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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2026-CA-1430-I

APPEAL FROM JEFFERSON
CIRCUIT COURT NO. 26-CI-7009

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION **MOVANT**

VS.

LEVAVIUM WELLS II, *et. al*. **RESPONDENTS**

RESPONDENTS' JOINT RESPONSE TO THE NCAA'S RAP 20(B) MOTION FOR RELIEF FROM TEMPORARY INJUNCTION

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CERTIFICATE OF SERVICE

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INTRODUCTION

This is the NCAA's fourth trip to this Court in this matter since September 1. They've now filed two RAP 20(B) motions and two RAP 20(D) emergency motions. The NCAA lost both emergency motions. When this Court considered the NCAA's prior RAP 20(B) motion, it dissolved the circuit court's order because it was styled as a restraining order and rested on no evidence. In its conclusion, this Court told the parties exactly what came next: "To be clear, nothing stated herein precludes the respondents from, upon proper motion, prospectively seeking CR 65.04 relief (*i.e.*, a temporary injunction) from the circuit court." (Appx. 3, at 25.) The circuit court did precisely what this Court said. It held a full evidentiary hearing. Eight student-athletes, two Division I men's basketball head coaches, an incoming freshman, and a sports agent testified and were cross-examined. The NCAA was invited to call witnesses and "declined this invitation." (Appx. 1, at 3.) The court then made findings of fact and entered a temporary injunction under CR 65.04.

The NCAA now asks this Court to treat its October 2 Order as something it expressly was not: a final ruling on the merits. This Court said it was "unnecessary to address any more of the substance of this matter, and we decline to do so absent a more developed record." (Appx. 3, at 24.) There is now a developed record, and the NCAA chose to put almost nothing in it.

On the merits, the NCAA's position comes down to a demand that courts enforce a rule that is not in the contract. The contract is the Division I Manual—the codification of the NCAA's bylaws, and the rulebook every student-athlete must sign off on, through a signed eligibility statement, before competing each academic year. (Appx. 8, Bylaw 12.5.2.1 and Appx. 7 Bylaw 20.2.4.7.) Bylaw 12.6 of the 2026-27 Manual, which the NCAA itself placed in the appendix, gives every "individual" a five-year period of eligibility with no seasons-of-competition limit and no exclusion for the Class of 2022. (Appx.8, Bylaw 12.6.) The Manual also says that when the NCAA

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wants to change what its legislation means, "[a] modification of wording shall be codified in the legislation." (Appx.8, Bylaw 9.3.1.1.1.) The NCAA never codified an exclusion it now seeks to enforce. Instead, the NCAA points to permissive wording in an "Effective Date" note contained in Proposal 2026-44, stating "may be applied", which never made it into the Manual. (Appx. 9.) Below, the NCAA went further and told the circuit court that "if any document in the record is a contract, it's the proposal . . . not the manual itself." (VR 10/14/26 at 2:10:15–14:10:44.) No student-athlete signs the Proposal. And the NCAA applies the new rule to the Classes of 2023, 2024, and 2025, all of whom enrolled under the old rules, while carving out a single class of athletes who followed every rule the NCAA ever wrote.

The NCAA is also asking two courts to decide the same questions at once. Two days after filing this motion, it filed a motion to dismiss in the circuit court raising the same jurisdiction, "law of the case," and contract arguments—and including a venue objection it never presented to the circuit court before the injunction issued. Those questions are pending below, where they belong. The NCAA's motion does not show that the circuit court abused its discretion on the record before it, and it should be denied.

STATEMENT OF THE CASE

A. The NCAA adopts a new eligibility rule and publishes it without any Class of 2022 exclusion.

For decades, Bylaw 12.6 limited student-athletes to four seasons of competition within a five-year period. (Appx. 7, Bylaws 12.6, 12.6.1.) Over the last five years, the NCAA routinely gave athletes more: a blanket COVID-19 season to every athlete enrolled in 2020-21, junior-college exemptions, redshirts, hardship waivers, and—most recently—eligibility for former professional basketball players. (Appx. 1, at 4–5, 12, 15.) On June 24, 2026, the Division I Cabinet voted to adopt an age-based model. (Appx. 4, ¶ 16.) The resulting amendment to Bylaw 12.6, as codified in the 2026-27 Manual, provides:

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> **12.6 Five-Year Period of Eligibility.** An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following: (*Revised: 7/31/14, 6/6/25 effective 7/1/25, 6/24/26 effective 8/1/26*)
>
> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution . . . in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday.

(Appx. 8, Bylaw 12.6.) The bylaw contains no seasons-of-competition limit. It contains no exclusion for athletes who enrolled before a particular date, who graduated high school in a particular year, or who used four seasons under the former rule. The new Manual adds that "[t]here shall be no waivers of the application of the five-year period of eligibility legislation." (Appx. 8, Bylaw 12.6.8.) A Plaintiff who first enrolled full time in the fall of 2022 is in the fifth year of that five-year period during the 2026-27 academic year.

Instead of the plain language of the manual, the NCAA's argument relies instead on Proposal 2026-44. The Proposal's "Effective Date" note states that the rule is effective August 1, 2026 and "***may be applied*** to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026," and that "[p]revious rules ***may*** be applied to student-athletes who enrolled before or enroll during the 2026-27 academic year." (Appx. 9) (emphasis added). The note in the Proposal says "may." It does not say the rule "shall" or "shall not" apply to anyone. And this note was not placed in the Manual. The published bylaw carries only the parenthetical "6/24/26 effective 8/1/26." (Appx. 8, Bylaw 12.6.)

B. This Court dissolves the circuit court's prior order on procedural and evidentiary grounds and invites a renewed motion.

Plaintiffs filed suit on August 12, 2026. (Appx. 17.) On August 21, the circuit court entered an order styled as a temporary restraining order. (Appx. 2.) On October 2, this Court held that the

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order was, in substance, a temporary injunction and that it was unsound because "the circuit court took no evidence" and the complaint was not properly verified. (Appx. 3 at 14–15, 22–24.) In addressing whether the order was a restraining order, this Court considered what it called "an entirely new argument" about the 2026-27 version of Bylaw 12.6 stating—"[e]ven if it were proper for us to consider this new argument"—it concluded that the "purported latest version of Bylaw 12.6 (assuming it is operative)" did not support Respondents' status-quo argument on the record then before it. (Appx. 3 at 15–21.) This Court then expressly declined to go further: "It is unnecessary to address any more of the substance of this matter, and we decline to do so absent a more developed record." (Appx. 3 at 24.) And it stated, "[t]o be clear, nothing stated herein precludes the respondents from, upon proper motion, prospectively seeking CR 65.04 relief (*i.e.*, a temporary injunction) from the circuit court." (Appx.3 at 25.)

C. The circuit court holds an evidentiary hearing; the NCAA calls no witnesses.[1]

On October 14, 2026, the circuit court held the evidentiary hearing this Court's previous Order contemplated. Eight Plaintiffs, from a variety of different sports, testified:

- Seth Trimble, Louisville men's basketball (VR 10/14/26, at 11:14:30—11:28:57)
- Jawaun Northington, Murray State football (*Id*., at 1:11:00—1:14:30)
- Davion Cunningham, Morehead State men's basketball (*Id*., at 01:14:30—1:20:06)
- Olivia Albert, Indiana women's soccer (*Id*., at 1:20:06—1:22:00)
- Sophie Harlan, Kentucky women's soccer (*Id*., at 1:22:00—1:25:30)
- Regan Dancer, Xavier women's soccer (*Id*., at 1:25:30—1:30:12)
- Kalib Perry, Louisville football (*Id*., at 1:32:44—1:40:13); and
- Alex Afari Jr., Kentucky football (*Id*., at 1:40:30—1:49:53).

In addition, the circuit court heard testimony from University of Louisville men's head basketball coach Pat Kelsey (*Id*., at 11:50:00—12:17:35) and University of Missouri men's basketball head coach Dennis Gates (*Id*., at 12:17:40—1:10:52). Louisville men's basketball

[1] For the Court's convenience, Respondents provide an unofficial transcript prepared from the video record, included at Resp. Appx. H–J; citations in this response are to the video record by clock time.

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player, freshman Isaac Ellis (*Id*., at 11:29:35—11:33:35), and sports agent Daniel Hennes (*Id*., at 10:11:00—11:14:01), also testified. The parties stipulated to the admission of all exhibits—Plaintiffs' Exhibits 1 through 36 and the NCAA's Exhibits 1 through 17. (*Id*., at 10:08:30–10:09:13.) Further, the parties stipulated to the admissibility of numerous affidavits, including from witnesses who were unable to testify due to shortage of time on the court's docket. *Id*., at 1:32:10—1:32:44). During the testimony of Mr. Afari, the Court accepted as evidence the affidavits of 11 of Mr. Afari's teammates, all fellow linebackers rostered by the University of Kentucky, and all who expressed that the only fair outcome was for Mr. Afari to play this year, and all expressing that they welcomed the opportunity to play alongside him. (*Id*., at 1:43:10—1:44:03.)[2]

The NCAA cross-examined every witness but called none of its own. The NCAA was "given the opportunity to present [its] own witnesses," and it "declined this invitation." (Appx. 1 at 3.) When Plaintiffs finished presenting witnesses, the parties proceeded to closing argument. The Wells Plaintiffs went first. (*Id*. at 1:49:51–1:55:13) followed by counsel for the NCAA (1:55:04—2:17:00) and counsel for Mr. Afari (2:17:00—2:20:50).

By agreement, Plaintiffs submitted additional affidavits and declarations after the hearing, and the NCAA stated on the record that it had no objection, and specifically it had "no objection to the evidence coming in through declarations." (VR 10/14/26 at 2:21:00–2:22:30; Appx. 32.) The Plaintiffs provided declarations for the following Plaintiffs:

- Reese Ragland, Delaware cross-country and track;
- D'Angelo Hutchinson Jr., Louisville and Cincinnati football;
- Katie Fichtner, Ohio State field hockey;
- Coach John Long, Indiana swimming team;
- Kristina Paegle, Indiana swimming team;

[2] Respondent Afari had previously filed in the record a Verified Intervening Complaint, an Affidavit in support, and his UK Football Statistics. These items and Affidavits of numerous team members were presented into evidence at the evidentiary hearing. *See also* October 15, 2026, Alex Afari Jr.'s Notice of Filing of Exhibits from Temporary Injunction Hearing.

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- Donovan Oday; NKU and Troy men's basketball; and
- Garret Helsel; Xavier baseball.

These Declarations were submitted with affidavit of counsel pursuant to CR 43.13. (Resp. Appx. K[3] and Appx. 32.) They describe these Plaintiffs' Class of 2022 status, where they have competed in their careers, how they have competed against 5th and 6th year players during their own careers, their current plans, the harm they will incur if not allowed to compete, and the benefits for them and to their teammates of allowing the Class of 2022 to compete for 5 years, a benefit they've seen countless other athletes enjoy.

In his Declaration, Coach John Long testifies that "[a]s Kristin's coach I have seen a large number of athletes compete in their 5th year of eligibility and I know that all future athletes will receive 5 years. I think it would be unfair to denied [sic] her this opportunity. In addition, he testifies, "[a]s a coach I frequently read the rule book. The rule book changes shows that athletes have 5 years of eligibility, without any stipulations as to when this would start. As the rule is written, Kristina should be eligible to compete." (Resp. Appx. K., and Appx. 32, Declaration of Coach Long, ¶ 10).

In its present motion, the NCAA tells this Court that, "[r]ather than presenting any evidence about the rule itself," the witnesses testified only to unfairness, and that no witness testified that the new rule gives Plaintiffs additional eligibility. (Mot. 11.) The record shows otherwise. At the hearing, Plaintiffs' Exhibit 26—excerpts from the September 15, 2026 edition of the 2026-27 Manual—was admitted by stipulation, and agent Daniel Hennes read Bylaw 12.6 into the record from page 45 of that edition, including its revision note which simply states "Revised: 7/31/14, 6/6/25 effective 7/1/25, 6/24/26 effective 8/1/26, 9/9/26." (VR 10/14/26 at 10:32:40–10:35:25.)

[3] At the hearing, the circuit court and all parties recognized the urgency of the matter. Because counsel for the NCAA explicitly stated they "have no objection" to the evidence being admitted through stipulations, counsel for Plaintiffs filed the Declarations along with affidavits of counsel, rather than waiting for each Plaintiff to have their documents notarized.

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Asked whether he saw "anything in this rule that excludes any particular group of athletes," he answered, "No."

Further, Mr. Hennes testified that Plaintiff Seth Trimble, a men's basketball player, is within five years of both his first full-time enrollment and his 19th birthday, and that, reading the rule, "I certainly think he's eligible." (*Id*. at 10:34:55–10:35:35.) Hennes also testified that in his work as an agent, he keeps track of the NCAA's position on different types of athletes and is aware that the NCAA has cleared at least nine former professionals older than Trimble—some of whom played professionally for more than four years—without any of them having to sue. (*Id*. at 10:35:36–10:37:00; Pls.' Ex. 36.) He testified that it is not fair for the NCAA to allow professional international players, older than Mr. Trimble, to play, while simultaneously attempting to bar Mr. Trimble from playing (*Id*., at 10:36:30—10:37:10).

Missouri men's basketball head coach Dennis Gates agreed that the Division I manual is the rulebook on eligibility. When presented with Bylaw 12.6 on the witness stand, Coach Gates testified "it's never mentioned" when asked if he sees anything in the rule prohibiting the Plaintiffs from playing. When asked if Plaintiffs are eligible under the rule as written by the NCAA, he testified, "it is written." (VR 1:08:00—1:09:20). When asked if he can think of any reason why the Plaintiffs should not be able to play this year, Coach Gates testified, "I can't think of a reason." (*Id*., at 1:09:50—1:10:13). At the NCAA's request, Coach Gates also read the Manual's statement that its online version, the Legislative Services Database (LSDBi), is "updated throughout the year to reflect any adopted legislation, modifications of wording, incorporations and editorial revisions." (Id., at 12:51:30—12:52:30). Bylaw 12.6 was then displayed in court as it currently appears in LSDBi. It contains no exclusion either. (*Id*., at 1:09:15—1:10:11).

Coach Gates was asked what he thinks is the right thing for the NCAA to do regarding the Class of 2022. He testified the right thing is "to allow young people to be developed, give them

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what they gave everybody else. It's just that simple. Not exclude them from growth, maturity, and opportunity." (*Id*, at 12:25:07—12:25-35). Further, Coach Gates is a member of the National Association of Basketball Coaches ("NABC"), an organization where coaches meet, have conventions, and exchange information. The NABC sent notes and ideas about a potential 5th year of eligibility, and it was the stance of the NABC to grant athletes a 5th year of eligibility. (*Id*., at 12:27:50—12:28:43). The NABC never suggested excluding the of the Class of 2022 from 5 years of eligibility, and Coach Gates has not heard from any other coaches that want to exclude the class of 2022. (*Id*., at 12:30-30—12:30:45).

Coach Gates testified that the NCAA has previously signaled that current fifth year players have additional eligibility because after the player's fourth year, the NCAA allowed these players to enter the transfer portal. (*Id*., at 12:44:25—12:46:40). Further, Coach Gates testified, "when you have covid take place, just a couple years ago with the same teammates that these kids have, they're not going to conclude that they don't have a fifth year, when everybody around them has had a fifth year." (*Id*., at 12:47:30—12:48:05). In his concluding testimony on direct examination, Coach Gates testified:

> "All I'm saying is, treat everybody the same. Don't exclude a class of student athletes who want development. They want the development. They're not screwing anything up with the current students or teammates, they just want an opportunity to go to college for an extra year, with the same excitement that they did when they filled out the application while they were in high school. That's all they want. So all I ask is to treat them fairly."

(*Id*., at 12:35:35—12:36:10)

When Louisville men's basketball head coach Pat Kelsey was asked to explain why he wants Plaintiffs Seth Trimble and Levavium "LJ" Wells on his team, he responded by asking, "how long you got?" before describing his opinions on the high character of the players, describing them as "world class human beings, they make us better, they make me better, I'm blessed to be their coach." He testified that the rest of the Louisville basketball team members "love those dudes,

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they're family." (VR 10/14/26, at 11:58:01—11:59:33.) Coach Kelsey further testified that he is aware that the NCAA cleared basketball player London Johnson to play for two college seasons after playing three professional seasons in the National Basketball Association ("NBA") G League, including after receiving a reported $1.1 million contract (*Id*., at 11:55:05—11:56:25). He also testified the "chaos" the NCAA invokes is "100% the NCAA trying to keep the class of 22 from getting eligible, no question." (*Id*., at 12:17:00-12:17:30.)

Isaac Ellis is a freshman point guard on the Louisville basketball team who competes for minutes with Plaintiff Seth Trimble. He testified that after he initially heard that Mr. Trimble, a highly decorated player who plays his same position was coming to Louisville, he was a little upset because he knew he wouldn't play as much. But, "after I kinda realized and thought about it, I knew that being able to compete against a guy like Seth every day, a guy that's played in those big games, and learn from him, and be around him every day, I was really excited for that opportunity to be around him." After he found out that Mr. Trimble was coming to Louisville, Mr. Ellis contacted Coach Kelsey and told him, "it was a great pickup, and I thought it would make our team a lot better, and I was excited about it." (*Id*., at 11:30:00—11:31:13.)

Mr. Ellis testified that the NCAA is giving him five years of eligibility, and he believes it is fair for Mr. Trimble and the other Plaintiffs to receive the same five years. Although he may get less minutes this year, he has a whole fifth year to make up for it. Coach Kelsey neither cut him nor reduced his pay because Mr. Trimble joined the team. (*Id*., at 11:31:13—11:32:00). Mr. Ellis testified that the entire back row of the courtroom was full of teammates supporting the Plaintiffs and their teammates, Seth Trimble and LJ Wells, in this case. Mr. Ellis testified he would "love" for these teammates to play this year. (*Id*., at 11:32:00—11:32:31).

The Plaintiff witnesses all testified that they were members of the Class of 2022 and had played against 5th and even sometimes 6th year players in their careers. On cross-examination, the

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NCAA questioned Plaintiff Regan Dancer about a recent game she played in against Georgetown. Counsel for the NCAA asked her if she thinks that Georgetown would think it's fair that she was able to play in that game, to which she testified "yeah, I think they would think that it's fair" and added that "I have a good relationship with that Coach, actually, and he said that he was happy to see me out there." (*Id*., at 1:27:55—1:28:36).

Plaintiff Seth Trimble testified that no one was cut and no one would be paid less because of his return to the team (*Id*. at 11:19:22–11:19:42) and Plaintiff Alex Afari testified that no one was cut when he rejoined the University of Kentucky roster. (*Id*., at 13:45:41–13:45:54.)

D. After hearing the evidence,[4] the circuit court grants Plaintiff's Motion for Temporary Injunction.

On October 16, after hearing the evidence, the circuit court entered findings of fact and conclusions of law and granted a temporary injunction. (Appx.1.) The circuit court found that the coaches, "in conjunction with discussions with their compliance offices, . . . relied upon the published plain text of Bylaw 12.6 to construct their rosters," and that allowing Plaintiffs a fifth year "would not take roster spots or deprive other players." (Appx. 1 at 5, 11–12.) It also found that "[n]o evidence was introduced in support of the NCAA's contention that allowing the Plaintiff's a fifth year of eligibility would harm other student athletes." (*Id*. at 6.)

The circuit court further found that Plaintiffs are intended third-party beneficiaries of the membership agreement that incorporates the Manual (*Id*., at 13), that the published text of Bylaw 12.6 governs eligibility for the 2026-27 season, and it contains no Class of 2022 exclusion (*Id*., at 13–15). The circuit court specifically found that Plaintiffs do not seek retroactive application of the rule (*Id*. at 14). The circuit court also found that "the NCAA is bound by unambiguous terms contained in its Manual." (*Id*., at 15).

[4] The evidentiary hearing was over four hours long.

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The circuit court continued, finding even if the NCAA's argument that language in the Proposal predating the formal adoption of Bylaw 12.6 is considered, it "disagrees that the NCAA has unfettered, unencumbered, right to legislate and interpret its Bylaws in any matter it so chooses." (*Id*.) Thus, the circuit found that the NCAA breached the covenant of good faith and fair dealing by granting "5th, 6th, and even 7th seasons of eligibility with no consistent explanation as to why" while excluding the Class of 2022—a position the court found "so arbitrary that it breaches the contract" (*Id*. at 16). The circuit court found "by clear and convincing evidence that Plaintiffs have a substantial likelihood of success on the breach of contract/good faith and fair dealing claim." (*Id*., at 16). Further, the court found irreparable harm and that the equities and public interest favored relief. (*Id*. at 9–12.)

The NCAA again sought emergency relief. On October 30, this Court denied it, holding that the NCAA had not shown "an imminent, ruinous, and incalculable injury," noting that the NCAA had not sought Supreme Court review of the prior denial, and observing that "it behooves no one for Respondents' eligibility status to flip-flop repeatedly as our courts work through the underlying issues." (Resp. Appx. A, at 4).

E. After filing this motion, the NCAA files a motion to dismiss in the circuit court on the same grounds.

On October 29, 2026—two days after filing this motion—the NCAA filed in the circuit court a Motion to Dismiss for Lack of Jurisdiction, Improper Venue, and Failure to State a Claim under CR 12.02(b), (c), and (f). (Resp. Appx. G.) It raises the same personal-jurisdiction, venue, "law of the case," third-party-beneficiary, good-faith, and Rule of Restitution arguments the NCAA presses here, and it describes the circuit court's jurisdictional ruling as "preliminary." (*Id*., at ii, and 2–25.) That motion remains pending.

The motion to dismiss is the first time the NCAA has asked the circuit court to rule on venue as to the Wells Plaintiffs. The NCAA's opposition to Plaintiffs' motion for injunctive relief did

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not raise venue at all. (Appx. 19.) The NCAA's only earlier venue objection was directed to Respondent Afari's motion to intervene. (Appx. 25.) The NCAA did not raise venue in opposing Plaintiffs' renewed October motion, and it did not raise venue at the October 14 injunction hearing: its closing argument there addressed the merits, the balance of the equities, and the scope of any injunction, but not venue. (VR 10/14/26 at (1:55:04—2:17:00.) The circuit court's October 16 Order accordingly does not address venue. (Appx. 1.)

STANDARD OF REVIEW

Appellate courts review a trial court's grant or denial of a temporary injunction for abuse of discretion. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 664 S.W.3d 633, 659 (Ky. 2023). Therefore, "a party seeking interlocutory relief from a trial court's decision to grant or deny a temporary injunction ***bears an enormous burden***…" *Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 162 (Ky. 2009) (emphasis added). This is because "an appellate court may not disturb a trial court's decision on a temporary injunction unless the trial court's decision is a clear abuse of discretion." *Id*. And "[u]nless a trial court has abused that discretion, this Court has no power to set aside the order below." *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky. Ct. App. 1978). A trial court abuses its discretion when its decision "was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Cameron*, 664 S.W.3d at 659 (citing *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999)). A circuit court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR 52.01.

Motions for temporary injunctive relief are evaluated under the three-part "substantial question" test outlined by this Court in *Maupin v. Stansbury*:

> First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such

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> things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented ***a substantial question*** as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the actual overall merits of the case are not to be addressed in CR 65.04 motions. ***Unless a trial court has abused its discretion in applying the above standards, we will not set aside its decision on a CR 65.07 review.***

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky. Ct. App. 1978) (emphasis added).

The merits of the issue in litigation are not conclusively decided at this stage. "The merits of an issue in litigation cannot be conclusively decided within the scope of a hearing on a motion for a temporary injunction." *SM Newco Paducah, LLC v. Ky. Oaks Mall Co*., 499 S.W.3d 275, 279 (Ky. 2016). At most, such preliminary findings are "necessarily in accord with the circuit court's obligation to determine whether the party seeking interlocutory injunctive relief has presented a substantial question on the merits underlying the case and whether the equities are in favor of issuance of injunctive relief." *Id*. A ruling on a temporary injunction "does not constitute an adjudication of the parties' ultimate rights." *Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760, 762 (Ky. 1958).

ARGUMENT

I. The October 2 Order Is Not "Law of the Case" on the Merits.

The NCAA's lead argument The NCAA's lead argument is that this Court already decided the merits on October 2. (Mot. 12–14.) The Order itself says otherwise.

First, this Court's October 2 Order decided only two questions: (1) whether the August 21 order was a restraining order or a temporary injunction; and (2) whether it rested on sufficient evidence. (Appx. 3 at 21–24.) Having answered both, this Court said: "[i]t is unnecessary to address any more of the substance of this matter, and we decline to do so absent a more developed record." (*Id*. at 24.) When this Court expressly declines to reach the merits of an issue, this Court

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has not decided the merits. And this Court went on to invite exactly the motion the circuit court granted. (*Id*. at 25.) The NCAA's reading would make that invitation meaningless. Under the NCAA's view, the circuit court was told it could entertain a new motion for a temporary injunction that it was already forbidden to grant.

Second, the passage the NCAA quotes arose in this Court's analysis of the status quo—whether the August 21 order was a restraining order. Respondents had argued the order merely preserved the status quo because the new Bylaw 12.6 already made them eligible. The Court described that as "an entirely new argument," considered it only on the assumption that "it were proper for us to consider" it, referred throughout to a "purported" version of the bylaw "(assuming it is operative)," and limited its conclusion to what was in the Manual "that the respondents have directed us to." (Appx. 3 at 15–16, 20–21.) That is not the language of a binding merits holding. It is the language of a court addressing what it considered a new argument on an undeveloped record and saying so.

Third, the NCAA's cited authority defeats its argument. *Renshaw v. Cook* says an appellate ruling dissolving a temporary injunction is "the law of that case so long as the facts shown in the record are substantially unchanged." 111 S.W. 377, 383 (Ky. 1908) (cited at Mot. 13). Here, the record has changed completely. When this Court issued its Order on October 2, there was no evidence. (Appx. 3 at 23–24.) Citing *Beshear v. Goodwood Brewing Co., LLC*, 635 S.W.3d 788, 797 (Ky. 2021), this Court noted that "evidentiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction." (Appx. 3 at 24.) Since this Court's October 2 Order, there has been an evidentiary hearing and there is now a full evidentiary record, including the authenticated 2026-27 Manual (including Bylaw 9.3.1.1.1, discussed below), Bylaw 12.6's actual effective-date language, sworn testimony from coaches who relied on the published bylaw, and the circuit court's findings of fact.

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The NCAA's reliance on *Inman v. Inman*, 648 S.W.2d 847 (Ky. 1982), is likewise unavailing. *Inman* concerns a trial court's obligation to follow an appellate mandate after a merits appeal and remand. There was no merits appeal here. Inman simply requires that when "there was no change in the issues or evidence" that the circuit court must "follow the mandate of the appellate court." Here, there is now substantially different evidence, and this Court's mandate in its October 2 Order was to permit a renewed CR 65.04 motion. "To be clear, nothing stated herein precludes the respondents from, upon proper motion, prospectively seeking CR 65.04 relief (*i.e.*, a temporary injunction) from the circuit court." (Appx. 3 at 25.)

Fourth, the circuit court's injunction rests on a ground this Court's October 2 Order never touched. Independent of the governing text of Bylaw 12.6, the circuit court found that the NCAA breached the covenant of good faith and fair dealing by arbitrarily extending eligibility to former professional players and to athletes receiving "5th, 6th, and even 7th seasons of eligibility" while singling out the Class of 2022, "with no consistent explanation as to why." The circuit court could reach "no other conclusion other than that this is arbitrary." (Appx. 1 at 15.) Nothing in this Court's October 2 Order touches on that finding. Even if the NCAA were right about its "law of the case" argument, injunction would stand on this independent ground.

Tellingly, the NCAA is presenting the same "law of the case" argument to the circuit court in its pending motion to dismiss. (Resp. Appx. G, Mem. § III.) The circuit court has not yet ruled on it. That is where the argument belongs in the first instance, and the pendency of that motion confirms that the merits remain to be adjudicated below, not here.

II. Plaintiffs presented a Substantial Question on the Merits.

A. The Manual's text makes Plaintiffs eligible, and applying it to games played after August 1, 2026 is not "retroactive."

The Manual is unambiguous. As codified in the 2026-27 Manual, Bylaw 12.6 gives every "individual" a five-year period of eligibility measured from first full-time enrollment (or the year

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after the individual's 19th birthday), with no cap on seasons. (Appx.8, Bylaw 12.6.) The bylaw does not exclude anyone based on the year he enrolled or the number of seasons he used under the old rule. When a contract is unambiguous, it is enforced according to its terms. *Frear v. P.T.A. Indus., Inc*., 103 S.W.3d 99, 106 (Ky. 2003) ("in the absence of ambiguity a written instrument will be enforced strictly according to its terms, and a court will interpret the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence").

The NCAA's answer is retroactivity. But Plaintiffs do not ask the NCAA to re-score a past game or to restore any past season. They ask to compete in games played after the rule took effect. A rule "does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law." *Landgraf v. USI Film Prods*., 511 U.S. 244, 269 (1994)—the very case this Court cited on October 2. (Appx. 3, at 20.) The question is whether the rule "attaches new legal consequences to events completed before its enactment." *Id*. at 269–70. An eligibility rule that governs who may compete in 2026-27 contests, measured by reference to when an athlete enrolled, is a prospective rule that uses an antecedent fact. The circuit court recognized exactly this distinction and specifically found that the Plaintiffs do not seek retroactive application of the rule. (Appx. 1, at 14.)

The NCAA's own conduct proves the point. It applies the new rule to the Classes of 2023, 2024, and 2025—every one of whom enrolled before August 1, 2026, under the very same four-seasons rule. If applying the current bylaw to an athlete who enrolled under the old rules were "retroactive," the NCAA would be applying it retroactively to thousands of athletes every day. The NCAA does not contend that application is improper. The only question is which pre-August 2026 enrollees the rule covers, and the Manual answers it: every "individual" within the prescribed five-year period.

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The NCAA's fallback—that Plaintiffs did not prove when each of them first enrolled or turned 19 (Mot. 17)—fares no better. The NCAA has never contended that any Plaintiff is outside the five-year window; it declared each of them ineligible for one reason, that each used four seasons under the former rule. And the record establishes the facts the NCAA says are missing. Plaintiff Afari, for example, testified that he was born May 7, 2004, graduated high school in 2022, and first enrolled at the University of Kentucky in the fall of 2022. (VR 10/14/26 at 1:40:44–1:41:01.) Hennes testified that Plaintiff Seth Trimble is within five years of both his first enrollment and his 19th birthday. (*Id*. at 10:34:55–10:35:13.) Plaintiffs Northington, Cunningham, Albert, Harlan, and Dancer each testified that they started college in 2022 and are 22 years old, which places each of them in the fifth year of the five-year period this academic year. (*Id*. at 1:11:20–1:30:00) The NCAA does not dispute that all other athletes are similarly situated in that they are 23 years old or younger and within five years of starting college. But if the Court were to find the showing insufficient as to a particular Plaintiff, the remedy would be to narrow the injunction as to that Plaintiff and remand to allow such Plaintiff to present additional evidence, not to vacate the injunction.

B. The NCAA cannot add an exclusion to the unambiguous Bylaw by "interpretation."

The NCAA argues that Bylaw 12.01.1 makes eligibility subject to "interpretations," so the NCAA may interpret Bylaw 12.6 to exclude Plaintiffs. (Mot. 16, 23–24.) But the same Manual tells the NCAA how it must change what its legislation says: a committee "may interpret legislation consistent with the intent of the membership in adopting the legislation if sufficient documentation and testimony are available to establish clearly that the wording of the legislation is inconsistent with that intent," and "[a] modification of wording ***shall be codified in the legislation***." (Appx. 8, Bylaw 9.3.1.1.1 (emphasis added).) The NCAA's argument is precisely that the wording of Bylaw 12.6 is inconsistent with the membership's intent. Its own rules required

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it to codify any such modification. It never did, though the NCAA updates the online Manual "throughout the year to reflect any adopted legislation, modifications of wording, incorporations and editorial revisions." (Appx. 8, at ix.) Nearly five months after the vote, the Bylaw still contains no exclusion, in print or online. (VR 10/14/26 at 12:18–13:11.) The NCAA cannot invoke its interpretive authority while ignoring the express limit the Manual places on it.

Nor can Proposal 2026-44 do the work. Its "Effective Date" note is permissive: the new rule "may be applied" to athletes with eligibility remaining, and "[p]revious rules may be applied" to athletes enrolled before 2026-27. (Appx. 9.) A statement that a rule "may" be applied to one group is not a command that it "shall not" be applied to another. And this "Effective Date" note is not in the Manual. The NCAA has told other courts that it "speaks with one voice regarding the provisions of its eligibility rules, and it does so **through the Manual**." (Appx. 1, at 14 (quoting the NCAA's filing *in Godfrey v. NCAA*, No. 26-CV-05617 (Cobb Cnty. Super. Ct.)) (emphasis in the circuit court's order). It should be held to that statement. The pre-vote press releases and committee reports the NCAA cites (Mot. 6–8) are not the Manual either—and the most they say is that the new rules were "not expected to apply retroactively." (Appx. 11).

The NCAA's position on what the contract even is has also shifted. Before the circuit court, the NCAA disclaimed the Manual. When Mr. Hennes testified, he agreed that the Proposal's "Effective Date" note uses "may be applied" language but added that other parts of the rulebook "might call that [language] into question." To that, NCAA counsel responded: "We're not talking about the manual, we're talking about the proposal." (VR 10/14/26 at 11:03:05–11:03:31.) In closing, counsel for the NCAA told the court that "if any document in the record is a contract, it's the proposal because that's what the record reflects was voted on, not the manual itself," and that Proposal 2026-44 "is the governing legislation." (*Id*. at 2:10:22–2:11:47.) Here, the NCAA argues instead that its reading is "the most natural interpretation of the Manual." (Mot. 17.) It cannot have

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it both ways, and the position it took below is wrong. A Proposal is a proposal; the legislation is the bylaws as codified in the Manual. No student-athlete signs a Proposal or certifies eligibility under one. Before competing each academic year, every student-athlete must instead sign a statement submitting information related to his or her eligibility "under the governing legislation," and an athlete who fails to sign it is ineligible. (Appx. 8, Bylaws 12.5.2.1, 20.2.4.7.) The document student-athletes sign off on is the Manual, and the Manual contains no Class of 2022 exclusion.

Courts across the country have rejected the NCAA's argument on this precise point. As the circuit court noted, the Florida court in *Aberdeen v. NCAA* found that "[t]here is no bylaw in the 2026-27 Manual carving out the class of 2022," and that because the NCAA "has expressly excluded certain classes from application of its bylaws, but has not done so in Bylaw 12.6, the only reasonable construction is that Bylaw 12.6 intentionally did not exclude the class of 2022." (Appx. 1, at 14–15 (quoting *Aberdeen v. NCAA*, No. 01-2026-CA-002874 (Fla. 8th Cir. Ct. Oct. 5, 2026.)) The State of Florida, appearing as amicus curiae in the NCAA's appeal of that order, told the Florida appellate court that "Proposal 2026-44 is not part of the operative Manual." (Resp. Appx. B, at 8.) An Indiana court, while applying the law of the State where the NCAA is headquartered, granted a preliminary injunction on the same claims and denied the NCAA's motion to stay it. (Resp. Appx. C, D.)

To counsel for respondents' knowledge, no appellate court has stayed or reversed an injunction arising from a hearing that took place after the NCAA published the 2026-2027 Manual.

C. Plaintiffs are intended third-party beneficiaries of the NCAA's membership agreement.

The contract is in the record and the NCAA admits it. In its current motion, the NCAA says Plaintiffs never proved a contract. (Mot. 17–18.) But the NCAA's own motion explains that "[t]he NCAA's member institutions created the Manual as a set of rules to which they agreed to be bound," and that the Manual "imposes obligations on institutions as conditions of continued

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membership in the NCAA." (Mot. 21.) That is a contract: mutual promises, by the NCAA and its members, to abide by and enforce the rules codified in the Manual. Each member promises to certify "the eligibility of student-athletes under the terms of the bylaws" (Appx.7, Bylaw 20.2.4.4), and to "administer annually a signed statement for each student-athlete" concerning eligibility (Appx.8, Bylaw 20.2.4.7). Student-athletes, in turn, must sign that statement before competing each academic year, on threat of ineligibility. (Appx. 8, Bylaw 12.5.2.1.) The Manual is the document that binds all three. And it is in the record; this Court has already noted that it was "filed of record and indisputedly authentic." (Appx. 3 at 3–4.)

Kentucky's third-party beneficiary test is satisfied here. A third party may enforce a contract that "was made for the actual and direct benefit of the third party," as opposed to one that benefits him only incidentally. *Phoenix Am. Adm'rs, LLC v. Lee*, 670 S.W.3d 832, 839 (Ky. 2023); *Presnell Constr. Managers, Inc. v. EH Constr., LLC*, 134 S.W.3d 575, 579 (Ky. 2004). The eligibility bylaws are not a contract that incidentally happens to have an influence on student-athletes. They exist for no other purpose than to define student-athletes' rights to practice and compete. Bylaw 12.6 speaks directly to "[a]n individual's period of eligibility." (Appx.8, Bylaw 12.6.) Bylaw 12.6.8 prohibits waivers of "the five-year period of eligibility legislation"—a protection that runs to the individual athlete. (Appx.8, Bylaw 12.6.8.) The NCAA's Constitution describes the Association as "committed to the well-being and development of student-athletes" and recognizes that intercollegiate athletics "provide student-athletes with the opportunity to participate in sports and compete." (Appx.7, Const. pmbl.) Student-athletes are not incidental to the eligibility rules; they are the only people those rules are about.

Courts applying the NCAA's eligibility bylaws in this very dispute have so held. The Florida court in *Aberdeen* found that the Manual "was entered into primarily and directly for the benefit of student athletes," observing that "[e]ach year student-athletes must 'review and execute

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acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools," and that "as other courts have noted, student athletes are not incidental to the agreement between the NCAA and its members, they are the entire point of it." (Resp. Appx. E at 6.) The federal court in *Lorient* agreed: "Plaintiffs are certainly beneficiaries. The NCAA Manual's stated purpose is not merely to regulate institutions, but to serve student-athletes." (Resp. Appx. F at 47.) The Indiana court in *Daley* reached the same conclusion under Indiana law, as discussed below. (Resp. Appx. C, at 31-32.) Courts outside this litigation are in accord. *See Bloom v. NCAA*, 93 P.3d 621, 623–24 (Colo. App. 2004) ("the NCAA's constitution, bylaws, and regulations evidence a clear intent to benefit student-athletes"); *Bartle v. NCAA*, No. 5:24-cv-00107, 2024 WL 4685604, at *5 (N.D. W. Va. Nov. 4, 2024) (student-athlete sufficiently alleged that he was a third-party beneficiary of the NCAA's bylaws and constitution).

The donee/creditor labels do not help the NCAA. The NCAA argues that only donee and creditor beneficiaries may sue, and that Plaintiffs are neither. (Mot. 19–20.) But those categories track the Restatement (First) of Contracts, under which a donee beneficiary includes one whom the promisee intends "to confer upon him a right against the promisor to some performance neither due nor supposed or asserted to be due from the promisee to the beneficiary." Restatement (First) of Contracts § 133(1)(a) (1932). That describes this case exactly: each member institution contracts with the NCAA so that the student-athletes it fields will be judged under the eligibility rules as written. And *Phoenix*—the NCAA's own principal authority—found a consumer to be an intended beneficiary of a contract's administrative obligations without pausing over any gift or pre-existing debt. 670 S.W.3d at 839–40. The NCAA's rigid reading of the categories is not Kentucky law. And if a gift were required, the Manual supplies one: as the *Lorient* court put it, the Manual's "principles, rights, responsibilities, rules, regulations, policies, procedures, and statements" are

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"all centered on giving the 'gift' of college athletics," and they are properly read "as words of intention." (Resp. Appx. F, at 48.)

The NCAA's other cited cases are not about eligibility rules. *Rose*, *Hall*, and *Doe* involved general statements of principle about health, safety, and welfare, which those courts found too aspirational to create enforceable rights. (Mot. 20–22.) Plaintiffs do not sue on aspirations. They sue on a specific, mandatory eligibility bylaw that defines exactly who may compete. The Indiana court in *Daley*—applying the same Indiana law the NCAA's *Doe* decision applied—distinguished *Doe* on exactly this ground. *Doe* involved statements that were "more of an aspirational goal," whereas here "the Manual specifically outlines rules as to eligibility," and "[e]ligibility determinations are a duty that the NCAA has control over." (Resp. Appx. C, at 31.) The court held that student-athletes "are intended third-party beneficiaries of the Manual under Indiana law as the Manual is intended to benefit Plaintiffs, explicitly names student athletes, and contains direct obligations to Plaintiffs and all other student-athletes." (*Id*., at 32.) And it adopted the Tennessee court's finding that "student-athletes are required to review and execute acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools," a requirement that "demonstrates that the contractual framework was intended to operate directly upon student-athletes and not merely upon member institutions." *(Id*. quoting *Washington v. NCAA*, No. 26-0896-III (Tenn. Ch. Ct. Davidson Cnty. July 31, 2026)).

D. Deference under *Lasege* and *Hopkins County* does not extend to an interpretation that rewrites the text, and the circuit court found arbitrariness.

The NCAA's own authorities limit the deference it claims. Courts defer to an association's interpretation of its bylaws only "so long as that interpretation is fair and reasonable," and decisions are conclusive only "[i]n the absence of mistake, fraud, collusion or arbitrariness." *Ky. High Sch. Athletic Ass'n v. Hopkins Cnty. Bd. of Educ.,* 552 S.W.2d 685, 687 (Ky. App. 1977). An interpretation that adds an exclusion the bylaw does not contain—in defiance of the Manual's own

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codification requirement—is neither fair nor reasonable. And the circuit court made an express finding of arbitrariness on evidence: the NCAA has granted "5th, 6th, and even 7th seasons of eligibility with no consistent explanation as to why," has allowed athletes with "multiple years of professional playing experience" to return, and has excluded only the Class of 2022. (Appx.1 at 15–16.) That finding is not clearly erroneous; the NCAA offered no witness to explain it.

NCAA v. Lasege, 53 S.W.3d 77 (Ky. 2001), does not change the analysis. *Lasege* reviewed the NCAA's adjudicative determination that a particular athlete had forfeited his amateur status—a fact-bound application of a rule whose meaning was not in dispute—and asked whether it was supported by substantial evidence. *Id*. at 83–85. Here, the facts are undisputed; the question is what the published contract says. That is a question of law for the courts. The NCAA's complaint about the circuit court's citation of *Loper Bright* (Mot. 26–28) misses the point the circuit court was making: when a governing text is clear, the drafter does not get to override it by announcing a different "interpretation." That is a basic rule of contract law, not administrative law.

Nor does the NCAA's "differently situated" argument (Mot. 25) survive the record. The NCAA allows 2022 high school graduates who signed professional contracts and played professionally in 2022-23 to compete in 2026-27, while barring 2022 graduates who followed the NCAA's rules and went straight to college. (Appx. 1 at 15–16.) Mr. Hennes identified at least nine former professional athletes, all older than Trimble, whom the NCAA cleared to play without litigation. (VR 10/14/26 at 10:35:36–10:37:00.) Treating rule-breakers better than rule-followers is the definition of arbitrary.

E. The covenant of good faith applies to the NCAA's exercise of discretion under the contract.

Plaintiffs do not assert a freestanding tort. They assert breach of contract, and "in every contract, there is an implied covenant of good faith and fair dealing." *Ranier v. Mount Sterling Nat'l Bank*, 812 S.W.2d 154, 156 (Ky. 1991). *Farmers Bank & Trust Co. v. Willmott Hardwoods,*

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Inc., 171 S.W.3d 4, 11 (Ky. 2005), holds that the covenant cannot override an express contractual right. Plaintiffs do not challenge the NCAA's right to amend its bylaws; they ask that the amendment be applied as written. And the only "express right" the NCAA invokes—its interpretive authority—is expressly limited by Bylaw 9.3.1.1.1's codification requirement. Where a contract gives a party discretion, as the Manual does with waivers and interpretations, the covenant requires that the discretion be exercised in good faith. After hearing the evidence, the circuit court found it was not. (Appx.1, at 15–16.)

III. *Lasege's* Rule-of-Restitution Holding is No Basis to Vacate the Eligibility Injunction.

The NCAA devotes several pages to the circuit court's injunction against the Rule of Restitution and related bylaws. (Mot. 28–30.) Even taking the NCAA's argument at face value, it would justify, at most, modifying that paragraph of the order—not vacating the injunction that allows Plaintiffs to compete. The core of the injunction—barring the NCAA from declaring Plaintiffs ineligible under Bylaw 12.6 because they used four seasons under the old rule—does not depend on the restitution paragraph.

The transfer-portal and professional-contract provisions of the injunction are different in kind. They do not enjoin those rules generally; they prevent the NCAA from using technical rules that were triggered only because the NCAA wrongly declared Plaintiffs ineligible—for example, by closing the transfer window before Plaintiffs could enter it or treating an athlete who signed a professional contract after being told his eligibility was over as an amateur—to accomplish indirectly what the injunction forbids directly. (Appx. 1, at 17–18.) The record bears out the concern. The Plaintiffs who explored professional options did so only after the NCAA told them they were ineligible, and none signed a professional contract. Plaintiff Seth Trimble attended an NBA Summer League on expenses only and testified that he would have been "back at school" had the NCAA changed the rule when his season ended; Afari attended a 48-hour Green Bay

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Packers tryout on expenses only; and Kalib Perry signed no professional contract and received no money. (VR 10/14/26 at 11:19:45–11:20:08, 11:28:31–11:28:51, 1:45:03–1:45:32, 1:35:34–1:35:49.) An injunction may properly reach conduct that would otherwise render the relief ineffectual. Under CR 65.04(1) injunctive relief is available where the adverse party's acts "will tend to render" a "final judgment ineffectual."

As to the Rule of Restitution itself, *Lasege* recognized that the rule "does not purport to authorize interference with any court order during the time it remains in effect." 53 S.W.3d at 88. Even if the injunction were later reversed as to granting Plaintiffs the ability to compete, an appellate court should still affirm the portion of the injunction concerning the Rule of Restitution to prevent a chilling effect on athletes' constitutional rights of access to courts. That said, if this Court concludes that *Lasege* controls the restitution paragraph, the appropriate relief is to strike that paragraph and leave the remainder of the injunction in place.

IV. The Circuit Court Had Personal Jurisdiction over the NCAA.

As amended in 2024, Kentucky's long-arm statute now reaches any defendant "on any basis consistent with the Constitution of Kentucky and the Constitution of the United States." KRS 454.210(2). *Whitehead v. MemberSelect Ins. Co*., No. 2025-CA-1029-MR, 2026 Ky. App. LEXIS 37, at *7 n.2 (Ky. Ct. App. 2026) ("Effective July 15, 2024, the long-arm statute was amended to read that a court may exercise jurisdiction over a party on any basis consistent with the Constitution of Kentucky and the Constitution of the United States. Where the new statute applies, courts need consider only whether an assertion of personal jurisdiction would comport with due process and other constitutional requirements"). Due process under the U.S. Constitution requires: (1) "purposeful availment"; (2) claims that "arise out of or relate to" the defendant's forum conduct; and (3) that the exercise of jurisdiction must be reasonable under the circumstances. *Hinners v.*

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Robey, 336 S.W.3d 891, 895-898 (Ky. 2011). *And See*, *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct*., 592 U.S. 351, 359–62 (2021). All three factors are met here.

The NCAA does not seriously dispute purposeful availment. There are eight Division I member institutions in Kentucky—Bellarmine, Eastern Kentucky, Kentucky, Louisville, Morehead State, Murray State, Northern Kentucky, and Western Kentucky. (Appx. 20, at 2.) The NCAA hosts its championships here, including NCAA Tournament games in Louisville in 2023 and Lexington in 2025. (*Id*.) The NCAA also purposefully avails itself of the benefits of Kentucky law by enforcing the Bylaws at issue in this case with respect to every one of those eight Division I schools, its March Madness tournament, and every athlete playing for *or against* them within Kentucky. And when a defendant "deliberately has engaged in significant activities within a State" and "availed himself of the privilege of conducting business there," it is "presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477, (1985).

Plaintiffs' claims arise directly from those contacts. The contract Plaintiffs sue on is the NCAA's agreement with its members—including its Kentucky members—to apply the eligibility bylaws as written. Plaintiffs Wells, Oday, Hutchinson, Campbell, King, and Mack played for Kentucky universities (Appx. 3, at 7 (quoting Appx.2)); Plaintiff Afari plays for the University of Kentucky (Appx., 22); Plaintiffs Wells and Trimble play basketball for the University of Louisville (VR 10/14/26 at 11:15:08–11:15:16, 11:32:08–11:32:22, 11:50–12:17); Plaintiff Kalib Perry plays football for the University of Louisville (*Id*., at 1:33:12–1:33:21); Plaintiff Jawaun Northington plays football for Murray State University (*Id*. at 1:11–1:14); Plaintiff Davion Cunningham plays basketball for Morehead State University (*Id*. at 1:15–1:20); and Plaintiff Sophie Harlan plays soccer for the University of Kentucky (*Id*. at 1:22–1:25). When the NCAA declares those athletes ineligible to play at a Kentucky institution under a contract with that Kentucky institution, the

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claim arises in Kentucky. That is not a case, like *Walden v. Fiore*, 571 U.S. 277 (2014), in which "the plaintiff [is] the only link between the defendant and the forum." The NCAA's own Kentucky contracts are the link. Other Plaintiffs have directly competed in Kentucky, played in collegiate games in Kentucky against fifth and sixth year players, and/or played against Kentucky schools.

As a result, there is an "activity or occurrence" that took place in the forum state causing damage to each Plaintiff. *See Bristol -Myers Squibb Co. v. Superior Court of California, San Franciso County*, 582 U.S. 255, 264 (2017) ("[i]n order for a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State."); *See also, Ford Motor Co. v. Montana Eighth Judicial District Court*,, 592 U.S. 351 (2021) (clarifying the "arise out of or relate to" standard).

The United States Supreme Court decision in Ford governs this case. *In Ford*, the car manufacturer argued that certain states did not have specific jurisdiction over Ford concerning accidents involving allegedly defective Ford vehicles that occurred in their states. Rather, Ford argued the claims had to be brough where the car was manufactured or sold, arguing that specific jurisdiction required that Ford itself take some action within the forum state that "gave rise to the plaintiff's claim." *Id*. at 361. "In Ford's view, the link must be causal in nature: Jurisdiction attaches 'only if the defendant's forum conduct *gave rise* to the plaintiff's claims." *Id*., at 361 (emphasis in original). The Supreme Court disagreed with Ford's "causation-only approach", noting that the claims must "arise out of or relate to the defendant's contacts with the forum state." *Id*., at 362 (emphasis in original). In other words, it is enough that a plaintiff's claims merely "relate to" the defendant's forum contacts; it is not necessary that the defendant took action in the forum state that damaged a plaintiff. "None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do." *Id*. In giving an

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example, the Supreme Court said, "if Audi and Volkswagen's business deliberately extended into Oklahoma (among other States), then Oklahoma's courts could hold the companies accountable for a car's catching fire there—even though the vehicle had been designed and made overseas and sold in New York." *Id*. at 363. Likewise, because the NCAA has deliberately extended its business of college sports into Kentucky through its member institutions here, the NCAA is subject to jurisdiction here when its actions harm players who played basketball in Kentucky.

Kentucky has also rejected the "but for" test. *Hinners*, 336 S.W.3d at 896-98. "[W]ith respect to interstate contractual obligations, we have emphasized that parties who 'reach out beyond one state and create continuing 'relationships and obligations with citizens of another state' are subject to regulation and sanctions in the other State for the consequences of their activities.'" *Id*., at 897-98 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985). The Kentucky Supreme Court has also recognized it is "presumptively not unreasonable" to find jurisdiction when a defendant has deliberately engaged in significant activities in a State. "And finally, 'where the defendant 'deliberately' has engaged in significant activities with a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in the forum as well." *Hinners*, 336 S.W.3d at 898.

Like Ford, the NCAA argues "for an exclusively causal test of connection" where the NCAA must have taken specific action in Kentucky that caused Plaintiffs injury. *Id*. at 366. But the United States Supreme Court and the Supreme Court of Kentucky have both rejected that theory. As with Ford, the NCAA "has a host of forum connections," has engaged in "significant activities" in Kentucky hosting events here, and has created "continuing obligations" between itself and NCAA member institutions in Kentucky including, but not limited to, the University of

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Louisville, University of Kentucky, and Northern Kentucky University. "The place of a plaintiff's injury and residence may be relevant in assessing the link between those connections and the plaintiff's suit." *Ford Motor*, 592 U.S. at 363. Here, all Plaintiffs were injured in Kentucky due to application and arbitrary interpretation of NCAA rules imposed on players, and NCAA member institutions in Kentucky, forcing them to play against fifth- and sixth-year players without receiving the same additional year to play that has been granted to prior athletes, and future athletes. As a result, the Plaintiffs claims both "arise out of" and "relate to" the NCAA's contacts with Kentucky (even though only one of the two is required).

The NCAA's *Bristol-Myers* argument (Mot. 33) does not fit either. There, nonresident plaintiffs sued over products they bought and used elsewhere. 582 U.S. at 264–65. Here, the circuit court found that every Plaintiff either played for a Kentucky institution or competed against Kentucky institutions in Kentucky under the eligibility regime at issue (Appx. 1, at 8–9), and the claim of every Plaintiff arises under the same multilateral agreement to which the Kentucky institutions are parties. And *Ford* rejected the NCAA's premise that a claim must be ***caused*** by the defendant's forum conduct; it is enough that the claim "relate[s] to" the defendant's forum contacts. 592 U.S. at 361–62. At most, the NCAA's evidentiary objections as to particular Plaintiffs (Mot. 35–36) would warrant narrowing the injunction as to them, or directing the circuit court to hear more evidence regarding those Plaintiffs. They provide no basis to vacate it as to the Plaintiffs whose Kentucky ties are undisputed.

Finally, the NCAA has now asked the circuit court to decide personal jurisdiction on a full CR 12.02(b) motion, calling the court's ruling in the injunction order "preliminary." (Resp. Appx. G, Mem. at ii, 2–8.) Whatever the outcome of that motion, the question here is narrower: whether the circuit court abused its discretion in finding, on the injunction record, a sufficient jurisdictional basis to grant interim relief. It did not.

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V. Venue is Not a Ground to Vacate a Temporary Injunction.

The NCAA never asked the circuit court to rule on venue before the injunction issued. As to the Wells Plaintiffs, the NCAA did not raise venue in opposing injunctive relief (Appx. 19), and the October 16 order does not mention it (Appx. 1). The NCAA first moved to dismiss for improper venue on October 29—two days after filing this motion. (Resp. Appx. G.) An appellate court "is without authority to review issues not raised in or decided by the trial court." *Reg'l Jail Auth. v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989). That rule applies with particular force here, where the NCAA's venue motion is pending before the circuit court right now. The NCAA cannot obtain vacatur of an injunction on a ground the circuit court was never asked to decide before entering it, while simultaneously asking the circuit court to decide it.

Venue is not a basis for vacating interim relief. Venue is not jurisdictional; it concerns "the proper place for the claim to be heard," not the court's power to adjudicate. *Dollar Gen. Stores, Ltd. v. Smith*, 237 S.W.3d 162, 165 (Ky. 2007). Where venue is improper, "the remedy is transfer rather than dismissal." *Id*. at 166. An objection to venue thus provides no basis to vacate an injunction entered by a court that has jurisdiction; if the circuit court were to find venue improper on the NCAA's pending motion, the remedy would be transfer.

In any event, venue lies in Jefferson County. When personal jurisdiction is authorized by the long-arm statute, "any action or suit may be brought in the county wherein the plaintiff resides or where the cause of action or any part thereof arose." KRS 454.210(4). The NCAA concedes that the Louisville Plaintiffs may have proper venue in Jefferson County. (Mot. 39–42.) This is a single action against a single defendant on a single contract, seeking uniform injunctive relief against a single rule. "[A]ny part" of that cause of action arose in Jefferson County, where the NCAA enforces the challenged rule against Plaintiffs at the University of Louisville. The NCAA's cases are not to the contrary. *Copass v. Monroe County Medical Foundation*, 900 S.W.2d 617 (Ky.

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App. 1995), concerns claims against multiple defendants with separate venue rights. Here, there is one Defendant. *State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d 168 (Mo. 2019), is a Missouri decision construing a Missouri rule. Neither involves KRS 454.210(4)'s "any part thereof" language.

VI. The Circuit Court Correctly Found Irreparable Harm.

The NCAA does not dispute that losing a season of college athletics is irreparable. It cannot: a season, once played, "is gone forever," and no damages award can restore it. (Appx. 1, at 9–10 (collecting cases)). The circuit court heard that harm described by the Plaintiffs themselves and by their coaches. (*Id*. at 5–6, 11.) Plaintiff Afari's testimony shows what it looks like. After this Court dissolved the first order, Afari—who had led Kentucky in tackles in his most recent game—learned on landing in South Carolina that he could not play. He watched as his team won overtime games against South Carolina and LSU, the second before a national television audience, and testified that he "would never get that moment back." (VR 10/14/26 at 1:46:04–1:48:21.) Plaintiff Sophie Harlan, a University of Kentucky soccer player who receives no NIL money, learned that this Court had dissolved the circuit court's first order "[a]n hour before my game." (*Id*. at 1:22–1:25.) Plaintiff Regan Dancer left her job teaching fourth and fifth grade to return to Xavier's soccer team. (*Id*. at 1:26–1:30.) Plaintiff Reese Ragland testifies "I had to tell my teammates that I wasn't able to race or travel with them anymore until further notice. I had to disappoint them as their faces dropped and as they asked me if anything had changed for me to able to compete with them again, every single practice." (Resp. Appx. K.) None of those losses can be compensated with money.

The NCAA argues that 29 Plaintiffs offered no individual evidence. (Mot. 42–43.) But the harm here flows from a single, categorical eligibility determination that the NCAA concedes applies identically to every Plaintiff: each graduated high school in 2022, each used four seasons,

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and the NCAA asserts that each is barred from the 2026-27 season for that reason alone. The NCAA does not contend that any Plaintiff would be eligible absent the injunction, or that any Plaintiff has stopped pursuing his or her sport. Its own table lists each Plaintiff's current institution. (Appx. 37.) The testimony of the eight Plaintiffs who appeared, the coaches, and the declarants established the nature of the harm that the NCAA's rule inflicts on every member of the group. And again, if the Court were to conclude the record is insufficient as to a particular Plaintiff, the remedy would be to narrow the injunction as to that Plaintiff and remand to allow such Plaintiff to present additional evidence—not to vacate it as to everyone.

Regarding the NCAA's "full measure" argument, it says Plaintiffs got the four seasons they were promised. (Mot. 43.) That is a merits argument, and it is wrong: the contract now in force gives every individual a five-year period without a seasons cap. (Appx. 8, Bylaw 12.6.)

The NCAA's delay argument (Mot. 43–46) fails on its own terms. The Cabinet voted on June 24, 2026. The NCAA did not publish the 2026-27 Manual containing the new Bylaw 12.6 until mid-August. (Appx.3 at 15; Appx.1 at 5.) Plaintiffs filed suit on August 12—seven weeks after the vote and before the bylaw they sue on was even published. (Appx. 17.) The Plaintiffs who joined in October did so after this Court's October 2 order invited a renewed motion. And the NCAA's own authority acknowledges that the length of a delay is not dispositive; the question is whether it was reasonable. (Mot. 44 (citing *Comfort Systems USA (Ky.), Inc. v. AHM Bowling Green LLC*, 2026 WL 2364301, at *7 (W.D. Ky. Aug. 14, 2026)).) The NCAA's real complaint—that Plaintiffs competed while its RAP 20 motions were pending (Mot. 45)—is a complaint about this Court's denial of the NCAA's emergency motions, not about anything Plaintiffs did.

VII. The Equities and the Public Interest Favor the Injunction.

The circuit court weighed the equities on an evidentiary record, and the NCAA chose to present no witness. The coaches testified that Plaintiffs would not take roster spots from anyone,

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and Isaac Ellis, the incoming freshman who would compete with Plaintiff Trimble for minutes testified that he was "fine with" Trimble's return. (Appx.1 at 11–12); *and see* VR 10/14/26 at 11:05:29–11:06:13, 11:19:22–11:19:42, 11:30:23–11:31:54, 1:45:41–1:45:54.) The circuit court found that "[n]o evidence was introduced in support of the NCAA's contention that allowing the Plaintiff's a fifth year of eligibility would harm other student athletes." (*Id*. at 6.) That finding is not clearly erroneous. The NCAA's response is to speculate about other teams and other players for whom it, too, offered no evidence. (Mot. 47–49.) The NCAA bore no burden to disprove harm, but it cannot overturn a factual finding with argument it chose not to support with evidence.

The NCAA invokes *Lasege's* recognition that the NCAA "unquestionably has an interest in enforcing its regulations." (Mot. 46 (quoting 53 S.W.3d at 85).) Plaintiffs agree. The regulation in the Manual is Bylaw 12.6, and it makes Plaintiffs eligible. The NCAA has no cognizable interest in enforcing an exclusion it never codified.

The NCAA's prediction of "roster chaos" is belied by its own history. It gave every athlete enrolled in 2020-21 an additional season, mid-stream, without chaos. (Appx.1 at 4–5, 12.) It has applied its new rule, mid-stream, to every class except Plaintiffs'. And this Court has already found, twice, that the NCAA failed to show any imminent, ruinous injury from allowing Plaintiffs to compete pending review. (Resp. Appx. A, at 4.) The seasons are now underway. Plaintiffs are competing under the circuit court's order. As this Court said, "it behooves no one for Respondents' eligibility status to flip-flop repeatedly." (*Id.*) Vacating the injunction now would not restore any status quo; it would pull athletes off teams mid-season, disrupt the teammates and coaches who have built around them, and do so in service of an exclusion that appears nowhere in the NCAA's legislation.

Finally, the NCAA closes with the warning that a ruling for Plaintiffs would "punish prospectivity" and freeze the NCAA's rules. (Mot. 49–50.) Those words are not from any

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Kentucky court; they come from a single Illinois trial court's order denying a temporary restraining order. (Appx. 38; *see* Mot. 22, 49–50 (citing it as "Appx.12".)) And the concern is misplaced. Nothing about this case prevents the NCAA from adopting (non-arbitrary) prospective rules. Its own Manual tells it how: codify the line in the legislation (and do so before the academic year at issue begins). (Appx.8, Bylaw 9.3.1.1.1.) The NCAA did not do so. Plaintiffs ask only that the NCAA be held to the rule it actually wrote.

CONCLUSION

The circuit court did exactly what this Court's October 2 order contemplated: it held an evidentiary hearing, heard and weighed the evidence (the NCAA offered none), and entered findings supporting a temporary injunction under CR 65.04. Its decision was not arbitrary, unreasonable, unfair, or unsupported by sound legal principles. The NCAA's RAP 20(B) motion should be denied. In the alternative, if the Court concludes that any discrete provision of the injunction cannot stand, it should modify the injunction as to that provision only and leave the remainder in place.

Respectfully submitted,

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Resp. Appx. F	Order Granting Preliminary Injunction, Lorient v. NCAA, No. 1:26-cv-00094-JPB (N.D. W. Va. Sept. 30, 2026)
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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2026-CA-1430-I

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

MOVANT

v.

LEVAVIUM WELLS II, ET AL.

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Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-1430-I

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION — MOVANT

v.

ON MOTION FOR INTERLOCUTORY RELIEF
ARISING FROM JEFFERSON CIRCUIT COURT
ACTION NO. 26-CI-007009

LEVAVIUM WELLS, III; ALEX AFARI, JR.; OLIVIA ALBERT; JUSTIN ALLEN; CARDELL BAILEY; JALYN BROWN; KAYDEN CAMPBELL; THOMAS CASTELLANOS; SKYY CLARK; DAVION CUNNINGHAM; REGAN DANCER; KATIE FICHTNER; ALBERT VARGAS FRITO; JOSIE GILVIN; AIDAN HADAWAY; ZOE HAMMOND; SOPHIE HARLAN; DAMONI HARRISON; GARRETT HELSEL; CLAUDIA HOFMEISTER; D'ANGELO HUTCHINSON; JAVON JACKSON; FRED KING; ORLANDO LOVEJOY; JABARI MACK; MACKAVELLI MALOTUMAU; MARK MITCHELL; CAZEEM MOORE; JAWAUN NORTHINGTON; DONOVAN ODAY; EMMANUEL OKORAFOR; ALICE OTIS; KRISTINA PAEGLE; KALIB PERRY; — RESPONDENTS

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COLIN PORTER; REESE RAGLAND;
LEVI SANDIDGE; BILLY SMITH;
RYLEN SU'A-FILO; SETH TRIMBLE;
SANIAH TYLER; JAYLEN WESTER;
AND MACY WHISENAND

ORDER
DENYING EMERGENCY RELIEF

* * * * * *

This matter is before the Court on a motion filed by Movant, the National Collegiate Athletic Association (NCAA), for emergency relief pursuant to RAP[1] 20(D). Pursuant to that rule, the Court has elected to address the NCAA's motion without a response and determines that the motion must be denied.

The underlying case involves a determination of the eligibility of Respondents, who are collegiate student-athletes, to participate in additional athletic competitions organized by the NCAA. The case was previously before this Court in a recent action, No. 2026-CA-1107-I. In that action, this Court issued an Order on October 2, 2026, granting the NCAA's motion for relief under RAP 20(B). Specifically, a panel of this Court concluded that the Jefferson Circuit Court had improperly issued a temporary injunction (which it styled as a "temporary restraining order") and dissolved the injunction.

Thereafter, the Jefferson Circuit Court conducted an evidentiary

[1] Kentucky Rules of Appellate Procedure.

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hearing on October 14, 2026, and issued a new temporary injunction by Opinion and Order entered October 16, 2026. This Opinion and Order temporarily enjoined the NCAA from enforcing its bylaws or other rules which prevented Respondents from participating in an additional season of their respective sports due to having (1) completed four seasons of competition, (2) not entered the NCAA transfer portal, or (3) signed a professional contract and/or played a sport professionally (provided that the contract is terminated and money received is returned within seven days).

The NCAA has now moved this Court for interlocutory relief from the October 16 temporary injunction under RAP 20(B) and for emergency relief under RAP 20(D). In its RAP 20(D) motion, the NCAA argues that it will be irreparably harmed if this Court does not grant emergency relief pending the Court's resolution of its RAP 20(B) motion. The NCAA contends that even with expedited review, "a small handful of regular season wins" can significantly affect the NCAA and all competing schools. It asserts that allowing Respondents to compete while this Court resolves the RAP 20(B) motion will give their respective schools an unfair competitive advantage which cannot be effectively undone if the injunction is ultimately dissolved and Respondents are thus ruled ineligible.

To be entitled to emergency relief under RAP 20(D), a movant must show that it "will suffer irreparable injury before a motion under [RAP 20(B)] will

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be considered by a panel of the Court of Appeals[.]" The alleged harm must be "something of a ruinous nature [] or incalculable damage to the applicant." *Robertson v. Burdette*, 397 S.W.3d 886, 891 (Ky. 2013) (internal quotation marks, citations, and emphasis omitted).

In the prior action before this Court, the NCAA also moved for emergency relief under RAP 20(D). We issued an Order on September 4, 2026, denying the RAP 20(D) motion, in part noting that because RAP 20(B) motions have a 10-day response period, any alleged irreparable injury must also be imminent to warrant emergency relief under RAP 20(D). Here, as in the first action, the NCAA has not shown that there is an imminent, ruinous, and incalculable injury that will befall it if this Court does not grant a stay of the injunction. Moreover, it behooves no one for Respondents' eligibility status to flip-flop repeatedly as our courts work through the underlying issues.

The Court further notes that the NCAA did not seek review by the Supreme Court of Kentucky of our September 4, 2026, Order denying their RAP 20(D) motion. *See* RAP 20(F)(5). This fact cuts against the NCAA's assertion that the underlying issues are sufficiently urgent to grant RAP 20(D) relief in this instance.

Finally, as we stated in our September 4, 2026, Order in the previous action, the issues presented herein are better suited to be addressed by a three-

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Judge panel in its consideration of the underlying RAP 20(B) motion.

Accordingly, having considered the motion for emergency relief, the Court ORDERS that the motion be, and it is hereby, DENIED. Nothing herein shall be construed as the Court's taking any position on the merits of the underlying RAP 20(B) motion, which will be submitted to a three-Judge panel of this Court pursuant to RAP 20(B)(5).

This Order shall not be reconsidered. RAP 20(E). The Clerk of this Court is DIRECTED to EMAIL a copy of this Order to counsel of record and Hon. Brian C. Edwards in addition to conventional service.

ENTERED: October 30, 2026

HON. SARA WALTER COMBS
JUDGE, COURT OF APPEALS

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1D2026-3016

In the Court of Appeal for the First District
State of Florida

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Appellant,
v.
DENZEL ABERDEEN,
Appellee.

ON APPEAL FROM THE 8TH JUDICIAL CIRCUIT
L.T. NO. 01-2026-CA-002874

BRIEF OF ATTORNEY GENERAL AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE

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October 28, 2026

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ARGUMENT 6

I. The plain language of the Manual is clear and therefore renders the NCAA's extrinsic evidence irrelevant. 7

II. The NCAA is not entitled to deference or immunity from judicial review in this case. 10

III. The public interest is served by Florida athletes receiving the benefit of the 26-27 Manual's plain meaning. 12

CONCLUSION 12

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INTEREST OF *AMICUS CURIAE* & SUMMARY OF ARGUMENT

"The duty of an Attorney General is essentially a public one." *Watson v. Claughton*, 34 So. 2d 243, 245 (Fla. 1948). As "the chief state legal officer" of Florida, Art. IV, § 4(b), Fla. Const., the Attorney General "[s]hall appear in and attend to, in behalf of the State, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state." § 16.01(4), Fla. Stat.

The State's interest extends to its own higher education system. *See United States v. Virginia*, 518 U.S. 515, 576 (1996) (Scalia, J., dissenting) (acknowledging the "important state interest in providing effective college education for its citizens."). That interest, in turn, extends to prominent features of the college landscape, including athletics. *See Bloedorn v. Grube*, 631 F.3d 1218, 1238 (11th Cir. 2011) ("We have no doubt that a university's interest in protecting the educational experience of its students is a significant one.").

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Florida is no stranger to the NCAA and collegiate athletics. Florida's universities have won nearly 100 NCAA championships[1] and eight Heisman Trophies.[2] In fact, the University of Florida has won at least one national championship in each of the last 16 seasons.[3] When it comes to college athletics, as with most other endeavors, the State of Florida is a habitual winner.

The State's interests are fully implicated here, where a student and school are prevented from taking full advantage of the unambiguous terms of a contract with the NCAA. Staying the injunction below will injure Florida's interest in fair and equitable collegiate athletics at one of its premier institutions. *Cf.* § 1006.74,

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[1] *See* University of Florida: 49 championships, https://floridagators.com/sports/2015/12/10/_overview_; Miami University: 21 championships, https://miamihurricanes.com/the-national-champions; Florida State University: 20 championships, https://seminoles.com/sports/2021/12/20/all-time-national-championships; University of Central Florida: one championship, https://www.bradenton.com/sports/article217396010.html

[2] *See* Keith Jenkins, *Which colleges have the most Heisman Trophy Winners?* ESPN (Dec. 14, 2025), https://www.espn.co.uk/college-football/story/_/id/41853224/which-colleges-most-heisman-trophy-winners.

[3] Mary Howard, *Gator Athletics Program Seventh in the Nation* (June 26, 2025), https://floridagators.com/news/2025/6/26/general-gator-athletics-program-seventh-in-the-nation.

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Fla. Stat. Namely, the university's athletic program will be deprived of the talents of Mr. Aberdeen, and the educational, social, economic, and reputational benefits associated with his participation in Gators basketball. The University of Florida and the NCAA entered a contract, and the NCAA now attempts to unilaterally rewrite its terms on the fly—a maneuver foreign to contract law. This Court should require the NCAA to honor the bargain it struck.

ARGUMENT

The temporary injunction at issue in this case doesn't "rewrite" the NCAA's eligibility rules. Rather, it prevents the NCAA from rewriting those rules itself by enforcing its own atextual gloss to deter the University of Florida from playing Mr. Aberdeen this season, despite his clear eligibility under the terms of the 2026-2027 NCAA Division I Manual.

To obtain an appellate stay of the trial court's injunction, the NCAA must show "a likelihood of prevailing on appeal, irreparable harm to movant if the motion is not granted, or a showing that a stay would be in the public interest." *Lampert-Sacher v. Sacher*, 120 So. 3d 667, 668 (Fla. 1st DCA 2013).

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The NCAA fails every element. The NCAA cannot demonstrate a likelihood of success on the merits or that a stay would be in the public interest. The NCAA's motion, moreover, presents a false portrait of the trial court's order as "driven more by narrative than by law." NCAA's Motion to Stay Temporary Injunc. Pending Appeal at 7, *NCAA v. Aberdeen*, No. 1D2026-3016 (Oct. 14, 2026). But the circuit court's order was sound, and the NCAA's criticism is baseless.

I. The plain language of the Manual is clear and therefore renders the NCAA's extrinsic evidence irrelevant.

Player eligibility is governed by the NCAA Manual. The eligibility rule governing this basketball season (Bylaw 12.6), is unambiguous and complete. Effective August 1, 2026, the Manual states:

> **12.6 Five -Year Period of Eligibility.** An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:
>
> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign, see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday.

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Mr. Aberdeen is entering his fifth year and is therefore still eligible to play. The NCAA tries to complicate this plain language by looking to "Proposal 2026-44," which addresses student athletes who exhausted eligibility under the previous Manual. The simple problem with this argument, however, is that Proposal 2026-44 is not part of the operative Manual. It therefore is not binding on the other party to the contract—the University of Florida—or any third-party beneficiaries.

Despite this basic rule of contract interpretation, the NCAA insists Florida courts treat its proposal like a session law. That is, the NCAA claims that Proposal 2026-44 is binding regardless of disparate language in the subsequent codification.

That is wrong multiple times over. As an initial matter, the NCAA isn't a government; it lacks any bona fide legislative power and its proposals are not akin to acts that become session laws upon executive approval. *See NCAA v. Tarkanian,* 488 U.S. 179, 197 (1988) ("The NCAA enjoy[s] no governmental powers . . . It ha[s] no power to . . . assert sovereign authority over any individual."); *NCAA v. Brinkworth*, 680 So. 2d 1081, 1084 (Fla. 3d DCA 1996) ("The NCAA

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is properly viewed as a private organization, not a governmental agency.").

Instead, the NCAA's relationships with Florida universities arise from contract, governed by codified rules approved by the constituent members (including the University of Florida). *See Sult v. Gilbert*, 148 Fla. 31, 35 (1941); *Retreat at Port of Islands, LLC v. Port of Islands Resort Hotel Condo. Ass'n*, 181 So. 3d 531, 532 (Fla. 2d DCA 2015) ("[O]rganizational bylaws are treated as contracts, and we review construction of those bylaws."). No university agreed to Proposal 2026-44, and the NCAA possesses no authority to unilaterally impose those requirements.

The operative Manual never incorporated Proposal 2026-44's language. That means that the Manual's language affording players "five years of eligibility" governs. And no extrinsic evidence can alter this plain meaning. *See Fla. Recycling Servs. v. Greater Orlando Auto Auction*, 898 So. 2d 129, 131 (Fla. 5th DCA 2005) ("If the provisions of a contract are unambiguous, courts may not violate the clear meaning of the words in order to create an ambiguity, and certainly may not rewrite the contract."); *see also Jenkins v. Eckerd Corp.*, 913

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So.2d 43, 52 (Fla. 1st DCA 2005). As the circuit court noted, moreover, the specific language the NCAA used in Bylaw 12.6—its reference to "individuals"—produces one conclusion: high school class-of-2022 athletes, such as Aberdeen, are entitled to calculate their eligibility under the 26-27 Manual's five-season framework.

Finally, the NCAA's argument on retroactivity misses the point. The University of Florida doesn't need the Manual to have retroactive effect to play Aberdeen. *See Fla. High Sch. Activities Ass'n v. Temple Baptist Church*, 509 So. 2d 1381, 1382 (Fla. 1st DCA 1987). All the university requires is assurance that the NCAA will be held to what its current eligibility rules say, rather than what the NCAA now wishes the rules had said.

II. The NCAA is not entitled to deference or immunity from judicial review in this case.

The NCAA also argues that Florida law requires courts to defer to its interpretation of Bylaw 12.6 even if a breach of the Manual is assumed and a third-party beneficiary demonstrates harm. *See*

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Motion at 34. That is not how contract disputes are resolved in the State of Florida.[4]

The NCAA contends that Florida courts must defer to its interpretation of Bylaw 12.6 because it is a purely "voluntary association." But the NCAA has not been able to credibly claim that status for years. The NCAA brings in over a billion dollars in revenue annually and exercises monopsony power over college athletics.[5] Because the NCAA has "assume[d] a larger purpose or stature than pleasant, friendly and congenial social relationships," it must abide by the strictures of Florida law—including typical judicial scrutiny

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[4] The NCAA is even more brazen in other forums. *See* Def.'s Br. Opp. Pl.'s Emergency Mtn. for Injunc. at 2, 9–11 & n.3, *Bauman v. NCAA*, No. 2026-17787 (Fla. 11th Jud. Cir. Ct. Sept. 8, 2026) (Characterizing rulings it dislikes as "judicial interference in the internal affairs of private associations," and suggesting that Florida courts go "beyond [their] province" when exercising equity power over the NCAA.).

[5] The NCAA bristles at the trial court's mentioning of this fact in its order. But the NCAA's website proudly embraces its own origins and President Theodore Roosevelt's role in the process. *See* NCAA, *The History of the NCAA*, https://www.ncaa.org/about-us/history/ ("Public clamor rose to such crescendo that President Theodore Roosevelt summoned athletic leaders to two White House conferences to urge reformation of the game and warned an executive edict might be forthcoming if his request passed unheeded. The NCAA evolved from a meeting of 13 colleges and universities called in early December 1905, to bring about reforms in the playing rules.") (last visited October 25, 2026).

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and impartiality—when involved in a legal suit. Actions that "adversely affect[] substantial property, contract or other economic rights" are subject to standard judicial review. *Brinkworth*, 680 So. 2d at 1084. The trial court properly found that Aberdeen's substantial rights would be irreparably harmed absent injunctive relief, and the NCAA has not shown that to be an abuse of discretion.

III. The public interest is served by Florida athletes receiving the benefit of the 26-27 Manual's plain meaning.

Courts in other states have also prevented the NCAA from penalizing schools that treat athletes from the Class of 2022 as eligible. *See* Pl.'s Mtn. for Temporary Injunc. at 12–13 nn.18 & 19, *Aberdeen v. NCAA*, No. 2026-2874 (Fla. 8th Jud. Cir. Sept. 22, 2026) (collecting cases). If an appellate stay is entered, the Gators will be forced to start the season at a clear disadvantage. This national imbalance, particularly at the expense of Florida schools, is antithetical to the public interest.

CONCLUSION

The application for a stay should be denied.

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Dated: October 28, 2026 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the font and word count requirements of Fla. R. App. P. 9.045(e) and 9.210(a)(2).

/s/ Ryan P. Schelwat
Assistant Solicitor General

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CERTIFICATE OF SERVICE

I certify that on October 28, 2026, I electronically filed the foregoing document with the Clerk of the Court using the Florida court's e-Filing Portal, causing it to be served on all counsel of record:

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RESPONDENTS' APPENDIX

TAB C

Findings of Fact, Conclusions of Law, and Order Granting Preliminary Injunction, *Daley v. NCAA*, Cause No. 53C06-2609-PL-002418 (Ind. Monroe Cir. Ct. Sept. 23, 2026)

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STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT
	)	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2609-PL-002418

STEPHEN DALEY, KELLEN WYATT, OWEN MCDONALD, ZALAN SARKANY, JORDAN JOHNSON, AVRY TATUM, MALIK RENEAU, YOHAN TRAORE, COLE CLARK, JACOB KOONIN, LUKE NOMURA, MASON SWINNEY, MATTHEW HEARD, OWEN MCELFATRICK, RILEY ORR, ANDREW ROHDE, ANTHONY "TRE" WHITE, BOWEN HARDMAN, BRIT HARRIS, BRYSON OGLETREE, CAMERON CORHEN, DIONTE JOHNSON, EFREM JOHNSON JR., ELIJAH JAMISON, ELIJAH MAHI, GEOFFREY SPROUSE, JACK COLLINS, JACKSON PAVELETZKE, JACY WEISBROD, JAYDEN BREWER, JAYDEN DAWSON, JUSTIN ABSON, JUSTIN MULLINS, KARON BOYD, KENNY NOLAND, KENYON GILES, MADISON DURR, MAJOR FREEMAN, MASAI TROUTMAN, MICHAEL SHARAVJAMTS, MICHAEL WALZ, NIKOLAS GRAVES, NORDIN KAPIC, OWEN AQUINO, PHARRELL BOYOGUENO, PRINCE ALIGBE, RILEY KUGEL, SAM ALEXIS, TAMIN LIPSEY, TOBENNA NNADOZIE, TREY LEWIS, TROY GLOVER, VINCENT BRADY II, SAMUEL PETERSON, DANIELA MENDEZ, RYLEIGH HECK, SIETSKE BRÜNING, CHASE BELCHER, CLIFTON JEREMIAH THOMPSON, DAINSUS MILLER, DMON BRINSON, DONOVAN BRANCH, J.D. LAMPLEY, JACOREY THOMAS, JADEN MOSLEY, JAMEL JOHNSON, JAXSON MOI, KAM'RYN THOMAS, MALIK MCKINZIE, MYAHN LUKE BRACEY, NAQUARI ROGERS, PATRICK MCDONNELL, PHILLIP DUNNAM, RASHOD DUBINION, RECE VERHOFF, SAMUEL DANKAH, TYRENCE CRUTCHER, JOHAN BREDENKAMP, RYAN FORD, AIDAN O'NEIL, CARSON FORNEY, MAX WEINRICH, RAPHAEL KISTMANN, BRIANNA DESPINES, RAQUEL GONZALEZ, AVA GENOVESE, RILEY TATE, ANALA NELSON, CATHERINE ALBEN, DIONNA GRAY, JENNA VAN SCHAIK, MADISON SKORUPSKI, MIA NICASTRO, MYA PETTICORD, COLEY SIDLOSKI, MADELYN MUHR, AND MCKENNA SCHAEFBAUER,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 14, 2026, the Court held a hearing on Plaintiffs' Motion for Preliminary Injunction. After considering Plaintiffs' First Amended Complaint, and all documents attached thereto and referenced therein, Plaintiffs' Motion for Preliminary Injunction (the "Motion"), the Response to said Motion submitted by Defendant National Collegiate Athletic Association ("NCAA"), along with all documents attached thereto and referenced therein, evidence presented at the September 14, 2026 hearing, including live witness testimony from more than a dozen players and coaches, Plaintiffs' Exhibits 1-25, and NCAA Exhibits 1-16, along with argument of counsel, the Court finds the Motion is well-taken and it is GRANTED for the reasons set forth below on terms set forth at the conclusion of this opinion.

JURISDICTION AND VENUE

The NCAA concedes this Court has general jurisdiction and that this is a proper venue for this lawsuit. The Court agrees.

PROCEDURAL BACKGROUND

On September 4, 2026, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction Allowing Plaintiffs to Play Collegiate Sports. In that Motion, they alleged that if the Court did not grant a Temporary Restraining Order by September 4, 2026, the same day they filed their Motion, that they would be prohibited from playing collegiate sports for the 2026-2027 season. They alleged irreparable harm would occur if they were denied the opportunity to play sports. *State of Ohio v. NCAA*, 706 F. Supp. 3d 583, 597 (N.D. W. VA. 2023).

An amended complaint was filed September 15, 2026, the morning of the preliminary

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injunction hearing that added ninety-some Plaintiffs to the case. The attorneys for the parties informed the Court that they had discussed the Amended Complaint the Friday before the hearing and that the NCAA did not object to the filing of the Amended Complaint.

The parties stipulated that all exhibits that were attached to their pleadings would be admitted and additionally the Court would be provided with a thumb drive that contained all of the exhibits that were stipulated to by the parties. These exhibits were added to the case after the hearing and are now in evidence. The Court considered no exhibits that were not stipulated to and did not consider any information presented to the Court after September 17, 2026 which was when the proposed findings of fact were submitted by the parties. The Court considered both Plaintiff's and Defendant's Proposed Findings of Fact and Conclusions of Law.

The Temporary Restraining Order expired Monday September 14, 2026. The parties did not agree to extend it.

The Court disclosed potential conflicts of interest that do not require automatic recusal. No party expressed concerns or asked that the Court recuse after those disclosures.

Plaintiffs are pursuing injunctive relief and are not seeking money damages at this time.

Indiana University is not a party to this action, nor are any of the universities where these students are enrolled. The Court expressed concern to the parties that they may be necessary parties to this action since any eligibility rulings will impact their programs. Stephen Harper, Deputy Athletic Director and Chief Operating Officer at Indiana University was called as a witness. Indiana University is aware of this action and, at this time, does not feel that they are a necessary party to this action.

Indiana University is aware of the Rule of Restitution whereby the NCAA can punish schools if they rely on a court order that is later overturned. Indiana University is aware of the

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risks associated with that.

To address the Court's concern that the institutions that could be affected by this ruling have notice, Plaintiff's counsel represented to the Court that they will give notice to all of those institutions. The Plaintiff provided the Court with a spreadsheet that lists the names of each Plaintiff, which school they could play for and information regarding their eligibility. *Plaintiff's Exhibit 1*".

FINDINGS OF FACT

I. An Overview of the NCAA

1. Defendant National Collegiate Athletic Association (NCAA hereinafter) is an unincorporated nonprofit association headquartered in Indianapolis, Indiana, that regulates intercollegiate athletics for more than eleven hundred (1,100) member institutions nationwide, including twenty-three (23) in Indiana, with eleven (11) competing in Division I. The NCAA's principal place of business and national headquarters are located in Indiana.

2. The NCAA characterizes itself as a "voluntary" membership association. However, the NCAA and its conference and member institutions control the highest and most popular level of collegiate athletics. Therefore, any individual who wishes to provide athletic services in exchange for the payment of partial or full tuition for an undergraduate academic education and wishes to derive the substantial benefits from competing at the highest level of collegiate athletics must by necessity attend an NCAA Division I member institution. There are zero practical alternatives that can provide the unique combination of attributes offered by NCAA Division I athletic schools: (i) the ability to exchange athletics services for the payment of the partial or full cost of an education plus room and board, (ii) high quality academic educational services, (iii) top-of-the-line training facilities, (iv) high quality coaches that will best be able to

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launch players to professional careers, (v) national publicity through national championships and nationwide broadcasting contracts, (vi) opportunities to profit from NIL agreements, and (vii) competition at the highest level of collegiate athletics. As a practical matter, the NCAA is not truly "voluntary" because no school can compete at the highest level of intercollegiate athletics without joining the NCAA and no athlete can compete at the highest level of collegiate sports without attending an NCAA school.

3. Despite being a $1.3 billion per year organization, the NCAA enjoys tax exempt status because its mission is to "[p]rovide a world-class athletics and academic experience for student-athletes that fosters lifelong well-being" and "promotes the physical and mental well-being of student athletes." P. Ex. 19, NCAA, Return of Organization Exempt from Income Tax (IRS Form 990) for Fiscal Year 2023. The NCAA has evolved into the central gatekeeper of a multibillion-dollar industry. In *NCAA v. Alston*, 594 U.S. 69 (2021) the Court adopted an "uncontested premise that the NCAA enjoys monopsony control in the relevant market". *Id.* at 70. The NCAA's broadcast contract for the March Madness basketball tournament at that time was worth $1.1 billion annually. *Id.* at 79.

4. Its member institutions agree to be bound by the NCAA's rules as set forth in the Manual. P. Exs. 15 and 16, NCAA Const. 8.01.2; *see also Nat'l Collegiate Athletic Ass'n v. Miller*, 795 F. Supp. 1476, 1479 (D. Nev. 1992), aff'd, 10 F.3d 633 (9th Cir. 1993).

5. The NCAA's "[m]ember 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." Thus, "[t]he 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

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integral part of the student body." See Ex. 15 and 16, NCAA Const. pmbl.

6. The NCAA Constitution and Bylaws are published together annually as the NCAA Division I Manual (the "NCAA Manual"). Ex. 15, 2025-26 NCAA Manual (the "Old Manual") and Ex. 16, 2026-27 NCAA Manual (the "New Manual").

7. The NCAA Manual is not merely technical guidance, but rather a contract between the NCAA and its member schools by which the NCAA exerts control over college athletes' careers, compensation, and opportunities and the labor and consumer markets for college athletics. In the NCAA's own words, "the NCAA speaks with one voice regarding the provisions of its eligibility rules, and it does so through the Manual." P. Exs. 23 and 24, NCAA Briefing to Courts.

8. The "House Settlement" that originated from the case *House v. NCAA*, 545 F.Supp.3d 804 (N.D. Ca. 2021), has shifted the entire landscape of collegiate athletics. That settlement gave a certain amount of money to the schools for uncompensated Name, Image and Likeness (NIL hereinafter) and that money is distributed to the various sports by the schools. The *House* settlement also allowed athletes to be paid for the Name, Image and Likeness (NIL) going forward and allows athletes to receive compensation for that.

9. Ryan Poor, who is the head men's soccer coach at the University of Missouri explained that football gets approximately seventy-five percent (75%) of the NIL money, men's basketball, ten-fifteen percent (10-15%), women's basketball gets five percent (5%) and all of the other sports get whatever is left. So, for example, soccer is considered a non-revenue sport, and its players get less than four thousand dollars ($4000.00) a year whereas a football player could receive over one million dollars (1,000,000.00) a year.

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II. Plaintiffs' Eligibility Clock Still Has One Year Remaining

10. Under both the Old Manual Bylaw 12.6.1 and New Manual Bylaw 12.6, each student-athlete has a five-year window of eligibility that runs continuously for five years (the "Eligibility Clock"). Under the Old Manual, the Eligibility Clock begins when an athlete enrolls in college. Under the New Manual, the Eligibility Clock begins the earlier of: (1) when an athlete enrolls in college; or (2) the start of the academic year after the athlete's nineteenth (19^{th}) birthday.

11. Plaintiffs graduated from high school in 2022 and enrolled in college at that time.[1] They all began college no later than the first academic year after their 19^{th} birthday. They all remain within five (5) years of enrolling in college today. Accordingly, each Plaintiff has one (1) year remaining in their Eligibility Clock for the 2026-27 academic year – under both the Old Manual and the New Manual.

12. Under the Old Manual, athletes were limited to competing against other schools in four of their five years – unless they were granted an exception through a "redshirt" or a waiver under the NCAA's discretion. Under the New Manual, redshirts and waivers are eliminated and each athlete is simply entitled to compete in all five years of their Eligibility Clock.

13. In short, all athletes are granted five (5) years of eligibility under both the Old Manual and the New Manual. The only difference is the number of years in which they can set foot on the field against an opponent in their fifth (5^{th}) season. Plaintiffs are entering their fifth (5^{th}) and final season under their Eligibility Clock. They have not redshirted. Presumably, they could remain with their team for the year without setting foot on the field or court without violating any NCAA rule.

---

[1] Plaintiff Vincent Brady spent one year at the Airforce Academy Prep School after graduating from high school, but still enrolled in college in the academic year following his 19^{th} birthday. The NCAA does not count prep school against seasons of eligibility under either the New Manual or the Old Manual (both as defined).

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14. The only question is whether each Plaintiff must sit on the sidelines as a "redshirt" in their fifth (5th) year of eligibility or whether they can compete. The Court finds that Plaintiffs may compete: (1) under the express terms of the 2026-27 Manual: and (2) because the NCAA violated its obligations to them under the 2025-26 Manual.

15. The class of 2022 had their high school experience disrupted by COVID. COVID disrupted their college recruiting process and there were less roster slots available for them coming out of high school due to the COVID classes getting a fifth year of eligibility. COVID made it difficult, and in some cases impossible, to visit schools to determine where they might fit best, some recruiting visits were conducted by Zoom.

16. The Plaintiffs are impressive young athletes. They played their whole collegiate careers against fifth year seniors, they expected that they would also receive a fifth year because all of the classes they competed against received a fifth (5th) year.

17. Several of the Plaintiffs are pursuing their Masters degrees this year. They were already enrolled in school and were granted a fifth (5th) year to play through the Colorado injunction that has since been stayed. *Wisne et al. v. NCAA*, No. 26-1309 (D.C. No. 1-26-CV-03063-CNS-KAS)(D.Colo) August 21, 2026. *Wisne* is an anti-trust case as opposed to this case which is based in contract. If they are unable to play, they will lose their scholarships and not be able to stay in school. Several of the athletes who are earning higher NIL amounts are using that money to help their families.

18. Some of the Plaintiffs are training for the Olympics. In the United States the main training ground for Olympic athletes is university campuses. Universities offer athletes the best chance to achieve their Olympic dreams. Universities provide student athletes with training facilities, nutritionists, coaches and strength training that most would not be able to afford on their

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own. One Indiana University swimmer who is training for the Olympics earned fifteen hundred dollars ($1500.00) swimming for one year. If he does not swim for Indiana University, he would have to find a club program to swim with and pay for his own expenses.

19. John Long is a collegiate swim coach for Indiana University (IU), the program is recognized nationally as a strong program, they are consistently top five (5) in the nation. Fifteen to twenty of IU's swimmers have a chance to compete for a spot on the Olympic team. During COVID, Indiana University competed in every regular season meet, which normally would count for one year of eligibility, they received a "COVID year" which was an extra season of eligibility, essentially five years of eligibility. Two Indiana University swimmers are Plaintiffs in this lawsuit and IU has a roster spot available for them. Coach Long believes that giving these swimmers who are still eligible under the text of the rule another year of eligibility would be the fair result.

III. The NCAA Has Repeatedly Exercised Its Discretion to Allow Other Athletes to Compete in All Five Years of Their Eligibility Clock

A. COVID Waiver

20. Each Plaintiff competed in college for four consecutive seasons, from 2022-23 through 2025-26, without ever receiving a redshirt year or a waiver. During their four (4) years of competition, they each competed against numerous student-athletes playing in their fifth (5^{th}) season of competition and sometimes their sixth (6^{th}) year of eligibility, some of whom were twenty-five (25) years old. All athletes from the Classes of 2017, 2018, 2019, and 2020 received a fifth (5^{th}) year of competition because they attended college during COVID – even though many missed a minimal number of competitions. For instance, the swimmers testified that their team competed in every dual meet and the Big Ten championship during their COVID season. They only missed one meet, albeit a big one – the national championship meet. Likewise, a football

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coach testified that his team played in ten (10) of their twelve (12) games in the COVID season. Despite missing a minimal number of games, each athlete on those teams was granted a fifth (5^{th}) year of competition.

21. In contrast, Plaintiffs' high school recruiting was severely disrupted by COVID, with official visits canceled and recruiting taking place over Zoom. As a result, one coach testified that a higher than usual number of players across the country transferred after their freshman seasons post-COVID because they did not know enough about the schools in which they enrolled due to the COVID recruiting limitations. The NCAA did not give any of those athletes an additional year – even when they faced psychological damage from negative team environments or lost credits when they transferred such that they could not complete their undergraduate degrees within four (4) years. The NCAA also did not grant individualized waivers to any Plaintiffs who missed more games in their career due to injury or trauma than athletes who received a fifth (5^{th}) year due to COVID.

B. Professionalism Rule Changes

22. Additionally, the NCAA has interpreted its rules so as not to count prior years of professional competition against eligibility, permitting athletes to compete in four (4) seasons of Division I basketball notwithstanding multiple paid professional seasons abroad. This means that an athlete who graduated high school with Plaintiffs in 2022 and violated NCAA rules to play professionally in the 2022-23 year will be permitted to play college basketball in 2026-27, while Plaintiffs, who complied with all NCAA rules and never played professionally, are prohibited from playing.

23. The NCAA says that its rules on professionalism have not changed since 2022, only their application of such rules: "Q. So you said the rules have not changed for professional

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participation at all in the last five years? A. Correct." Ex. 13, Testimony of J. Vaughn, NCAA's Managing Director for Division I Governance and Member Services at 416:24-417:2. Evidence in the record contradicts this. Indiana University's Executive Director of Basketball, Ryan Carr, who spent twenty-three (23) years with the Indiana Pacers before taking a job with Indiana University testified that, prior to the last year, professional G League basketball players could not return to college. Yet over the last year and a half the NCAA has effectively changed its rules to allow professional basketball players to play in college. For instance, London Johnson signed a $1.1 million dollar G League contract out of high school. P. Ex. 8. After two years in the G League, Johnson decided to go back to college. *Id.* The NCAA did not count Johnson's G League 2022-23 season against his four (4) seasons of competition—even though he played in thirty-six (36) games—more than the typical NCAA season. They gave him two (2) more seasons to play in the NCAA, making him eligible in 2026-27. Additionally, James Nnaji played four (4) seasons of professional basketball in Spain and Turkey, and then the NCAA granted him an additional four (4) years of college eligibility.

24. When questioned about it, the NCAA testified, "So has the membership instructed your team to think about actual and necessary expenses a little more -- a little differently over the last few years as things have changed in the real world? A. Correct." P. Ex. 13, Vaughn Testimony at 379:21-25. Further, "it's permissible to get over a million dollars of money from our own campuses. So how do we hold a prospective student athlete accountable for that because they got it from somewhere else." *Id.* at 379:5-8.

25. A million dollars does not represent reasonable and necessary expenses for basketball players. Neither do most foreign professional leagues only pay reasonable and necessary expenses. Those changes are not in the Manual and run contrary to the NCAA's stated

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goal of differentiating between college and professional basketball. The NCAA's change in the application of its rules on former professionals was arbitrary and unreasonable and damaged Plaintiffs who played basketball by: (1) making them to compete against former professionals; and (2) allowing the professionals to play through the fifth year of their eligibility clock while depriving Plaintiffs of the same opportunity.

C. Redshirts

26. While not specifically defined in the NCAA Manual, the Redshirt Rule requires an athlete to sit out of competition against other schools for a year to preserve his or her fifth (5th) year of eligibility. Redshirt athletes fulfill nearly all the obligations of their teammates: they train with the team, take classes, and participate in meetings, travel, and film study. But they are not allowed to set foot on the field or court in a game – unless they play football—then they get to play four (4) regular season games plus the post-season. Only by redshirting can a player preserve a fifth (5th) year of eligibility under the Old Manual, but the coach, not the player, decides who gets to redshirt.

27. The resulting disparity is stark: two (2) college athletes may spend four (4) years on campus and fully participate in their programs, yet one can preserve eligibility through redshirting and be automatically entitled to a fifth (5th) season while the other, by means of stepping on a court or field for a single moment,[2] is arbitrarily denied that opportunity and limited to four seasons, unable to fully capitalize on their competitive window.

28. The Redshirt Rule has been modified for football players, who may compete in up to four (4) regular season games and, as of 2024, postseason contests without losing a year of eligibility.[3] There is also a different rule for wrestling that allows for players to compete in five (5)

[2]Or, for football, playing a snap in more than four regular season games.
[3]*See* Ex. 1, 2025-26 NCAA Division I Manual, Bylaw 12.6.3.1.6, at 50 (2025).

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days of competition. No comparable flexibility exists for college athletes in other sports, such as basketball, where even a single moment of competitive play—here, just ten (10) minutes for one women's player—consumes an entire season of eligibility. This selective application underscores the Redshirt Rule's arbitrary nature.

29. The application of "medical redshirts" is even more arbitrary. To receive a medical redshirt in a sport other than football, a player must play in less than thirty percent (30%) of their school's games, suffer a season-ending injury, and not play a game within the second half of the season.[4] In other words, a player who plays ten (10) minutes at their coach's discretion loses a year of eligibility even though she played in less than thirty percent (30%) of their teams total games. Meanwhile, an athlete who played far more minutes in far more games gets an additional year because of an injury.

30. Garyn Berry who is the Director of Field Hockey Operations at the University of North Carolina Chapel Hill is familiar with the NCAA rulebook though his employment and also through a Masters level class he completed in NCAA compliance. The redshirt rules seem very random to him and he stated that there was no non-arbitrary reason that the class of 2022-2023, competes against athletes in the high school class of 2018, 2019 and 2020 and athletes from 2023, 2024 and 2025 who all get five (5) seasons of eligibility, but they receive just four (4). They are receiving different results from players who came into college under the same set of rules.

31. Several of the Plaintiffs in this lawsuit applied for medical redshirts for issues they were experiencing with mental health due to traumatic experiences, that were denied by the NCAA. One student had been on campus at Michigan State when an active shooter terrorized that campus, she also lost her head coach that year who had to medically retire after she was in a serious

[4] *Id.* at p. 54, Bylaw 12.6.4.2.

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car accident, she applied for and was denied a waiver. Whereas another student was awarded a waiver for tonsilitis.

D. The Pavia Waiver

32. The NCAA also granted a fifth (5th) season of competition to many athletes who began their college careers in a junior college. Specifically, after a single junior college athlete obtained a preliminary injunction allowing him to play an additional season in *Pavia v. NCAA*,[5] the NCAA extended a blanket waiver granting an additional season of competition to Pavia and all "similarly situated student-athletes" who started their career in junior college.[6] *Pavia v. Nat'l Collegiate Athletic Ass'n*, 154 F.4th 407, 411 (6th Cir. 2025) (describing the waiver the NCAA provided to Pavia and any player similarly situated to him following the entry of a preliminary injunction).

33. Jerry Vaughn, Jr. is the Managing Director of Division I Governance and Member Services for the NCAA. He explained that the granting of an additional season was due to a "notion of collective fairness—right—for student athletes who are in similar situations should get relief." P. Ex. 13 at 358. Later in his testimony he described that the NCAA has an obligation, that he describes as "collective fairness for the totality of the student athlete population." *Id.* at 407.

34. But the NCAA did not extend that waiver to Plaintiffs in this case who started in junior college. And, while hundreds of athletes from the Class of 2022 have obtained preliminary injunctions from courts across the country granting them a fifth year to compete, the NCAA refuses

[5] 760 F.Supp.3d 527, 544 (M.D. Tenn. 2024).

[6] While claiming to afford relief to all similarly situated athletes, the NCAA denied a fifth season of eligibility to all other former junior college players who had not yet completed their fourth season of competition in either junior college or an NCAA institution.

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to give a waiver to these Plaintiffs.

E. Hardship Waivers

35. Additionally, under the Old Manual, the NCAA granted hardship waivers under Bylaw 12.6.4, and Old Bylaw 12.6.4.1.1 provided that the Committee on Student-Athlete Reinstatement "shall have the authority to review and determine whether to approve the waiver based on circumstances that may warrant relief from the application of the legislated waiver criteria." Ex. 15, 2025-26 NCAA Manual, Bylaws 12.6.4 and 12.6.4.1.1. Plaintiffs in this case testified about numerous hardships that might not have fallen exactly within "legislated waiver criteria," but still warranted relief – from injuries, to coaching mistreatment, to institutional loss of medical records, to emotional trauma. The NCAA denied each and every one of them. And failed to present a witness to articulate a single example of the NCAA using its authority to grant such a waiver. It appears the NCAA's waiver review process did not actually provide an opportunity for individualized review under 12.6.4.1.1. The NCAA had a contractual obligation to Plaintiffs to conduct such reviews in good faith. Plaintiffs have presented a prima facie case that the NCAA did not conduct waiver analysis in good faith and the NCAA did not offer any evidence in rebuttal.

36. Several Plaintiffs had unfortunate circumstances that disrupted a year of their college career. They have applied for waivers that have not yet been ruled on by the NCAA.

37. Old Bylaw 12.6.1.7 granted the NCAA Committee on Reinstatement the discretion to approve waiver of the five-year limit on eligibility "as it deems appropriate." Ex. 15, Old Bylaw 12.6.6 contained a catch-all providing that the Committee "shall have authority to review and grant a waiver based on additional documented extenuating circumstances." *Id.* at Bylaw 12.6.6. And

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Old Bylaw 12.10.1 permitted an institution to seek restoration of eligibility whenever "the circumstances warrant." *Id.* at 12.10.1.

IV. The NCAA Failed to Respond to Plaintiffs' *Prima Facie* Case That It Failed to Appropriately Consider Exercising Discretion With Respect To Their, Or Any Other, Individualized Circumstances

38. Many Plaintiffs faced hardships in college, from intense emotional and psychological trauma to severe injuries that failed to meet the criteria for a medical redshirt. The NCAA either denied – or has failed to rule on – all waiver requests submitted by any Plaintiff. In at least one instance, a waiver was denied because an NCAA member institution failed to maintain an athlete's medical records after she transferred. In another case, one female athlete played only ten (10) minutes as a walk-on – an athlete without a scholarship paying for her own schooling – the NCAA even denied her waiver request. With respect to several Indiana University players seeking a fifth (5th) year, the NCAA has simply held their waiver requests without a response.

39. Plaintiffs made a prima facie case that their class was treated unfairly compared to others who came before them under the 2025-26 Manual – both as a group and with respect to individual circumstances. The NCAA declined to issue waivers to Plaintiffs (or any other members of the high school class of 2022) based on the argument that they were treated unfairly compared to all other athletes they competed against over their careers, but failed to present a single witness to explain that decision. The NCAA also presented no evidence that it ever utilized its discretion under the Bylaws to grant a single *individual* athlete another year of eligibility outside of narrowly specified waiver criteria. Plaintiffs made a prima facie case that the NCAA should have granted them an additional year under its discretionary waiver authority, the NCAA's failure to provide any evidence or testimony to the contrary suggests that the NCAA's discretionary waiver system does not actually exist. And the NCAA likely breached its contractual obligation to Plaintiffs under the Old Manual to operate its discretionary waiver system in good faith. At a

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minimum, Plaintiffs have demonstrated a reasonable likelihood of success at trial based on a prima facie case.

40. During the first four years of their eligibility, Plaintiffs had to compete for roster spots against student-athletes with much more seniority than them including former professional athletes, and competed against numerous student-athletes playing in their fifth season of competition and, in some cases, their sixth (6^{th}) year of eligibility.

V. The NCAA's Self-Imposed Timeline Was Arbitrary and Unreasonable

41. The timeline of the NCAA's process is striking. The NCAA's discussions about Five-for-Five became public in September 2024.[7] At that time, all seniors in NCAA member institutions were already allowed to play in five (5) seasons of competition due to the NCAA's COVID waiver. If the NCAA had adopted the new rule at that time, in the first half of the 2024-25 academic year, there could have been a seamless transition, with all high school graduates from the Class of 2020 or earlier allowed to play five (5) seasons under the COVID waiver and all high school graduates from the Class of 2021 or later allowed to play five (5) seasons under the new rule. Instead, the NCAA delayed.

42. A lawsuit was filed asking the NCAA to immediately adopt Five-for-Five in November 2024, arguing that the NCAA's failure to allow athletes to compete through their five-year eligibility window amounted to an antitrust violation.[8] At the NCAA Convention in Nashville in January 2025, the NCAA said it would discuss Five-for-Five in early 2025. P. Ex. 2. In the Summer of 2025, the NCAA Division II Council (but not Division I) voted to move forward with Five-for-Five.

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[7] https://theyellowjacket.org/the-ncaa-begins-discussions-to-give-all-student-athletes-the-chance-for-a-fifth-year-option/

[8] *Pavia v. NCAA*, Case No. 3:24-cv-01336, M.D. Tenn.

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43. In September 2025, a class action seeking immediate Five-for-Five status for all athletes in the Classes of 2021 and 2022 was filed against the NCAA.[9]

44. On October 25, 2025, the NCAA responded to the lawsuit by sending a memo saying it would NOT adopt Five-for-Five "anytime soon" and eligibility rules would not change in either the current academic year or the 2026-27 academic year.[10] This statement by the NCAA misled Plaintiffs, leading them to make rational decisions to move on with their lives outside of collegiate sports including, but not limited to, entering into professional contracts.

45. Mr. Jerry Vaughn, the NCAA's Managing Director for Division I Governance and Member Services, testified at that time that "allowing athletes to stay in school for five years would decrease opportunities for high school athletes to participate in college football." P. Ex. 13 at 401:13-17. After Mr. Vaughn's testimony, the Court in *Patterson v. NCAA* denied the athletes' request for a preliminary injunction granting them a fifth (5th) year of eligibility in January 2026.

46. Then, according to Mr. Vaughn, "after the injunction hearing [was] over, the NCAA [did] exactly that and changed the rule for everyone going forward, they get five years." P. Ex. 13 at 401:25-402:3. The NCAA has treated players like yo-yos, with their likely eligibility status for 2026-27 changing often.

47. The NCAA termed their new rule "age-based eligibility." However, the NCAA's "age-based eligibility" is the functional equivalent of "Five-for-Five." It allows athletes to compete for five (5) collegiate seasons from the time they enroll in college so long as they enroll no later than the academic year after they turn nineteen (19).

48. When the NCAA first announced the plan for the new rule on April 15, 2026, it appeared that the Class of 2022 would be eligible for a fifth (5th) season in the 2026-27 year. P.

[9] *Patterson v. NCAA*, Case No. 3:25-cv-00994, M.D. Tenn.
[10] https://www.nytimes.com/athletic/6741377/2025/10/22/ncaa-will-not-implement-5-for-5-eligibility-rules

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Ex. 4. In fact, NCAA President Charlie Baker prepared a "Q&A" memo that explicitly said the NCAA was working on a "smooth transition to the new eligibility framework, including for student-athletes who matriculated under the current framework." P. Ex. 5 at Q. 9. And when asked, "[w]ouldn't this rule change lead to incoming, younger players losing out on roster spots to players who can now stick around for their fifth year?," Baker said, "We are committed to a successful and fair transition for all student-athletes. Many student-athletes already remain on campus for five years because of waivers or redshirts." *Id.* at Q.10.

49. Multiple Plaintiffs testified that both they and their coaches believed they would likely be eligible. The Court accepts and adopts this testimony as a finding of fact.

50. Then, on April 27, 2026, the Division I Board of Directors told the Division I Cabinet to move forward with the rule change—but exclude the Class of 2022. P. Ex. 7. It appears that the exclusion of the Class of 2022 was not based on a principled position to benefit student athletes, but to protect NCAA institutions from having to raise additional funds to pay players and, in the words of Mr. Vaughn for the NCAA, because "it would create a lot of administrative burdens for -- for our members." P. Ex. 14, Vaughn Testimony at 133:17-18.

51. Rather than proceed with the normal ninety day (90) comment period for a major rule change, the Division I Cabinet approved the rule change in late June 2026 as "emergency legislation." The NCAA makes much of a "unanimous vote" in the Cabinet in favor of granting athletes five years to compete. But the Cabinet was never given a choice to include the Class of 2022 in the vote. No coaches were present in the room or allowed to vote. P. Ex. 14, Vaughn Testimony at 137:11-14 (" Q. But the committee that made the decision on the age-based eligibility rule change had no coaches on it, correct? A. That's correct."). The coaches recommended expanding roster sizes to avoid any issues caused by inclusion of the Class of 2022. P. Ex. 9. The

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NCAA Cabinet "did not move forward with" the coaches' recommendation.[11] At first, Mr. Vaughn implied the Cabinet considered and rejected including the Class of 2022 and the coaches' recommendation to expand rosters. But then it came to light that the Cabinet had no actual choice in the matter:

> Q. The Cabinet was not given an option to vote to allow the class of '22 to be part of the rule change, were they?
>
> A. So the Division I Board of Directors provided guidance to -- to the cabinet as to how they should move forward with implementing the age-based eligibility model for student athletes who only had eligibility remaining going into 26/27.[12]
>
> Q. And that was on April 27th, they said do not include the class of '22 in the age-based model, correct?
>
> A. I believe what the Board said was, in order for this model to apply to you, you have to have eligibility remaining going into 26/27.
>
> Q. And that was a change from what they had put in their report less than two weeks earlier on April 15th, correct?
>
> A. I think it was further clarification about how the model would be implemented is how I would describe it .
>
> Q. And the clarification came after feedback from a high-profile coach, Coach Pitino, that he was out of money, correct?
>
> A. I think it came after lots of -- of questions from various folks in our membership: coaches, student athletes, others."[13]

The new rules did not go through the normal comment period because of the emergency designation. If they had started that process as late as October of 2025, the Class of 2025 could have been included in the new rule without an issue: *See* P. Ex. 13, Vaughn Testimony at 436:10-20 ("Q. If it was proposed in October and had the 90-day comment process and passed after 90 days, there still would have been time for an orderly transition to allow the plaintiffs to play next

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[11] Ex. 14, Vaughn Testimony at 137:15-22 ("Q. Now the coaches did submit a recommendation to expand rosters for next year to deal with the rule change. You're aware of that, right? A. That's my understanding amongst other things that they recommended. Yes, sir. Q. And the cabinet did not take the recommendation, did it? A. It did not move forward with it .").

[12] Ex. 14, Vaughn Testimony at 139:2-9

[13] *Id.* at 138:20-139:12.

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year.· Right? A. Yeah.· Again, ultimately, that's a conversation for the cabinet members.· They felt like -- I assume -- right -- it wasn't appropriate for them to introduce it at that time, for whatever reason they did.· All I know is factually what happened.· In June, the cabinet introduced it and adopted it as emergency legislation.").

52. After delaying implementation of the Five-for-Five or "Age-Based" model for two (2) years, the emergency designation in June 2026 does not make sense. Emergency legislation would have been appropriate based on the early April concept designed to include the Class of 2022--they would need to find roster spots for a school year only two (2) months away. But the Court questions the "emergency" in June 2026 preventing a standard ninety day (90) comment period on the proposed rules absent inclusion of the Class of 2022.

53. As a Georgia trial judge asked the NCAA: "when the NCAA was passing this new rule that grants the five years from your high school graduation or your 19th birthday, and they were -- then you were going to just exclude some people still in that five-year window, did anybody raise their hand and say this is going to get us sued?" P. Ex. 14, 149:20-150:1. The evidence suggests the NCAA knew it would get sued by the Class of 2022. The NCAA originally planned to include the Class of 2022 in the rule change. Indeed, the plain language of the 2026-27 Manual still includes the Class of 2022. The NCAA faces no harm from Plaintiffs or other members of the Class of 2022 playing this year – its games go on either way. Schools can choose to roster members of the Class of 2022 – or decline to do so. Without the Class of 2022, no playing emergency appears apparent.

V. The New Manual Applies to All Students Who Fall Within Their Five Year Eligibility Window

54. On June 23, 2026, the NCAA Division I Cabinet adopted a new eligibility model permitting student-athletes to compete for five seasons within their five-year window, while

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eliminating the four-season limit, redshirt years, and discretionary waivers (the "Five for Five" or "Age-Based" Eligibility Model). The NCAA adopted the Age-Based Eligibility Model expressly to "benefit the student-athlete body." D. Ex. 4 at 3. On or around August 14, 2026, the NCAA published the 2026-27 NCAA Manual. See P. Ex. 16.

55. Bylaws 12.6 through 12.6.8, as published in the New Manual, incorporate the Five-for-Five Eligibility Rule. Ex. 16, 2026-27 NCAA Manual Bylaws 12.6-12.6.8.

56. Bylaw 12.6 of the New Manual provides that "[a]n individual's period of eligibility for practice and competition shall be limited to five years." Its effective date is August 1, 2026.

57. Under Bylaw 12.6 of the New Manual, the five (5)-year window of eligibility begins on the date of the first class in an individual's full-time enrollment at a member institution or the beginning of the academic year after the individual's nineteenth (19^{th}) birthday, whichever is earlier. *Id.*

58. On its face, Bylaw 12.6 applies to Plaintiffs and the NCAA concedes that no provision contained in the New Manual excludes Plaintiffs from application of Bylaw 12.6. The New Manual does not reference or otherwise incorporate the uncodified Transition Framework (as defined below) announced by the NCAA.

59. All Plaintiffs in this case have represented that they are within five (5) years of their nineteenth (19^{th}) birthday and five (5) years of enrolling in college and the NCAA has not disputed that representation.

VI. The Uncodified Transition Framework Improperly Excludes Plaintiffs and Other Student-Athletes in the Class of 2022.

60. At the same time that the NCAA announced its Age-Based Eligibility Model, it announced a purported transition framework governing student-athletes who enrolled in NCAA institutions under the Old Manual (the "uncodified Transition Framework"). *See* D. Ex. 5.

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61. Under the uncodified Transition Framework, student-athletes with fewer than four (4) seasons of competition after the 2025-26 season, as well as those first enrolling in 2026-27, may elect between the new Five-in-Five Rule or the Historic Eligibility Rules, depending on which framework produces the "most favorable outcome" for them (the "Most Favorable Outcome"). *Id.* D. Ex. 5.

62. The Uncodified Transition Framework extended that election to every cohort still within the five-year eligibility window, except student-athletes in the Class of 2022 who played four (4) consecutive seasons. *See Id.* The NCAA is even allowing athletes from the Class of 2022 who redshirted to choose their Most Favorable Outcome. The NCAA presented no live witness to justify its decision to exclude the Class of 2022 who did not redshirt from their ability to choose their Most Favorable Outcome. Discriminating against athletes whose coaches did not permit them to redshirt in favor of identically situated athletes who were permitted to redshirt is arbitrary and capricious.

63. Allowing the remainder of Class of 2022 access to the Most Favorable Outcome would have two positive effects. First, it would have fulfilled the NCAA's contractual obligation to treat all athletes with time remaining on their Eligibility Clock equitably and fairly. Second, it would help alleviate the roster crunch the NCAA has created for the Fall of 2027.

64. Specifically, by providing the Most Favorable Outcome to all current athletes other than the non-redshirting Class of 2022, the NCAA has ensured that nearly all athletes on 2026-27 NCAA rosters will have a fifth (5^{th}) year of eligibility in 2027-28, with only athletes from the Class of 2022 who previously redshirted having four (4) years of eligibility. As a result, a much lower number of roster spots will be available for the high school graduating class of 2027.

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65. In contrast, if the entire Class of 2022 had been included in the Most Favorable Outcome, a number of athletes, including Plaintiffs, would have competed for a fifth (5^{th}) and final year in 2026-27. But no school would have been forced to roster such athletes and many of them had already moved on to other careers and would not have returned to school. As a result, Members of the Class of 2022 would have filled a limited number of roster spots on discovering their eligibility in June 2026. And every roster spot filled by a member of the Class of 2022 would have represented a guaranteed roster opening in 2027-28.

66. The Plaintiffs presented evidence that the implementation of the new rule was arbitrary and capricious and the application of the rules under the new manual and the old manual to the class of 2022 was arbitrary and capricious. The NCAA presented no live witness to rebut this. The evidence that was presented, an Affidavit by Geoff Silver explains that they felt it would create chaos, but there is no explanation about why this was emergency legislation. It seems that common sense would find an emergency might exist if you were adding in the class of 2022, not subtracting them. If the NCAA had followed the normal legislative process and passed the legislation in January, much of the need for TROs would have been obviated. A compressed transition period, created chaos for athletes who found themselves still eligible under the rule.

VII. Equitable Requirements to Make Injunctive Relief Meaningful.

67. To reduce challenges to its decisions, the NCAA maintains a powerful enforcement mechanism designed to discourage institutions from relying on court orders that permit potentially ineligible athletes to compete. This is NCAA Bylaw 12.9.4.2, commonly known as the "Rule of Restitution." P. Exs. 15 and 16, NCAA Bylaw 12.9.4.2.

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68. Under the Rule of Restitution, if a student-athlete who is ineligible under NCAA legislation is permitted to participate in intercollegiate competition in accordance with the terms of a court restraining order or injunction, and said injunction is voluntarily vacated, stayed, or reversed, the NCAA may impose severe penalties on the institution that rostered the athlete, including vacating wins, postseason bans, return of television revenue, and financial penalties. *Id.* The Rule on its face seems to deter student-athletes from exercising their legal rights and to deprive courts of the ability to grant effective relief.

69. Likewise, Plaintiffs must be granted relief from the NCAA Transfer Portal (the "Portal"), the NCAA's mandatory clearinghouse through which any Division I student-athlete who wishes to transfer to another institution must enter their name in order to be legally contacted by coaches at other schools, negotiate a new scholarship, and be placed on a new team's roster. The Portal is not a mere administrative convenience: it is the exclusive pathway through which roster mobility in Division I sports is effectuated. While most Plaintiffs are enrolled for school for this year, the remaining Plaintiffs will not be blocked from enrolling by a Transfer Portal they had no reason to enter when their last season of competition ended.

70. Finally, equity requires that the NCAA not punish any Plaintiff who signed a professional contract after being declared ineligible, so long as the player has terminated that contract and returns any compensation received beyond reimbursement of expenses, prior to competing in college.

CONCLUSIONS OF LAW

1. To the extent any of the above findings of fact are deemed conclusions of law, they are hereby incorporated as additional conclusions of law. To the extent any of the conclusions of

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law are deemed findings of fact, they are hereby incorporated as additional findings of fact. The misplacement of a finding in the conclusions section and vice versa shall not constitute an error.

I. Standard for a Preliminary Injunction

2. To obtain a preliminary injunction, the moving party must show by a preponderance of the evidence that: "(1) the movant's remedies at law were inadequate, causing irreparable harm pending resolution of the substantive action; (2) the movant had at least a reasonable likelihood of success at trial by establishing a *prima facie* case; (3) the threatened injury to the movant outweighed the potential harm to the defendant; and (4) the public interest would not be disserved." *Ind. Fam. and Soc. Serv. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind.2002).

3. "A mandatory injunction is an extraordinary equitable remedy which should be granted with caution[.][t]he plaintiff carries the burden of demonstrating injury which is certain and irreparable if the injunction is denied." *City of Gary v. Majestic Star Casino, LLC*, 905 N.E.2d 1076, 1082 (Ind. Ct. App. 2009).

4. The party requesting injunctive relief "is not required to show that he is entitled to relief as a matter of law, nor is he required to prove and plead a case, which would entitle him to relief upon the merits." *Avemco Ins. Co. v. State ex rel. McCarty*, 812 N.E.2d 108, 118 (Ind. Ct. App. 2004). Because of this, appellate courts reviewing the trial court's decision to grant injunctive relief are required to determine "whether the likelihood of success is so improbable as to render the trial court's determination erroneous as a matter of law." *Id. See also Abercrombie & Fitch Stores, Inc. v. Simon Prop. Grp., L.P.*, 160 N.E.3d 1103, 1108 (Ind. Ct. App. 2020).

5. The status quo is the "last, actual, peaceful, and non-contested status which preceded the pending controversy." *Hannum Wagle & Cline Engineering, Inc. v. American Consulting, Inc.*, 64 N.E.3d 863, 883 (Ind. Ct. App. 2016). Everything between the NCAA and the Class of 2022 has been contested since no later than April 2026. First, the NCAA announced

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it was including the Class of 2022 in its new Age-Based Eligibility Rules. P. Exs. 4 and 5. Then it reversed itself when it realized such a determination might cost its schools more money. *See* P. Exs. 6 and 7. It passed a rule purportedly excluding the Class of 2022 and got sued the next day. *See Borovicanin v. NCAA*, Case No. A2603352 (Ohio Ct. C.P. July 9, 2026) (order granting preliminary injunction). Then it published its New Manual explicitly including the Class of 2022 in the new rules. Accordingly, the last actual peaceful and non-contested state occurred when Plaintiffs were eligible to play and on college rosters in the 2025-26 year.

6. Regardless, "[p]reliminary injunctions are designed to protect the property and rights of the parties from any injury, ***usually by maintaining the status quo*** as it existed prior to the controversy, until the issues and equities in a case can be determined after a full examination and hearing." *AGS Capital Corp. v. Product Action Int'l, LLC*, 884 N.E.2d 294, 314 (Ind. Ct. App. 2008), *trans. Denied* (emphasis added). In other words, even if the status quo did not involve Plaintiffs as eligible players, the Court could still act to protect the rights of the parties.

> "The necessity of maintaining the *status quo* is to prevent harm to the moving party which could not be corrected by a final judgment. If irreparable injury were to occur during the course of litigation, the judgment, in effect, would be rendered meaningless. Thus, it has been held that an injunction will not be granted where the law can provide a full, adequate, and complete method of redress. (citing case) It would appear that only harm which a court cannot remedy following a final determination on the merits may be deemed to constitute irreparable injury warranting issuance of a preliminary injunction."

Wells v. Auberry (1982) Ind.App., 429 N.E.2d 679, 682, *reh. den'd., trans. den'd.* Here, the Court must act to preserve Plaintiffs' rights because they cannot receive an adequate remedy at law after their season of competition passes.

7. In a case from 1939 that is still cited today, the Supreme Court of Indiana ruled:

> Where, as here, the facts properly before the court make a case for a final mandatory injunction there would seem to be no reason why a temporary injunction, similar in effect, might not issue to save the complainant from irreparable injury which might be sustained prior to a final hearing on the matter.

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Watson v. Burnett, 23 N.E.2d 420, 424 (Ind. 1939). Here, Plaintiffs have presented facts supporting a final mandatory injunction against the NCAA. They face irreparable harm without the immediate issuance of a preliminary injunction. Accordingly, a preliminary injunction fashioned to prevent the NCAA from causing irreparable harm by excluding them from competition is the appropriate remedy.

II. Plaintiffs Face Irreparable Harm

8. "Irreparable harm is that harm which cannot be compensated for through damages upon resolution of the underlying action....The test is whether later money damages would be 'as full and adequate as the equitable remedy.'" *Abercrombie & Fitch Stores, Inc. v. Simon Prop. Grp., L.P.*, 160 N.E.3d 1103, 1110 (Ind. Ct. App. 2020) (Citation omitted). "Injunctive relief may be granted if it is more practicable, efficient, or adequate than the remedy afforded by law.... One purpose of a preliminary injunction is to prevent harm to the moving party that could not be corrected by a final judgment." *Id.*

9. The 2026-27 Division I football, soccer, cross country, and field hockey seasons are underway. Swimming and basketball seasons are fast approaching, with official practices for basketball beginning on September 21, 2026. Spring sports are around the corner.

10. Plaintiffs have secured roster spots, but will not receive scholarship aid or NIL payments until their eligibility is confirmed by a court order. If relief is denied, they will lose their roster spots. College sports seasons are time-limited opportunities. Once lost, they cannot be restored, even if Plaintiffs later prevail on the merits. In this case, monetary damages cannot fully or adequately compensate the Plaintiffs for their lost opportunity to participate in college sports.

11. Eighty-Four (84) of the ninety-seven (97) Plaintiffs reported a specific school at which they are enrolled and will play this year. P. Ex. 17. Thirteen (13) reported that they needed their eligibility confirmed before a school would confirm a scholarship and roster spot for them.

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with eight (8) of those listing specific schools under consideration. *Id.* Plaintiffs and coaches universally testified that no player was cut or scholarship revoked to create a roster spot for any Plaintiff.

12. Put simply, the Court cannot fashion a remedy at the end of the case which would return time and experience to the Plaintiffs. Injunctive relief is more practicable, efficient, and adequate than monetary damages in this case.

III. Plaintiffs Have Established a Reasonable Likelihood of Success on the Merits

13. "To establish a party has a reasonable likelihood of success on the merits, the party must establish a prima facie case. The party is not required to show that he is entitled to relief as a matter of law, nor is he required to prove and plead a case, which would entitle him to relief upon the merits." *Satkovich v. Diverse Staffing Servs., Inc.*, 270 N.E.3d 513 (Ind. Ct. App. 2025). The prima facie case must be established with "substantial evidence." *Id.* "'Substantial evidence is that which is more than a scintilla and less than a preponderance.'" *Id. See also Abercrombie & Fitch Stores, Inc. v. Simon Prop. Grp., L.P.*, 160 N.E.3d 1103, 1109 (Ind. Ct. App. 2020).

14. A "'likelihood of success' exists if the party seeking injunctive relief shows that it has a 'better than negligible' chance of succeeding on the merits.'" *Ind. High Sch. Ath. Ass'n v. Martin*, 731 N.E.2d 1, 7 (Ind. Ct. App. 2000) (Affirming injunctive relief in favor of high school basketball player).

A. Plaintiffs Are Intended Third-Party Beneficiaries of the Old Manual and the New Manual

15. "A person or entity who is not a party to a contract may directly enforce that contract as a third-party beneficiary if: '(1) the parties intend to benefit a third party; (2) the contract imposes a duty on one of the parties in favor of the third party; and (3) the performance of the terms of the contract renders a direct benefit to the third party.'" *Midwestern Indem. Co. v.*

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Sys. Builders, Inc., 801 N.E.2d 661, 670 (Ind. Ct. App. 2004), *abrogated by Bd. of Comm'rs of Cnty. of Jefferson v. Teton Corp.*, 30 N.E.3d 711 (Ind. 2015). *See also Luhnow v. Horn*, 760 N.E.2d 621, 628 (Ind. Ct. App. 2001).

16. "Among these three factors, the intent of the contracting parties to benefit the third-party is the controlling factor.... [s]uch an intention may be demonstrated by specifically naming the third-party, or by other evidence.... [t]he intent necessary to the third-party's right to sue is not a desire or purpose to confer a particular benefit upon the third-party nor a desire to advance his interest or promote his welfare, but an intent that the promising party or parties shall assume a direct obligation to him." *Nat'l Bd. of Exam'rs for Osteopathic Physicians & Surgeons v. Am. Osteopathic Ass'n*, 645 N.E.2d 608, 618 (Ind. Ct. App. 1994) (citations omitted).

17. The intent of the contracting parties to benefit a third-party, the controlling factor, "may be demonstrated by specifically naming the third-party or by other evidence." *Barth Elec. Co. v. Traylor Bros., Inc.*, 553 N.E.2d 504, 506 (Ind. Ct. App. 1990). It must be shown that it is the intention of one of the parties to require performance of some part of the contract in favor of the third-party and for their benefit and that the other party to the contract intended to assume the obligation imposed. *MJewell, LLC v. Bainbridge, 113 N.E.3d 685, 689 (Ind. Ct. App. 2018)*

18. Defendants cite *Doe*, 2024 WL 3293591, at 20 which states that under Indiana law "the fact that a contract may incidentally benefit a third party or even that the contracting parties intended that a third party benefit from their contract is not sufficient to confer third party beneficiary status[.]" *Doe*, 2024 WL 3293591, at 20. The NCAA contends that Plaintiffs cannot show direct benefits that the Manual requires the NCAA provide to student athletes and therefore Plaintiffs cannot meet their burden to demonstrate third-party beneficiary rights thereunder.

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19. The Court disagrees with this for a couple of reasons. First, the *Doe* case involved athletes suing the NCAA for failure to promulgate rules to protect student athletes from sexual abuse. In that case the manual was silent on this topic and had no express language providing such protections to students. The Plaintiffs in that case argued that statements in the manual like "conduct intercollegiate athletics programs "in a manner designed to protect and enhance" student-athletes' physical and educational wellbeing" conferred a duty to protect. In *Doe* the Court found that the statements in the Manual were more of an aspirational goal to conduct athletic programs in a manner that promotes safety. *Doe* is factually distinct from this case where the Manual specifically outlines rules as to eligibility and NIL. Eligibility determinations are a duty that the NCAA has control over. Second, *Doe* was decided before the "House Settlement" that shifted the landscape of college athletics. College athletes are now able to earn money for NIL, Name, Image and Likeness. The NCAA in its proposed findings discussed cases that said that athletic eligibility is not a property right, but those cases were decided prior to the House Settlement that now allows athletes to earn money for their NIL.

20. The Court finds this case is more analogous to *Weston v. Big Sky Conf.* 466 F. Supp. 3d 896 which is a federal case that applied Indiana law. The Court in *Weston* found a valid breach of contract claim to survive a Motion to Dismiss filed by the NCAA. The difference between *Weston* and *Doe* is due to the type of duty being extracted from the relevant documents. *Weston* found a plausible specific safety duty tied directly to the conduct of athletic competition (concussion protocols), while *Doe* found no plausible basis for a duty requiring the NCAA to supervise interpersonal coach-athlete relationships, which the NCAA's documents affirmatively suggested fell outside its institutional role. The present lawsuit involves Rule 12.6 which is eligibility. The Manual itself appears to make them eligible. That leaves the matter of eligibility

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squarely in the NCAA's control. The NCAA has a duty to apply its rules in in a fair and non-arbitrary manner.

21. Plaintiffs are intended third-party beneficiaries of the Manual under Indiana law as the Manual is intended to benefit Plaintiffs, explicitly names student athletes, and contains direct obligations to Plaintiffs and all other student-athletes. As explained by the Chancery Court of Davidson County, Tennessee:

> When reading the Bylaws at issue in this case, they are all largely devoted to regulating the eligibility, participation, welfare, and compensation of student-athletes. They repeatedly identify student-athletes as the objects of the Bylaws, indicating an intent to benefit them. The Bylaws are not limited to allocating rights and obligations among member institutions. Rather, they establish detailed rights, privileges, obligations, eligibility requirements, procedural protections, and benefits that directly govern the relationship between the NCAA and every student-athlete participating in NCAA competition. Those provisions demonstrate that student-athletes are not merely incidental beneficiaries of the contractual arrangement but are among its principal intended beneficiaries.
>
> The Court further finds it significant that student-athletes are required to review and execute acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools. (Trial Testimony of Jerry Vaughn). This requirement demonstrates that the contractual framework was intended to operate directly upon student-athletes and not merely upon member institutions. Therefore, this Court finds that the Plaintiffs are the intended beneficiaries of the contracts at issue in this case.

Washington v NCAA, Case No. 26-0896-III, Chancery Court of Davidson County, Tennessee, July 31, 2026 Order Granting Temporary Injunction; *See Bloom v. Nat'l Collegiate Athletic Ass'n*, 93 P.3d 621, 623-24 (Colo. Ct. App. 2004) ("the NCAA's constitution, bylaws, and regulations evidence a clear intent to benefit student-athletes"); *Battle v. Nat'l Collegiate Athletic Ass'n*, No. 5:24-cv-00107, 2024 WL 4685604, at *5 (N.D. W. Va. Nov. 4, 2024) (holding that student-athlete sufficiently alleged he was a third-party beneficiary to the Bylaws and Constitution of the NCAA); *Smith v. NCAA*, Case No. 2026-CP-39-00073 (S.C. Ct. C.P. June 12, 2026) (entering injunction on a claim for breach of NCAA Bylaws); *Borovicanin v. NCAA*, Case No. A2603352 (Ohio Ct.

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C.P. July 9, 2026) (order granting preliminary injunction) ("the NCAA Manual and Bylaws are clearly intended to benefit student-athletes").

22. Based on the evidence before the Court, the Plaintiffs have satisfied their burden of demonstrating they have a reasonable likelihood of success on the merits of their claim that they are third-party beneficiaries of the Old Manual and New Manual. There is a greater than negligible chance in this case that the Plaintiffs will succeed on the merits of their claim.

B. Plaintiffs Have Made a Prima Facie Case Demonstrating a Reasonable Likelihood of Success of the Merits for Their Claim for Breach of the New Manual

23. The New Manual went into effect on August 1, 2026. Bylaw 12.6 now states:

> **Five-Year Period of Eligibility**. An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following: (Revised: 7/31/14, 6/6/25 effective 7/1/25, 6/24/26 effective 8/1/26).
>
> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday

D. Ex. 2, 2026-27 Manual at 55. The provision applies to all athletes enrolled in, or desiring to enroll in, an NCAA Division I institution for the 2026-27 year with no limitation. Under the plain, unambiguous text of the Manual, Plaintiffs are eligible.

24. There are thirty (30) other places in the New Manual where the NCAA states that a particular provision only applies to an athlete "initially enrolling" after a certain date. And six (6) rules in the New Manual only apply "for student-athletes initially enrolling full time in a

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collegiate institution on or after 8/1/23." That is the exact language the NCAA would have used to exclude the Class of 2022 from the right to compete for five (5) years. It did not.

25. The NCAA has represented to Courts across the country that it "speaks with one voice regarding the provisions of its eligibility rules, and it does so through the Manual." P. Exs. 23 and 24. Accordingly, the NCAA is estopped from arguing that documentation outside the Manual modifies the Manual.

26. Further, even if the NCAA were not estopped from such an argument, the Manual is unambiguous and the Court will not consider parole evidence given the lack of ambiguity.

27. Finally, even if the Court could consider parole evidence, the Manual was published after the NCAA's parole evidence (D. Exs. 5 and 6) and, as a result, supersedes such evidence.

28. In short, the Manual means what it says and Plaintiffs are currently eligible under its terms. Accordingly, the law and facts are clearly on Plaintiffs' side. Plaintiffs have demonstrated that they have a better than negligible chance to prevail on their breach of contract claim because the NCAA is denying their right to play in direct contravention of the express language in the New Manual.

C. Plaintiffs Have Made a Prima Facie Case Demonstrating a Reasonable Likelihood of Success of the Merits for Their Claim for Breach of the Old Manual

29. As set forth in the Findings of Fact, the NCAA had an obligation under the Old Manual to equitably and fairly apply the eligibility and waiver provisions in the Old Manual. It failed to do so by granting waivers or changing the rules with respect to: (1) Classes of 2017, 2018, 2019, and 2020 due to COVID; (2) former professional athletes; (3) persons seeking redshirts; (4) former junior college athletes; (5) persons seeking hardship waivers; and (6) the classes of 2023, 2024, and 2025, all of whom Plaintiffs competed against. The NCAA's treatment of Plaintiffs in

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comparison to players they competed against was arbitrary, capricious, and unreasonable. Plaintiffs have made a prima facie case of breach of the Old Manual.

30. Under NCAA Bylaw 12.6, an NCAA Division I college athlete has five (5) years of eligibility in NCAA sports. The college athlete's window—known as an Eligibility Clock—starts to run from the date on which a college athlete registers as a full-time student at any collegiate institution or turns nineteen (19) years old. Plaintiffs all remain within the window of their five-year Eligibility Clock for the 2026-27 school year. Under the plain terms of the 2026-27 NCAA Manual, they are eligible to compete, and the NCAA is breaching its contractual obligations by denying them that opportunity.

IV. The Threatened Injury to Plaintiffs Outweighs Any Potential Harm to the NCAA

31. Harm to the NCAA by virtue of this injunction is minimal or nonexistent. The NCAA regularly grants waivers allowing athletes five (5) years to play – sometimes for hundreds or thousands of athletes at a time. This injunction covers less than one hundred (100) athletes across a multitude of sports. It does not require a school to roster a player and it will not prevent any NCAA competition from taking place. The NCAA retains its right to appeal any limitation of its powers following trial on the merits on all of Plaintiffs' claims.

V. The Public Interest Would Not Be Disserved By An Injunction

32. As set forth in the Findings of Fact, the NCAA's flawed decision-making process created the present timeline. The public has an interest in seeing all players treated fairly. That means allowing all players within five (5) years of enrolling in college and their nineteenth (19^{th}) birthday to play.

33. Any Conclusion of Law more properly construed as a Finding of Fact shall be deemed a Finding of Fact.

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34. Plaintiffs' claims only challenge the Age-Based Rule. But in its proposed order Plaintiffs ask for relief from other rules as well: the NCAA's junior college rules, its professional participation rules, and the like. The Court finds a likelihood of merits of the Plaintiffs challenge to the Age-Based Rule, it is not comfortable using that finding as an opportunity to re-write the Manual.

35. Justice delayed is justice denied applies to this case, many of the Plaintiffs in this case are involved in sports that are already under way. They cannot wait until a trial on the merits: the harm will be irreparable from this lost season.

36. The Court finds the law and facts are clearly with the Plaintiffs in this case and issues a preliminary injunction as follows:

1. Defendant National Collegiate Athletic Association ("NCAA"), and its officers, agents, employees, representatives, successors, assigns, members, and all persons acting in concert or participation with them, including conferences, are hereby temporarily restrained and enjoined from enforcing previous NCAA Bylaw 12.6, or any other NCAA bylaw or rule, to preclude Plaintiffs from competing in NCAA Division I athletics during the 2026–2027 season on the basis that Plaintiffs have already competed in four seasons of competition;

2. Defendants, and their officers, agents, employees, representatives, successors, assigns, members, and all persons acting in concert or participation with them, including conferences are hereby temporarily restrained and enjoined from prohibiting any Plaintiff from participating at any NCAA Division I institution during the 2026–2027 season on the basis that the Plaintiff did not enter the NCAA transfer portal;

3. Defendants, and their officers, agents, employees, representatives, successors, assigns, members, and all persons acting in concert or participation with them, including conferences are hereby temporarily restrained and enjoined from prohibiting Plaintiffs from competing in NCAA Division I athletics during the 2026–2027 season based on any actions Plaintiffs took after the conclusion of their 2025-26 season, such as signing a professional contract, agent contract, or playing in a professional sporting event, so long as they terminate any such contract and repay any money they have received prior to playing in a collegiate game;

4. Defendants, and their officers, agents, employees, representatives, successors, assigns, members, and all persons acting in concert or participation with them, including conferences, are further temporarily restrained and enjoined from enforcing NCAA Bylaw 12.9.4.2 (the Rule of Restitution), the ghost transfer rule, and or any conference rule or proposed penalty against:

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a. Plaintiffs;

b. Any NCAA member institution or coach for which Plaintiffs choose to compete during the 2026–2027 season; and

c. Any NCAA member institution or coach that competes against Plaintiffs.

5. The NCAA is ordered to open the transfer portal for all Plaintiffs for one week from entry of this Order and, upon request of any Plaintiff, his/her NCAA member institutions shall immediately place such Plaintiff in the national transfer database without any other requirements or delay;

6. To be clear, it is the Court's intention to place Plaintiffs in the position they were in at the end of their last college sports season. As long as they would have been eligible, academically and otherwise, to continue playing college sports in the following semester if they had a fifth year of eligibility, they are eligible today.

7. This Preliminary Injunction shall remain in effect until trial of this case; and

8. The Court orders that Plaintiffs shall post a nominal bond in the amount of $100, pursuant to applicable law.

SO ORDERED: September 23, 2026

Hon. Kara E. Krothe, Judge
Monroe Circuit Court VI

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RESPONDENTS' APPENDIX

TAB D

Order Denying Defendant's Emergency Motion to Stay Preliminary Injunction, *Daley v. NCAA*, Cause No. 53C06-2609-PL-002418 (Ind. Monroe Cir. Ct. Oct. 5, 2026)

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STATE OF INDIANA	)	IN THE MONROE CIRCUIT COURT VI
	)	
COUNTY OF MONROE	)	CAUSE NO. 53C06-2609-PL-002418
	)	
STEPHEN DALEY, KELLEN WYATT, OWEN MCDONALD, ZALAN SARKANY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	)	
	)	
Defendant.	)	
	)	

ORDER DENYING DEFENDANT'S EMERGENCY MOTION TO STAY PRELIMINARY INJUNCTION

This matter comes before the Court on Defendant National Collegiate Athletic Association's ("NCAA") Emergency Motion to Stay Preliminary Injunction, filed September 23, 2026 (the "Motion"). The Court has considered the Motion, Plaintiffs' Response in Opposition, the evidentiary record from the September 14, 2026 hearing, and the Court's Findings of Fact, Conclusions of Law, and Order Granting Preliminary Injunction entered September 23, 2026 (the "Injunction Order"). Being duly advised, the Court now DENIES the Motion for the following reasons.

I. Standard

Indiana Trial Rule 62(C) provides that, when an appeal is taken from an order granting an injunction, the court "in its sound discretion may suspend, modify, restore, or grant the injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." Ind. Trial Rule 62(C).

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The NCAA asks the Court to apply the four factors set out in *Nken v. Holder*, 556 U.S. 418 (2009). The Court need not decide whether Indiana has adopted the *Nken* framework, because the result is the same under *Nken* or under the familiar preliminary-injunction factors. *See Doe v. O'Connor*, 781 N.E.2d 672, 674 (Ind. 2003). Under *Nken*, a stay pending appeal "is not a matter of right, even if irreparable injury might otherwise result"; it is "an exercise of judicial discretion," and "[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." 556 U.S. at 433–34. The first two factors—a strong showing of likely success and irreparable injury to the movant—"are the most critical," and "simply showing some possibility of irreparable injury" does not suffice. *Id.* at 434–35.

The NCAA also invokes the sliding-scale approach, under which "[t]he goal is to minimize the costs of error." *In re A & F Enters., Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014). That principle weighs heavily against a stay here. If the Court erroneously denies a stay, the NCAA's competitions proceed as scheduled and fewer than one hundred athletes compete in a season the NCAA's published Manual permits. If the Court erroneously grants a stay, Plaintiffs permanently lose the final season of their eligibility, a loss no later judgment can repair.

II. The NCAA Has Not Made a Strong Showing That It Is Likely to Succeed on Appeal

The Motion largely restates arguments the NCAA presented in its Response to Plaintiffs' Motion for Preliminary Injunction and at the September 14, 2026 hearing. The Court considered and rejected those arguments after receiving live testimony from more than a dozen players and coaches and the parties' stipulated exhibits. Re-argument of positions already rejected is not a "strong showing" of likely success.

The NCAA's prospects on appeal must also be measured against the standard of appellate review. The grant of a preliminary injunction rests within the sound discretion of the trial court

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and is reviewed for an abuse of that discretion, and the trial court's findings will not be set aside unless clearly erroneous. *Ind. Fam. & Soc. Servs. Admin. v. Walgreen Co.*, 769 N.E.2d 158, 161 (Ind. 2002); Ind. Trial Rule 52(A). Many of the Court's determinations rest on the credibility and weight of live testimony that the NCAA chose not to rebut with live witnesses of its own. (Injunction Order, Findings ¶¶ 39, 62, 66.) This Court gave substantial weight to the live testimony of Plaintiffs and their coaches, which it found credible. The Court found the NCAA's written documentation in the absence of live testimony less credible than Plaintiffs and their coaches. Argument of the NCAA's counsel is not evidence.

Third-party-beneficiary status. In the context of the present dispute over eligibility rules, the vast majority of courts across the country have determined that athletes similarly situated to those here are third-party beneficiaries of the NCAA Manual (*Id.* ¶ 21 (collecting cases)), including additional courts not referenced in this Court's ruling on September 23, 2026. *See Lorient v. NCAA*, Case No. 26-CV-00094 (N.D. W.Va. Sept. 30, 2026 Order Granting Preliminary Injunction at 43-47); *Campbell v. NCAA*, Case No. 260200088 (Business and Chancery Court of Utah, Oct. 2, 2026 Temporary Restraining Order at 7-8); *Nunnery v. NCAA*, Case No. 18CH1:26-cv-0011-SM (Chancery Court of Forrest County, Mississippi, Sept. 29, 2026 Order Granting Preliminary Injunction at 6-7); *Council v. NCAA*, Case No. E2026022033 (Monroe County, New York Supreme Court, Sept. 23, 2026 Decision at 26-30 applying Indiana law); *Pearce v. NCAA*, Case No. 7231/2026 (Westchester County, New York Supreme Court, Sept. 21, 2026 at 4-7); *Mitchell v .NCAA*, Case No. 2026-2409-6 (474th Judicial District Court of McLennan County, Texas, Sept. 17, 2026 Temporary Injunction Order at 3-4); *Adams v. NCAA*, Case No. CV-2026-1757 (District Court of Tulsa, Oklahoma Sept. 16, 2026 at 12-13).

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The NCAA argues that Plaintiffs cannot be intended beneficiaries of the 2026–27 Manual because the NCAA intended to exclude them. That argument depends entirely on materials outside the Manual: Proposal No. 2026-44, a Cabinet report, and NCAA press releases. They are athletes enrolled in college after August 1, 2026 and, on its face, the Manual includes them. The Court has already found that Bylaw 12.6 is unambiguous, that the NCAA has represented to courts that it "speaks with one voice regarding the provisions of its eligibility rules, and it does so through the Manual," and that the published Manual post-dates the extrinsic materials on which the NCAA relies. (Injunction Order, Conclusions ¶¶ 23–28.) The Court further explained why *Doe 1 v. NCAA*, 2024 WL 3293591 (S.D. Ind. July 2, 2024), is distinguishable: the eligibility provisions at issue here impose direct obligations concerning student-athletes, unlike the aspirational welfare statements at issue in *Doe*. (*Id.* ¶¶ 19–21.) The NCCA's contention is without merit.

Reviewability. The NCAA contends that, as a private association, its decisions are insulated from judicial review absent fraud, illegality, or an abuse of civil or property rights having their origin elsewhere. *See Hisp. Coll. Fund, Inc. v. NCAA*, 826 N.E.2d 652, 655 (Ind. Ct. App. 2005). That argument does not undermine the Injunction Order for three reasons. First, Plaintiffs' interests in athletic scholarships, roster positions, and name-image-likeness and revenue-sharing compensation arise from agreements with institutions and third parties, and those interests carry substantial economic value in the post-*House* landscape. (Injunction Order, Findings ¶¶ 8–9, 17; Conclusions ¶ 19.) Plaintiffs have a present interest in property rights by virtue of their agreements with NCAA member schools, which will be voided or terminated if the NCAA prevails in this litigation. Those contracts do not originate in the NCAA Manual, but the NCAA's misapplication, misinterpretation, and arbitrary actions concerning the NCAA Manual interfere with those property rights.

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Second, even under a deferential arbitrary-and-capricious standard, the Court's findings support its conclusion, including: the NCAA's prior waivers and extensions of eligibility to others against whom Plaintiffs competed; the NCAA's April 15, 2026 indication that the Class of 2022 would be included, followed by the April 27, 2026 reversal; the "emergency" designation that bypassed the ordinary comment period; the Cabinet's lack of any option to include the Class of 2022; the extension of the "Most Favorable Outcome" election to Class of 2022 athletes who redshirted but not to identically situated athletes who did not; and the NCAA's failure to present a live witness to justify those decisions. (*Id.*, Findings ¶¶ 48–53, 61–62, 66.). *See also Council* at 33 applying Indiana law ("Council establishes a likelihood of success on his claim for breach of the covenant of good faith and fair dealing because in acting in a manner that is arbitrary, inconsistent, and contrary to the reasonable expectations created by its own constitution and bylaws, the NCAA acted fraudulently and/or abused Council's civil or property rights.") (internal citations omitted).

Third, Plaintiffs' claim for violation of the present 2026-27 Manual does not ask the Court to second-guess the NCAA's interpretation of an ambiguous rule. It asks the Court to enforce the unambiguous published text of Bylaw 12.6. An association's right to interpret its rules does not include a right to disregard their plain terms in favor of an uncodified transition framework, press releases, or purported interpretations, all of which predated publication of the Manual itself.

Retroactivity. The NCAA's reliance on the presumption against retroactive legislation is misplaced. That presumption concerns rules that attach new legal consequences to completed past conduct. Applying Bylaw 12.6, effective August 1, 2026, to determine who may compete in the 2026–27 season is a prospective application. It governs future competition. Indeed, the NCAA itself applies the new rule to many athletes who enrolled before August 1, 2026, including Class

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of 2022 athletes who redshirted and the Classes of 2023, 2024, and 2025. Other courts have recently reached the same result:

> The NCAA's position is particularly difficult to reconcile with its treatment of the Class of 2023, for example. One could argue that the Class of 2022 received what they bargained for when they entered college—four (4) years of eligibility. But the same reasoning applies to the Class of 2023: those student-athletes likewise entered college expecting four (4) years of eligibility. Yet, the NCAA permits the Class of 2023 to continue competing while denying the same opportunity to the Class of 2022. The distinction appears arbitrary and is difficult to reconcile with the NCAA's treatment of eligibility during the COVID-19 pandemic.
>
> The Court is not persuaded that the NCAA has adequately explained this distinction. If the NCAA were willing to recognize an additional year of eligibility when circumstances created an overlap between otherwise eligible athletes and subsequent recruiting classes during the COVID-19 pandemic, it is not apparent why the same concern regarding a potential substitution effect warrants a different result here. At a minimum, the NCAA's explanation does not adequately account for why the Class of 2022 should bear the consequences of the asserted "substitution effect" while similarly situated student-athletes in the Class of 2023 are permitted to continue competing.
>
> The Court therefore finds the NCAA's distinction between these two (2) classes difficult to justify on the record presently before it. Whatever legitimate concerns the NCAA may have regarding the effects of an additional year of eligibility, those concerns do not, without more, explain why an exception was appropriate for one cohort but not the other. The NCAA's treatment of the Class of 2022, particularly when viewed in light of its prior decision to grant additional eligibility during the COVID-19 pandemic, raises substantial questions concerning the consistency and rationale of the eligibility restriction at issue here.

Lorient, Sept. 30, 2026 at 50-51.

III. The NCAA Has Not Shown Irreparable Harm Absent a Stay

The NCAA's asserted harms are either speculative or not the kind of harm that justifies a stay. The Injunction Order does not require any institution to roster any Plaintiff and does not prevent any competition from taking place. It covers fewer than one hundred athletes, while the NCAA has granted additional seasons of competition to thousands of athletes through the COVID and *Pavia* waivers without any claimed injury to the institution. (Injunction Order, Findings ¶¶ 20, 32; Conclusions ¶ 31.)

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The NCAA's interest in uniform enforcement of its rules is the same institutional interest the Court weighed in granting the injunction. That interest is also undercut by the NCAA's own conduct, which applies different eligibility outcomes to identically situated members of the Class of 2022 depending on whether a coach chose to redshirt them. (*Id.*, Findings ¶ 62.)

The prospect that other athletes may file their own lawsuits is not an irreparable harm arising from this injunction. That other similarly situated athletes may seek to enforce the same contractual rights is not a harm that equity protects against.

Finally, the NCAA argues that, absent a stay, it will lose meaningful appellate review because the season may end before its appeal is decided. Indiana recognizes a public-interest exception to the mootness doctrine. *See In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). More fundamentally, the time-sensitive nature of this dispute is precisely why preliminary relief was necessary. If time sensitivity alone justified a stay, every injunction protecting a time-limited opportunity would be stayed, and the irreparable harm the injunction was entered to prevent would occur in every case.

IV. A Stay Would Substantially Injure Plaintiffs and Third Parties

A stay would inflict the very irreparable harm the Injunction Order was entered to prevent. The 2026–27 seasons in football, soccer, cross country, and field hockey are underway; basketball practice began September 21, 2026; and swimming and spring sports are approaching. (Injunction Order, Conclusions ¶ 9.) A stay pending appeal would likely last as long as the remaining season. The NCAA's suggestion that Plaintiffs "could play a fifth season" if they ultimately prevail ignores the Court's finding that 2026–27 is the final year of each Plaintiff's five-year eligibility period. (*Id.*, Findings ¶¶ 11, 13.) A lost season cannot be restored, and money damages cannot replace it. (*Id.*, Conclusions ¶¶ 10–12.)

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The NCAA's argument also ignores the roster crunch it created for the 2027-28 academic year by granting all athletes currently in school (other than those who redshirted) another season of competition. As a result, few athletes currently rostered (other than members of the Class of 2022 competing under court orders) will be forced to leave collegiate sports after this year. Meanwhile, an entire freshman class has already been recruited and expects roster spots. As a result, schools are likely to have less roster spots available next year due to the NCAA's rule change. This Court did not order any school to roster a player and no coach testified he or she would have a roster spot available for any Plaintiff next season.

The NCAA's claimed harm to other student-athletes remains speculative. The record shows that no player was cut and no scholarship was revoked to create a roster spot for any Plaintiff. (*Id.*, Conclusions ¶ 11.) Roster decisions remain with the member institutions, and the NCAA's general declarations do not identify any athlete actually displaced by a Plaintiff. As noted by other courts,

> The Court does not discount the possibility that granting an additional year of eligibility to certain student-athletes could affect roster composition or opportunities for other athletes. But where the NCAA relies upon such a potential effect to justify excluding an entire class of student-athletes, the Court would expect some evidentiary basis demonstrating that the asserted harm is likely to occur. On the present record, the NCAA has not sufficiently connected its generalized concern regarding roster space to any concrete impact on a particular student-athlete or roster. The rosters for the 2026—27 seasons have essentially been set, and the "destabilized rosters for the 2026—27 season" do not exist.

Lorient, Sept. 30, 2026 at 53.

V. The Public Interest Does Not Favor a Stay

The public interest is served by enforcing contracts according to their plain terms, by the fair treatment of similarly situated athletes, and by preserving the effectiveness of judicial relief. The NCAA's policy arguments about which eligibility rule is preferable address a question this

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Court has not decided. The Court has not rewritten the Manual. (Injunction Order, Conclusions ¶ 34.) It has held, on a preliminary record, that the NCAA is likely bound by the rule it published.

VI. A Stay Would Disrupt, Not Preserve, the Status Quo

The NCAA characterizes the Injunction Order as a mandatory injunction that alters the status quo. The Court has already determined that the last actual, peaceful, and non-contested status preceding this controversy was the 2025–26 season, when Plaintiffs were eligible and on college rosters, and that preliminary relief was in any event necessary to protect the parties' rights pending trial. (Injunction Order, Conclusions ¶¶ 5–7 (citing *Hannum Wagle & Cline Eng'g, Inc. v. Am. Consulting, Inc.*, 64 N.E.3d 863, 883 (Ind. Ct. App. 2016); *AGS Cap. Corp. v. Prod. Action Int'l, LLC*, 884 N.E.2d 294, 314 (Ind. Ct. App. 2008); *Watson v. Burnett*, 23 N.E.2d 420, 424 (Ind. 1939)).); *See also Pearce*, Sept. 21, 2026 Order at 3 ("under the plain language of Bylaw I 2.6, plaintiff is eligible to compete in a fifth year. The requested injunction which maintains the status quo is prohibitory."). Plaintiffs are now enrolled, rostered, and competing. A stay would not preserve the status quo; it would remove athletes from teams in the middle of their seasons.

ORDER

For the foregoing reasons, IT IS ORDERED that Defendant National Collegiate Athletic Association's Emergency Motion to Stay Preliminary Injunction is DENIED. The Court's Findings of Fact, Conclusions of Law, and Order Granting Preliminary Injunction entered September 23, 2026, remains in full force and effect pending appeal.

SO ORDERED this 5th day of October, 2026.

Hon. Kara E. Krothe, Judge
Monroe Circuit Court VI

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RESPONDENTS' APPENDIX

TAB E

Order Granting Temporary Injunction, *Aberdeen v. NCAA*, No. 01-2026-CA-002874 (Fla. 8th Cir. Ct. Alachua Cnty. Oct. 5, 2026)

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IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

CASE NUMBER: 01-2026-CA-002874
Circuit Civil Division CA3

DENZEL ABERDEEN,
Plaintiff,

-vs-

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
Defendant.

ORDER GRANTING TEMPORARY INJUNCTION

This matter is before the Court on Plaintiff Denzel Aberdeen's Motion for Temporary Injunction. The Court held a hearing on this motion on Tuesday, September 29, 2026. The Court, after considering the pleadings, the stipulated evidence, the argument of counsel, and the relevant law, finds that Mr. Aberdeen has established all grounds entitling him to a temporary injunction. Although a temporary injunction is an extraordinary remedy that courts should sparingly issue, because Mr. Aberdeen's right to relief is so clear and certain, because the harm he is facing is so real and ascertainable, because this harm cannot in any form be compensated later by money damages, and because the public interest is served by ensuring that *all* student athletes are treated in a fair and consistent manner, the Court must grant the temporary injunction.

The issues before the Court are the same issues facing countless courts across the country at both the state and federal level. On August 1, 2026, Defendant National Collegiate Athletic Association ("NCAA") fundamentally changed how it calculated the length of time a student athlete would be eligible to compete at one of the colleges or universities that constitute its membership. Under the prior rules, a student athlete had five years of eligibility in which to complete four "seasons" in any "one sport."[1] NCAA, Division I 2025-26 Manual at 46 (Aug. 30, 2025) ("2025-26 Manual.") This was informally referred to as the "4-in-5" rule. What constitutes a season and what is one sport is defined by the NCAA manual. The 2025-26 Manual considered

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[1] See, e.g., Marc Bianchi, Guardian of Amateurism or Legal Defiant? The Dichotomous Nature of NCAA Men's Ice Hockey Regulation, 20 Seton Hall J. Sports & Ent. L. 165, 196–97 (2010)("NCAA regulations allow an individual to play professionally in one sport and to retain amateur status in another. This practice is seen in college football, where some players have previously played professional baseball. Two prominent college football players that played professional baseball before attending college were Chris Weinke and Drew Henson. Weinke spent six seasons, from the time he was eighteen until he was twenty-four, in the Toronto Blue Jays organization. Upon signing his first professional baseball contract at eighteen, Weinke received $375,000-$400,000 as a signing bonus. He advanced as high as the Triple-A level, the level below Major League Baseball.")

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cross country, indoor track and field, and outdoor track and field as separate sports, while "[t]riathlon and cross country are considered the same sport, triathlon and track and field are considered the same sport, and triathlon and swimming are considered the same sport[.]" Id. at 36-37. Under Bylaw 12.6.3.1, "**Any competition, regardless of time**, during a season in an intercollegiate sport **shall be counted as a season of competition in that sport**[.]" Id. at 46 (emphasis added). What follows this straight-forward and simple rule are numerous exceptions, such as excluding from competition participating in only *one* "celebrity sports activity" or representing "the institution in a certified foreign tour." Id. at 50, 53. In addition to the exceptions, the NCAA also has the power to waive the 5-year rule under Bylaw 12.6.1.7. "The Committee on Student-Athlete Reinstatement, or its designated committee, by a two-thirds majority of its members present and voting, may approve waivers of the five-year rule as it deems appropriate." Id. at 48. This placed student athletes in a Schrödinger's eligibility conundrum—a player is both eligible and not eligible until the NCAA decides which exception or waiver does or does not apply, in its sole discretion.

On August 1, 2026, the NCAA formally adopted a change to Bylaw 12.6, which now states that "[a]n individual's period of eligibility for practice and competition shall be limited to five academic years." NCAA, Division I 2026-27 Manual at 43 (Aug. 27, 2026) ("2026-27 Manual.") Under this new system, an "individual's five-year period of eligibility begins with the earlier of" the academic term an individual enrolls and attends class or the beginning of the academic year following the individual's 19th birthday. Id. at 43-44. This is known as the "5-in-5" rule. Instead of eligibility being determined by seasons and sports, the new Bylaw 12.6 proposes a straightforward solution to the convoluted waiver and exception system that preceded it—once the eligibility clock starts ticking, an individual has five years to compete in any sport. The bylaw, as written, is silent on any retroactive or prospective application. Bylaw 12.01.02, however, clarifies that if "NCAA rules specify that an 'individual' may or may not participate in certain activities, this term refers to a person before and after enrollment in a member institution. If NCAA rules specify a 'student-athlete,' the legislation applies only to that person's activities after enrollment." Id. at 32.

Since the plain language of the new eligibility bylaw defines an "individual's" period of eligibility, countless student athletes across the country reasonably concluded that the NCAA intended to calculate their eligibility under the new rules. The NCAA disagreed and issued press releases and tweets, explaining that despite what Bylaw 12.6 actually says, the NCAA intended for the new rule to apply only to the student-athlete classes of 2023, 2024, 2025, 2026, and beyond. Excluded from the 5-in-5 rule is the student-athlete class of 2022, which includes Mr. Aberdeen.[2] Through press release the NCAA informed thousands of student athletes that their college-sports careers were effectively over.

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[2] The NCAA defines a student's class by the year the student athlete entered college rather than the year of expected or eventual graduation. Based on his enrollment date, Mr. Aberdeen is part of the class of 2022.

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In response, college athletes from the class of 2022 have filed dozens of lawsuits in state and federal courts seeking to enjoin the NCAA from excluding them from a fifth year of eligibility.[3] What has emerged from this scrum is a patchwork of arguments and rulings, at times contradictory, from judges across the country. Student athletes from the class of 2022 are left in limbo while some injunctions are denied, others granted and then stayed, and some injunctions are upheld on appeal. With the NCAA college basketball season beginning on November 1, 2026, and with teams engaged in exhibition or scrimmage games before the season tip-off, these student athletes wish to avail themselves of the eligibility rules that the NCAA has enacted.

While the Court is professedly unfamiliar with many of the rules of college basketball and the byzantine system of regulation of the sport enacted by the NCAA, the Court is familiar with several types of ball games. There is "Ref-Ball," where the referees officiating a game dictate the outcome either through bad calls, missed calls, or over-calling penalties. Apparently, nobody likes this game. There is also a new sport sweeping the nation called "Judge-Ball," in which student athletes have resorted to the courts to determine their eligibility. Although judges often refer to themselves as referees or umpires,[4] this Court has found few fans of this new process, either among the players or spectators. Finally, there is "Calvinball," a game invented by the characters in Bill Waterson's comic strip Calvin and Hobbes. In Calvinball, rules, goals, and boundaries are invented, discarded, or reversed on the fly by whoever is playing. "Calvinball has only one rule: There are no fixed rules." Nat'l Institutes of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2675, (2025) (Jackson, J., concurring in part). A reaction to the rules in organized sports like baseball, the improvisational and lawless foundation of Calvinball often leads to conflicts and disputes, much like the case at hand. Here, the NCAA urges the Court to join it in a game of Calvinball to find that the bylaws it has enacted can be changed at any time in its sole discretion by tweet, press release, or interpretation. The Court declines this invitation.

FACTUAL BACKGROUND

Plaintiff Denzel Aberdeen is a 22-year-old student at the University of Florida, first enrolling in the fall of 2022. He grew up in Florida, went to high school in Orlando, and was part of the first recruiting class of coach Todd Golden. Mr. Aberdeen played basketball for the University of Florida during the 2022-2023,[5] 2023-2024, 2024-2025 seasons, and after a brief sojourn to another school where he played basketball in the 2025-2026 season, he returned to

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[3] See, e.g., Wisne v. Nat'l Collegiate Athletic Ass'n, No. 1:26-CV-03063-CNS-KAS, 2026 WL 2214234 (D. Colo. July 31, 2026), opinion clarified, No. 1:26-CV-03063-CNS-KAS, 2026 WL 2214320 (D. Colo. Aug. 2, 2026); Trotter v. Nat'l Collegiate Athletic Ass'n, No. CV 3:26-0523, 2026 WL 2656556 (S.D.W. Va. Sept. 9, 2026); Blythe v. Nat'l Collegiate Athletic Ass'n, No. 26-1106, 2026 WL 2653349 (9th Cir. Sept. 9, 2026).

[4] See R. Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 8 (1971)(To be an umpire, the judge "must stick close to the text and the history, and their fair implications," because there "is no principled way" for a neutral judge "to prefer any claimed human value to any other.")

[5] During his freshman season, Mr. Aberdeen played a total of thirty-two minutes in the regular season across eleven games, and an additional eight minutes in the National Invitational Tournament. This playing time was often after the outcome of the game was decided, known as "garbage time," where a coaching decision was made to pull starting players out of sportsmanship to avoid running up the score, and to give development time to other players.

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Gainesville where he re-enrolled at the University of Florida. At the time the NCAA amended its bylaws, Mr. Aberdeen was a student at the University of Florida. When Mr. Aberdeen transferred back to the University of Florida, Coach Golden notified his team and offered any affected player the opportunity to enter the transfer portal.[6] No player who remains on the team would be affected by Mr. Aberdeen's eligibility; to the contrary, if Mr. Aberdeen is declared ineligible, the team would be unable under the NCAA rules to fill that spot. In essence, Florida would be playing down one player.

The NCAA is a nonprofit organization with its headquarters in Indianapolis, Indiana. It regulates student athletics at around 1,100 colleges involving over 500,000 college student athletes. In the Preamble to its Constitution, the NCAA states:

> 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.

2026-27 Manual at 1 (emphasis added). Consistent with this pledge, the NCAA requires good academic standing for student athletes, and requires each "member to conduct its athletics program in a manner that promotes the ideals of higher education, human development and the integrity of intercollegiate athletics. All individuals associated with intercollegiate athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty, responsibility, academic integrity, ethical conduct, and the rules of their conferences." Id. at 2.

From its inception, the NCAA was created solely to protect and benefit student athletes. During the turn of the twentieth century, the violent nature of college football and the inadequacy of protective gear led to numerous student fatalities. "President Theodore Roosevelt responded by convening a meeting between Harvard, Princeton, and Yale to review the rules of the game, a gathering that ultimately led to the creation of what we now know as the NCAA." Nat'l Collegiate Athletic Ass'n v. Alston, 594 U.S. 69, 76 (2021). The NCAA enacted and implemented standards and rules for sports, and promoted ideals such as fairness and sportsmanship. In this case, the NCAA has given numerous reasons for its decision to exclude the class of 2022, such as disrupting roster slots. It has argued that the Court lacks personal

[6] See Declaration of Todd Golden at 2.

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jurisdiction over the NCAA. It has also argued that the student athletes were never the intended beneficiary of any contract entered into by the NCAA and its members through the 2026-2027 Manual. And finally, the NCAA argues that Mr. Aberdeen has not met the elements entitling him to a temporary injunction. The Court will take each of these arguments in turn.

The Court Has Personal Jurisdiction Over the NCAA

Under Florida's long-arm statute, this Court has personal jurisdiction over the NCAA because the NCAA is "engaged in substantial and not isolated activity within this state." FLA. STAT. § 48.193(2). The NCAA has twenty-seven member institutions in Florida, it hosts sporting events in Florida, and it regulates and sanctions competitions between the schools, among many other substantial and not isolated activities. Additionally, this is a claim "arising from" the NCAA (1) "[o]perating, conducting, engaging in, or carrying on a business or business venture in this state," or (2) "[b]reaching a contract in this state by failing to perform acts required by the contract to be performed in this state." FLA. STAT. § 48.193(1)(a)1., 7. Almost the entirety of the NCAA's income is generated through the NCAA men's basketball tournament. See Alston, 594 U.S. at 79 ("The NCAA's current broadcast contract for the March Madness basketball tournament is worth $1.1 billion annually.") The NCAA derives revenue from these sporting events held in Florida. As part of a revenue-sharing system, the NCAA channels millions of dollars annually through Florida institutions to Florida resident student-athletes.

Additionally, as further discussed *infra*, Mr. Aberdeen was an intended third-party beneficiary of a contract that the NCAA is alleged to have breached by declaring him ineligible under its bylaws, affixing a scarlet letter that could subject him and the University of Florida to severe sanctions should he play for the team. Mr. Aberdeen is a Florida resident and a student at the University of Florida, who wants to play basketball at Florida, and is alleging that he cannot because the NCAA is refusing to honor its contract with him. The Court finds that because the NCAA purposefully availed itself of the privilege to do business in Florida and then is alleged to have breached a contractual obligation to be performed in Florida to the harm of a Floridian, sufficient contacts exist to exercise personal jurisdiction over the NCAA which satisfy statutory and constitutional requirements.

Mr. Aberdeen is an Intended Third-Party Beneficiary of the NCAA Manual

The doctrine of third-party beneficiaries provides that under certain circumstances, a person may sue to enforce a contract, even though the person is not a party to the contract. See 11 Fla. Jur.2d Contracts § 206, at 406–07 (2008). "[T]he purpose behind the third-party beneficiary doctrine . . . is to do justice for the non-contracting third-party beneficiary." Mendez v. Hampton Ct. Nursing Ctr., LLC, 203 So. 3d 146, 149 (Fla. 2016). "To establish an action for breach of a third party beneficiary contract, [the third-party beneficiary] must allege and prove the following four elements: '(1) existence of a contract; (2) the clear or manifest intent of the contracting parties that the contract primarily and directly benefit the third party; (3) breach of the contract by a contracting party; and (4) damages to the third party resulting from the

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breach.'" Found. Health v. Westside EKG Assocs., 944 So.2d 188, 194–95 (Fla. 2006). "From the early days of the third-party beneficiary principle, its proponents recognized that the third-party beneficiary rule was grounded in principles of justice and equity." Mendez at 149.

The contract at issue here is the NCAA Division 1 Manual. "A contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing." *Contracts*, BLACK'S LAW DICTIONARY (11th ed. 2019). The NCAA describes itself as a voluntary association. "The law is well settled that the Constitution and bylaws of a voluntary association when subscribed or assented to by the members becomes a contract between each member and the association and if they so provide a member may be expelled for insubordination to the association." Sult v. Gilbert, 3 So. 2d 729, 731 (Fla. 1941). Here, the manual has a constitution and bylaws enacted under it, and member institutions must agree to administer their athletics program in accordance with the bylaws. The Court finds that the NCAA Division 1 Manual is a contract between the NCAA and its members and is enforceable as such.

This contract was entered into primarily and directly for the benefit of student athletes. Each year student-athletes must "review and execute acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools[.]" The NCAA requires student athletes to maintain academic standards, to refrain from banned substances, and to abide by a myriad of rules and regulations. In return, student athletes receive the benefit of safe and regulated sporting events, scholarships to attend school, education and career opportunities, and access to revenue sharing. As discussed *supra*, the NCAA was created in response to the deaths of students participating in college football. What is the purpose of an organization named the "National Collegiate Athletic Association" if not to benefit college athletes? As other courts have noted, student athletes are not incidental to the agreement between the NCAA and its members, they are the entire point of it. Therefore, the Court finds that Mr. Aberdeen has established that he and hundreds of thousands of students like him are the intended beneficiaries of the NCAA Manual.

As discussed more fully *infra*, the Court also finds that Mr. Aberdeen has sufficiently shown that the NCAA breached its contractual obligation by refusing to apply Bylaw 12.6 as written to the class of 2022. The NCAA wrote Bylaw 12.6, which contains no exclusion or carve-out for the class of 2022. The NCAA has applied this bylaw retroactively to some classes, but not to Mr. Aberdeen's class. At the time the NCAA amended Bylaw 12.6, Mr. Aberdeen was a student enrolled at a member university, and a valid contract was formed intending to benefit Mr. Aberdeen. Under Bylaw 12.6 as written, Mr. Aberdeen has a contractual right to compete in college, and the NCAA is refusing to allow him to do so under the theory that it gets to amend what is written through any form of interpretation. "It is firmly established that a corporation is prohibited from amending its bylaws so as to impair a member's contractual right." First Fla. Bank, N.A. v. Fin. Transaction Sys., Inc., 522 So. 2d 891, 892 (Fla. 2d DCA 1988). The Manual itself states that the "eligibility of student-athletes" is governed by "the terms of the bylaws."

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2026-27 Manual at 332 (Bylaw 20.2.4.4). The terms of the bylaws say that Mr. Aberdeen is eligible.

Finally, Mr. Aberdeen has shown that he will be damaged by this breach. He has shown that he has a contractual right to eligibility, and the NCAA is preventing him from playing basketball for the University of Florida. Mr. Aberdeen faces not only economic damages from lost revenue, but also lost opportunities, such as the experience gained through collegiate competition at the highest level. Furthermore, Mr. Aberdeen will be unable to use the talent of both the coaching staff and fellow players at the University of Florida to further develop as a player. The Court finds that Mr. Aberdeen has sufficiently established his damages, and that he has standing as an intended third-party beneficiary to enforce the terms of the 2026-2027 NCAA Manual.

GROUNDS FOR TEMPORARY INJUNCTION

Having found that Mr. Aberdeen has standing to enforce the contractual requirements of the NCAA Manual, the Court next turns to the stipulated facts and their application to the elements of a temporary injunction. Here, Mr. Aberdeen must show (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC, 236 So. 3d 466, 471 (Fla. 1st DCA 2018). A party seeking a temporary injunction must prove each element with competent, substantial evidence. Failure to prove any one of the four elements mandates denial of the motion for temporary injunction. Id. "The purpose of a temporary injunction is to preserve the status quo while the movant seeks permanent injunctive relief." Holland M. Ware Charitable Found. v. Tamez Pine Straw LLC, 343 So. 3d 1285, 1289 (Fla. 1st DCA 2022).

"A temporary injunction . . . is merely an interim writ (rather than a provisional remedy), and the trial court's power to grant one comes directly from the constitution. See Art. V, § 5(b)." Fla. Const. Equal Ground Educ. Fund, Inc. v. Sec'y, Fla. Dep't of State, 434 So. 3d 657 (Fla. 2026) (Tanenbaum, J., specially concurring). "Courts distinguish between prohibitory injunctions, which restrain specific conduct, and mandatory injunctions, which command specific conduct and are looked upon with disfavor." Park Crossing Homeowners Ass'n, Inc. v. Suarez, 415 So. 3d 676, 690 (Fla. 4th DCA 2025). "[I]ts purpose is to preserve the property or rights in statu quo, until a satisfactory hearing upon the merits, without expressing and indeed without having the means of forming an opinion as to such rights," and without the necessity of "decid[ing] in favor of complainant upon the merits." Sullivan v. Moreno, 19 Fla. 200, 215 (1882). "This means that the constitutional authority of a circuit court to preserve the status quo will not support its going further to grant a remedy on a provisional basis. The court must find an independent, substantive source of authority to grant a party a temporary remedy for a claimed right violation." Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc., 339 So. 3d 1070, 1076 (Fla. 1st DCA 2022).

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The starting point for any court addressing a request for temporary injunctive relief is identifying the status quo, which is defined as "the last, actual, peaceable, noncontested condition which preceded the pending controversy." Nazia, Inc. v. Amscot Corp., 275 So. 3d 702, 705 (Fla. 5th DCA 2019). The NCAA amended Bylaw 12.6 effective August 1, 2026, and this present lawsuit was filed on September 11, 2026. Under the bylaws as written, Mr. Aberdeen's status as of August 1, 2026, was that he was eligible. Although the NCAA argues that it has since declared Mr. Aberdeen and his class ineligible through its own interpretation of the bylaws, where one party unilaterally upsets the status quo, courts will not "permit a wrongdoer to shelter himself behind a suddenly and secretly changed status." Bowling v. Nat'l Convoy & Trucking Co., 101 Fla. 634, 135 So. 541 (1931). Here, granting a preliminary injunction would maintain the status quo, while denying it would effectively determine the merits in favor of the NCAA. "A preliminary injunction is improperly entered when it bypasses the procedures for a permanent injunction and preliminarily grants the same relief that would have been given in a final order of permanent injunction." Nazia, 276 So.2d at 705.

The Court will next evaluate whether Mr. Aberdeen has presented competent, substantial evidence entitling him to temporary injunctive relief. Rule 1.610(c) requires every injunction to specify the reasons for entry and to describe in reasonable detail the act or acts restrained without referencing a pleading or another document. Strict compliance with rule 1.610(c) is required. See River Landings Phase One Homeowners Ass'n, Inc. v. River Carlton Taylor, Inc., 431 So. 3d 278, 279 (Fla. 4th DCA 2026). The Court first addresses irreparable harm and inadequate remedy at law, which "are two sides of the same coin." Park Crossing Homeowners Ass'n, Inc. v. Suarez, 415 So. 3d 676, 692 (Fla. 4th DCA 2025).

1. Irreparable Harm and No Adequate Remedy at Law

Irreparable injury is defined as injury that cannot be cured by money damages. "[W]hat makes an injury irreparable is that no other remedy can repair it." Weinstein v. Aisenberg, 758 So. 2d 705, 708 (Fla. 4th DCA 2000) (Gross, J., concurring). Similarly, whether a remedy at law is adequate depends on if a money judgment can be obtained, not whether it will be collectible once obtained. Sammie Invs., LLC v. Strategica Capital Assocs., Inc., 247 So. 3d 596, 600 (Fla. 3d DCA 2018). If the resulting harm is economic, then generally money will suffice to remedy any injury. However, courts in Florida have found that even if purely economic, if the damages cannot be calculated, then the legal remedy may be inadequate.

> The court also enjoined the Hotel's referral of general inquiries for medical attention to any doctor except Kaplan. The court found that the Hotel had violated this provision of the lease and concluded as a matter of law that Kaplan was entitled to damages. The proof of damages for such a violation could be extremely difficult as the doctor may never know of requests for medical attention which were referred elsewhere. Under such circumstances, equitable relief to prevent a recurrence of similar acts is justified as special conditions exist which make a purely legal remedy inadequate.

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Fontainebleau Hotel Corp. v. Kaplan, 108 So. 2d 503, 505 (Fla. 3d DCA 1959). In those cases, "evidence of the potential destruction of a business, without a track record from which to calculate the potential loss and with harm of a continuing nature, may in some cases provide sufficient indicia of irreparable harm to support temporary injunctive relief." Id. Mr. Aberdeen certainly faces loss of revenue sharing opportunities, but the Court finds he has also clearly established that the harm presented cannot later be compensated by money, and as such Mr. Aberdeen has no adequate remedy at law.

The evidence establishes that Mr. Aberdeen has a spot on the Florida Gators basketball team. The NCAA has not articulated any harm caused by Mr. Aberdeen's eligibility. He will displace no one, and no roster will be affected by him playing. The teammates he will be playing with are considered the best in the nation. No amount of money can recreate the team dynamic, nor can it replace the rivalry, competition, and growth that comes from playing alongside the best. "I am expected to be a starter at Florida for the 2026-27 season. Without eligibility, I will lose that opportunity. The practices, the chance to compete alongside my teammates and develop under the coaching staff, and the chance for my family to watch me play close to home will be gone forever. I will also lose the chance to compete while completing my degree." Declaration of Denzel Aberdeen at 5. The teammates that Mr. Aberdeen is expected to start with include Rueben Chinyelu, the 2025-2026 Southeastern Conference and NCAA Defensive Player of the Year; Thomas Haugh, a 2026-2027 first-team Blue Ribbon Preseason All-American; Alex Condon, a projected first-round NBA pick and preseason All-American; and McDonald's All-American Boogie Fland.

And then there's time. An athlete has a short window of time in which to ply their trade. With injuries, newer and younger talent recruited each year, and the realities of aging, the average career of a player with the National Basketball Association lasts 4.5 years.[7] For Mr. Aberdeen, this is his last year of eligibility with the NCAA. Missing one year of competition for Mr. Aberdeen could effectively end his professional career before it begins. He would miss out on the opportunity to display his skills over a season on national television. Professional scouts would not see Mr. Aberdeen's abilities immediately before the draft. "I will also lose the opportunity to compete on a national stage for the 2026-27 season as a member of the nation's #1-ranked team in men's basketball. That exposure would allow me to showcase my abilities to NBA scouts and recruiters and enhance my prospects for an NBA career." Id. This loss of athletic eligibility is irreparable because the harm is of a continuing nature, and there is simply no way to calculate the potential loss to Mr. Aberdeen. The only way to prevent this harm and maintain the status quo is to grant a temporary injunction.

The foundation of our country's economic and political system, our court's adversarial system, and our nation's sporting pastimes is that when the rules are fairly and evenly applied,

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[7] "Life after NBA comes sooner than many players think" (June 10, 2010) https://www.nba.com/nuggets/features/junior_bridgeman_20100610.html

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competition will produce the best results. Those of a certain generation recall the rivalry between Magic Johnson and Larry Bird, who were able to reach levels of greatness precisely through their rivalry and competition. To be the best you have to compete against the best. It would be impossible to calculate the value of the opportunity lost to Mr. Aberdeen, both as a player and person, if he could not play with his fellow teammates. Because money cannot later compensate Mr. Aberdeen, the Court finds that he has produced competent, substantial evidence of irreparable harm and no adequate remedy at law.

2. Likelihood of Success on the Merits: Plain Language of the Contract

The Court also finds that Mr. Aberdeen has shown that he is likely to succeed on the merits of his claims. The Court is asked to address only the contract claim, which it will do, as much ink has already been spilled by other more capable judges on the remaining issues. As discussed *supra*, Mr. Aberdeen is the intended third-party beneficiary of the 2026-2027 NCAA Manual. He alleges that the NCAA has breached its contract because the exclusion of the 2022 class violates the 2026-27 Manual's new eligibility framework, which is currently in effect and permits Mr. Aberdeen to play in the upcoming season. In other words, the Manual says he is eligible, and the NCAA must honor the Manual.

As always, beginning with what the words say is an excellent starting point. "So, as we do with all contracts, we evaluate the Club's governing documents, including the bylaws, according to their plain terms." Fiddlesticks Country Club, Inc. v. Shaw, 363 So. 3d 1177, 1181 (Fla. 6th DCA 2023). The 2026-2027 Revised Bylaw 12.6 provides:

> **12.6 Five-Year Period of Eligibility.** An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:
>
> > (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
> >
> > (b) The beginning of the regular academic year immediately after the individual's 19th birthday.
>
> [6/24/26 effective 8/1/26].

2026-27 Manual at 44 (Bylaw 12.6). "The rules used to interpret statutes, contracts, and other written instruments are applicable when construing corporate bylaws." William M. Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 4195 (perm. ed. rev. vol. 1992). In interpreting either a statute or a contract to discern meaning, a court must first examine its text. "The words in the statute are the best guide to legislative intent." State Farm Mut. Auto. Ins. Co. v. Nichols, 932 So. 2d 1067, 1076 (Fla. 2006); see also State v. Burris, 875 So. 2d 408, 410 (Fla. 2004) ("When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. . . . Instead, the

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statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.")

The plain language of Bylaw 12.6 states that as of August 1, 2026, individuals may participate in intercollegiate athletics for five years, starting from the earlier of (a) enrollment at an institution, or (b) the academic year following the player's 19th birthday. The evidence the Court received is that Mr. Aberdeen enrolled at the University of Florida in August 2022 and turned nineteen in December 2021. He was a student at the University of Florida in August 2026 when the NCAA promulgated the new bylaw. Reading the bylaw as written, Mr. Aberdeen is eligible.

There is no bylaw in the 2026-27 Manual carving out the class of 2022. There is no bylaw that makes 12.6 applicable to one class but not the other. There is no bylaw that excludes a student athlete who has exhausted their eligibility under the prior Manual. The NCAA points to the legislative history of Bylaw 12.6 as proof of their intent to exclude the class of 2022. Proposal Number 2026-44, the legislation that amended Bylaw 12.6, includes the history, rationale, topic area, evaluation of the impact on student-athletes' time, the source of the amendment, and guidance on the effective date, which states:

> **Effective Date:** August 1, 2026; may be applied to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026. May be applied to student-athletes who initially enroll full time in any collegiate institution in the 2026-27 academic year. (Previous rules may be applied to student-athletes who enrolled before or enroll during the 2026-27 academic year; however, no waivers will be available. Additionally, the legislated exceptions to the previous season of competition rules do not apply to competition that occurs during the 2026-27 academic year through the exhaustion of the student-athlete's Division I eligibility.) Applicable to student-athletes who initially enroll full time in any collegiate institution in 2027-28 and thereafter.

This language appears nowhere in the 2026-27 Manual. As implemented, Bylaw 12.6 does not contain any of these limitations, and does not reference any of these exclusions by footnote, endnote, or other indication that the NCAA intended for these requirements to be integrated into the final bylaw. At best, the legislative history shows that the intent is that it "may" apply to every student athlete today, but is "applicable" to all classes in the future.

A written agreement is presumed to encompass the whole agreement of the parties. See, e.g., Jenkins v. Eckerd Corp., 913 So. 2d 43, 53 (Fla. 1st DCA 2005) ("The parol evidence rule presumes that the written agreement that is sought to be modified or explained is an integrated agreement; that is, it represents the complete and exclusive instrument setting forth the parties' intended agreement.") This is the contract the NCAA drafted and then required its member institutions to comply with. The NCAA and its members are governed by the terms of the contract, of which Mr. Aberdeen is an intended third-party beneficiary. The Court cannot add to this contract what the parties have omitted. "When contracting parties elect to adopt a term or

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condition, . . . it is not the province of a court to second guess the wisdom of their bargain, or to relieve either party from the burden of that bargain by rewriting the document." Okeechobee Resorts, L.L.C. v. E Z Cash Pawn, Inc., 145 So. 3d 989, 993 (Fla. 4th DCA 2014). Here, the NCAA is attempting to explain or modify the contract through its legislative history.

The First District Court of Appeal addressed a factual situation nearly identical to this case in Fla. High Sch. Activities Ass'n, Inc. v. Temple Baptist Church, Inc., 509 So. 2d 1381, 1383 (Fla. 1st DCA 1987). There, a student transferred to a new high school to play football. The relevant bylaws of the Florida High School Activities Association, Inc. operated much like the 2025-2026 NCAA Division 1 Bylaws—rules that established blanket ineligibility while also providing a system for waiving any ineligibility. In Temple Baptist, the student athlete transferred from a public school to a private school, and Bylaw 19-11-2 required the student to complete a full calendar year at the new school before becoming eligible to play football. This requirement was waived if the principals of both the sending and receiving schools signed a waiver request. Because of paperwork issues, the student had already competed in eight games by the time both principals finally completed the required forms. When this was discovered, the student athlete was declared ineligible, and the team forfeited the eight games he played while ineligible. The trial court enjoined the Florida High School Activities Association, Inc. from declaring the student athlete ineligible and from requiring his team to forfeit the games where he played.

In reviewing the trial court's decision, the appellate court simply looked to how the Florida High School Activities Association, Inc. applied its general transfer rule, and found that the plain language of the rule was silent on when the waiver had to be executed:

> Note 1 to By-Law 19–11–2 provides that the one-year residency requirement may be waived when both principals sign a waiver form. In the present case, after a series of mishaps, the blue waiver form was ultimately executed by both principals and forwarded to FHSAA. There is nothing in the above note that would prohibit its retroactive application under the circumstances of this case. . . . **Indeed, to interpret otherwise** the effect of the ultimate signing of the blue waiver form **would be to invite challenge on the grounds that the waiver provision is administered in a purely arbitrary, whimsical and capricious manner.**

Id. at 1382-83 (emphasis added). The arguments raised by the NCAA are nearly identical to those of FHSAA—that they have the authority to interpret their own rules, and they interpret the rules to apply retroactively to some classes but not others. The First District soundly rejected that argument, finding that the text controls, and the bylaws were silent of the timing of the waiver.

The NCAA argues that only it has the authority to interpret its bylaws, and that courts cannot second-guess and must defer to their interpretation. The fatal flaw to this argument is that one resorts to interpretation only if the text in question contains an ambiguity, or its plain language leads to an absurd or unreasonable result. "[C]ourts will not attempt to look beyond the language of bylaws written in unambiguous terms." Virginia High Sch. League, Inc. v. J.J. Kelly

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High Sch., 254 Va. 528, 531, (Va. 1997). "If the language provides a clear and unambiguous meaning, then the court will apply that meaning without resorting to the rules of statutory construction." Vansmith v. State, 247 So. 3d 64, 66 (Fla. 1st DCA 2018). Here, Bylaw 12.6 is clear, plain, and unambiguous—Mr. Aberdeen is eligible. The NCAA argues that postings on their website, tweets, press releases, and other matters outside the four corners of the Manual show that they intended for this bylaw to exclude the 2022 class. A core rule in statutory construction is that nothing is to be added to what the text states or reasonably implies; that is, a matter not covered is to be treated as not covered— *casus omissus pro omisso habendus est.* The NCAA certainly knows how to write bylaws that explicitly exclude certain classes, as its manual has at least 65 bylaws that limit application to students enrolling after a certain date.[8] Since the NCAA has expressly excluded certain classes from application of its bylaws, but has not done so in Bylaw 12.6, the only reasonable construction is that Bylaw 12.6 intentionally did not exclude the class of 2022 from its expansion of the eligibility period. Therefore, on the face of the contract as written, Mr. Aberdeen has demonstrated a clear right to relief and a likelihood of success on the merits.

3. Issuance of a Temporary Injunction is in the Public Interest

The final prong of the four-part test Mr. Aberdeen must meet is whether a temporary injunction will serve the public interest. Florida has no single statutory definition of "public interest." A court may refuse an injunction where "greater injury and inconvenience would be caused to the defendant by granting the injunction than denying it, or where the granting of an injunction will result in confusion, disorder and injury to the public outweighing any individual right to relief the complainant may have." Fla. Land Co. v. Orange Cnty., 418 So. 2d 370, 372 (Fla. 5th DCA 1982).

The Court finds Mr. Aberdeen has established that the public interest supports the fair, equal, and consistent treatment of Florida's citizens and student athletes, and therefore an injunction ensuring that the bylaws enacted by the NCAA are equally applied is in the public interest. Florida has a public interest in ensuring that student-athletes like Mr. Aberdeen are treated fairly at Florida colleges and universities. Additionally, the public interest is served by protecting and enforcing the contractual rights of individuals like Mr. Aberdeen. See Hilb Rogal & Hobbs of Fla., Inc. v. Grimmel, 48 So.3d 957, 962 (Fla. 4th DCA 2010) (Recognizing that "the public has a cognizable interest in the protection and enforcement of contractual rights.")

In contrast, the NCAA can point to no demonstrable harm it will suffer should Mr. Aberdeen and other members of the class of 2022 play basketball. The NCAA has previously granted blanket eligibility waivers to entire classes without any of the roster chaos it now fears. The NCAA has presented no evidence that the injunction will not be in the public interest. Mr.

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[8] Bylaw 14.5.4.2.1 applies only to "student-athletes initially enrolling … on or after 8/1/20." 2026-27 Manual at 147.
Bylaw 14.5.4.1 applies only to "student-athletes initially enrolling … on or after 8/1/12." Id. at 146.
Bylaw 12.3.2.3 applies only to "student-athletes initially enrolling … on or after 8/1/26." Id. at 42.

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Aberdeen, however, has shown that the only harm to the public interest will be if injunctive relief is denied.

> The NCAA's rationale also has no applicability in Denzel Aberdeen's case. Denzel was given a roster spot while team members (and prospective team members) could still choose to attend another school. I spoke with each player about Denzel's return while the transfer portal remained open, and each had an opportunity to leave. Everyone who chose to play for the Gators this year did so on the assumption that Denzel would have a roster spot. Our players resoundingly supported, and still support, Denzel's return because they believe, as I do, that Denzel makes Florida a better team and improves the entire team's opportunity for success, which creates more opportunities for every player. And if Denzel cannot participate, we will not (indeed, cannot) fill his spot with another student-athlete. He will not displace anyone.

Declaration of Todd Golden at 2.

Florida also has a compelling interest in having the best students graduate from its schools. See Sch. Bd. of Hernando Cnty. v. Rhea, 213 So. 3d 1032, 1041 (Fla. 1st DCA 2017) (Finding that the state has a compelling interest in identifying—and not "socially promoting"—third grade students with reading deficiencies.) As the NCAA's constitution acknowledges, "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." While the benefit of a college degree to graduates is obvious, there is an even greater benefit to the people of Florida. Public university graduates enrich the civic and economic life of their communities, they contribute more in taxes and are less reliant on government services,[9] and they are more likely to remain in Florida after graduation, where the investment of tax-payer money is recouped through the talent retained in-state.

Here, Mr. Aberdeen is a student at the designated flagship public university of Florida. He wishes to complete his degree and education at the University of Florida, a vital part of which is participation in sports. Mr. Aberdeen, who is pursuing a degree in Education Sciences, is on track to graduate in spring 2027. Recognizing that a career playing basketball is shorter than most other jobs, Mr. Aberdeen states that he wants "to coach and teach kids. My degree will help me pursue that goal long after my playing career ends." The public interest is served by ensuring that students like Mr. Aberdeen are afforded the opportunity to participate in sports as a vital co-curricular part of their education.

CONCLUSION

The Court expresses no opinion on the merits surrounding this litigation. This order is preservative of the status quo only, as the Court finds the only means by which to prevent irreparable harm to Mr. Aberdeen is to enjoin the NCAA from enforcing its eligibility bylaws in

[9] See U.S. Bureau of Labor Statistics, Quartiles and Selected Deciles of Usual Weekly Earnings by Educational Attainment, 2024.

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any manner inconsistent with their plain text. Mr. Aberdeen has met his burden entitling him to the relief sought. Therefore, it is hereby

ORDERED AND ADJUDGED:

1. Plaintiff's Motion for Temporary Injunction is GRANTED and an injunction is ENTERED. The NCAA, and its officers, agents, employees, and all persons acting in concert or participation with it, are enjoined from:

   A. Enforcing any NCAA bylaw, rule, or policy, to preclude Denzel Aberdeen from practicing, competing, or otherwise participating in NCAA Division I men's basketball during the 2026-27 season on the basis that he has already competed in four seasons of competition or on the basis of the "'22 Carveout."

   B. Enforcing NCAA Bylaw 12.9.4.2, commonly known as the "Rule of Restitution," or any analogous or successor provision, against Denzel Aberdeen, the University of Florida, any of the University of Florida's coaches, compliance personnel, or athletic department staff, or any NCAA member institution or coach that competes against Denzel Aberdeen or the University of Florida by reason of Denzel Aberdeen's participation pursuant to this Order during the 2026-27 season.

2. The actions enjoined in this Order are conditioned upon Plaintiff filing a bond in the amount of $100.00 with the Clerk of Court within five days of entry of this Order. This injunction shall remain in effect until further order from this Court.

DONE AND ORDERED this 5th day of October 2026.

George Wright, Circuit Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies have been furnished by U.S. Mail or via filing with the Florida Courts E-Filing Portal on October 5, 2026, to the following:

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If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator at 201 East University Ave., Room 410, Gainesville, FL 32601, (352) 337-6237, at least 7 days before your scheduled court appearance, or immediately on receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

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RESPONDENTS' APPENDIX

TAB F

Order Granting Preliminary Injunction, *Lorient v. NCAA*, No. 1:26-cv-00094-JPB (N.D. W. Va. Sept. 30, 2026)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg

BRENEN LORIENT,
JAVAN BUCHANAN,
JASON CHAMBERS, and
BENJAMIN MCDOUGAL,

Plaintiffs,

v.

CIVIL ACTION NO. 1:26-CV-94
Judge Bailey

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant.

MEMORANDUM OPINION AND ORDER

Before addressing the merits of the above-styled case, the Court would be remiss if it did not offer its two cents regarding the increasingly complicated world of college athletics. The undersigned has now presided over two (2) cases involving West Virginia University ("WVU") student-athletes seeking injunctive relief to permit them to participate in collegiate sports. *See* ***Battle v. NCAA***, Civil Action No. 1:23-CV-101 and ***Robinson v. NCAA***, 1:25-CV-75. The Court has also presided over litigation in which the States of Ohio, Colorado, Illinois, New York, North Carolina, Tennessee, West Virginia, Minnesota, and Mississippi, the Commonwealth of Virginia, and the United States of America sought to enjoin enforcement of National Collegiate Athletic Association ("NCAA") Bylaw 14.5.5.1, commonly known as the "Transfer Eligibility Rule." *See* ***Ohio v. NCAA***, Civil Action No. 1:23-CV-100. While the Court has no doubt that the federal judiciary is capable of

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adjudicating the cases that come before it, these cases have brought into sharp focus a troubling feature of the current system: student-athletes are increasingly required to seek relief from individual district courts, sometimes on expedited schedules, with the possibility that similarly situated athletes may receive different answers depending upon the court in which their case happens to be filed.[1]

The consequences of such a system extend beyond the parties and the courts themselves. A student-athlete visiting a university as part of the recruiting process should be considering the institution's academic programs, coaching staff, facilities, campus, and opportunities for competition—not whether a particular federal district court has previously been receptive to claims involving NCAA eligibility rules. Yet, under the current system, the location of a university, or even the happenstance of which judge is assigned a case, may affect whether an athlete is permitted to compete. That creates the unfortunate possibility that judicial outcomes could become another factor in the recruiting process and could provide certain universities with an advantage unrelated to the merits of their institutions or athletic programs.

The Court recognizes that these cases present difficult and evolving questions involving antitrust law, student-athlete eligibility, collegiate competition, and the authority

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[1]With Judge Sweeney's July 31, 2026 Order in ***Wisne et al. v. National Collegiate Athletic Association***, 2026 WL 2214234 (D. Colo. July 31, 2026), *opinion clarified* 2026 WL 2214320 (D. Colo. Aug. 2, 2026), having been stayed by the Tenth Circuit, numerous student-athletes who had relied upon the nationwide relief afforded by that decision were effectively left with no alternative but to seek individualized relief in the courts where their respective universities are located. As a result, student-athletes facing the same eligibility issue are now being required to pursue separate litigation in different jurisdictions, potentially subjecting similarly situated athletes to different outcomes based solely on the court in which relief is sought.

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of the NCAA. The Court further recognizes that reasonable jurists may disagree about the appropriate resolution of those questions. But the present patchwork approach—where individual athletes seek emergency relief in courts across the country and different courts may reach different conclusions concerning substantially similar NCAA rules—does little to promote certainty, uniformity, or fairness. It also places courts in the unenviable position of making decisions that can have immediate and significant consequences not only for the litigants before them, but for universities, athletic programs, conferences, and student-athletes nationwide.

Additionally, Judge Kara Krothe in the Monroe County Circuit Court in Indiana issued an injunction on September 23, 2026, allowing almost 100 players to play, including, ironically, a player committed to West Virginia University.[2]

In short, the current system is a mess. College athletics has changed dramatically, while the legal and regulatory framework governing that industry has struggled to keep pace. Whatever the ultimate merits of the various challenges to NCAA eligibility rules may be, there is a compelling need for a more uniform and predictable system for resolving these disputes. That responsibility should not fall principally upon individual Judges faced with emergency motions involving athletes whose seasons, scholarships, and collegiate careers may turn on decisions that must be made in a matter of days.[3] The Court therefore

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[2]JaCorey Thomas dressed and was available for West Virginia University's game on September 26, 2026, against Oklahoma State University.

[3]For instance, with the addition of Jason Chambers in the above-styled case, a Division I football player, the urgency of this matter has increased substantially. Division I football games began on August 27, 2026, meaning that the 2026 football season is already underway while Chambers and similarly situated student-athletes remain uncertain as to whether they will be permitted to compete. At this point, the question of eligibility is

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respectfully suggests that the time has come for Congress to address the broader structure governing college athletics and provide a clear, comprehensive, and uniform framework—rather than leaving the federal courts to piece one together case by case.[4]

Turning to this case, plaintiffs seek an injunction prohibiting the NCAA from enforcing arbitrary and capricious decisions, breaching its contracts with its member institutions, and preventing them from participating in college sports. *See* [Doc. 12]. On August 18, 2026, the Court held a Status Hearing and issued deadlines for preliminary injunction briefing. *See* [Docs. 4, 10]. The Court also directed the parties to provide notice regarding any proceedings in the Tenth Circuit regarding the appeal of Judge Sweeney's July 31, 2026 Order in ***Wisne et al. v. National Collegiate Athletic Association***, 2026 WL 2214234 (D. Colo. July 31, 2026). [Doc. 10 at 1–2].

The parties filed a Joint Status Report on September 1, 2026. *See* [Doc. 11]. The parties report that, on August 21, 2026, the Tenth Circuit stayed the nationwide preliminary injunction entered in ***Wisne***, which had restored eligibility for qualifying 2022-entry Division I student-athletes under the NCAA's "Five-for-Five" framework. [Id. at ¶¶ 1–3]. As a result of the Tenth Circuit's ruling, the nationwide injunction entered in

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not merely academic or prospective; each passing week represents games, practices, and meaningful opportunities to participate that cannot be recovered. The circumstances therefore underscore the need for a prompt resolution of the issues presented before the Court.

The case was filed on August 3, 2026, and the Court promptly scheduled a hearing on plaintiffs' Motion for Preliminary Injunction for September 24, 2026, following expedited briefing. Thus, from the filing of the Complaint to the date by which the student-athletes must know their playing futures, the parties and the Court have had less than two (2) months to litigate and resolve issues of significant legal and practical consequence.

[4]This request for congressional action is not an endorsement of any pending legislative action.

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Wisne is currently not in effect and athletes whose eligibility depended solely upon the ***Wisne*** class-wide injunction are presently ineligible unless they have obtained separate relief through another court order or injunction. [Id. at ¶ 4]. The stay does not resolve the merits of the underlying antitrust claims or vacate the district court's class certification or preliminary injunction, and the appeal remains pending on an expedited schedule. [Id. at ¶ 5]. Following the stay, plaintiffs reported that at least two (2) additional similarly situated WVU student-athletes have been prevented from competing, and plaintiffs amended the Complaint to add those athletes as plaintiffs, with the parties agreeing that the existing case schedule should remain in place. [Id. at ¶ 9].[5] Separately, the NCAA has petitioned the Judicial Panel on Multidistrict Litigation ("JPML") to centralize numerous NCAA eligibility-related antitrust cases, but this action is currently identified only as a potential tag-along action and has not been transferred. [Id. at ¶¶ 10–12]. The JPML has not yet ruled on the proposed MDL, and oral argument is scheduled for September 24, 2026; therefore, the pending MDL proceedings do not presently affect this Court's schedule. [Id. at ¶¶ 14–17].

Also on September 1, 2026, plaintiffs filed their Motion for Preliminary Injunction and accompanying Memorandum of Law in Support. *See* [Docs. 13 & 16]. On September 15, 2026, the NCAA filed a Response [Doc. 22]. Plaintiffs filed a Reply [Doc. 23] on September 22, 2026. For the reasons that follow, this Court will **GRANT** plaintiffs' request for a preliminary injunction.

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[5]Plaintiffs filed an Amended Complaint and added the two (2) additional athletes: Jason Chambers (football) and Benjamin McDougal (baseball). [Doc. 12].

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I. Background

The NCAA is the governing body for college sports in the United States. [Doc. 12 at ¶ 59 ("The NCAA is a voluntary, self-governing association of colleges, universities, and conferences that regulate intercollegiate sports, including eligibility and participation.")]. NCAA member institutions must agree to comply with NCAA rules and enforcement mechanisms as a condition of membership and competition. [Id. at ¶ 60].

For decades, the NCAA's "Five-Year Rule" has permitted student-athletes to compete in up to four (4) seasons of intercollegiate athletic competition over a five (5)-year period. [Doc. 22-1 at 58–68]. The NCAA's eligibility rules also provide various means for member institutions to obtain "waivers" of the Five-Year Rule on student-athletes' behalf. [Id. at 60, 65–68]. These waivers permit student-athletes to either obtain an additional season of eligibility to participate in competition and/or an extension of their five (5)-year eligibility clock under defined circumstances. [Id.].

But in June 2026, the NCAA changed course. Under the "new age-based eligibility model," which plaintiffs call the "Five for Five Rule,"

> An individual's[6] period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:

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[6]NCAA Bylaw 12.01.2 states:

> **"Individual" vs. "Student-Athlete."** NCAA eligibility may be lost as a result of activities before enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person before and after enrollment in a member institution. If NCAA rules specify a "student-athlete," the legislation applies only to that person's activities after enrollment.

[Doc. 13-3 at 14].

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> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday.

[Doc. 13-3 at 25–26]. Waivers are no longer available for injury, illness, family emergencies, or economic hardship. The "exceptions" are now limited to military service, recognized foreign aid services such as the Peace Corps, conscientious objectors, and official religious missions under Rule 12.6.6, and pregnancy under Rule 12.6.7. [Doc. 16 at 6 (citing [Doc. 13-3 at 26–27])].

In this case, plaintiffs are four (4) athletes who have each competed in four (4) seasons of collegiate sports, most recently competing at West Virginia University. They seek to compete in a fifth season while enrolled as full-time students during their fifth year of college.

In June 2026, the NCAA Division I Cabinet adopted a new rule that would allow some athletes to do just this—play five (5) seasons within a student-athlete's five (5)-year period of full-time enrollment. [Doc. 22-2 at ¶ 16]. Going forward, student-athletes will receive a five (5)-year eligibility period beginning at the start of the academic year following their 19th birthday or upon full-time enrollment at a collegiate institution, whichever comes sooner, and student-athletes may compete during that five (5)-year period of eligibility without restriction, providing they meet all other eligibility requirements. [Id. at ¶ 17].

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Waivers have been eliminated under this new rule other than clearly defined cases required by law involving pregnancy, military service, and religious missions. [Id.].

For example, plaintiff Javan Buchanan's request and situation are almost identical to several waiver requests granted by the NCAA in other cases, including those of Ben Humrichous and Elijah Malone. In each of those cases, the student-athlete was granted a waiver for additional eligibility—in fact, the student-athletes in those cases were awarded years of eligibility in excess of what is being requested by Buchanan here. In the Ben Humrichous situation, he participated for two (2) years at the National Association of Intercollegiate Athletics ("NAIA") level and then three (3) additional years at the Division I level. Elijah Malone spent four (4) years at the NAIA level and then participated two (2) additional years at the Division I level. Notably, in the Elijah Malone case, his waiver required not only an eligibility waiver but a five-year clock waiver. Buchanan's requested waiver to the NCAA here is much simpler and more limited but was denied nonetheless by the NCAA.

But plaintiffs, due to the timing of when they were born, high school graduation, and number of seasons in which they have already competed, are not allowed to compete for a fifth year under this rule. In other words, plaintiffs are caught in the gap between the old regime and the new regime of eligibility rules. Plaintiffs seek injunctive relief because implementation of this rule wrongfully denies them the opportunity to compete in a fifth season of their collegiate careers, and because this rule and the NCAA's conduct amounts to a violation of federal antitrust law.

The Five for Five Rule poses a problem for plaintiffs. While not stated in the language of the Rule itself, the Rule does not apply to athletes who began playing in 2022

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and were deemed by the NCAA to have completed four (4) years of competition. Thus, plaintiffs here are ineligible to play a fifth season of college sports—despite wanting to do so—due to the NCAA's eligibility determination. This not only prohibits plaintiffs from competing in a fifth season, but also denies them the "right to compete for revenue sharing, NIL opportunities, training, exposure, and professional-development opportunities." [Doc. 12 at ¶ 72]. In the words of plaintiff Brenen Lorient, and a sentiment shared by the other three (3) plaintiffs, "[i]f I cannot compete during the 2026–27 season, I will lose opportunities associated with participation in Division I athletics, including training, competition, exposure, potential revenue-sharing opportunities, name, image, and likeness opportunities, and opportunities to further develop as a basketball player." [Doc. 13-4 at ¶ 22].

The NCAA reasoned that applying the Five for Five Rule "retroactively" would "destabilize rosters just ahead of the coming season by disrupting settled expectations of countless student-athletes regarding their expected roster spots and playing time next year. . . ." [Doc. 16 at 7–8 (quoting two (2) posts by NCAA News on X)]. The NCAA declined to apply the Five for Five Rule retroactively because it believed doing so "would not be in the best interest of all current and future college athletes." [Id.].

In plaintiffs' view, proper—not arbitrary—implementation of the Five for Five Rule should allow them to compete for a fifth season. Plaintiffs seek relief in the form of a preliminary injunction "to restrain the [NCAA] from enforcing against them a specific rule implementation that prohibits them from competition in Division I athletics during the 2026–27 academic year." [Doc. 13 at 1]. Specifically, plaintiffs seek equitable relief:

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A. Enjoining the NCAA, its officers, agents, servants, employees, attorneys, and all persons acting in active concert or participation with it from declaring Plaintiffs ineligible for NCAA Division I competition during the 2026–27 academic year based on their prior seasons of competition or based on their exclusion from the NCAA's Five for Five eligibility framework;

B. Permitting the Players to compete for available roster positions at West Virginia University, or another NCAA Division I member institution as applicable, during the 2026–27 academic year without the NCAA treating that participation as a violation of its eligibility rules; [and]

C. Enjoining the NCAA from applying, enforcing, or threatening to enforce its Rule of Restitution, including NCAA Bylaw 12.11.4.2 or any similar rule, against Plaintiffs, West Virginia University, any other NCAA member institution, or any third party based on Plaintiffs' participation in competition pursuant to the Court's injunction.

[Doc. 13 at 4].[7] In seeking this relief, plaintiffs contend they are likely to succeed on the merits on their claims under Section 1 of the Sherman Act and West Virginia Code § 47-18-3, breach of contract, tortious interference, and contract and promissory estoppel

[7]Plaintiffs also ask to waive the requirement to give security under Federal Rule of Civil Procedure 65(c) and any other relief as necessary to prevent prejudice. [Doc. 13 at 4].

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claims.[8] Plaintiffs' antitrust theory is based on allegations that the NCAA is an illegal monopsony[9] whose Five for Five Rule is an unreasonable restraint on trade. *See* [Doc. 12 at ¶¶ 181–214].

II. Plaintiffs[10]

This Court will provide a summary of each plaintiff's collegiate career.

1. Brenen Lorient (Basketball)

Brenen Lorient attended Florida Atlantic University ("FAU") in 2022. [Doc. 12 at ¶ 31]; [Doc. 16 at 9]. During his freshman season, he appeared in only twenty-one (21) games and accumulated approximately seventy-four (74) total minutes[11] of playing time. [Id.]; [id.]. Plaintiffs assert Lorient's freshman season was "primarily developmental" and he was not a "meaningful contributor" in the competitive sense. [Id. at ¶ 32]; [id. at 10]. Because the NCAA counts any competition as a full season of competition unless a listed

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[8]To obtain preliminary injunctive relief, plaintiffs bear the burden to show that they are likely to succeed on one (1) of their claims. ***Profiles, Inc. v. Bank of America Corp.***, 453 F.Supp.3d 742, 747 (D. Md. 2020) (Gallagher, J.) (citing ***Stinnie v. Holcomb***, 355 F.Supp.3d 514, 527 (W.D. Va. 2018) (Moon, J.)). Thus, the Court will only address the claim under the Sherman Act.

[9]A monopoly occurs when one seller dominates a market and has significant control over the price of a good or service. A monopsony occurs when one buyer dominates a market, giving the buyer significant power over the price it pays, such as wages in a labor market.

[10]Each plaintiff submitted a Declaration. *See* [Docs. 13-4 through 13-7].

[11]For context, a full basketball game is forty (40) minutes, so this is just under two (2) full games. A typical Division I basketball team plays an average of 31 to 33 games during the regular season, with total game counts reaching 35 to 40+ games for teams that advance to conference and national postseason tournaments. Andy Wittry, NCAA.com, *How many games are in a college basketball season? It depends*, Oct. 29, 2020, https://www.ncaa.com/news/basketball-men/article/2020-10-27/how-many-games-are-college-basketball-season (last visited Sept. 29, 2026).

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exception applies, the NCAA counted Lorient's seventy-four (74) total minutes as an entire season of competition. [Id. at ¶ 33]; [id.]. Plaintiffs assert the facts demonstrate that neither Lorient nor his then-school advisors understood that this limited participation would count as a full season of competition. [Id. at ¶ 34]; [id.].

In spring 2024, FAU's head coach, Dusty May, left FAU for the University of Michigan. [Id. at ¶ 35]. Lorient then transferred to the University of North Texas. [Id.]. In 2025, North Texas's head coach, Ross Hodge, left for WVU and Lorient followed Coach Hodge to WVU. [Id. at ¶ 36]. Lorient competed for WVU during the 2025–26 season and graduated from WVU in August 2026. [Id. at ¶ 37].

Lorient then sought a waiver from the NCAA's former four-year seasons-of-competition limit to play a fifth year at WVU or another Division I institution while pursuing a master's degree; was supported in this pursuit by his former coach's, Coach Dusty May, admission that he had mishandled Lorient's playing time, but the NCAA denied the request. [Id. at ¶ 38]; [Doc. 16 at 10].

Lorient desires to pursue a master's degree and compete during the 2026–27 at WVU or another Division I institution. [Id.]. The Motion argues under the Five for Five Rule, Lorient—born on April 29 and eligible under the age-based model—would be permitted a fifth year of competition. [Id. at 11]. And under the prior rules, Lorient would be eligible for a waiver for what should have been treated as a "redshirt" freshman season. [Id.]. The Motion also states Lorient is a standout WVU basketball player who started all thirty-four (34) games last season and earned College Basketball Crown All-Tournament Team honors. [Doc. 16 at 10–11]. Before WVU, he excelled at North Texas, earning First

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Team All-Conference and Sixth Man of the Year honors. [Id.]. His size, shooting ability, defensive versatility, and continued development have made him a legitimate NBA prospect, although he ultimately did not sign a professional contract. [Id.]. His return would provide WVU with significant talent and depth while making him a strong candidate for grant-in-aid, revenue sharing, and NIL opportunities. [Id.].

2. Javan Buchanan (Basketball)

Javan Buchanan attended Indiana Wesleyan University, a NAIA institution, for two (2) seasons before transferring to Boise State University. [Doc. 12 at ¶¶ 17–18]; [Doc. 16 at 12]. Buchanan competed in two (2) seasons at Boise State and completed his undergraduate degree in May 2026, for a total of four (4) seasons of participation in competition. [Id. at ¶ 19]; [id.].

Buchanan was accepted at WVU to pursue a master's degree while continuing his athletic career. [Id. at ¶ 20]; [id.]. The Motion argues the inequity is particularly apparent when compared to the NCAA's treatment of junior college athletes, for whom courts and the NCAA have recognized that rigid eligibility rules can unfairly disadvantage athletes who develop through alternative collegiate pathways. [Doc. 16 at 12–13]. The Motion asserts Buchanan faces the same issue because his pre-NCAA playing years are being treated as exhausting eligibility even though those years occurred outside the NCAA's direct governance. [Id. at 13]. Unlike athletes covered by the NCAA's new age-based framework or transition relief, Buchanan is denied a fifth year despite remaining within the five-year period the NCAA now recognizes as appropriate for collegiate competition. [Id.]. The Motion also notes his circumstances closely resemble cases involving Ben

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Humrichous and Elijah Malone, both of whom received waivers allowing additional eligibility after competing at the NAIA level, making Buchanan's narrower waiver request particularly difficult to justify. [Id.].

3. Jason Chambers (Football)

Jason Chambers attended North Carolina Central University during the 2022–23 academic year. [Doc. 12 at ¶ 40]; [Doc. 16 at 14]. Chambers subsequently competed at Appalachian State University and WVU. [Id.]; [id.]. Chambers completed four (4) seasons of competition by the conclusion of the 2025–26 academic year. [Id. at ¶ 41]; [id.].

Chambers seeks only to compete during his fifth year in 2026–27, without requesting any extension, sixth year, or guaranteed benefits. [Id. at ¶ 42]; [id.]. As a 2022–23 enrollee who completed four (4) seasons by 2025–26, he seeks only the benefit of the NCAA's amended Bylaw 12.6 during the fifth year it now recognizes. [Id. at ¶ 44]; [id.].

4. Benjamin McDougal (Baseball)

Benjamin McDougal attended Potomac State College in 2022 before transferring to WVU. [Doc. 12 at ¶ 48]; [Doc. 16 at 15]. McDougal's 2026 season was severely limited by two (2) significant injuries, including a back injury that kept him out until late January and a flexor strain that sidelined him for nearly two (2) months. [Id. at ¶¶ 49–52]; [id.]. Although he was charged with a full season of eligibility, he appeared in only thirteen (13) games and pitched 14.1 innings, with restricted workloads even after returning. [Id. at ¶ 55–56]; [id. at 15–16]. He therefore argues that treating the injury-shortened season as

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a full season of competition is arbitrary and inequitable, particularly because he remains within the NCAA's recognized five-year eligibility period. [Id. at ¶¶ 57–58]; [id.].

III. Legal Standard

To qualify for preliminary injunctive relief, a plaintiff must establish: (1) likelihood of success on the merits; (2) likelihood of irreparable harm; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *See* ***Winter v. Natural Res. Def. Council, Inc.***, 555 U.S. 7, 20 (2008). While these factors are a balancing test, a failure to establish a likelihood of success on the merits "'is usually fatal' to a plaintiff's request for preliminary injunction." *See* ***Pavia v. NCAA***, 760 F.Supp.3d 527, 536 (M.D. Tenn. 2024) (quoting ***Enchant Christmas Light Maze & Market Ltd. v. Glowco, LLC***, 958 F.3d 532, 539 (6th Cir. 2020) (citation omitted)).

Federal Rule of Civil Procedure 65 provides

> Every order granting an injunction and every restraining order must:
>
> (A) state the reasons why it issued;
>
> (B) state its term specifically; and
>
> (C) describe in reasonable detail–and not by referring to the complaint or other document–the act or acts restrained or required.

IV. Analysis

The Court will first address the parties' arguments under the ***Winter*** framework as to plaintiffs' likelihood of success on the merits and whether, absent injunctive relief, plaintiffs will suffer irreparable harm before turning to the balancing of the equities and the public interest prongs.

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A. Likelihood of Success on the Merits

While a plaintiff is required to make a clear showing that he is likely to succeed on the merits in order to obtain injunctive relief, a plaintiff is not required to establish with certainty that he will succeed on the merits. ***Pashby v. Delia***, 709 F.3d 307, 321 (4th Cir. 2013); ***Roe v. Dep't of Defense***, 947 F.3d 207, 219 (4th Cir. 2020). Indeed "'[a] district court's determination that such a showing [of likelihood of success on the merits] has been made is best understood as a prediction of a probable, but necessarily uncertain, outcome….'" ***Stinnie v. Holcomb***, 37 F.4th 977, 982 (4th Cir. 2022) (quoting ***Smyth ex rel. Smyth v. Rivero***, 282 F.3d 268, 276 (4th Cir. 2002)); ***Stinnie v. Holcomb***, 77 F.4th 200, 208 (4th Cir. 2023). Moreover, in showing a likelihood of success on the merits, a plaintiff is not required to demonstrate a likelihood of success on all claims. ***Power Balance LLC v. Power Force LLC***, 2010 WL 5174957, at *5 (C.D. Cal. Dec. 14, 2010) (Guilford, J.); *see* ***Hudson v. AFGE***, 292 F.Supp.3d 145, 153 (D. D.C. Nov. 9, 2017) (Boasberg, J.) ("the Court begins with [movant's] likelihood of success on the merits of at least one claim" [emphasis added]); *see also* ***Miller v. Garland***, 2023 WL 3692841, at *34 (E.D. Va. May 26, 2023) (Alston, Jr., J.); *see also* ***Winter***, 555 U.S. at 19 n.4 (Circuit Court's discussion limited to a single claim of plaintiff's multi-claim complaint).

Plaintiffs allege that the Five for Five Rule violates Section 1 of the Sherman Antitrust Act of 1890 ("the Sherman Act"),[12] which provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or

[12]The Supreme Court of the United States "has already recognized that the NCAA itself *is* subject to the Sherman Act." ***Nat'l Collegiate Athletic Ass'n v. Alston***, 594 U.S. 69, 96 (2021) (emphasis in original).

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commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1.

1. Commercial Restraint

Section 1 of the Sherman Act outlaws contracts "in restraint of trade or commerce." 15 U.S.C. § 1. "Restraint" means an "unreasonable," ***State Oil Co. v. Khan***, 522 U.S. 3, 10 (1997), or "undue," ***NCAA v. Alston***, 594 U.S. 69, 81 (2021), restraint. *See also* ***Ohio v. Am. Express Co.***, 585 U.S. 529, 540 (2018) (explaining "unreasonable" and "undue" are synonymous in Section 1 context). But fundamentally, Section 1 of the Sherman Act outlaws commercial restraints. *See, e.g.*, ***Robinson v. NCAA***, 172 F.4th 271, 287 (4th Cir. 2026). Thus, to meet their burden, plaintiffs must show that the challenged conduct is commercial in nature.

The NCAA concedes that the Fourth Circuit in ***Robinson*** determined that the NCAA's eligibility rules are commercial and subject to the "rule of reason" analysis used in Section 1 Sherman Act claims. *See* [Doc. 22 at 6].

As noted by the NCAA and as stated by the Fourth Circuit in ***Robinson***:

> We must review the eligibility rules based on their commercial or non-commercial nature, not the nature of the NCAA overall, because "the dispositive inquiry is whether the transaction is commercial, not whether the entity engaging in the transaction is commercial." ***Va. Vermiculite, Ltd.*** [***v. W.R. Grace & Company- Connecticut***], 156 F.3d [535,] 541 [(4th Cir. 1998)].

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Review of ***NCAA v. Board of Regents of the University of Oklahoma***, 468 U.S. 85 (1984), does not clearly identify whether NCAA eligibility rules are commercial or non-commercial. See ***id.*** at 102. At most, the Court suggested NCAA eligibility rules are procompetitive, which implies that they are commercial. *See* ***id.***; *cf.* ***id.*** at 121 (White, J., dissenting) ("[T]he Court errs in treating intercollegiate athletics under the NCAA's control as a purely commercial venture in which colleges and universities participate solely, or even primarily, in the pursuit of profits."). The Court observed that the NCAA's collusive behavior is only permissible because "a certain degree of cooperation is necessary if the type of competition that [the NCAA] and its member institutions seek to market is preserved." ***Id.*** at 117 (majority opinion). It explained that horizontal restraints on competition are essential if the product of college sports is to be available at all. *See* ***id.*** at 98–105. It specifically gave the example that leagues require the joint establishment of certain rules such at the "size of the field" or the "number of players on a team." ***Id.*** at 101. Indeed, "[i]n order to preserve the character and quality of the 'product,' athletes must not be paid, must be required to attend class, and the like." ***Id.*** at 102. The Court found that these eligibility restrictions in fact "widen consumer choice—not only the choices available to sports fans but also those available to athletes—and hence can be viewed as procompetitive." ***Id.*** To be sure, the majority in ***Board of Regents*** primarily focused on the NCAA's rules limiting universities'

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broadcast rights and it contrasted the procompetitive effects of certain eligibility rules with the broadcast rules that it found in violation of antitrust laws. *See* ***id.*** at 98–105. But the language heavily implies that eligibility rules should be considered presumptively procompetitive. *See* ***id.*** at 117 ("[M]ost of the regulatory controls of the NCAA are justifiable means of fostering competition among amateur athletic teams and therefore [are] procompetitive because they enhance public interest in intercollegiate athletics.").

Almost four decades later, in ***Alston***, the Court echoed some of its prior conclusions from ***Board of Regents***. It observed that "[w]ithout some agreement among rivals—on things like how many players may be on the field or the time allotted for play—the very competitions that consumers value would not be possible." ***Alston***, 594 U.S. at 90; *see also* ***id.*** at 110 (Kavanaugh, J., concurring) ("Everyone agrees that the NCAA can require student athletes to be enrolled students in good standing."). But it cautioned that though some restraints are necessary, that does not mean all aspects of the interleague cooperation are. ***Id.*** at 90 (majority opinion). It noted that an abbreviated review (i.e., quick look) of restraints is appropriate for those rules "necessary to produce a game," though a fuller review (i.e., rule of reason) may be appropriate for others. *See* ***id.*** But it expressly rejected any suggestion that the NCAA was exempt from the Sherman Act because the

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challenged restrictions "happen to fall at the intersection of higher education, sports, and money." ***Id.*** at 94.

Courts have found the question of whether eligibility rules are commercial to be a close issue in the wake of ***Alston***. On the one hand, several courts have concluded that eligibility requirements are not commercial because there is no money guaranteed from participation in Division I football. *See, e.g.*, ***Goldstein v. NCAA***, 2025 WL 662809, at *4 (M.D. Ga. Feb. 28, 2025) (describing the ***Alston*** decision as "more scalpel than ax" and concluding that the Five-Year Rule is not commercial in nature and thus not subject to antitrust scrutiny); ***Coley v. NCAA***, 792 F.Supp.3d 634, 643–44 (E.D. N.C. 2025) [(Dever, III, J.)] (same); ***Brzovic v. NCAA***, 2025 WL 1370758, at *4 (D. S.C. May 11, 2025) [(Norton, J.)] (same); ***Johnson v. NCAA***, 2025 WL 1790345, at *10 (D. Mont. June 26, 2025) (same). On the other hand, with the advent of revenue sharing and NIL compensation (sometimes facilitated by the educational institution), there is a legitimate argument that participation in college sports results in compensation such that eligibility rules are commercial and subject to review under the Sherman Act. *See, e.g.*, ***Pavia v. NCAA***, 760 F.Supp.3d 527, 537–38 (M.D. Tenn. 2024) (concluding NCAA's eligibility rules are commercial because only eligible players can negotiate NIL agreements), *appeal dismissed as moot*, 154 F.4th 407 (6th Cir. 2025); ***Braham v. NCAA***, 794 F.Supp.3d 824, 833 (D. Nev. 2025) (concluding that the post-***Alston***

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collegiate athletic world means that eligibility rules are intertwined with commercial rules and benefits such that they are essentially commercial in nature), *appeal docketed*, No. 25-5040 (9th Cir. Aug. 11, 2025); ***Martinson v. NCAA***, 804 F.Supp.3d 1109, 1124–25 (D. Nev. 2025) (concluding NCAA eligibility rules are commercial because they determine the ability of Division I athletes to participate in the labor market and be compensated for their labor), *appeal docketed*, No. 25-5962 (9th Cir. Sept. 22, 2025).

We join the two courts of appeals to have considered this question post-***Alston*** in concluding that the challenged eligibility rules are subject to the Sherman Act. *See* ***Elad*** [***v. NCAA***], 160 F.4th [407,] 414–15 [(3d Cir. 2025)] (holding that ***Alston*** superseded the Third Circuit's prior precedent characterizing NCAA eligibility rules as categorically non-commercial); ***Fourqurean***, 143 F.4th at 863. The challenged eligibility rules limit college athletes' participation in a labor market. ***Elad***, 160 F.4th at 415. This restraint on labor through association rulemaking interferes with student athletes' free exercise of their rights to engage in commerce (i.e., participate in Division I football). *See* ***Anderson v. Shipowners' Ass'n of Pac. Coast***, 272 U.S. 359, 362–63 (1926) (applying section 1 of the Sherman Act to shipping associations' restrictions on seamen's access to the labor market); ***Radovich v. Nat'l Football League (NFL)***, 352 U.S. 445, 448–54 (1957) (applying section 1 to the professional football association's blacklisting of players who played football for a rival professional football conference). As

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> such, we conclude the challenged eligibility rules are commercial and therefore subject to review under the Sherman Act.

172 F.4th 271, 277–290.

While ***Robinson*** dealt with a different set of challenged rules, it is even clearer that the Five for Five Rule is a horizontal restraint on commerce because it directly impairs the supply of labor from the market of Division I intercollegiate athletics by fully removing one-fifth of the entering class cohorts—just for this year—that otherwise would be eligible to participate next year, and, in effect, prior years through applicable waivers and exceptions that no longer apply.

Having established that the Five for Five Rule is commercial in nature, the "only question left is whether that restraint is an unreasonable restraint on trade." ***Elad***, 160 F.4th at 415.

2. Rule of Reason[13]

As laid out by the Fourth Circuit in ***Robinson***:

> Section 1 of the Sherman Act prohibits agreements "in restraint of trade or commerce." 15 U.S.C. § 1. The "[Supreme] Court has long recognized that, in view of the common law and the law in this country when the Sherman Act was passed, the phrase 'restraint of trade' is best read to mean 'undue restraint.'" ***Ohio v. Am. Express***, 585 U.S. 529, 540 (2018) (citation modified). "Determining whether a restraint is undue for purposes

[13]In the Amended Complaint, plaintiffs state they are "challeng[ing] the restraints under the full rule of reason and do not rely on per se or abbreviated quick-look treatment." [Doc. 12 at ¶ 205].

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of the Sherman Act 'presumptively' calls for what we have described as a 'rule of reason analysis.'" ***Alston***, 594 U.S. at 81 (*first quoting* ***Texaco Inc. v. Dagher***, 547 U.S. 1, 5 (2006); *and then quoting* ***Standard Oil Co. of N.J. v. United States***, 221 U.S. 1, 60–62 (1911)). In practice, there are three avenues of analysis under section 1 of the Sherman Act that apply depending on how obviously anticompetitive the challenged conduct is: (1) per se liability, (2) quick-look scrutiny, and (3) rule of reason analysis. ***N.C. State Bd. of Dental Exam'rs v. FTC***, 717 F.3d 359, 373 (4th Cir. 2013). . . . Rule of reason analysis requires "a three-step, burden-shifting framework," [***Am. Express***, 585 U.S. at 541], whereas quick-look analysis directs courts to "undertake only a cursory examination before imposing antitrust liability," ***Texaco***, 547 U.S. at 7 n.3.

[Quick-look analysis] should be rarely applied because "[m]ost restraints challenged under the Sherman Act—including most joint venture restrictions—are subject to the rule of reason." [***Alston***, 594 U.S. at 88]; *see also* ***Robertson v. Sea Pines Real Est. Cos.***, 679 F.3d 278, 290 (4th Cir. 2012) (explaining that rule of reason traditionally applies to joint venture cooperation that has possible procompetitive justifications). In other words, "[t]he rule of reason applies if the reasonableness of a restraint cannot be determined without a thorough analysis of its net effects on competition in the relevant market." ***N.C. State Bd. of Dental Exam'rs***, 717 F.3d at 373 (citation modified).

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172 F.4th at 290–91.

> The Supreme Court of the United States:
>
> has "long recognized that in view of the common law and the law in this country when the Sherman Act was passed, the 'restraint of trade' is best read to mean 'undue restraint.'" ***Ohio v. American Express Co.***, 585 U.S. 529, 540 (2018) (brackets and some internal quotation marks omitted). Determining whether a restraint is undue for purposes of the Sherman Act "presumptively" calls for what we have described as a "rule of reason analysis." ***Texaco Inc. v. Dagher***, 547 U.S. 1, 5 (2006); ***Standard Oil Co. of N. J. v. United States***, 221 U.S. 1, 60–62 (1911). That manner of analysis generally requires a court to "conduct a fact-specific assessment of market power and market structure" to assess a challenged restraint's "actual effect on competition." ***American Express***, 585 U.S. at 541 (internal quotation marks omitted). Always, "[t]he goal is to distinguish between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer's best interest." ***Ibid***. (brackets and internal quotation marks omitted).

Alston, 594 U.S. at 81.

When analyzing a claim under Section 1 of the Sherman Act to determine whether a restraint violates the rule of reason, courts use a "three-step, burden shifting framework." ***Am. Express***, 585 U.S. at 529. Under this framework,

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> the plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market. . . . If the plaintiff carries its burden, then the burden shifts to the defendant to show a procompetitive rationale for the restraint. . . . If the defendant makes this showing, then the burden shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means.

Id.

At the "inception" of any "rule-of-reason analysis," courts must "adequately define the relevant market." ***Elad***, 160 F.4th at 416. *See also* ***Am. Express***, 585 U.S. at 543 ("[C]ourts usually cannot properly apply the rule of reason without an accurate definition of the relevant market."); ***Pavia v. NCAA***, 154 F.4th 407, 416 (6th Cir. 2025) ("[A]nalysis of anticompetitive and procompetitive effects—the key to many antitrust cases—relies on market definition.") (Thapar, J., concurring).

The Court will first analyze the relevant market and market definition. *See* ***Am. Express***, 585 U.S. at 543. The Court then will analyze plaintiffs' claims under the rule of reason's three (3)-step framework.

i. Market Definition

Plaintiffs contend that the relevant market "is the labor market for the athletic services for Division I intercollegiate athletics in which Division I men's basketball[, football and baseball are] sub-market[s]." [Doc. 12 at ¶¶ 79, 93, 101]. Plaintiffs further contend

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that they have put forth sufficient evidence to support their market definition. [Doc. 16 at 23–28].

Various Circuit Courts have chastised District Courts from simply using the market definition utilized in ***Alston***,[14] citing changes in the market realities since ***Alston***. However, the relevant market has not changed with respect to eligibility—the NCAA is still the gorilla in the room. An individual can freely transfer now, but only if the NCAA says he or she is eligible. An individual can receive NIL money, but only if he or she is eligible. An individual can get revenue sharing, but only if he or she is eligibile.

The Fourth Circuit, however, finds ***Alston***'s definition to be insufficient and that more is needed.

The NCAA argues that plaintiffs do not accurately or reliably identify the relevant market and that this failure forecloses their request for injunctive relief. *See* [Doc. 22 at 8–12]. The NCAA contends that plaintiffs' expert Ted Tatos's market definition is deficient for three (3) reasons: (1) he did not perform standard economic analyses to test the market's boundaries, (2) he relies heavily on outdated pre-***Alston*** evidence that does not account for major changes in college athletics, and (3) his proposed market is overly broad because it treats all Division I athletes within a sport as competing in the same market despite significant differences in compensation, skill level, and professional opportunities. [Id.]. Defendants therefore argue that plaintiffs have not demonstrated that the NCAA

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[14]***Fourqurean v. NCAA***, 143 F.4th 559 (7th Cir. 2025); ***Elad v. NCAA***, 160 F.4th 407 (2025); ***Robinson v. NCAA***, 172 F.4th 271.

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currently possesses the alleged monopsony power and have not met their burden of establishing a relevant market. [Id.].

Robinson provides guidance:

> Indeed, in cases like this one, the rule of reason analysis requires courts to conduct a fact-specific assessment of market power and market structure to assess the restraint's effect on competition. [***Am. Express***, 172 F.4th] at 541. Courts cannot properly apply this analysis without an accurate definition of the relevant market. ***Id.*** at 542–43. The relevant market is defined as "the area of effective competition," meaning "the arena within which significant substitution in consumption or production occurs." ***Id.*** (citation modified). In the labor market context, the market is comprised of those employers seen by workers as reasonably good substitutes. ***Fourqurean***, 143 F.4th at 869 (citing ***Todd v. Exxon Corp.***, 275 F.3d 191, 202 (2d Cir. 2001)). The plaintiff bears the burden of proof on the issue of the relevant product and geographic markets in an antitrust case. ***Satellite Television & Associated Res., Inc. v. Cont'l Cablevision of Va., Inc.***, 714 F.2d 351, 355 (4th Cir. 1983). Market definition is essentially a question of fact. ***E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.***, 637 F.3d 435, 442 (4th Cir. 2011).
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> * * *
>
> As the Third Circuit wrote in ***Elad***, "[r]ule-of-reason analyses under Section 1 of the Sherman Act," when relying on a showing of market power, "require

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> a well-defined relevant market and cannot rely on antiquated market definitions accepted on different evidence and in a different posture." *See* 160 F.4th at 417; ***Queen City Pizza, Inc. v. Domino's Pizza, Inc.***, 124 F.3d 430, 436 (3d Cir. 1997) ("Where the plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand[ ] or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products ... the relevant market is legally insufficient.").
>
> We are not specifying the exact quantity of evidence required for an antitrust plaintiff to meet their burden of proof to establish market definition to be granted a preliminary injunction.

172 F.4th at 294.

The inquiry, then, is twofold. Plaintiffs must first present sufficient evidence to support their proposed relevant market. ***Robinson***, 172 F.4th at 293. The Court must then make the factual findings necessary to determine whether plaintiffs have carried their burden. ***Id.*** at 294. At the preliminary-injunction stage, however, the Court need not resolve every factual dispute concerning the precise contours of the market. Rather, the question is whether plaintiffs have presented sufficient evidence from which the Court can identify the relevant arena of effective competition and proceed to assess the challenged restraints. ***Id.***

Unlike the plaintiffs in ***Robinson*** who relied on an expert affidavit pulled from another case's docket and precedent from other circuits, and unlike the plaintiffs in ***Trotter***

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v. NCAA, Civil Action No. 3:26-0523 [Doc. 20] (S.D. W.Va. Sept. 9, 2026) (Chambers, J.), who did not disclose an expert opinion in support of their motion for preliminary injunction, plaintiffs here rely principally on the declaration of Mr. Ted Tatos, who provided a declaration specifically for the above-styled case. *See* [Doc. 16 at 23–28]; *see generally* [Doc. 13-1]. Mr. Tatos has extensively studied and written academically concerning the antitrust relevant market definition for Division I intercollegiate athletics for years. [Doc. 13-1 at ¶¶ 1–5]. He opines that other NCAA Divisions are not viable substitutes for Division I and professional leagues such as the NBA and NFL do not discipline the NCAA's monopsony power. [Id. at ¶¶ 29–49]. His declaration supports those opinions with evidence addressing the "market realities for college sports," ***Fourqurean***, 143 F.4th at 870, and that includes "cold, hard data," ***Pavia***, 154 F.4th at 417 (Thapar, J., concurring).

At the hearing, Mr. Tatos testified that if there is direct evidence of monopsony power, running the hypothetical monopolist/monopsonist test ("HMT") and Small but Significant and Non-transitory Increase in Price or Other Worsening of Terms ("SSNIPT") test superfluous. His support for this position is outlined in his declaration.

First, Mr. Tatos addresses whether other NCAA Divisions are viable substitutes for Division I. [Doc. 13-1 at ¶¶ 29–34]; *see also* [Doc. 12 at ¶ 193]. He notes, as the NCAA itself explains, Division I is "the biggest stage in college sports." [Id. at ¶ 29 (quoting https://www.ncaa.org/division-i/)]. He states Division I players make up the vast majority of rosters in the NFL, NBA, WNBA, and international games. [Id. at ¶¶ 30–32]. For example, Division I Football Bowl Subdivision players made up 92.7 percent of NFL rosters in 2025. [Id. at ¶ 30]. Mr. Tatos further states that these top athletes at Division I

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institutions also frequently receive full scholarships. [Id. at ¶ 33]. By contrast, Division II provides partial scholarships with strict eligibility limits, while Division III does not allow any athletic scholarships at all. [Id. at ¶¶ 33–34]. Mr. Tatos therefore opines that these financial and eligibility differences make the lower divisions poor substitutes for Division I. [Id.]. This evidence provides support for plaintiffs' market definition arguments. *See, e.g.*, ***Le v. Zuffa, LLC***, 216 F.Supp.3d 1154, 1166 (D. Nev. 2016) ("To find whether the Plaintiffs defined a relevant market within a sport, therefore, the Court must take into consideration how athletes in their respective fields are ranked with regards to one another.").

Mr. Tatos likewise provides evidence that the Division I labor market is distinct from professional sports. [Id. at ¶¶ 35–49]; *see also* [Doc. 12 at ¶ 193]. He addresses the NCAA's contention that a recent decline in underclassmen entering the NBA draft demonstrates that college basketball now operates as a substitute for professional play, thereby weakening the NCAA's market power. [Id. at ¶ 35]. Mr. Tatos explains that this argument misinterprets draft entry data, which functions more like a job application than a guaranteed roster spot. [Id. at ¶ 36]. He notes historically that top talent only left early to escape the NCAA's strict compensation limits. [Id. at ¶ 37]. And, because the NBA has a severely restricted number of roster spots compared to the hundreds of college teams, professional leagues do not provide enough alternative positions to meaningfully discipline the NCAA's market power. [Id. at ¶¶ 39–42]. He argues the NCAA's own data concerning the probability of athletes competing in professional athletics further supports this point, indicating that only a small fraction of athletes ultimately participate in the major professional sports leagues:

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Estimated probability of competing in professional athletics

The table below outlines the estimated percentage of NCAA athletes that move on to compete professionally in sports like baseball, basketball, football, ice hockey and lacrosse.

	NCAA Participants	Approximate # Draft Eligible	# Draft Picks	# NCAA Drafted	% NCAA to Major Pro	% NCAA to Total Pro
Baseball	41,580	9,240	615	452	4.9%	–
M Basketball	19,617	4,359	58	43	1.0%	21.8%
W Basketball	16,823	3,738	36	30	0.8%	9.1%
Football	83,794	18,621	257	257	1.4%	–
M Ice Hockey	4,558	1,013	224	76	7.5%	–
W Ice Hockey	3,074	683	48	43	6.3%	–
M Lacrosse	16,691	3,709	32	31	0.8%	–

Note: *Major Pro is defined as being drafted into the following U.S. professional leagues: MLB, NBA, WNBA, NFL, NHL, PWHL, and PLL. NWSL and WPF were previously included, but the leagues have since discontinued their drafts. Men's soccer is not included because of the numerous professional opportunities available (e.g., MLS, USL). As additional opportunities and athlete databases become available, NCAA Research intends to expand the definition of both "Major Pro" and "Total Pro" for future iterations of this document.*

NCAA, *Probability of Competing Beyond High School*, https://www.ncaa.org/student-athletes/probability-of-competing-beyond-high-school/.

Mr. Tatos provides a succinct explanation:

> 39. Athletes cannot unilaterally choose to "go to the NBA" or another professional league. A match must occur between the individual athlete and a team that needs that athlete's skill sufficiently to pay for it. In other words, labor markets require agency on both sides of the transaction: the requirements of the worker (athlete) must match the requirements of the employer (team). This relationship contrasts with one-sided agency in product markets. Given that the consumer is willing to pay the price, a gallon of gasoline, a carton of milk, or a vacuum cleaner has no say in whether (or which) consumer purchases them. The entire decision rests with consumer. In labor markets, a match must occur.

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* * *

43. The NCAA's own data explains why this is the case. Athletes must have sufficient skill to obtain a contract in a professional league like the NFL, NBA, and so on, just as they must have sufficient skill to participate in NCAA Division I athletics. A high school football player cannot declare that he will play for West Virginia, Indiana, Ohio State, and so on. The player must be recruited and receive an offer.

44. Recent examples evince this conclusion. Former Missouri basketball player Mark Mitchell entered the 2026 NBA draft but was not selected. However, I understand that he received lucrative offers from two top basketball programs in NCAA Division I: Kentucky and Louisville, from which he chose the former. Likewise, Seth Trimble, a former standout for the University of North Carolina basketball team, was not selected in the draft and returned for a fifth year to compete for Louisville. These examples underscore the market realities that the vast majority of athletes do not have other viable options that would discipline the restraints that the NCAA imposes. Further, the NBA-NBPA collective bargaining agreement stipulates that a player must be one year removed from his high school graduation to be eligible for the NBA draft. Thus, the vast majority of top talent entered the NCAA prior to its loosening of compensation rules and they continue to do so.

[Doc. 13-1 at ¶¶ 39, 43–44].

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Mr. Tatos further opines that the data does not demonstrate that the NCAA lacks market power. Rather, he contends that players are remaining in college because recent legal changes have permitted them to receive fairer compensation. [Id. at ¶¶ 45–49]. He also notes that the NCAA continues to actively restrict athlete earnings through its Clearinghouse or specific committees, including the College Sports Commission ("CSC"). [Id.]. For example, recent data from July 2026 reveals that the CSC blocked over 1,800 Name, Image, and Likeness ("NIL") deals worth nearly $90 million, or 20% of the NIL money offered, with a heavy focus on rejecting the largest, most lucrative offers. [Id. at ¶¶ 46–47]. Mr. Tatos opines this ongoing scrutiny demonstrates that the NCAA continues to exercise substantial monopsony control over college athletic compensation. [Id. at ¶¶ 48–49].

The NCAA resists Mr. Tatos's declaration as adequate evidence, as well as the evidence that Mr. Tatos marshals in providing it. *See* [Doc. 22 at 8–12]. The NCAA argues that plaintiffs cannot establish an anticompetitive effect because Mr. Tatos's analysis fails at the threshold issue of defining the relevant market. [Id.]. Specifically, the NCAA contends that Mr. Tatos does not employ any standard methodology for defining the market, relies principally on evidence predating the significant changes in college athletics following ***Alston*** and ***House***,[15] and defines the market too broadly by treating all Division I athletes within a particular sport as participants in the same market. [Id.]. According to the NCAA, Mr. Tatos acknowledges the hypothetical-monopsonist test but does not

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[15]***In re Coll. Athlete NIL Litig.***, 803 F.Supp.3d 959 (N.D. Cal. 2025), *appeal dismissed,* 2025 WL 2831020 (9th Cir. July 29, 2025) *and objections overruled*, 2025 WL 3501920 (N.D. Cal. Nov. 13, 2025).

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perform it or calculate cross-price elasticities to assess substitution among available alternatives. [Id. at 8–9]. The NCAA further maintains that Mr. Tatos relies on outdated evidence of NCAA monopsony power despite recognizing the substantial changes in athlete compensation, NIL opportunities, revenue sharing, and transfer-portal mobility. [Id. at 9–10]. Finally, the NCAA argues that the proposed market obscures meaningful differences among student-athletes based on skill level, compensation, conference affiliation, and professional opportunities, including the availability of professional leagues as substitutes for certain athletes. [Id. at 10–12]. Thus, the NCAA contends that plaintiffs have not established a relevant market or demonstrated that the Five for Five Rule has an anticompetitive effect.

The Court observes that Mr. Tatos's opinion is not an isolated one; other experts have reached the same conclusion. In ***Wisne***, the NCAA criticized the plaintiffs' expert, Dr. Berri. According to the NCAA, Dr. Berri improperly "suggest[ed] that all Division I sports are part of the same market, [and therefore that] all Division I sports are interchangeable for each other." ***Wisne***, 2026 WL 2214234, at *13. The ***Wisne*** Court found that Dr. Berri did not:

> suggest all Division I sports are interchangeable. Instead, his declaration is evidence that for NCAA Division I sports the NCAA is the sole 'buyer' for all athletes in the "submarkets" of individual sports. Dr. Berri opine[d], and provide[d] evidence in support of, the proposition that Division I athletics constitute a *distinct labor market* from any other divisional (e.g., Divisions II and III) or professional counterpart (e.g. NBA or MLB) for Division I athletics.

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> In other words, evidence that other divisions or associations do not constitute "good substitutes" for Division I athletics. ***Todd***, 275 F.3d at 202 (citation modified). Regardless, at this stage Plaintiffs are not required to, for instance, offer evidence about every single Division I sport's revenue or attendance for the Court to make its own findings as to the relevant market. Instead, Plaintiffs have, as they must, put forth statements from Dr. Berri that are "based on specific facts pertaining to the proposed market"—i.e., NCAA Division I athletics. ***Berlyn, Inc. v. Gazette Newspapers***, Inc., 223 F.Supp.2d 718, 727 (D. Md. 2002) [(Smalkin, C.J.)], *aff'd sub nom.* ***Berlyn Inc. v. The Gazette Newspapers, Inc.,*** 73 Fed.App'x. 576 (4th Cir. 2003).
>
> The NCAA's related observation that there are alternative markets, such as the NBA and Europeans Leagues, *see* ECF No. 32 at 14, does not undermine Dr. Berri's analysis. The point is not that there are no alternative markets. The point is that, as a function of market realities—and as a doctrinal antitrust matter—alternative markets such as professional leagues are insufficient substitutes for Division I athletics. *See, e.g.*, ***Todd***, 275 F.3d at 202; ***Fourqurean***, 143 F.4th at 869. (And they are.)

Id. (footnotes omitted).

The Court agrees with plaintiffs. Plaintiffs have defined their market as the labor market for NCAA Division I intercollegiate athletics, with each athlete participating in the sport-specific submarket applicable to his or her sport. This definition identifies both the

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"product market"—labor—and the "geographic market"—Division I athletics in the United States. *See* ***2311 Racing LLC v. Nat'l Ass'n for Stock Car Auto Racing, LLC***, 809 F.Supp.3d 371, 379 (W.D. N.C. 2025) (Bell, J.) (concluding that "geographic scope of the relevant market, which [was] the United States," satisfied market definition requirement); ***Ohio v. NCAA***, 706 F.Supp.3d 583, 592 (N.D. W.Va. 2023) (Bailey, J.). Plaintiffs also address, through Mr. Tatos's declaration and the quantitative data therein, the "reasonable interchangeability of use or the cross-elasticity of demand between" NCAA Division I athletics and divisional or professional substitutes. ***Queen City Pizza, Inc.***, 124 F.3d at 436.

The evidence likewise addresses contemporary changes in the market. Mr. Tatos's declaration provides "cold, hard data" that "grapple[s] with recent changes" in the relevant market, ***Pavia***, 154 F.4th at 417 (Thapar, J., concurring), including changes in market realities since ***Alston***, *see* ***Fourqurean***, 143 F.4th at 870. *Cf.* ***Robinson***, 172 F.4th at 295 (holding plaintiffs did not meet market definition burden of proof where they "presented no factual evidence" of market definition). Nor did Mr. Tatos "exclusively rel[y] on ***Alston*** to define the relevant market," or fail to cite "[any] market evidence or economic data" in his declaration. ***Elad***, 160 F.4th at 416. To the contrary, Mr. Tatos identifies and relies upon evidence from which he draws conclusions concerning the relevant market.

At this stage, that evidence is sufficient. It is current, empirical, and directed to whether Division I athletics has "good substitutes," ***Todd***, 275 F.3d at 202. Plaintiffs have presented evidence supporting their contention that Division I athletics lacks "commonality [or] interchangeability," ***id.***, with other NCAA Divisions or professional leagues for Division

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I sports. *See also* ***Am. Express***, 585 U.S. at 543 ("The relevant market is defined as the area of effective competition. Typically, this is the arena within which significant substitution in consumption or production occurs." (citation modified)). Mr. Tatos's conclusions are bolstered by evidence of a statement made by Charlie Barker, the current NCAA president, that "98% of the 550,000 NCAA student-athletes will go pro in something other than sports," [Doc. 16 at 26], underscoring that the NCAA Division I labor market is unique. *See* ***Todd***, 275 F.3d at 205 ("Industry recognition is well established as a factor that courts consider in defining a market. It is significant because we assume that the economic actors usually have accurate perceptions of economic realities." (citation modified)). Even the NCAA's own counsel acknowledged its cartel classification economically, infamously spinning the necessary conclusion in this way: "It is a cartel that does good things, as opposed to a cartel that does bad things." [Doc. 13-1 at ¶ 20 (citing Dennis Dodd, O'Bannon trial: NCAA lawyer says it's a cartel that 'does good things', CBS Sports, June 26, 2014, available at https://www.cbssports.com/college-football/news/obannon-trial-ncaa-lawyer-says-its-a-cartel-that-does-good-things/)].

At this stage, plaintiffs are not required to, for instance, offer evidence about every single Division I sport's revenue or attendance for the Court to make its own findings as to the relevant market. Instead, plaintiffs have, as they must, put forth statements from Mr. Tatos that are "based on specific facts pertaining to the proposed market"—i.e., NCAA Division I athletics. ***Berlyn, Inc. v. Gazette Newspapers, Inc.***, 223 F.Supp.2d 718, 727

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(D. Md. 2002) (Smalkin, C.J.), *aff'd sub nom.* ***Berlyn Inc. v. The Gazette Newspapers, Inc.***, 73 Fed.App'x. 576 (4th Cir. 2003).

Having considered the parties' arguments and evidentiary submissions, and consistent with the above analysis, the Court finds that, based on the preliminary injunction record, plaintiffs have met their market definition burden. *See* ***Robinson***, 172 F.4th at 294; ***Elad***, 160 F.4th at 416. The Court therefore rejects the NCAA's contention that plaintiffs have failed to define a relevant market and that their request for injunctive relief must fail on that basis. The evidence supports the existence of a defined and unique labor market for Division I athletics and demonstrates that contemporary market realities distinguish that market from other NCAA Divisions and professional leagues. Accordingly, the Court proceeds to its rule of reason analysis. *See* ***Am. Express***, 585 U.S. at 543; ***Pavia***, 154 F.4th at 416 (6th Cir. 2025) (Thapar, J., concurring).

ii. Substantial Anticompetitive Effect

Applying the rule of reason, plaintiffs bear the initial burden to "prove that the challenged restraint"—the Five for Five Rule—"has a substantial anticompetitive effect." ***Alston***, 594 U.S. at 96 (citation modified). *See also* ***Law v. NCAA***, 134 F.3d 1010, 1017 (10th Cir. 1998) ("A rule of reason analysis first requires a determination of whether the challenged restraint has a substantially adverse effect on competition." (citation modified)). Regarding anticompetitive effects, the "reasonableness of a restraint is evaluated based on its impact on competition as a whole within the relevant market." ***Robinson***, 172 F.4th at 292 (citation modified)). Plaintiffs may meet their step one, anticompetitive effect burden, with indirect evidence. *See* ***Am. Express***, 585 U.S. at 542 ("Indirect evidence would be

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proof of market power plus some evidence that the challenged restraint harms competition." (citation modified)).

The eligibility regulations imposed by the NCAA and its member organizations generally constitute horizontal agreements. *See* ***Business Elec. Corp. v. Sharp. Elec. Corp.***, 485 U.S. 717, 730 (1988) (explaining that horizontal agreements are agreements between competitors at the same level in a particular industry). There is no question that the NCAA and its members hold monopsony power over the labor market for college football and, therefore, have "market power." *See* ***Alston***, 594 U.S. at 109 (Kavanaugh, J., concurring) ("[The] NCAA acknowledges that it controls the market for college athletics" and "accepts that its members collectively enjoy monopsony power in the market for [college athlete services[.]").

At issue is whether plaintiffs have presented some evidence that the Five for Five Rule harms competition.

Plaintiffs argue the Five for Five Rule implementation will harm them because the Five for Five Rule "exclude[s] otherwise qualified athletes from supplying NCAA Division I men's basketball, football, and baseball services, prevent[s] institutions from competing for Plaintiffs' services, reduce[s] the available supply and output of qualified athlete labor, eliminate[s] independent institutional decision making concerning Plaintiffs, suppress[es] the athletic aid, NIL compensation, institutional revenue sharing payments, and other benefits that competition for Plaintiffs' services would otherwise produce, reduce athlete and institutional choice, and foreclose[s] Plaintiffs from the unique educational, athletic, and economic opportunities tied to active NCAA Division I eligibility." [Doc. 12 at ¶ 197].

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In other words, that by excluding a defined cohort of otherwise eligible student-athletes, the NCAA is restricting competition within the labor market. Plaintiffs argue the anticompetitive effects are "direct rather than speculative. WVU and other NCAA Division I institutions cannot lawfully roster or obtain Plaintiffs' basketball, football, and baseball services while the challenged determinations remain in effect, and Plaintiffs [as well as all other individuals in the same age cohort,] cannot offer those services to any Division I institution subject to the NCAA's uniform enforcement system." [Id. at ¶ 198].

Indeed, the NCAA explains that Division I is "the biggest stage in college sports." [Doc. 13-1 at ¶ 29 (quoting NCAA.org, https://www.ncaa.org/division-i/, last accessed Aug. 30, 2026)]. Mr. Tatos agrees, concluding, "Other NCAA divisions do not exert any pricing discipline on NCAA Division I." [Id.]. This truth is intuitive and reinforced by plaintiffs' own career developments. For example, for Lorient who declared for the NBA draft—regarded by commentators as having "a clear path to NBA minutes"—the reality is that out of 4,359 NBA draft eligible NCAA participants, only 58 were selected.

Mr. Tatos's conclusions are consistent with opinions recognized by other courts, including the District of Colorado in ***Wisne***, where Dr. David Berri defined a relevant market as "the labor market for Division I college athletes." ***Wisne***, 2026 WL 2214234, at *14. Dr. Berri explained that "Division I college sports are a unique labor market [and] distinct from other college divisions, minor league professional sports, and major league professional sports," outlining substantiating market evidence concerning revenue and attendance data showing that other markets are not reasonable substitutes. ***Id***. at *11. Stated simply, the economic data confirms what is intuitive: student athletes do not have

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a meaningful alternative to NCAA Division I athletics because there are no reasonable substitutes. In search of substitutes to counter-act overwhelming evidence of monopsony power, the NCAA bypasses sub-markets with less developed professional markets and focuses on the most developed pipeline for professional athletes in the United States—the National Basketball Association. In other litigation, the NCAA has argued that the "market realities" have changed following the ***House*** settlement due to its loosening of compensation restrictions on athletes. For example, the NCAA argued that in 2025–26, underclassman entered the NBA at "dramatically reduced rates." [Doc. 13-1 at ¶ 33]. As Mr. Tatos explains, however, NBA draft declaration does not mean that the player will make a roster.[16] And because economists expect labor supply elasticity to be higher at the monopsony rate, "the more talented the athlete, the greater the anticompetitive harm of the NCAA's compensation restrictions on the athlete." [Id. at ¶ 37]. In other words, with a greater restraint, more athletes "often made decisions to enter the draft, when, absent the restriction, they would have remained in college." [Id.]. But because the number of picks in the draft is fixed and unrepresentative of the market as a whole, the NCAA thus "focuses on the wrong denominator" by looking to changes in numbers declared as opposed to numbers selected. [Id. at ¶ 36].

More fundamentally, however, Mr. Tatos explains that the NCAA misconceives the proper interpretation of this development, because "this loosening of restrictions does not

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[16][Doc. 13-1 at ¶ 27 ("In fact, anyone older than 19 who submits the correct paperwork can technically 'enter the NBA draft.'") (citing Tim Reynods, People with no chance at playing in the NBA can still enter the NBA draft, Associated Press, June 21, 2023, available at https://apnews.com/article/nba-draft-2023-eligibility-7929025cf6a221305c10a09689f3cb2b)].

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indicate that the relevant market is now broader, as the NCAA erroneously concludes." [Id. at ¶ 28]. He explains succinctly, "The fact that judicial and legislative pressures have compelled the NCAA to loosen its restraints does not mean that other potential substitutes can now discipline any attempt by the NCAA to exercise market power. The question still remains: does the NCAA also need to control any other potential substitutes to restrain competition? The answer is no." [Id. at ¶ 45].

Plaintiffs are correct in that the implementation of the Five for Five Rule harms competition in the relevant market by excluding a qualified cohort—namely, 2022 high school graduates. As Mr. Tatos observes, there is no economic logic in arguing that the Five for Five Rule somehow affects the 2022–2023 class differently. [Doc. 13-1 at ¶ 52]. He states:

> In its ***Wisne*** emergency motion, the NCAA argued that "If Plaintiffs are permitted to join a roster, they will take a spot from someone else who is eligible—including those who expect to use the first of their five years under the Age-Based Eligibility Rule." I understand that this is the "substitution effect" to which the District Court in ***Wisne*** referred in its ruling. But [the] exact same "substitution effect" can apply every year after the matriculating class of 2023–2024 enters their fifth year of eligibility and will apply every year after the matriculating class of 2026–2027 enters their fifth year of eligibility, according to this same rule. In the 2027–2028 academic year, athletes who would enter their fifth year of eligibility would, by the same rule that the NCAA now calls pro-competitive and by the same argument that the

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> NCAA offers above, take the a [sic] spot from someone else who is eligible and entering their first of five years under the rule.

[Id.].

Mr. Tatos also finds no rationale for why the NCAA's Five for Five Rule "mysteriously only becomes pro-competitive beginning in 2026-2027 and not a moment earlier." [Id. at ¶ 51]. Nor does the NCAA's asserted "substitution effect" supply one. The concern that fifth-year student-athletes may displace incoming freshman—and thereby create a cascading effect on later classes—misunderstands the NCAA's own rule. The same substitution effect will occur once the Five for Five Rule takes effect in 2026–27. [Id. at ¶ 52]. It is inherent to the age-based model, and it cannot be cured by forcing a single transition cohort to absorb the full loss. Indeed, the NCAA's stated concern that underclassmen may be out-competed for roster spots confirms that the challenged exclusion is designed to reduce, not promote, competition.

The Court finds it curious that the NCAA would draw a hard line excluding the Class of 2022 rather than make an exception similar to the one it made in response to the COVID-19 pandemic. When the NCAA granted an additional year of eligibility to athletes who competed during the 2020–2021 academic year because of COVID-related disruptions, the same purported "substitution effect" would have applied. Nevertheless, the NCAA chose to grant that additional year of eligibility. The question, then, is why the NCAA has taken a different approach here—effectively excluding an entire class of student-athletes based solely on the year in which they were born. These student-athletes

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were, in effect, born in the wrong year. The Five for Five Rule is really the Five for Five But Not For You Rule.

This Court also finds unfairness and arbitrariness in the implementation of the Five for Five Rule as shown in the below table that was prepared by the NCAA:[17]

Student-athletes	Which eligibility rules apply
Student-athletes who used their final season of competition (under previous rules) during 2025-26.	No additional eligibility.
Current student-athletes with eligibility remaining (under previous rules) after the 2025-26 academic year.	Either the previous rules OR the new age-based model, whichever is most beneficial to the student-athlete.
Prospects who initially enroll full time at any college or university during 2026-27.	Either the previous rules OR the new age-based model, whichever is most beneficial to the student-athlete.
Prospects who initially enroll full time at any college or university in fall 2027 or later.	The age-based model only.

Under this framework, current student-athletes and new prospects can select between the previous eligibility rules or the Five for Five Rule, whichever is more beneficial to the student-athlete. The previous rules would necessarily include the waivers which were part of the old regime.[18]

With respect to plaintiffs' cohort, no eligibility, period, leading to the moniker "Five for Five But Not For You."

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[17]Meghan Durham Wright, NCAA.org, *Division I adopts age-based eligibility model*, https://www.ncaa.org/division-i-adopts-age-based-eligibility-model/, June 23, 2026 (last visited Sept. 28, 2026).

[18]If the waivers were not included, the student-athlete would be left with a Hobson's choice — five (5) years to play four (4) seasons or five (5) years to play five (5) seasons. And it cannot mean just previous waivers since new student-athletes would not have previous waivers.

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Further evidence of the unreasonable and unfair implementation of the Five for Five Rule is found in the Rule itself, which provides:

> An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:
>
> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday.

[Doc. 13-3 at 25–26].

Plaintiffs are individuals whose five (5) year period of eligibility began in the 2022–2023 academic year. Accordingly, the fifth academic year would be the 2026–2027 year — for which the NCAA has decreed these very athletes ineligible.

In its pronouncements, the NCAA refers to plaintiffs' cohort as "student-athletes," but the Bylaws refer to them as individuals.

There is a difference. Bylaw 12.01.2 notes the distinction providing:

> **"Individual" vs. "Student-Athlete."** NCAA eligibility may be lost as a result of activities before enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person before and after enrollment in a member institution. If NCAA rules

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specify a "student-athlete," the legislation applies only to that person's activities after enrollment.

[Doc. 13-3 at 14].

The distinction between "individuals" and "student-athletes" is important because Rule 12.01.2 clearly designates that Article 12 Rules governing "Eligibility for Athletics Participation" will be governed by specific definitions: *individual*— "a person before and after enrollment in a member institution;" and *student-athlete*— "legislation [that] applies only to that person's activities after enrollment." This means that eligibility is extended to individuals with remaining eligibility under the age-based model, even if they are not currently enrolled (i.e., "before enrollment"). And by its own terms, the NCAA is failing to honor that agreement for individuals.

The NCAA contends that despite the clarity of Rule 12.6, plaintiffs do not qualify because they are no longer "student-athletes." The Rule, however, refers not to "student-athletes" but to "individuals."

The controversy in this case arises not out of the Rule itself, but its implementation. In a web post authored by the NCAA, the NCAA explains that "**[s]tudent-athletes** who used their final season of competition (under previous rules) during 2025–26" have "[n]o additional eligibility." [Doc. 23 at 4 (quoting Meghan Durham Wright, NCAA.org, *Division I adopts age-based eligibility model*, https://www.ncaa.org/division-i-adopts-age-based-eligibility-model/, June 23, 2026 (emphasis added))]. This breaches Rule 12.6 in two (2) critical ways:

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- First, by applying the restriction to student-athletes, the NCAA takes away a fifth year of eligibility that student-athletes (who are by definition enrolled) had at the end of 2025–2026 under the prior rules.
- Second, by applying the implementation to *student-athletes*, the NCAA conflicts with Rule 12.6 that applies to *individuals*.

This Court is aware that the NCAA claims that it has universal authority to interpret the Bylaws. This Court finds, however, that the claim of such authority over a clear and unambiguous provision violates the spirit, if not the letter of ***Loper Bright Enterprises v. Raimondo***, 603 U.S. 369 (2024).

The above discussion not only confirms the unfairness and arbitrariness of the NCAA's actions, it also establishes an additional basis for finding a likelihood of success on the merits; specifically, on plaintiffs' breach of contract claim.

The NCAA claims that plaintiffs may not maintain an action for breach of contract due to a lack of standing. The NCAA contends that plaintiffs were not "sole" beneficiaries of the NCAA framework.

Plaintiffs are certainly beneficiaries. The NCAA Manual's stated purpose is not merely to regulate institutions, but to serve student-athletes. In the Preamble, the NCAA announces its member institutions' "commit[ment] 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." [Doc. 13-3 at 3]. Those purposes are carried forward in the NCAA Constitution's Article 1 "Principles" and reinforced by

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structural rights that give student-athletes a voice in NCAA governance, including "voting representation on the Board of Governors" and the Division I Board of Directors. [Id. at 9].

Individually and collectively, the Division I Manual and Bylaws furnish strong evidence of the NCAA's intent to confer student-athletes with what the NCAA calls "the life-changing experience of college athletics" and the "life-changing benefits college sports provides." [Doc. 23 at 10 (quoting NCAA News, @NCAA_PR on X, https://x.com/NCAA_PR/status/2069909731364249863, last accessed Sept. 28, 2026)]. The Court reads these principles, rights, responsibilities, rules, regulations, policies, procedures, and statements all centered on giving the "gift" of college athletics as words of intention.

In ***United Dispatch, Inc. v. E.J. Albrecht Co.***, the Supreme Court of Appeals of West Virginia noted "wherein the plaintiff was one of a class of persons designated in a contract for whose benefit the contract was made; and that a member of such class could maintain an action at law, although not a party to the contract." 135 W.Va. 34, 42, 62 S.E.2d 289, 294 (1950). *See also* ***Goff v. Penn Mut. Life Ins. Co.***, 229 W.Va. 568, 729 S.E.2d 890 (2012).

In the Monroe County, Indiana case, Judge Krothe cited and relied upon a decision from the Chancery Court of Davidson County, Tennessee, which held:

> When reading the Bylaws at issue in this case, they are all largely devoted to regulating the eligibility, participation, welfare, and compensation of student-athletes. They repeatedly identify student-athletes as the objects of the Bylaws, indicating an intent to benefit them. The Bylaws are not limited

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> to allocating rights and obligations among member institutions. Rather, they establish detailed rights, privileges, obligations, eligibility requirements, procedural protections, and benefits that directly govern the relationship between the NCAA and every student-athlete participating in NCAA competition. Those provisions demonstrate that student-athletes are not merely incidental beneficiaries of the contractual arrangement but are among its principal intended beneficiaries.
>
> The Court further finds it significant that student-athletes are required to review and execute acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools. (Trial Testimony of Jerry Vaughn). This requirement demonstrates that the contractual framework was intended to operate directly upon student-athletes and not merely upon member institutions. Therefore, this Court finds that the Plaintiffs are the intended beneficiaries of the contracts at issue in this case.

Washington v NCAA, Case No. 26-0896-III, Chancery Court of Davidson County, Tennessee, July 31, 2026 Order Granting Temporary Injunction. *See also* ***Bloom v. NCAA***, 93 P.3d 621, 623–24 (Colo. Ct. App. 2004) ("the NCAA's constitution, bylaws, and regulations evidence a clear intent to benefit student-athletes"); **Battle v. NCAA**, 2024 WL 4685604, at *5 (N.D. W. Va. Nov. 4, 2024) (Bailey, J.) (holding that student-athlete sufficiently alleged he was a third-party beneficiary to the Bylaws and Constitution of the NCAA); **Smith v. NCAA**, Case No. 2026-CP-39-00073 (S.C. Ct. C.P. June 12, 2026) (entering injunction on a claim for breach of NCAA Bylaws); ***Borovicanin v. NCAA***, Case

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No. A2603352 (Ohio Ct. C.P. July 9, 2026) (order granting preliminary injunction) ("the NCAA Manual and Bylaws are clearly intended to benefit student-athletes").

This Court finds breach of contract to be another theory upon which plaintiffs have a likelihood to prevail on the merits.

The NCAA's position is particularly difficult to reconcile with its treatment of the Class of 2023, for example. One could argue that the Class of 2022 received what they bargained for when they entered college—four (4) years of eligibility. But the same reasoning applies to the Class of 2023: those student-athletes likewise entered college expecting four (4) years of eligibility. Yet, the NCAA permits the Class of 2023 to continue competing while denying the same opportunity to the Class of 2022. The distinction appears arbitrary and is difficult to reconcile with the NCAA's treatment of eligibility during the COVID-19 pandemic.

The Court is not persuaded that the NCAA has adequately explained this distinction. If the NCAA were willing to recognize an additional year of eligibility when circumstances created an overlap between otherwise eligible athletes and subsequent recruiting classes during the COVID-19 pandemic, it is not apparent why the same concern regarding a potential substitution effect warrants a different result here. At a minimum, the NCAA's explanation does not adequately account for why the Class of 2022 should bear the consequences of the asserted "substitution effect" while similarly situated student-athletes in the Class of 2023 are permitted to continue competing.

The Court therefore finds the NCAA's distinction between these two (2) classes difficult to justify on the record presently before it. Whatever legitimate concerns the NCAA may have regarding the effects of an additional year of eligibility, those concerns do not,

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without more, explain why an exception was appropriate for one cohort but not the other. The NCAA's treatment of the Class of 2022, particularly when viewed in light of its prior decision to grant additional eligibility during the COVID-19 pandemic, raises substantial questions concerning the consistency and rationale of the eligibility restriction at issue here.

With respect to roster space, Mr. Tatos states a "scenario where an incoming athlete would need to compete for [sic] a fifth year athlete would only occur if the rosters were already full and could not accommodate an additional athlete. I have not seen any evidence that this would be the case, and to my knowledge, the NCAA has not identified any specific players that would lose their roster space if the Plaintiffs in this case were deemed eligible." [Id. at ¶ 58].

The Court finds this observation significant. Although the NCAA relies upon the potential displacement of other student-athletes as a justification for its position, the record presently before the Court does not identify any particular student-athlete who would actually lose a roster position as a result of plaintiffs receiving an additional year of eligibility. Nor has the NCAA identified evidence demonstrating that the relevant rosters are, in fact, full or that granting plaintiffs an additional year of eligibility would necessarily result in the displacement of incoming or current student-athletes. Thus, the NCAA's asserted concern regarding roster space appears, at this stage, to be based largely on a theoretical possibility rather than evidence of an actual consequence. A favorable ruling granting an injunction would not displace any student athlete. Such a ruling would only permit plaintiffs to *compete* for a roster spot on a team. The ruling would not compel any team to accept the player and force the team to have a roster spot for the player.

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That distinction is important. The Court does not discount the possibility that granting an additional year of eligibility to certain student-athletes could affect roster composition or opportunities for other athletes. But where the NCAA relies upon such a potential effect to justify excluding an entire class of student-athletes, the Court would expect some evidentiary basis demonstrating that the asserted harm is likely to occur. On the present record, the NCAA has not sufficiently connected its generalized concern regarding roster space to any concrete impact on a particular student-athlete or roster.

The rosters for the 2026–27 seasons have essentially been set, and the "destabilized rosters for the 2026–27 season" do not exist. What does exist is that some schools have reserved roster spots that, without this Court's intervention, will go unfilled—it was represented by plaintiffs at the hearing that roster spots for all four (4) plaintiffs have been reserved. Therefore, the Court finds plaintiffs have met their burden of showing a substantial anticompetitive effect.

2. Procompetitive Rationale

The burden now shifts to the NCAA to set forth a "procompetitive rationale" for its restraint (which is to say, the Five for Five Rule). ***Alston***, 594 U.S. at 96 (citation modified). The NCAA may meet its burden by showing that such rationale, or rationales, "justify the anticompetitive effects." ***Law***, 134 F.3d at 1021 (citation modified)). *See also* ***Alston***, 594 U.S. at 99 ("[A]t step two the NCAA had to show only that those same rules collectively yield a procompetitive benefit." (citation modified)).

The NCAA says it has met its burden because the Rule has procompetitive benefits. *See* [Doc. 22 at 15–17]. Specifically, the NCAA argues that the Five for Five Rule provides

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procompetitive benefits by preserving the structure and unique character of college athletics, including ensuring opportunities for incoming high school athletes and aligning athletic eligibility with the typical four (4)-year undergraduate experience. [Id. at 15]. The NCAA further argues that applying the new age-based eligibility rule retroactively would disrupt the 2026–27 season because roster spots, playing time, scholarships, and other team resources are limited, potentially displacing athletes who currently expect to compete. [Id. at 16–17].

The NCAA's argument proceeds from a flawed premise: that *excluding* athletes from the labor market is actually procompetitive. In the NCAA's own words:

> The decision to apply the new age-based framework going forward protects competitive opportunities and reliance interests of thousands of other student-athletes entering the 2026-27 season. The opportunities to participate in college sports are zero-sum. Roster spots are fixed. If Plaintiffs are permitted to join a roster, they may take away a spot from someone else who is eligible. Each contest has a fixed number of minutes in a game and opportunities to see the field or court at a given position. If Plaintiffs can compete, it will crowd out other student-athletes looking for their first opportunity, or opportunities to develop as their collegiate careers progress.

[Doc. 22 at 16]. Its argument about the Rule specifically not only suffers this same flaw (and assumes that all rosters are zero-sum, which evidence in the preliminary injunction record contradicts). But antitrust law does not endorse—or sustain—this understanding of markets or market output, i.e., that *reducing* laborers in a market is somehow

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procompetitive. "[T]his justification runs afoul of the basic economic principle that greater competition in a labor market generally leads to better outcomes for workers." ***Martinson v. NCAA***, 804 F.Supp.3d 1109, 1130 (D. Nev. 2025) (citation modified). And the Court shares ***Martinson***'s concern that this rationale is an artificial attempt to "even the playing field" that "leads to lower wages for all workers." ***Id.*** *See also* ***Law***, 134 F.3d at 1021 ("Justifications offered under the rule of reason may be considered only to the extent that they tend to show that, on balance, the challenged restraint enhances competition." (citation modified)); ***New York ex rel. Schneiderman v. Actavis PLC***, 787 F.3d 638, 659 (2d Cir. 2015) ("While *introducing* [a product] may be procompetitive, that argument provides no procompetitive justification for *withdrawing* [another product]." (original emphasis)); ***Realcomp II, Ltd. v. F.T.C.***, 635 F.3d 815, 834 (6th Cir. 2011) (noting defendants can meet step two (2) burden by demonstrating "some countervailing procompetitive virtue—such as, for example, the creation of efficiencies in the operation of a market or the provision of goods and services." (citation modified)).

Ultimately, the Supreme Court explained the same concepts which were undisputed in the compensation litigation at issue in ***Alston***:

> No one disputes that the NCAA's restrictions *in fact* decrease the compensation that student-athletes receive compared to what a competitive market would yield. No one questions either that decreases in compensation also depress participation by student-athletes in the relevant labor market—so that price and quantity are both suppressed.

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594 U.S. at 86 (citing 12 P. Areeda & H. Hovenkamp, Antitrust Law ¶ 2011b, p. 134 (4th ed. 2019) (emphasis in original).

The same economic reality applies here. ***Alston*** recognized the close relationship between price and quantity in a monopsonized labor market: a restraint on compensation suppresses not only wages, but also participation. The converse follows as well. A direct restraint on the quantity of available labor—here, excluding a defined cohort of otherwise eligible student-athletes—distorts competition in the same market. That point is especially clear where the restraint operates as a categorical prohibition on one (1) transition class, no different in principle from randomly declaring one (1) out of every five (5) athletes ineligible so that the remaining athletes face less competition for roster positions. Nor can the NCAA justify the exclusion as necessary to preserve the character or quality of college athletics. The same fifth-year participation barred for the 2022–23 cohort will be permitted under the NCAA's own rules beginning next year. The challenged exclusion is therefore not a product-preserving eligibility rule; it is an exercise of monopsony power to restrict competition in the labor market.

Because the NCAA has not met its step two, procompetitive rationales burden, the Court's rule of reason analysis could conclude here—and conclude that plaintiffs have shown a likelihood of success on the merits of their Section 1 claim. Yet for the sake of completeness, the Court proceeds to analyze the third rule of reason step, which is whether—presuming that the NCAA actually met its step two, procompetitive burden—plaintiffs have shown the NCAA's proffered procompetitive rationales could be achieved through less restrictive alternatives.

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3. Less Restrictive Alternatives

Presuming the NCAA has met its procompetitive effects burden, plaintiffs must now show that "the challenged conduct is not reasonably necessary to achieve the legitimate objectives or that those objectives can be achieved in a substantially less restrictive manner." ***Law***, 134 F.3d at 1019 (citation modified). *See also* ***Alston***, 594 U.S. at 100 (observing that plaintiffs met third step burden where "they were able to show that the NCAA could achieve the procompetitive benefits it had established with substantially less restrictive restraints").

The NCAA contends that simply increasing roster sizes would not eliminate these concerns because playing time and other resources remain finite and would be spread among more athletes. [Doc. 22 at 17].

Plaintiffs simply want to be treated like all other athletes under the Five for Five Rule, which is to say they want to be eligible for a fifth season of competitive play. And they identify a practical alternative to achieving their goal that would be entirely consistent with the Rule: granting them a waiver under the Rule for an additional year of eligibility, notwithstanding they are otherwise ineligible for such a year based on the year they graduated high school and the number of seasons in which they have competed so far.

Plaintiffs' proposed waivers, whose administration appear entirely possible and feasible under the NCAA's current Bylaws, would "eliminate the anticompetitive harm" that plaintiffs and class members face under the Rule's impending implementation. ***Braham***, 794 F.Supp.3d at 837. And granting plaintiffs eligibility waivers, to the extent that

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they would qualify for them, is consistent with the NCAA's own proffered procompetitive rationale, insofar as expanding the number athletes in the relevant market—rather than artificially and arbitrarily limiting it—would expand output. *See* ***Chicago Pro. Sports Ltd. P'ship v. Nat'l Basketball Ass'n,*** 961 F.2d 667, 673 (7th Cir. 1992) ("Rivalry makes for a more attractive product, which then attracts a larger audience—the very expansion of output that the antitrust laws foster."); ***Israel Travel Advisory Serv., Inc. v. Israel Identity Tours, Inc.***, 61 F.3d 1250, 1253 (7th Cir. 1995) ("Output often grows in the process as competition intensifies."); ***Town of Concord, Mass. v. Bos. Edison Co.***, 915 F.2d 17, 21–22 (1st Cir. 1990) ("[A practice] harms that [competitive process] when it obstructs the achievement of competition's basic goals." (citation modified)). Thus, "Plaintiff's proposed alternative eliminates the anticompetitive harms discussed above while appearing to satisfy" the procompetitive rationale "advanced by the NCAA." ***Pavia***, 760 F.Supp.3d at 543.

B. Irreparable Harm

The parties dispute whether plaintiffs will suffer irreparable harm absent injunctive relief. *Compare* [Doc. 16 at 3] *with* [Doc. 22 at 23–24]. The Court need not dwell on this issue.

Courts have repeatedly found that "[c]ollege students suffer irreparable harm when they are denied the opportunity to play sports." ***S.A. v. Sioux Falls School Dist. 49-5***, 2023 WL 6794207, at *9 (D. S.D. Oct. 13, 2023) (quoting ***Portz v. St. Cloud State Univ.***, 401 F.Supp.3d 834, 868 (D. Min. 2019); *see also* ***McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck***, 370 F.3d 275, 302 n.25 (2d Cir. 2004); ***Navarro v. Fla. Inst. of***

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Tech., Inc., 2023 WL 2078264, at *16–17 (M.D. Fla. Feb. 17, 2023) (courts have consistently held that losing the opportunity to participate in sports is irreparable harm); ***Biediger v. Quinnipiac Univ.***, 616 F.Supp.2d 277, 291 (D. Conn. 2009) ("Courts have consistently held that, given the fleeting nature of college athletics, plaintiffs will suffer irreparable harm by losing the opportunity to participate in their sport of choice on a continuous and uninterrupted basis."); ***Brooks v. State Coll. Area Sch. Dist.***, 643 F.Supp.3d 499, 510 (M.D. Pa. Dec. 1, 2022); ***Mayerova v. E. Mich. Univ.***, 346 F.Supp.3d 983, 997 (E.D. Mich. 2018); *but see* ***Doe v. Portland Pub. Sch.***, 2023 WL 7301072, at *16 (D. Me. Nov. 3, 2023); ***Revesz v. Pa. Interscholastic Ath. Ass'n, Inc.***, 798 A.2d 830, 837 (Commonwealth Court of Pa. May 21, 2002).

The Court agrees with plaintiffs that they face the loss of a season of competition and exclusion from sports teams for which they might otherwise be eligible. This harm is certainly impending[19] and the inability to play in the upcoming (or ongoing) seasons cannot be "compensated after the fact by money damages." ***DTC Energy Grp., Inc. v. Hirschfeld***, 912 F.3d 1263, 1270 (10th Cir. 2018) (internal quotations and citations omitted). To the extent that plaintiffs face a loss of NIL compensation[20] as well, this harm does not displace the fundamental and irreparable harm they face if they are excluded from playing in the upcoming season. *See, e.g.*, ***Denver Rockets v. All-Pro Mgmt., Inc.***,

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[19]For Jason Chambers, the harm is current. WVU Football has already played four (4) games.

[20]At least one (1) court has observed that lost NIL opportunities are not purely economic. *See* ***Braham***, 794 F.Supp.3d at 838 ("Regardless of whether such offers may result in calculable monetary compensation, the foregone opportunity to 'market' one's 'name' and 'likeness' and to 'showcase abilities to future employers' cannot be estimated or quantified." (citation modified)).

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325 F.Supp. 1049, 1057 (C.D. Cal. 1971) (finding that "[i]f [movant] [were] unable to continue to play professional basketball . . . he w[ould] suffer irreparable injury in that a substantial part of his playing career will have been dissipated").

Accordingly, plaintiffs have met their irreparable harm burden.

C. Balance of the Equities

Plaintiffs argue that the balance of the equities "strongly favors preliminary relief" because, absent injunctive relief, they "will permanently lose the opportunity to compete during the 2026–27 academic year, together with the educational, athletic, NIL, revenue-sharing, exposure, and professional-development opportunities that attach to that competition." [Doc. 16 at 36].

Moreover, an injunction that preserves this ability imposes "no cognizable prejudice" on the NCAA, given that granting plaintiffs injunctive relief would allow plaintiffs "the same opportunity to compete for available positions during the fifth year of eligibility that the NCAA now recognizes as appropriate under its own amended eligibility framework." [Id.].

The NCAA argues that granting plaintiffs' request for relief would be inequitable because plaintiffs' requested relief would not eliminate harm but merely shift it to other student-athletes. [Doc. 22 at 24–25]. Because college athletics are inherently competitive and roster spots, playing time, and scholarships are limited, the NCAA argues allowing plaintiffs to compete could displace other athletes who are not parties to the litigation. [Id.]. The NCAA also argues that granting relief to these plaintiffs could encourage similar challenges by other student-athletes, creating broader instability in NCAA eligibility rules. [Id.].

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The Court is persuaded, like the Court in ***Wisne*** was, "upon review of the parties' arguments and the preliminary injunction record, that the harms the NCAA faces are much less severe. Fundamentally, Plaintiffs face *irreparable* harm, and the NCAA *itself* faces challenges in administering Plaintiffs' relief and ensuring their eligibility for the upcoming season. There is no contest between the two, and they resolve in Plaintiffs' favor. *See, e.g.*, ***Tennessee*** [***v. NCAA***], 718 F.Supp.3d [756,] 766 [(E.D. Tenn. 2024)] ("Here, the balance of the equities weighs heavily in favor of Plaintiffs because neither the NCAA nor any other affected individual or entity will face substantial harm with the issuance of an injunction, whereas, as explained above, student-athletes face irreparable harm."); ***Ohio***, 706 F.Supp.3d at 600 ("This Court does not see substantial harm to the NCAA that would result from this Court granting a temporary injunction. A prohibition on enforcing the Transfer Eligibility Rule causes no harm to the NCAA or any other entity or individual."); ***Braham***, 794 F.Supp.3d at 839; ***Pavia***, 760 F. Supp. 3d at 544." ***Wisne***, 2026 WL 2214234, at *22 (emphasis in original).

Granting four (4) athletes on three (3) teams relief will not destabilize college sports. Plaintiffs only seek the same opportunities as those who came before, and those who will come after.

D. The Public Interest

Finally, the parties dispute whether issuance of a preliminary injunction would be in the public interest. *Compare* [Doc. 16 at 36–37] *with* [Doc. 22 at 24–25].[21] "As a practical

[21]The NCAA contends that the public interest weighs against an injunction because the judiciary should not be placed in the position of repeatedly determining individual eligibility under NCAA bylaws. [Doc. 22 at 24–25]. According to the NCAA, granting plaintiffs relief could create ripple effects throughout Division I athletics and disrupt the

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matter, if a plaintiff demonstrates both likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff." ***Am. Tel. and Tel. Co. v. Winback and Conserve Program, Inc.***, 42 F.3d, 1421 1427 n.8 (3d Cir. 1994).

Plaintiffs have met their burden of showing the public interest favors injunctive relief. As they observe, ensuring the NCAA's compliance with federal and state antitrust laws will serve the public interest, thus satisfying this factor. *See, e.g.*, ***Tennessee***, 718 F.Supp.3d at 766 ("Finally, the requested injunctive relief will serve the public interest because it will prevent anticompetitive behavior." (citation modified)); ***Ohio***, 706 F.Supp.3d at 600 ("Free and fair competition in labor markets is essential to the American economy."); ***Bigelow v. RKO Radio Pictures***, 327 U.S. 251, 266 (1946) ("The dominant purpose of the Anti-Trust Acts is protection of the public interest by prohibiting unjustifiable restrictions upon competitive enterprise.") (Frankfurter, J., dissenting).

V. Rule of Restitution

Plaintiffs ask this Court to enjoin the NCAA's Rule of Restitution (Bylaw § 12.9.4.2) in addition to the Challenged Rules. [Doc. 6 at 23–24]. The NCAA does not address this in their Response.

NCAA Bylaw 12.9.4.2, commonly known as the "Rule of Restitution" provides:

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expectations of other student-athletes, teams, and schools. [Id.]. Rather than eliminating harm, an injunction would simply reallocate limited roster spots and playing opportunities from other athletes to plaintiffs. [Id.].

In the preface to this Opinion, the Court gives its two cents regarding the weight increasingly being placed on the judiciary to resolve disputes arising from the ever-changing landscape of college athletics. But the reality is that the Court's hands are tied. Until something is done to bring greater clarity and consistency to the rules governing college sports, these difficult questions will continue to find their way into the courts.

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12.9.4.2 Restitution. If a student-athlete who is ineligible under the terms of the bylaws or other legislation is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Board of Directors may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions:

(a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;

(c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;

(d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(e) Require that team awards earned during participation by such

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ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;

(f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;

(g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;

(h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in a contest selected for such telecast, or if the Board of Directors concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and

(i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions.

[Doc. 13-2 at 58]. As this Court held in ***Ohio***:

The breadth of the Rule of Restitution is staggering and goes well beyond final adjudication on the merits in the NCAA's favor. It is in fact a measure

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designed to inhibit a person's access to the courts.

Knowing this, many Division I institutions will not permit the student-athlete to compete, even if a court issues a temporary restraining order or a preliminary injunction finding that those rules are likely illegal. This, in turn, deters student-athletes from challenging the NCAA's substantive eligibility rules, such as the Transfer Eligibility Rule.

It appears to this Court that the Rule of Restitution's purpose is to punish challenges to the NCAA's anticompetitive rules by attempting to deprive courts of the ability to grant effective relief and depriving individual student-athletes and member institutions of the practical ability to rely on court orders in their favor. The Rule of Restitution forces student-athletes to run the risk of severe personal punishment and the risk of subjecting their institutions or teammates to the harsh sanctions of the Rule of Restitution simply by following the terms of a court order. For instance, suppose this Court issues an injunction that allows a student-athlete, like RaeQuan Battle, to play for the remainder of the 2023–2024 basketball season. Suppose, hypothetically, WVU goes on to win the Big 12 Championship and National Championship. If this Court does not enjoin NCAA Bylaw 12.11.4.2,[22] NCAA could require that WVU be stripped of the Big 12 and National Championship Titles, all over WVU following a court order

[22]The Rule of Restitution was revised on June 6, 2025, and effective on July 1, 2025. Since this Court's Opinion in ***Ohio***, the number of the Rule of Restitution has changed to NCAA Bylaw 12.9.4.2.

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> instructing WVU that RaeQuan Battle is good to play on gamedays. Thus, this Court will enjoin NCAA from enforcing the Rule of Restitution against student-athletes and their respective institutions.

706 F.Supp.3d at 600–602. *See also* ***Pavia***, 760 F.Supp.3d at 545 (enjoining the NCAA from enforcing the Rule of Restitution); ***Elad***, 2025 WL 1202014, at *10–11 (same); ***Braham***, 2025 WL 2017162, at *10 (same).

It is self-evident that the Rule of Restitution would chill both plaintiffs' and WVU's ability to rely on this Court's injunction by exposing them to severe penalties should the injunction later be voluntarily vacated, stayed, or reversed. Consistent with its decision in ***Ohio***, this Court sees no reason to depart from that reasoning and holds that the Rule of Restitution must be enjoined for the injunction to have effect.

VII. Conclusion

For the reasons set forth above, the Court will **GRANT** plaintiffs' Motion for Preliminary Injunction [**Doc. 13**]. The NCAA will be **ENJOINED** from enforcing the Five for Five Rule as it applies to Brenan Lorient, Javan Buchanan, Jason Chambers, and Benjamin McDougal. Brenan Lorient, Javan Buchanan, Jason Chambers, and Benjamin McDougal are permitted to compete for available roster positions at West Virginia University, or another NCAA Division I member institution as applicable, during the 2026–27 academic year without the NCAA treating that participation as a violation of its eligibility rules. No security will be required.

Finally, the NCAA is **ENJOINED** from enforcing its Rule of Restitution (Bylaw § 12.9.4.2) against Brenan Lorient, Javan Buchanan, Jason Chambers, and

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Benjamin McDougal and/or West Virginia University for complying with, and relying on, this Order.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein.

DATED: September 30, 2026.

JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE

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RESPONDENTS' APPENDIX

TAB G

The NCAA's Motion to Dismiss for Lack of Jurisdiction, Improper Venue, and Failure to State a Claim, and Memorandum of Law, *Wells v. NCAA*, No. 26-CI-007009 (Jefferson Cir. Ct. filed Oct. 29, 2026)

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NO. 26-CI-7009
Electronically Filed

JEFFERSON CIRCUIT COURT
DIVISION 11
JUDGE BRIAN EDWARDS

Levavium Wells II, *et al.* Plaintiffs

v.

THE NCAA'S MOTION TO DISMISS FOR LACK OF JURISDICTION, IMPROPER VENUE, AND FAILURE TO STATE A CLAIM

National Collegiate Athletic Association Defendant

Defendant, the National Collegiate Athletic Association ("NCAA"), respectfully moves the Court to dismiss the complaints filed by the Wells Plaintiffs, Alex Afari, and Kalib Perry, under CR 12.02(b),(c), and (f), with prejudice, for lack of personal jurisdiction, improper venue, and failure to state a claim. As set forth in the attached memorandum of law in support of this motion, none of Plaintiffs' claims arise from the NCAA's alleged forum contacts, Jefferson County is not a proper venue, and Plaintiffs have failed to state a claim for breach of contract or violation of the Kentucky Consumer Protection Act.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 29, 2026, the foregoing was electronically filed via the Court's eFiling system and served by email to:

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JEFFERSON CIRCUIT COURT
DIVISION 11
JUDGE BRIAN EDWARDS

Levavium Wells II, *et al.* — Plaintiffs

v.

National Collegiate Athletic Association — Defendant

THE NCAA'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

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RELEVANT ALLEGATIONS[1]

For decades, the NCAA's "Five-Year Rule" permitted student-athletes to compete in up to four seasons of intercollegiate athletic competition over a five-year period. (Wells Pls.' 3rd Am. Compl. ("Compl.") ¶ 1; Afari's Compl. ¶ 6 (incorporating Wells Plaintiffs' allegations and exhibits); Perry's Compl. ¶ 6 (same); Wells Pls.' Exhibit 1, 2025–26 NCAA Division I Manual, Bylaw 12.6.) The NCAA's former eligibility rules, contained in the Manual, authorized member institutions to seek waivers of the Five-Year Rule on behalf of student-athletes. (Bylaws 12.6.1.7, 12.6.4, 12.6.5, 12.6.6.) Under specified circumstances, those waivers could grant an additional season of competition, extend the five-year eligibility clock, or both.

In June 2026, the NCAA Division I Cabinet adopted a new age-based eligibility model. (*See id.* ¶¶ 3, 59, 84.) Going forward, student-athletes will receive a five-year eligibility period beginning at the start of the academic year following their 19th birthday or upon full-time enrollment at a collegiate institution, whichever comes sooner, and student-athletes may compete during that five-year period of eligibility without restriction, provided they meet all other eligibility requirements. (*See id.*) Waivers have been eliminated under this new rule other than defined cases involving pregnancy, military service, and religious missions.

Plaintiffs here are student-athletes who completed four seasons of intercollegiate sports during a four-year period. (*See id.* ¶ 117[2]; Afari Compl. ¶ 1; Perry Compl. ¶ 1.) They take no issue with the new eligibility model in the abstract. (Compl. ¶ 85.) Yet they ask this Court to

[1] As required, the NCAA assumes the truth of Plaintiffs' factual allegations solely for the purposes of this motion. *Marshall v. Montaplast of N. Am., Inc.*, 575 S.W.3d 650, 651 (Ky. 2019). To be clear, it very much disputes Plaintiffs' version and characterization of events.

[2] In paragraph 117 of their complaint, the Wells Plaintiffs allege they each played "college basketball." The NCAA assumes this is an error in pleading, as it is contradicted by earlier allegations claiming many of them competed in other sports. (Compl. ¶¶ 10–50.)

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enjoin the NCAA's 2025-26 eligibility rules and affirmatively order the NCAA to apply its 2026-27 eligibility rules retroactively because neither set of rules personally benefit them.

LEGAL STANDARD

Under CR 12.02(b), a plaintiff bears the burden of making a prima facie showing of personal jurisdiction. *Hinners v. Robey*, 336 S.W.3d 891, 895 (Ky. 2011). The plaintiff must allege sufficient contacts between the defendant and Kentucky to support jurisdiction. *Id.* When the complaint fails to allege facts establishing either specific or general jurisdiction, dismissal is required. *Doe 1 v. Flores*, 661 S.W.3d 1, 6 (Ky. App. 2022). Similarly, "[i]mproper venue is a ground for a trial court's dismissal of an action under the provisions of CR 12.02(c)." *Hensley v. Traxx Mgmt. Co.*, 622 S.W.3d 652, 660 (Ky. App. 2020). And because "venue is a creature of statute," there must be a specific statutory basis for filing and maintaining suit in the plaintiff's chosen venue. *See O'Bannon v. Allen*, 337 S.W.3d 662, 665 (Ky. App. 2011).

A cause of action must also be dismissed when it fails to "state a claim upon which relief can be granted." CR 12.02(f). When considering a motion to dismiss under CR 12, the Court generally must presume the truth of the factual allegations in the complaint. *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010). However, a motion to dismiss may attach documents that are "integral" or "central to the claims in the [plaintiff's] complaint," which the Court may properly consider without converting the motion to one for summary judgment. *Schell v. Young*, 640 S.W.3d 24, 33 (Ky. App. 2021); *Netherwood v. Fifth Third Bank, Inc.*, 514 S.W.3d 558, 564 (Ky. App. 2017).

ARGUMENT

I. Plaintiffs' allegations fail to make a prima facie showing of personal jurisdiction over the NCAA.

Kentucky's long-arm statute governs personal jurisdiction over any defendant "who is a nonresident of this Commonwealth." KRS 454.210(1). Following 2024 amendments to the

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statute, long-arm jurisdiction is now "coterminous with federal constitutional limits." *Clark v. Baker*, No. 3:25-cv-70, 2026 WL 125972, at *9 (W.D. Ky. Jan. 16, 2026) (citing *Valentine v. Samsung SDI Co., Ltd.*, No. 2024-CA-0277, 2025 WL 3038404, at *2 (Ky. App. Oct. 31, 2025)). Plaintiffs do not contend that the NCAA is subject to general jurisdiction in Kentucky, so only specific personal jurisdiction is at issue.

Kentucky courts employ a "three-part test for determining whether the exercise of specific jurisdiction comports with due process." *Lindsay Constr., LLC v. Z & Z Heavy Haul, LLC*, --- S.W.3d ---, No. 2025-CA-0369-MR, 2026 WL 2617418, at *3 (Ky. App. Sept. 4, 2026) (final 10/12/26, to be published). That test asks whether the defendant purposefully engaged in or caused consequences in Kentucky, the claims arise from those Kentucky-related contacts, and exercising jurisdiction is reasonable. *Id.* To satisfy the "arising from" prong, "the plaintiff must demonstrate a causal nexus between the defendant's contacts with the forum state and the plaintiff's alleged cause of action," and there must be a "substantial connection" between that cause of action and "the defendant's in-state activities." *Murphy v. Frontier Prof. Baseball, Inc.*, 601 S.W.3d 511, 516 (Ky. App. 2020). The jurisdictional issue is thus whether Plaintiffs allege sufficient ties between the NCAA, Kentucky, and their claims. They did not.

A. Plaintiffs' claims do not arise from any NCAA contact with Kentucky.

The conduct Plaintiffs challenge is the NCAA's adoption and interpretation of the new Bylaw 12.6—a nationwide eligibility rule approved by the NCAA's Division I Cabinet and published for all member institutions. That rulemaking did not occur in Kentucky and was not aimed at Kentucky. "The NCAA legislates in Indiana, where it is headquartered." *Aldrich v. NCAA*, 484 F. Supp. 3d 779, 795 (N.D. Cal. 2020). Thus, any alleged harm caused by its rulemaking decisions and eligibility rules "arises out of Indiana," and a contrary holding "would

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improperly subject the NCAA to jurisdiction anywhere." *Id.* Plaintiffs' claims arise from legislation approved in Indianapolis, not from anything the NCAA did in the Commonwealth.

Although Plaintiffs contend it was "unfair" to compete against fifth-year student-athletes without receiving a fifth year themselves, that is not the injury they seek to redress. Plaintiffs allege they were "harmed" in Kentucky because they competed against fifth- and sixth-year student-athletes whose eligibility had been extended under then-existing NCAA. (*See, e.g.,* Compl. ¶¶ 10–50; Afari Compl. ¶ 23; Perry Compl. ¶ 22.) But Plaintiffs do not challenge those rules, the waivers issued under them, or the eligibility of the student-athletes who received those waivers. Their prior competition against waiver recipients therefore does not supply the necessary connection between Kentucky and the NCAA conduct that gives rise to their claims. The NCAA's prior eligibility decisions, including COVID-related waivers, did not and could not affect Plaintiffs' eligibility. Their claims arise from the NCAA's new age-based eligibility rules, which were promulgated from NCAA headquarters in Indiana and were "directed at nowhere in particular." *Neville v. Salvation Army Natl. Corp.*, No. 3:25-CV-227-RGJ, 2026 WL 687952, at *20 (W.D. Ky. Mar. 11, 2026). And to the extent that the NCAA purportedly knew its rulemaking or eligibility decisions might affect Plaintiffs while they were present in Kentucky, that is insufficient. *Bondurant v. St. Thomas Hosp.*, 366 S.W.3d 481, 485–86 (Ky. App. 2011) ("The mere fact that the [defendants] may have known that their actions in [a neighboring state] might have an effect in Kentucky is alone insufficient to exercise personal jurisdiction.").

As a Colorado state court aptly stated in a recent hearing, as to Plaintiffs "who may have played one or two games in the [forum state] over the course of their four year athletic careers, that is not enough." (*Branch, et al. v. NCAA*, No. 26CV32732, Denver District Court (Denver, CO), 08/12/2026 Hearing Tr. at 4:15–18, excerpts attached for ease of reference.) Because while

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"[t]hey came here to play the game," and it may have been "under the auspices of the NCAA rules[,] it was not the NCAA purposefully availing [itself] as to those particula[r] Plaintiffs and, in fact, even if it was, it wasn't as to the issues [i.e., retroactive application of the age-based rule] we're facing right now." (*Id.* at 4:18–21.)

In any event, those are the *Plaintiffs'* contacts, not the NCAA's, and they cannot support jurisdiction over the NCAA. Specific jurisdiction turns on the defendant's contacts with the forum state itself, not its contacts with individuals who live there. *Walden v. Fiore*, 571 U.S. 277, 284–286 (2014). A plaintiff cannot be the sole link between the defendant and the forum; the required connection must arise from the defendant's own conduct directed at the forum state. *Id.* at 285. And "the mere fact that [a defendant's] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 291. The District of Colorado applied this rule and rejected jurisdiction over the NCAA where the plaintiff pointed only to his own forum residence, not any case-specific NCAA contact with the state. *Keanaaina v. NCAA*, No. 26-CV-01283-NYW-KAS, 2026 WL 1213385, at *3–5 (D. Colo. May 4, 2026).

Some Plaintiffs allege they are Kentucky "residents" or "natives," or that they previously attended an NCAA DI institution located in Kentucky. (*See* Compl. ¶¶ 10–50; Afari Compl. ¶ 1; Perry Compl. ¶ 1.) But those Plaintiffs' ties to the forum are beside the point. What matters is the connection between the NCAA's allegedly wrongful conduct and the forum state. The fact that the conduct may have affected plaintiffs with forum connections is not enough to establish jurisdiction. *Walden*, 571 U.S. at 291.

B. The Court's preliminary jurisdictional analysis is flawed.

The preliminary jurisdictional analysis in the Court's prior orders misapprehends the specific personal jurisdiction inquiry. (*See* October 16, 2026, Opinion and Order Granting in Part Plaintiffs' Motion for Temporary Injunction at 7–9; August 21, 2026, Opinion and Order

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Granting Plaintiffs' Motion for Temporary Restraining Order at 5–7.) For one, the Court's reasoning conflated unrelated forum activity with the claim-specific contacts that due process requires. The Court "[f]ollow[ed] the logic of the *Godfrey v. NCAA* Order," in finding personal jurisdiction over the NCAA as to Plaintiffs' claims. (October 16 Op. at 8.) But in *Godfrey*, the Georgia trial court's "logic" was that "[t]he NCAA does not contest jurisdiction." (Order in *Godfrey v. NCAA*, attached.) The *Godfrey* court merely recited those plaintiffs' allegations and found jurisdiction. (*Id.*)

The Court essentially engaged in a general jurisdiction analysis. The NCAA's alleged "contacts" pointed to in the October 16 Order are that the NCAA: (a) "currently transacts substantial business within Kentucky," (b) "conducts athletic competitions, ticket and merchandise sales, television agreements, and other revenue generating activities in Kentucky along with its member institutions," (c) "has substantial and continuous contacts with Kentucky," and (d) "is {allegedly} engaged in an illegal anticompetitive scheme that is directed at and has the intended effect of causing injury to persons residing in, located in, or doing business throughout Kentucky." (October 16 Op. at 8.)

None of these purported contacts would establish that Plaintiffs' claims arise from any NCAA contacts with Kentucky. Contacts (a) and (c) describe generalized, continuous business activity—the hallmark of the general-jurisdiction inquiry. Continuous contacts cannot supply specific jurisdiction unless the claim arises from them, and Plaintiffs' claims do not. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 261–263 (2017). Contact (b) improperly attributes to the NCAA activities undertaken by conferences and member institutions, none of which is a party to this case. Courts have rejected the notion that a national athletic association is subject to jurisdiction merely because it derives revenue from

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forum-based activities: in a breach-of-contract case, only the parties' dealings concerning the disputed contract are relevant to the minimum-contacts analysis. *Richardson v. Se. Conf.*, 612 F. Supp. 3d 753, 766 (N.D. Ill. 2020). Broadcasting programming nationwide and generating revenue "does nothing to prove that [the] contacts with [the forum] are greater than [the] contacts with other states." *Id.* at 764–765. And revenue from broadcasting rights, merchandise, and ticket sales is "too attenuated" qualify as the NCAA's own forum contact because it flows through the member institutions, not directly between athletes and the NCAA. *Id.* at 772–73. The alleged competitions, ticket sales, and television agreements are the business of Kentucky's universities and conferences—not NCAA conduct from which Plaintiffs' claims arise.

Additionally, the Court's statement, adopted from *Godfrey*, that the NCAA has allegedly "engaged in an illegal anticompetitive scheme that is directed at and has the intended effect of causing injury to persons residing in, located in, or doing business throughout Kentucky" is erroneous. (*See* October 16 Op. at 8.) In *Godfrey*, that finding was based on the Georgia plaintiffs asserting antitrust claims. In antitrust actions, the "effects" test permits specific jurisdiction where intentional conduct expressly aimed at the forum causes foreseeable in-forum harm. *Wisne v. NCAA*, No. 1:26-CV-03063-CNS-KAS, 2026 WL 2214234, at *4 (D. Colo. July 31, 2026). But Plaintiffs assert no antitrust claims. And because many Plaintiffs have no Kentucky connection, their claims could not arise from any such effects anyway. The effects-based theory adopted from *Godfrey* has no application here.

These problems are compounded for the many Plaintiffs with no alleged connection to Kentucky beyond merely competing here against Kentucky-based teams. The October 16 Order states that "[a]s to the [Plaintiffs] who were not domiciled" in Kentucky, it found the logic of *Lee v. Branch Banking & Tr. Co.*, No. CV 18-21876-CIV, 2018 WL 5633995, at *4 (S.D. Fla. Oct.

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31, 2018) "persuasive and applicable to the facts in this matter." (October 16 Op. at 8–9.) But that decision did not extend jurisdiction to nonresident plaintiffs—it dismissed their claims, holding that named plaintiffs who were not forum citizens and whose claims bore no connection to the forum "fail[ed] to make a prima facie showing of specific jurisdiction." *Lee*, 2018 WL 5633995, at *4. That is directly opposite the result this Court reached.

Finally, the October 16 Order also points to the personal jurisdiction analysis in *Wisne v. NCAA*, No. 1:26-CV-03063-CNS-KAS, 2026 WL 2214234, at *4 (D. Colo. July 31, 2026), as persuasive. (October 16 Op. at 9.) But in *Wisne* the finding of personal jurisdiction as to the named plaintiff was based on the plaintiff residing in the forum state and the NCAA's purported "anticompetitive scheme" being "directed at" and "causing injury" "to individuals domiciled" in the forum state. *Id.* at *5. Here, unlike the *Wisne* plaintiff, many Plaintiffs do not allege they reside in Kentucky, and Plaintiffs do not assert any antitrust claims. Further, the *Wisne* court's conclusion that personal jurisdiction over the lead plaintiff's claims was sufficient to extend jurisdiction over the nonresident plaintiffs' claims is also not applicable here because unlike *Wisne*, this is not a class action. *See id.* at *6.

II. Jefferson County is an improper venue.

Independent of the jurisdictional defects, Jefferson County is not the proper venue for this action. Because "venue is a creature of statute," *O'Bannon v. Allen*, 337 S.W.3d 662, 665 (Ky. App. 2011), a plaintiff must identify the statutory basis for venue as to each claim asserted. *Ruther v. O'Neal*, No. CIV A 06-CV-303-JMH, 2006 WL 2795508, at *2 (E.D. Ky. Sept. 26, 2006); *Ajaj v. Kruger*, No. 2:20-CV-00244-JPH-MG, 2021 WL 4287497, at *3 (S.D. Ind. Sept. 21, 2021) ("In a case involving multiple parties and multiple claims, the plaintiff must establish that venue is proper as to each defendant and each claim."). Plaintiffs premise venue on two

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statutes, KRS 452.405[3] and KRS 452.450, "because Plaintiffs Jabari Mack, D'Angelo Hutchinson Jr., and Kayden Campbell competed for the University of Louisville," and "because the NCAA's unlawful conduct directly and continuously affects those Plaintiffs, and all other Plaintiffs whose institutions and opponents regularly compete in Jefferson County." (Compl. ¶ 54.) Neither the statutes nor that theory places this suit in Jefferson County.

1. The corporate venue statute cannot supply venue.

KRS 452.450 provides that a tort or contract action against "a corporation which has an office or place of business in this state, or a chief officer or agent residing in this state, must be brought in the county in which such office or place of business is situated or in which such officer or agent resides," or for an action on a contract, one of those counties or the county where the contract was made or is to be performed. This statute cannot supply venue for several reasons. First, it is facially inapplicable because the NCAA is not a corporation—it is an unincorporated organization. (Compl. ¶ 51.) Second, the NCAA does not have "an office or place of business" in Kentucky, or "a chief officer or agent residing in this state," and there is no allegation otherwise. Third, with respect to the many Plaintiffs not attending a school in Jefferson County, the alleged contract they claim to be a beneficiary of was not even arguably "made" or "to be performed" here. For any Plaintiff enrolled in a member institution outside of Jefferson County, the NCAA's purported "membership agreement" with those Plaintiffs' schools could only have been made and performed in Indianapolis or the county where their school is situated. Thus, even if KRS 452.450 applied to Jefferson County-based Plaintiffs, it cannot supply venue for the many other Plaintiffs' claims.

[3] KRS 452.405 is plainly inapplicable to this case, as it provides venue for actions "[f]or the recovery of a fine, penalty, or forfeiture, imposed by a statute," "[a]gainst a public officer," or "[u]pon the official bond of a public officer." KRS 452.405. Plaintiffs do not seek recovery of a fine, penalty, or forfeiture imposed by statute, the NCAA is not a public officer, and Plaintiffs' claims are not upon the bond of a public officer.

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2. Each Plaintiff must independently establish venue, and the few who may have proper venue in Jefferson County cannot anchor the claims of Plaintiffs who do not.

Plaintiffs try to circumvent this problem by anchoring *all* of their claims to three Plaintiffs who allegedly "competed for the University of Louisville," and then sweep in "all other Plaintiffs whose institutions and opponents regularly compete in Jefferson County." (Compl. ¶ 54.) That is not how venue works. While CR 20.01 allows Plaintiffs to "join in one action as plaintiffs if" their individual claims share certain specified qualities, joinder cannot create venue that would not exist if each Plaintiff's claim were filed separately.

The Missouri Supreme Court confronted that precise issue in *State ex rel. Johnson & Johnson v. Burlison*, 567 S.W.3d 168, 172 (Mo. 2019). In that case, dozens of plaintiffs sued Johnson & Johnson and a talc supplier in St. Louis City. One plaintiff allegedly suffered injury in St. Louis City, so under Missouri law venue was proper for her claim there. But other plaintiffs had no comparable connection to St. Louis City (which is an independent city functioning as its own county equivalent). One of the plaintiffs (Blaes) alleged that his wife bought and used the products and was injured in St. Louis County, but the defendants moved to sever that claim and transfer it to the County. Blaes argued that his claim was properly joined with the claims of other plaintiffs, and because venue was proper for those plaintiffs, his claims could proceed in St. Louis City. The Missouri Supreme Court flatly rejected his argument and held "joinder cannot be used to expand venue for separate and discrete claims." *Id.* at 172. The court pointed to Rule 51.01 of Missouri's Rules of Civil Procedure, which states that those rules "shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein." The court explained that Rule 51.01 made clear that "joinder of Blaes' claims with the other claims alleged in the petition cannot extend venue to a county where Blaes' claims could not otherwise be brought and pursued." *Id.* at 175.

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Kentucky law points to the same conclusion. CR 20.01 permits related plaintiffs to join in one action, but it does not enlarge statutory venue. Like Missouri's, the Kentucky's Rules of Civil Procedure "shall not be construed to extend or limit the jurisdiction of any court of this Commonwealth or the venue of actions therein." CR 82. And CR 19.01 confirms that joinder remains subordinate to venue: even an otherwise necessary party "shall be dismissed" if that party objects and joinder would render venue improper. If compulsory joinder cannot override venue, permissive joinder cannot do so either. The Kentucky Court of Appeals has previously recognized that joinder cannot enlarge statutorily prescribed venue. In *Copass v. Monroe Cnty. Med. Found., Inc.*, 900 S.W.2d 617, 619–620 (Ky. App. 1995), the Court held that one plaintiff could not bring claims against multiple defendants in a county where venue was proper as to only one, and the plaintiff's desire to avoid "a multiplicity of suits" did not override statutory venue requirements. In other words, joinder cannot create venue where the statute does not—a plaintiff cannot anchor claims against multiple defendants in a venue that is only proper for one. *See id.* That reasoning applies with equal force here: Plaintiffs cannot bring their separate claims against a single defendant in a county where venue may be proper as to only a few of them.

The same problem arises even if Plaintiffs argue venue under KRS 454.210(4), which allows an action against a nonresident defendant to be brought "in the county wherein the plaintiff resides or where the cause of action or any part thereof arose."[4] With respect to most Plaintiffs, there is no allegation that they reside in Jefferson County. The only Plaintiffs who could even conceivably reside in Jefferson County, or whose claims could have conceivably

[4] To be clear, Plaintiffs have not invoked KRS 454.210(4) as a basis for venue—they have pointed only to KRS 452.405 and 452.450. (Compl. ¶ 54.) And even if they had claimed venue under KRS 454.210(4), that argument fails for an even more basic reason: it applies only when personal jurisdiction exists, and, as explained above, this Court lacks personal jurisdiction over the NCAA here.

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arisen there, are those who allege they are enrolled at a member institution located in Jefferson County. The remaining Plaintiffs lack even a colorable argument for venue here.

III. Plaintiffs' claims have been foreclosed by the Court of Appeals' decision dissolving the erroneously entered first temporary injunction.

At bottom, Plaintiffs' claims are premised on the faulty notion that the NCAA's new age-based eligibility rules should apply to them, even though they already exhausted their eligibility under the rules in place during their collegiate careers and the NCAA decided its new rules should not be retroactive. Those claims were foreclosed by the Court of Appeals' opinion dissolving the first erroneously entered temporary injunction in this case. In its decision, the Court of Appeals stated unambiguously that the "purported latest version of Bylaw 12.6 . . . ***does not apply to the respondents***." *NCAA v. Wells*, No. 2026-CA-1107-I, at 20–21 (Ky. App. Oct. 2, 2026) (emphasis added). It reached this conclusion "even if the NCAA Division I handbook qualifies as a contract, and even if the respondents qualify as 'third-party beneficiaries' of that contract." *Id.* at 20.

The holdings and conclusions of the Court of Appeals are law of the case. Under the law-of-the-case doctrine, once an appellate court "has passed on a legal question and remanded the case to the court below for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case," and "on remand the trial court must strictly follow the mandate of the appellate court." *Inman v. Inman*, 648 S.W.2d 847, 849 (Ky. 1982). An appellate decision "which is supposed to put the issue to rest between the same parties" cannot "be a starting point for new litigation." *Id.* at 850. That the Court ruled on a RAP 20 motion does not alter the fact that those holdings are law of the case, "an iron rule, universally recognized, that an opinion or decision of an appellate court in the same cause is the law of the case for a subsequent trial or appeal." *Svestka v. Oakes*, 2024-CA-

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0748, 2025 WL 1415813, at *6 (Ky. App. May 16, 2025) (quoting *TECO Mech. Contractor, Inc. v. Kentucky Lab. Cabinet*, 474 S.W.3d 153, 158 (Ky. App. 2014)).

Indeed, Kentucky has held for over a century that, when a trial court grants a temporary injunction, "which on application to a judge of this court is dissolved, it must stand dissolved throughout the litigation, and until a final trial," and the appellate ruling "is the law of that case so long as the facts shown in the record are substantially unchanged." *Renshaw v. Cook*, 111 S.W. 377, 383 (Ky. 1908). The appellate determination is "as binding upon everybody concerned as if rendered by the Court of Appeals [then Kentucky's high court] sitting in banc," and "cannot be avoided by bringing a new suit about the same thing, presenting for decision again the same or substantially the same disputed question of law and fact." *Id.*

Plaintiffs' claims seek the same relief—a fifth season under the 2026-27 rules—on the same legal theory and allegations the Court of Appeals has already rejected. The Court of Appeals' holding controls, and Plaintiffs' claims cannot entitle them to the relief requested.

IV. Plaintiffs fail to state a claim for breach of contract.

A. Plaintiffs' newly-asserted theory breach of contract fails as a matter of law.

In their third amended complaint, the Wells Plaintiffs assert a new breach of contract theory: they claim that the NCAA's new eligibility rules *do* apply to them, and argue that the NCAA is "breaching its obligations to them under the New Manual by declaring them ineligible." (Compl. ¶¶ 122–24.) But, as explained above, the Court of Appeals rejected this theory. *NCAA v. Wells*, 2026-CA-1107-I, at 15–21 (Ky. App. Oct. 2, 2026). The court explained that the NCAA's bylaws are "legislation," which under Kentucky law are presumed to apply prospectively and cannot "applied retroactively . . . unless the amendment expressly provides for retroactive application." *Id.* at 19, 21. And since "[n]othing in the text of" the 2026-27 Bylaw

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12.6 "expressly provides that this legislation was designed to have retroactive application," the new eligibility rule "does not apply to the" Plaintiffs. *Id.* at 20–21.

In any event, Plaintiffs' self-serving interpretation of the 2026-27 Bylaw 12.6 requires them to ignore other provisions of the new Manual that make clear they are ineligible. For example, Bylaw 12.01.1, titled "**Eligibility for Athletics Participation**," makes clear that "[o]nly a student-athlete who meets the governing athletics eligibility legislation ***and interpretations*** is eligible for intercollegiate athletics participation." (2026-27 Manual at 33 (emphasis added).) And the actual legislation approved by the NCAA DI Cabinet expressly states that the new eligibility rules became effective August 1, 2026, and "may be applied to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026." (Proposal 2026-44, attached as **Exhibit A**.)[5] Thus, the text of the legislation approved by the NCAA unambiguously states that the new eligibility rules do not apply to Plaintiffs, and their breach of contract claims should be dismissed as a matter of law. The NCAA's interpretation is fair and reasonable where the Court of Appeals has held it is the most natural interpretation of the Manual, and the legislation the Cabinet voted on is explicit that it does not apply to Plaintiffs.

B. Plaintiffs' are not third-party beneficiaries of the Manual.

Plaintiffs allege they are "intended third-party beneficiaries of the membership agreement between the NCAA and its member institutions, which incorporates the NCAA's Bylaws as set forth in" the Manual. (Compl. ¶ 119.) But Plaintiffs do not provide a copy of the "membership agreement," and the Manual does not identify them as express-third party beneficiaries.

[5] The legislative proposal is central to Plaintiffs' breach-of-contract claim because Plaintiffs contend the 2026-27 Manual is a contract. The text the Cabinet approved is therefore properly before the Court and may be considered without converting this motion to one for summary judgment. *Netherwood*, 514 S.W.3d at 564.

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Even assuming *arguendo* that the Manual is a contract between the NCAA and its member institutions, Plaintiffs are not third-party beneficiaries with standing to sue. The third-party beneficiary theory "is an exception to the general rule that only parties to a contract may enforce or be bound by its provisions." *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581, 595 (Ky. 2012). Under Kentucky law, not every third party who benefits from a contract has standing to enforce it. The third-party beneficiary exception is narrow and applies only to a specific subset of beneficiaries. First, the parties must have intended the third party to benefit from their contract; an incidental beneficiary cannot enforce it. *Phoenix Am. Adm'rs, LLC v. Lee*, 670 S.W.3d 832, 839 (Ky. 2023). But even then, not every intended beneficiary acquires such a right. In Kentucky, only two specific types of intended beneficiaries meet the third-party beneficiary exception, "namely, a donee or a creditor beneficiary." *Id.*; *Sexton v. Taylor Cnty.*, 692 S.W.2d 808, 810 (Ky. App. 1985) (explaining that third party beneficiaries "fall into two classes—donee beneficiaries and creditor beneficiaries"). A "donee beneficiary" is a party intended to receive the benefits of a contract as a gift. *Phoenix*, 670 S.W.3d at 839. A "creditor beneficiary" is a party to whom a debt or obligation is owed by the promisee, and is intended to receive "the performance of the contract in satisfaction" of that debt or obligation. *Id.*

Plaintiffs are neither donee nor creditor beneficiaries of the Manual. While they summarily allege they are "intended third-party beneficiaries," (Compl. ¶ 119), they do not allege that they are donee or creditor beneficiaries, nor any facts from which it could be inferred they are such beneficiaries. Plaintiffs do not allege the NCAA and its member institutions intended for them to receive any purported benefits of the Manual as a gift. To the contrary, the only plausible inference to be made from their allegations is that whatever benefits Plaintiffs were supposedly intended to receive were not a gift, but based on their participation in

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intercollegiate athletics. Nor do Plaintiffs allege being a creditor of the NCAA or any member institution, much less that the NCAA or its members intended Plaintiffs to receive performance of the Manual in satisfaction for some debt owed to them.

In any event, the Manual reflects that it is primarily intended to create a governance framework for the sponsorship of DI sports, not to confer direct, enforceable contract rights to student-athletes. If the Manual is a contract, then "like other contracts [it must] be construed as a whole so as to give effect to the parties' intent as expressed in the language they chose." *Baker v. Magnum Hunter Prod., Inc.*, 473 S.W.3d 588, 592 (Ky. 2015); *Chicago Veneer Co. v. Anderson*, 105 S.W. 108, 109 (Ky. 1907) (intent of the parties "is to be collected, not from detached parts of the instrument, but from the whole of it, and to this end all parts of the writing, and every word in it, will, if possible, be given effect"). The NCAA's member institutions created the Manual as a set of rules to which they agreed to be bound. (*See* Manual, Const. pmbl.) It imposes obligations on institutions as conditions of continued membership in the NCAA—not promises to deliver benefits to student-athletes. (*Id.*; *see generally id.*, Bylaw 12.) The NCAA's "Principles," described in Article I of the NCAA's Constitution, highlight that it imposes "responsibilit[ies] of each member institution," not rights guaranteed to student-athletes. (*Id.*, Const., art. 1 §§ A, C, D, E at 2.) To the extent that any benefits flow from the Manual, they are incident to NCAA participation and the duties run from ***member institutions to student-athletes***, not from the NCAA directly. (*See, e.g.*, Manual, Const. art. I ¶¶ A, C, D, E) (denoting the responsibilities of "each member institution" vis-à-vis student-athletes). The Manual identifies the specific individuals who have standing to seek a restoration of a student-athlete's eligibility—the exact relief Plaintiffs seek here—none of whom are the student-athletes themselves. (*See* Bylaw 12.10.2.)

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Multiple courts have concluded the Manual is not a contract that may be enforced by non-party student-athletes. In *Rose v. NCAA*, 346 F. Supp. 3d 1212 (N.D. Ill. 2018), former Purdue University football players alleged that student-athletes were "the intended third-party beneficiaries of the contract between the NCAA and Purdue University" regarding implementation of NCAA safety rules. *Id.* at 1229 (internal quotation marks omitted). The court rejected the claim because the plaintiffs pointed only to "the NCAA's rules, regulations, purpose, and principles" as evidence of the parties' intent—which "[u]nder Illinois law . . . is not enough." *Id.*; *see also Doe 1 v. NCAA*, No. 1:23-cv-00542, 2024 WL 3293591, at *21 (S.D. Ind. July 2, 2024) (Manual's aspirational goals regarding student-athlete welfare do not evidence "an intent to create a direct contractual obligation" to individual student-athletes); *Hall v. NCAA*, 985 F. Supp. 782, 796–97 (N.D. Ill. 1997) (same). Plaintiffs' claims fail for the same reason.

Finally, many Plaintiffs do not allege that they are enrolled at an NCAA DI institution. As a court in Cook County Illinois recently held, "asserted rights [as] a third-party beneficiary" in the Manual "presupposes" that plaintiff "is a student and is actually in college," when plaintiff "has not shown either"; "[a]n order certifying plaintiff eligible would certify him eligible for nothing in particular" and "would be an order about a hypothetical season, at a hypothetical school, under a hypothetical scholarship." (*Avila v. NCAA*, at 4, 17–18, attached.)

C. The implied covenant of good faith and fair dealing does not save Plaintiffs' breach of contract claims.

Plaintiffs do not premise their breach of contract claim on an alleged failure of the NCAA to comply with a clear, justiciable requirement of its Bylaws. Rather, they complain that, in their subjective view, the NCAA's membership acted unfairly, and inconsistently with the implied covenant of good-faith and fair dealing, by choosing to apply the new age-based eligibility rules

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on a prospective basis. But Plaintiffs' allegations relating to the implied covenant of good faith and fair dealing do not save their contract claim.

While Kentucky law recognizes the obligation of good faith performance in contracts, violation of the good faith covenant alone does not give rise to an independent cause of action. *J. S. v. Berla*, 456 S.W.3d 19, 25 (Ky. App. 2015). Other than in insurance contracts, Kentucky does not recognize an independent tort for breach of good faith and fair dealing. *Id.*

Further, the implied covenant of good faith and fair dealing cannot prevent the NCAA from exercising its express contractual rights. *Farmers Bank and Tr. Co. of Georgetown, Kentucky v. Willmott Hardwoods, Inc.*, 171 S.W.3d 4, 11 (Ky. 2005). The Manual expressly allows for its own amendment, including amendments to Division I eligibility rules, (Bylaw 9.2), and Plaintiffs do not allege that the NCAA failed to follow that process. Plaintiffs cannot sustain a claim for breach of the implied covenant of good faith and fair dealing based on the NCAA's exercise of its express right to amend its own eligibility rules. *Farmers Bank*, 171 S.W.3d at 11; *see also* 23 Williston on Contracts § 63:22 (4th ed.) (“”[T]here can be no breach of the implied promise or covenant of good faith and fair dealing where the contract expressly permits the actions being challenged, and the defendant acts in accordance with the express terms of the contract.”).

The same is true for Plaintiffs' claim that the NCAA violated the implied covenant of good-faith and fair dealing by interpreting the new rules as not applying to them. The Manual expressly states that “[o]nly a student-athlete who meets the governing athletics eligibility legislation and interpretations is eligible for intercollegiate athletics participation in a particular sport.” (Bylaw 12.01.1.) The “governing eligibility legislation” approved by the Cabinet, Proposal 2026-44, expressly states that the new eligibility rules would not apply to student-

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athletes who did not have seasons of competition or years of eligibility remaining under prior rules:

> **Effective Date:** August 1, 2026; may be applied to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026. May be applied to student-athletes who initially enroll full time in any collegiate institution in the 2026-27 academic year. (Previous rules may be applied to student-athletes who enrolled before or enroll during the 2026-27 academic year; however, no waivers will be available. Additionally, the legislated exceptions to the previous season of competition rules do not apply to competition that occurs during the 2026-27 academic year through the exhaustion of the student-athlete's Division I eligibility.) Applicable to student-athletes who initially enroll full time in any collegiate institution in 2027-28 and thereafter.

(Proposal 2026-44.) And by making eligibility subject to the governing "interpretations," the Manual is explicit that application of the new rules is subject to the NCAA's interpretation of those rules. If the Manual is a contract, it gives the NCAA the express right to interpret its eligibility rules, and Plaintiffs cannot sustain a breach of implied covenant of good-faith and fair dealing based on the NCAA's exercise of this right.

D. Binding Kentucky precedent precludes the Court from substituting its own policy judgments for that of the NCAA.

Voluntary athletic associations, and the NCAA specifically, "should be allowed to 'paddle their own canoe' without unwarranted interference from the courts." *NCAA v. Lasege*, 53 S.W.3d 77, 83 (Ky. 2001). In *Lasege*, the Supreme Court cautioned lower courts against substituting their own judgment for that of the NCAA when it comes to eligibility matters. *Id.* at 85. Indeed, "[t]he NCAA's eligibility determinations are entitled to a presumption of correctness." *Id.* "Voluntary associations may adopt reasonable bylaws and rules which will be deemed valid and binding upon the members of the association unless the bylaw or rule violates some law or public policy." *Kentucky High Sch. Athletic Ass'n v. Hopkins Cnty. Bd. of Ed.*, 552 S.W.2d 685, 687 (Ky. App. 1977), *overruled on other grounds by Lasege*, 53 S.W.3d at 89. "It is not the responsibility of the courts to inquire into the expediency, practicability or wisdom of the bylaws and regulations of voluntary associations." *Id.* And "the courts will not substitute their

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interpretation of the bylaws of a voluntary association for the interpretation placed upon those bylaws by the voluntary association itself so long as that *interpretation* is fair and reasonable." *Id.* (emphasis added).

This makes sense as a theoretical matter—deciding whether an association's bylaws themselves are fair is a policy question, not a legal one. As the United States Supreme Court recently explained in the context of executive policy: "judges may have views on which policy approach is better or fairer. But judges are not appointed to make those policy calls. We merely ensure, in justiciable cases, that" the law is followed. *Noem v. Perdomo*, 146 S. Ct. 1, 5–6 (2025). A Tennessee federal court applied this same principle to the NCAA's ylaws, explaining, "[t]his Court is a court of law, not policy. What the NCAA ***should do*** as a policy matter to benefit student athletes is beyond the reach of the [law] and by extension, this Court." *Zeigler v. NCAA*, No. 3:25-cv-226-KAC-JEM, 2025 WL 1671952, at *5 (E.D. Tenn. June 12, 2025).

Plaintiffs contend that the NCAA's decision not to apply the new rules to them is, in their subjective opinion, unfair. That is not the type of lawsuit that Kentucky courts should entertain. *Hopkins Cnty. Bd. of Ed.*, 552 S.W.2d at 687. When a plaintiff challenges the wisdom of a voluntary association's bylaw, the case presents a non-justiciable question of policy. *Id.* ("It is not the responsibility of the courts to inquire into the expediency, practicability or wisdom of the bylaws and regulations of voluntary associations."). Whether the new eligibility rules should apply retroactively was, and remains, a policy judgment for the NCAA's membership.

E. Plaintiffs fail to establish a breach of contract.

Again, assuming *arguendo* that the Manual is a contract and that Plaintiffs have standing to enforce it, Plaintiffs' breach of contract claim fails as a matter of law because the plain text of the Manual demonstrates the purported "breaches" they allege are not breaches at all. *First*, Article I-C does not apply to the NCAA. The first sentence vests the "responsibility of each

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member" to ensure the "integrity of intercollegiate athletics." (Manual at 2.) And when it discusses "[a]ll individuals associated with intercollegiate athletics programs and events" when describing "fairness," it contextualizes the regulated individuals to "the rules of *their* conferences." (*Id*.) By identifying "each member" and then classifying "all individuals" as it relates to "their conferences," the Manual excludes the NCAA from governance under this provision. Accordingly, this requirement does not bind the NCAA.

Second, Plaintiffs contend that the NCAA breached the covenant of good faith and fair dealing because it has authority under Bylaw 12.6.6 to grant discretionary waivers in "extenuating circumstances," which it has granted to former professional athletes and COVID-19 era student-athletes, but not granted to Plaintiffs. (*E.g.*, Compl. ¶ 126.) All of that is wrong.

Bylaw 12.6.6—which exists under the 2025-26 Manual but not under the 2026-27 Manual given the elimination of waivers—has nothing to do with professional competition and does not authorize the Committee on Student-Athlete Reinstatement to *sua sponte* grant a "class-wide" waiver. It allows student-athletes to receive an additional season of competition in "extenuating circumstances," which are narrowly defined to encompass life events that made it impossible for a student-athlete to compete in a season of competition in which they were eligible, such as life-threatening injury or illness, extreme financial difficulties because of a specific event, or the institution dropping the student-athlete's sport. (*See* Bylaw 12.6.6.1.) Plaintiffs identify nothing of the sort justifying them receiving more eligibility under the Manual.

Moreover, for the Committee on Student-Athlete Reinstatement to exercise its "authority to review and grant a waiver" under Bylaw 12.6.6, it must have a waiver request to review and grant in the first instance. But Plaintiffs do not allege that any such waivers were ever sought on

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their behalf. It is unclear how the NCAA could have "refus[ed] to exercise available waiver authority" (Compl. ¶ 126) when it was never asked to do so.

Third, Plaintiffs' allegations regarding Section 16.13.1 suffer the same shortcomings as Article I-C. It relies on permissive language—"[a]n institution *may* provide . . ."—but does not create any obligation on the NCAA. Because the NCAA does not have an obligation to Plaintiffs under the benefits-pool eligibility provision, it cannot be said that the NCAA breached any obligation to Plaintiffs.

Fourth, all of Plaintiffs' theories violate elementary canons of contract interpretation. Specific provisions in a contract govern over the general, *Triton Servs., Inc. v. Century Constr., Inc.*, No. 2:19-CV-135 (WOB-CJS), 2022 WL 789009, at *5 (E.D. Ky. Mar. 14, 2022), and contracts must be construed to avoid rendering any provision superfluous or meaningless. *Smith v. Crimson Ridge Dev., LLC*, 410 S.W.3d 619, 621 n.2 (Ky. App. 2013). The versions of the Manual that governed Plaintiffs' participation specifically guaranteed no more than four seasons of competition. But Plaintiffs proffer an interpretation that would supplant this specific requirement with generalized duties and inapplicable exceptions that—under Plaintiffs' reading—would guarantee them the opportunity to compete for five seasons. Plaintiffs' interpretation would render the express four-seasons limitation meaningless.

Accordingly, Plaintiffs have not articulated any coherent theory of breach. They received the full measure of eligibility they were "promised" under the Manual: the opportunity to participate in four seasons of competition. The premise of Plaintiffs' contract claim is therefore fundamentally flawed—they received exactly what they were promised under the "contract" they allege was breached, and their claims fail as a matter of law.

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V. Plaintiffs fail to state a viable KCPA claim.

Plaintiffs' claims under the KCPA are also fatally defective. To assert a KCPA claim, a plaintiff must fall within the class of persons protected by KRS 367.220. *Skilcraft Sheetmetal, Inc. v. Kentucky Mach., Inc.*, 836 S.W.2d 907, 909 (Ky. App. 1992). That class is persons who purchase or lease goods or services primarily for personal, family, or household purposes and suffer an ascertainable loss because of a practice prohibited by KRS 367.170. KRS 367.220.

Plaintiffs did not purchase anything from the NCAA. "Claims may only be brought under the KCPA by individuals who personally purchase goods or services *from a merchant*." *Keaton v. G.C. Williams Funeral Home, Inc.*, 436 S.W.3d 538, 546 (Ky. App. 2013) (emphasis added). In other words, a claim under KRS 367.220 lies only against the entity from whom the good or service was purchased. And since Plaintiffs allege that they merely "acquire[d]" their "education, room, board, and other benefits" from the NCAA, but do not allege—and could not truthfully allege—that they "purchased" those things from the NCAA, their KCPA claims fail.

Even if Plaintiffs had purchased an education, room, and board from the NCAA (they did not), as a matter of law those purchases would not have been "for personal, family or household purposes" as required by KRS 367.220. *Suhail v. University of the Cumberlands* is instructive. 107 F. Supp. 3d 748 (E.D. Ky. 2015). In *Suhail*, the plaintiffs insisted that they "did not enroll in the [University's] Program for commercial purposes" and that "[t]heir enrollment [was] part of their quest in obtaining higher education and possibly moving on to obtaining licensure and prescriptive authority in the future." *Id.* at 759. Yet "[e]ven considering these statements in the light most favorable to the Suhails," the court could not conclude "that the Suhails decision to pay tuition and seek a degree from the University was '*primarily* for personal . . . purposes.'" *Id.* (quoting KRS 367.220). As the court recognized, "[t]he impetus behind this lawsuit is that the Suhails have been unable to obtain licensure and prescriptive authority—recognitions that exist

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to qualify individuals for employment and compensation." *Id.* Put differently, the plaintiffs had paid for their education to gain employment and compensation opportunities.

The same is true of Plaintiffs here. Plaintiffs do not allege any personal purpose in seeking to obtain an additional year of eligibility, but the opportunity for additional compensation and career development. "Under these facts, they cannot maintain a claim under the KCPA." *Id.* Nor have Plaintiffs identified any ascertainable financial loss. While Plaintiffs contend that they have the opportunity to ***gain*** a benefit if they obtain additional eligibility (i.e., another year of "NIL and revenue-sharing income" (Compl. ¶ 135)), they do not allege that they have suffered a ***loss*** due to the NCAA's alleged conduct.

VI. Binding Kentucky Supreme Court precedent forecloses Plaintiffs' request to enjoin the NCAA's "Rule of Restitution."

In addition to Bylaw 12.6, Plaintiffs ask the Court to enjoin Bylaw 12.9.4.2, referred to as the "Rule of Restitution." That rule "allows the NCAA to seek restitution from member institutions who permit student-athletes found ineligible by the NCAA to compete for their athletic teams pursuant to court orders which are later vacated." *Lasege*, 53 S.W.3d at 82 (describing the Rule of Restitution, which at the time was numbered Bylaw 19.8). According to Plaintiffs, the Rule of Restitution's "continued availability would chill member institutions from rostering Plaintiffs even if this Court grants the relief" they request. (Compl. ¶ 137.)

The Kentucky Supreme Court rejected that argument 25 years ago in *Lasege*. The Court explained that "[b]y becoming a member of the NCAA, a voluntary athletic association," each member institution "agreed to abide by its rules and regulations." *Lasege*, 53 S.W.3d at 87. The Rule of Restitution "is one of those regulations, and it specifically provides that the NCAA can attempt to restore competitive equity by redistributing wins and losses and imposing sanctions upon a member institution which allows an ineligible player to participate under a subsequently-

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vacated court order, even if that order *requires* the institution to allow the player to participate." *Id.* The Court emphasized that ***there is no such thing as a "risk-free" injunction***. *Id.* at 88 (emphasis added). "In fact, . . . the concept of 'risk-free' injunctive relief is unheard of—CR 65.05 requires the party in whose favor the injunction is granted to post a bond and wrongfully enjoined parties may recover compensatory damages." *Id.* at 88.

Like the trial court in *Lasege*, Plaintiffs' "belief that the NCAA's Restitution Rule 'thwarts the judicial power' is simply without foundation." *Id.* The Rule "does not purport to authorize interference with any court order during the time it remains in effect, *but only authorizes restitutive penalties when a temporary restraining order is ultimately dissolved and the challenged eligibility rule remains undisturbed in force*." *Id.* (emphasis added).

Even if the Rule of Restitution "would deter aggrieved student-athletes from seeking judicial redress because of fears that their efforts would only hurt their teams in the long-run" or "created a disincentive for NCAA member institutions to allow players whose eligibility has not yet been finally adjudicated to play in games or other athletic events," "[n]either conclusion would justify" enjoining the Rule. *Id.* "The decision to seek injunctive relief will always involve a calculated risk on the part of the plaintiff, and those with meritorious claims will decide to proceed." *Id.* at 88–89. Accordingly, to the extent that Plaintiffs' claims seek to enjoin the Rule of Restitution and the Ghost Transfer Rule—to which the same analysis applies—their claims fail as a matter of law.

CONCLUSION

For these reasons, this Court lacks personal jurisdiction over the NCAA and is an improper venue, and Plaintiffs have failed to state a claim. Accordingly, all Plaintiffs' claims should be dismissed, with prejudice, under CR 12.

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Respectfully submitted,

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DONOVAN BRANCH, JORDAN HERMAN, BRYSON TAYLOR, JOEY SPALLINA, BILLY DWAN, LUKE RHOA, FINLAY THOMSON, DMON BRINSON, MICHAEL LEO, MADDY WHITMAN, AARON TOGURI, PATRICK CROGAN, FINN THOMSON, Plaintiff, v. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, Defendant	**Court Use Only**
Attorney or Party without Attorney Peter J. Schaffer, Esq. Attorney for Plaintiffs Andrea Ahn Wechter, Esq. Attorney for Defendant	Case Number: 26CV32732 Division: 209

TRANSCRIPTIONIST'S TRANSCRIPT/FTR PROCEEDINGS

The following hearing was held on August 12, 2026, before The Honorable J. Eric Elliff, Judge of the Denver District Court.

This transcript is The Judge's Ruling on the Motion for Injunctive Relief in its entirety as requested by the Dorsey & Whitney, LLP.

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(requested portion starts at 3:47:33 p.m. FTR recording time)

THE COURT: All right, these are findings in 26CV32732, Branch versus NCAA. We're here on a hearing on a preliminary injunction motion and I will get to the merits in a moment. I did raise the issue of jurisdiction originally and I do find that I do not have jurisdiction over the vast majority of the Plaintiffs in this case. The case I rely on and that I find persuasive is *Keanaaina versus NCAA*, that is a Westlaw cite of 26 Westlaw 1213385 authored by Judge Wang over in Federal District Court. We have, by my count, 11 named plaintiffs in this case and what *Keanaaina* counsels, and what is true, I don't – I would say I don't – I like *Keanaaina* because it is on point but it – the law that it espouses is not controversial. There is general jurisdiction and there is specific jurisdiction. General jurisdiction is a situation where the Court, this Court, would have jurisdiction over the Defendant for all purposes and that would suggest that-. So, for example, if the NCAA were headquartered here or if their Articles of Incorporation were filed here or some other significant contact with the State of Colorado or this judicial district which due process would then allow me to assert general jurisdiction over them. That – we do not have that here. Yes, there are five Division One schools in the state but that is a small fraction of the NCAA's total jurisdiction nationwide, it's some fraction of a percentage, and the Supreme Court requires much, much more than that. It requires substantial, continuous, and systematic – and a systematic course of business, and the Supreme Court further counsels that if a finding of general

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jurisdiction would then allow-. Let me state it differently. A finding of general jurisdiction based on a set of facts which would then invoke general jurisdiction in every other state suggests that that is an incorrect analysis Certainly, if I were to rule that I have general jurisdiction over the NCAA because there are five Division One schools in this state, that analysis would apply across – across the country to all 50 states. So I do not have general jurisdiction here, nor did anybody really argue that I did have. So that brings us to the question of specific jurisdiction and specific jurisdiction is when a Defendant purposely avails itself in a way that invokes the laws of this state or individuals within the state. The Plaintiff's injuries must arise out of the Defendant's forum-related activities. So, with that, we have our named Plaintiffs. We – I'm going to just start with Mr. Crogan. He went to school in Georgetown, lives on the east coast, may have played a game here, I don't remember, but I would say, as to those Defendants who may have played one or two games in the state of Colorado over the course of their four year athletic careers, that is not enough. They came here to play the game. Yes, it was under the auspices of the NCAA rules but it was not the NCAA purposefully availing themselves as to those particulate Plaintiffs and, in fact, even if it was, it wasn't as to the issues we're facing right now. So just one or two games played in Colorado doesn't so it. So that eliminates Mr. Crogan. Mr. Thomson is a Toronto resident who played lacrosse at Syracuse, like Mr. Rhoa, R-H-O-A. Again, they may have played in Colorado but they played – they may have played a game in

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Colorado but they went to school in Syracuse, they were on the Syracuse lacrosse team. Mr. Rhoa is a Maryland resident and there is no jurisdiction over misters Crogan, Thomson, or Rhoa by this Court for the purposes of this case or, probably, anything else. Mr. Herman is a name that was mentioned in the briefs and briefly in the – in the first amended complaint. He's a Sacramento State University football player or former football player. He wants to go to Colorado State and that is all I know about him and that is not enough for me to exercise jurisdiction with respect to him in this case. Mr. Toguri played lacrosse in Jacksonville. He is a Canadian resident and that is all I know about him. He certainly – to the extent he's had any contact with Colorado, it is the same analysis before. He's played maybe a couple of games here and that is not sufficient. Mr. Leo is another Syracuse lacrosse player and a New York resident. Again, not enough to exercise jurisdiction. Mr. Taylor played at Utah State. He's a Georgia resident and he wants to return to Utah State, though there are difficulted with that. No jurisdiction over Mr. Taylor based on no purposeful availment by the NCAA. And, likewise, Mr. Branch, a University of Connecticut football player, Florida resident, wants to transfer to Colorado State but does not live here and so, therefore, the Court cannot exercise jurisdiction with respect to Mr. Branch. That leaves Mr. Brinson and Ms. Whitman. Mr. Brinson is living in Colorado, in Fort Collins, he has a, what we hope is a pending job offer from Colorado State as an assistant coach. The NCAA rules currently render him ineligible to play further for Colorado State or any other football team and, likewise,

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Ms. Whitman, who lives in Eagle County, votes in Eagle County, has a Colorado driver's license, and goes to school in Northwestern – at Northwestern on their track and cross country teams. With respect to Ms. Whitman and Mr. Brinson, *Keanaaina* suggests, again, that I don't have jurisdiction over, even as to those two individuals with respect to this case because the Plaintiffs mere presence in the state does not suggest purposeful availment. And, again, when we're talking jurisdiction, we're talking jurisdiction over the NCAA, the Defendant, not necessarily the Plaintiffs. And so for the Plaintiffs to simply be present here, in the Court's view, doesn't convey sufficient jurisdiction over this Court. So, I am – but I am going to go further because there is a small possibility, though not insignificant, that I am wrong about Mr. Brinson and Ms. Whitman and I do want to go further and go through the preliminary injunction factors because I think they will, if not be informative in other cases, they will be informative in this case. The question that came up is well, under what legal theory are the Plaintiffs proceeding and that case is answered – that question is answered by *Bloom versus NCAA* and that is at 93 P.3d 621 and that case, which is a good, enforceable Court of Appeals law, that case says that athletes playing under the auspices of the NCAA are third party beneficiaries of the NCAA rules. So if – and the NCAA rules, according to *Bloom*, are – constitute a contract so that, if – and within the contract, there's an implied duty of good faith and fair dealing. So if the, under *Bloom*, if the student athlete is playing at an NCAA sanctioned school, here Division One, and if the NCAA unreasonably

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takes action under its existing rules, the duty – the student athlete is a third party beneficiary of the contract and, therefore, can bring a – a breach of duty, have good faith and fair dealing contract claim and *Bloom* says that that is a viable claim. So there is a legal hook and that brings us to, under that legal hook, should the Court issue a preliminary injunction. And there are six factors, all of them actually, sometimes some of these factors really don't apply but they're all of some import here. The first, of course, being a reasonable probability of success on the merits, and that brings me back to the contract analysis. Each and every one of these Plaintiffs played their eligibility out under the prior NCAA rule, which is the – the four out of five rule. They – none of them, near as I can remember, applied for any sort of extension or a period of extended eligibility and they got what they were entitled to at the time, and that is four years of an ability to play in the sport of their choice at the school of their choice, and then the NCAA changed the rule. They changed the contract. It is a new contract. It is a contract that, in my view, does not apply to the Plaintiffs who rode out their eligibility under the prior rule. So we have a new contract with new rules and the – the gist of Plaintiff's complaint is we like the new rule better. We want the new rule to apply and you, NCAA, are breaching the duty of fair – of good faith and fair dealing when you don't apply the new rule to us. That – that, to me, is a stretch. It's no different than if I go out and I buy a new car at the full suggested retail price and then my partner goes out and buys the same car and, you know, he gets 10,000

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dollars off. Well I want that contract but I'm not entitled to that contract. I entered into my own contract under different rules and a different set of agreements. So I do not find that there's a reasonable probability of success on the merits in this case for the Plaintiffs. A danger of real, immediate, and irrevocable injury. Now, here, I do want to say I was really impressed with the testimony of everybody that appeared live. I appreciate that testimony. I think everybody understands that the player eligibility system of the NCAA is something of a dog's breakfast. They're trying to change it, I guess, but, you know, just read the sports page any day of the week and, you know, there – it's just no, to me, sometimes rhyme or reason as to what the NCAA does and I get that there is harm in not being able to play a fifth season, particularly with respect to Mr. Brinson and Mr. Branch who, you know, potentially could play a fifth season, hopefully have some success and then maybe leverage that into an NFL career, possibly, but that is only one factor. likewise to Ms. – Ms. Whitman. No plain, speedy, and adequate remedy at law. I think it's the same analysis as I just articulated. They either get an injunction or they don't get an injunction, money, damages, or other legal remedy, probably, isn't sufficient here. The fourth factor is the granting of a preliminary injunction will not disserve the public interest. Now, here, what is the public interest? The NCAA would have it that the public interest is the certainty that incoming freshman have that they will be able to play a maximum of five years starting at age 19 or when they enroll but without the ability for any sort of waiver and extension and what the

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Plaintiffs in this case are seeking is the same thing, but they're seeking it for their own benefit. So – so there really isn't a public interest here. Certainly, the Plaintiffs have an interest in an extension but I didn't hear, nor do I perceive, any sort of public interest that would be served if I were to enjoin the NCAA in this matter. The balance of equities favors the injunction. Again, I think the public interest piece of that applies to this factor as well but I was also struck by, you know, the sincere testimony of the witnesses that they didn't want to displace anybody and they wanted to – and they wouldn't even pursue this if they thought that it was going to cost somebody else a slot in the roster and I appreciate that. I think it's generous but I would also note that they testified that when they started their athletic careers, they sometimes lost out playing time to older students and, you know, the testimony was I could have played more, I wanted to play more, but there are these older, more developed students ahead of me, some of whom had extended eligibility, and they cost me playing time. And that very same logic applies here, you know. If I were to grant the injunction and Mr. Brinson, for example, joined the Colorado State Football Team, you know, there's very – there's a very high likelihood that some younger, new athlete would be – would be cost playing time. So, at the very best, it's a wash in terms of balance of equities. Finally, preserving the status quo. I think it is important to note that that is not what I am being asked to do here. What I am asked – what I am being asked to do here is to mandate behavior. I am being asked to order the NCAA to open the portal. I am

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asking – I am being asked to order the NCAA to waive or forgive payments that some of these athletes may have received on a professional basis and, you know, I get the – the argument that, well, it's a narrower form of relief, and it is in that it involves only 11 Plaintiffs but it is a significant ask and it is a mandatory ask and that is not a preservation of the status quo. The preservation of the status quo is we have the current 4-5 rule in place and, as the NCAA argued, and I agree, you've got to draw the line somewhere and the line was drawn in a way that is unfortunate for the Plaintiffs in this case but does not merit an injunction of the sort that is being asked for here. Let me make sure I don't have any other-. Oh, and I guess I would say, and I don't mean to pile on, Ms. Whitman, but she is fully protected by *Wisne* and so, you know, going back to the irreparable harm prong, *Wisne*, she is absolutely four square on *Wisne's* prohibition. She wants to go back to Northwestern, there's no portal issue. *Wisne* directs the NCAA to allow her to do that. Yes, *Wisne* is being appealed but I have no doubt that, if I were to issue an injunction in this case, it would go up as quickly as possible and I will tell you that our Supreme Court is not shy about Rule 21 motions these days. So, you know, the fact that *Wisne* is being appealed is no different than this case being appealed, which I'm sure it would be, but – and may yet be, but I am denying the motion for a preliminary injunction both – based both on the fact that I don't have jurisdiction over the vast majority, if not all, of these Plaintiffs but also on the fact that the MacFarlane factors simply haven't been satisfied here. All right, thank

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you all for your presentations. I really appreciate it. We will stand in recess.

MR. SCHAFFER: Your Honor, one quick-

THE COURT: Sure.

MR. SCHAFFER: If *Wisne* is overturned with regard to Ms. Whitman, would we be entitled to another hearing?

THE COURT: I am not going to give you an advisory ruling today on that, Mr. Schaffer.

MR. SCHAFFER: Thank you, Your Honor.

THE COURT: Thank you all.

(requested portion ends at 4:09:25 p.m. FTR recording time)

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TRANSCRIPTIONIST'S CERTIFICATE

The above and foregoing is a true transcript of the hearing in proceedings taken in the above-entitled case, which was audio recorded in the Denver District Courts at the time and place set forth above, which was listened to and transcribed to the best of my ability.

Done this 13th day of August, 2026.

/s/ Charles A. Aaron
Charles A. Aaron, Transcriptionist

/s/ Cheryl Bassett
Charleigh Transcription, LLC
786 Gussy Lane
Benton, AR 72019

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EFILED IN OFFICE
CLERK OF SUPERIOR COURT
COBB COUNTY, GEORGIA
26CV05617
HENRY R. THOMPSON
AUG 05, 2026 11:35 AM
Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

RANDALL GODFREY JR., et al,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Defendant.

EMERGENCY INTERLOCUTORY INJUNCTION REQUESTED

Civil Action File No.: 26CV05617

ORDER GRANTING INTERLOCUTORY INJUNCTION

On this day, the Court considered Plaintiffs' Motion for Interlocutory Injunction. After considering the briefing of the Parties including evidence referenced therein, testimony presented at a hearing on July 29, 2026 and argument of counsel, the Court joins the courts of Ohio,[1] Tennessee,[2] Colorado,[3] New Jersey,[4] Texas,[5] and Oklahoma[6] in concluding the NCAA's application of its Bylaws to student-athletes violates its contractual obligations to those athletes in connection with the NCAA's rules eligibility rules concerning "seasons of competition." As a result, the Court concludes the Motion is well-taken and it is GRANTED for the reasons set forth below.

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[1] Borovicani v. NCAA, Case No. A2603352, Court of Common Pleas, Hamilton County, Ohio, July 9, 2026 Order Granting Preliminary Injunction.

[2] Washington v. NCAA, Case No. 26-0896-III, Chancery Court of Davidson County, Tennessee, July 31, 2026 Order Granting Temporary Injunction.

[3] Wisne v. NCAA, Case No. 1:26-cv-03063-CNS-KAS, United States District Court for the District of Colorado, July 31, 2026 Order Granting Preliminary Injunction.

[4] Kromah v. NCAA, Case No ESX-C-000165-26, Superior Court of New Jersey (Essex County), July 30, 2026 Bench Order Granting Preliminary Injunction.

[5] Wheeler v. NCAA, Case No. 2026-2074-5, 414th Judicial District Court of McLennan County, Texas, July 29, 2026 Order Granting Motion for Temporary Restraining Order.

[6] Oates v. NCAA, Case No. CJ-26-325, District Court of Payne County, Oklahoma, July 29, 2026 Order Granting Motion for Temporary Restraining Order.

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JURISDICTION AND VENUE

Plaintiffs assert jurisdiction is proper in this Court because the NCAA has more than 15 member institutions in the State of Georgia, and routinely conducts business in Georgia and directed at citizens of Georgia through its rulemaking activities. Plaintiffs further assert the Court may exercise personal jurisdiction over the NCAA because it (a) currently transacts substantial business within Georgia; (b) conducts athletic competitions, ticket and merchandise sales, television agreements, and other revenue generating activities in Georgia along with its member institutions; (c) has substantial and continuous contacts with Georgia; and (d) is engaged in an illegal anticompetitive scheme that is directed at and has the intended effect of causing injury to persons residing in, located in, or doing business throughout Georgia. The NCAA does not contest jurisdiction and the Court finds it as jurisdiction over the NCAA in this matter.

Plaintiffs assert venue is proper in Cobb County because multiple plaintiffs were damages by playing basketball against fifth and sixth year players in Cobb County without being afforded a fifth year themselves. The NCAA does not contest venue and the Court finds that Cobb County is a proper venue for this matter.

LEGAL STANDARD

Under O.C.G.A. § 9-5-1, equity has jurisdiction to "restrain … a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law."

A party seeking an interlocutory injunction in Georgia must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) that the threatened injury to the plaintiff outweighs any damage the injunction might cause the defendant; and (4) that the injunction would not disserve the public interest. Bishop v. Patton, 288 Ga. 600, 604 (2011). The Court has broad discretion and, given the time constraints

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inherent in an interlocutory motion, must focus on the potential harm to the Plaintiff if the injunction is denied, balanced against potential harm to the Defendant if the injunction is granted and later overturned:

> [T]he decision to grant an interlocutory injunction must often be made under time constraints that do not allow for the careful deliberation and reflection that accompany a full trial on the merits. Thus, the trial court must make a judgment call regarding the equities presented, and the court is vested with broad discretion in making that decision.

City of Waycross v. Pierce County Board of Commissioners, 793 S.E. 389, 391 (Ga. 2016) (internal citations omitted).

Interlocutory injunctions can "require[] action that can affect the rights of the parties," rather than merely preserving the status quo. *See* State Farm Mut. Auto Ins. Co. v. Mabry, 556 S.E.2d 114, 116 (Ga. 2001) (affirming lower court's issuance of mandatory interlocutory injunction); Davis v. VCP South, 297 Ga. 616 (2015) (affirming grant of "granting mandatory interlocutory injunctions"). Issuance of an interlocutory mandatory injunction remains "within the sound discretion of the trial court" and "should be crafted in a manner that is the least oppressive to the defendant while still protecting the valuable rights of the plaintiff." *Id.* at 123. "The status quo is not defined by the parties' existing legal rights; it is defined by the reality of the existing status and relationships between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights." SCFC ILC v. Visa USA, 936 F.2d 1096, 1100 (10th Cir.1991).

FINDINGS OF FACT

The Court takes judicial notice of and adopts and incorporates the July 31, 2026 order of the Chancery Court of Davidson County in the case styled *Washington v. NCAA*, Case No. 26-

0896-III (the "Tennessee Order"), which is attached here to as Exhibit 1, including all findings of fact.

CONCLUSIONS OF LAW

I. NCAA Bylaws Are Subject to Judicial Review

A. Plaintiffs' Right to Earn a Living Playing College Basketball is a Property Right

Plaintiffs' right to earn a living playing basketball is a property right. The right to earn a living is "objectively, deeply rooted in this Nation's history and tradition." Golden Glow Tanning Salon, Inc. v. City of Columbus, Mississippi, 52 F.4th 974, 982 (5th Cir. 2022) (Ho, J., concurring). Further, "[o]ccupational freedom, the right to earn a living as one chooses, is a nontrivial constitutional right entitled to nontrivial judicial protection." Patel v. Texas Department of Licensing and Regulation, 469 S.W.3d 69, 123 (Tex. 2015) (Willett, J., concurring) (""). "[T]he right to engage in productive labors is essential to ensuring the ability of the average American citizen to exercise most of their other rights. So it's not surprising that various scholars have determined that the right to earn a living is deeply rooted in our Nation's history and tradition—and should thus be protected under our jurisprudence of unenumerated rights." Golden Glow, 52 F.4th at 984. *See also* Tennessee Order at 18-21 ("The Bylaws of the NCAA Interfere With The Property Rights of the Plaintiffs").

The NCAA's rules are subject to judicial review because of their impact on Plaintiffs' property rights. Howard v. Betts, 9 S.E.2d 742, 744 (1940) ("courts of equity do not concern themselves with internal controversies in voluntary associations *unless they involve substantial property rights*") (emphasis added); *see also* Georgia High School Association v. Charlton County School District, 826 S.E.2d 172, 179 (Ga.App. 2019) ("general principles of judicial restraint cited by GHSA do not preclude our review because Charlton County is seeking to require that GHSA

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abide by its Constitution and Bylaws," which it ruled contractual in nature, in imposing penalties on a high school baseball team).

B. NCAA Bylaws Are Also Subject to Judicial Review Because the NCAA Has a Monopoly Over High Level Collegiate Sports

Even if the NCAA's rules did not impact Plaintiffs' property rights, they would remain subject to judicial review because the NCAA has monopsony power over high level collegiate sports in that no college wishing to compete in high level collegiate sports can do so without becoming part of the NCAA. *See* NCAA v. Alston, 594 U.S. 90 (2021) ("its members collectively enjoy monopsony power in the market for student-athlete services, such that its restraints can (and in fact do) harm competition."). Because the NCAA has monopsony power of college sports and is not simply a "voluntary social association," its rules are subject to judicial scrutiny:

> [T]he IBF is more than simply a voluntary social association: it is a profit-making corporation which wields substantial economic power over the careers of boxers fighting under its aegis. Moreover, as the district court noted, the public has a substantial interest in the IBF's actions and in its integrity. The judicial interest in protecting those who may be detrimentally affected by an organization like the IBF is greater than the judicial interest in protecting members of purely social organizations.

Schulz v. U.S. Boxing Ass'n, 105 F.3d 127, n.9 (3rd Cir. 1997).

II. Plaintiffs Are Likely To Prevail On Their Breach of Contract Claim

Plaintiffs are third-party beneficiaries of the NCAA Manul and Bylaws for the reasons set forth in the Tennessee Order and the July 9, 2026 order of the Court of Common Pleas of Hamilton County, Ohio, in the case styled Borovicanin v. NCAA, Hamilton County Court of Common Pleas, Case No. A2603352, of which the court takes judicial notice of and adopts and incorporates in full and attached hereto as Exhibit 2 (the "Ohio Order").

Under Georgia law, "[t]he implied covenant of good faith and fair dealing inheres in every contract ... and requires a party in a contractual relationship to refrain from ***arbitrary or***

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unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." *The Rainmaker Group Ventures v. Bellack*, 354 Ga. App. 847, 851, 841 S.E.2d 738 (2020) (emphasis added).

The NCAA engaged in arbitrary and unreasonable conduct that prevented Plaintiffs from receiving the fruits of their bargain. Specifically, Plaintiffs had a reasonable expectation to be treated fairly and equally with other athletes when they entered an NCAA institution. The NCAA deprived Plaintiffs of that right through arbitrary and unreasonable conduct in: (1) forcing Plaintiffs to compete against fifth and sixth year players throughout their career and extending that benefit to those coming after Plaintiffs, but depriving Plaintiffs of a fifth season of basketball; (2) creating a rule allowing all athletes five years to compete after they turn 19 years old and enter college, but depriving Plaintiffs of the benefit of that rule even though they are within five years of their 19th birthday and five years of entering college; (3) granting other players extra years of eligibility on an arbitrary and capricious basis based on various concepts of a "redshirt," which is not defined in the Bylaws; (4) counting junior college years as equivalent to years of NCAA participation even though junior colleges are not part of the NCAA (*See Pavia v. NCAA*, 760 F.Supp.3d 527 (M.D. Tenn. 2024)); and (5) exempting prep school years and the first professional year of competition after high school from counting as a season of competition, while counting as few as six minutes of a single game as a full season. *See also* Tennessee Order at 24 ("Plaintiffs introduced evidence that Defendant applied the challenged eligibility rules inconsistently among similarly situated student-athletes, thus breaching good faith and fair dealing").

III. Plaintiffs Are Likely to Prevail on Their Georgia Fair Business Practices Act Claim

The purpose of the Georgia Fair Business Practices Act is "[t]o protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in

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the conduct of any trade or commerce in part or wholly within this state." O.C.G.A. § 10-1-391(a). A "consumer" is any natural person who seeks or acquires "goods, services, . . . or thing of value." Plaintiffs are consumers who acquired college educations from NCAA member schools.

O.C.G.A. § 10-1-393(a) of the GFBPA declares unlawful any "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce...." The NCAA has for decades consistently told athletes that college athletics is reserved for "amateurs" and that a former professional player cannot return to college to play the same sport professionally. Over the past year, the NCAA reversed course—allowing numerous former professional basketball players to return to college without counting their professional seasons against their four allotted seasons of competition. The NCAA thus holds out one set of rules to prospective student-athletes like Plaintiffs while operating under a completely different set of rules for former professionals. That selective treatment, applied against Plaintiffs while benefiting former professionals, is precisely the "unfair" conduct the GFBPA prohibits.

IV. The Court Has the Independent Equitable Power to Enjoin the NCAA's Actions That Are Contrary to Equity and Good Conscience

Additionally, the Court has the power to enjoin "any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law." O.C.G.A. § 9-5-1. The NCAA's decision to deprive Plaintiffs of a fifth season of college basketball while they remain within the explicit terms of the new eligibility rules (e.g., five years of enrolling in college and their 19th birthday) is "contrary to equity and good conscience." As a result, the Court has the independent equitable power to enjoin the NCAA pending trial of this case because Plaintiffs have no adequate remedy at law.

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V. Plaintiffs Face Irreparable Harm

Plaintiffs will be irreparably harmed if denied the opportunity to play this year. *State of Ohio v. NCAA*, 706 F. Supp. 3d 583, 597 (N.D. W. Va. 2023) ("college students suffer irreparable harm when they are denied the opportunity to play sports."); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 291 (D. Conn. 2009) ("Given the fleeting nature of college athletics, plaintiffs will suffer irreparable harm by losing the opportunity to participate in their sport of choice on a continuous and uninterrupted basis."). As explained in more detail in the Tennessee Order and Ohio Order, Plaintiffs' irreparable harm includes, but is not limited to, developmental opportunities, unrecoverable "name, image, and likeness" opportunities, and impaired professional trajectory and reputational harm.

VI. An Injunction Will Not Cause Substantial Harm to Others

The balance of equities strongly favors Plaintiffs. For them, time is the one resource that cannot be replenished. Their eligibility is tied not only to age but to the narrow window in which they can compete—and earn—at the highest collegiate level. The NCAA, by contrast, would suffer no comparable hardship from an interlocutory injunction. It has already permanently changed the rule on a go-forward basis for all athletes graduating from high school in 2023 or later. It routinely allows players to compete during their fifth year of eligibility through redshirt status or individual waivers. Allowing Plaintiffs to compete on the same terms presents no administrative or financial burden.

Courts have consistently recognized this asymmetry of harm in NCAA eligibility cases. *See Robinson v. Nat'l Collegiate Athletic Ass'n*, No. 1:25-CV-75, 2025 WL 2409203, at 19 (N.D.W. Va. Aug. 20, 2025) ("Plaintiffs are likely to suffer substantial, immediate, and irreparable harm

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should they be prevented from playing this season. The NCAA, by contrast, would suffer little harm...."); *Braham*, 2025 WL 2017162, at *9; *Elad*, 2025 WL 1202014, at *10.

Additionally, as schools have already filled most of their roster spots for next season, Plaintiffs will not deprive any athletes of such a spot – they merely seek to obtain one of the last roster spots that coaches have held open hoping that the Class of 2022 will regain eligibility. And, to the extent the NCAA is still concerned that allowing Plaintiffs to play next season would deprive another player of a roster spot, the NCAA (or the Court) could simply designate the Plaintiffs as "Designated Student Athletes" under the methodology of the *House* Settlement such that they do not count against any school's roster limit for next year. As for playing time, the NCAA has already granted each athlete competing in Division I basketball next year an entire additional season of eligibility, allowing Plaintiffs to compete this year merely balances the scales, it does not disadvantage the player who has already been awarded an additional year beyond next season. The equities overwhelmingly favor Plaintiffs.

VII. The Public Interest Favors Injunctive Relief

As set forth in the Ohio Order and Tennessee Order, the public interest favors injunctive relief and mandates that the NCAA not chill the rights of athletes to pursue legal remedies by threatening schools and coaches for complying with Court orders. Accordingly, the Court will enjoin use of the NCAA's Rule of Restitution, "ghost transfer rule," and any other means by which the NCAA could punish a coach or school for rostering a plaintiff in this case.

Additionally, given that Plaintiffs needed to carry on with their lives during their period of ineligibility prior to issuance of this Order, the Court will enjoin the NCAA from precluding Plaintiffs from playing college basketball at a college of their choice because they: (1) failed to enter the transfer portal; or (2) signed a professional contract after completing their 2025-26 season

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of competition. Plaintiffs will be required to return any professional compensation received other than reasonable and necessary expenses.

VIII. An Interlocutory Injunction Is The Only Appropriate Means to Avoid Harm to Plaintiffs Pending Trial of This Case

An interlocutory injunction is a "device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication." Price v. Empire Land Co., 218 Ga. 80, 85, 126 S.E.2d 626 (1962). Only an interlocutory injunction can prevent the NCAA from hurting Plaintiffs pending trial of this case.

This order is interlocutory in nature as it looks to the future hearing and preserves the status quo rights of Plaintiffs to play college basketball under the NCAA's new eligibility rules pending trial of this case (with the exception of this injunction preventing the NCAA's improper exclusion of Plaintiffs from those new rules); it is not a final judgment and the Court anticipates trial on the merits prior to the conclusion of the college basketball season. *See* Grossi Consulting, LLC v. Sterling Currency Grp., LLC, 290 Ga. 386, 389, 722 S.E.2d 44, 47 (2012) (order giving Plaintiff control over Defendants' asset was interlocutory, rather than mandatory so long as it is not a "final decision on the merits of the parties' claims.").

Here, Plaintiffs would be irreparably harmed if they are denied their fifth and final season of college basketball. In contrast, the NCAA faces no harm by complying with this injunction. The NCAA is permitted to enforce its new eligibility rules and is merely restrained from excluding Plaintiffs from the benefits of those rules pending trial of the case. *See* Davis, 297 Ga. 616 (affirming grant of "granting mandatory interlocutory injunctions"); Rinzler v. Folsom, 209 Ga. 549, 553 (1953) ("This order is not subject to the criticism that it is a mandatory injunction . . . . Though the defendants in complying with restraints imposed by the order may have to perform some act, the essential nature of the order is to restrain and not to compel."); Cason v. Upson Cnty.

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Bd. of Health, 227 Ga. 451, 452 (1971) ("the court cannot issue a purely mandatory order, but that the court can grant an injunction the essential nature of which is to restrain, although in yielding obedience to the restraint the defendant may be incidentally required to perform some act."); McMillen Dev. Corp. v. Bull, 228 Ga. 826, 829 (1972) ("Whether prohibitory or mandatory in nature, a court of equity in Georgia can grant injunctive relief as was done under the order here.").

The Court sets trial in this case for January ___, 2027. As a result, the Court's orders will not operate as final relief on any of Plaintiffs claims pending trial on the merits. *See* Grossi, 722 S.E.2d at 389 ("The purpose of an interlocutory injunction is preliminary and preparatory; it looks to a future final hearing, and while contemplating what the result of that hearing *may be,* it does not settle what it *shall* be").

TERMS OF INJUNCTION

The NCAA is hereby enjoined from the following pending trial on the merits in this case:

- enforcing NCAA Bylaw 12.6, or any other Bylaw, to preclude Plaintiffs from playing NCAA Division I basketball in the 2026-27 season on the basis that they have already competed in four seasons of competition;
- preventing each Plaintiff from playing for any NCAA Division I school because they did not enter the NCAA Transfer Portal;
- preventing each Plaintiff from playing for any NCAA Division I school because they signed a professional contract during their period of ineligibility, so long as they terminate such contract and return any money received other than reasonable and necessary expenses;
- enforcing Bylaw 12.9.4.2 (the Rule of Restitution) or "ghost transfer rule" against Plaintiffs, any NCAA member institution or coach for which Plaintiffs choose to play in 2026-27, or any institution that competes against Plaintiffs in the 2026-27 basketball season, or using any other means to punish any school or coach;

The Court will not require a bond as the NCAA faces no risk of financial loss.

Signed this 5th day of August 2026.

The Honorable Henry Thompson

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Exhibit A

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Division: I

Proposal Number: 2026-44

Title: ATHLETICS ELIGIBILITY -- AGE-BASED ELIGIBILITY MODEL -- FIVE-YEAR PERIOD OF ELIGIBILITY

Status: Adopted Final

Intent: To establish an age-based eligibility model that defines a student-athlete's period of eligibility for practice and competition, as specified.

Category: Amendment

A. Bylaws: Amend 12, as follows:

12 Athletics Eligibility

[12.01 through 12.02 unchanged.]

12.1 Athletics Eligibility. An individual shall not receive or accept a promise to receive funds, awards, benefits or expenses not permitted by the governing legislation and interpretations for athletics eligibility. (See Bylaw 12.10 regarding the eligibility restoration process.) **An individual's period of eligibility shall be limited to five years pursuant to Bylaw 12.6.**

12.1.1 Validity of Athletics Eligibility Status. As a condition and obligation of membership, it is the responsibility of an institution to determine the validity of the information on which the athletics eligibility status of a prospective student-athlete (including two-year and four-year college transfers initially enrolling at an NCAA Division I institution) and student-athlete is based. (See Bylaw 14.01.3.)

12.1.1.1 Athletics Eligibility Certification Process. An institution shall use the NCAA Eligibility Center approved by the Board of Governors to determine the validity of the information on which the athletics eligibility status of a student-athlete is based**, including an individual's period of eligibility**.

12.1.1.1.1 Scope. The certification of athletics eligibility status **pursuant to Bylaws 12.1.2, 12.1.3 and 12.2** issued by the Eligibility Center is limited to activities that occur before the prospective student-athlete's request for final certification or the prospective student-athlete's initial full-time enrollment at an NCAA member institution, whichever occurs earlier. **The Eligibility Center shall administer the certification of an individual's period of eligibility pursuant to Bylaw 12.6, including legislated exceptions, which may occur before or after initial full-time collegiate enrollment.**

12.1.1.1.2 Institutional Responsibilities.

12.1.1.1.2.1 Athletics Eligibility Status After Certification. An institution is responsible for certifying the athletics eligibility status of a prospective student-athlete (including two-year and four-year college transfers initially enrolling at an NCAA Division I institution) **pursuant to Bylaws 12.1.2, 12.1.3 and 12.2** from the time the prospective student-athlete requests that a final certification be issued by the Eligibility Center or from the time the prospective student-athlete initially enrolls as a full-time student at an NCAA member institution (whichever occurs earlier).

12.1.1.1.2.2 Sharing Information and Reporting Discrepancies. If an institution receives additional information or otherwise has cause to believe that a prospective student-athlete's athletics eligibility status has been jeopardized **or period of eligibility has changed**, the institution is responsible for promptly notifying the Eligibility Center of such information. Further, an institution is responsible for promptly reporting to the Eligibility Center all discrepancies in information related to a student-athlete's ~~*certification*~~ **athletics eligibility status or period of eligibility**.

12.1.1.1.3 Eligibility for Practice or Competition. Before engaging in practice or competition, a student-athlete shall receive a final certification of athletics eligibility status based on activities that occur before the student-athlete's request for final certification or initial full-time enrollment at an NCAA member institution (whichever occurs earlier) **and based on the student-athlete's period of eligibility pursuant to Bylaw 12.6**.

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12.1.1.1.3.1 Temporary Certification. If a prospective student-athlete reports for athletics participation before the student's athletics eligibility status **or period of eligibility** has been certified, the student may practice, but not compete, for a maximum period of 45 days. After this period, the student's athletics eligibility status **and period of eligibility** must be certified in order to continue to practice or to compete.

12.1.1.1.3.2 Effect of Violations. A violation of Bylaw 12.1.1.1.3 or Bylaw 12.1.1.1.3.1 in which the student-athlete is subsequently certified without conditions shall be considered an institutional violation per Bylaw 8.01.3 but shall not affect the student-athlete's eligibility.

12.1.1.1.4 Eligibility for Practice After a Final Not-Certified Certification. After a final not-certified certification is rendered, a student-athlete may continue to engage in practice activities, provided the institution has submitted a notice of appeal. At the point in which all appeal opportunities have been exhausted and no eligibility has been granted, the student-athlete may no longer participate in practice activities.

12.1.1.1.5 Review of Factual Determinations. An institution may request that the Athletics Eligibility Subcommittee review a final determination of facts by the Eligibility Center. (See Bylaw 21.3.4.2.)

[12.1.2 through 12.1.3 unchanged.]

[12.2 through 12.5 unchanged.]

12.6 ~~*Seasons of Competition:*~~ Five-Year ~~*Rule*~~ **Period of Eligibility**. ~~*A student-athlete shall not engage in more than four seasons of intercollegiate competition in any one sport (see Bylaws 12.02.3 and 14.3.3). An institution shall not permit a student-athlete to represent it in intercollegiate competition unless the student-athlete completes all seasons of participation in all sports within the time periods specified below.*~~ **An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:**

(a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or

(b) The beginning of the regular academic year immediately after the individual's 19th birthday.

~~*12.6.1 Five-Year Rule. A student-athlete shall complete the student-athlete's seasons of participation within five years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program of studies in a collegiate institution, with time spent on an official religious mission, in the armed services or with recognized foreign aid services of the U.S. government being excepted. For international students, service in the armed forces of the student's home country is considered equivalent to such service in the United States.*~~

~~*12.6.1.1 Determining the Start of the Five-Year Period. For purposes of starting the count of time under the five-year rule, a student-athlete shall be considered registered at a collegiate institution (domestic or foreign; see Bylaw 14.02.4) when the student-athlete initially registers in a regular term (semester or quarter) of an academic year for a minimum full-time program of studies, as determined by the institution, and attends the student's first day of classes for that term (see Bylaw 12.6.2).*~~

~~*12.6.1.3 Academic Study Abroad Exception. Time spent participating in a full-time study-abroad program during a regular term of an academic year may be excepted from the application of the five-year rule, provided:*~~

~~*(a) The institution recognizes the student-athlete as a full-time student at the time of participation in the study-abroad program;*~~

~~*(b) At the time of participation in the study-abroad program, the student-athlete is academically eligible for competition and is not subject to an athletically related suspension;*~~

~~*(c) The student-athlete does not participate in practice or competition with the institution's team and does not engage in outside competition while participating in the study-abroad program;*~~

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(d) The student-athlete satisfactorily completes the study-abroad program; and

(e) The student-athlete earns a baccalaureate degree within five years or fewer.

12.6.1.4 Internship or Cooperative Educational Work Experience Program Exception. Time spent participating in a full-time internship or cooperative educational work experience program during a regular term of an academic year may be excepted from the application of the five-year rule, provided:

(a) The institution recognizes the student-athlete as a full-time student at the time of participation in the internship or cooperative educational work experience program;

(b) At the time of participation in the internship or cooperative educational work experience program, the student-athlete is academically eligible for competition and is not subject to an athletically related suspension;

(c) The student-athlete does not participate in practice or competition with the institution's team and does not engage in outside competition while participating in the internship or cooperative educational work experience program;

(d) The student-athlete satisfactorily completes the internship or cooperative educational work experience program; and

(e) The student-athlete earns a baccalaureate degree within five years or fewer.

12.6.1.6 Athletics Activity Waiver. The Athletics Eligibility Subcommittee shall have the authority to waive this provision by a two-thirds majority of its members present and voting to permit student-athletes to participate in:

(a) Official Pan American, Parapan American, World Championships, World Cup, World University Games (Universiade), World University Championships, Olympic and Paralympic training, tryouts and competition;

(b) Officially recognized training and competition directly qualifying participants for final Olympic or Paralympic tryouts; or

(c) Official tryouts and competition involving national teams sponsored by the appropriate national governing bodies of the U.S. Olympic and Paralympic Committee (or, for student-athletes representing another nation, the equivalent organization of that nation, or, for student-athletes competing in a non-Olympic or non-Paralympic sport, the equivalent organization of that sport).

12.6.1.6.1 Junior Level Competition. The athletics activity waiver does not apply to junior level training, tryouts or competition (e.g., Youth Olympic Games, U20 World Cup, Junior National Teams) that may be associated with the training, tryouts or competition specified in Bylaw 12.6.1.6.

12.6.1.6.2 Athletics Activity Waiver Criteria. Extensions of the five-year period of eligibility for student-athletes shall be based on the following criteria: The member institution in which the student-athlete is enrolled must establish (by objective evidence) that the student-athlete was unable to participate in intercollegiate athletics as a result of participation in one of the activities listed in the above legislation for a specific period of time. Further, such an extension shall be limited to one time and for a period not to exceed one year per student-athlete, per sport.

12.6.1.7 Five-Year Rule Waiver. The Athletics Eligibility Subcommittee, by a two-thirds majority of its members present and voting, may approve waivers of the five-year rule as it deems appropriate.

12.6.1.7.1 Waiver Criteria. A waiver of the five-year period of eligibility is designed to provide a student-athlete with the opportunity to participate in four seasons of intercollegiate competition within a five-year period. This waiver may be granted, based upon objective evidence under the following circumstances:

(a) The student-athlete did not use a season of intercollegiate competition due to an institutional decision to redshirt the student-athlete; the student-athlete was listed on the institution's squad list and was eligible for competition during the segment of the season that concludes with the NCAA championship; and the student-athlete was deprived of the opportunity to participate in intercollegiate competition in one other season due to circumstances beyond the control of the

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student-athlete or institution. (The use of this provision is limited to one time in a student-athlete's period of eligibility); or

(b) The student-athlete is deprived of the opportunity to participate for more than one season in his or her sport within the five-year period of eligibility for reasons that are beyond the control of the student-athlete or the institution.

12.6.1.7.1.1 Circumstances Beyond Control. Circumstances considered to be beyond the control of the student-athlete or the institution and do not cause a participation opportunity to be used shall include, but are not limited to, the following:

(a) Situations clearly supported by contemporaneous medical documentation, which states that a student-athlete is unable to participate in intercollegiate competition as a result of incapacitating physical or mental circumstances;

(b) The student-athlete is unable to participate in intercollegiate athletics as a result of a life-threatening or incapacitating injury or illness suffered by a member of the student-athlete's immediate family, which clearly is supported by contemporaneous medical documentation;

(c) Reliance by the student-athlete upon written, contemporaneous, clearly erroneous academic advice provided to the student-athlete from a specific academic authority from a collegiate institution regarding the academic status of the student-athlete, which directly leads to the student-athlete not being eligible to participate and, but for the clearly erroneous advice, the student-athlete would have established eligibility for intercollegiate competition;

(d) Natural disasters (e.g., earthquake, flood); and

(e) Extreme financial difficulties as a result of a specific event (e.g., layoff, death in the family) experienced by the student-athlete or by an individual upon whom the student-athlete is legally dependent, which prohibit the student-athlete from participating in intercollegiate athletics. These circumstances must be clearly supported by objective documentation (e.g., decree of bankruptcy, proof of termination) and must be beyond the control of the student-athlete or the individual upon whom the student-athlete is legally dependent.

12.6.1.7.1.2 Circumstances Within Control. Circumstances that are considered to be within the control of the student-athlete or the institution and cause a participation opportunity to be used include, but are not limited to, the following:

(a) A student-athlete's decision to attend an institution that does not sponsor the student-athlete's sport, or decides not to participate at an institution that does sponsor the sport;

(b) An inability to participate due to failure to meet institutional/conference or NCAA academic requirements, or disciplinary reasons or incarceration culminating in or resulting from a conviction;

(c) Reliance by a student-athlete upon misinformation from a coaching staff member;

(d) Redshirt year;

(e) Ineligibility to participate as a result of a transfer year of residence or fulfilling a condition for restoration of eligibility; and

(f) A student-athlete's lack of understanding regarding the specific starting date of the five-year period of eligibility.

12.6.1.7.1.3 Circumstances of Extraordinary or Extreme Hardship. The Athletics Eligibility Subcommittee may review requests that do not meet the more-than-one-year criteria of this waiver for circumstances of extraordinary or extreme hardship.

12.6.1.7.1.4 Practice While Waiver is Pending. A student-athlete who has exhausted five years of eligibility may continue to practice (but not compete) for a maximum of 30 consecutive calendar days, provided the student-athlete's institution has submitted a waiver request. The student-athlete may not commence practice until the institution has filed such a request. Further, if such a request is

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~~denied before exhausting the 30-day practice period, the student-athlete must cease all practice activities upon the institution's notification of the denial.~~

~~12.6.2 Additional Applications of the Five-Year Rule.~~

~~12.6.2.5 Eligibility for Practice. To be eligible to participate in organized practice sessions, a student-athlete shall have eligibility remaining under the five-year rule (see Bylaws 14.2.1.7 and 14.2.1.8).~~ [D]

~~12.6.3 Criteria for Determining Season of Competition.~~

~~12.6.3.1 Minimum Amount of Competition. Any competition, regardless of time, during a season in an intercollegiate sport shall be counted as a season of competition in that sport, except as provided in Bylaws 12.6.3.1.1, 12.6.3.1.2, 12.6.3.1.3, 12.6.3.1.4, 12.6.3.1.5 and 12.6.3.1.6. This provision is applicable to intercollegiate athletics competition conducted by a two-year or four-year collegiate institution at the varsity or subvarsity level.~~

~~12.6.3.1.1 Two-Year College Scrimmages. A two-year college prospective student-athlete may compete in a scrimmage as a member of a two-year college team without counting such competition as a season of competition, provided the competition meets all of the following conditions:~~

~~(a) The scrimmage is approved by the two-year college;~~

~~(b) No official score is kept;~~

~~(c) No admission is charged;~~

~~(d) No official time is kept;~~

~~(e) The scrimmage is played before the two-year college's first regularly scheduled outside competition; and~~

~~(f) The prospective student-athlete participates in not more than two such scrimmages or dates of competition per academic year.~~

~~12.6.3.1.2 Exception -- Nonchampionship Segment Competition -- Field Hockey, Men's Soccer, Women's Soccer, Women's Volleyball and Men's Water Polo. In field hockey, men's soccer, women's soccer, women's volleyball and men's water polo, a student-athlete may engage in intercollegiate competition during the segment of the playing season that does not conclude with the NCAA championship without using a season of competition, provided the student-athlete was academically eligible during the segment that concludes with the NCAA championship.~~

~~12.6.3.1.3 Exception -- Nonchampionship Segment Competition -- Baseball, Women's Beach Volleyball, Lacrosse, Softball, Men's Volleyball and Women's Water Polo. In baseball, women's beach volleyball, lacrosse, softball, men's volleyball and women's water polo, a student-athlete may engage in intercollegiate competition during the segment of the playing season that does not conclude with the NCAA championship without using a season of competition, provided the student-athlete remains academically eligible during the segment that concludes with the NCAA championship.~~

~~12.6.3.1.4 Preseason Exhibitions/Preseason Practice Scrimmages. A student-athlete may compete in preseason exhibition contests and preseason practice scrimmages (as permitted in the particular sport per Bylaw 17) without counting such competition as a season of competition.~~

~~12.6.3.1.5 Alumni Game, Fundraising Activity or Celebrity Sports Activity. A student-athlete may engage in outside competition in either one alumni game, one fundraising activity or one celebrity sports activity during a season without counting such competition as a season of competition, provided the event is exempted from the institution's maximum number of contests or dates of competition as permitted in the particular sport per Bylaw 17.~~

~~12.6.3.1.6 Exception -- Football. In football, a student-athlete representing a Division I institution may compete in up to four contests in a season without using a season of competition.~~

~~12.6.3.1.7 Exception -- Men's Wrestling. In men's wrestling, a student-athlete representing a Division I institution may compete in up to five dates of competition during the student-athlete's initial year of collegiate enrollment without using a season of competition. Competition in a conference championship~~

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tournament, the NCAA Division I Wrestling Championships, or any other season-ending championship event shall not be exempted from counting as a season of competition.

12.6.3.2 Delayed Enrollment -- Seasons of Competition.

12.6.3.2.1 Sports Other Than Men's Ice Hockey, Skiing and Tennis. In sports other than men's ice hockey, skiing and tennis, a student-athlete who does not enroll in a collegiate institution as a full-time student in a regular academic term during a one-year period (by October 1 or March 1 immediately after one year has elapsed) after the student-athlete's high school graduation date or the graduation date of the student-athlete's class (as determined by the first year of high school enrollment or the international equivalent as specified in the NCAA Guide to International Academic Standards for Athletics Eligibility and based on the prescribed educational path in the student-athlete's country), whichever occurs earlier, shall be subject to a delayed enrollment condition based on the number of contests (or dates of competition) in which the student-athlete participated as a percentage of the maximum number of permissible contests (or dates of competition) in the sport per NCAA Bylaw 17 for each calendar year after the one-year period and before full-time collegiate enrollment in which the student-athlete has participated in organized competition per Bylaw 12.02.6. (See Figure 12-2.)

12.6.3.2.1.1 Exception -- Transfer Student. A student-athlete is not required to fulfill an academic year of residence before being eligible to represent the institution in intercollegiate competition, provided the student-athlete:

(a) Attended a collegiate institution (or institutions) as a full-time student for at least two semesters or three quarters (excluding summer terms); and

(b) Satisfactorily completed an average of at least 12 semester or quarter hours of transferable-degree credit for each term of full-time attendance.

12.6.3.2.1.2 Exception -- National/International Competition. For a maximum of one year after a prospective student-athlete's first opportunity to enroll full time in a collegiate institution following the one-year time period after the prospective student-athlete's high school graduation date or the graduation date of the prospective student-athlete's class, whichever occurs earlier, participation in the following organized national/international competition is exempt from application of Bylaw 12.6.3.2.1:

(a) Official Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup, World University Games (Universiade) and World University Championships and established regional competition (e.g., North American Championships, European Championships) or the junior level equivalents (e.g., Youth Olympic Games, U20 World Cup, junior national teams);

(b) Officially recognized competition from which participants may be selected to a national team that will participate in the Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup or World University Games (Universiade), World University Championships and established regional competition (e.g., North American Championships, European Championships) or the junior level equivalents (e.g., Youth Olympic Games, U20 World Cup, junior national teams) and final tryout competition from which participants are selected for such teams; or

(c) Official competition involving a national team sponsored by the appropriate national governing body of the U.S. Olympic and Paralympic Committee (or, for student-athletes representing another nation, the equivalent organization of that nation).

12.6.3.2.1.3 Service Exceptions. Participation in organized competition during time spent in the armed services, on an official religious mission or with a recognized foreign aid service of the U.S. government is exempt from the application of Bylaw 12.6.3.2.1. Additionally, if a student-athlete enrolls as a full-time student in a regular term of a collegiate institution at the first opportunity following completion of the service commitment, the period between completion of the service commitment and the first opportunity to enroll is exempt from the application of Bylaw 12.6.3.2.1.

12.6.3.2.1.4 Track and Field and Cross Country. A student-athlete who has participated in organized competition after the one-year time period (the next opportunity to enroll after one calendar year

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has elapsed) and before full-time collegiate enrollment during a cross country, indoor track and field, or outdoor track and field season (as opposed to general road racing events) shall be charged with a season of competition in the sport in which the student-athlete has participated for each calendar year after the one-year time period in which the student-athlete participated in organized competition.

12.6.3.2.1.5 Road Racing. A student-athlete who has participated in road racing activities after the one-year time period (the next opportunity to enroll after one calendar year has elapsed) and before full-time collegiate enrollment shall be charged with a season of competition in each of the sports of cross country, indoor track and field, outdoor track and field, and triathlon for each calendar year after the one-year time period in which the student-athlete participates in organized competition.

12.6.3.2.2 Tennis. In tennis, a student-athlete who does not enroll in a collegiate institution as a full-time student in a regular academic term within six months (by October 1 or March 1 immediately after six months have elapsed) after the student-athlete's high school graduation date or the graduation date of the student-athlete's class (as determined by the first year of high school enrollment or the international equivalent as specified in the NCAA Guide to International Academic Standards for Athletics Eligibility and based on the prescribed educational path in the student-athlete's country), whichever occurs earlier, shall be subject to a delayed enrollment condition based on the number of dates of competition in which the student-athlete participated as a percentage of the maximum number of permissible dates of competition in the sport per NCAA Bylaw 17 for each calendar year after the six-month period and before full-time collegiate enrollment in which the student-athlete has participated in organized competition per Bylaw 12.02.6. (See Figure 12-2.)

12.6.3.2.2.1 Exception -- Transfer Student. A student-athlete is not required to fulfill an academic year of residence before being eligible to represent the institution in intercollegiate competition, provided the student-athlete:

(a) Attended a collegiate institution (or institutions) as a full-time student for at least two semesters or three quarters (excluding summer terms); and

(b) Satisfactorily completed an average of at least 12 semester or quarter hours of transferable-degree credit for each term of full-time attendance.

12.6.3.2.2.2 Exception -- National/International Competition. For a maximum of one year after a prospective student-athlete's first opportunity to enroll full time in a collegiate institution following the six-month time period after the prospective student-athlete's high school graduation date or the graduation date of the prospective student-athlete's class, whichever occurs earlier, participation in the following organized national/international competition is exempt from application of Bylaw 12.6.3.2.2:

(a) Official Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup, World University Games (Universiade) and World University Championships competition or the junior level equivalents (e.g., Youth Olympic Games, U20 World Cup, junior national teams);

(b) Officially recognized competition from which participants may directly qualify for final tryouts for a national team that will participate in the Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup or World University Games (Universiade), World University Championships or the junior level equivalent (e.g., Youth Olympic Games, U20 World Cup, junior national teams) and final tryout competition from which participants are selected for such teams; or

(c) Official competition involving a national team sponsored by the appropriate national governing body of the U.S. Olympic and Paralympic Committee (or, for student-athletes representing another nation, the equivalent organization of that nation.)

12.6.3.2.2.3 Service Exceptions. Participation in organized competition during time spent in the armed services, on an official religious mission or with a recognized foreign aid service of the U.S. government is exempt from the application of Bylaw 12.6.3.2.2. Additionally, if a student-athlete enrolls as a full-time student in a regular term of a collegiate institution at the first opportunity

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~~following completion of the service commitment, the period between completion of the service commitment and the first opportunity to enroll is exempt from the application of Bylaw 12.6.3.2.2.~~

~~12.6.3.2.2.4 Matriculation After 20th Birthday -- Tennis. In tennis, a student-athlete who is eligible under Bylaw 12.6.3.2.2, but who participates in organized tennis events after the student-athlete's 20th birthday and before full-time enrollment at the certifying institution shall be subject to a delayed enrollment condition based on the number of dates of competition in which the student-athlete participated as a percentage of the maximum number of permissible dates of competition in the sport per NCAA Bylaw 17. (See Figure 12-2.)~~

~~12.6.3.2.2.4.1 Exception -- Continuous Full-Time Enrollment. A student-athlete who is eligible under Bylaw 12.6.3.2.2 and who maintained full-time enrollment in a collegiate institution during each regular academic term from initial full-time enrollment in a collegiate institution to initial full-time enrollment at the certifying institution is not subject to the application of Bylaw 12.6.3.2.2.4.~~

~~12.6.3.2.2.4.2 Exception -- Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup, World University Games (Universiade) and World University Championships Participation. Participation in the Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup, World University Games (Universiade) and World University Championships or the junior level equivalents (e.g., Youth Olympic Games, U20 World Cup, junior national teams) is exempt from the application of Bylaw 12.6.3.2.2.4.~~

~~12.6.3.2.2.4.3 Service Exceptions. Participation in organized competition during time spent in the armed services, on an official religious mission or with a recognized foreign aid service of the U.S. government is exempt from the application of Bylaw 12.6.3.2.2.4. Additionally, if a student-athlete enrolls as a full-time student in a regular term of a collegiate institution at the first opportunity following completion of the service commitment, the period between completion of the service commitment and the first opportunity to enroll is exempt from the application of Bylaw 12.6.3.2.2.4.~~

~~12.6.3.2.3 Low-level and Minimally Organized Competition. A student-athlete may be granted relief from delayed enrollment conditions during the athletics eligibility certification process for participation that meets the definition of organized competition (see Bylaw 12.02.6) but is determined to be low-level or minimally organized competition.~~

~~12.6.3.3 Participation After 21st Birthday -- Men's Ice Hockey and Skiing. In men's ice hockey and skiing, any participation as an individual or a team representative in organized sports competition by a prospective student-athlete during each 12-month period after the prospective student-athlete's 21st birthday and before initial full-time enrollment in a collegiate institution shall result in a delayed enrollment condition based on the number of contests (or dates of competition) in which the prospective student-athlete participated as a percentage of the maximum number of permissible contests (or dates of competition) in the sport per NCAA Bylaw 17. (See Figure 12-2.). Participation in organized competition during time spent on an official religious mission, in the armed services or with recognized foreign aid services of the U.S. government shall be excepted.~~

~~12.6.3.4 Foreign-Tour Competition. A student-athlete who did not compete during the institution's season just completed and who represents the institution in a certified foreign tour after that intercollegiate season and before the start of the next academic year shall not be charged with a season of eligibility (see Bylaw 17.34.1.4).~~

~~12.6.3.5 Participation on an Institution's Club Team. An individual is charged with a season of competition for participation in intercollegiate competition (see Bylaw 12.02.3) as a member of an institution's club team if the institution sponsored the sport as a varsity intercollegiate sport and as a club sport at the time of participation.~~

~~12.6.4 Hardship Waiver. A student-athlete may be granted an additional year of competition by the conference or the Athletics Eligibility Subcommittee for reasons of "hardship." Hardship is defined as an incapacity resulting from an injury or illness that has occurred under all of the following conditions:~~

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(a) The incapacitating injury or illness occurs in one of the four seasons of intercollegiate competition at any two-year or four-year collegiate institutions or occurs after the first day of classes in the student-athlete's senior year in high school;

(b) The injury or illness occurs before the first contest or date of competition of the second half of the playing season that concludes with the NCAA championship in that sport and results in incapacity to compete for the remainder of that playing season; and

(c) The injury or illness occurs when the student-athlete has not participated in more than three contests or dates of competition or 30 percent of the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 for the applicable sport plus one contest or date of competition, whichever is greater.

12.6.4.1 Administration of Hardship Waiver. The hardship waiver shall be administered by the member conferences or, in the case of an independent member institution, by the Athletics Eligibility Subcommittee.

12.6.4.1.1 Review of Denied Waiver. An institution may submit a denied hardship waiver to the Athletics Eligibility Subcommittee. The subcommittee shall have the authority to review and determine whether to approve the waiver based on circumstances that may warrant relief from the application of the legislated waiver criteria.

12.6.4.2 Criteria for Administration of Hardship Waiver.

12.6.4.2.1 Nature of Injury/Illness. It is not necessary for the incapacitating injury or illness to be the direct result of the student-athlete's participation in the institution's organized practice or game competition.

12.6.4.2.2 Medical Documentation. Contemporaneous or other appropriate medical documentation, from a physician (a medical doctor) who administered care at the time of the injury or illness, that establishes the student-athlete's inability to compete as a result of that injury or illness shall be submitted with any hardship-waiver request. Documentation from an individual other than a physician (e.g., chiropractor, physical therapist) may only be used to support the physician's documentation. For a case involving a psychological or mental illness, the required contemporaneous or other appropriate medical documentation may be provided by an individual (e.g., psychiatrist, psychologist) who is qualified and licensed to diagnose and treat the particular illness.

12.6.4.2.3 First Half and 30 Percent of Season Denominator. The denominator used to determine the first half and 30 percent of a season is the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 for the applicable sport plus one contest or date of competition (see Figure 12-1).

12.6.4.2.3.1 Exception — Indoor and Outdoor Track and Field. For an institution that sponsors both indoor and outdoor track and field, the number of completed dates of competition, including postseason competition, in the applicable season (either indoor or outdoor) is used to determine the first half and 30 percent of the season. For an institution that sponsors only indoor or outdoor track and field (but not both), the maximum number of dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 plus one date of competition is used to determine the first half and 30 percent of the season.

12.6.4.2.3.2 Fraction in the First-Half-of-Season Computation. A computation of the first-half-of-season that results in a fractional portion of a contest or date of competition shall be rounded up to the next whole number. The first contest or date of competition immediately following the rounded value is the first contest or date of competition in the second half of the season (see Figure 12-1).

12.6.4.2.3.3 Fraction in Percent Computation. Any computation of the percent limitation that results in a fractional portion of a contest or date of competition shall be rounded to the next whole number (e.g., 30-percent of a 29-game basketball schedule — 8.7 games — shall be considered nine games).

12.6.4.2.4 Playing Season that Concludes with the NCAA Championship. In sports in which the playing season may be divided into two segments, but championship selection is based on competition throughout the season (e.g., golf, ice hockey), completed competition for the entire season (e.g., nonchampionship and championship segments) shall be used when identifying the first contest or date of competition in the second half of the season and the number of contests or dates of competition in

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~~which the student-athlete has participated. In sports in which the playing season may be divided into two segments, but championship selection is based on competition during only one segment of the season (e.g., baseball, soccer), completed competition for only the championship segment shall be used when identifying the first contest or date of competition in the second half of the season and the number of contests or dates of competition in which the student-athlete has participated.~~

~~12.6.4.2.5 Exclusions from the First Half and 30 Percent of Season. In identifying the first contest or date of competition in the second half of the season and the number of contests or dates of competition in which the student-athlete has participated, the following competitions shall be excluded:~~

~~(a) Preseason exhibition contests and preseason practice scrimmages that do not count toward the use of a season of competition per Bylaw 12.6.3.1.4; and~~

~~(b) Annual exemptions (e.g., alumni game, foreign team in the United States) as specified in Bylaw 17 for the applicable sport, except for a conference championship and other postseason competition.~~

~~12.6.4.2.6 Reinjury in Second Half of Season. A student-athlete who suffers an injury in the first half of the season that concludes with the NCAA championship or who suffers an injury after the first day of classes in the student-athlete's senior year of high school, attempts to return to competition during the second half of that season and then is unable to participate further as a result of aggravating the original injury does not qualify for the hardship waiver.~~

~~12.6.4.2.7 Outside Competition in Second Half of Season. An individual who engages in outside competition during the second half of the institution's playing season that concludes with the NCAA championship, including competition while not representing the institution, does not qualify for a hardship waiver.~~

~~12.6.4.2.8 Transfer Student-Athletes. The application of the hardship legislation for a transfer student-athlete may be based on the method that would be most beneficial to the student-athlete (the rule applicable to the division in which the injury or illness occurred or the Division I rule). The application of a particular division's legislation must include all the applicable elements of that division's legislation. It is not permissible to use selected elements of the legislation of more than one division.~~

~~12.6.4.2.9 Foreign-Tour Competition. A student-athlete who qualifies for a hardship for the previous academic year would not use a season of competition if the student-athlete represents the institution on a certified foreign tour during the summer-vacation period at the conclusion of that academic year.~~

~~12.6.5 Season-of-Competition Waiver -- Competition While Ineligible. In conjunction with a request for restoration of eligibility and any conditions imposed thereon per Bylaw 12.10, a student-athlete may be granted an additional season of competition by the Athletics Eligibility Subcommittee when the student-athlete participated in a limited amount of competition as a result of a good-faith, erroneous formal declaration of eligibility by the institution's appropriate certifying authority; or the student-athlete's good-faith, erroneous reliance on a coaching staff member's decision to put the student-athlete into competition before the coaching staff member receiving a formal declaration of the student-athlete's eligibility from the institution's appropriate certifying authority. The competition must have occurred under all of the following conditions:~~

~~(a) The competition occurred while the student-athlete was representing an NCAA member institution;~~

~~(b) The competition occurred within 60 days of the date the student-athlete first reported for athletics participation;~~

~~(c) The student-athlete did not participate in more than two events or 10 percent (whichever number is greater) of the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 for the applicable sport plus one contest or date of competition. All competition against outside participants that triggers the use of a season of competition shall be countable under this limitation in determining the number of events in which the student-athlete participated;~~

~~(d) The student-athlete was involved innocently and inadvertently in the erroneous determination or declaration of eligibility, which permitted the student-athlete to compete while ineligible; and~~

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~~(e) In the case of a coaching staff member's erroneous decision, the student-athlete had reason to believe the student-athlete would be eligible to participate, and the student-athlete did not contribute to the coaching staff member's erroneous decision to allow the student-athlete to participate.~~

~~12.6.5.1 Ten Percent Calculation. The requirements specified in Bylaw 12.6.4.2.3 shall apply to the 10 percent calculation specified in this waiver.~~

~~12.6.6 Season-of-Competition Waiver -- Competition While Eligible. A student-athlete may be granted an additional season of competition by the Athletics Eligibility Subcommittee in a case in which the student-athlete participated in a limited amount of competition while eligible due to a coach's documented misunderstanding of the legislation or other extenuating circumstances. In cases in which a student-athlete does not meet the criteria of this waiver, the Athletics Eligibility Subcommittee shall have authority to review and grant a waiver based on additional documented extenuating circumstances.~~

~~12.6.6.1 Coach's Documented Misunderstanding. The student-athlete participated as a result of good faith, reliance on a coaching staff member's decision to put the student-athlete in an alumni contest, exhibition contests, scrimmages, or nonchampionship segment contests based on the coach's documented misunderstanding of NCAA legislation and the competition occurred under the following conditions:~~

~~(a) The competition occurred while the student-athlete was representing an NCAA institution;~~

~~(b) The competition occurred before the completion of the first 20 percent of the playing season that concludes with the NCAA championship in that sport; and~~

~~(c) The student-athlete did not compete in more than two events or 10 percent (whichever number is greater) of the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 for the applicable sport plus one contest or date of competition. All competition against outside participants that triggers the use of a season of competition shall be countable under this limitation in determining the number of events in which the student-athlete participated.~~

~~12.6.6.1.1 Percent Calculation. The requirements specified in Bylaw 12.6.4.2.3 shall apply to the percent calculation specified in this waiver.~~

~~12.6.6.2 Extenuating Circumstances. Extenuating circumstances include, but are not limited to, the following:~~

~~(a) The student-athlete failed to complete the entire season of competition at the institution as a result of a life-threatening injury or illness suffered by a member of the student-athlete's immediate family, that clearly is supported by contemporaneous medical documentation;~~

~~(b) The student-athlete failed to complete the entire season of competition at the institution as a result of extreme financial difficulties as a result of a specific event (e.g., layoff, death in family) experienced by the student-athlete or an individual upon whom the student-athlete is legally dependent and prohibited the student-athlete from participating in intercollegiate athletics. These circumstances must be clearly supported by objective documentation (e.g., decree of bankruptcy, proof of termination) and must be beyond the control of the student-athlete or the individual upon whom the student-athlete is legally dependent;~~

~~(c) The student-athlete's institution dropped the sport (in which the student-athlete practiced or competed) from its intercollegiate program.~~

~~12.6.6.2.1 Conditions of Competition. The competition must have occurred under all of the following conditions:~~

~~(a) The competition occurred before the first contest or date of competition of the second half of the playing season that concludes with the NCAA championship in the sport; and~~

~~(b) The student-athlete did not compete in more than three contests or dates of competition or 30 percent of the maximum number of contests or dates of competition of the playing season that concludes with the NCAA championship as set forth in Bylaw 17 for the applicable sport plus one contest or date of competition, whichever is greater.~~

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~~*12.6.6.2.1.1 Percent Calculation. The requirements specified in Bylaws 12.6.4.2.3, 12.6.4.2.4 and 12.6.4.2.5 shall apply to the percent calculation specified in this waiver.*~~

12.6.1 Timing of 19th Birthday. For an individual who turns 19 years old on or after September 1, the period of eligibility begins at the start of the subsequent academic year, unless the individual enrolls full time in a collegiate institution earlier.

12.6.2.*1* Athletics Competition. Even though an individual is enrolled in less than a minimum full-time program of studies at a collegiate institution, the individual's five-year period of eligibility begins if the individual represents the institution in intercollegiate athletics.

12.6.*2***3**.*2* Nonrecognized College. Enrollment in a postsecondary, noncollegiate institution (e.g., technical school, seminary or business college) in the United States that is not accredited at the college level by an agency or association recognized by the secretary of the Department of Education and legally authorized to offer at least a one-year program of study creditable toward a degree, constitutes enrollment in the application of the five-year period only if:

[12.6.3-(a) through 12.6.3-(b) unchanged.]

12.6.*2***4**.*3* Joint College/High School Program. An individual's five-year period of eligibility does not begin while the individual is enrolled in a collegiate institution in a joint high school/college academic program for high school students in which the courses count as both high school graduation credit and college credit, provided the individual has not officially graduated from high school and does not participate in intercollegiate athletics while enrolled in the joint program.

12.6.*2***5**.*4* Vocational Program. A student-athlete's five-year period of eligibility does not begin while the student is enrolled in a minimum full-time program of studies as a part of a special vocational program that combines enrollment in regular college courses and participation in vocational training courses, provided the student is not considered to be regularly matriculated by the institution, does not go through the customary registration and testing procedures required of all regular entering students and is not eligible for the institution's extracurricular activities, including athletics.

12.6.*1***6**.*2* Service Exceptions to the Five-Year ~~*Rule*~~ **Period of Eligibility**. Time spent in the armed services, on official religious missions or with recognized foreign aid services of the U.S. government is excepted from the application of the five-year ~~*rule*~~ **period of eligibility**. Among such services that qualify for an exception are:

[12.6.6-(a) through 12.6.6-(c) unchanged.]

12.6.*1***6**.*2***1**.*1* Elapsed Time/Service to Enrollment. If a student-athlete enrolls in a regular term of a collegiate institution at the first opportunity following completion of one of the service exceptions, the elapsed time (the exact number of calendar days) between completion of the service and the first opportunity for enrollment may be added to the exact number of days served on active duty in the armed services, with foreign aid services or on official religious missions and will not count toward the student-athlete's five years of eligibility. It is not permissible to extend the five-year period by any additional time beyond the first opportunity to enroll (the opening day of classes of the first regular term at the institution in which the student-athlete enrolls as a regular student immediately following the termination of the active-duty commitment).

12.6.*1***6**.2.*2* Collegiate Enrollment Concurrent With Service Assignment. Any time in which a student-athlete is enrolled for a minimum full-time load as a regular student in a collegiate institution while simultaneously on active duty in the U.S. military, on an official religious mission or with a recognized foreign aid service of the U.S. government shall count against the ~~*five years in which the*~~ student-athlete's ~~*seasons*~~ **period** of eligibility ~~*must be completed*~~.

12.6.6.3 Organized Competition During Service Assignment. If an individual participates in organized competition (see Bylaw 12.02.6) at any time during a service assignment, none of the time spent in the service assignment shall be excepted from the individual's five-year period of eligibility.

12.6.6.3.1 Low-level and Minimally Organized Competition. A student-athlete may be granted relief from the application of Bylaw 12.6.6.3 in the athletics eligibility certification process for

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participation that meets the definition of organized competition but is determined to be low-level or minimally organized competition.

12.6.~~1~~**7**.*5* Pregnancy Exception. ~~*An institution may extend a*~~ **A** female student-athlete's five-year period of eligibility ~~*for one year*~~ **may be extended** for reasons of pregnancy **based on the period in which the student-athlete is unable to participate (practice or compete) in intercollegiate athletics, as supported by contemporaneous medical documentation**.

12.6.7.1 Application. The pregnancy exception applies to any condition related to pregnancy (e.g., miscarriage, postpartum depression).

12.6.7.2 Medical Documentation. Contemporaneous or other appropriate medical documentation, from a physician (medical doctor) who administered care at the time of the pregnancy or related condition shall be submitted to establish the application of the pregnancy exception. For a case involving a psychological or mental illness, the required contemporaneous or other appropriate medical documentation may be provided by an individual (e.g., psychiatrist, psychologist) who is qualified and licensed to diagnose and treat the particular illness.

12.6.8 Waivers. There shall be no waivers of the application of the five-year period of eligibility legislation.

12.7 U.S. Service Academy Exceptions, Special Eligibility Provisions.

~~*12.7.1 Five-Year Rule. The Athletics Eligibility Subcommittee, by a two-thirds majority of its members present and voting, may approve waivers to the five-year rule (see Bylaw 12.6) for student-athletes of the national service academies who have exhausted eligibility in one sport but wish to compete in another sport or sports in which they have eligibility remaining.*~~

[12.7.1 renumbered as 12.7.0, unchanged.]

[12.8 through 12.10 unchanged.]

B. Bylaws: Amend 14, as follows:

14 Academic Eligibility

[14.01 through 14.2 unchanged.]

14.3 Freshman Academic Requirements.

[14.3.1 through 14.3.2 unchanged.]

~~*14.3.3 Seasons of Competition -- Nonqualifiers. Nonqualifiers, recruited or nonrecruited, shall not engage in more than three seasons of competition in any one sport. A student who transfers to a Division I member institution from another collegiate institution shall not engage in more than four seasons of competition with not more than three of those seasons in Division I.*~~

[14.3.3 renumbered as 14.3.2, unchanged.]

~~*14.3.3.1 Application of Delayed Enrollment Legislation. A student-athlete who is charged with a season (or seasons) of eligibility due to the application of delayed enrollment legislation (Bylaws 12.6.3.2 and 12.6.3.3) is considered to have used that season (or seasons) of competition for purposes of Bylaw 14.3.3.*~~

~~*14.3.3.2 Fourth Season of Competition -- Nonqualifiers. A fourth season of intercollegiate competition shall be granted to a student-athlete who is a nonqualifier, provided that at the beginning of the fifth academic year following the student-athlete's initial, full-time collegiate enrollment, the student-athlete has completed at least 80 percent of the student-athlete's designated degree program.*~~

~~*14.3.3.2.1 Waiver. The Academic Eligibility Subcommittee shall have the authority to grant a fourth season of intercollegiate competition to a student-athlete who is a nonqualifier based on objective evidence of extraordinary circumstances that warrant a waiver of the normal application of this regulation.*~~

[14.3.4 renumbered as 14.3.3, unchanged.]

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14.4 Progress-Toward-Degree Requirements.

[14.4.1 unchanged.]

14.4.2 Eligibility for Financial Aid and Practice. Eligibility for institutional financial aid and practice during each academic year after a student-athlete's initial year of residence ~~*or after the student-athlete has used one season of eligibility in a sport*~~ shall be based upon the rules of the institution and the conference, if any, of which the institution is a member.

14.4.3 Eligibility for Competition.

[14.4.3.1 unchanged.]

14.4.3.2 Fulfillment of Percentage of Degree Requirements. A student-athlete who is entering the third year of collegiate enrollment shall have completed successfully at least 40 percent of the course requirements in the student's specific degree program. A student-athlete who is entering the fourth year of collegiate enrollment shall have completed successfully at least 60 percent of the course requirements in the student's specific degree program. A student-athlete who is entering the fifth year of collegiate enrollment shall have completed successfully at least 80 percent of the course requirements in the student's specific degree program. The course requirements must be in the student's specific degree program (as opposed to the student's major).

[14.4.3.2.1 unchanged.]

14.4.3.2.2 Application of Rule to Transfer Student. The provisions of Bylaw 14.4.3.2 shall be applicable to the eligibility of a transfer student from a two-year or four-year collegiate institution, even if the student has not yet completed an academic year of residence ~~*or used a season of eligibility in a sport*~~ at the certifying institution.

[14.4.3.2.2.1 unchanged.]

[14.4.3.2.3 through 14.4.3.2.4 unchanged.]

[14.4.3.3 through 14.4.3.10 unchanged.]

[14.5 through 14.6 unchanged.]

14.7 Additional Waivers for Eligibility Requirements. Conditions under which exceptions are permitted or waivers may be granted to specific eligibility requirements in this bylaw are noted in other sections of this bylaw.

14.7.1 Academic and General Requirements Waivers. The Academic Eligibility Subcommittee may waive academic eligibility requirements under the following conditions or circumstances:

[14.7.1-(a) unchanged.]

(b) For institutions that have instituted a trimester or other accelerated academic program, provided any member institution applying for a waiver shall demonstrate a reasonable need for such waiver. ~~*Further, no waiver shall be granted that permits a student-athlete to compete in more than the maximum permissible number of seasons of intercollegiate competition (see Bylaw 12.6).*~~ Under the waiver allowed, if a student in an accelerated academic program completes the requirements for a degree before completing eligibility, the student may participate in competition that begins within 90 days after completion of the requirements for the degree; and

[14.7.1-(c) unchanged.]

[14.8 through 14.9 unchanged.]

C. Bylaws: Amend 18.4.1.4, as follows:

18.4.1.4 Ineligibility for Use of Banned Drugs. A student-athlete who, as a result of a drug test administered by the NCAA, tests positive for use of a substance in a banned drug class shall be declared ineligible for further participation in postseason and regular-season competition in accordance with the ineligibility provisions in this bylaw.

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18.4.1.4.1 Penalty -- Banned Drug Classes Other Than Narcotics. A student-athlete who, as a result of a drug test administered by the NCAA, tests positive for use of a substance in a banned drug class other than narcotics (in accordance with the testing methods authorized by the Board of Governors) shall be subject to the following:

(a) The student-athlete shall be ineligible for competition in all sports until the student-athlete has been withheld from the equivalent of one season (the maximum number of championship segment regular-season contests or dates of competition in the applicable sport per Bylaw 17) of regular-season competition. The student-athlete must be otherwise eligible for competition to fulfill this penalty; **and**

~~*(b) A student-athlete who tests positive during a year in which the student-athlete did not use a season of competition shall be charged with the loss of one season of competition in all sports. A student-athlete who tests positive during a year in which the student-athlete used a season of competition shall be charged with the loss of one additional season of competition in all sports (in addition to the season used) unless the student-athlete uses a season of competition in the academic year immediately after the positive test; and*~~

[18.4.1.4.1-(c) relettered as 18.4.1.4.1-(b), unchanged.]

[18.4.1.4.1.1 unchanged.]

[18.4.1.4.2 unchanged.]

18.4.1.4.3 Breach of NCAA Drug-Testing Program Protocol. A student-athlete who is in breach of the NCAA drug-testing program protocol (e.g., no-show) shall be considered to have tested positive for use of any drug in a banned drug class other than narcotics.

18.4.1.4.3.1 Tampering with Drug-Test Sample. A student-athlete who is involved in a case of clearly observed tampering with an NCAA drug-test sample (e.g., urine substitution and related methods), as documented per NCAA drug-testing protocol by a drug-testing crew member, shall be subject to the following:

(a) The student-athlete shall be ineligible for competition in all sports until the student-athlete has been withheld from the equivalent of two seasons (the maximum number of championship segment regular-season contests or dates of competition in the applicable sport per Bylaw 17) of regular-season competition. The student-athlete must be otherwise eligible for competition to fulfill this penalty; **and**

~~*(b) A student-athlete who is involved in tampering during a year in which the student-athlete did not use a season of competition, shall be charged with the loss of two seasons of competition in all sports. A student-athlete who is involved in tampering during a year in which the student-athlete used a season of competition, shall be charged with the loss of two additional seasons of competition in all sports (in addition to the season used) unless the student-athlete uses a season of competition in one of the next two academic years. If the student-athlete uses a season of competition in one of the next two academic years, the student-athlete will only be charged one additional season of competition in all sports (in addition to the seasons used); and*~~

[18.4.1.4.3.1-(c) relettered as 18.4.1.4.3.1-(b), unchanged.]

[18.4.1.4.4 through 18.4.1.4.11 unchanged.]

D. Bylaws: Amend 21.3, as follows:

21.3 Academics and Eligibility Committee.

[21.3.1 through 21.3.3 unchanged.]

21.3.4 Subcommittees of the Academics and Eligibility Committee.

[21.3.4.1 unchanged.]

21.3.4.2 Athletics Eligibility Subcommittee.

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[21.3.4.2.1 unchanged.]

21.3.4.2.2 Duties and Responsibilities. The Athletics Eligibility Subcommittee shall:

(a) With oversight from the Cabinet, make legislative and policy recommendations related to the period of eligibility ~~*and seasons of competition*~~; awards, benefits and expenses unrelated to the House settlement; involvement with professional teams; preenrollment athletics eligibility; and professional sports agents;

[21.3.4.2.2-(b) through 21.3.4.2.2-(c) unchanged.]

(d) Review and act upon appeals of staff decisions on legislative relief wavier requests related to the areas listed in (a) above and provide annual reports of legislative relief waiver decisions to the Cabinet; ~~*and*~~

(e) Review and act upon appeals of staff decisions on student-athlete reinstatement requests and provide annual reports of reinstatement decisions to the Cabinet. The subcommittee shall oversee the policies and procedures for the restoration of eligibility of a student-athlete who is ineligible for intercollegiate competition.~~;~~ **and**

(f) Review and act upon requests to review staff determinations of facts related to athletics certifications and the period of eligibility. The Cabinet shall oversee the policies for such determinations.

[21.3.4.2.3 unchanged.]

21.3.4.2.4 Authority. An interpretive, **fact-finding,** waiver or reinstatement decision made by the Athletics Eligibility Subcommittee shall be final, binding and conclusive and shall not be subject to further review by any other authority.

E. Bylaws: Amend 9.3, as follows:

9.3 Other Legislative and Amendment Procedures.

9.3.1 Interpretations of Bylaws.

9.3.1.1 Authorization. The Cabinet has overall oversight of interpretations of the bylaws and is empowered to make interpretations of the bylaws that are not subject to the authority of other committees. The Academics and Eligibility Committee is empowered to make interpretations of bylaws related to academics, including initial eligibility; two-year and four-year college transfers; progress toward degree and academic integrity; and eligibility, including period of eligibility ~~*and seasons of competition*~~; awards and benefits unrelated to the House settlement; involvement with professional teams; preenrollment athletics activities; and professional sports agents. Sports oversight committees are empowered to make interpretations of sport specific bylaws of Articles 11, 13, 17 and 31.

[9.3.1.1.1 unchanged.]

[9.3.1.2 through 9.3.1.3 unchanged.]

[9.3.2 through 9.3.4 unchanged.]

Source: NCAA Division I Cabinet

Effective Date: August 1, 2026; may be applied to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026. May be applied to student-athletes who initially enroll full time in any collegiate institution in the 2026-27 academic year. (Previous rules may be applied to student-athletes who enrolled before or enroll during the 2026-27 academic year; however, no waivers will be available. Additionally, the legislated exceptions to the previous season of competition rules do not apply to competition that occurs during the 2026-27 academic year through the exhaustion of the student-athlete's Division I eligibility.) Applicable to student-athletes who initially enroll full time in any collegiate institution in 2027-28 and thereafter.

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Rationale: The Age-Based Eligibility Model provides predictable boundaries for eligibility that closely track the typical trajectory of collegiate athletics participation in terms of attendance and degree completion. Supporting the five calendar years of Division I collegiate eligibility, NCAA Division I Academic Performance Program data indicates that of the Division I student-athletes who earned their bachelor's degrees in 2024, 98 percent did so within five years or fewer, while 72 percent graduated in four years or fewer. Further, although there are some individual sport outliers, the five-year average of APP data demonstrates that the average age of first-year Division I student-athletes is 18.7. Aligned with the existing NCAA core guarantees, including scholarship protections, healthcare and medical services, degree completion support, academic support, career counseling and life skills education, the age-based eligibility model ensures consistent standards across Division I.

Estimated Budget Impact: None.

Impact on Student-Athlete's Time (Academic and/or Athletics): None.

History:

Jun 24, 2026	In Progress	Considered by the Division I Cabinet as emergency legislation.
Jun 24, 2026	Adopted Final	Adopted by the Cabinet as emergency legislation.
Aug 3, 2026	Adopted Final	The Cabinet adopted emergency legislation to amend the effective date to specify that the legislated exceptions to the season of competition legislation (e.g., football/men's wrestling redshirt exceptions, competition in nonchampionship segment, preseason exhibitions/scrimmages) are not be applicable for continuing student-athletes who are certified under the previous period of eligibility rules and prospective student-athletes who initially enroll full time in any collegiate institution during the 2026-27 academic year and are certified under the previous period of eligibility rules. Effective immediately, the exceptions no longer apply to competition that occurs during the 2026-27 academic year through the exhaustion of the student-athlete's Division I eligibility.

Legislative References

Legislative Cite	Title
9.3	Other Legislative and Amendment Procedures.
9.3.1	Interpretations of Bylaws.
9.3.1.1	Authorization.
12	Athletics Eligibility
12.1	Athletics Eligibility.
12.1.1	Validity of Athletics Eligibility Status.
12.1.1.1	Athletics Eligibility Certification Process.
12.1.1.1.1	Scope.
12.1.1.1.2	Institutional Responsibilities.

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Legislative Cite	Title
12.1.1.1.2.1	Athletics Eligibility Status After Certification.
12.1.1.1.2.2	Sharing Information and Reporting Discrepancies.
12.1.1.1.3	Eligibility for Practice or Competition.
12.1.1.1.3.1	Temporary Certification.
12.1.1.1.3.2	Effect of Violations.
12.1.1.1.4	Eligibility for Practice After a Final Not-Certified Certification.
12.1.1.1.5	Review of Factual Determinations.
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12.6.1.2	Service Exceptions to the Five-Year Rule.
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12.6.1.2.2	Collegiate Enrollment Concurrent With Service Assignment.
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12.6.1.5	Pregnancy Exception.
12.6.1.6	Athletics Activity Waiver.
12.6.1.6.1	Junior Level Competition.
12.6.1.6.2	Athletics Activity Waiver Criteria.
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12.6.1.7.1.3	Circumstances of Extraordinary or Extreme Hardship.
12.6.1.7.1.4	Practice While Waiver is Pending.
12.6.2	Additional Applications of the Five-Year Rule.
12.6.2.1	Athletics Competition.
12.6.2.2	Nonrecognized College.

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Legislative Cite	Title
12.6.2.3	Joint College/High School Program.
12.6.2.4	Vocational Program.
12.6.2.5	Eligibility for Practice.
12.6.3	Criteria for Determining Season of Competition.
12.6.3.1	Minimum Amount of Competition.
12.6.3.1.1	Two-Year College Scrimmages.
12.6.3.1.2	Exception -- Nonchampionship Segment Competition -- Field Hockey, Men's Soccer, Women's Soccer, Women's Volleyball and Men's Water Polo.
12.6.3.1.3	Exception -- Nonchampionship Segment Competition -- Baseball, Women's Beach Volleyball, Lacrosse, Softball, Men's Volleyball and Women's Water Polo.
12.6.3.1.4	Preseason Exhibitions/Preseason Practice Scrimmages.
12.6.3.1.5	Alumni Game, Fundraising Activity or Celebrity Sports Activity.
12.6.3.1.6	Exception -- Football.
12.6.3.1.7	Exception -- Men's Wrestling.
12.6.3.2	Delayed Enrollment -- Seasons of Competition.
12.6.3.2.1	Sports Other Than Men's Ice Hockey, Skiing and Tennis.
12.6.3.2.1.1	Exception -- Transfer Student.
12.6.3.2.1.2	Exception -- National/International Competition.
12.6.3.2.1.3	Service Exceptions.
12.6.3.2.1.4	Track and Field and Cross Country.
12.6.3.2.1.5	Road Racing.
12.6.3.2.2	Tennis.
12.6.3.2.2.1	Exception -- Transfer Student.
12.6.3.2.2.2	Exception -- National/International Competition.
12.6.3.2.2.3	Service Exceptions.
12.6.3.2.2.4	Matriculation After 20th Birthday -- Tennis.
12.6.3.2.2.4.1	Exception -- Continuous Full-Time Enrollment.
12.6.3.2.2.4.2	Exception -- Olympic Games, Paralympic Games, Pan American Games, Parapan American Games, World Championships, World Cup, World University Games (Universiade) and World University Championships Participation.
12.6.3.2.2.4.3	Service Exceptions.

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Legislative Cite	Title
12.6.3.2.3	Low-level and Minimally Organized Competition.
12.6.3.3	Participation After 21st Birthday -- Men's Ice Hockey and Skiing.
12.6.3.4	Foreign-Tour Competition.
12.6.3.5	Participation on an Institution's Club Team.
12.6.4	Hardship Waiver.
12.6.4.1	Administration of Hardship Waiver.
12.6.4.1.1	Review of Denied Waiver.
12.6.4.2	Criteria for Administration of Hardship Waiver.
12.6.4.2.1	Nature of Injury/Illness.
12.6.4.2.2	Medical Documentation.
12.6.4.2.3	First Half and 30 Percent of Season Denominator.
12.6.4.2.3.1	Exception -- Indoor and Outdoor Track and Field.
12.6.4.2.3.2	Fraction in the First-Half-of-Season Computation.
12.6.4.2.3.3	Fraction in Percent Computation.
12.6.4.2.4	Playing Season that Concludes with the NCAA Championship.
12.6.4.2.5	Exclusions from the First Half and 30 Percent of Season.
12.6.4.2.6	Reinjury in Second Half of Season.
12.6.4.2.7	Outside Competition in Second Half of Season.
12.6.4.2.8	Transfer Student-Athletes.
12.6.4.2.9	Foreign-Tour Competition.
12.6.5	Season-of-Competition Waiver -- Competition While Ineligible.
12.6.5.1	Ten Percent Calculation.
12.6.6	Season-of-Competition Waiver -- Competition While Eligible.
12.6.6.1	Coach's Documented Misunderstanding.
12.6.6.1.1	Percent Calculation.
12.6.6.2	Extenuating Circumstances.
12.6.6.2.1	Conditions of Competition.
12.6.6.2.1.1	Percent Calculation.
12.6.6.3	Organized Competition During Service Assignment.

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Legislative Cite	Title
12.6.6.3.1	Low-level and Minimally Organized Competition.
12.6.7.1	Application.
12.6.7.2	Medical Documentation.
12.6.8	Waivers.
12.7	U.S. Service Academy Exceptions, Special Eligibility Provisions.
12.7.1	Five-Year Rule.
14	Academic Eligibility
14.3	Freshman Academic Requirements.
14.3.3	Seasons of Competition -- Nonqualifiers.
14.3.3.1	Application of Delayed Enrollment Legislation.
14.3.3.2	Fourth Season of Competition -- Nonqualifiers.
14.3.3.2.1	Waiver.
14.4	Progress-Toward-Degree Requirements.
14.4.2	Eligibility for Financial Aid and Practice.
14.4.3	Eligibility for Competition.
14.4.3.2	Fulfillment of Percentage of Degree Requirements.
14.4.3.2.2	Application of Rule to Transfer Student.
14.7	Additional Waivers for Eligibility Requirements.
14.7.1	Academic and General Requirements Waivers.
18.4.1.4	Ineligibility for Use of Banned Drugs.
18.4.1.4.1	Penalty -- Banned Drug Classes Other Than Narcotics.
18.4.1.4.3	Breach of NCAA Drug-Testing Program Protocol.
18.4.1.4.3.1	Tampering with Drug-Test Sample.
21.3	Academics and Eligibility Committee.
21.3.4	Subcommittees of the Academics and Eligibility Committee.
21.3.4.2	Athletics Eligibility Subcommittee.
21.3.4.2.2	Duties and Responsibilities.
21.3.4.2.4	Authority.

Student-Athlete Success/Well-Being:

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Enforceable and Merits Outweigh Monitoring Burdens:

Consequential or Nationally Significant:

Division I Commitment:

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

ROBERTO AVILA, *Plaintiff,* *v.* NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *Defendant.*	Case Number: 2026 CH 07738 Calendar 15 Honorable William B. Sullivan, Judge Presiding

MEMORANDUM OPINION AND ORDER *DENYING* ENTRY OF A TEMPORARY RESTRAINING ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

This matter comes before the Court following a hearing on Plaintiff Roberto Avila's ("Avila") Motion for a Temporary Restraining Order ("Motion"). Notice of the hearing was provided to Defendant National Collegiate Athletic Association ("NCAA"). The NCAA has filed an appearance and presented the Court oral arguments, but it has not yet properly responded to the Motion in writing. For the following reasons, Avila's Motion, insofar as it requests a temporary restraining order, is DENIED, and this matter is set for an evidentiary hearing regarding the imposition of a preliminary injunction as set forth below.

I. INTRODUCTION

With two minutes and five seconds showing on the clock in Saint Louis University's 2026 NCAA Tournament game against the University of Michigan,

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Avila came off the floor. The CBS broadcast marked the moment the way broadcasts do, in the present tense and with a note of finality: "Avila comes out of the game and his [college basketball] career is coming to an end."[1] It was a fine call. It was also, in the strict sense, a prediction—and predictions, unlike judgments, do not bind anyone. Whether Avila's college basketball career is in fact over is now a question for this Court to decide. It is a question of first impression in Illinois.

Before the Court is Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, filed August 12, 2026, and noticed for hearing on August 18, 2026. Mr. Avila asks this Court to enjoin the National Collegiate Athletic Association from applying its seasons-of-competition rules to him; to enjoin the NCAA from applying its roster limits in any manner that would foreclose his opportunity to compete; to enjoin the NCAA from enforcing its Rule of Restitution and its "Ghost Transfer" penalties against him, against any institution that may roster him, and against any institution that may play against him; and, finally, to direct the NCAA to certify him as eligible for the 2026-27 season.

The request is not a modest one, and the Court does not fault Plaintiff's counsel for its ambition. Equity is not a timid jurisdiction. But the difficulty with this motion is not its boldness. The difficulty is that the record is missing the one thing an order of this kind requires: a place for Mr. Avila to play.

The papers name no institution at which Mr. Avila is enrolled. They name no institution to which he has applied. They name no institution that has admitted

[1] The Court recounts the broadcast call as narrative framing and nothing more. It is not evidence, it is not in the record, and no part of this Order rests upon it. It is repeated here because it states, more concisely than the pleadings do, the question the parties have placed before the Court.

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him, offered him a scholarship, offered him a roster spot, or offered him a dollar. They identify no graduate program, no coach, no athletic director, no compliance officer, no term sheet, and no signed anything. The only member institution that appears anywhere in the prayer for relief is Temple University, which is named once, in the Motion, and never mentioned again in any other paper in this case.[2] Mr. Avila asks this Court to order him onto a court it cannot locate, for a team no one has named, to receive a scholarship no one has offered.

A temporary restraining order is the most summary relief the law affords. It is entered on an abbreviated record, on abbreviated notice, before the other side has meaningfully been heard, and it is meant to hold a situation still—not to resolve it. It is not a jump ball. On the record now before it, the Court cannot grant one.

Five conclusions drive that result, and the Court states them plainly at the outset so that the reader need not hunt for them.

First, the relief Plaintiff seeks is mandatory, not prohibitory. He does not ask the Court to leave things as they are. He asks the Court to command the NCAA to declare him eligible and to make room for him on a roster. Illinois reserves that species of relief for cases in which the necessity is "clearly established and free from

[2] (Mot. at 2 (asking the Court to enjoin enforcement of the Rule of Restitution "against Mr. Avila, Temple University, any other NCAA member institution for which Mr. Avila may compete in 2026-27").) The Complaint's parallel prayer omits Temple University. (Compl. ¶ 108(3).) Nothing in the Complaint, the Memorandum, or the Lloyd Declaration connects Mr. Avila to Temple University. The Court notes the reference not to embarrass counsel, who filed on an emergency footing and under real time pressure, but because it is symptomatic of the deeper problem addressed throughout this Order: these papers describe a category of plaintiff rather than this plaintiff. The Court makes the same observation about the Memorandum's table of authorities, which carries a section heading captioned "Suspects." (Mem. at iv.)

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doubt." *Ambassador Foods Corp. v. Montgomery Ward & Co.*, 43 Ill. App. 2d 100, 105 (1st Dist. 1963). This case is not free from doubt. It is very nearly all doubt.

Second, the status quo—the thing a temporary restraining order exists to preserve—is not what Plaintiff says it is. The status quo is the last actual, peaceable, uncontested position of *these parties* before this controversy arose. *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 397 (1993). As of that moment Mr. Avila had played four seasons, exhausted his seasons of competition under a rule he does not claim was misapplied, taken his degree, gone home to Oak Forest, and entered the 2026 NBA Draft. Plaintiff's "practical status quo"—the proposition that since 2016 nearly everyone has gotten five seasons—is a statement about other people. It is a league average, not a status quo.

Third, Plaintiff has not demonstrated a clearly ascertainable right in need of protection. His asserted rights are a third-party beneficiary interest in the NCAA Division I Manual, a right to pursue his trade as a collegiate athlete, a right to engage in collegiate athletics, and a statutory right to be compensated for his name, image, and likeness. Each of the four presupposes that he is a student and is actually in college. He has not shown either.

Fourth, Plaintiff has not shown a probability of success on the merits. His contract claim rests on third-party beneficiary status that Illinois law strongly presumes against and that the federal court in this District has already rejected on materially identical allegations. His tortious interference claim identifies no third party. His declaratory judgment claim asks the Court to find an Illinois public

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policy in two statutes that address other subjects entirely. And the theory that has actually carried the day for athletes elsewhere—federal antitrust—is not pled in this case at all.

Fifth, the equities and the public interest do not presently favor an order that would be entered without the participation of the parties it would most affect: the member institutions whose rosters the order would rearrange and the student-athletes now occupying the spots Plaintiff would have this Court open.

None of this means Mr. Avila loses. It means he has not shown enough to win, without an evidentiary hearing, on five days' notice, on one side's papers. Courts elsewhere have granted relief to athletes in Mr. Avila's graduating class, and this Court has read each order Plaintiff supplied. Several are thoughtful. Not one of them binds this Court, and not one of them involved an athlete who had no school. The Court therefore denies the temporary restraining order without prejudice and sets this matter for an evidentiary hearing on the preliminary injunction in short course, so that the questions this record leaves open can be answered by witnesses under oath rather than by inference from a brief.

II. BACKGROUND

The facts that follow are drawn from the Verified Complaint, the Memorandum of Law, the Declaration of Duncan Lloyd, and the exhibits attached to Plaintiff's filings. Nothing recited here is a finding of fact; on a motion of this kind, at this stage, the Court describes the record it has been given. The Court will note at the outset that as an enthusiast of college basketball, the Court is

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informally aware of several facts regarding Mr. Avila; however, the Court will remain entirely impartial and will use *only* the facts and record presented to it in deciding this Motion. The Court will insert certain anecdotes in this Opinion, but those will be used *only* for their illustrative purposes and in no way affect this Court's impartial performance of the adjudicative duties of judicial office. Additionally, the Court notes that pursuant to Rule 2.11 of the Illinois Code of Judicial Conduct of 2023, there is no need for this Court to disqualify itself. The Court has no personal bias or prejudice concerning Mr. Avila or the NCAA or personal knowledge of facts that are in dispute in the proceeding.

A. The Player

A word on names before the facts. Mr. Avila is a well-known player. He grew up in Oak Forest, Illinois, and graduated from Oak Forest High School in 2022 as the school's all-time leading scorer. (Compl. ¶¶ 13-15, 23.) He enrolled at Indiana State University, where he was named to the Missouri Valley Conference All-Freshman Team in 2022-23 and, as a sophomore in 2023-24, helped his team to a 32-7 record. (Compl. ¶¶ 24-26.) When his head coach left for Saint Louis University, Mr. Avila followed. (Compl. ¶ 27.) In 2025-26 he was named Atlantic 10 Player of the Year and First Team All-Conference, and Saint Louis reached the NCAA Tournament. (Compl. ¶ 28.)

He graduated on May 14, 2026, earning a bachelor's degree in Communications from Saint Louis University, and he has "since moved back home [to] Oak Forest, Illinois." (Compl. ¶ 16.) He competed in four seasons of NCAA

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Division I basketball—2022-23 and 2023-24 at Indiana State, 2024-25 and 2025-26 at Saint Louis—and he "did not sit out (redshirt) during any season." (Compl. ¶ 30.)

One further fact appears in Plaintiff's own evidentiary submission and deserves to be stated here rather than buried later. Mr. Avila's agent declares: "Mr. Avila was not selected in the 2026 NBA Draft." (Lloyd Decl. ¶ 10.) A player is not "not selected" in a draft he did not enter.[3]

B. The Rules as They Stood

Four features of the NCAA's prior eligibility framework matter. First, the five-year clock: under Bylaw 12.6.1, a student-athlete must complete his seasons of participation "within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered," and the clock runs whether or not he competes. (Compl. ¶¶ 46, 54(a).) Second, seasons of competition: a season was charged whenever an athlete competed in any contest during an academic year, and athletes were limited to four. (Compl. ¶ 54(b).) Third, the redshirt: an athlete who sat out an entire season burned a year of the clock without burning a season of competition, and could thereby spread four seasons across five years. (Compl. ¶ 54(c).) Fourth, and as a consequence, the framework known as "Four-in-Five." (Compl. ¶ 54(d).)

The arithmetic of Mr. Avila's career under that framework is not disputed. He played four seasons. He did not redshirt. His four seasons were therefore

[3] The Court draws no conclusion at this stage about Mr. Avila's subjective intentions, and it is aware that under the governing framework an athlete may test the professional draft and return. The point is evidentiary. The only record evidence concerning Mr. Avila's plans for the spring and summer of 2026 is that he made himself available for a professional draft. That evidence came from Plaintiff.

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exhausted at the conclusion of 2025-26. Plaintiff says so himself: "Under the old rules, according to the NCAA, Mr. Avila had exhausted his four seasons of competition." (Compl. ¶ 55.) It bears emphasizing, because much of the argument in this case obscures it, that *under the rules in force during every day of Mr. Avila's college career, he had no right to a fifth season.* He does not contend otherwise. He does not contend the NCAA counted a season it should not have counted, denied him a hardship waiver he should have received, or misapplied any Bylaw to his individual circumstances. His grievance is not with the application of the old rule. It is with the reach of the new one.

Two enforcement provisions round out the picture. Bylaw 12.9.4.2—the Rule of Restitution—permits the NCAA to impose penalties on an institution that fields an ineligible athlete under a court order later vacated, stayed, or reversed. (Compl. ¶¶ 57-58.) And legislation adopted April 1, 2026—the "Ghost Transfer" penalty—sanctions institutions that roster a student-athlete outside the designated transfer portal. (Compl. ¶ 59.) Plaintiff candidly acknowledges that Mr. Avila "did not join that school during the April 2026 transfer portal while his eligibility was still up in the air." (Compl. ¶ 61.)

C. The June 2026 Legislation

In April 2026, the NCAA announced that it intended to permit five seasons of competition within the five-year window to all athletes. (Compl. ¶ 62.) On June 23, 2026, and as "Emergency Legislation" the Division I Cabinet adopted what the Association calls the "age-based eligibility model," under which the five-year clock

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begins on the earlier of first full-time collegiate enrollment or the start of the academic year following the athlete's nineteenth birthday, and within which an athlete may compete in five seasons. (Mem., Ex. I, Ex. 2 ¶¶ 3-5.) The rule change was made effective for the academic year beginning August 1, 2026. (Mem., Ex. I, Ex. 2 ¶ 4.)

The NCAA's position on retroactivity appears in Plaintiff's own Exhibit I, and the Court quotes it because it frames the dispute exactly:

> Student-athletes who exhausted their eligibility under the pre-existing Five-Year Rule are not able to now claim additional eligibility under the new age-based framework. In other words, student-athletes who completed their fourth season of eligibility pursuant to the previous rule are not able to claim eligibility for an additional year of competition under the new rule, because they already received all the eligibility they were promised under the rules they agreed to when they enrolled in college sports.
>
> (Mem., Ex. I, Ex. 2 ¶ 4.)

Plaintiff characterizes the same decision very differently: as a deliberate carve-out that singles out athletes who graduated high school in 2022 and did not redshirt, leaving his class in "a void of [the NCAA's] own creation." (Compl. ¶¶ 8-9, 68-69.) Which characterization is the more accurate is a merits question the Court does not resolve today. What matters now is the timing, and the timing is not in dispute.

D. The Chronology

Assembled from Plaintiff's papers, the sequence is this:

- Fall 2022—Mr. Avila first enrolls full time at Indiana State University; his five-year clock starts.

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- March 2026—Mr. Avila plays his fourth and final season under the then existing rules for Saint Louis University; his four seasons of competition are exhausted.
- April 2026—The NCAA announces intent to create the new 5-in-5 rule.
- May 14, 2026—Mr. Avila receives his bachelor's degree and moves home to Oak Forest.
- June 2026—Mr. Avila is not selected in the 2026 NBA Draft.
- June 23, 2026—The Division I Cabinet adopts the age-based eligibility model.
- August 1, 2026—The new model takes effect.
- August 12, 2026—Mr. Avila files this action, the Motion, and the Memorandum.
- August 13, 2026—Mr. Avila requests leave to present the Motion.
- August 18, 2026—The Court heard oral argument on the Motion.

The Court draws attention to one juxtaposition. On the day the NCAA legislated, Mr. Avila was not a student-athlete at a member institution. He was a graduate of one. He had a diploma, a residence in Cook County, and a place in a professional draft. He did not have a school, a roster spot, or a season. That is not a criticism of him; it is a description of him, and it is drawn entirely from his own pleading. But it turns out to matter a great deal, because nearly every legal theory in the Complaint is built on the proposition that Mr. Avila is a *student-athlete* to whom the NCAA owes duties. On this record, at the moment that counts, he was not.

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E. The Papers

Plaintiff supports the Motion with the Verified Complaint, a fifteen-page Memorandum of Law, the Declaration of Duncan Lloyd (a certified National Basketball Players Association (aka NBPA) and *Fédération Internationale de Basketball* (aka FIBA) agent), and nine exhibits, eight of which are orders entered by other courts in eligibility litigation against the NCAA and one of which (Exhibit I) is the NCAA's own opposition brief and supporting declaration filed in Ohio. Several of the attached orders are substantial written opinions. Others are short forms of order that state a result without stating reasons. The Court has read all of them and discusses them in Section IV.G below.

III. LEGAL STANDARD

Preliminary injunctive relief such as a temporary restraining order issues only to a movant who establishes (1) a clearly ascertainable right in need of protection, (2) irreparable injury in the absence of protection, (3) the lack of an adequate remedy at law, and (4) a likelihood of success on the merits. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). Ordinarily, the movant need not prove its whole case in advance; it must raise a "fair question" as to the existence of the right claimed and persuade the Court that the status quo should be preserved until the merits can be decided. *Buzz Barton & Assocs., Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985); *see Prairie Eye Center, Ltd. v. Butler*, 305 Ill. App. 3d 442, 445 (4th Dist. 1999) (prima facie showing). Even then, the remedy remains "an extraordinary" one, reserved for "situations where an extreme emergency exists and

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serious harm would result" without it. *Buzz Barton*, 108 Ill. 2d at 386-87. The Court also weighs the balance of hardships, including the effect of an injunction on parties, non-parties, and the public. *Kalbfleisch v. Columbia Community Unit School District No. 4*, 396 Ill. App. 3d 1105, 1119 (5th Dist. 2009). And because the motion comes before answer or discovery, the Court does not resolve controverted facts or the merits of the case. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 156-57 (1992).

The "status quo" to be preserved is a term of art: it is "the last, actual, peaceable, uncontested status which preceded the pending controversy." *Postma*, 157 Ill. 2d at 397. Injunctive relief that would *change* that status, or that would hand the movant the ultimate relief sought in the case, is disfavored and improper absent a far stronger showing. *Id.* at 397-98. Mandatory preliminary injunctive relief—relief compelling affirmative acts rather than restraining them—is granted only in cases of great urgency, *Sadat v. American Motors Corp.*, 104 Ill. 2d 105, 115-16 (1984), where the need for such relief is "clearly established and free from doubt," *Ambassador Foods*, 43 Ill. App. 2d at 105, and where the movant carries the heavier burden of showing a *probability* of ultimate success on the merits, not merely a fair question, *Keystone Chevrolet Co. v. Kirk*, 69 Ill. 2d 483, 486 (1978); *see Kalbfleisch*, 396 Ill. App. 3d at 1112-13, 1117 (alteration of the status quo is sometimes permissible, but only under this heightened standard).

While it is true that "the trial court does not have to wait until an injury actually occurs to grant an injunction," a "speculative possibility of injury is not

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sufficient to meet this requirement." *Smith, Waters, Kuehn, Burnett & Hughes, Ltd. v. Burnett*, 192 Ill. App. 3d 693, 703 (3d Dist. 1989).

Finally, entry of injunctive relief is an exercise of the Court's conscience and a balancing of the equities, and the conduct of the parties is something this Court can take into consideration when crafting an injunction. *Kalbfleisch*, 396 Ill. App. 3d at 1119 ("An application for an injunction is addressed to the conscience and sound discretion of the court, and it is not controlled by technical legal rules (***) In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction.").

IV. ANALYSIS

The Court now turns its attention to analyzing the facts presented in the record and applying them to the law to determine if issuing a temporary restraining order is warranted. It is not.

A. The Relief Sought Is Mandatory, and the Heightened Standard Governs

The Court begins with what Plaintiff actually asks it to do, because the label on the Motion and the substance of the prayer are not the same thing.

Paragraph (4) of the prayer asks the Court to enter an order "directing the NCAA to certify Mr. Avila as eligible for the 2026-27 season." (Mot. at 2; Compl. ¶ 108(4).) That is an affirmative command to a defendant to take an action it has not taken. Paragraph (2) asks the Court to enjoin the NCAA from applying its roster limits "in a manner that would foreclose Mr. Avila's opportunity to compete at any member institution." (Mot. at 1.) Framed in the negative, it is affirmative in

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operation: rosters are capped at fifteen players, and an order requiring that Mr. Avila's opportunity not be foreclosed by that cap is an order requiring that room be made. (Compl. ¶ 89; Lloyd Decl. ¶ 9.) Paragraph (3) asks the Court to disable two enforcement Bylaws as against Mr. Avila, as against any institution that may roster him, and as against "any institution that competes against Mr. Avila" in 2026-27—that is, as against the better part of Division I.

Plaintiff does not ask this Court to hold the ball while the parties catch their breath. He asks it to inbound the ball to him at half court, with the clock running and the other team not yet on the floor. That is mandatory relief, and it carries a heightened showing: the necessity must be "clearly established and free from doubt." *Ambassador Foods*, 43 Ill. App. 2d at 105. Plaintiff must also carry the heavier burden of showing a *probability* of ultimate success on the merits, not merely a fair question. *Keystone Chevrolet*, 69 Ill. 2d at 486; *see Kalbfleisch*, 396 Ill. App. 3d at 1112-13, 1117 (alteration of the status quo is sometimes permissible, but only under this heightened standard).

Plaintiff's answer is that a mandatory injunction is permissible when necessary to maintain the status quo. (Mem. at 5.) True enough as an abstraction, but it assumes the conclusion. Everything turns on what the status quo was. To that the Court now turns.

B. The Status Quo Was Mr. Avila's Position—Not the League's Average

Two questions must be answered in order: when did the controversy begin, and what was the last actual, peaceable, uncontested status that preceded it?

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The first is easy, because Plaintiff pleads it. This controversy arose in June 2026, when the NCAA adopted the age-based eligibility model and declined to extend it to athletes who had already exhausted their seasons of competition. (Compl. ¶¶ 8, 62, 68.) Every claim in the Complaint is directed at that decision. Nothing before June 2026 is challenged; indeed, Plaintiff affirmatively concedes that the prior rule was correctly applied to him. (Compl. ¶ 55.)

The second question answers itself once the first is answered. Immediately before June 2026, Mr. Avila's actual, peaceable, uncontested status was as follows. He had competed in four seasons of Division I basketball and exhausted his seasons of competition. (Compl. ¶¶ 30, 55.) He had received his bachelor's degree from Saint Louis University. (Compl. ¶ 16.) He had left St. Louis and moved home to Oak Forest. (Compl. ¶ 16.) He was enrolled at no institution, rostered by no institution, and eligible at no institution. He had entered the 2026 NBA Draft and had gone unselected. (Lloyd Decl. ¶ 10.) He was, in the plainest terms, a recent college graduate living at home in Cook County, looking for what came next.

That is the status quo. It is a condition of rest, and a settled one. An order commanding the NCAA to certify him eligible and to open a roster spot for him would not preserve that condition. It would replace it.

Plaintiff proposes a different measure. He says the "practical status quo" in Division I since 2016 or 2017 has been that "virtually all athletes receive five (or more) seasons of competition," and that the exclusion of the class of 2022 is "an anomalous departure" from it. (Compl. ¶ 105; Mem. at 7, 15.) The Court has

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considered this framing carefully, because it is the most interesting argument in the brief. It does not work, for a reason that is doctrinal rather than rhetorical. *Postma* measures the status quo by the position of *the parties*, not by the fortunes of a cohort. 157 Ill. 2d at 397. The last actual, peaceable, uncontested status is a fact about Avila and the NCAA. It is not a fact about the average member of the classes of 2016 through 2021, whose extra seasons came from pandemic waivers, or about the classes of 2023 forward, whose extra seasons will come from a rule adopted after Mr. Avila graduated.

Put another way: Plaintiff's status quo is a highlight reel of other players' fifth seasons. It is compelling footage. It is not, however, evidence of where these parties stood. Were the law otherwise, every disappointed applicant could recharacterize the benefit he did not receive as the settled state of the world, and the doctrine would collapse into a general license to award whatever the plaintiff says most people got.

There is a further wrinkle in the argument that deserves mention. Plaintiff's own account establishes that the extra seasons enjoyed by earlier classes came from a global pandemic and from a federal court order in Tennessee that the NCAA mooted by issuing a waiver. (Compl. ¶¶ 73-75.) A status quo assembled out of a public health emergency and litigation settlements is, at best, an unstable structure on which to build a doctrine of repose.

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C. Plaintiff Has Not Shown a Clearly Ascertainable Right in Need of Protection

The first element for a temporary restraining order requires the movant to show a clearly ascertainable right in need of protection. Plaintiff asserts four. The Court takes them in turn, but a threshold observation applies to all of them.

1. *The Record Contains No Institution*

Every right Mr. Avila asserts presupposes a college. A third-party beneficiary interest in an agreement between the NCAA and its member institutions presupposes a relationship with a member institution. A right to "pursue his trade as a collegiate athlete" presupposes a collegiate roster. A right to "engage in collegiate athletic sport" presupposes a team. And a statutory right to be compensated for name, image, and likeness as a student-athlete presupposes being a student. (Mem. at 5-6.)

The record supplies none of it. The Complaint alleges that Mr. Avila "seeks to pursue a graduate degree at an NCAA Division I institution during the 2026-27 academic year." (Compl. ¶ 17.) Seeking is not enrolling. It alleges that "Division I schools have indicated that they would add Mr. Avila to their roster," but names none, attaches nothing from any of them, and pleads the compensation "upon information and belief." (Compl. ¶ 91.) The Lloyd Declaration says "Multiple NCAA Division I programs have expressed interest in rostering Mr. Avila if he were granted eligibility," but again names none, and offers Mr. Lloyd's estimate that Mr. Avila's "NIL potential likely tracks well into the seven-figure range" "[b]ased on my professional experience." (Lloyd Decl. ¶¶ 7-8.)

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The Court does not doubt Mr. Lloyd's expertise, and it does not suggest that anyone has been less than candid. It observes only what the papers show. There is no application, no admission letter, no scholarship offer, no roster invitation, no NIL term sheet, no communication from a coach, and no affidavit from anyone at any institution. There is not even an allegation that Mr. Avila has applied to a graduate program anywhere.

This is not a technical gap. It goes to whether there is anything for an injunction to protect. An order certifying Mr. Avila eligible would certify him eligible for nothing in particular. It would be an order about a hypothetical season, at a hypothetical school, under a hypothetical scholarship. Equity does not deal in hypotheticals when it acts summarily. A player cannot check in at the scorer's table without a jersey, a team, and a coach waving him on. The Court has been shown none of the three.

2. *Third-Party Beneficiary Status: A Graduate is a Stranger to the Manual*

Plaintiff's principal asserted right is contractual: he says the NCAA Division I Manual is a contract between the NCAA and its member institutions, and that student-athletes are intended third-party beneficiaries of it. (Compl. ¶¶ 112-13; Mem. at 8-10.) The first half of that proposition is unremarkable. The second is where Illinois law parts company with him.

Illinois indulges a strong presumption that "contracting parties intend that the contract's provisions apply to only them and not third parties." *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1057 (2d Dist. 2010). A third party may

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enforce a contract only where the contracting parties intentionally entered into the contract for the third-party's direct, rather than incidental, benefit, as demonstrated by the contract's language, and the contract must have an express provision identifying the third-party beneficiary by name or by description of a class to which he belongs. *Id.* at 1057-58. The presumption is overcome only "by an implication so strong as to be practically an express declaration." *Estate of Willis v. Kiferbaum Construction Corp.*, 357 Ill. App. 3d 1002, 1008 (1st Dist. 2005).

Applying that standard, the United States District Court for the Northern District of Illinois has already rejected the theory Avila advances here. In *Rose v. NCAA*, 346 F. Supp. 3d 1212 (N.D. Ill. 2018), former Purdue football players alleged that student-athletes were the intended third-party beneficiaries of the contract between the NCAA and their institutions. Applying Illinois law, the court held that pointing to "the NCAA's rules, regulations, purpose, and principles" as evidence of intent "is not enough." *Id.* at 1229. That is precisely the showing Avila makes here. His Complaint and brief rest on the Manual's preamble, on Article I's principles of "fairness" and "well-being," and on Bylaws 20.9.1.3 and 20.9.1.6—hortatory statements of institutional purpose. (Compl. ¶¶ 42-49; Mem. at 9-10.) The NCAA's briefing attached as Plaintiff's Exhibit I collects additional authority to the same effect. (Mem., Ex. I at 13.)

Plaintiff's contrary authorities are distinguishable on a single, consistent ground: in every one of them, the athlete was enrolled at a member institution. *Hutsonville Community Unit School District No. 1 v. Illinois High School Ass'n*,

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2021 IL App (5th) 210308, involved a student at a member high school, and the reasoning turned on the point that "it would be impossible for a member school to participate in the State Series without student athletes." (Mem. at 9 (*quoting Hutsonville*).) *Langston v. Mid-America Intercollegiate Athletics Ass'n*, 448 F. Supp. 3d 938 (N.D. Ill. 2020), and *Weston v. Big Sky Conference*, 466 F. Supp. 3d 896 (N.D. Ill. 2020), likewise involved enrolled, competing athletes. The proposition those cases support is that a member school cannot field a team without its own students. It is not the proposition Plaintiff needs, which is that an association's rulebook confers enforceable contract rights on a person who is not enrolled at any member school at all.

And that is the decisive point. Whatever the Manual may or may not promise to student-athletes at member institutions, Mr. Avila was not one when the challenged legislation was adopted in June 2026, and he is not one now. He had graduated. He had gone home. His relationship to any NCAA member institution ended with the conferral of his degree.

A rulebook governs the players on the floor. It does not govern the alumni in the stands. On the present record, Mr. Avila stands in no better relation to the Division I Manual than any other interested observer of college basketball—including, the Court notes without any pleasure in the observation, the judge who writes this Opinion. Mr. Avila may have his personal opinions about the NCAA's rules. This Court, having never played a collegiate sport and following the

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NCAA purely for its sporting and entertainment value, holds no such preconceived notions. Neither of us is a party to those rules.

The Court states two qualifications, and means both. First, this conclusion rests on *this* record. If Mr. Avila enrolls at a member institution, the analysis changes materially, and the Court will consider it afresh. Second, the Court expresses no view on whether an enrolled Division I athlete is an intended beneficiary of the Manual under Illinois law. That question is not presented, because Plaintiff is not an enrolled Division I athlete.

3. *The Illinois NIL Statute Confers a Compensation Right, Not a Season*

Plaintiff invokes the Student-Athlete Endorsement Rights Act, 110 ILCS 190/1 *et seq.*, and specifically the "statutory right to earn[] compensation as a result of the use of the student-athlete's name, image, likeness, or voice." (Mem. at 6 (*quoting* 110 ILCS 190/15).) The Act does confer rights, and this Court takes them seriously. It does not confer the right Plaintiff needs.

Section 15(b) provides that an athletic association, conference, or other group with authority over intercollegiate athletics—including, by name, Defendant—"shall not prevent, or otherwise enforce a contract, rule, regulation, standard, or other requirement that prevents a student-athlete (***) from earning compensation as a result of the use of the student-athlete's name, image, likeness, or voice." 110 ILCS 190/15(b). Read the operative verb. The prohibited act is preventing a student-athlete from *earning compensation for his NIL*. Nothing in the NCAA's seasons-of-competition rules prevents Roberto Avila from licensing his

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name, selling his likeness, endorsing a product, or signing an appearance deal. The rules he challenges determine whether he may *compete*. The statute supplies a right to be paid for one's name. It does not supply a roster spot to which to attach the name.

Plaintiff's real complaint is that eligibility is the gateway to the most lucrative NIL market. (Compl. ¶¶ 39, 52.) That may well be true as a matter of economics and may be the driving reason for bringing this suit (the Court will not speculate). It is not, however, a construction of Section 15(b). The General Assembly removed restrictions on athletes' ability to monetize their publicity rights. It did not legislate a right to a fifth season of intercollegiate competition, and this Court will not read one into a statute that does not contain it.

4. *The Compliance-Enforcement Statute Is Not a Charter of Eligibility*

Plaintiff's declaratory judgment count leans heavily on legislative findings that the NCAA is "essentially [a] monopol[y] controlling intercollegiate athletics throughout the United States" and that the State's duty to protect its citizens "is especially strong where the parties have greatly unequal bargaining power." (Compl. ¶ 132; Mem. at 13 (*quoting* 110 ILCS 25/2).)[4] Those findings exist and say what Plaintiff says they say. The difficulty is the statute they preface.

Section 2 is the findings section of the Collegiate Athletic Association Compliance Enforcement Procedures Act, 110 ILCS 25/1 *et seq*. That Act does one thing: it prescribes procedural protections—notice, hearings, evidentiary standards,

[4] Plaintiff dates these findings to 1999. (Compl. ¶ 132; Mem. at 13.) The Act's source note is P.A. 87-462. The Court flags this discrepancy only for the record's accuracy; nothing turns on it.

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the right to counsel—when a collegiate athletic association conducts infractions and compliance enforcement proceedings against Illinois institutions and the individuals associated with them. It is a due process statute for disciplinary proceedings. It says nothing about the substantive content of eligibility legislation, and by its own terms it does not reach investigations of academic qualifications. 110 ILCS 25/10.

The NCAA has not charged Mr. Avila with an infraction. It has not conducted an enforcement proceeding against him, denied him a hearing, or made any individualized determination about his conduct at all. It amended its Bylaws prospectively. A statute about how an association must run a hearing supplies no rights to a person who has not been given—and does not claim to have been denied—a hearing. Legislative findings are a preamble; they are not free-floating grants of substantive entitlement, and they do not travel outside the Act they introduce.

5. *The Right to Pursue a Trade Presupposes the Trade*

Finally, Plaintiff asserts "the right to pursue his trade and business as a collegiate athlete earning substantial compensation," citing *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton*, 105 Ill. 2d 389 (1985). (Mem. at 5-6.) *Coldwell Banker* concerns the constitutionality of Section 15(e)(20) of the Real Estate Brokers and Salesmen License Act. *Coldwell Banker*, 105 Ill. 2d at 392. *Coldwell Banker* does state that "[i]t is a well-established constitutional principle that every citizen has the right to pursue a trade, occupation, business or

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profession. This inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions." *Id.* at 397. But the analogy does not carry. A "collegiate athlete" is not a trade one may practice independently; the adjective is doing all the work. One cannot pursue the trade of collegiate athlete without a college, any more than one can pursue the trade of airline pilot without an airline. The asserted right is not a right at all until the antecedent relationship exists.

The first element for a temporary restraining order is therefore not satisfied, and that alone requires denial of the Motion insofar as it seeks a temporary restraining order. Because the parties are entitled to know the Court's full thinking before the evidentiary hearing, the Court proceeds to the remaining elements.

D. Plaintiff Has Not Shown a Probability of Success on the Merits

Plaintiff likewise fails to demonstrate a probability of success on the merits—a necessary element for a mandatory temporary restraining order.

1. *Count I Pleads a Remedy, Not a Claim*

The first cause of action in the Complaint is captioned as "Preliminary and Final Injunctive Relief." Injunctive relief, on its own, is not a cause of action; it must be anchored to a substantive claim. *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2013 IL App (1st) 113498, ¶ 66 ("An injunction is only a remedy for an underlying cause of action and is not a cause of action in itself."), *aff'd in part and rev'd in part on other grounds*, 2015 IL 117193. Avila does properly list the four elements required for a temporary restraining order and a preliminary injunction, but that is

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not enough. Plaintiff appears to agree himself, since Count I itself concludes that "Mr. Avila is likely to succeed on the merits of his claims, *as set forth in Counts II through IV below*." (Compl. ¶ 107 (emphasis added).) Avila nonetheless pleads injunctive relief as a freestanding cause of action. The Court therefore evaluates the probability of success by reference to Counts II, III, and IV.

2. *Count II—Breach of Contract and the Implied Covenant*

The contract claim fails at the threshold for the reason given in Section IV.C.2: on this record Mr. Avila is not an intended third-party beneficiary of the Manual, and a person who is neither a party nor an intended beneficiary cannot sue on a contract. *See generally Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017 (3rd Dist. 2009). That is dispositive. But three further problems would remain even assuming *arguendo* this threshold were cleared, and the parties should be prepared to address them.

First, the deference owed to voluntary associations. Illinois courts do not sit in review of the internal governance of private associations at large. Judicial intervention is available "when there was a violation of the constitution or bylaws of the association, when the association rules and proceedings violated concepts of fundamental fairness, or when the association's action was motivated by prejudice, bias, or bad faith," and otherwise "[a]bsent a violation of law or public policy, Illinois courts refrain from examining the substance of voluntary associations' actions or regulations." *Butler v. USA Volleyball*, 285 Ill. App. 3d 578, 583 (1st Dist. 1996) (*citing Van Daele v. Vinci*, 51 Ill. 2d 389, 397 (1972) (Underwood, C.J., dissenting,

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joined by Davis, J.); *Virgin v. American College of Surgeons*, 42 Ill. App. 2d 352, 369 (1963)). Plaintiff does not allege that the NCAA violated its own Bylaws, departed from its own amendment procedures, denied him any process the Manual guarantees, or singled him out from bias or bad faith. He alleges that the substance of a properly adopted rule is unfair to his cohort. That is an argument addressed to the association's members, and to Congress—where, by Plaintiff's own account, the debate is presently being conducted. (Compl. ¶¶ 71, 86.) In fact, there is at least one currently pending bill in Congress for a legislative path forward. *See, e.g.*, SCORE Act, H.R. 4312, 119th Cong. (2025).

Second, the implied covenant. Illinois recognizes that every contract contains an implied covenant of good faith and fair dealing, *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 473-74 (1st Dist. 2004), but the covenant is a rule of construction, not an independent source of obligation, *Cramer v. Insurance Exchange Agency*, 174 Ill. 2d 513, 525 (1996). Plaintiff's own authority frames it correctly: the covenant polices the *exercise of discretion vested by the contract*, requiring that discretion be used "reasonably and with proper motive." *Mid-West Energy Consultants, Inc. v. Covenant Home, Inc.*, 352 Ill. App. 3d 160, 165 (2004); (Mem. at 11.) But the NCAA did not exercise discretion as to Mr. Avila. It did not weigh his petition, deny his waiver, or make any judgment about him individually. It legislated, prospectively, for the future. The covenant cannot be stretched to convert a legislative act into a discretionary one, and it cannot be used to write into the Manual a fifth season that the Manual never contained.

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Third, arbitrariness. Plaintiff's most rhetorically effective charge is that the NCAA drew a line with no principled basis. The Court does not dismiss the charge; it may prove to have force, and the evidentiary hearing will permit development of it. But a line-drawing decision is not arbitrary merely because it draws a line. Every prospective rule has an effective date, and every effective date leaves someone on the wrong side of it by a matter of months. The existence of a boundary is not proof of caprice. What would be required is evidence that the boundary was drawn for no reason, or for a bad one—and Plaintiff's own Exhibit I offers a reason: the settled expectations of institutions that built their rosters around the rules then in force, and of the incoming athletes to whom those roster spots were promised. (Mem., Ex. I, Ex. 2 ¶¶ 8-9.) Plaintiff may ultimately show that reason to be pretextual or insufficient. He has not shown it yet, and the only evidence in this record on the subject is his own exhibit, which cuts the other way.

3. *Count III—Tortious Interference with Prospective Economic Advantage*

The elements of this tort are settled: (1) a reasonable expectancy of entering into a valid business relationship; (2) the defendant's knowledge of that expectancy; (3) purposeful interference by the defendant that prevents the expectancy from ripening; and (4) resulting damages. *Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 511 (1991); *accord Voyles v. Sandia Mortgage Corp.*, 196 Ill. 2d 288, 300-01 (2001); *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483-84 (1998).

The first element is the problem, and it is the same problem that runs through this motion. An expectancy must be an expectancy of something, with

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someone. The record identifies no institution, no sponsor, no negotiation, and no offer. What it identifies is an agent's professional judgment that interest exists and that compensation would likely be substantial. (Lloyd Decl. ¶¶ 7-8.) That is a forecast. Forecasts are useful, and this one may well be accurate, but a claim for interference with a prospective relationship requires the prospect of a relationship with an identifiable counterparty, and the Court cannot supply the counterparty by inference.

The third element presents a second and more structural difficulty. The "interference" Plaintiff alleges is the NCAA's application of its own eligibility rules. If those rules are lawful, their application is not tortious—an association's enforcement of its validly adopted legislation is, at minimum, presumptively justified. If they are unlawful, the tort claim adds nothing to the claims that say so. The theory is circular: it converts the merits of the eligibility dispute into the wrongfulness element of a tort, and then offers the tort as an independent basis for finding the eligibility dispute likely to be won. A litigant cannot boost himself by his own bootstraps, and this claim, as pled, tries.

4. *Count IV—Declaratory Judgment and Illinois Public Policy*

A declaratory judgment action under 735 ILCS 5/2-701 requires "(1) a plaintiff with a legal tangible interest; (2) a defendant having an opposing interest; and (3) an actual controversy between the parties concerning such interests." *Beahringer v. Page*, 204 Ill. 2d 363, 372 (2003) (*citing Griffin v. County of Cook*, 369 Ill. 380, 398 (1938) (Stone, J., specially concurring, joined by Farthing, J.); *Alicea v.*

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Snyder, 321 Ill. App. 3d 248, 253 (2001)). The first requirement returns the Court to where it began. A "legal tangible interest" is not the same thing as a strong interest in the outcome, and on this record Mr. Avila's interest in the 2026-27 season is an interest in an opportunity he has not yet shown exists. It is speculative, and a "speculative possibility of injury is not sufficient to meet this requirement" for a temporary restraining order to issue. *Smith, Waters*, 192 Ill. App. 3d at 703.

The substance fares no better. Plaintiff asks for a declaration that the NCAA's exclusion of the high school class of 2022 is "void and unenforceable as against Illinois public policy." (Compl. ¶ 139.) Public policy in Illinois is found in the State's constitution, its statutes, and the decisions of its courts. *State Farm Mutual Automobile Insurance Co. v. Collins*, 258 Ill. App. 3d 1, 4 (1st Dist. 1994). The two statutes Plaintiff offers do not declare the policy he needs: one governs infractions procedure, and the other governs NIL compensation. Neither speaks to how many seasons of intercollegiate competition an association may allot, or to whether an association may adopt a beneficial rule prospectively rather than retroactively.

The Court adds a word of candor, because the point deserves it. It is not difficult to see why an athlete in the class of 2022 feels ill-used. That class competed for four years against opponents who had extra seasons the class of 2022 did not have, and it will now watch younger athletes receive as a matter of course the fifth season it was denied. If the question before the Court were whether that outcome is *fair*, the answer would be considerably closer than the NCAA might like. But this

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Court does not sit to grade the fairness of private rules. It sits to determine legal rights, and a sense of grievance—however well founded—is not one.

5. *The Claim that Is Not in this Case*

Any court considering NCAA eligibility rules in 2026 must reckon with *NCAA v. Alston*, 594 U.S. 69, 94 (2021), in which the Supreme Court unanimously held that the Association enjoys no special immunity from the antitrust laws. (Compl. ¶ 35.) Serious questions attend the Association's control of an enormous market, and this Court does not suggest otherwise. Plaintiff's own exhibits show that the theory has real traction: the order he attaches from the District of Colorado, *Wisne v. NCAA*, No. 1:26-cv-03063-CNS-KAS (D. Colo. July 31, 2026), rests on section 1 of the Sherman Act, 15 U.S.C. § 1, and so did *Pavia v. NCAA*, 760 F. Supp. 3d 527 (M.D. Tenn. 2024), *appeal dismissed as moot*, No. 24-6153 (6th Cir. Oct. 1, 2025), the decision that generated the very waiver Plaintiff says the NCAA extended to everyone but him. (Compl. ¶ 74.)

But this Complaint pleads no antitrust claim. It pleads no violation of the Sherman Act. It pleads no violation of the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*, which Plaintiff does not mention. It pleads breach of contract, tortious interference, and declaratory judgment under Illinois public policy—and it asks this Court to reach the results that other courts reached on a theory that is not in this case.

A court may not grant relief on a claim no one has pled. That is not formalism; it is the difference between adjudication and improvisation. The NCAA

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is entitled to notice of the theory against which it must defend, and to develop a record addressed to that theory[5]—relevant market, anticompetitive effect, procompetitive justification, less restrictive alternatives—none of which appears in these papers. If Plaintiff wishes to litigate an antitrust case, the remedy is an amended complaint, not an injunction premised on somebody else's.

E. Irreparable Harm and the Adequacy of a Legal Remedy

The proposition that a lost athletic season cannot be restored is intuitive and, in the ordinary case, correct. A season is not fungible; you cannot replay March. The Court accepts the premise. What the Court cannot accept, on this record, is the syllogism's minor premise: that but for the NCAA's rule, Mr. Avila would be playing.

Four features of the record give the Court pause.

First, the missing school. Harm from a lost season presupposes a season that would otherwise occur. Where no institution has enrolled the athlete, offered him a place, or been identified by name, the causal chain between the challenged rule and the claimed injury has a gap in the middle of it. The Court is not saying the harm is imaginary. It is saying the record does not yet establish it.

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[5] "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (*quoting Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314 (*citing Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385; *Priest v. Las Vegas*, 232 U.S. 604; and *Roller v. Holly*, 176 U.S. 398). "The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." *Mullane*, 339 U.S. at 314 (*citing Grannis v. Ordean*, 234 U.S. 385; *Roller v. Holly*, 176 U.S. 398; and *cf. Goodrich v. Ferris*, 214 U.S. 71).

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Second, the draft. Plaintiff's declarant states that Mr. Avila was not selected in the 2026 NBA Draft. (Lloyd Decl. ¶ 10.) Entering a professional draft is, in the ordinary case, an athlete's announcement that he is finished with the college game. The Court does not treat that as conclusive—the framework permits testing the draft, circumstances vary, and Mr. Avila is entitled to explain—but it is evidence bearing directly on whether a fifth college season was in prospect at all, and it comes from Plaintiff's own submission.

Third, timing. The legislation Plaintiff challenges was adopted on June 23, 2026, and took effect August 1, 2026. This suit was filed August 12, 2026—roughly seven weeks after adoption, and eleven days after the effective date. Plaintiff's own exhibits show that other athletes in his position filed in June and July, and that several obtained relief before he filed. Equity aids the vigilant. The Court does not find laches, which has not been raised and would require development; it observes only that a party who asks for the most summary relief the law affords, on the ground that every day matters, invites the question why the days between June 24 and August 12 did not.

Fourth, and most significantly, the class action Plaintiff himself put in the record. Exhibit C to the Memorandum is an order entered in a putative class action brought by twelve named plaintiffs "on behalf of themselves and all others similarly situated," in which the district court states that it "certifies Plaintiffs' class" and enters preliminary injunctive relief. (Mem., Ex. C at 1, 13.) Plaintiff places that order among the eight on which he relies, and describes it as authority for the relief

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he wants. Nowhere in his papers does he say whether he is a member of that class; whether he has sought relief under it; whether relief under it has been extended to him or withheld from him; or what, if anything, its terms provide for someone in his position.[6] That silence is not a technical omission. A movant who may already hold classwide relief from a federal court has not explained why he requires duplicative emergency relief from this one—or what this Court should do if the two were to conflict. The Court will expect an answer at the hearing.

On the adequacy of a legal remedy, one further point. A substantial share of the injury Plaintiff describes is money: lost NIL income, lost revenue-sharing payments, lost scholarship value. (Compl. ¶ 103(b).) Plaintiff quantifies it, through his agent, as "well into the seven-figure range." (Lloyd Decl. ¶ 8.) A harm that the plaintiff's own expert can price to an order of magnitude is, by definition, a harm capable of computation, and damages are the classic remedy for it. The genuinely non-compensable components—a season of competition, development, exposure—return the Court to the missing school.

F. The Balance of Hardships and the Public Interest

The equities do not presently favor an order entered on one side's papers, and for a reason larger than this case.

Consider who is absent. The NCAA has yet to file a proper response to the Motion. The member institutions whose rosters the requested order would

[6] The Court also observes, from the face of Exhibit C, that the order was entered after full adversarial briefing. The district court expressly construed the motion as one for a preliminary injunction "after ordering responsive briefing from the NCAA and permitting Plaintiffs to file a reply." (Mem., Ex. C at 1 n.1.) This Court has no responsive brief and no reply. It has one side properly in writing and only oral arguments from Defendant.

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rearrange are not parties and have had no notice. The institutions the order would immunize from the Rule of Restitution—including, by the terms of the prayer, "any institution that competes against Mr. Avila" during the season—are not parties either. And the fifteenth player on some Division I roster, who accepted an offer this spring in reliance on the rules as they stood, is not here to say what the order would cost him. "[S]ports are generally zero sum." *West Virginia v. B.P.J.*, ___ U.S. ___, ___, 146 S. Ct. 2356 (2026). Replacing that student on the roster with Avila who has not demonstrated eligibility "*necessarily* displaces or disadvantages" that student—replacing that student on the roster, knocking that student out of the starting lineup, reducing that student's playing time, depriving that student of a medal, and the like. *Id.* (emphasis in original). Plaintiff's own Exhibit I is, at present, the only evidence in this record on that subject, and it warns of exactly this displacement. (Mem., Ex. I, Ex. 2 ¶¶ 8-9.)

Then consider the principle. The NCAA's June 2026 legislation was prospective. Plaintiff asks this Court to make it retroactive by decree—to hold that an association may not improve its rules going forward unless it improves them backward as well. Follow that principle where it leads. Every prospective reform produces a last cohort under the old regime, and every last cohort can say, with complete sincerity, that it bore the burden of the old rule and will not enjoy the benefit of the new one. If that alone stated a claim for equitable relief, no rule could ever be changed prospectively. Each improvement would summon the class that just missed it, and the class before that, and the class before that. The Association's

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choice would be to freeze its rules or to litigate every amendment against everyone it ever governed.

That is not a policy this Court is prepared to announce. The consequence would not be fairer rules; it would be fewer of them, adopted later, and drafted with an eye to litigation rather than to the athletes they are meant to serve. Prospective rulemaking is how institutions improve. A doctrine that penalizes prospectivity punishes improvement.

The Court is aware that other courts, in other States across the country, have weighed these considerations differently and reached different results. Several of those decisions are thoughtful, and one of them—the order from the District of Colorado—is a fifty-page opinion issued after full briefing on a federal antitrust theory. If the floodgates of litigation like this popping up around the nation stand open, they were opened by courts other than this one, and on records other than this one. This Court will not put its shoulder to the door on the facts thus presented. However, based on the evidence produced to this Court at the evidentiary hearing, it may attempt to dam the gate as much as it can or open the door further. That is a question this Court will decide following the evidentiary hearing.

G. The Out-of-State Orders

Plaintiff opens his Memorandum with a tally: "Eight (8) courts have ruled on this exact issue — and eight granted injunctive relief to student athletes to play next season." (Mem. at 1.) The Court has read every order Plaintiff supplied and

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cited—there are in fact nine of them. They deserve individual treatment rather than a headcount, and they receive it here.

- *Borovicanin v. NCAA*, No. A2603352 (Ohio Ct. C.P. Hamilton Cnty. July 9, 2026) (Ex. A). Plaintiff represents that fifteen named student-athletes obtained relief there on an Ohio-law theory that the Association applied its rules arbitrarily and capriciously. (Mem. at 1, 9, 11.) Ohio's law of voluntary associations is not Illinois's; the plaintiffs there are alleged to have been enrolled at member institutions; and the order does not purport to bind courts outside Hamilton County. Notably, the exhibit Plaintiff filed under this tab is the NCAA's opposition materials, including the Conference Commissioners' declaration on which this Court has relied above—evidence Plaintiff himself placed in the record. As an ancillary note, the Ohio Appellate Court granted the NCAA's motion to stay the injunction issued by the trial court in this case just yesterday, August 17, 2026.
- *Washington v. NCAA*, No. 26-0896-III (Tenn. Ch. Ct. Davidson Cnty. July 31, 2026) (Ex. B). This is Plaintiff's strongest exhibit, and it proves the Court's point rather than his. Chancellor Myles expressly grounded her ruling in "the evidence presented at *the preliminary injunction hearing*" and found, on that evidence, that the NCAA had not applied its eligibility rules uniformly among similarly situated athletes. (Mem., Ex. B at 29-30.) In other words, the decision Plaintiff most wants this Court to follow was reached after precisely the proceeding this

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Court is today ordering. Plaintiff asks this Court to reach the same destination without taking the same road.

- *Wisne v. NCAA*, No. 1:26-cv-03063-CNS-KAS (D. Colo. July 31, 2026) (Ex. C). A fifty-page opinion from Judge Sweeney granting classwide preliminary injunctive relief. It differs from this case in three respects, each independently sufficient. The claim is federal antitrust under section 1 of the Sherman Act—not pled here. The record was adversarial: the court ordered responsive briefing from the NCAA and permitted a reply. (Mem., Ex. C at 1 n.1.) And the plaintiffs were enrolled Division I athletes at identified institutions; the court's illustrations are a track athlete at Long Island University and a basketball player at the University of Northern Colorado. (Mem., Ex. C at 1-2.) As a procedural update, the NCAA has filed an appeal of this decision to the United States Court of Appeals for the Tenth Circuit along with a motion to stay the injunction. The motion to stay has been briefed with the reply filed on August 16, 2026, but the panel of the Tenth Circuit has yet to rule on the motion to stay. The Court will expect a procedural update on this case at the evidentiary hearing.
- *Kromah v. NCAA*, No. ESX-C-000165-26 (N.J. Super. Ct. Ch. Div. Aug. 4, 2026) (Ex. D). A three-page form of order applying New Jersey law. It contains no reasoning this Court can evaluate or adopt.
- *Wheeler v. NCAA*, No. 2026-2074-5 (Tex. Dist. Ct. McLennan Cnty. July 29, 2026). This order is not attached. Plaintiff supports it with a hyperlink to a

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Yahoo Sports article. (Mem. at 1 n.1.) A hyperlink to a sports column is not a citation, and the Court accords the reference no weight.

- *Hutson v. NCAA*, No. D-1-GN-26-005654 (Tex. Dist. Ct. Travis Cnty. July 23, 2026) (Ex. E). This exhibit repays close reading, because the contrast with our case could not be sharper. The Travis County court entered a temporary restraining order *without notice* to the NCAA, set a $100 bond, set a temporary injunction hearing for August 3, and provided that the order "shall expire on August 3, 2026, at 5:00 p.m." (Mem., Ex. E at 3-5.) By its own terms it is spent. More to the present point: the plaintiff there was an enrolled football player at the University of Texas at Austin, and the order names his institution repeatedly—restraining the NCAA from declaring him ineligible "to practice with, participate in team activities of, receive athletically related financial aid from, or compete for the University of Texas at Austin." (Mem., Ex. E at 3.) The order could be written because there was a school to write into it. That is what this record lacks.
- *Oates v. NCAA*, No. CJ-26-325 (Okla. Dist. Ct. Payne Cnty. July 29, 2026) (Ex. F). As with Exhibit D, a short form of order under another State's law, without reasoning available to this Court.
- *Godfrey v. NCAA*, No. 26-cv-05617 (Ga. Super. Ct. Cobb Cnty. Aug. 5, 2026) (Ex. G). Plaintiff quotes two propositions from this order: that "Plaintiffs' right to earn a living playing basketball is a property right" and that "Plaintiffs are third-party beneficiaries of the NCAA Manu[a]l and Bylaws." (Mem. at 6, 10.)

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Both are statements of Georgia law. Illinois law on third-party beneficiaries is stated in *Wilfong* and *Estate of Willis*, and Illinois federal courts applying it have reached the opposite conclusion on these very allegations. *See Rose*, 346 F. Supp. 3d at 1229.

- *Ondekane v. NCAA*, No. CI 26-3097 (Neb. Dist. Ct. Douglas Cnty. July 1, 2026) (Ex. H). The Court need not distinguish this order, because the issuing court distinguished it first: "This case is distinct from all other NCAA eligibility litigation cited by the parties or found by this Court." (Mem., Ex. H at 14.) Mr. Ondekane had *already been granted* a fifth season through the Pavia waiver, broke his ankle in a required preseason scrimmage, was on the University of Nebraska at Omaha roster, and was denied any individualized medical-hardship review. The Nebraska court granted relief because the NCAA refused to look at his medical records. Mr. Avila has not been denied a hardship waiver, has not applied for one, and is not on anyone's roster.

Two observations about the collection as a whole.

First, the tally proves less than it appears to. Not one of these orders binds this Court. Nearly all are interlocutory. At least one was entered *ex parte*. At least one has expired by its own terms. At least two are on appeal (at least one of which is stayed by an appellate court). They apply the law of seven States and the federal antitrust laws, and they turn on theories—Ohio association law, Tennessee good faith, Georgia property rights, federal antitrust—that vary from one to the next. A

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scoreboard is not a citation. Eight to nothing is a result, not a holding, and a court that decided cases by counting other courts would not be deciding them at all.

Second, and decisively, every one of these orders was entered for an athlete with a school. The Tennessee plaintiffs were enrolled. The Colorado plaintiffs were enrolled. Mr. Hutson was at Texas. Mr. Ondekane was at Omaha. In each case the court could describe, in the ordering paragraphs, the institution at which the athlete would practice, receive aid, and compete. This Court cannot write that paragraph, because Plaintiff has not given it the name to write in.

H. Deficiencies in the Evidentiary Record

Because this matter will proceed to an evidentiary hearing, the Court identifies several problems now, so that they can be cured rather than repeated.

Mr. Lloyd's statement is captioned a Declaration, is referred to in the Memorandum as a "Certification," and closes: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment." That is the certification form used in another jurisdiction. It is not an affidavit sworn before an officer authorized to administer oaths, and it does not track the certification prescribed by Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109. In addition, the signature line reads "Dated: August ___, 2026," with the day left blank on the face of the document. For this reason alone, the Lloyd Declaration is STRICKEN. Counsel shall submit a compliant declaration properly attested to under Section 1-109 as set forth below.

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Even setting form aside, the substance is largely hearsay and opinion. The assertion that "NBA scouts have stated that he requires another season" of Division I basketball is an out-of-court statement offered for its truth, from declarants who are not identified. (Lloyd Decl. ¶ 10.) The remaining statements of interest and compensation are "[b]ased on my professional experience." (Lloyd Decl. ¶¶ 7, 8, 11, 12, 13.) Expert opinion may well be admissible at the hearing; it is not a substitute for percipient evidence about whether any school will actually take Mr. Avila.

The allegation that available compensation "would be lucrative" rests on information and belief. (Compl. ¶ 91.) A verified complaint supports a temporary restraining order only to the extent it is verified on personal knowledge.

Plaintiff asks that no bond be required. (Mem. at 14.) Section 11-103 of the Illinois Code of Civil Procedure contemplates security, and the argument that none is needed because the NCAA cannot be harmed is in tension with the harm to which the NCAA is exposed should a preliminary injunction issue and then be reversed. This is especially important in light of NCAA Bylaw 12.9.4.2—the "Rule of Restitution." The Court does not reach the question today, but will expect argument on the issue at the preliminary injunction hearing.

The NCAA has contested personal jurisdiction in several of the cases Plaintiff attaches, and both the Tennessee and Colorado courts addressed the issue at length. (Mem., Ex. B at 11-12; Ex. C at 6-14.) The NCAA orally argued the Motion in opposition to a temporary restraining order but has not yet raised the question

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properly before the Court,[7] and this Court neither reaches nor prejudges the question. It notes only that denial of a temporary restraining order does not require it to be resolved; that nothing in this Opinion should be read as a finding that jurisdiction exists or does not; and that nothing in this Opinion shall be construed to waive or prejudice any objection Defendant may preserve under 735 ILCS 5/2-301.

V. WHAT THE COURT WILL WANT AT THE HEARING

So that the parties may prepare, the Court identifies the questions on which evidence would be most useful. The list is not exclusive and is not a ruling on relevance.

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[7] The NCAA filed a Motion to Dismiss under 735 ILCS 5/2-301 and 735 ILCS 5/2-619. An unfiled version of this Motion to Dismiss along with an unfiled version of a written Response to the instant Motion were sent to the Court via email after business hours on August 17, 2026—the day prior to the hearing on the TRO. The Court responded to the email at 9:18 AM on August 18, 2026, informing the parties that the Motion to Dismiss and the Response to the TRO would not be entertained at the TRO hearing. Defendant did not have leave to notice the Motion to Dismiss on an emergency basis and the Response came much too late to be read and analyzed prior to the hearing too. The Court further informed the parties that it would (and did), however, hear oral arguments today from all counsels on the TRO.

One point on this. It is improper, and entirely unfair, for the Court to permit an epilogue from Defendant—only hours prior to the argument—while denying an equivalent afterword to Plaintiff, who filed no such brief (such as a reply) and never requested additional briefing of the sort. Litigation is not cosmic. The parties do not get to loose motions, briefs, and filings into the record at their whim—whenever, and however, they see fit. There is a process to court proceedings. The Court will not be bombarded. Indeed, the Court possesses the "inherent authority to control matters before it as necessary to prevent undue delay or disruption in the proceedings." *In re L.S.*, 2022 IL App (1st) 210824, ¶ 111. Defendant's Response is therefore STRICKEN, and the Court relies solely on the record presented prior to its filing as well as the arguments of counsels. *See TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 375 (1st Dist. 2009) ("[I]t [is] well within the circuit court's discretion to grant or withhold permission regarding a briefing schedule. No authority exists to nullify that discretion."). The Response was not taken into consideration in the Court's analysis herein.

The Motion to Dismiss may be refiled and noticed in the ordinary course and fresh courtesy copies delivered via email once the filed versions of the motion and the notice are received from the Clerk's Office. Defendant will have an opportunity to respond to the Motion *sub judice* as set forth below. At the time of the writing of this Opinion, neither the Motion to Dismiss nor the Response brief appear on the Clerk's Office's online case management and docketing system.

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- Is Mr. Avila enrolled at, admitted to, or an applicant to any postsecondary member institution of the NCAA for the 2026-27 academic year? If so, which one, and in what program?
- Is there an NCAA member institution prepared to roster Mr. Avila for the 2026-27 season? If so, the Court will want to hear from someone at that institution with authority to say so, under oath.
- Is Mr. Avila a member of the class certified in *Wisne v. NCAA*, No. 1:26-cv-03063-CNS-KAS (D. Colo.)? Has he sought or obtained relief under that order? What is that case's present posture, including any appeal or stay?
- What are the circumstances of Mr. Avila's entry into the 2026 NBA Draft, including when he declared, whether he withdrew or sought to withdraw, whether he signed any professional or agency agreement, and what representations he made about his intentions for 2026-27?
- What is the operative text of the June 2026 legislation, what process produced it, and what record exists of the deliberations concerning its application to athletes who had exhausted eligibility? What was the timeline of the June 2026 legislation's implementation?
- What did Mr. Avila do between June 23, 2026, and August 12, 2026, with respect to his eligibility—including any waiver request, any communication with the NCAA or any member institution, and any participation in a transfer portal window opened by any other court order?

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- What harm, if any, would the requested relief impose on member institutions and on athletes currently holding roster spots, and what evidence supports it?
- Whether security should be required, and in what amount, if the Court were to issue a preliminary injunction—particularly in light of NCAA Bylaw 12.9.4.2, the "Rule of Restitution"?

VI. CONCLUSION

Back, then, to the two minutes and five seconds.

A broadcaster watching Roberto Avila walk to the bench in March said his career was coming to an end. It was a graceful line, and it may prove to be right. It may also prove to be wrong. Broadcasters call what they see, and what they saw was a young man leaving a floor, not a court entering a judgment.

What this Court can say today is narrower than either. It cannot say Mr. Avila's career is over. It cannot say the NCAA's line-drawing was sound, or that the class of 2022 has no grievance worth a hearing, or that this case will end badly for the man who brought it. Those questions are open, and the Court means to keep them open.

What it can say is that a temporary restraining order is the law's most abbreviated instrument, and that the record supporting this one is more abbreviated still. It contains no enrollment, no roster, no institution, no offer, and no answer from the party to be restrained. It asks this Court to order a player onto a floor without telling it which floor. Whatever else equity may do on short notice, it cannot do that.

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So the whistle that stops play here is not the final horn. It is a stoppage. The parties will be heard—with witnesses, under oath, on a complete record, and soon. Roberto Avila still has the ball. He has simply not yet shown this Court a basket.

The Motion for a Temporary Restraining Order is denied without prejudice. The Motion for a Preliminary Injunction is set for evidentiary hearing as set forth below.

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THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

(1) Plaintiff's Motion for Entry of a Temporary and Preliminary Injunction is DENIED WITHOUT PREJUDICE as to the request for a temporary restraining order.

(2) Because the Court requires a fuller factual record, the Motion is SET for evidentiary hearing on Plaintiff's request for a preliminary injunction on September 21, 2026, at 10:30 AM in person in Courtroom 2410 of the Daley Center. All witnesses, attorneys, court reporters, parties who wish to observe; *etc.* SHALL appear in person for the evidentiary hearing.

(3) The Lloyd Declaration is STRICKEN as non-compliant with 735 ILCS 5/1-109.

(4) Defendant's Motion to Dismiss and Response to Plaintiff's Motion are both STRICKEN without prejudice as untimely. Defendant may refile the Motion to Dismiss and notice the Motion to Dismiss in the ordinary course with courtesy copies submitted in conformance with the Court's Standing Order. No argument under 735 ILCS 5/2-301 is waived. A renewed response SHALL be filed as set forth below.

(5) On or before August 20, 2026, Plaintiff SHALL file a supplemental declaration complying with 735 ILCS 5/1-109, made on personal knowledge, addressing:

(a) His enrollment status, applications, and admissions for the 2026-27 academic year;

(b) Any NCAA member institution prepared to roster him and the evidentiary basis for that statement;

(c) Whether he is a member of the class certified in *Wisne v. NCAA*, No. 1:26-cv-03063-CNS-KAS (D. Colo.), and what relief, if any, he has sought or obtained in that action; and

(d) The circumstances of his participation in the 2026 NBA Draft.

(6) Defendant SHALL file a response to Plaintiff's Motion on or before August 31, 2026.

(7) Plaintiff SHALL file a reply in support of his Motion on or before September 8, 2026, at 4:30 PM.

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(8) The parties SHALL exchange lists of potential witnesses and exhibits sought to be introduced into evidence on or before September 8, 2026 at 4:30 PM.

(9) Courtesy copies for the evidentiary hearing (including copies of Motion, all briefs and exhibits attached thereto, witness and exhibit lists, *etc.*) SHALL be submitted by each party in compliance with the Court's Standing Order by submitting TWO sets of physical copies and ONE set of electronic courtesy copies to the Court on or before 4:30 PM on September 8, 2026.

(a) When tendering physical courtesy copies, the courier SHALL call one of the Court's law clerks at the telephone number listed below upon arrival to Courtroom 2410 so that chambers' staff may accept delivery and confirm receipt of the physical courtesy copies; and

(b) Electronic courtesy copies SHALL be emailed to the Court's email address listed below.

(10) The question of security under 735 ILCS 5/11-103 is RESERVED and shall be addressed in the parties' briefs and at the preliminary injunction evidentiary hearing.

IT IS SO ORDERED.

Date: August 18, 2026

ENTERED:

William B. Sullivan

Honorable William B. Sullivan
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
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ENTERED
Judge William B. Sullivan-2142
AUG 18 2026
MARIYANA T. SPYROPOULOS
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

Filed 26-CI-007009 08/18/2026 David L. Nicholson, Jefferson Circuit Clerk
2026-CA-1126 Lisa R. Morgan, Clerk, Kentucky Court of Appeals

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CCC6D860-8997-49A8-B4ED-DADEA95F18D8 : 000125 of 000126

NO. 26-CI-7009
Electronically Filed

JEFFERSON CIRCUIT COURT
DIVISION 11
JUDGE BRIAN EDWARDS

Levavium Wells II, *et al.* Plaintiffs

v.

[PROPOSED]
ORDER GRANTING MOTION TO DISMISS

National Collegiate Athletic Association Defendant

This matter is before the Court on Defendant National Collegiate Athletic Association (the "NCAA")'s Motion to Dismiss for Lack of Jurisdiction, Improper Venue, and Failure to State a Claim (the "Motion"). Having reviewed the parties' briefs, considered the arguments and applicable law, and being otherwise sufficiently advised,

It is hereby Ordered that the NCAA's Motion is **GRANTED**. All claims asserted against the NCAA in this action are hereby **DISMISSED** [with / without] prejudice for [lack of personal jurisdiction / improper venue / failure to state a claim].

Dated: _____

_____
Judge Brian Edwards

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RESPONDENTS' APPENDIX

TAB H

Transcript of Evidentiary Hearing, *Wells v. NCAA*, No. 26-CI-007009 (Jefferson Cir. Ct. Oct. 14, 2026), Part 1 (VR 10:06:16–11:33:55) (unofficial transcript prepared from the video record)

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2026-10-14 10.06.16.960

(0:00 - 0:10)

Court is on the record in the matter of Wells et al. versus National Collegiate Athletic Association. I'll go ahead and take appearances for the record, please.

(0:13 - 0:28)

Hans Hoppe, Ryan Dalton, Kirk Laughlin, and Taylor Richard, on behalf of the Wells plaintiffs. Thank you. Yes, Judge, good to see you.

Kirk Redford, top court. Good morning, Judge. I'm Dave Mash, on behalf of the Pallet Safari Plaintiff.

(0:30 - 1:00)

Good morning, Your Honor. Mark Topp, here on behalf of Cable Theory. Good morning, Your Honor.

David Zeitlin. I have a pending Pro Hoc Vitae application on behalf of the National Collegiate Athletic Association. Good morning, Your Honor.

Charles Skilfer. And we're joined by Jackson Marcotte, who's the Associate Director of Legal Affairs for the NCAA. We do ask that the court entertain the motion for Pro Hoc Vitae admission of David Zeitlin.

(1:00 - 1:10)

He's in good standing in the state of Tennessee and has registered through the KBA's Pro Hoc Vitae program. No objection. Motion granted.

(1:11 - 1:30)

Thank you, Your Honor. All right. Ladies and gentlemen, we're here this morning to take up an evidentiary hearing in conjunction with the petitioner's complaint in their motions for the issuance of a temporary injunction.

(1:31 - 1:56)

As everyone is aware, there's been extensive argument previously heard by the court on this matter. The matter has gone to the Court of Appeals, who has directed this matter back here for today's proceeding to hear evidence in support of the petitioner's various arguments. We have allotted three hours for today.

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(1:56 - 2:31)

I would advise the parties to use that time primarily for the presentation of evidence in that the case has, as I stated above, been extensively argued and briefed previously. So, any preliminary matters that we need to take up before I yield the floor to counsel for the presentation of their case? Your Honor, very briefly, we've got some stipulations that the sides have agreed to. We have Plaintiff's Exhibits 1 through 36 and Defendant's Exhibits 1 through 17.

(2:31 - 2:39)

Those sides have stipulated admission. We are not stipulating to the weight of those documents. That's, of course, for the court to consider.

(2:40 - 2:55)

But both parties agree that the court can consider all those exhibits in this record. And, Your Honor, the NCAA, before the beginning of testimony, would invoke the rule for sequestration of non-party witnesses. That motion will be granted.

(2:56 - 3:11)

Okay. So, for those of you who aren't familiar with that, all of the players who are plaintiffs in the case can stay in the courtroom. All of the family members who are not on anyone's witness list can stay in the courtroom.

(3:11 - 3:29)

There are some coaches and any players who are on a witness list but are not a plaintiff need to go sit in the hallway. And we will bring you guys in when it's your turn to testify. And then, generally, once you've testified, you'll be allowed to stay in the courtroom.

(3:30 - 3:39)

But you have to be out in the hallway until it's your turn. And, Your Honor, our first witness, you can stay in. Okay.

(3:47 - 4:17)

So, all of you guys in the last row, you're good to stay in the courtroom. You only have to leave if you're testifying today. If you're a plaintiff in the case, you can stay.

(4:21 - 4:33)

Teammates, you can stay. All right. Yeah.

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(4:34 - 4:55)

Your Honor, we'll call Daniel Hennis. Your Honor, what is your preference? Do I come here to examine the witnesses? It's up to you. No preference.

(4:56 - 5:05)

Sir, if you'd raise your right hand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? I do. All right.

Please be seated. Thank you. Mr. Downton, you may inquire.

(5:05 - 5:11)

Will you please state your name for the record and also introduce yourself to the judge? Yes. Nice to meet you, Your Honor. My name is Daniel Hennis.

(5:11 - 5:23)

And what do you do for a living? I'm a college basketball agent. How long have you been a college basketball agent? Five years. Do you have any clients who are here in the courtroom today? Yes, sir, I do.

(5:23 - 5:55)

Who are your clients that are here today? Here today, Seth Trimble, Jackson Shelstad, and Floyd Berduca. Are you familiar with the NCAA's new rule concerning eligibility? Yes, sir, I am. What is your understanding of the rule that went into effect as of August 1, 2027? My understanding of the rule that went into effect then is that everyone currently in college gets an additional year, and the class of 2022, the NCAA, was trying to arbitrarily exclude.

(5:56 - 6:00)

All right. So everyone gets an additional year. That is a fifth-year competition, correct? Yes, correct.

(6:01 - 6:34)

When is the first time you heard as part of your professional life that the NCAA was considering giving five years to everyone? In 2024, we had a player who was on a red shirt at a Mountain West school, and the coach told him at that school that he didn't need to worry about his red shirt because he'd be getting a fifth year, and that was 2024. I think we had one case of that then and then several cases of that this past year. So I'd like to take you through the timeline from 2024 to today.

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(6:34 - 6:47)

In your knowledge, the NCAA's consideration of a fifth year of eligibility and competition. So you said initially you heard about it in 2024. We've got some exhibits for you to flip through today.

(6:47 - 6:55)

There's a black binder in front of you with a white cover page. There's one for the court as well. So let's take a look.

(6:55 - 7:23)

Let's start with exhibit number two. Can you read? I did not think about doing this in the way the audience would be able to look. Am I able to join the Zoom display on the screen? Are we going to use the Elmo? If you all want to project it onto the screens, I can feed it into the record and they should see it.

(7:23 - 7:36)

Do you have a bigger copy that you don't connect? You just have to connect here to the table. We don't have an HDMI cable. We have one.

(8:08 - 8:27)

And they can see it on Zoom. Wonderful, thank you. Yes, sir.

(8:28 - 8:45)

All right, Mr. Hennis, looking at exhibit number two, can you read the headline there? Yes, it says, Report NCAA Considering Five-Year Eligibility Rule for All Sports. And I'd like you to flip over to the second page. There is a tweet highlighted in the article from a person named John Rostein.

(8:45 - 8:59)

Are you familiar with Mr. Rostein? I am, yes. Who is Mr. Rostein? He's a college basketball insider for CBS Sports. And what did Mr. Rostein do? Your Honor, I'd object on hearsay grounds in that we're trying a preliminary injunction hearing by tweet.

(8:59 - 9:17)

This doesn't do anything to lay the foundation because there's no person for the NCAA identified who made the statement that this rule was under consideration as it was before. Your Honor, I believe in a preliminary injunction, you're allowed to consider hearsay. These documents are part of the record.

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(9:17 - 9:26)

You, of course, give them the weight that you choose. What we're trying to do is set the timeline here at this stage for the rest of the testimony. All right.

(9:26 - 9:31)

I agree with Mr. Downing. This is a preliminary hearing. This is not a trial, so hearsay is admissible.

(9:32 - 9:36)

Understood, Your Honor. Thank you. You're not going to read the tweet? So I'd like you to read Mr. Rostein's tweet.

(9:37 - 9:56)

The NCAA is considering allowing five years of eligibility for players in all sports moving forward per an NCAA official. The topic will continue to be discussed in early 2025. And so in your experience, were there discussions in 2025 that you were aware of concerning a fifth year of eligibility for all players? Yes, absolutely.

(9:57 - 10:27)

And what is your recollection of those discussions? I mean, I've personally had several discussions with coaches, administrators at different schools, as well as with my own clients, advising them on timelines, using of eligibility, how it would affect your decisions to transfer, knowing that you're going to have an extra year, you might want to stay at a mid-major again, knowing you can earn later. So, yes, it became relevant, I would say, even before John's tweet. It became relevant for me December 2024 when I had a couple coaches mention that they thought it was coming, per their conversations with NCAA and conference officials.

(10:28 - 10:41)

So I guess to answer your question shortly, yes, it was a very, very big part of our conversations. Are you familiar with the COVID waiver, the NCAA waiver? Yes, I had two clients who benefited tremendously from that waiver. Three actually, four actually.

(10:41 - 10:49)

And I'm just going to summarize it to move forward quickly. Essentially, if you were in college during COVID, you got a fifth year of competition. Yes, sir, correct.

(10:50 - 11:07)

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And so that applied to everyone who entered college in 2017, 18, 19, and 20. It applied to them also while they were in college, yes. So in early 2025, you still had kids in college who benefited from the COVID waiver, correct? Absolutely, yes.

(11:07 - 11:26)

And then you had classes who had not yet received a fifth year. Yes, sir. If the NCAA had passed this rule change in 2025, could there have been a seamless transition from athletes who got a fifth year because of COVID and athletes who got a fifth year of the rule change moving forward? Yes, absolutely.

(11:26 - 11:40)

To be honest, most of my younger players coming in just assumed because of the COVID thing that they were going to get a fifth year anyway. So without a doubt, yes. Let's move forward in the timeline.

(11:41 - 12:10)

What is your next recollection? And I can help you if we want to, but what's your next recollection of discussions about the fifth year after the spring of 2025? I mean, there was like when it became a big mass thing again where we had a bunch of guys call us about it. I think, was it Patterson or whatever? There was a case in like December of that year in the fall where some players were trying to get a class action to get a fifth year. And I had Zavian Lee at the time, who's at Florida, and he was calling me saying, I'm going to get my fifth year.

(12:10 - 12:20)

Like, this is really big for me. Like, it was a frequent topic of conversation. So you're aware of a lawsuit called Patterson versus the NCAA that was filed in the fall of 2025? Yes.

(12:20 - 12:41)

And your understanding was that lawsuit was trying to get a fifth year for all players who did not get one? Yeah, I believe the lawsuit was it was football players suing, but it would have affected athletes in all sports was like my understanding. I'm not a lawyer. But because of that, a lot of our basketball guys were calling and saying, how does this affect me? How should I be thinking about one or two year deals? How should I be thinking about my current school? So I remember it a lot.

(12:42 - 12:54)

And we've got a court reporter here today that's got to take down all my questions to your answers. It's really easy once you get going to talk over. I will do my best to let you finish your answer for the next question.

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(12:54 - 12:58)

Try really hard not to respond at all. Yes, sir. Sorry.

(12:58 - 13:16)

Okay. Do you recall if the NCAA put out a statement in the fall of 25 as to whether it was going to move forward at that time with the fifth year for everyone? I believe they said they were considering if they put out. I think it was an ambiguous statement that's like we're considering a fifth year thing that would apply to everyone going forward.

(13:17 - 13:33)

I could be wrong, but I believe they did. And then at some point after Patterson was filed, do you recall if the NCAA changed that position? Yeah, they said they weren't going to do it. Let's take a look at Exhibit 3. And if you could read the headline here.

(13:33 - 13:45)

Yes, sir. NCAA will not implement 5-for-5 eligibility rules anytime soon, internal memo says. What's the date of this article? The date of that article would be October 22, 2025.

(13:46 - 14:02)

And let's flip over to the second page. What did the NCAA say about the current eligibility rules that I've highlighted for you? You've highlighted on the page behind it or the page over here? I don't see anything highlighted. Oh, highlighted over there.

(14:03 - 14:18)

It says, will remain in place for the rest of this academic year as well as the 2026-2027 academic year. And what academic year are we in now? 2026-2027. Did the NCAA actually keep the old rules in place? No, sir.

(14:21 - 14:44)

All right, so that's October. Did the NCAA stay consistently with that position that the old rules were going to stay in place? No. When do you recall it changing again? I recall it changing, wasn't it April that they came out? The cabinet had a meeting and said they were going to do, or maybe it was even before April, but basically they were going to do a 5-in-5 thing.

(14:44 - 14:58)

And at that point, I remember talking to our lawyer who said it was going to affect everyone currently in college, too. So we told our guys, like Mr. Trimble, to enter the transfer portal and Mr.

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Polk to enter the transfer portal because they were getting a fifth year. So I remember it again in April.

(14:59 - 15:14)

Possible it came up before that, but that's like the next vivid recollection I have of it. Let's look at Exhibit 4. This is an NCAA governance update from April 15, 2026. Do you recall, is this a document you would have seen back then? Oh, yes, absolutely.

(15:16 - 15:25)

And what is the headline of this document? D1 Cabinet Adopts Changes to Eligibility Rules for Prospects. I remember that, yeah. And let's flip to the third page.

(15:26 - 15:56)

Yes. It says the cabinet discussed a concept which eventually proposed and adopted would adjust eligibility to do what? Eliminating seasons of competition and instead implementing an age-based model that allows student-athletes to be eligible for Division I competition for a window of five years, starting the academic year immediately after a prospective student-athlete's high school graduation or 19th birthday, whichever occurs first. So is it fair for me to summarize that? Well, actually, let's keep going.

(15:57 - 16:11)

Do you know who Charlie Baker is? Yes, sir. Who is Charlie Baker in connection with this matter? He is the president of the NCAA. I'm going to direct you to Exhibit 5. It's a tweet from a gentleman named Ross Dellinger attaching a memo from Charlie Baker.

(16:12 - 16:21)

Are you familiar with Mr. Dellinger? Yeah, I know him well. Who is Mr. Dellinger? He is a college football and basketball insider for Yahoo Sports. He covers the business of the NCAA, congressional things, et cetera.

(16:22 - 16:33)

And what is the date of this tweet? April 16, 2026. Let's take a look at Mr. Baker's memo. He's got a Q&A about changes to Bylaw 1226.

(16:34 - 16:44)

Do you see that document? Yes, I remember as well. And let's switch over to question number nine on the last page of the Q&A. Yes, question number nine.

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(16:45 - 17:04)

Got you. Can you please read question number nine from Mr. Baker's memo? If implemented, when would the new age-based eligibility rule become effective? And what was his answer? I don't remember what. We are evaluating all options to ensure a smooth transition to the new eligibility framework, including for current student-athletes who matriculated under the current framework.

(17:04 - 17:12)

Should I remember, sir? Athletes who matriculated under the current framework. That's all the plaintiffs in this room who started college at 22. Yes, Your Honor.

(17:12 - 17:18)

That's actually what caused us to tell our guys, you are for sure getting the fifth year. We thought it was coming. You need to enter the portal and be ready.

(17:18 - 17:20)

Go ahead. Let's read question 10-2. Yes, sir.

(17:21 - 17:36)

Wouldn't this rule change lead to incoming younger players losing out on roster spots to players who can now stick around for their fifth year? Let's read just the first two sentences of Mr. Baker's answer. Yes, sir. We are committed to a successful and fair transition for all student-athletes.

(17:37 - 17:48)

Many student-athletes already remain on campus for five years because of waivers or red shirts. Is that consistent with your experience that many athletes are staying for five years? Some for six. I mean, Seth played with the Cormac about six years.

(17:51 - 18:07)

As the NCAA eventually implemented the system, do you think they did that in a way that was a successful and fair transition? Not at all. They mentioned a concern here about roster spots. You've got athletes who are trying to come back for a fifth year.

(18:07 - 18:18)

I do. Are you aware of any other athletes losing a roster spot because of one of your athletes coming back? Not one. The NCAA has also expressed a concern about playing time.

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(18:19 - 18:37)

Have you, as part of your job, looked at the impact of playing time on a fifth year of eligibility's impact on playing time? Yes, sir. Actually, I think that's one of the biggest fallacies in this entire case. The NCAA's argument is that younger players are disproportionately disadvantaged, specifically freshmen.

(18:38 - 19:08)

So what we did, we have a data scientist on our team, and we looked at recruits in basketball ranked outside of the top 100, because those would be the most likely to theoretically be disadvantaged, ranked between 101 and 150. And we went back 10 years on the 2-4-7 rankings, and we broke it into three cohorts, 2016 to 2018, before NIL in the portal, 2019 to 21, when NIL in the portal was starting to happen, and 2022 to 2025, currently. And what we found, because the NCAA always talks about the long-term development of student-athletes.

(19:08 - 19:32)

We want colleges, we want guys to be there four or five years, use all five years, use all of their eligibility, and develop as players and people. So the longer you're in college, the better. And what we found was that, yes, players who their freshman year, and it dropped off, I could be like not 100% exact, I believe from like 14 minutes a game to 10 minutes a game, but by their senior years, they're actually statistically playing more now.

(19:32 - 19:55)

Freshmen ranked 101 to 150 in the most recent cohort by their senior year are playing four minutes per game, more than their peers in the 2016 to 2018 cohort. So the actual data does not support the NCAA's argument. It also supports why a lot of our younger players are in favor of this, because they know they have five years, and they get to practice and learn from veteran players who impact them both on and off the court.

(19:55 - 20:27)

I encourage you, if you look actually at Seth Trimble, after his, what was it, junior year, they lost to Ole Miss in the NCAA tournament, he sat up there and did a press conference, and was crying talking about the impact that R.J. Davis, a player on his fifth year on his COVID waiver, had had on him as a player and a man. So a lot of that argument is just actually false when you look at the facts. So you're saying that your analysis has concluded that when freshmen compete against fifth-year players, by their senior year, they're playing more minutes.

(20:27 - 20:34)

Yes, sir. Let's go back to the timeline. So that was April 15th and 16th, 2026.

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(20:35 - 20:44)

We're going to move forward just a week or so to April 23rd. There's a tweet from a man named Jeff Goodman. Do you know who Mr. Goodman is? I know him well, yes.

(20:45 - 20:59)

Who is Mr. Goodman? He is a college basketball reporter for the Field of 68. And his appointment is Exhibit 6. He has a quote in his tweet from a gentleman named Rick Pitino. Do you know who Coach Pitino is? Yes, sir, I know him well.

(20:59 - 21:14)

And who is Coach Pitino, for the record? He is the head coach of the St. John's University men's basketball team. Do you know how long he's been? Would it surprise you to know he's been coaching for 40-something years? Not at all. Is he a well-respected coach within NCAA services? Very.

(21:15 - 21:25)

What is the quote from Coach Pitino on April 23rd, 2026? Quote, it would be pure chaos. Most teams have used 80% of their NIL. Next year makes sense.

(21:25 - 21:44)

Now don't get me wrong, I would love to have my seniors back, but our NIL is just about finished unless Mike Rapoli wins the Derby LOL. And that last part, do you know who Mike Rapoli was? Of course, yes. And what? He is the owner of, or he sold body armor, and he is the main benefactor of the St. John's.

(21:44 - 21:49)

He also owns Noble. He's the main benefactor of the St. John's University men's basketball team. So that's basically a joke.

(21:49 - 22:03)

Yes, it is a joke. But the first part of the tweet, he said he would love to have his seniors back, but he spent all of his NIL. He's basically saying they should play, but I don't want to have to go raise more money, which was the common refrain from coaches of like, this is great.

(22:03 - 22:09)

We love our guys. We want this opportunity, but I got to go call donors. I got to go, as they would say, knock on some doors.

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(22:10 - 22:29)

For the record, what is NIL? NIL stands for name, image, and likeness. What Rick is specifically referring to is the money players now make to license their name, image, and likeness to a university to play college basketball for that university. And are you familiar with the difference between revenue sharing and third-party NIL? Of course.

(22:30 - 22:46)

For the record, can you please explain that? Yes. So basically, when the house settlement was passed, it created a cap where each school was allowed to pay their student athletes up to $21.5 million, I believe is the number, directly. And any number above that or beyond that had to be through legitimate third-party NIL.

(22:46 - 23:16)

So think Nike or Adidas or Pepsi or Louisville Slugger. And basically, it broke it into those two buckets where if you're a school and you want to pay your players, you can do it, but there's a cap of what you can do directly, so anything else has to be legitimate third-party deals. Does that answer your question? Yes, and are coaches and schools allowed to help facilitate those third parties? They're not directly facilitating them, but they're allowed to, through their MMR partners or through third-party entities that are affiliated with the school, can help bring them.

(23:16 - 23:35)

But we've never had a coach or an administrator make someone do one of those deals. Well, of course, no one can make anyone do it, but Coach Patino can go out in the community and say, Coach Patino can go out in the community and say, I need some more sponsors, we've got some guys, we need to raise more money for third parties. He does that frequently.

(23:35 - 23:50)

I mean, he talks about the business connections he has and the deals that those companies will do with St. John's players. I mean, the evidence is there. If you look at Ozai Sellers, who played for them last year, he was posting about Junk Brands, a company owned by Mike Rapoli, that Rick Patino encouraged him to do.

(23:51 - 24:00)

So, yes. So this is April 23rd. Coach Patino expressed concern about having to raise more NIL, and you said your experience, other coaches raised the same concern.

(24:00 - 24:08)

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Yeah, it was pretty unanimous. Like, they want the players to play. They've coached them, they know their character, but it does require a lot of additional work for them to raise the NIL.

(24:08 - 24:18)

And let's look at four days later, April 27th. Is it 7? This is another. This is Playhouse Exhibit 7, another release from the NCAA.

(24:18 - 24:46)

The headline is, D1 Board of Directors Directs Cabinet to Advance Age-Based Eligibility Rule. Can you read what it says in highlight? Maintain existing rules allowing four seasons of competition and five years of eligibility for student-athletes competing in the 2025-2026 academic year. New rules are not expected to retroactively apply to student-athletes whose eligibility is or will be completed by the spring of 2026.

(24:47 - 25:10)

Up until this point, did you believe that all of the athletes who start at school in 2022 and finish their fourth year in 2026 were going to be included in the new rule? Yes. And was that consistent with your experience when you're dealing with coaches and players across the country? Yes. How did you react when you saw, well, did you see this? I did see this.

(25:10 - 25:19)

I thought the NCAA is trying to walk back. I mean, it's consistent where they'll say something and then someone will complain about some part, and they'll walk it back. They're very reactionary.

(25:19 - 25:30)

Actually, when I saw this, it reminded me a little bit, if you look at how NIL was first implemented, it was piecemeal state laws. And then the NCAA said, oh, no, this is a problem. We can't have this.

(25:30 - 25:39)

We're going to fight it. And then they flip-flopped. And then two days before the laws were set to take effect on July 1st, I think it was June 28th, they announced their interim NIL policy originally.

(25:39 - 25:52)

So I figured, like, they were going to get pushback, and they would flip-flop back on it. And we told our guys to still – that's why Seth didn't sign a pro contract – to still continue to prepare as if they might get a fifth year. Does that answer your question? Yes, thank you.

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(25:53 - 26:12)

And then you understand that the NCAA did vote and adopted new rules in June 2026? Yes. Have you looked at the new manual – well, strike that. You understand that the NCAA also put out press releases when it passed the new rule saying the class of 22 was excluded.

(26:12 - 26:22)

Correct. They did say that. Have you seen the actual NCAA manual that they published for 2026? Yeah, with the whole Rule 12.6 thing and the plain text.

(26:22 - 26:51)

Yes, I'm familiar. All right, we're going to take a look at Plaintiff's Exhibit 26, which is excerpts from the Division I 2026-27 manual. I'm going to have you turn over to page 45 of the manual that was published on September 15th of this year.

(26:52 - 27:12)

Can you please read Rule 12.6 into the record? Just the first one? Or the whole thing? Rule 12.6. You can stop before you get to the letter A. Excellent. Rule 12.6, Five-Year Period of Eligibility. An individual's period of eligibility for practice and competition shall be limited to five academic years.

(27:13 - 27:42)

An individual's five-year period of eligibility begins with the earlier of the following. Would you like me to read that or stop there? Let's stop there. We've got A and B. Can you please read A? A, the regular academic term, semester or quarter, of an academic year in which the individual enrolls in a collegiate institution, domestic or foreign, see Bylaw 14-2-4, in a minimum full-time program of studies and attends a class in that term while enrolled full-time, or B-2.

(27:43 - 28:01)

Can I summarize that as when they start college? Yes, sir. Or B. Or B. The beginning of the regular academic year immediately after the individual's 19th birthday. If you look back in the parenthetical before the letter A, it's got information about the effective date.

(28:02 - 28:24)

What does it tell you there? Yes, revised 7-31-14, 6-6-25, effective 7-1-25, 6-24-26, effective 8-1-26, 9-9-26. The 9-9-26 changes are further down in the page. We're not going to focus on them today.

(28:24 - 28:38)

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Okay. So June 24, 2026, does that coincide with your understanding of when the rule change was voted on? Yes, it was like a couple days after. And then effective August 1, 2026, are we after August 1, 2026? Yes, sir.

(28:39 - 28:57)

Do you see anything in this rule that excludes any particular group of athletes? No. Your client, Mr. Trimble, is he within five years of starting college and five years of his 19th birthday? Yes, sir. He's younger than several of the players that have been cleared by the NCAA.

(28:57 - 29:19)

Okay. So when you read this rule, do you think he's eligible or not eligible? When I read the rule, I certainly think he's eligible. You mentioned other athletes that had been cleared by the NCAA.

(29:20 - 29:37)

Yes. In your work, do you keep track of the NCAA's position on different types of athletes? Of course. And so have you looked at older athletes that are not part of the class of 22? So my team, I had them pull up.

(29:37 - 30:14)

We have nine guys that were currently cleared by the NCAA who played overseas, who are older than Mr. Trimble, who played professionally for multiple years, some cases even more than four years, in Europe and were cleared, including the most interesting ones to me are Quinn Ellis, who was cleared yesterday it was announced, and Nathan D'Souza at Gonzaga, who was cleared, I believe, it was within this last month, both times when the NCAA has been saying it would cause chaos to add these roster spots or to add players to teams, yet they're clearing similar guys who just haven't been in college, they're clearing and letting them join teams right now. So I've been tracking. We have at least nine.

(30:15 - 30:22)

I'm happy to share that list with the court if helpful, but yes, there's probably more. So I've actually marked... Oh, yeah, that's our list. I've marked your list as Exhibit 36.

(30:22 - 30:44)

Yeah. Did any of these athletes sue the NCAA or did the NCAA just give them eligibility? They were just given eligibility. Do you think it's fair that international players who are older than Mr. Trimble and were paid to play professionally are getting cleared to play college basketball next year while he is not? Absolutely not.

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(30:54 - 30:57)

All right. We're going to let the NCAA ask you some questions. Okay.

(30:57 - 31:04)

Thank you. Thank you. Good morning, Mr. Hendens.

(31:04 - 31:07)

Good morning. Am I pronouncing your name right? Yes, you are. Thank you.

(31:07 - 31:17)

I have a name that's difficult to pronounce. Thank you for being here today. I understand you're supporting your clients.

(31:20 - 31:24)

And you said you have three clients who are plaintiffs in the lawsuit. Is that right? No, no, sir. I have three clients.

(31:25 - 31:39)

I have one client who's a plaintiff in the lawsuit, and when he's deemed eligible, I'll have three clients who are in this courtroom today because I have two other people who play at the University of Louisville who are here to support. Understood. And for... And your client who's a plaintiff is Mr. Trimble, correct? Yes, sir.

(31:39 - 31:52)

And if Mr. Trimble is cleared as eligible, he'll have the opportunity to earn revenue sharing and NIL compensation? Yes, sir. And you'll earn a portion of that compensation if he's cleared. Is that right? What's the percentage? I'll earn 5%.

(31:52 - 32:01)

And do you know what dollar amount that'll... Yeah. It'll be roughly $50,000 to $100,000. So you have a vested interest.

(32:01 - 32:04)

Yeah. I mean, it's a very, very small percentage of my company's revenue. Very small.

(32:04 - 32:16)

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Understood. So you testified earlier that it's your understanding that the NCAA has arbitrarily excluded the class of 22 from the new rules. Yes, sir.

(32:17 - 32:30)

And when you say the class of 22, you're talking only about people who have played four seasons since 22. I'm talking about people, yeah, who graduated high school in the class of 2022 and have played four years. Not redshirted, played four years.

(32:30 - 32:44)

Because people who entered in the class of 2022 and redshirted, they're still eligible for the season, right? Yes. And they would be eligible under the old rules, correct? I mean, I'm not... Yes. Because they've had five years... Yes, they've had five years to play before and they redshirted.

(32:44 - 32:50)

Yes. And they'd be eligible under the new rules as well because they're within their five-year period of eligibility. Yes.

(32:51 - 33:24)

And is there any group you're aware of who was not eligible under the old rules who is eligible to compete in the 26-27 season under the new rules? Of course. How far do you want to go back on the old rules? Under the four-and-five model. Is there anybody who would not be eligible to compete under four-and-five who's now eligible under the age based in the 26-27 act? We had a player, I believe he's at St. Mary's, an international player, who was given more eligibility as a result of this.

(33:25 - 33:33)

And he would have been... It was a question mark as to what his eligibility would have been. And this actually resolved it to make him more eligible. So I think... Right, but that's not exactly my question.

(33:33 - 33:47)

But your client at St. Mary's, he was eligible under the old model. It was just a question of how much eligibility he had remaining, correct? We believed he was eligible, yes. But there was no dispute he would be eligible for the 26-27 academic year? No.

(33:48 - 34:10)

Is there anyone you're aware of who under the old rules would not have been eligible to compete this year or who would have been eligible to compete this year who's not eligible under the new

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rules? No, but they still are materially adversely affected because they're getting less than everyone else is getting. Right, I'm just focusing on the 26-27 academic year. Sure.

(34:11 - 34:26)

And is there anybody who was eligible under the old rules who's no longer eligible under the new rules? No, because no. Okay. So everybody's position for the 26-27 academic year is unchanged from the prior rules.

(34:26 - 34:37)

Yeah, but the NCAA talks about the entirety of their college career. I mean, Charlie Baker tweeted in October 2nd it's about their long-term career that matters. So it might be unchanged for this year, but it's about their whole college career that's changed.

(34:37 - 34:49)

I understand, but pinning it down for just the 26-27 academic year, the answer is yes. Everyone's position is unchanged from the prior rules for this academic year. Well, no, not the class of 2022's position who just played four years.

(34:49 - 35:00)

Seth's position has materially changed. But Seth, under the old rules, he would have exhausted his eligibility, correct? Right. And under the new rules, he doesn't have any new eligibility.

(35:00 - 35:07)

Well, that's under your interpretation of the new rules. Right, but that's what we're here to dispute. You're seeking an injunction against those rules.

(35:07 - 35:18)

Okay. So just pinning you down on an answer, for the 26-27 year, everyone's eligibility status remains unchanged from the old rules, correct? Sure. Okay.

(35:19 - 35:23)

Well, no, their eligibility, yeah, for that year, for just that year. For just that year. Yes, I would agree.

(35:27 - 35:51)

So you also testified that everybody gets a fifth year of competition under the new rules. Is that a fair interpretation? Yeah, I mean, everybody being a loose word, like I understand that there's the age rules, and if you've registered it, you don't get the fifth year, but the vast majority of players

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do. But fair to say, people now have the opportunity to participate in up to five seasons, and they didn't before, correct? Correct, absolutely.

(35:51 - 36:07)

But some people won't play five seasons, correct? I mean, that's hard to tell. I think the vast majority of people will. But, I mean, some people were injured for a year under previous rules, correct? Yeah, I mean, but what will change is, like, those players who were injured, season-ending injuries are a very small fraction.

(36:07 - 36:13)

It used to be you would get injured, and you would medically register to protect your year. Now those guys won't do that. They'll just play the whole year.

(36:13 - 36:21)

So I actually don't think you'll see that many guys get injured and not take advantage of the full year. Right, but I'm not talking about averages. I'm talking about specific student-athletes.

(36:21 - 36:33)

Sure. Some student-athletes will lose a season due to injury, correct? Yeah. Some student-athletes won't see the field or the court because the coach just will choose not to put them in, correct? Yes, a minority of student-athletes, but yes.

(36:33 - 36:51)

And some, that'll be the case for more than one season, correct? Sure. So it's fair to say that while you think more student-athletes than the average will play five seasons, some student-athletes will play less than average. I mean, I don't think that the statistics would bear out that it's proven a high preponderance of those guys will benefit from this.

(36:51 - 37:04)

Right, but some student-athletes would actually benefit from the old rules if they would qualify for extension. Yeah, sure, a small percentage, yes. Right, but just to say whether you benefit from the new rules more or the old rules depends on your circumstances.

(37:04 - 37:20)

Yeah, but the NCAA talks about doing the most good for most of their student-athletes, and the most good for most of their student-athletes is giving everyone five years. I think you testified that a coach told one of your student-athletes not to redshirt because they expected him to pass. He told him not to worry about, so he was redshirting originally.

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(37:20 - 37:32)

He told him not to worry about burning the redshirt because he was getting the five years, so it wouldn't matter. Right, did you? Mr. Zeidlin's done a great job of working with you. I think your reporter's gonna struggle.

(37:32 - 37:50)

Okay, sorry. Understood. Did you, that conversation, and the conversations you testified that you had had about the new rules, your conversations were with coaches and administrators on campus, correct? As well as with our clients, their parents, and various lawyers, yes.

(37:50 - 38:07)

But no one at the NCAA, correct? No. And nobody who's on the NCAA Division I Cabinet, correct? I mean, I don't know the members of the Cabinet. But so none of those conversations were informed by anyone who had authority to enact a new eligibility rule.

(38:08 - 38:18)

They were informed by people who had authority to interact with the rule, but I didn't directly have them with those people. Like, coaches get feedback from conference commissioners and from the NCAA directly, and then that's what they're relaying to me. So you are right.

(38:18 - 38:27)

I did not directly have those conversations, but they were certainly informed by people with the authority to implement those rules. That's why I'm getting those calls, if that makes sense. Understood.

(38:28 - 38:50)

Pivoting to the COVID waiver, you testified that the COVID waiver gave everybody another season or year of eligibility, correct? Yes. Is it fair to say that the 2020-21 academic year for a lot of student-athletes was in no way a normal season? I mean, basketball, they played the vast majority of their season. I wouldn't necessarily grant that.

(38:50 - 39:04)

Well, basketball, they canceled the tournament in 2019-2020, correct? Yeah, after they played the entire regular season and conference tournaments. And then in 2020-2021, most conferences didn't allow full capacity in the stands. Yeah, but they still played the whole season.

(39:04 - 39:20)

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Some had limited schedules, correct? No, I mean, I think they all played the full 32-game schedules, and they played the full 64-team NCAA tournament as normal. What's your basis for that testimony? Go look at the... I mean, they played the full tournament, and they played 32 games. Like, that's a full schedule.

(39:21 - 39:37)

But in fall sports, for example, the Ivy Leagues canceled the season entirely. Are you familiar with that? Yeah. And even the Big Ten and the SEC, they didn't allow full capacity in the stands, correct? Correct.

(39:37 - 39:57)

They didn't allow full capacity in the stands, but nothing that changed the competition. And if you had significant testing protocols, even in winter sports, correct? I believe it was a once-weekly COVID test. And contract tracing, where if a certain amount of people had been exposed to COVID or tested positive, that games would be canceled? Yeah, yeah.

(40:00 - 40:14)

So... And it was the sport where your clients are participating? Yeah, but I think if you actually look statistically, I mean, again, I don't know, but I would say go look at the facts. I think they played almost a full football season. They played, for sure, a full basketball season.

(40:15 - 40:27)

And I don't think any other sport had a significant percentage of their season canceled. It baffles me that they use this argument that it's like a completely different season when it just, like, actually wasn't. There were minor inconveniences, but they still played the same sport.

(40:27 - 40:36)

The NBA draft was unaffected. The NCAA tournament, maybe it had smaller crowds, but it was unaffected in terms of number of games. So I don't... I'm not going to concede that it was a materially different year.

(40:36 - 40:50)

It was not. Okay. On Patterson, you testified that your client, one of your clients, wanted to join that lawsuit to get a... or believed that lawsuit would give them a good season penalty, correct? Yes, sir.

(40:51 - 41:07)

But that belief was based on private litigation, not an NCAA rule change, correct? That... yeah.

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That belief was based on the lawsuit and then the NCAA statements that had been passed previously before the lawsuit, and then the lawsuit happened, and they said they weren't going to do it, and then my client got very confused. Okay.

(41:09 - 41:19)

Um... I want to get into the timeline of the NCAA's announcements a little bit. You have two binders in front of you. One, Mr. Downton has walked through with you, which is plaintiff's exhibits.

(41:19 - 41:36)

The other is the NCAA's... Is that this binder, sir? Yes. I want you to start with exhibit five, plaintiff's binder, which was that memo from Mr. Baker that Mr. Downton walked you through. Yes.

(41:37 - 41:44)

So... go into question nine. Give me a second. Yes, sir.

(41:45 - 42:05)

Mr. Downton, had you read that into the record? We were evaluating all options to ensure a smooth transition to the new eligibility framework, including for student-athletes who matriculated under the current eligibility framework. Student-athletes who matriculated under the current eligibility framework included people who matriculated in 2025... Yeah. ...in 2024... Yeah.

(42:06 - 42:41)

...in 2023. There's nothing in that sentence that could lead you to certainly conclude that the new rule was intended to extend to student-athletes who had already exhausted their eligibility framework. I think certainty is an incredibly difficult thing to quantify, and if you look at the difference in this statement, when this is the first time he mentions who matriculated under the current framework, that was interpreted a lot by the people I work with, coaches and the people at their conferences, as politicians speak and NCAA speak for everyone's eligible because they know who he's referencing when he says under the current framework.

(42:41 - 42:46)

That seems to mean the younger players. So I disagree. Like, there's no certainty.

(42:46 - 43:07)

We don't know anything for 100%. That's part of the problem with how this has been implemented, but I think you could conclude if you look at that statement in the broader context of

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all other statements that all of a sudden he's talking about the current framework, it means the class of 2022 guys. The other statements you're talking about, none of those were from the NCAA, correct? Those were the tweets that... Correct, but the NCAA is known for, like, giving those.

(43:07 - 43:24)

Those are all highly reliable insiders who are talking to people very high up within the NCAA who gives them that information, but the NCAA wants that message out there. But this is you reading between the lines, not anything that the NCAA said? Sure, correct. So, and then I'm going to direct you now to the NCAA's binder.

(43:24 - 43:36)

We're going to start at tab 5. Tab 5. Okay, one moment, please. Tab 5. Got it. This is a document you've already seen.

(43:36 - 43:44)

This is the April 15th government report. Yes, sir. So Mr. Downing directed you to that top paragraph on the second page.

(43:44 - 43:55)

Can you read the second paragraph? The one that starts with division 1? Page 2, sorry. Oh, page 2. Period of eligibility concepts, that one? Yeah. The cabinet.

(43:55 - 44:10)

Mr. Downing directed you to the one that starts the cabinet also discussed. So you want the one... Can you read the one below that? Yes, sir. The cabinet did not take a formal position on the topic or the concept itself, but did support NCAA staff continuing to discuss the idea with other stakeholders to gather additional feedback.

(44:11 - 44:24)

So this document, fair to say, it expressly states the cabinet hadn't taken a position yet on how this would be implemented. Yes. And I think you testified that you absolutely would have seen this document when it was published.

(44:24 - 44:33)

Yes. Fair to say that you are familiar with all NCAA governance updates that concern student-athlete eligibility? I don't want to say I'm familiar with every one. I think most of them.

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(44:33 - 44:44)

I don't want to say I'm familiar with every single update. But you were tracking developments about the age base, right? I tried to track it very closely, yes, sir. So you would have tried to be familiar with governance updates as they were published, correct? Yeah, absolutely.

(44:44 - 45:02)

And are you familiar with NCAA committee reports? Educate me. Are you aware that the NCAA on its website has a list of its committees where the reports from all of their committees are publicly available? Yes. Do you review those reports? No, I mean, sometimes they're sent to me from time, but I wouldn't say I review them frequently.

(45:02 - 45:42)

But if you wanted to stay off on eligibility rules, fair to say that you would want to track the process with new legislation affecting eligibility? Yeah, I mean, although sometimes I find, like, the NCAA's reports are more confusing than the media and everything else puts out, I think it's hard to, like, get an accurate picture on what's going to happen from their own reports because it's a lot of things like this where there is no formal position. So top six, and this is another document that Mr. Downton already showed you. This is the April 27, 2026 governance update, which you testified, I believe, it's the first time that the NCAA announced that a new rule would maintain existing rules for student-athletes competing in 25-26.

(45:42 - 45:53)

New rules are not expected to apply retroactively to student-athletes whose eligibility is or will be completed by the spring of 2026. Not expected to, yeah. Right.

(45:54 - 46:09)

You previously testified that all the prior statements about the new rules, those were people reading between the lines about what would happen, right? Yeah, because it wasn't, you're saying because it wasn't directly from the NCAA. Correct. Yeah, so there is some level of interpretation.

(46:09 - 46:21)

And this is the first time the NCAA Division I Board of Directors has taken a position on the new rules. But even, it's not a position, they said it's not expected, even they don't take a definite position. They say it's not expected to apply, but not that it doesn't.

(46:21 - 46:27)

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They just say they don't expect it to. So I would argue they're doing the same thing. Because the cabinet was still reviewing statements.

(46:27 - 46:44)

Right, so we're, I'm still, in my opinion, still reading between the lines on what they're trying to say here. Okay, and then tab seven. This is the report of the Division I Board of Directors from April 27th, 2026.

(46:44 - 47:02)

Fair to say that's contemporaneous with the governance update that we just looked at? Yeah. And can you read the paragraph at the bottom, in number three? Yes, sir. Division I Collegiate Eligibility Review.

(47:02 - 47:21)

The Board of Directors discussed the Division I age-based eligibility model. The Board reviewed and supported socializing the draft implementation plan with the broader membership. The Board supported maintaining existing rules, allowing four seasons of competition and five years of eligibility for student-athletes competing in the 2025-2026 academic year.

(47:21 - 47:34)

New. Do you want me to keep reading, or just end it at new? Keep reading just the next sentence. New rules are not expected to retroactively apply to student-athletes whose eligibility is or will be completed by the spring of 2026.

(47:35 - 47:52)

The Board directed the Cabinet to seek broader stakeholder feedback to inform further discussion during upcoming Cabinet and Board meetings in May. And that's consistent with the governance update that we just looked at, right? It's still not the rules, though, but yes, I still am trying to read between the lines of what's actually going to happen when they do pass the rule. So if you'll go to tab eight.

(47:53 - 48:08)

Yes, sir. And this appears to be the report of the Division I Cabinet May 22, 2026 video conference, correct? Yes, sir. And as you testified, this is something that's publicly available on the NCAA's website.

(48:09 - 48:32)

Could you read subparagraph B for me? Subparagraph B. Timing of implementation. The Cabinet

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supports full implementation of the age-based collegiate eligibility model beginning fall 2027. As previously shared in the NCAA Division I Board of Directors April 27, 2026 meeting report, the model will not retroactively apply to student-athletes whose eligibility is or will be completed by spring 2026.

(48:32 - 48:54)

Implementation scenarios of the age-based collegiate eligibility model for continuing and incoming student-athletes are set forth in the following chart. So fall 27 wouldn't even be this season. So that ended up being inaccurate, right? Or am I wrong? I mean, we can get into that, but that's the discussion we had earlier where everybody's eligibility status remains unchanged from the prior rules for this season.

(48:54 - 49:17)

Next year will be the first time anybody has the opportunity to play a good season of competition for the first time without a waiver. Okay. So could you also read the third line to me? The box on the left identifies the categories of student-athletes that are impacted by the rule, and then the box on the right explains which eligibility model applies.

(49:17 - 49:33)

So student-athletes who use final season of competition during 2025-2026 but have time remaining in their period of eligibility. Current rule is no longer eligible. So this memo, yes, which is not the actual rule or the language of the rule, it appears that they're trying to legislate through this memo that they're excluding people.

(49:33 - 49:43)

So we're in May 22nd, 2026? Yeah, when there's no rule out yet. So it's unclear still what exactly. The rule hasn't even been voted on, correct? Yes, and it seems to be what they're thinking about potentially doing.

(49:43 - 50:00)

Right, these are implementation scenarios being solicited, being discussed by the cabinet. Which is just the cabinet, yeah. But as of May 22nd, 2026, it's fair to say that the published expected implementation no longer has ambiguity.

(50:00 - 50:06)

It's no longer expected to apply. This is how it is going to apply based on the model. I don't think so.

(50:07 - 50:15)

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I think this is the cabinet saying this is what they want, but I don't necessarily think that's saying this is what the rule is. That's just they're saying this is what we want. There is no rule.

(50:15 - 50:20)

There is no rule, exactly. So it's impossible to say what things can change. It's not passed for another month, so no, I would not consider that.

(50:20 - 50:37)

But the cabinet's the one that votes on the rule, correct? Yes, but don't the broader stakeholders have to actually implement it too? Are you familiar with how the actual rules pass? Yes. We'll get there. And then May 22nd, if you'll go to tab nine, this is another government update.

(50:37 - 50:56)

Division I cabinet continues discussions of age-based collegiate eligibility model. Yes, sir. Do you agree with me that this is the same date as that reported cabinet that we just looked at? And then if you could read the paragraph that precedes the first bullet point and the first bullet point and correct it.

(50:56 - 51:00)

Yes, sir, and correct me if I do this wrong, but in an effort it starts with that one. Correct. Yeah.

(51:00 - 51:20)

In an effort to provide clear and predictable guidelines and make a transition to the model as seamless as possible, the cabinet outlined the expected implementation process should the change be adopted. Specifically, the implementation options currently contemplated include, and then you'd like the first bullet? Yes. Student athletes whose fourth season of collegiate eligibility was completed by spring 2026, no additional eligibility.

(51:20 - 51:26)

And that's consistent with the report of the cabinet that we just looked at? Yeah, same date. Yes, sir. Okay.

(51:26 - 51:36)

Taps in. A lot of reading. This is the June 25th, June 5th, 2026 report of the Division I cabinet? Yes.

(51:36 - 51:56)

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Again, same format where you would expect this to be publicly available on the NCAA's website? Yes, sir. And then for the third implementation scenario where it's talking about student athletes who used final season of competition during 2025-26, but have time remaining in their period of eligibility, the guidance is the same. Current rules, no longer eligible.

(51:56 - 51:59)

Yes, the same as the May 2026. Correct. May 2022 report.

(51:59 - 52:09)

Yes. And then if you'll go to tab 11, this is another government's update from the same date. Division I modifies age-based eligibility concept.

(52:13 - 52:43)

There's no indication in this document that student athletes who exhausted their seasons of competition would be eligible under the new rules, correct? I'll give you a second. Can I read it? Yeah. Alright, I've read it.

(52:43 - 53:05)

Would you mind re-asking the question? I'm sorry. Nothing in that memo that changes your understanding of the previous implementation guidance, correct? Yeah, it's consistent with what they previously put out in their other, in the other thing you just had me read. And then if you'll go to tab 12, June 23rd, 2026, Division I adopts age-based eligibility model.

(53:05 - 53:13)

This is another government's update, correct? And if you'll go to the second page, So page two or three. Correct. Yep.

(53:15 - 53:33)

This has the same guidance for student athletes who used their final season of competition under previous rules during 25-26. No additional eligibility, correct? Yes. It doesn't have the actual text of the rule in here, but it does have that box of what they think it's going to say, but it doesn't have the actual rule text in here.

(53:33 - 53:38)

Understood. Yes. So if you'll turn with me to tab three.

(53:39 - 53:42)

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And this same binder? This same binder. Okay. Go back.

(53:48 - 54:04)

This is the report of the cabinet from the same day, right? June 23rd to 2024. Yes, sir. And could you read that first, the first bold sentence in the sentence that follows into the record? The sentence that follows into the record? Yes.

(54:04 - 54:08)

I'm sorry. You can just read the first two sentences. Oh, read it into the record.

(54:08 - 54:16)

I'm sorry. Yes, one. NCAA Division I proposal number 2026-44 Athletics Eligibility Age-Based Eligibility Model.

(54:16 - 54:32)

The NCAA Division I cabinet adopted proposal number 2026-44 as emergency legislation. The proposal establishes the individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the fall.

(54:32 - 54:44)

Would you like me to continue reading? No, that's fine. But fair to say that the cabinet implemented the age-based eligibility model through a vote on proposal 2026-44. I think so, yes.

(54:45 - 55:16)

If you'll turn with me to tab two, you see this is proposal number 2026-44 at the top? Yes, sir. Now, if you'll go to the back, and these are not number pages. If you go one, two, three, four, five, six, seven pages from the back.

(55:16 - 55:22)

Okay. Can you give me like am I looking? The bottom will say effective date. Oh, boy.

(55:28 - 55:39)

How many pages from the back? From the back, so you want me to start at the back and work back? Seven pages from the back. Yep, yep, yep, gotcha. So this is one, two, I think you have it marked actually for me.

(55:40 - 55:43)

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Yes, yes. Effective date, yes, sir. Effective date.

(55:43 - 55:53)

Yeah. I should have numbered these pages. All right.

(55:54 - 56:19)

Can you read that first sentence for me? Yeah, so you don't want me to read 12-6 of the actual rule, you want me to read just this effective date? I want you to read effective date. Okay, effective date, August 1st, 2026, may be applied to student athletes with eligibility remaining seasons and period of eligibility who initially enrolled full-time in any collegiate institution before August 1st, 2026. May be applied to student athletes who initially enrolled full-time in any collegiate institution in the 26-27 academic year.

(56:20 - 56:40)

Previous rules may be applied to student athletes who enrolled before or enrolled during the 2026-27 academic year. However, no waivers will be available. Additionally, the legislated exceptions to the previous season of competition rules do not apply to competition that occurs during the 2026-27 academic year though the exhaustion of the student athletes Division I, through the exhaustion, excuse me, through the exhaustion of the student athletes Division I eligibility.

(56:40 - 57:04)

Applicable to student athletes who initially enrolled full-time in any collegiate institution in 2027, 2028, and thereafter. So we've established this is the proposal 2026-44 is what the cabinet voted on, right? Yes. And the cabinet's legislation says that it may be applied to student athletes with eligibility remaining parentheses seasons and period of eligibility.

(57:04 - 57:15)

It says that in this part of the rule book but I think there are other parts that might call that into question. We're not talking about the manual, we're talking about the proposal. Okay, yeah, in this part it does appear to say that.

(57:15 - 57:35)

I'm not a lawyer but it does appear to say that. And you're familiar with the NCAA but you're not an expert in how the NCAA's rulemaking process works, correct? I mean, it depends on the threshold of expert but yeah, I wouldn't say that I'm an expert in the legalese of how they make their rules. So you don't know in government parlance how a bill becomes a law within the NCAA, correct? No, sir.

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(57:36 - 58:02)

So if the cabinet voted on proposals and the manual were just a compendium of active legislation, you wouldn't have any reason to disagree with that? Can you rephrase the question? So if I told you that the cabinet voted on specific proposals but does not vote on the manual as a whole, you would have no reason to disagree with that? No, I could disagree with that. I don't know because I don't know if it's true or not. So I don't know.

(58:03 - 58:07)

Correct, you don't know. Yeah, but that doesn't mean I don't disagree. It just means I don't know.

(58:07 - 58:13)

You don't have a factual basis to disagree with that because you don't know. No, I also don't have a factual basis to agree with it either. But yes, correct.

(58:14 - 58:44)

So pivoting out of the timeline, you disagreed with Mr. Downton about this premise that student athletes would lose roster spots to individuals who have exhausted four seasons of competition, right? Correct. That analysis, though, is confined to the plaintiffs in these cases who know they have a roster spot somewhere, right? No, not all the plaintiffs go in knowing they have a roster spot. So not all of them know they have a roster spot, right? No, absolutely not.

(58:45 - 59:13)

So when legislation is passed at the NCAA Division I level, that affects, if it's legislation that applies to all sports, it's about 180,000 student athletes, correct? Correct. And if we're going to estimate how many of those are student athletes who use four seasons within a four-year period, that's at least tens of thousands of student athletes, right? Yes. And fair to say that if all of those student athletes were eligible, there's not enough roster spots for all of those student athletes.

(59:13 - 59:31)

I mean, I'll just weigh on specifically in basketball, where the record has shown that's not the case because many coaches kept spots open knowing this was coming. Right, for specific student athletes, correct? No, just for any potential student athletes knowing that the fifth-year thing was coming. In basketball, at least there's a dearth, sorry, there's a dearth, there's actually a shortage every year of players.

(59:31 - 59:57)

Most teams, not most teams, several teams will go through the season actually without their

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roster full because they can't find enough players to be on the team because you have the NBA guys who leave and then you have guys who graduate. So in basketball, it's really been a non-issue where we haven't had a single player lose a spot or be disadvantaged because coaches don't fill their rosters anyway because there's not enough players. So I don't know about the other sports, but for basketball specifically, I would actually say that's inaccurate.

(59:58 - 1:00:10)

But for, so I want to break that down. Okay. So basketball, there are some schools that have roster spots open, correct? Yeah, I don't think every school does, but there are certainly dozens and dozens of schools that do.

(1:00:10 - 1:00:26)

There are dozens. Yes. But there are potentially thousands of student athletes who exhausted their eligibility by competing in four seasons within four years last year, correct? Well, yeah, but we have to look at the basketball numbers, so we can't say dozens of basketball spots, but then thousands including certain balls.

(1:00:26 - 1:00:31)

I'm just talking about basketball. I think there aren't, if you look at the senior guys. fair to say hundreds? Maybe.

(1:00:31 - 1:00:55)

It's probably pretty, like, yeah, hundreds-ish, probably pretty close, but like there's, I think there's a pretty good open, good amount of open spots with the guys who graduate. Like, I don't think it's that wide of a spread. That's not something I've studied analytically, but I actually don't think the spread is as wide as it's being made out to be, which is why you've been able to see these guys find roster spots without anyone being dislodged or displaced because there's actually quite enough.

(1:00:55 - 1:01:10)

These guys you're talking about are student athletes who have gotten injunctions. Yeah, but at this point, most every, most every fifth-year player who has a desire to, actually, every fifth-year player who has a desire to come back because you forget, some of those guys graduate and don't want to come back, so they don't want the roster spots. So it doesn't affect them.

(1:01:11 - 1:01:31)

At this point, pretty much everyone who does actually want to come back to play is a part of, in some way, shape, or form, one of these state cases, and they do have a spot for them available.

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So I think what you might be trying to say is if this is passed, oh no, chaos, all of a sudden there's thousands of players, people would be unhappy. I actually think the people who want spots will get them, and the people who don't want spots, they don't have to use the fifth-year.

(1:01:31 - 1:02:07)

If they want to go play overseas or they want to go into the workforce, that's their right too, and I think those are the ones who are choosing not to get this year, so it doesn't really matter at this point if these guys are given the fifth year, because there's plenty of spots for them. Does that make sense? I understand your point, but you're talking about the state of play as exists in the current litigation environment, correct? Yeah, I have, yeah. You're not talking about when the cabinet voted on this proposal in June of 2026, before the new academic year had started, the number of student athletes who, if it applied retroactively, would get additional eligibility versus the number of open roster spots.

(1:02:07 - 1:02:22)

However, there were far more open roster spots then, because when that happened, schools thought, okay, well maybe these fifth-year guys won't get it, we don't know, so we should go get international players. So had they known it was happening, it wouldn't have actually affected anyone. There were more open roster spots then because they didn't know.

(1:02:22 - 1:02:35)

So if we're going to go back in time on the player math, we also need to go back in time on the roster math, if that makes sense. But this is all just speculation. You haven't looked at how many roster spots there were versus how many student athletes there were.

(1:02:35 - 1:03:04)

I'd be happy to go look at them and provide, but I can tell you anecdotally representing 50 players across the sport, this is all we do is talk to coaches and see things like it didn't seem to be an issue at all. There were several schools that had multiple spots open. My business partner and I joke about it like, in the old landscape, we used to get calls from, we got a call from a school last year in September saying, oh no, we have an open spot, can we get someone to reclass and come up? So I can't give you the exact numbers, but I can tell you from pretty much being in it every day that there's a plethora of spots.

(1:03:04 - 1:03:32)

To fill for a 50 person client book, correct? No, to fill for hundreds of players, it's not just me. You have not looked at the difference between the number of student athletes who exhausted their eligibility out of college basketball last year by competing in four seasons in the number of roster spots that were available when the cabinet passed provisional 2020 season? Sure, I have not. Is

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that something the NCAA has looked at? The question was, have you and the NCAA No, I have not, no.

(1:03:33 - 1:03:53)

Okay. You testified that it's your position that freshmen are actually better off for having competed against student athletes in their fifth year? Yeah, by the time they finish their careers, absolutely. Are you aware that Mr. Downton has taken the position across cases that it's actually an injury to have competed against the more experienced? Yeah, I'm not familiar with every position in every case.

(1:03:57 - 1:04:24)

I just say they're better off in terms of total minutes played at the end. Regarding the Goodman tweet about Rick Pitino, do you have any personal knowledge that a tweet about a quote from Rick Pitino influenced the cabinet's implementation decision about the age-based eligibility rule? No, but the age-based eligibility, I mean, they seem to say frequently that they listen to what their coach is saying. If they interpret their coach as saying something a certain way, they'll take action because they serve their member institutions.

(1:04:25 - 1:04:41)

So, no, I don't have hard evidence, but if the NCAA is the National Collegiate Athletic Association, if it appears that they think their members want something, they theoretically should try to do it. So, if they're trying to interpret it as Pitino doesn't want this, it makes perfect sense that they would then take that action. He was not the only coach that day that did that.

(1:04:42 - 1:05:18)

The answer is no, you don't have any personal knowledge that Pitino's quote or other coaches influenced the age-based implementation? Do you represent any of your clients in connection with their entry into the NCAA, into the NBA or just college basketball? No, just college. Okay. You testified that there are international athletes, older athletes, and former professional athletes that you represent who obtained eligibility.

(1:05:18 - 1:05:20)

No, sir, not that I represent. Okay, that you're aware of. Yes, sir.

(1:05:21 - 1:05:44)

Is it fair to say that, do you have any reason to believe that those student athletes are not eligible under the rules in the main rule? I mean, I think the NCAA what was the rule they passed in May that basically said if you played in the Euroleague you would not be eligible and then Quinellis

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played in the Euroleague and they granted him eligibility. I'm not familiar with that rule. You have a copy of the manual.

(1:05:44 - 1:05:59)

Yeah, they put out a statement. I don't have time to read the whole manual, but they put out a statement about international players. I think it was May 9th that they put this statement out saying they weren't going to be eligible and weren't going to be cleared and it caused chaos and then they actually ended up clearing Quinellis who by their own rules they wouldn't have cleared.

(1:05:59 - 1:06:06)

So I would encourage you to go look at that. Is that a statement or a rule that you're aware of? What you guys seem to be using statements as I don't know. That's the whole point.

(1:06:06 - 1:06:15)

It's hard to tell what is a statement. You don't know why these people got eligible you just have questions about the result. I know why they got the NCAA cleared and that's why they got eligible.

(1:06:16 - 1:06:46)

But you don't know whether they're eligible under the rules or not? No, I don't think anyone can tell who's eligible under what rules. Are you aware I mean certainly you're aware as an agent that the rules for participating in a pro league before your full-time college enrollment and after your full-time college enrollment are different, correct? Yeah, even those have changed so much. But those rules there are rules that apply to those circumstances that are applied based on a student-athlete's individual circumstances.

(1:06:46 - 1:06:55)

Fair? Yeah. And same with international rules you can be taxed for a competition that you have elsewhere but it doesn't necessarily make you eligible. Okay.

(1:06:56 - 1:07:14)

Fair? Yeah. And then older student-athletes all of the people that you're referring to who participated for more than five years in the NCAA they got waivers that enabled them to do that, right? Yes. But nobody was able to do that based on the previous thing.

(1:07:15 - 1:07:17)

Correct. Four and five rules that way. Correct.

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(1:07:18 - 1:07:37)

Although if you look at it with the total amounts of games played players ended up being able to play like if you look at like Puff Johnson at Ohio State he technically only got quote unquote four seasons of competition but if you look at the amount of games he actually played it was more than four seasons worth of games. Mr. Hennis I don't think I have anything else for you. Thank you.

(1:07:39 - 1:07:42)

No redirection, Your Honor. Mr. Hennis you may step down, sir. Thank you, sir.

(1:07:42 - 1:07:55)

Thank you, Your Honor. Your Honor may Mr. Trimble be I'm sorry Mr. Hennis be released from the rules and stay in the courtroom. He may be.

(1:07:57 - 1:08:08)

You're on call Seth Trimble. Mr. Trimble please approach. All right.

(1:08:17 - 1:08:23)

Good morning. You need to raise your right hand, please. Do you swear or affirm to tell the truth the whole truth and nothing but the truth? I do.

(1:08:23 - 1:08:46)

All right. Please be seated. For you and all other witnesses there is a drop-off off of that platform so be careful moving around if you do not roll yourself off that side.

(1:08:46 - 1:08:52)

Thank you, Mr. Hennis. Will you please introduce yourself to the judge with your name your school and your sport? Yes, sir. My name is Seth Trimble.

(1:08:52 - 1:09:00)

I attend the University of Louisville. I'm a men's basketball team. Prior to Louisville where did you go to school? I played four years at the University of North Carolina.

(1:09:03 - 1:09:14)

In your first year how many minutes of games did you play? I think it was 9.8 minutes. I played a little bit to start off the year and that took a huge drop about the last three-fourths of the year. That was that.

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(1:09:16 - 1:09:25)

Did you play against older players when you started school? Yes, sir. One of my teammates was one. I'm sure I played against a handful of them.

(1:09:26 - 1:09:36)

How old is the oldest guy you remember competing against? I want to say 24 years old. Could have been 25. I'm not exactly sure but I know it was in that range.

(1:09:37 - 1:09:48)

Did you have any significant injuries while you were playing in North Carolina? Yes, sir. What injuries did you have? My sophomore year I had a mild concussion. I took an elbow in practice.

(1:09:48 - 1:09:59)

My junior year I had another concussion. In my senior year I broke my left radius. It's a bone, a top bone in your forearm.

(1:09:59 - 1:10:07)

So I broke that. I got surgery and if you want me to talk about the details of the surgery I absolutely will. I won't make you go through the details of the surgery.

(1:10:08 - 1:10:22)

I do want to take you through the timeline though. When did that injury occur in your arm? It was the day after the Kansas game. I can't tell you the exact date but from November 8th to November 10th it was one of those days.

(1:10:23 - 1:10:32)

And then you were out for two months, right? Yes, sir. Are you familiar with the NCAA's rules for a medical redshirt? I know a little bit about it. I'm not exactly sure.

(1:10:33 - 1:10:49)

Generally is it fair to say a medical redshirt means you don't lose a year. You played some of the games you got hurt and you get to come back another year. I see you nodding but they won't pick that up so can you say yes or no? Yes, sir.

(1:10:49 - 1:10:57)

I hear that. I understand that. And then for a medical redshirt there's some rules you have to comply with, right? Yes, sir.

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(1:10:58 - 1:11:08)

So you've got to get hurt in the first half of the season play less than 30% of the games and not have a season ending injury. Yes, sir. Did you get hurt before you played 30% of the games? Yes, sir.

(1:11:08 - 1:11:18)

Right after the second game of the year. Did you have to have some metal put in your arm? Yes, sir. I have a 6-inch plate and I have an 8-screws in my arm right now.

(1:11:18 - 1:11:37)

So even after your surgery two months later you still have some pain in your arm, right? Absolutely. I actually have a fractured bone still that heals on its own but I have a fractured styloid as well that couldn't do any surgery on unfortunately but had to just let that heal. So you got hurt the first half of the season and you played less than 30% of your games.

(1:11:37 - 1:11:46)

You could have shut it down and gotten a whole other year of eligibility, right? No doubt. Why didn't you do that? It's not the type of guy I am. I had a team that invested in me.

(1:11:46 - 1:12:16)

I had a coaching staff that invested in me and I had a family that you know wanted to be led and I knew I would be letting them down if I made what I think is a selfish act like that so I made the decision to come back as quick as I can. Even though you were hurt? Even though I was hurt. Do you think it's fair for the NCAA to put you in a position that you've got to choose between being selfish and looking out for your own personal financial best interest for another year for being a good teammate? No sir.

(1:12:17 - 1:12:29)

I don't think it's fair. I think I'd get praised for being a good teammate but that's not the case. Have you gotten some money to compensate you for use of your name, image and likeness over your career? Yes sir.

(1:12:30 - 1:12:41)

So freshman year in North Carolina how much money did you make? I made zero dollars. Alright, how about sophomore year? I got my rent paid for. Junior year? I made $200,000.

(1:12:42 - 1:12:54)

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And senior year? I made $150,000. And now you're a Blue Belt? Yes sir. Assuming you get to play this year how much money would you make? Assuming I get to play I'll make a million dollars this year.

(1:12:55 - 1:13:05)

And is that a significant life changing money for you and your family? Yes sir. Huge for me, my family and my future endeavors. Did you consider going back to North Carolina? Absolutely.

(1:13:06 - 1:13:19)

Why did you end up not going back? Simply because North Carolina couldn't take me back. As much as they loved me as much as I gave them four years they had filled their roster up and they didn't have room for me. Now Louisville had room for you.

(1:13:19 - 1:13:26)

Yes sir. Did anyone get cut because you were joining the team? No sir. To your knowledge today wouldn't make less money? No sir.

(1:13:29 - 1:13:39)

After you graduated did you get drafted? No sir. Did you ever sign a professional contract? No sir. Did you get a chance to try out in an NBA summer league? Yes sir.

(1:13:39 - 1:13:52)

But you didn't get paid for that other than you got expenses. Other than expenses no sir. What would you like this court to allow you to do this year? Play for the University of Louisville this year under Coach Kelsey and with the rest of my teammates.

(1:13:53 - 1:14:16)

Is there anything else you'd like to tell the judge this morning? I think my class wants a chance to be treated equally. I think the NCAA they praise that they're huge on equality and being treated fair. I think it would be unfair for one group for one age group for a bunch of guys who have been given four years to be left out of that equality that they talk about.

(1:14:17 - 1:14:22)

That's really it. I'm very thankful for being here and very thankful for you bringing me out. Thank you.

(1:14:23 - 1:14:28)

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I'll pass it to this one. Good morning Mr. Trimble. Good morning.

(1:14:28 - 1:14:46)

Thank you for being here and congratulations on a really outstanding career. Thank you for being here. When did you first think that you had a claim to an additional year of eligibility to the NCAA? I never had a for sure fact but I've thought it for a while now having a lot of my teammates in that extra year.

(1:14:48 - 1:15:09)

I've thought it for a while now. But for a while can you give me like a ballpark of when you thought that you'd have the ability to get another season? I mean I'd say like my sophomore year was in my head but I never really thought about it for sure. My plan was always to have the best year I can and to deal with that.

(1:15:09 - 1:15:21)

But it was before this new rule passed, right? Yes, sir. Okay. And there are some media reports that you signed what's called an Exhibit 10 contract or that's just not true? Not true.

(1:15:21 - 1:15:28)

Okay. And did you hire an agent to help you get ready for the NCAA? No, sir. For the NBA? No, sir.

(1:15:28 - 1:15:35)

You've never hired a professional basketball player? No, sir. I have not. And you participated in Summer League? Yes, sir.

(1:15:35 - 1:16:09)

And you know that the NCAA rules say that once you're a student athlete if you go compete professionally you can't come back? I'm aware that they say that. But you believed two years ago that you had a right to additional eligibility? I knew that that was up in the air. So why did you jeopardize your ability to come back to the NCAA by competing professionally if you wanted another year? One, I didn't think that was jeopardizing.

(1:16:13 - 1:16:32)

I mean, I didn't fully believe that was jeopardizing. But I could be wrong but I believe that ACC has put out you can return and having played in Summer League will not impact that decision with ACC. But that's just the ACC's rules, right? Yes, sir.

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(1:16:32 - 1:16:41)

And the NCAA, you haven't seen a similar statement from them, right? I don't pay attention to it. That's what my agent is for. I couldn't answer that question.

(1:16:41 - 1:16:56)

But you were aware of the NCAA rule before you competed in Summer League? I was aware that there was a chance I'd be able to come back to college. But you were aware of the post-enrollment professional participation rules? Not exactly. My circle was aware.

(1:16:56 - 1:17:09)

Okay. Going to your injury history, your freshman year you weren't injured, correct? My freshman year I had a concussion to start the year off. I didn't enlist it just because it wasn't in season.

(1:17:09 - 1:17:16)

But I did suffer an injury my freshman year. And I also deal with an astragona. It's an extra bone in my heel.

(1:17:17 - 1:17:25)

And it really delayed me my first summer there. So, I was. How many games did you play your freshman year? I think I played every game.

(1:17:25 - 1:17:32)

You played every game? Yes, sir. And then your sophomore year you said you had a concussion that year too, right? Yes, sir. But you played 34 games that year.

(1:17:32 - 1:17:39)

Yes, sir. And then your junior year you said you also had an injury that year, right? Yes, sir. But you played 35 games.

(1:17:39 - 1:17:55)

Yes, sir. And then your senior year you had an injury that required you to sit out but you still played in 24 games, correct? Yes, sir. And Mr. Downe made it sound like if you had just sat out you would get another year of eligibility.

(1:17:55 - 1:18:33)

But are you aware that to get an injury waiver the injury itself has to be incapacitating where you cannot play because of it for the remainder of the season? Are you familiar with that rule? They're

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familiar, sir. Right, but they're respectfully, I think misrepresenting what the rule actually says. Do you have any reason to believe from any conversation you have with compliance that if you had sat out you'd be entitled to an additional year? I never spoke to compliance because I wanted to come back and be there for my team and playing through pain was something I was very much willing to do.

(1:18:34 - 1:18:51)

So I never had that conversation. If you had a question about a rule compliance is who you go to, right? Yes, sir. And you were able to come back and play despite the injury? Yes, sir, I was able to.

(1:18:54 - 1:19:13)

If you don't get eligibility from this court today it's fair to say that your basketball career isn't over, right? My basketball career would not be over. You're going to find a way to play whether it's in the G League or internationally. You're going to be a professional basketball player, right? Yes.

(1:19:13 - 1:19:32)

So it's fair to say that the question for your ability to play is not if you're going to be able to compete. It's where and how much money you're going to be able to earn, right? No, no. I think my question and what's in my best interest is situation and opportunity.

(1:19:32 - 1:19:53)

Right, and you might think that playing for Louisville is in your best interest, but you don't dispute that even if you don't get to play for Louisville you're going to be able to earn money playing basketball. I do understand that I'll make money playing basketball after Louisville. And you indicated that you weren't taking anybody's minutes.

(1:19:54 - 1:20:12)

Is that a fair summary of your testimony? I indicated I wasn't taking anybody's roster spot or taking money from anybody. So on the issue of playing time there's only so many minutes in a basketball game, right? Right. There's 40 minutes in a game.

(1:20:13 - 1:20:16)

Yeah. There's five people on the court at a given time. Yes.

(1:20:16 - 1:20:24)

If you're able to play somebody else isn't getting those minutes who would otherwise be on the court. Is that fair? Yes, sir. I think it's fair to say each and every year.

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(1:20:24 - 1:20:50)

And the $1 million that you testified that you would be able to get if you're eligible what's the breakdown there between what of that is revenue sharing from Louisville versus which of that is NIL from a third party? I don't completely have the full knowledge of it. My agent Mr. Daniel was just previously up here. He would very much understand all that but believe it's revenue share.

(1:20:50 - 1:21:20)

My agent was just up here to confirm that. Is it your understanding of revenue share previously and from Mr. Hennis' testimony that schools get about $20.5 million to distribute across all schools, correct? Yes. Louisville might have had that money to distribute to you but if you didn't take it is it fair to say that the athletic department could allocate that to somebody else in another sport? Sure.

(1:21:20 - 1:21:23)

Okay. I don't have anything else for you. Thank you so much for coming.

(1:21:23 - 1:21:27)

Thank you. A few follow-up for you. Yes sir, Mr. Ryan.

(1:21:27 - 1:21:34)

So the NCAA said you weren't eligible this summer, right? Yes sir. And so then you made decisions to figure out what your future could be. Yes sir.

(1:21:34 - 1:21:47)

You didn't take any money to try out for the NBA, did you? No sir. Do you think it's fair for the NCAA to come in here and say you should be punished for trying to figure out your life when they said you weren't eligible? Absolutely not. Absolutely not.

(1:21:48 - 1:22:14)

We were waiting my family and I and as well as many other college athletes for that decision to be ruled on or to be said during the month of June. We were all hoping that we would have an answer before that and we didn't. I don't know if you know the exact day, Mr. Ryan, but when was it said that we wouldn't be able to come back? Do you know exactly? Well, they've gone back before so many times it's hard to say.

(1:22:15 - 1:22:35)

But if they had changed the rule back in 2025, would you have gotten to an NBA summer camp

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or would you just be back at school? No sir, I'd be back at school. If they had changed the rule in April 2026 when your season ended, would you have gotten to an NBA summer camp or would you be back at school? I'd be back at school, sir. Alright, I'll pass you with this.

(1:22:35 - 1:22:38)

Thank you. Nothing further. Mr. Trimble, thank you, sir.

(1:22:38 - 1:22:44)

You may step down. Thank you, Your Honor. Your Honor, I'm going to call Isaac Ellis.

(1:22:44 - 1:23:31)

We'll have to grab him from the hallway. Counsel, we'll take a five-minute break after Mr. Ellis' testimony. And Your Honor, for planning purposes, is the one o'clock a hard cutoff? Let's talk about that after the break, okay? Mr. Ellis, if you would raise your right hand, please.

(1:23:33 - 1:23:45)

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? Yes, sir. Alright, please be seated. Mr. Ellis, will you please introduce yourself to the judge with your name, your school, and your sport? Yes, sir.

(1:23:45 - 1:23:52)

I'm Isaac Ellis. I play at the University of Louisville and I play basketball. And what year were you at Louisville? I'm a freshman.

(1:23:54 - 1:24:05)

What position do you play? Point guard. What position does Mr. Trimble play? Point guard as well. When did you find out that Mr. Trimble was going to come to Louisville? I guess it would have been August.

(1:24:07 - 1:24:38)

What's your reaction when you hear that a highly decorated guy who plays your position is coming to the school where you're a freshman? At first, you know, I was a little upset because I knew I wasn't going to be able to play as much. It was going to take some of my playing time, but after I kind of realized and thought about it, I knew that, you know, being able to compete against a guy like Seth every day, a guy that's played in those big games, and learn from him and just be around him every day, I was really excited just for that opportunity to be around him. Did you communicate with your coach when you found out Mr. Trimble was coming back? Yes, sir.

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(1:24:38 - 1:24:54)

Whenever I found out about it, I texted Coach Kelsey and I just told him that it was a great pickup and I thought it would make our team a lot better and I was excited about it. So you didn't tell Coach Kelsey, don't bring Seth back. I committed to come here to be your point guard and you promised me we wouldn't have a point guard coming back.

(1:24:54 - 1:24:59)

No, sir, I didn't. Thank you. Now, you're a freshman.

(1:25:00 - 1:25:16)

You're not a plaintiff in this case, right? No, sir. How many years of eligibility is the NCAA giving you? Five. Do you think it's fair that Mr. Trimble and all these other plaintiffs also get five? Yes, sir.

(1:25:18 - 1:25:38)

So, when you were coming in as a freshman, you're going to get less minutes this year, but you're going to get a whole fifth year at the end of your career, right? Yes, sir, that's right. When Coach Kelsey told you Mr. Trimble was coming back, did he say he was going to cut you? No, sir, he didn't. Did he say he had to reduce how much money you were going to get paid? No, sir, he didn't.

(1:25:44 - 1:25:51)

Do you have teammates here today? Yes, sir, I do. They're right there in the back. That whole row back there? Yes, sir, that entire row.

(1:25:52 - 1:26:06)

Other than Mr. Trimble, do you have another teammate who's here as a plaintiff in this case? Yes, sir, I do, LJ Wells. Do you want him back? I would love for him to come back. Do you know if your teammates want these guys back? I think they do.

(1:26:06 - 1:26:18)

Any of you guys, raise your hand if you don't want Mr. Trimble and Mr. Wells back. Is that consistent with your conversations? Yes, sir, it is. Do you think you are a better team with Mr. Trimble and Mr. Wells? One thousand percent.

(1:26:18 - 1:26:30)

Even though that means they're going to get some minutes and you and those other guys may

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get a few less. Do you think that is a reason they should not get their fifth year that you're getting? No, sir. We're going to pass the witness.

(1:26:31 - 1:26:37)

Thank you for your time. Good morning, Mr. Ellis. Thank you for being here.

(1:26:38 - 1:27:07)

I don't have very much for you, but how did you decide to attend Louisville? I knew Coach Kelsey for a while and I knew there was a great culture and a great school and I thought it would be a good fit for me. What factored into why it would be a good fit? Just the culture, the people and then really just the culture of the university and how much they love sports. When you were considering where to attend, did you consider the opportunity that you would have to play as a freshman? Yes, sir.

(1:27:08 - 1:27:15)

For sure. And was that informed by the roster making of those teams at the time you were getting recruited? Yes, sir. No further questions, Your Honor.

(1:27:17 - 1:27:20)

No, DeRionne, Your Honor. All right, Mr. Ellis, thank you, sir. You may step down.

(1:27:23 - 1:27:36)

All right, ladies and gentlemen, we're going to take a five-minute break. We'll resume proceedings in five minutes. Counsel, if you all would approach.

(1:27:36 - 1:27:39)

I probably just need the two of you all. I don't think we need the host.

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RESPONDENTS' APPENDIX

TAB I

Transcript of Evidentiary Hearing, *Wells v. NCAA*, No. 26-CI-007009 (Jefferson Cir. Ct. Oct. 14, 2026), Part 2 (VR 11:35:17–13:30:46) (unofficial transcript prepared from the video record)

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I'm going to start with a little bit of history, and then I'm going to talk a little bit about plaintiff's attorneys. Can Isaac come in? He didn't get it until this morning. And some of the defendants are still in there.

He ended it on the night, but it didn't get served until then. What will you do to address this? I just did what I decided to say. I'll just give a short quote.

No. No, there's something at the end about... I don't know how fast they get through certifications. Because I think the review process is still like a couple years.

He said another hour. Yeah, till 2. 20 minutes? Yeah, as long as I-65 isn't backed up, it's pretty quick. You got Puerto Rico? Yeah.

Your tax burden trial is going to blow that up in water. So do you go to Atlanta? We might have a bunch of people. How many days do you have left that I can be off-file? 18.

Oh, wow. Oh, yeah. Well, you have to be there a certain number of days to get residency or tax? Do you not lose money? Not lose? Yeah.

Okay. Okay. Okay.

Okay. Okay. Okay.

Okay. Okay. Okay.

Okay. Okay. Okay.

Okay. Okay. Okay.

Okay. Okay. Okay.

Okay. 19. 19, it's like, should we go out to dinner? Well, part of the team is just going to go so much.

You are, for sure. Yeah. I've got a list, by the way.

I don't know if I can include it. No, I need to fix that. How is your network? It's not there.

Yeah, I don't know. It's just not working. Maybe this is not nice.

That's what you're watching. Oh, yeah. I'll send it out as well.

I'll send it out. I'll send it out. Yeah.

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Come to order. Court is back in session. Thank you, sir.

Please be seated. All right. We're now back on the record.

Petitioners may call their next witness. Thank you, Your Honor. We'll call Pat Kelsey.

All right. Your Honor. Good morning, sir.

Good morning. If I could have you raise your right hand, please. Yes, sir.

Do you swear? I do. Please be seated. Coach, will you please introduce yourself to the court with your name, your job, and your school? Your Honor, my name is Pat Kelsey.

I'm the head men's basketball coach at the University of Louisville. You haven't been in the courtroom this morning, right? I've never been in a courtroom in my life. And you've been out in the hallway or another room while the court was being held? All right.

So, as you've heard all the other witnesses talk so far. Pacing like it's before a game. It's a pretty intense day for you, right? Yeah.

Papers served to me yesterday. I never thought I'd say that yesterday. So this is a whole new experience.

Pretty interesting. What do you mean, papers? I was just told by our university counsel that I was subpoenaed to appear in court today, which was an interesting thing. So I'm learning a lot.

I now know what stays are and injunctions are. I have a whole new vernacular in coaching. Who subpoenaed you to appear in court? The NCAA.

Weren't you already coming? Yes. And you were on the witness list for the plaintiffs, right? Yes sir. How did it make you feel to get a subpoena? Never thought I'd get one in my entire life.

I didn't even know what one was. And then they told me it means that you're required to appear in court. I'm a basketball coach.

I'm not a lawyer. I'm not a doctor. I'm not a money manager.

You've got a couple binders in front of you. The black one with the white cover. That's a bunch of exhibits.

I'm going to ask you to go in that and turn to exhibit 10. Yes sir. Exhibit 10 is a memorandum the NCAA issued last fall.

And you can see at the top it says it was being sent on behalf of the NCAA Division 1 Board of Directors. Yes sir. I'd like you to read the last two paragraphs for the record please.

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Coaches and other athletic department officials who encourage these lawsuits and even support them on the premise that it is to benefit only one student athlete are undermining the very rules their schools have voted to approve and abide by. And are depriving future student athletes of meaningful opportunities to compete. The Division 1 Board will explore fair ways to hold accountable institutions electing to not follow the rules that they have supported.

You've got two, well you've got your whole team in this courtroom today right? Yes sir. And two of those players are plaintiffs in this case? Yes sir. Who are they? Seth Trimble and LJ Wells.

Are they members of your team? Yes sir they are. Do you want them on your team this year? All day long. Are you supporting them and being able to be on your team this year? Yes sir.

Do you think it is fair or reasonable for the NCAA to threaten your institution that if you support your players they're going to try to find ways to punish your school? No sir. Let's talk about other players who have gotten opportunities that are being denied to your players. Are you familiar generally with the NCAA's rules about allowing professionals to play in college? Yes sir.

Up until say the last 16 months did you believe that someone could go get paid to play professional basketball in the G League and then go to college? No sir. When did that change? When did it change? In the last year or so? Now the NCAA didn't have a rule change that said now you can be a professional and go to college right? Correct. But all of a sudden former G League players are getting approved to go back to school? Yes sir.

And you're familiar with some of them? Yes sir. So James Nagy have you heard of him? Yes sir. Do you know what school he went to? Baylor.

And were you aware, it's in the record, I won't pull up the transcript, but you're aware he played professionally for four years in Turkey and Spain before he came back to college? Yes. I believe so. I knew it was something like that but yes.

So he had four years playing professionally and then did you know the NCAA then gave him four years to play college basketball? Yes sir. Does it seem fair to you that your guys can't get a fifth year but Mr. Nagy got four years professional and four years in college? Yes sir. That seems unfair.

Or it is unfair. But you've got to live within the system right? Yes sir. So when you found out other G League players were coming back did you guys look at a G League player? Yes sir.

Who did you look at? London Johnson. And do you know how many years Mr. Johnson had played in the G League? I believe it was three years. And there's some media coverage about Mr. Johnson.

We don't have to turn to it but for the record it's Exhibit 8. Are you aware of about how much money Mr. Johnson got paid to go to the G League? Over the three years, I think it was like a

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million dollars. Exhibit 8 says he got paid a contract for 1.1 million for just his first two years. Do you know if that's accurate or not? I believe it is.

Prior to the G League players coming back had you heard of the NCAA allowing players who got paid over a million dollars to play basketball professionally to then come to college? Did I repeat that again? I'm sorry. Before this last year had you ever heard of the NCAA doing that? No sir. It's pretty well known that wasn't allowed under the rules right? Correct.

So Mr. Johnson did he commit and come to Louisville? Yes sir. How many years did the NCAA give him? Gave him two years. So he got three professional years and then the NCAA said he could have two in college? That's correct.

He gets five years? That's correct. Even though he broke the rules and got paid a million dollars? Yes. But Mr. Trimble and Mr. Wells neither of them played professionally right? That is correct.

They just played for four years? Yes sir. How come Mr. Johnson gets a fifth year and they don't? I don't know. That doesn't seem fair at all.

You weren't here when Mr. Trimble testified. Did you know he played in NBA Summer League? Yes sir. Do you know it's the NCAA's position that he is forever barred from coming to college because he played in NBA Summer League? Yes sir.

Did he get paid? You know he didn't get paid to do that right? That is correct. Do you have an understanding as to how it's fair that Mr. Trimble who was declared ineligible by the NCAA and then played Summer League to try out, he can't come to college for a fifth year. But Mr. Johnson who got paid over a million dollars to play three years of professional basketball, he can have a fifth year? Yes sir.

That's not fair at all. Tell me about Mr. Wells and Mr. Trimble and why you want them on your team. How long you got? You get about 45 seconds each player.

I have two daughters and they're my most prized possessions in the world, counselor. Is that what I call you counselor? In the movies in the courthouse that's what they call them. And I have a son.

And those are my three most prized possessions in the world. If LJ Wells and Seth Trimble knock on my door and ask for my daughter's hand in marriage, I'll be the happiest dude in the world. Those are world class human beings.

They make us better. They make me better. I'm blessed to be their coach.

I can't give a higher compliment than that. We already introduced your team. Do you know if they want them back? I mean there's three hours without a cell phone.

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Do you know what that's like for a teenager today? Their head's ready to explode. They love those dudes. They're brothers.

They're family. Do you talk to your leadership counsel before you brought them back? Bring it. All of them.

Because you know what? I told them about their character. And I told them about their background. I told them about their heart.

I told them if they're about team first. I told them they're not about the amount of money they're making. They're about winning.

They're about sacrificing for the guy next to you. Because we did our due diligence and did our homework. World class people.

And they were all like coach we trust you. Bring it. In all these cases there is talk about how much money the athletes make.

In your opinion as a basketball coach is a season of college basketball worth anything other than money? What does it mean to have an extra season of college basketball for these players for their lives? Well Coach Gates is back there from Missouri. And I got to spend time with him last night. And picked his brain on philosophy and life.

And Coach Maddox who's here who's the head coach at Moorhead State. I'm the head coach at University of Louisville. We're not NBA coaches.

Nothing against NBA coaches. I got friends in the NBA. That's different.

These dudes are still in the formative years of their life. We choose to be college coaches because we can still have an impact on these guys lives. They deserve the money they're making.

They deserve more. This is a billion dollar industry. But they're blessed to be with Dennis Gates.

That is a world class dude. Mark Mitchell just telling you right now I got to know that dude last night too. You're a lucky dude.

Whoever's in here from Moorhead State you're a lucky dude. I think those guys are lucky dudes because college coaches can change lives. What do you think the NCAA should do in the current situation? End the chaos and let this entire class have their fit here.

It's a no brainer. Mark Few who's 8,000 times smarter than I am he's a hall of famer. I'll never get to the hall of fame.

He said it best. End the chaos. What are we doing? Coach Patino said it.

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Hall of famer. Mount Rushmore. I'm never going to be on it.

He said it. Why do it in June? What are we doing? Do it in November so these guys can all make life decisions and get on with their life. What are we doing? End the chaos.

We talked about Coach Patino earlier. You saw his testimony he gave in California just a couple weeks ago. I read it.

While Coach Patino tweeted, we saw while you weren't in the courtroom, that he was worried he might have to go raise more money for NIL. He'd love to have the guys back but he might have to raise more money. Did you know he had tweeted that back in the spring? Not a big social media guy but I'll take your word for it.

Now Coach Patino is saying end the chaos, let them play. Smart dude. Been doing this a long time.

So has Coach Few. End the chaos. Let's go.

I think they could have done this a long time ago. There were two major things that happened. You had the world almost came to an end and shut down COVID.

And then you had this seismic shift in our industry where it no longer became about the quote unquote amateurism. People start realizing these guys are very valuable and they deserve to make money. I believe the NCAA made the right decision years ago when they gave those guys the extra year.

Smart. That was caring about these kids. Caring about them.

So now high school class of 17 gets a fifth year. 18 gets a year. 19 gets a year.

20 gets a year. Now with the new 5 for 5, 23 gets a fifth year. 24, 25, 26, 27, 28, 29, 30.

All those classes they get a fifth year. Why are we dying on the hill of this class not getting it? It's a different world now. That's what frustrates us coaches.

And did you know that the 21 class, if they went to junior college they get a fifth year too? Yeah. We had a junior college kid that got the extra year. If they're 22 and went to junior college they didn't get a fifth year.

That makes sense. Thank you for your time. I'm going to let the NCAA ask you some questions.

Coach, nice to meet you. Thanks for being here and supporting your guys. Appreciate that as a representative of the NCAA that you want to do what's best for your community.

Thank you. If you don't mind me asking, because I should know this and have done my

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homework, what's your name? David Ziland. David Ziland.

Nice to meet you. Good meeting you. Coach, who passed the age based eligibility rule? The NCAA? How did it do it? Is it your understanding that it was employees of the NCAA, that it's representatives of member institutions who vote on it? How does the rule work? The NCAA makes the rule and passes it.

If I told you that it was a cabinet of member representatives that includes a representative on behalf of the ACC, you wouldn't know that? I'm aware that the NCAA is an organization that's made up of its member institutions. I'm well aware of that. The members make the rules, right? Yeah, that's what the NCAA is.

It's made up of membership of its member institutions. Do you have any reason to dispute that the ACC had a representative that voted on the age based rule? I don't know that. You testified that there's been a lot of chaos with this new age based rule.

When did that chaos start? Probably when all this... Within the last couple years. What does that mean? You asked me when it started. I said probably within the last couple years.

What chaos are you referring to? Because I understood it to refer to the confusion about the age based rule. No, it's a lot of everything. Nobody knows for sure what all the rules are right now.

Because they change all the time. Talking about the age based rule specifically, did compliance give you updates about the rule before it passed? We keep in touch with our compliance office all the time. Did compliance tell you that it would only apply to student athletes who had seasoned in competition? We have phenomenal compliance.

They keep us abreast of everything. I appreciate that answer, but it doesn't answer my question. Did compliance tell you that the age based rule... We meet with compliance constantly.

They're constantly updating us on the 5,000 rules that's in here and then all of the changes and the chaos that's happening from it. To answer your question, we got the best compliance staff in the country. We have meetings constantly and they're documented and they're stood in.

Do I remember that in one instance? No, but we got the best in the country. We're scheduled to meet with them once a month and they go through all the changes. Yes, Dan Morrissey and those guys are world class.

I guarantee you they do it. Do I remember the day they said that? No, because there were 4,000 other rules they were going on and going over all the chaos and all the changing going on. We're trying to make sense of what's going on and we couldn't.

Did they do that? I guarantee you they did, because they're the best in the world at what they do. At what point then did you choose to recruit student athletes who had exhausted their eligibility

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under the previous rules? When did we choose to start? I think that speaks to the chaos I'm talking about. Nobody knew what the rule was.

Nobody knew who's eligible, who's not eligible. Then we start... We're doing our homework. We're doing our due diligence.

Our player acquisition staff is always out there looking at what's out there and then you start hearing about guys that are playing professionally that are eligible. We hear that's going out there so then we start exploring it. That's our job.

Our job is to do that and explore all possibilities around the world of players that can potentially come and play for Louisville. I'm asking about the timeline. At one point it's your testimony that because you have the best compliance staff they knew that the new rule didn't apply to student athletes who had exhausted their eligibility under old rules, correct? Correct.

One of those ten, fifteen meetings that we had that are an hour and a half at a time where they're going through every rule and every change. The day that they said that one to us, do I remember that? No, but I guarantee you they said it. Then you ask, when did we start recruiting those guys that have extra eligibility? When we start hearing that those guys are eligible.

And everybody starts going, they're eligible? That sounds a little crazy, but they are, so we start exploring that. Hearing that they're eligible, are you referring to a class injunction that was granted in the Federal Court of Colorado? No, we hear, because that's our job to hear, have our ear to the ground, find out what's going on. We start hearing these professional guys are having an opportunity to become eligible, so we start exploring that option.

Nobody thought that was a rule. That's a rule? You can take a guy that was a professional and go to basketball? When they brought the London Johnson thing to me, I'm like, no way. That's freaking nuts.

There ain't no way that that's a rule now. Can't happen. And then all of a sudden they go, Coach, look, it's this guy, it's this guy, it's this guy for Baylor.

I'm like, this is freaking nuts. We're here, boys. That's where we're at? Alright, fine.

Tell me about this kid. Coach, I know there's a camera, but I'm asking you about the AK school. Why did you say you know it's a camera? Because that's a little bit of a performance.

Sir, this is who I am. Have you ever done any homework with me? This is PK. Mr. Kelsey, let's lock in, ask the question, answer the question.

Yes, sir. I'm asking you, when you decided to start recruiting student athletes who had exhausted their four seasons of competition? When we start hearing about other ones were getting eligible, that's when. Right, and who did they get eligible from? What were you hearing about, is my

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question.

Who did they get eligible from? So you heard that some student athletes had gotten eligible who had exhausted their four seasons of competition. Is that a fair characterization of your testimony? Correct. When did you hear about that? I don't know.

Back when the Nanaji kid and all these other guys were getting eligible. I can't tell you the date right now. You don't remember when you started recruiting guys who are like sons to you? I'm sorry, say that again? You don't remember when you started recruiting guys that are like sons to you? When we started recruiting London Johnson, because that's the time.

What was that date? The plaintiffs in this case, around what part of the calendar did you start recruiting them? I'd have to look it up. I don't know. Whenever Nanaji and all those guys start getting eligible, I have to go back and look it up.

That was years ago. Yeah, when we start finding out professionals could possibly play in college, that's when we did it. I don't know right now when that was.

So when Mr. Trimble, for example, when he was at UNC two years ago, that's when you started recruiting him for the 26-27 academic year? No, I didn't recruit Seth. Seth was at another institution. Right, so I'm asking you, when did you start recruiting student athletes who had exhausted their four seasons of competition? I think it was, like I said, London Johnson was the first one.

But London Johnson never played college basketball before you recruited him, correct? He did not. And Mr. Nanaji, he never played college basketball before he got recruited by Baylor, correct? No. And going through that process of getting Mr. Johnson eligible, you're familiar with the NCAA rules that make a distinction between student athletes who play professionally before they enroll in college and those who do not, correct? Right.

So what I'm saying is that professional thing, when we start recruiting him, that's an example of this freaking chaos. That's the example. The example is like, oh my gosh, professionals are now eligible.

So now all of a sudden, completely unfair to all these class of 2022 guys who are seeing all their teammates get a fifth year. And back in COVID, there wasn't as much money involved because it was still amateurism. You're still getting your cost of attendance.

You're still getting your Pell Grant. You're still eating sandwiches and all this stuff. Meanwhile, it's a billion dollar industry.

Well, between that COVID thing where the NCAA, out of the kindness of their heart, is doing the right thing by the kids and giving them the extra year, to where we are now with the chaos, the money went like this. So now these guys don't have that opportunity to make life-changing

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money. That's what I'm saying.

So then once the fifth year things start coming up and guys start filing lawsuits because it is unfair, that's when we said, okay, just like back then, professionals can play college basketball and the rules are going to allow it? That's nuts. I never thought I'd see that. But let's go ahead and explore it to make sure we can find Louisville basketball players that are about the right things, help us win games, represent this school in the first place, all that stuff.

Then all of a sudden the fifth year stuff started happening. Now the fifth year stuff and the guys are... Yeah, they deserve that extra year. So then we start getting involved with those recruitment, with those guys that were in the portal to see if they could come in, help us win a championship, and represent this city in a first class manner.

The end of that answer is the question I was asking. You didn't start recruiting these student-athletes until other student-athletes filed lawsuits to get a fifth season, correct? Yeah, I mean, you didn't know whether they were going to be eligible. But now all of a sudden it became where it was a chance where fifth year guys were going to be eligible.

So then, yeah, we start recruiting those guys in the portal. But prior to those lawsuits, every communication from the NCAA about the new rule has said it doesn't apply to student-athletes who exhausted their season for competition fair. To be honest with you, from a coach's standpoint, every time the NCAA says something, we all shrug our shoulders and go, man, is that going to stand up? Is that a rule? We don't think there are rules right now.

We don't. We don't. That's why we want guardrails.

We want Congress to act. We want the chaos to end. Because nobody knows what the crap's going on.

Nobody. When you say, hey, did you know that this was... No, I didn't. But all of a sudden fifth year guys are starting to get eligible.

We start recruiting those guys. And they were getting eligible through lawsuits, correct? That's the only way you can get eligible. Because you guys aren't going to end the chaos and just let that class be eligible.

The only chance they got is to file lawsuits. To the extent there's chaos with enforcement of the age-based rule, that's the result of litigation. The NCAA has been consistent that these guys are not eligible under that rule of fair.

You're trying to turn questions and make me... Tell me the rules and I'll follow them. Tell me the rules and I'll follow them. Nobody follows them.

And then every time something happens, a lawsuit happens, so nobody knows. And you're

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saying, well, did you know this rule here and who made it? Do you know that you're trying to trick me with a bunch of stuff? End the chaos. End the chaos.

We recruited professionals in the G League because you couldn't enforce your rule. You couldn't enforce your rule. You couldn't do it.

Now all of a sudden the fifth year things start happening. This is our rule. Follow this.

Follow this. Be a good soldier. Follow this.

You can't enforce it. You can't. You can't.

So you're telling me, did you know this? Did they say this at this time? Doesn't matter. It doesn't matter. Just get rid of all this.

Care about the kids. Care about these guys. They're great dudes.

They deserve the extra year. All these other guys got an extra year. Give it to them.

What are we doing? Why are you fighting it? Why are you fighting it? I really don't get it. Sam Vincent. Anybody know who Sam Vincent is? I think somebody on your council, right? You guys are the Sam Vincent case.

No, this matters. This is a courtroom and I'm asking a question and you're on the stand to answer it. Can I go on? I can't go on.

I'm sorry. Recapping the testimony there, your position is that there's chaos with respect to the age-based rule because courts are interfering with NCAA's ability to enforce it. Is that fair? That litigation around this rule has created a lot of uncertainty about how it applies.

There's chaos. And it can all end just let this class go. We're all going to fifth year.

Everybody's good with that. The one transfer. All the coaches are good with it.

Let's go. Let's go. Let's pass this thing.

Let's get rocking. Why are we dying on the hill with this class? Fair to say that there's chaos when schools are competing under different rules on the same court. I'm sorry, say that again? What different rules when you're on a court? When we play Missouri, he's playing under different rules than we are? When one school gets to roster somebody who's ineligible through the court order and another person doesn't.

That doesn't matter. The rules can't be enforced. What you just said, one school can, one school can't.

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You know how all schools can and the chaos. Just let it go. Let it go.

Why are we doing this to these kids? Why are you hurting them? Is your answer just to have no rules? I'm sorry? Is your answer just to have no rules? I know we need rules. We need freaking rules. That's why Congress is trying to get involved.

That's why it's just this one little thing that's creating all these court cases. I should be worrying about my guys and develop them and mentor them and watching tape this morning. Getting ready for practice.

I'm in here doing this and Coach Patino's doing it somewhere else and Coach is doing something else. It could just end today. What are we doing? It's about the well-being of these kids.

You've said that there's been chaos for years. If you could list all the rules for me that you're talking about. I'm happy to list them.

All of them because there are no rules. That's chaos. No further questions.

I've heard you use the word chaos a lot. Do you think this will be a little long question. Do you think the NCAA created the chaos by trying to exclude the class of 22 from a fifth year or do you think the athletes created the chaos by going to court to try to get treated fairly? 100% the NCAA trying to keep the class of 22 from getting eligible.

No questions. Thank you for your time. Thank you.

Thank you your honor. Your honor may coach remain in court. Call Dennis Gates.

Please come forward sir. Good afternoon sir. Can I raise your right hand please? Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? Yes sir.

Please be seated. Coach will you please introduce yourself to the judge with your name, your job, your school. Yes.

Your honor my name is Dennis Gates, head men's basketball coach, University of Missouri. I've been there for five seasons in total. Do you have a player on your team who's played in this case? Yes.

Who is that? Mark Mitchell. How long have you been a coach? Since I was 22 years old. I'm currently 46 going on 47.

Have you had an opportunity to coach older players in your career? Yes. Older players, young players, players. You coached at Florida State before Missouri? I was at Cleveland State as a head coach but I was an assistant at Florida State for nine years.

When you were at Florida State did Florida State have a model that focused on older players?

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Yeah absolutely. We had kids that were red shirted or kids that was in a service. We signed kids from the Army or Air Force.

How was that for you as a coach in impacting them as far as their life experience in working with those players? Development of young people. It was great, unbelievable. Impacting kids, impacting youth.

I'd like to talk about your impact on one of your players who's not playing in this case. Are you familiar with the gentleman in Mr. Cruz who played for you? Yes, Jacob Cruz. Yes.

When did he come to Missouri? He came to us in three seasons ago. That was his first season. How many seasons did he get to play for Missouri? He played two but he only had one as a fifth year guy or grant transfer the first season.

When I recruited him I recruited him as a kid that we were signing for one season. When he came to you he was in his fifth year of attending college? Yes. You believe that would be the last year he would play for you? Absolutely.

Did that change? Yes it did. He got a sixth season? He got an extra year. How did it come about that Mr. Cruz got an extra year? I just remember Cruz coming to the office as it relates to when he saw the results from the quarterback at Vanderbilt at the time who had played Juco because Jacob's seasons prior to were at junior college at some point.

The quarterback at Vanderbilt was at Diego Pavia? Pavia case. After he sued the NCAA and got an extra year just for himself the NCAA gave an additional year of eligibility to everyone who well not everyone, to a number of people who played junior college. Absolutely.

To a number of people. For instance if anyone started in junior college in 2021 right out of high school and they played their four years, their last year would have been 2024-25, all of them got a fifth year. Yeah.

I just remember the confusion with the interpretations because some compliance would do the paperwork or at least look under the hood to the new rule because sometimes as coaches we kind of get a sense okay if it's going on in football can it go on in basketball? Some compliance had an interpretation, another compliance may not have. They just had different interpretations of it. And Mr. Cruz got an extra year because of policy.

Absolutely. But the guys who started junior college in 2022 they did not get the extra year, right? I don't know. You don't know? I don't know that.

Yeah. Do you believe that extra year was meaningful for Mr. Cruz? Absolutely. It was very meaningful for him.

I remember setting up an official visit for Jacob Cruz and this was like the probably third time in

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my career where I had to add the labor and delivery ward to a visit site because he had wife and kid on the way. When he was in junior college was anyone paying him NIL to your knowledge? Not that I know of. When he came to Missouri were you guys able to offer him some NIL dollars? Absolutely.

Absolutely. Hundreds of thousands? Yeah. Absolutely.

It was I think up close to 500, close to 500,000 that first season. We got to meet for the first time last night and you told me this story and what was he able to do with the money that you paid him for his wife and his newborn? Man he because of his upbringing he was one time homeless. I remember him bringing an MLS, I guess something with houses.

So he ended up buying a home in the area where he grew up. He grew up in the trailer park area. So he was so ecstatic about having a yard or he was remembering and crying talking about how he lived in a car before because of incarceration with parents, drug addiction with parents and he had nothing.

So he just wanted his family and I asked him why he got married. He said coach I got married because family is important to me. So for me, my wife, kid this is the best fit because of the family atmosphere.

And all of that happened because the NCAA did the right thing and after they lost a lawsuit for one guy they gave him and his whole class another year of eligibility. Absolutely. What do you think the right thing would be for the NCAA to do with the class of 22? Allow young people to be developed.

Give them what they gave everybody else. It's just that simple. Not exclude them from growth, maturity and opportunity.

When you say what they gave everybody else are you talking about a year? Yeah, yeah a year. Do you know what Mr. Cruz is doing today? Yeah, I absolutely know what he's doing today. Since graduating and completing his eligibility in May he pursued basketball but now he's sold two cars.

He's a car salesman. So he's got another career. It's not sports anymore.

He's in the car business. Sold two cars in five months I guess. So it's possible that Mr. Cruz may go on to own car dealerships and make a lot of money selling cars but for right now the high point of income for him was his time at Missouri playing college basketball.

Yeah, absolutely. My biggest fear is that opportunity to have him that second year but now he's out in the real world but it's scary. It's scary for me as a head coach.

That second year you got to have that extra year. He got granted. Do you think you were able to have an impact on his life beyond the money? Absolutely.

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Long conversations middle of the night. Talking about him being a husband, a father. He even had a miscarriage during that time.

Is that wisdom you think you get to impart to Mr. Mitchell if he also gets his year? Absolutely. Somewhere. I remember Mark Mitchell and talking about his mom's health, different things like that that he goes through from a day to day basis and then mentoring him.

Sort of like holding up a mirror so he can see the different versions of himself. No different than coaches have done for me or even I've seen my former bosses do for other kids. Switching topics slightly, are you a member of the National Association of Basketball Coaches? NABC, yes.

What is the NABC? It's the organization that is an affiliate where coaches are having a convention here and there and information is supposed to be passed through it sometimes. Did you have any conversations at the NABC about the fifth year possibility? They send notes, they send ideas, but more importantly they said let's grant these kids these years. I do recall that stands because the coaches were voicing it.

Do you know if the NABC gave any formal feedback to the NCAA about going to a fifth year for everybody? I don't know that. I wasn't in that conversation. I couldn't even tell you.

Let me show you there's a binder from you, black binder. If you turn to exhibit nine. Black binder, exhibit nine.

The blue one, I think that's the blue one. If you go to the black one. Right here.

I'm sorry, it's navy. It's my fault. Yeah, they send these notes out.

Alright, so this exhibit nine is NABC letterhead for May 2026. It says NABC feedback on division one age based eligibility. I'm going to direct you to the middle that talks about a roster bottleneck.

You can see that paragraph? I've highlighted up on the screen the last sentence. Can you read that last sentence? The coaches stresses the need to evaluate solutions for this bottleneck scenario. Obviously one of the potential being a one time expansion of roster sizes and limits.

So if the NCAA implementing the change to give everyone five years the NABC recommended they give you a one time expansion of roster limits, correct? Yes, that's what we did for COVID, right? There's nothing in any NABC recommendation you're aware of that said let's just exclude the class of 22. No. Have you ever had any conversations with coaches where they said when we go to five years we should exclude the class of 22? No.

Did the NCAA do this? Did they give a roster expansion for this year? Roster expansion? I thought the roster was minimized or deducted or something like that over the other case. So it was capped at some point. In the end when they passed the five year rule this summer they didn't follow the NABC's recommendation for roster expansion, did they? Absolutely not.

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Do you know if there were any coaches who got to vote on how this five year proposal was going to be implemented? I've stood up every year in our coaches meeting at the convention asking and begging for us to have a mandatory meeting where all coaches are invited so that we can talk about our profession but also so we can be heard. Ultimately it's almost a going joke. We know what Coach Gates is going to say when he stands up.

I'm in fact planning on doing a Zoom with all coaches to try to mobilize which is not happening in our profession enough by the NCAA and otherwise. That's what my goal is. You're aware that the cabinet is the NCAA body that voted on this? Absolutely.

No one is voting from basketball. I've asked to be a part of it to vote. There aren't any coaches on the cabinet are there? I've never seen a name.

Last topic for you, red shirts. Are you familiar with red shirts in college sports? Absolutely. If you red shirt you get to play another season under the old rules.

In basketball if you play one minute, unless you have an injury, one minute you can't red shirt. Is that fair? That is very fair to say. You will jeopardize and we'll have to potentially miss out on that every year.

Are you aware that a football player can play four games, a third of their regular season, and then play a bowl game, conference championship game, and all the playoff games and still red shirt? Yes. I'm aware of that rule because I asked why is that not happening for basketball? Did you get an answer as to why football players get to play all these games and red shirt and basketball players don't get to play a minute? Nope. I didn't get an answer for it.

Does it make any sense to you? No. It doesn't make sense. Thank you for coming here today.

Do you have anything else you'd like to tell the judge? I would just like to say I just want these kids to be treated fairly. I was a former student athlete. I was a part of the SAC, Student Athlete Advisory Committee.

I know where my voice was then. My voice wasn't heard because my sport wasn't represented. Sports like soccer, sports like hockey, sports like the Olympic sports, but when it comes down to football and basketball players, it was not represented.

I think our student athletes are going through the same thing. What's great for field hockey is not great for football. What's great for swimming is not great for basketball.

We all cheer for each other in these campuses, but ultimately we're for each other but what's great for that sport is not great for the next sport, but we're all getting painted with the same brush. Rules are different, but the years at which they are able to compete is the most important. To preserve what we're going through and I'm doing this as a coach because I can impact kids.

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I can build bridges. We have to continue to preserve the opportunities no different than we did for COVID. During COVID, it was no problem to add a fifth year.

So why is it a problem to add a fifth year now? I have no clue. But the business model was flipped upside down when COVID took place. People sat still and they listened and they viewed every student athlete as people.

Currently, under this model, it's not happening. It's not happening and it's disgusting. So all I'm saying is treat everybody the same.

Don't exclude a class of student athletes who want development. They want the development. They're not screwing anything up with the current students or teammates.

They just want an opportunity to go to college for an extra year with the same excitement that they did when they filled out the application while they were in high school. That's all they want. So all I ask is to treat them fairly.

Thank you. I think the NCAA has some questions. Coach, thank you for being here today.

I really appreciate your time. It's your testimony that the NCAA membership makes the rules right? Is my testimony that? That's what the NCAA tells us that they make the rules, they are the rules. That's what everybody is afraid of, that they are the rule makers.

But the cabinet, none of those are NCAA boards, right? They're representatives for member institutions. Could you name who you're referring to as the cabinet? I mean I can pull up a roster but for example... I would like to know who the cabinet is because I don't know who, Drew, you're referring to. So you don't know the cabinet? Not by name.

I know who generally the 20 representatives are including a representative from the SEC. I don't know the cabinet either. We don't know who does what.

Are you familiar with Assistant Commissioner Matt Boyer for the SEC? Is that who you're talking about as the cabinet? Or who is the 20 people in the cabinet? I want to know the other people in the cabinet, the entire cabinet. I can pull it up for you. I just want to know the cabinet.

You're asking me a question about something I would like to know who the cabinet is. The website. Do you have another HDMI cable? It's very difficult to find this stuff on a website, your honor.

And I'm saying this because these kids can't find fucking rules. Excuse my French. They can't find rules.

Just like this. This is adults. Imagine 18 to 22 year old people trying to find rules with the NCAA.

We'll wait for the next question. We'll put it up on the screen but if you google NCAA Division I

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committees, a link to the roster is the first thing that comes up. Let's google.

Just as fast as you say it, I would like to see it. Just let me know when you're ready. We're ready.

If I look up NCAA Division I committees, the first hit. That's two hits. The link to the NCAA website.

That's three hits. That's four hits. Let me know when you're ready to scroll down.

You're asking me do I know these people? I'm asking you if you're aware that these are representatives for member institutions and not employees of the NCAA. These are named officials that spend their time volunteering for the NCAA on these committees. In my eyes, volunteer work is working for the NCAA.

These are not employees of the NCAA, correct? They're spending their time away from their family to do work for the NCAA. You mentioned that you were on SAC. There's a Division I SAC representative here.

What sport is she in? I would have to google that. I remember saying something about SAC as it relates to... We've got to move this along a bit. Let's move on to your next line of questioning.

First of all, I call other compliance people who I know in the profession. I call coaches to ask their compliance so that I can see if there's alignment because there is always misalignment and interpretations of our rule book because it's so thick that sometimes those answers come back differently for me. When they come back differently as a head coach, it pushes me back because I don't want to break any rules.

If someone's saying that's a rule that should exist and another person is saying that's not a rule, it's total confusion. I ask our compliance after I have vetted all those things. That's what I do.

Did any compliance officer before litigation started around the age based rule tell you that it would apply to student athletes who have used four seasons of competition? I can't recall that. I do know some of my players that was out of eligibility put their name in a portal and they had to go to compliance to do that and they had to go on that national website to officially do it. I was confused at why that was taking place.

Has Missouri compliance told you that without an injunction that Mr. Mitchell will not be eligible to compete for Missouri basketball? Did they say without an injunction? Correct. These are the same that said why are these kids going in a portal if what's going on is what's going on. That was total confusion so I can't recall what they were saying at that time.

I lean on our compliance. I try to ask multiple compliance members on the same staff so that we can get everything in order. I can't recall that specific conversation of injunction and everything else.

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You're aware that Missouri before the start of the season has to submit a roster to the conference that everybody who's on the basketball team. Do we submit a roster? Yes. As part of that compliance has to certify that the individuals on the roster are eligible for competition.

They do that. You're talking about in the past they do that up until our first championship competition which is November. We're talking about something that happens in November.

We're not in November right now. My question is does compliance have to certify the eligibility of the student athletes on the roster? With the help of the NCAA. They go on the national website under their login information to do that.

So the answer is yes. Which I don't have access to. With the help of the NCAA conversations.

And is it your compliance department's opinion that without an injunction they're not going to be able to certify Mr. Mitchell as eligible? You said without a what? Without an injunction they're not going to be able to certify Mr. Mitchell as eligible. Is a TRO an injunction? TRO or an injunction. There's so many legal words that I don't really understand.

Let's say a court order. I just don't know what you're saying man. I'm just being honest with you.

Is compliance going to certify them as eligible without a court order that says they can play? I would hope compliance follows the NCAA's rules. What the NCAA tells them. Right and the NCAA has communicated that the new age based rule doesn't apply to student athletes who exhausted their eligibility under the old rule.

Correct? That's why we're here today. Well they would have never put the kids in the portal that they put in the portal that the NCAA told them to put in the portal. The kids that were on the national on my team last year.

Because for a head coach it's embarrassing to have kids in the portal. The NCAA allowed these kids to go into the portal. So what is that signaling? I had to talk to the kids.

Like why are you going in the portal? Because it was so negative. It's a negative connotation. So at the end of the day look at this.

From this perspective they got through the process of going into the portal. Why did kids with no eligibility go into the portal? You can only go into the portal if you have eligibility. So that starts this class.

What's your basis for that conclusion? Because there are articles dating back to 2024 with students since Papio. Because I'm in a foxhole. I'm in a foxhole.

I have to build a roster. Hold on. That's why I'm telling you this.

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I'm legitimately on the front lines building a roster and I have to answer questions to high school recruits that I'm trying to sign that I notice this kid put his name in a portal. So does that mean you have an extra scholarship? Does that mean this kid is disgruntled or upset? We allowed kids with no eligibility to go in the portal. And I got to clean that up.

Did you ask compliance why they did that? No, I would like to ask the NCAA. Because the NCAA allowed the tab for it to take place in the website. So our dispute is with the website? No, it's with the NCAA.

It's with the NCAA allowing it to take place. Because the NCAA would have told all compliance directors not to put these kids into the portal. So my question was before we got on the portal tangent.

Are you familiar with any communication from the NCAA that said anything other than student-athletes who exhausted their eligibility by competing in four seasons within four years would not get the scholarship? The NCAA book is so thick. And it has addendums to addendums to addendums. They stopped us coaches.

The NCAA stopped coaches from having to read and have the certification test. So how am I going to know what's in these books and what exactly you're saying? It comes at us 100 miles per hour and they try to keep us updated, man. They try to pass the message from you all at the NCAA to each campus.

I can't control everything else. I can't. I really can't.

You have seen no communications from the NCAA that this new rule would extend eligibility to student-athletes who exhausted four seasons of competition? When you have COVID take place just a couple years ago with the same teammates that these kids have, they're not going to conclude that they don't have a fifth year when everybody around them had had a fifth year. Right. I'm not talking about speculation.

That's not speculation. It's not speculation. It's total confusion.

I'm not familiar with what you're saying. You're not familiar with any communications from the NCAA that said this rule would apply to student-athletes who had already exhausted their eligibility, correct? The 22 class? We go by classes. Student-athletes who used four seasons of competition.

The class of 22? I asked because the class of 2022 who retchered, they're still eligible, right? I'm not sure. Everybody's eligible for different reasons, case by case. Let's talk about it if you want to.

There's kids that have had... Mr. Gates, I'm going to cut you off. Counsel, I think we can move on. If your compliance has questions about eligibility rules, are they able to get in touch with

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individuals at the NCAA about these questions? Absolutely.

They get in contact with the conference. They get in contact, especially with the level of it, they get in contact with NCAA. They have relationships with compliance directors at other schools just like we have relationships with other coaches.

The communication from a compliance director, sometimes that goes to University General Counsel. I don't know. I'm not a compliance director.

I wish I would know if the question that I ask the compliance director, that is not sometimes fearful, especially if it's something I want them to explore. But every question that they've had, they've gotten answered, right? Missouri basketball has not been subject to an infractions penalty because... What's an infraction? You're saying we do an infraction penalty? No, I'm saying every question compliance has had has gotten answered because you followed the rules. You haven't gotten in trouble for not following the rules, correct? At the end of the day, everyone goes to get the interpretations because we know there's differences in how people view the book from the NCAA.

So there's different interpretations and opinions. And everything is in a gray area. For one person on the same conference on a different campus, they have different interpretations of it.

But when there's confusion around the rules, there's a process to seek an official interpretation from the NCAA, correct? No, because sometimes we see these same kids playing and we were told not to recruit them. Coach, I'm going to give you a copy of the manual. I haven't seen one of these in a long time.

They once printed these out and every coach was to get this on their first day of the school year. I've not seen one of these in a long time. This is my first time in a while.

Coach, I think that might have updated with the times a little bit. No, it has not. I would disagree with you on that.

You want to know why? Let's go ahead and go with the question about the manual. First, I want to take you to page Roman numeral 9. You said Roman numeral 9? Yes. On which page? Page Roman numeral 9. Gotcha.

Can I take this clip off? Oh yeah, of course. Do you see where it says article 31? Article 31. At the bottom there? Yes.

Can you read that first paragraph for me? Under it or above it? Under it. The legislation included in the Division 1 manual is also available online via the NCAA legislative service database for the internet, lsdbi at www.ncaa.org. The lsdbi manual is updated through the year to reflect any adopted legislation, modifications of wording, incorporations, and editorial revisions. Therefore, the lsdbi manual includes the most up-to-date legislation available and the mechanism for quickly

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searching and locating legislations through a variety of user-friendly methods.

And then if you'll turn to page 19. Not Roman numeral 19? No, we're in Arabic. Got it.

We used to take tests for these books, but we no longer take them. So I've never read that in my entire career. Understood.

But if you'll just look at rule 9.3 for me, and I'm just going to ask you if you have any reason to disagree that that rule provides institutions the ability to seek an interpretation of a rule from the NCAA. So which part of this is a lot of, which one do you want me to read? 9.3.1.2.1 for starters. So again, you see how confusing that was? That was very confusing for me.

So where do you want me to read? By law 9.3.1.2.1 staff interpretation. Okay, staff interpretation. Determination that NCAA staff shall respond to a request from a member institution for an interpretation of NCAA rules that are not governed by the house settlement revised on January 14th, effective August 1st, October 5th, August 5th, March 1st.

But do you have any reason to dispute that as long as it's not about the house settlement, that rule provides compliance, the ability to seek an interpretation of a rule that they think is confusing? Compliance used to give us this book when computers existed. We used to have a test that existed that was no longer. This book is not even printed anymore or given to us while the times you're saying has changed.

So as it relates to this, I don't know what compliance does if I ask them a question. They don't tell me to look in a book if I ask them a question. So I don't know what you're asking as it relates to this book on what the compliance does.

Your testimony was that there was some confusion about the rules and I'm saying do you have any reason to dispute that compliance has a mechanism to seek clarification from the NCAA if they're I just know they call and I call and we do diligence in this profession to make sure that we understand what's going on. I don't have a whole lot more for you, Coach. Just two quick things.

One, you testified that another year would be really beneficial for these student-athletes. Isn't that true of any additional year? Wouldn't a six year be really beneficial to you? You know, I've had kids that served the Army. I've had kids that had hardship.

I've had kids that had mental disabilities. I've had kids that had injuries. I've had kids that had all those things.

They're all individuals and they were able to get back the year that they were supposed to have. COVID showed us what a fifth year was. Fifth year of actually playing.

Everyone since COVID were under the impression fifth year was going to exist. Therefore, that's what this class is. That's the only thing I can tell you.

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The COVID waiver, that was for the 2020-21 academic year, correct? I don't know which year but everybody had five years. The class who entered in 2021 and played four seasons in four years, they didn't get a fifth year. Which year? If you enter college in 2021, which was the year after the COVID.

Anybody that was impacted by not playing in a championship got a fifth year. Do you have any student-athletes last year who entered school in 2021? I have a quick question. I have a quick question.

I can't ask you a question? You're aware that people who entered in 2021, they didn't get the benefit of the COVID waiver, right? My impression was that I sat there and asked why is football players at that point during COVID when they competed had a fifth year given to them when in actuality we didn't find out about COVID until March of the following season. So I was confused at all of it, to be honest with you. Student-athletes who entered in 2021, they did not get the benefit of the COVID waiver, correct? I don't have, I need an organization to see what you're talking about.

But I'm just telling you what my interpretation was. Football season starts in August. It ends in December.

Championships is in January. Basketball season starts in November. Exhibition games in October.

Ends in March. The only sport, the biggest sport, March Madness was interrupted. How did that same class of football players get an extra year? That's confusing to basketball coaches because we're operating in this system where what's best for this person is best for that person.

No. NCAA is one organization, but I think that through this time and through the growth of the sports and college campuses that maybe we have to look at another model for each individual sport so that they can be supported properly. Coach, the NABC statement that Mr. Downton had you look at, do you see the line in the middle of the roster bottleneck paragraph where it says that Division I squad sizes are now hard capped by the house settlement? Hard capped? Yes, especially given that Division I squad sizes are now hard capped by the house settlement.

Hard capped by the house settlement is not one number. Again, the house settlement allowed exemptions because there were student athletes that were walk-ons, and I had several of them. They wanted those kids to find a home.

If they would have cut those kids out and said bottle cap or what was the exact word you said? Can you help me with that? I'm not sure. You said squad size hard capped. Then those kids would not have had a home.

They would have been left out. The NCAA gave exemptions to the roster sizes. Those kids that

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were put on there, you could not count them.

You're talking about designated student athletes. That's what it is. That's the concept that's in the house settlement.

Are you aware that to now change roster sizes it would require modification of an existing court order, not just a change in NCAA rules? The house settlement is a class action settlement. Are you aware that the NABC's proposal, which was to solve the roster bottleneck by increasing roster sizes, the NCAA doesn't have the authority to change the rules about roster limits without changing a federally approved class action settlement? What I'm confused about is how we're saying that this roster, the rosters aren't changing. These kids are already on campuses with aid and with ability.

I'm talking about the May 2026 proposal from the group that you're a member of. The May 26? The NABC Did you repeat the question again? If you were aware that the house settlement created the designated student athlete category and set roster limits and the NCAA can't just expand rosters without a modification of that settlement? They expanded them because I had more kids than that size that what they said. I know that because I've always kept a large roster.

I've always kept a walk-on. Do you have any reason to dispute though that the designated student athletes that allowed you to keep those walk-ons that was in the house settlement? I was just listening to what my compliance said. I don't know what you're saying and I was listening based off the NCAA's interpretation, what they were saying, the NABC and a conglomerate of people that has their hands sleeves rolled up, hands involved in making sure that we put a product out on the floor so that we can get to our money making situations and that is the NCAA tournament, the football bowl series, and the championships so that we can continue to move forward and having what we have, an unbelievable opportunity for our kids.

That's what it's about. Now when it comes down to what you're talking about, this concept of NCAA or NABC and the hard cap, some didn't give opportunities for other coaches to have hard capped. Now if the house settlement did that, who told coaches that they can't have certain sizes on that roster if it was indeed a house settlement? We were still told that sometimes you can't, just like COVID.

At one point in COVID, I had 19 kids on my rosters, but we still made things happen. These kids got developed, they moved forward with their education, and they loved every bit of it. And we still speak about those opportunities now because they're great memories.

And you got the guidance that allowed you to do that from compliance. From the NCAA as well. The NCAA has the website that you just showed.

This book that I have not seen, this is nostalgic. Because I remember sweating every time I had to take this test because we couldn't go on the road if we failed it. We couldn't go on the road

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recruiting.

That has gotten removed. So this is nostalgia. This is great.

This is the first time I've seen this in a long time. It's a shorter question. The guidance that you received about the eligibility rules was from compliance and from the NCAA, correct? That allowed you to roster the student athletes that you rostered? It sounds like you're asking a different question.

I don't know. What are you referring to right now? The student athletes that you were permitted to roster that you just referenced, the guidance you received that permitted you to roster those student athletes, that was from compliance and from the NCAA, correct? It comes from... My AD came in and said, hey, this is what is going on. This is what I'm getting from the NCAA.

So it's a team of people that talk about this. It's not just one set. I don't have anything else for you.

Thank you, Coach. A little brief follow up for you. Did you want this back? No, that can stay up there.

Coach, do you know who Greg Sankey is? Commissioner of the SEC. There was some conversation with council for the NCAA about the cabinet voting to approve this, the five year rule. Do you remember that? You said what? Council for the NCAA showed you that list of people who are on the cabinet and said they vote unanimously for this? So Mr. Sankey is the commissioner of the SEC.

He testified in one of these cases in Louisiana. We've got the transcript of Exhibit 15. I'll put that up.

Mr. Sankey was asked, I think you said earlier the SEC voted no on the rule change for five to five. He said that's correct. Our representative did.

He was asked, are you aware the NCAA has been telling everyone it was unanimous? Mr. Sankey said I have because on the rule after the emergency piece was voted on, we said no from a timing standpoint. They voted for the overall principle because that was what was left. When we talk about the chaos that was created by implementing this rule change in the middle of the summer before the school year, did you know that your conference said NCAA don't do this? Objection, your honor.

That misdescribes the document. The testimony is that the SEC voted no to adopt it as emergency legislation and voted yes to adopt the legislation. Let's focus on the text of the document and he can respond as it relates to that specific text.

Mr. Sankey said we said no from a timing standpoint. This is my first time saying that. Let's talk about the rules.

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You're a basketball coach. Is there a rule book for the rules of college basketball? There's a competition rule book. Competition rule book.

The competition rule book, you have to follow what it says in your competition rule book. Sometimes you play games, you've got a three point line in college basketball. How far is the three point line from the basket? I don't know the exact, but it's far enough.

Then the NBA has got another three point line that's a couple feet further back. Further than a college. Sometimes you play in a court that's got both of those lines.

Your rule book says how many feet your line is from the basket. I would think so. If you had a ref come to you and say hey, this game, I decided we're gonna make you shoot from the NBA line to get three points.

You showed him the rule book and said no, you're gonna follow the rule book. It says we use a college three point line. You would expect the ref to say that's what the rule says, we're gonna follow it.

Is that fair? That's fair. Absolutely. The NCAA's got a rule book on eligibility.

It's called the division one manual. That big book. We used to get it every year on our desk.

If we look at the rule on eligibility, it's rule 12.6. It says an individual is eligible for five years beginning the earlier of A, when you start college or B, your 19th birthday. It's effective August 26th. You see anything in that rule saying the class of 2022 does not get the same five years of everybody else? Never mentioned.

You don't need compliance to help you read this to see that every single plaintiff is eligible under the words of their rule book. It's written. They mentioned the LSBDI database.

I thought we'd quickly click into that. Isn't that rule 12.6? Let's see what they've got online. Rule 12.6 is exactly the same as it was in that manual we just looked at.

There's nothing in here that says anything about You're going too fast. I'm not asking you to read all of it. It's exactly the same as what we just looked at.

We can export to PDF. Let's click on that. It's the same.

Nothing about excluding class of 2022. If the NCAA is like the referee and this rule book is the equivalent of your basketball rules of competition, can you think of any reason why all these kids shouldn't get to play? I can't think of a reason. Thank you, Coach.

Do you mind scrolling down just a little bit, Ryan? Do you see that this document references proposal 2026-44? It's the second box in that chart. Is it in this book? No, on the screen. Do you

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see on the screen number 2026-44 right there? Athletics Eligibility Age-Based Eligibility Model Five-Year Period of Eligibility.

That's the title. I see proposal number. Right.

And you see two down from that header. Proposal number is 2026-44. I don't have anything else.

Mr. Gates, thank you, sir. You may step down. Thank you, Your Honor.

Your Honor, call Juwan Worthington. All right, sir. Good afternoon.

Good afternoon. I can have you raise your right hand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? I swear.

All right. Please be seated. All right.

Will you please introduce yourself to the judge with your name, your school, and your sport? My name is Juwan Worthington, and I play football for the Murray State Racers. When did you start college? The year of 2022-2023. How old are you today? I'm 22 years old.

Have you played against fifth-year players throughout your career? Yes, sir. Do you think you should get a fifth-year too? Yes, sir. You had a significant injury your freshman year, right? Yes, sir.

What's your injury? I tore my labrum my freshman year during the fourth game of the season, and I was told to play through it. It's just a bruise. You're in college.

Injuries happen. You can't do that. You've got to play through it.

How many more games did you play? I played two more games after that. Then they figured out it was torn, and you sat the rest of the season? Yes, sir. In those two games, I played under maybe 15 snaps.

One game, I played one play, and I was out the whole game. The rest of the game, then another game, I played maybe under 15 snaps. You had a torn labrum.

You couldn't play. Did you get to redshirt? No, sir. So you had the four games, and under football rules, you can redshirt after four games, right? Yes, sir.

But your coaches told you, we think it's just a bruise, keep playing. Yes, sir. They played you two more games, you lost your redshirt.

Yes, sir. Did you apply for a waiver to the NCAA? No, sir. You actually can't personally apply for a waiver, can you, as school's got to do that for you? Yes, sir.

Did your school say, this wasn't fair to you, you deserve another year, we're going to apply for a

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waiver? No, sir. We're going to try to go really fast, get a lot of guys on and off. Is there anything else you'd like to tell the coach today, or the judge today? Yes, sir.

I feel like my class has been affected by eligibility issues ever since our senior year of high school. When other guys got COVID years and messed up with recruiting, and some people had to go to certain schools, and they thought they would have the same opportunity as others from the classes above them, and then the classes below them. And I just think that it's not fair at all towards us, and I feel like we deserve the next year.

Thank you, Your Honor. Just briefly, sir, did you ask your institution to apply for a waiver on your behalf? I did my senior year. And what was their response to that? They didn't do nothing with it.

But that was your school's choice, not the NCAA's, correct? I don't know. Nothing further, Your Honor. Nothing further, thank you.

Mr. Northington, you may step down. Thank you. I call Davion Cunningham.

Mr. Cunningham, I'll swear you in. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? I do. Alright, please be seated.

Will you please introduce yourself to the court with your name, your sport, and your school? I'm Davion Cunningham. I attend Morehead State University, men's basketball. When did you start college? Class of 2022.

How old are you? 22 years old. You play against fifth-year players your whole career? My whole career, yes sir. Even had five on the team with me.

In your freshman year, did you talk to your coach about redshirting? Multiple times throughout the year. And what did he say? It just didn't make sense from a roster standpoint as in if somebody get hurt, they would need me. Did anyone get hurt? No sir.

How many games did you play? I played a total of three games, 19 minutes. So you heard about the football guys. If they played four games out of 12, they get a redshirt.

Your three games out of 32, did you get a redshirt? No sir. Did you ask your school to apply for a waiver? Yes sir. Were they willing to do it? No sir.

And you transferred? Right. How many schools did you ask to apply for a waiver for you? Two. Well, three including Morehead State.

Two before Morehead. They both told you no? No sir. Did Morehead apply for a waiver for you? Yes sir.

And was that waiver granted? No sir, it was denied. You know why it was denied? When football

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players get to play a third of the season and you just got 19 minutes in three games? I was asking the same question. I thought I was going to get it.

Is there anything else you'd like to tell the judge today? This class of 2022, I'm kind of like where Coach PK is. Since 2017, everybody had five years and now we're going to the five year route. I'm really concerned of what's the big argument of like why would you die on the hill in 2022? I'm asking the same question.

Thank you. I'll pass the witness. I've seen reports that you redshirted in your junior year.

Is that not accurate? Are you aware that the general rule that's actually in the 2025- 2026 NCAA manual is that any amount of competition counts as a season of competition and there's an exception legislated into the manual for certain sports? I don't think it's as clear cut. I feel like it got blurred between lives as the years went along. I've got bylaw 12-6-3 open.

Minimum amount of competition. Could you read bylaw 12-6-3-1 into the record for me? This is in the 2025- 2026 manual. Any competition regardless of the time during a season and it's a collegiate sport should be counted as a season of competition and a sport instead of providing bylaws.

Keep going? No, that's fine. Those bylaws that are listed, those are exceptions. I'll make this just a little bit smaller.

You don't see any exceptions here for basketball, do you? No, sir. Do you have any reason to disagree that the rule just says that your freshman year counts, correct? You think that it shouldn't, but you don't dispute that that's the correct outcome under what the rules say. I disagree.

I heard many other rules too. I heard the football rule and I heard a 30%. You play on a 30%.

Right, but you didn't play football. The football exception wouldn't apply to you, correct? The 30% rule, that's a medical injury waiver rule, correct? I'm not sure about that. I know the football rule.

I'm not sure about 30%. If this rule says any competition regardless of time counts, there's no 30% rule there. Under rule 12-6-3-1, your freshman basketball season counted.

You think the rule should be different. You don't understand why there's a difference between football and basketball, but you don't dispute that that's what the rule says. I was also asked to reassure before that I was kind of like Ashley.

We played, I think it was Bavar, second game of the season. I was thrown into the game after I already mentioned can I reassure, so I feel like I was kind of pressured to play. But that was your coach's decision.

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That wasn't the NCAA, correct? I also want to go talk to compliance about it. They left it as a coach's decision. I feel like it should have been higher up.

But that was your institution, compliance or university employees, correct? Correct. It wasn't a decision of the NCAA, correct? Okay. Nothing further, your honor.

Sir, thank you. You may step down. Ms. Albert, good afternoon.

Good afternoon. I could have you raise your right hand, please. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? Please be seated.

Will you please introduce yourself to the judge with your name, school, and sport? My name is Olivia Albert. I attend Indiana University and I play in soccer. What year did you start college? 2022.

Have you played against fifth year players throughout your career? I have. How old are you today? 22. In your freshman year, how many games did you get to play in? Five total.

Out of how many in your season? 2018 total. Approximately how many minutes did you play in those five games? 110 to be exact. So you played just more than the length of one full soccer game.

Yes. And you understand that because of that you can't get a fifth season under the old rules. Yes.

Does that seem fair to you? It does not. We're moving fast today. Is there anything else you'd like to tell the judge about your situation? I do not.

Even under the old rules, you could have a fifth year to play a fourth season, but you could never get a fifth season, right? Correct. And did I see that you signed a contract to play professionally with the Minnesota Aurora FC after your... That is not a professional team. That's a pre-professional team and we do not receive any money.

Got it. Did you hire an agent as part of that process? Yes. Nothing further.

Call Sophie Harlan. Alright. You swear or affirm to tell the truth, the whole truth and nothing but the truth.

I do. Please be seated. Will you please introduce yourself to the judge with your name, school, and sport? My name is Sophie.

I play at the University of Kentucky for the women's soccer team. What year did you start college? 2022. How old are you now? 22.

Play against fifth years in your career? Yes I have. Do you guys have a game today? We do.

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What time's your flight? We have a game tomorrow.

My flight is at 3.30. So you gotta go. I do have to go. What are you asking this court to do? To just grant my class the year that we deserve.

I've been blessed enough to actually kind of be in the middle of my season currently. We have four more games left. Not county conference.

And I can tell you just from the experience, I've made such an impact on the players that are younger than me. It's been a blessing to have them in my life. And it's honestly, having the older girls, I remember being a freshman and the older girls is what changed everything for me.

And I can see that I've done that as well for my team now. And I hope that you can let me play tomorrow and be with my team. You don't get any help, right? No.

Zero. Zero money. So this year for you is not about money.

It's about the camaraderie, the team building, the mentorship. It's just all about the relationships you have with the coaches, the team, everything along with that. That's what keeps me going for sure.

Thank you. I'll pass it with this. Were you first able to play under the Wisney injunction in Colorado? I'm not 100% sure.

The first time you played this season, did you already have a TRO from this court? Totally do not know. I think it was the Colorado, but I'm not sure. And then you're aware that that order was no longer in effect because of a decision of the Court of Appeals, right? Yes.

And then you got an order from this court that let you play, right? Yes. And then that order got, I'll say, vacated by the Kentucky Court of Appeals, correct? Yeah. An hour before my game, yeah.

And right now you're not allowed to play? Currently, no. Has that been really stressful to not know whether or not you're eligible? Oh, beyond. Can you describe what that uncertainty has meant for you? I mean, I'm also a biomedical engineer student, so I have the course load as well as being a leader on this team, for sure.

I mean, it's actually insane and mind-blowing. I'm lucky enough to have a great support system with my team and the people around me, but just, I just don't, no player should be going through this. Especially like, it's just absolutely insane to me that I have been going through this, for sure.

Yeah. Nothing further. Thank you, Your Honor.

Nothing further. Alright, Ms. Harland, thank you. I'll call Regan Dancer.

Oh, great. May this witness be excused? She may be. Thank you.

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Ms. Dancer, if you would raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth? I do. Alright, please be seated.

Would you please introduce yourself to the judge with your name, your sport, and your school? Yeah, I'm Regan Dancer. I play women's soccer at Xavier University. When did you start college? 2022.

How old are you now? 22. Played against fifth years throughout your career? Yes, I have. You had a pretty significant injury, was it your freshman year? Yes.

Something called compartment syndrome? Yes. And you did not get a medical waiver for that, correct? No, I did not. Before you found out you had potential for eligibility this year, what were you doing? I was teaching.

I was in a fourth and fifth grade classroom at Riverside Academy in Cincinnati, Ohio. And did you leave that job to go back to school? Yeah. I ultimately had to make a hard decision to leave my teaching experience and go play soccer because I just love the sport and the relationships there are something that I couldn't say no to.

Is your coach here today to support you? Yes. Is there anything else you would like to tell the judge today? Honestly, just like we're being treated unfairly right now and I think my team relies on me right now and the leadership that I can have on them is something that I know they value and if they could be here they would. But yeah, I just play for the love of it.

I don't make any NIL money so I just play for pure enjoyment. How many games do you have left? We have five. When's the next one? Saturday morning.

So what's Xavier's record on the year right now? We're doing well. I'm not sure exactly but I know that we only have two losses. Would you have any reason to disagree if I told you it was 8-2-3? No, I would not.

So you played against Georgetown, right? And that was 4-3 and you had two assists in that game. Yes. Do you think Georgetown thinks it was fair that you were allowed to play under an injunction and they didn't have somebody who was playing under an injunction and your two assists might have been the difference in the game? Yeah.

I think that they would think it's fair. Why? I think that they have athletes that could join if they had the desire to. A lawsuit, I think that I have a good relationship with that coach actually so he said that he was happy to see me out there.

And then you played DePaul on 9-30 and that was a tie. And you scored the only goal for your team in a 1-1 draw, correct? And to your knowledge, DePaul didn't have any ineligible student athletes on the field at the time. I'm not sure about that.

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DePaul didn't have any student athletes playing under a court order at the time, correct? I can't. I'm not sure. Just none to your knowledge? None to my knowledge.

And then since the Court of Appeals said that you couldn't play anymore, DePaul's 1-0-2, correct? I'm not sure of the record. But they were doing better with you than without you, right? I mean, I can't really say. Do you think they're a better team with you on the field? Counselor, you asked about DePaul's record.

Oh, I'm sorry. Thank you, your honor. Your team is 1-0-2 since you've not been allowed to play, correct? I'm not sure.

I think so. But you think they've done better with you on the field than without you on the field, right? I don't think our record shows that, because you're not talking about the non-conference games, too. I've played in two non-conference games that we've lost, and those are the only two losses that we have.

But you only have one win without them. But I've played in seven games, so no, because we've lost two. We haven't lost any with me out there.

Okay. No further questions. No redirect.

Thank you. Your honor, I think that we might be at a time in the clock where, for Mr. Downton's co-counsel's witnesses to be allowed to testify and have time for closing argument before 2 o'clock, that we might be where we are with Mr. Downton's witnesses.

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RESPONDENTS' APPENDIX

TAB J

Transcript of Evidentiary Hearing, *Wells v. NCAA*, No. 26-CI-007009 (Jefferson Cir. Ct. Oct. 14, 2026), Part 3 (VR 13:31:46–14:22:49) (unofficial transcript prepared from the video record)

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(0:27 - 0:54)

Your Honor, in light of our conference, our remaining witnesses, we are going to submit affidavits on their behalf this week, so we can let our co-counsel follow up. Very well. All right, and I'll note that the record reflected that there was no objection to that from the NCAA, and that the Court of Appeals did reference that as being a permissible basis of evidence for the Court to take under consideration.

(0:56 - 0:58)

Counsel. Thank you, Judge. Is he ready? Yes.

(0:59 - 1:18)

Your Honor, we'd like to call Caleb Perry to the stand. Mr. Perry, if I could have you raise your right hand, please. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? I do.

(1:18 - 1:26)

Please be seated. Caleb, we're going to try to keep this short and sweet. Can you tell the judge your name, school, and sport? Yes, my name is Caleb Perry.

(1:26 - 1:35)

I attend the University of Louisville, and I play football. Okay, and what year did you graduate? Uh, 2021, or 22. Where did you play? Uh, three years at Tennessee.

(1:36 - 1:54)

Okay, and that would have been your freshman, sophomore, junior year? Yes, sir. Can you walk me through your playing time, freshman year? Uh, really just more special teams. I had a lot of older guys in the room at the time, guys that were older than six years, so I didn't have a lot of opportunity besides teams that we blew out, and it was really just like one game, but really special teams only.

(1:54 - 2:05)

So freshman year, you didn't get to play a lot because you were fifth and sixth year guys ahead of you on the roster? Yes, sir. Okay, and what about your sophomore year? Uh, still kind of same story. Got a little bit of a rotation on defense, but now we had a seventh-year guy come back.

(2:06 - 2:20)

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So, still just limited playing time, and really just mainly special teams. Okay, so you were behind the fifth, sixth, and seventh-year guy your sophomore year, is that right? Yes, sir. Okay, and what about your junior year? Uh, they were done at the time, still kind of put behind.

(2:20 - 2:35)

I didn't get paid any NIL at the time through the three years, so just was kind of rotating a little bit on defense and special teams, just being a utility guy for the team, I reckon. And you were behind fifth, sixth, and seventh-year guys for junior year as well? Uh, really fifth year. Fifth year? Yes, sir.

(2:35 - 2:43)

Okay, and you played against fifth-years that entire time, right? Yes, sir. Okay, tell me about your senior year when you transferred to UofL. Yeah, a lot of opportunity still coming in at Louisville.

(2:44 - 2:59)

I had a guy that was a fifth-year playing behind in the linebacker room, but had a lot more opportunity the first year. I really had opportunity on defense to really show what I could do, and you know, coaches believed in me. And so that was really the kind of, how my fifth year, or fourth year settled down for senior year, I thought.

(2:59 - 3:19)

And while you were playing on your fourth year, or even before that, did you expect a fifth year? Well, I heard rumors about it, so I wasn't sure if a fifth year was going to happen or not. So, no, I wasn't sure if it was going to be my last year or not, but I was just approaching it, you know, trying to put everything on the line, you know, just approach every game like it's my last. And there were fifth years on your team, your fourth year, correct? Yes, sir.

(3:19 - 3:26)

Okay, and you sat behind fifth, sixth, and seventh-year guys your whole career, right? Yes, sir. And you probably played against fifth, sixth, and seventh-year guys, right? Yes, sir. Okay.

(3:27 - 3:47)

So, for you, having an expectation of a fifth year was on the table? Yes, sir. Okay. After you finished your fourth year at UofL, did you apply for a waiver? I was trying to, but because of compliance, they were unsure of the rules, and they weren't able to make me one, so I just was trying to figure out the next path for me.

(3:48 - 4:03)

And what was that next path for you? So, obviously, pro day, kind of seeing what the next level

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might look like, but still kind of talking to coaches, trying to see if there is a way for me to come back before committing to that path. Have you signed any professional contracts? No, sir. Have you gotten paid any money? No, sir.

(4:03 - 4:22)

Okay. What does a fifth year mean to you? It means everything. I think it just honestly gives me an opportunity just to kind of establish just another opportunity with football and also just an opportunity with life, just to be able to just network, be able to establish more of a professional life outside of just football as well.

(4:22 - 4:42)

Made a lot of connections now, even just from the little bit of time that I've had outside of just football, just put me in a better situation. So, it means everything outside of just football and just being able to be involved with all the guys on the team and just, you know, plug into them and speak life and speak truth. And is your dream to make it to the NFL? Yes, sir, it would be, but also my dream is just to be the best version of myself, whatever that means.

(4:42 - 4:57)

Would a fifth year allow you to put more tape on film? Yes, sir, it would. Play more football, have better evaluation? Yes, sir. Is there anything else you want to tell the judge today? Judge, your honor, just thank you for taking the time to hear us out and be here.

(4:57 - 5:11)

I know it's probably been a headache, as it has been for us. But, you know, this fifth year would allow a lot of us an opportunity and just allow us to stay established and also just be there for everyone else that's involved in this. So, I just want to say thank you and I appreciate the time.

(5:12 - 5:18)

And do you believe that being deprived of that fifth year is an irreparable harm to you? Yes, sir. Thank you. Thank you.

(5:20 - 5:33)

Good afternoon, Mr. Scarry. Good afternoon. So, it's fair to say that it's your testimony that nobody from the NCAA told you you'd get a fifth year, but you heard rumors and speculation that you might, correct? Yes, sir.

(5:34 - 5:55)

And did you graduate last year? No, sir. But you're aware that the NCAA core guarantees provide

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you guaranteed scholarship for the next ten years if you choose to finish your undergraduate degree? No, sir. I would suggest talking to Louisville about that if you don't want to play for the remainder of the season.

(5:56 - 6:17)

You indicated that you competed against guys in their fifth, sixth, or seventh years. All of those student-athletes that were playing on your waivers from the NCAA, correct? Some, yes, sir. But they were certified as eligible by the university, not through injunction, correct? Yes, sir.

(6:20 - 6:32)

And last year, did Louisville have a senior night? Yes, sir. Did you participate in that? I did, but I was not sure if I should or should not, because I wasn't sure if I was going to have a fifth year. So, I wasn't sure going into it.

(6:32 - 6:40)

And you participated in ProDev? Yes, sir. Did you go to any minicamps or anything? Yes, sir. So, did you hire an agent? Yes, sir, I did.

(6:41 - 6:59)

And you knew that hiring an agent would make you ineligible even if you could get an additional year? No, sir. You weren't familiar with NCAA rules about professional agents? No, sir. You didn't receive education from compliance through all four years about what it would mean for you to hire an agent to market you professionally? No, sir.

(6:59 - 7:10)

Okay. When did you leave Louisville? When did the academic year end for you last year? Was that in May? It was in December. It was in December.

(7:10 - 7:29)

So, your season ended in December and you ended your academic year in December to pursue Cornell, right? Yes, sir, but I was trying to come back in January. And the new rules didn't pass until... You tried to come back in January? Yes, sir. But you didn't come back? I wasn't able to.

(7:30 - 7:53)

And the new rule passed in June, right? Yes, sir. And that was after the conclusion of all NCAA sports in the 25-26 academic year, right? I believe so. If you get a fifth year and you don't make the NFL, wouldn't a sixth year be helpful to put more game pay on to be able to try to make it to the league? Sir, I don't really believe so.

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(7:53 - 8:09)

I think it's really just more of a situation type of answer that you're looking for with that. So, if four seasons wasn't enough, if five seasons isn't enough, you're not going to pursue the NFL? I think it just kind of depends where I'm at with it, honestly. I was answering that question.

(8:10 - 8:19)

Yes, I would love to pursue the NFL and have another opportunity at it. But also, if not, I know where I stand with that, and I have that conversation, and then I can approach what life will look like outside of that. Understood.

(8:20 - 8:22)

Thank you for your time, Mr. Perry. I appreciate it. Thank you.

(8:22 - 8:25)

Congratulations on a great career. No redirection. Thank you, sir.

(8:25 - 8:31)

Thank you so much. Judge, you're correct. On behalf of Mr. Aquari, would you like to call him, please? Call him, right.

(8:31 - 8:40)

Mr. Ashton will handle him, correct? I will. And may I approach with the four documents that we're going to present? Yes, you may. Judge, these are already in the record.

(8:40 - 8:43)

They're exiled in the record. I just wanted to make life a little easier. Thank you.

(8:44 - 8:47)

All right. Mr. Aquari, come on up. I'll swear you in.

(8:50 - 8:54)

Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth? I do. All right. Please be seated.

(8:58 - 9:05)

Please state your name for the record. Alex Aquari Jr. How old are you? 22. And what's your

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birthday? May 7, 2004.

(9:05 - 9:15)

What is your high school graduating class? Class of 22. When did you enroll the first time at the University of Kentucky? In the fall of 22. Are you married? Yes.

(9:15 - 9:20)

Do you have any kids? No, but I got one on the way due in December. Congratulations. Thank you.

(9:20 - 9:28)

Where do you grow up? Elboy. And is your wife present with you today? Yes, she's over there. Where have you lived the last four years? Lexington, Kentucky.

(9:29 - 9:38)

I'm going to hand you a document. May I approach? You may. Do you recognize that document? Yes.

(9:39 - 9:52)

And what is that? Verified complaint. And is that your signature on the last page that's notarized? Yes. And is all the information true and accurate to the best of your knowledge still to date? Yes.

(9:53 - 10:25)

Okay. Is this the verified complaint that you... I guess, are we doing it in numbers? Yeah, I think I've got what you had presented earlier, tendered verified complaint, and it was identified as number one. Let me just do intervening plaintiff, Afares, Exhibit 1. I'll hand you another document, pre-marked as intervening plaintiff, Afares, Exhibit 2. Do you recognize that document? Yes.

(10:25 - 10:52)

And what is it? I'm Byron Stets from the University of Kentucky. And is all the information in that document true and correct to the best of your knowledge? Yes. At this time, we'd like to move to introduce intervening plaintiff, Afares, Exhibit 2. I'm going to show you another document.

(10:53 - 11:21)

What is this? An affidavit I signed. And is that your notarized signature on the back? Yes. And is all the information contained in this affidavit true and accurate to the best of your knowledge? At this point, we would ask to move to introduce intervening plaintiff, Afares, Exhibit 3. Finally, I'm going to ask you to describe this document.

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(11:22 - 11:28)

It's an affidavit from my teammates. Okay. And is it 11 affidavits? Yes.

(11:29 - 11:57)

And how many linebackers are currently rostered on the University of Kentucky right now? Eleven. Twelve, including me. Okay.

And so, these affidavits, are they from all the other linebackers that are currently rostered on Kentucky? Yes. And do they all express that the only fair outcome is for you to play this year? Yes. And do they also express that they welcome the opportunity to play alongside you? Yes.

(11:58 - 12:17)

At this point, we'd like to move to introduce intervening plaintiff, Afares, Exhibit 4. No objection and same stipulation that we have with Mr. Downton for the other plaintiffs. Anything that is tendered at the hearing can be part of the record without objection for the court to assign whatever weight it so chooses. Very well.

(12:17 - 12:32)

During the first four years, what years did you play at the University of Kentucky? 22, 23, 24, 25, and 26. Did you compete against older players during that time period? Fifth-year players? Yes. Sometimes sixth-year players? Yeah.

(12:33 - 12:43)

And did you compete directly against them for playing time? Yes. Can you name a few? Yeah. De'Aaron Jackson, J.J. Weaver, Jordan Wright.

(12:44 - 12:58)

All of them were given fifth years? Yeah. Did you play against anyone, opponent-wise, that was granted a sixth year of eligibility? Yeah. A wide receiver from Tennessee, Breughan McCoy.

(12:58 - 13:08)

Did you play against him in 2024? Yes. And he had been playing six years? Yes. And when are you scheduled to graduate? May of 2027.

(13:09 - 13:17)

Okay. So when you finished the 2025 season, did you enter the draft? Yeah. Were you drafted? No.

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(13:17 - 13:33)

And were you invited afterwards to a rookie tryout at the Green Bay Packers? Yes. Did the Packers pay for anything other than the necessary lodging and expenses while you were there? No. And was that a 48-hour tryout? Yes.

(13:33 - 13:46)

Were you invited back to that tryout? No. So did you sign anything professionally with the Green Bay Packers or the NFL? No. And did you make any roster? No.

(13:46 - 13:55)

Did you play any professional game? No. Okay. Moving forward to this season, when did you enroll in the University of Kentucky? August 4, 2026.

(13:55 - 14:08)

And what was your purpose for enrolling? Just to graduate and play football. Okay. To your knowledge, was anyone cut from the roster whenever you joined? No.

(14:08 - 14:17)

Okay. And have you played any games this year? Yes. What games have you played? Youngstown State, Alabama, Texas A&M, and South Alabama.

(14:18 - 14:39)

South Alabama game. Did you lead the team in tackles? Yes. Okay.

Did you miss any games this year? Yes. What games? South Carolina and LSU. How did you find out about you weren't eligible to play South Carolina? I was preparing all week, preparing to play, and right when you landed in South Carolina, I got a phone call that I wasn't able to play.

(14:40 - 15:21)

So you were in South Carolina when you found out? Yes. How did that make you feel? I was devastated because my teammates were depending on me, and I was just preparing all week, ready to play, and I wasn't able to. And that was a historic win for the University of Kentucky? Yes.

Overtime game, 35-34. You're not going to get that back, right? No. What about the next week against LSU? Yes.

Also a very emotional game that I wasn't able to be a part of. Also 35-34 overtime win, and I

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would never get that moment back. Rushed the field, nationally televised audience.

Tell me about the linebacker corps for UK during that game. There was a lot of injuries in the linebacker room. Would you have played a substantial amount of that game? Yes.

(15:22 - 15:36)

And in that game, national TV audience, do you think that you would have provided some game film for potential NFL scouts to look at? Absolutely. Is your ultimate goal to play in the NFL? Yes. What is your next game? Saturday night.

(15:36 - 15:42)

And who do you play? Oklahoma. Another national televised game? Yes. Do you wish to play in that game? Yes, I do.

(15:42 - 16:01)

Have you prepared for that game? Yes. And what does the opportunity to play football this season mean to you? It will mean everything to me. I'll be able to finish where I started at Kentucky, and be able to be a leader to the young guys, and be able to provide for my family as well.

(16:02 - 16:35)

What is the irreparable harm that is going to occur if you're not allowed to play? I won't be able to have any tape on film to make it to the NFL. And what about the time that you're never going to get back? I would never get that time back, especially a game like LSU and South Carolina. I would never get that game back.

It was a historic game for us. And what's your record right now? 5-1. Currently ranked what? 15th.

(16:35 - 16:43)

No further questions at this time. Really briefly, your honor, Mr. Afari, nice to meet you. Thank you for being here today.

(16:44 - 16:55)

Are you a starter when you've been able to play this year? No. You rotate in? Yeah. About how much of the game have you been able to play? A good amount.

(16:57 - 17:24)

And Kentucky, and this is going to sound sarcastic and I really don't mean it that way, Kentucky's

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going to play 11 people on the defense at a time, right? Right. If you're not on the field, somebody's going to be off. If you're on the field, someone will be off.

Is that a yes? Yeah. And your teammates may have said that they think it's fair for you to play, but if you play, one of them is not, correct? Correct. And it's been a great year for Kentucky football so far, right? Right.

(17:24 - 17:51)

It's the first year with head coach Will Stein, correct? Correct. And the LSU game really put you all on the national map as far as the top tier of the SEC potential this year, correct? Correct. And for the teammate of yours who got to play the snaps you otherwise would have played, it was a big deal to be able to, for them to put on tape against LSU and to win that game, right? Right.

(17:53 - 17:58)

As part of your process in going to the NFL, did you hire an agent? Yes. Okay. Nothing further than that.

(18:03 - 18:05)

Nothing further, Your Honor. All right. So far, you may step down.

(18:05 - 18:20)

Thank you very much, Your Honor. All right, Your Honor, so we're done with witnesses because mine took the most time. I'd like to give about two minutes of closing and then… Thank you very much.

(18:21 - 18:37)

Your Honor, we're here for a preliminary injunction. There is a breach of contract claim, also a claim for the violation of the Consumer Protection Act. On the breach of contract, we've got a continuing contract that started when the players got to school in the manual, and it was amended over time.

(18:38 - 18:51)

I'd like to start looking at the old manual. The NCAA has an obligation to treat people fairly under its discretionary authority. The NCAA has violated that in two particularly important aspects.

(18:52 - 19:06)

First, respect to former professionals. The NCAA, you'll see testimony throughout the record from the other hearings where the transcripts are now in the record in this case. The NCAA has not

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changed the rules for former professionals.

(19:06 - 19:27)

They changed the interpretation where the NCAA has itself testified that how can we hold it against a player who gets paid a million dollars outside of the NCAA when our players can get paid a million dollars inside? Those players are getting to play a fifth year next year since they got out of high school. These players are not. That's arbitrary and unfair.

(19:28 - 19:59)

Bylaw 12.6.6 gives the NCAA committees discretionary authority to give waivers. They have chosen not to exercise that discretionary authority for this class. That's abuse of discretion in this case, given their decision to give a fifth year to all similarly situated athletes who came before and after through the COVID waiver, through the rule change, through the JUCO waiver for members of the class of 21, and through individualized hardship and redshirt waivers.

(20:00 - 20:15)

With respect to the current manual, the current rulebook for eligibility, it says these players are eligible. So you can decide under the rules as they existed before or under the rules as they exist now. We think they've reached both of them.

(20:15 - 20:31)

Bylaw 12.6 on its face says these players are eligible. It has no limitation concerning when they had to enroll. There is a limitation in the notes of the legislative history, but you don't get to the legislative history unless you have ambiguity, and there's no ambiguity.

(20:32 - 21:05)

And the NCAA knows, if we could put up on the screen, the NCAA knows how to draft a bylaw to exclude classes of players. For instance, Bylaw 14.3.4.4. It was revised January 2023, effective August 2023, for student athletes initially enrolling full-time on or after August 1st, 2023. But when you look at the bylaw at issue in this case, 12.6, it doesn't have any of that language.

(21:08 - 21:17)

It simply says the revised date of the effective date. It's not an error. There have been many hearings.

(21:18 - 21:27)

They've had many chances. They've amended the manual multiple times since this was published in August. Currently online today, there is still no exclusion of the class of 26.

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(21:27 - 21:33)

There is no ambiguity. I understand they've done press releases. I understand they've done legislative history.

(21:33 - 21:49)

But that's how interpretation of contracts or statutes works. Finally, the Consumer Protection Act. All of these athletes require an education from NCAA institutions.

(21:49 - 22:00)

The NCAA has an obligation to treat them fairly under that act in Kentucky. Here, it's unfair to not give them a fifth year when it's been given to everybody else. These athletes can be in school.

(22:00 - 22:07)

They are in school. They are still within their five-year eligibility window under the old manual. They can be on a roster.

(22:08 - 22:15)

They just aren't allowed to compete on the field. That's unfair and violates that act. Irreparable harm, we think is clear.

(22:15 - 22:27)

The loss of an opportunity to play a college athletic season is irreparable harm. They'll never get it back. Particularly in this case because the NCAA has created a tremendous roster crunch for next year.

(22:27 - 22:41)

Because everyone currently playing has been given an additional year of eligibility, very few people have to move on after this year. But the whole new class of freshmen are coming in. So these players have roster spots now.

(22:41 - 22:56)

If they are told, wait until trial, you can play next year, there's no guarantee they're going to have a roster spot next year because of this incoming crunch. Letting them play this year relieves the crunch. Every spot taken by these athletes means an open spot for next year's freshmen.

(22:57 - 23:05)

We don't believe there's any harm to the NCAA or third parties. All of these games will go on. The

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NCAA competitions will continue.

(23:06 - 23:16)

And no roster spots are being taken. There may be some reduced playing time, but that's been more than made up for by an additional year of eligibility. So I think I took more than my two minutes.

(23:16 - 23:24)

Very much appreciate Your Honor's time today. Thank you, Counsel. Thank you, Your Honor.

(23:27 - 23:44)

I've been involved in a lot of these cases throughout the country, and I do think two things are worth mentioning at the outset. Number one is these cases are not fun. It's not fun to look a student athlete in the eye and say, sorry, the rules and the law says that your eligibility is over.

(23:45 - 24:18)

The NCAA exists because the opportunity to participate in college athletics is worth fighting for and having an organization dedicated to. And the reason for time-based eligibility rules is to ensure that every year the next generation of student athletes gets to have that opportunity. The second point is that few states have law clearer about what courts are supposed to do in these cases than Kentucky.

(24:19 - 24:53)

There are two Court of Appeals decisions, one Court of Appeals decision and one Kentucky Supreme Court decision that provide the legal framework that this court is supposed to apply in ascertaining whether the plaintiffs have demonstrated a likelihood of success on the merits of a legal claim. The first is Kentucky High School Athletic Associations v. Hopkins, which is 552 Southwest 685. And it articulates a general rule of noninterference with voluntary athletic associations.

(24:53 - 25:29)

Quote, as a general rule, courts will not interfere with the internal affairs of voluntary associations. In the absence of mistake, fraud, collusion, or arbitrariness, the decisions of the governing body of an association will be accepted by the courts as conclusive. Under Hopkins and NCAA v. Lesage, which is 5382 Southwest 3rd 77, Kentucky Supreme Court in 2001, there are three classes of claims that can be asserted against a voluntary athletic association with respect to disputes about its own rules.

(25:30 - 26:00)

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There are claims challenging the... facially challenging whether a rule is permitted to exist. There are as-applied challenges that can challenge the interpretation of an association's rules. And if you get to the interpretation of a rule and the rule is applied to a specific student athlete based on their facts and circumstances in an adjudicative proceeding, then there's another as-applied standard for that.

(26:01 - 26:29)

The first two come from the Hopkins case. In as-applied challenges, the court will not... This is a quote again. The court will not substitute their interpretation of the bylaws of a voluntary association for the interpretation placed upon those bylaws by the voluntary association itself so long as its interpretation is fair and reasonable.

(26:30 - 27:22)

For facial challenges, again a quote, voluntary associations may adopt reasonable bylaws and rules which will be deemed valid and binding upon the members of the association unless the bylaw or rule violates some law or public policy. It is not the responsibility of the courts to inquire into the expediency, practicality, or wisdom of the bylaws and regulations of voluntary associations. The third, and this is from Lesage, is if we're discussing an adjudicative proceeding where a rule is being applied to a student athlete, for instance, in a reinstatement proceeding, we have held that the rule is subject to an arbitrary and capricious standard under which a ruling is arbitrary and capricious only where it is clearly erroneous, and by clearly erroneous we mean unsupported by substantial evidence.

(27:23 - 27:43)

This is important because what you heard Mr. Downton talk about is what the fair outcome is. But what the law requires is first we have to situate the claim into one of those three buckets, and then we have to determine whether the plaintiffs have met their burden to demonstrate a likelihood of success on the merits of the claim. We're not in the third bucket.

(27:43 - 28:08)

This is not an adjudicative proceeding where there's a pending reinstatement request, where there are fact findings made like there were in Lesage, and the court reviews to determine if the NCAA's disposition of a particular case was supported by substantial evidence. That's not what we are today. We're in either of the first two buckets under the Hopkins Board of Education case.

(28:10 - 28:51)

So is it a facial challenge? Is it a challenge that says the rule, to the extent it excludes the class of 2022, cannot stay on its face? And if that's the case, which I think this is what Mr. Downton is

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primarily advancing his theory under, the standard is whether the bylaw violates some law or public policy. You've heard no proof on either of those issues, none. Whether an NCAA rule violates some law generally arises in the antitrust context.

(28:51 - 28:59)

A rule is illegal because it's an unlawful restraint on trade. There's no antitrust claim here. There's no claim that the rule itself is illegal.

(29:00 - 29:33)

And you haven't heard any proof about what the public policy of the state of Kentucky is here, which is completely absent from the record. And respectfully, Your Honor, Kentucky Supreme Court precedent says that it's the job of the legislature only to determine what the public policy of the state is here. And while there's a law that permits student-athletes to earn NIL and revenue-sharing compensation during their period of eligibility, it does not provide a right to indefinite eligibility or eligibility of a specific period of time.

(29:34 - 30:00)

It only means that the NCAA can't prohibit student-athletes from earning NIL compensation while they're eligible, which is not the circumstances that we face here or circumstances we've faced since before also. So what does that leave? It leaves an as-applied challenge that contests the NCAA's interpretation of its own rule. And the proof was consistent today.

(30:00 - 30:27)

The NCAA, since adopting the first implementation model on April 27, 2026, was manifestly consistent. This rule would not apply to student-athletes who had exhausted their four seasons of competition. Is that a reasonable interpretation of the bylaw? Respectfully, Your Honor, the Court of Appeals has taken that question out of your hands.

(30:28 - 31:13)

Because on pages 19 through 21 of its order, the Court of Appeals affirmatively held that the NCAA's interpretation of its rule is reasonable. Because even if you don't look to the proposal that the Cabinet voted on, even if you only look to the effective date that's in the rule itself, August 1, 2026, the Court reasoned as part of its analysis about whether the TRO changed the status quo, about whether the age-based rule changed the status quo, about whether it was retroactive, because it is NCAA legislation. And the Court of Appeals held this rule would have to be retroactive to grant these plaintiffs additional eligibility.

(31:14 - 31:23)

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Because based on the rules that were in effect before August 1, 2026, they're out of time. They're out of seasons. They've used their seasons.

(31:23 - 31:42)

They wouldn't be permitted to come back to competition. So if the rule change gives eligibility that did not exist prior to the rule change, it's necessarily retroactive. It creates new rights for student-athletes that had exhausted their eligibility that did not exist.

(31:43 - 32:15)

And the testimony you heard from Mr. Hennis at the beginning was no one's circumstances are different. For the 2026-27 season, under the new rules or the old rules, everybody who had eligibility remaining is still eligible, and everybody who was out of eligibility is still ineligible. And you know, too, that the rules are not retroactive because they're not taking away eligibility from people who got waivers, people who are outside their 5 years or more than 5 years removed from their 19th birthday.

(32:16 - 32:40)

They're still eligible. So what does that mean for the Court? It means there's no likelihood of success on the merits of a contract claim. Regardless of what Mr. Downton is saying, about the fairness provisions of the bylaws, whether there's arbitrariness, those are buzzwords that matter under some state law in this context, but not Kentucky.

(32:41 - 33:13)

The appellate courts of this state have squarely provided the Court guidance on exactly what the record at an evidentiary hearing would have to show. And there hasn't been any evidence put forward on a cognizable claim to interfere with a voluntary association's promulgation, interpretation, and application of its own rules. But the most striking part of today is it is abundantly clear why that deference exists.

(33:14 - 33:29)

Because the testimony about chaos is right. There is absolutely chaos. There are student athletes who are eligible under court orders in states who are not eligible, who have been denied injunctive relief in other states.

(33:29 - 33:41)

Some courts have granted injunctive relief against professional participation rules. Some courts have said, I'm not touching that. Every court has a different conception of what fairness means.

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(33:42 - 34:06)

And that's why the law vests determining what the rules are and how those rules apply with the association and its members. Because the only way to have consistent application of eligibility rules is to leave one body with the right to make the rules and apply them. Because otherwise you're going to have inconsistent results.

(34:07 - 34:27)

Because there's never going to be consistency about what the rules should be. And the testimony from Louisville's coach was the chaos that was precipitated by all of these courts' injunctions, that's why we jumped on the train to go recruit players who had exhausted their four seasons of eligibility. And I understand that.

(34:27 - 34:53)

His job is to win basketball games, and if his competitors are rostering these players, well, by gosh, why not take a shot at it for my team too? But that race to the bottom is not a reason to grant the injunction. It's a reason to deny it. It's a reason why it's time to take a step back and apply the deference that the law requires to an interpretation of an association rule.

(34:53 - 35:44)

Because the only way to have consistent outcomes is to apply the rule that says student-athletes without eligibility remaining, they're not eligible. And even if you accept Mr. Downs' frame, even if you apply ordinary contract rules where Kentucky says that's not the relevant frame when we're talking about association rules, which was also the holding of the Ohio court in Borovikinon, which is the only court of appeals in the country that has issued a full merits ruling on the identical claim here and applied the deference frame and in its opinion cited with approval the Lesage opinion from the Supreme Court of Kentucky. They said fairness is in the eye of the beholder.

(35:45 - 35:52)

What's fair to one is not fair to another. Roster spots, playing time, it's all zero sum. What advantages some people will advantage another.

(35:53 - 36:40)

People have different conceptions about what fairness is. But even if you look at it in the contract frame, which set of rules are we talking about? If we're talking about the 2526 manual, which was the majority of Mr. Downs' closing argument, it is an elementary principle of contract interpretation that a contract should be construed to give meaning to all provisions and to avoid rendering any provision meaningless and that for that reason specific provisions are supposed to govern over the general. For that reason, generalized notions of fairness that aren't tied to particular rules in

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which people might disagree about what's fair, those can't trump the specific eligibility.

(36:41 - 37:04)

Which for the 2526 manual and its predecessor said you get five years to play four seasons. And every student athlete here got the benefit of that. And if you look at the 2627 manual, Mr. Downs' representation that you only look to the manual is belied by no proof in the record.

(37:04 - 37:25)

All of the testimony today is you go and ask compliance. And if you look at Exhibit 16 of the NCAA's exhibits, it's a deposition transcript from Jerry Vaughn who works in Governance and Membership Services for the NCAA. He testifies in response to the question.

(37:25 - 37:40)

So I'm trying to get to the core of where the confusion I think is coming from, Mr. Blackwell. Did the D1 cabinet actually vote on the manual itself? This is at page 137 of Exhibit 16. Answer, no.

(37:40 - 38:05)

They voted on individual proposals including the age-based eligibility model. Proposals are the legislative actions that they take throughout the year and then kind of the summary of those legislative changes show up in the printed version of the manual. Further down the page on 138, any trained compliance practitioner would know you don't make that decision about whether somebody's eligible in a vacuum.

(38:05 - 38:21)

You would go look at other supporting documentation including the proposal that made any sort of legislative change, any interpretations or educational columns, or other resources specific to that change. Because the testimony from the coaches today is right. The manual is confusing.

(38:22 - 38:58)

It takes professional compliance officers who that's their sole job is to understand the manual, to provide guidance to athletics coaching staff members. But what the proposal says, what the proposal that was voted on actually says, and if any document in the record is a contract, it's the proposal because that's what the record reflects was voted on, not the manual itself. The proposal says that the new model applies for student-athletes who enrolled in college prior to August 1 of 2026.

(38:59 - 39:23)

It only applies to student-athletes who have seasons of competition or years of eligibility

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remaining. And the NCAA's representations to the membership on April 27th, on June 5th, on May 22nd are all the same. Which matters under the framework that the Kentucky Court of Appeals has set out.

(39:24 - 39:37)

An interpretation is fair and reasonable if it's reasonably susceptible to that interpretation. The Kentucky Court of Appeals has said that's a reasonable interpretation. Not only reasonable, it's the most natural interpretation under the presumption of its retroactivity.

(39:38 - 40:03)

The Ohio Supreme Court of Appeals reached the same conclusion through different reasoning, citing bylaw 12.01.1 of the manual, which is the first eligibility bylaw that says only student-athletes who meet the governing legislation are eligible. And Proposal 2026-44, as the proposal that was voted on, is the governing legislation. And it says these student-athletes are not eligible.

(40:06 - 40:16)

Respectfully, Your Honor, it's not the easy choice. It's not the feel-good choice. It's not the choice that is going to make people happy.

(40:17 - 40:39)

But it is the choice that Kentucky law requires to find that there's no likelihood of success in the merits of this contract claim. Regarding the consumer protection claim, there's been no proof offered on that to date. There's no proof that any of these student-athletes are consumers, that they bought anything from the NCAA, even Mr. Downton framed those from the institutions, or that they've been deceived in any way.

(40:39 - 41:02)

Every representation from the NCAA has been consistent. And the only testimony to the contrary is that people have been confused by injunctions and that they have heard rumors and speculation that they might benefit from this rule, but nothing from the NCAA. The balance of the equities, too, Your Honor, weighs in the NCAA's favor.

(41:03 - 41:14)

And that's not just me arguing it. Again, it's the Kentucky Supreme Court in the Lissage case. Mr. Downton said, the NCAA's not harmed because the games go on.

(41:14 - 41:45)

That is exactly the reasoning that the Lissage court said was an abuse of discretion. The court

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reversed the injunction in part because the trial court could not possibly have weighed the NCAA's interests because it did not believe that the NCAA had any interest for it to consider. Nor does it appear that the trial court gave any consideration to the possible injury to those programs and student-athletes who, because of the temporary injunction, would compete against UofL's men's basketball team with Lissage on the roster.

(41:46 - 42:17)

It is unfair when different student-athletes on the court are playing by different rules, when different teams are playing by different rules, where some schools get to roster a student-athlete that others wouldn't get to. That harms the NCAA, whose purpose in this respect is to take the rules that the membership has passed and enforce them consistently. To say that that's not harm to the NCAA is disingenuous and inconsistent with Kentucky's Supreme Court precedent.

(42:21 - 42:46)

Your Honor, the only other thing that I would like to leave you with, in the event that the court is inclined... And the last thing on the balance of the equities, Your Honor. You also heard testimony about the stress that comes with injunctions that are later overturned by the Court of Appeals. And I don't want to presume what the Court of Appeals is going to do in this case or what you're willing to do in this case.

(42:47 - 43:08)

But the uncertainty of, I'm eligible one day, I'm not eligible the next, it's subject to the courts and not subject to the rules, leaves everyone worse off. Everyone worse off. If plaintiffs should get relief under this theory, the NCAA will stipulate to expedited appellate processes.

(43:08 - 43:37)

If the court finds that there is no likelihood of success on the merits, the proper remedy is in the Court of Appeals, not an injunction that the NCAA would move to stay. Because it harms student-athletes to not know where they stand and to have uncertainty about what's going to happen in the coming days. It harms student-athletes who are on their team who are losing the opportunity to compete to players who are competing under injunctions.

(43:37 - 44:22)

It harms the long-term success of that team because the team can be subject to penalties and if they're playing ineligible players where the Court of Appeals later says this injunction shouldn't have been entered, there's an asterisk next to the season, it harms their competition across the field because they don't get the same benefit of playing student-athletes who are competing under injunctions. Everyone is worse off. But if the court is going to grant injunction, the Kentucky Supreme Court decision, Lesage, doesn't authorize an injunction against any rules other than the

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age-based rule because that's the only rule that the plaintiffs have asserted a claim, challenged it, and put on evidence about.

(44:23 - 45:10)

And the Lesage court, in response to the trial court's injunction against the rule of restitution, said that the trial court's failure to conduct a Rule 6504 analysis, that reason standing alone would require us to vacate that portion of the decision. So even if the court is inclined to grant relief, the court should only enjoin the age-based rule and leave it to compliance in the NCAA's reinstatement process to determine eligibility under the professional participation rules, the pro-compensation rules, the agent rules, all the other rules that plaintiffs have asked you to enjoin because the Kentucky Supreme Court has said that without asserting a claim against those rules and going through the relevant analysis, it's error to enjoin those rules. And for those reasons, Your Honor, we'd ask that the court grant the injunction.

(45:11 - 45:19)

Thank you. Your Honor, may I speak on behalf of Mr. McAuley for a minute? We are so far beyond time. I'm going to give you two minutes, and then we've got to wrap it up.

(45:19 - 45:36)

You just waived, and I'm below two minutes. Judge, the plaintiffs had jointly filed yesterday those findings that were put in the record, and there's a hard copy for you. Mr. President, on behalf of Mr. Afari, Judge, we heard Coach Kelsey say let's be fair and let's stop the chaos.

(45:36 - 45:46)

You heard Coach Gates say let's preserve opportunities. I think what you heard from Mr. Afari is all about opportunities. I'm focused on this irreparable harm issue.

(45:48 - 46:07)

Over the years dealing with injunction hearings and restraining orders, some of us have grappled with what is irreparable harm. We know it's not money-related, but ultimately everything may become money-related. But in this case, since the Court of Appeals dissolved the restraining order, I realize what irreparable harm is.

(46:08 - 46:20)

It's South Carolina. It's LSU. Imagine being Mr. Afari, who was able to play against South Alabama based upon this court's restraining order, and he's the lead tackler.

(46:20 - 46:35)

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Then imagine he's standing on the sidelines during two of the biggest games in decades that the University of Kentucky football team has had, the most recent LSU game. Nearly everybody in the stadium crashed the field. What were they doing? They were hugging every player who was in uniform.

(46:36 - 46:39)

He was not in uniform. He may have been on the field, but he couldn't play. He couldn't participate.

(46:40 - 46:50)

That is irreparable harm. This court, no matter how great this court is, you can never give that back to Mr. Afari. No amount of money will ever give that back to Mr. Afari.

(46:50 - 47:14)

One of the most interesting things about that in the long-term impact is Mr. Afari will never be interviewed 25 years from now on some look-back on the greatest plays of the LSU game in 2026 and say, Alex, tell us about that play. Why? Because he wasn't in it. I will note that the Court of Appeals opinion, in its 26 pages that it took to tell us all, there's no evidence.

(47:15 - 47:39)

The last sentence that Judge Combs penned is, to be clear, nothing stated herein precludes the respondents from a proper motion prospectively seeking CR 6504 relief, i.e. a temporary injunction from the circuit court. This is an interim order regarding an interim appeal. We believe this court can do what this court chooses based upon the evidence that it heard today.

(47:39 - 47:50)

The evidence that it heard today from Mr. Afari is that Mr. Afari is eligible under the rule that we're talking about, this 12.6 rule. He's eligible. He fits the age.

(47:50 - 47:59)

He fits the class. He's eligible. The status quo for Mr. Afari is to be eligible based upon the rule from June 23rd.

(47:59 - 48:10)

He enrolled in school August 4th. He deserves to be treated under the rule. Why it's all confusing, why everybody's going off on these tangents, I don't quite understand.

(48:11 - 48:26)

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Why everybody wants to interpret something that's plain and clear in a different way, I do not understand. I think the court gathered that before. In closing, what I would point out to the court, the Hopkins case, the counsel pointed out to the court, arbitrariness.

(48:27 - 48:38)

That's what we're seeing here. We're seeing a plain and unambiguous provision in a contract that's being treated arbitrarily. It's being interpreted by them arbitrarily.

(48:38 - 48:44)

It says what it says. We rely on the court to review it, read it, determine what it says. It says what it means.

(48:44 - 49:01)

It means what it says. I'll close with pointing out to the court that every one of the plaintiffs, in this case, is one practice, one play, one snap, one game away from success and greatness. That's why they all deserve an injunction.

(49:01 - 49:06)

We appreciate your time today. Thank you, Mr. Griffin. All right, all.

(49:06 - 49:28)

Thank you all for your presentation this morning, this afternoon. As we discussed earlier, in order for the court to properly prepare its factual findings, it had to take evidence, which is what we did today. I have given counsel an opportunity to supplement the evidentiary presentation with verified affidavits, as was referenced by the Court of Appeals.

(49:29 - 49:47)

Please get those in as quickly as possible so that the court can get to work on its required duty of providing written findings of fact and conclusions of law. As much as I know many people would like for the court to rule here on the record, it simply cannot. It's not allowed to.

(49:47 - 50:01)

There must be written findings in support of its decision. So I will endeavor, once those affidavits are received, to get to work and get a decision out as quickly as possible for all involved. Your Honor, one question on the affidavits.

(50:01 - 50:08)

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Yes, sir. In many jurisdictions, we can do declarations. The NCAA in the past has not objected to that.

(50:08 - 50:30)

I know that's not traditional here. If they don't object, can we do declarations to speed things along where they don't have to get a notary? Or are we absolutely required? A Kentucky has got to be an affidavit with a notary. I'm not going to purport to speak for the Court of Appeals, but the NCAA has no objection to the evidence coming out through the declaration.

(50:30 - 50:42)

Very well. Hearing no objection, I believe that that would suffice. I know the Court of Appeals opinion did reference verified notarized affidavits, but without an objection, I think that that would be fine.

(50:42 - 50:45)

Thank you, Your Honor. Okay. Thank you all.

(50:45 - 51:03)

Thank you, Your Honor. Thank you.

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RESPONDENTS' APPENDIX

TAB K

Notice of Filing Supporting Affidavits and Declarations, Wells v. NCAA, No. 26-CI-007009 (Jefferson Cir. Ct. filed Oct. 16, 2026)

Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

NOTICE OF FILING SUPPORTING AFFIDAVITS AND DECLARATIONS

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Come now the *Wells* Plaintiffs, by undersigned counsel, and hereby notifies the Court of the filing of the attached affidavits and declarations from the following witnesses who Pla9ontiff intended to call to testify during the injunction hearing on October 14, 2026, but could not testify due to time constraints:

1. Declaration of Plaintiff Resse Ragland (women's track and field/cross-country, U. of Delaware) and supporting affidavit of counsel pursuant to CR 43.13.
2. Declaration of Plaintiff D'Angelo Hutchison (football, U. of Cincinnati) and supporting affidavit of counsel pursuant to CR 43.13.
3. Declaration of Plaintiff Katie Fichtner (field hockey, Ohio State) and supporting affidavit of counsel pursuant to CR 43.13.
4. Declaration of Plaintiff Kristina Paegle (Indiana, swimming) and supporting affidavit of counsel pursuant to CR 43.13.
5. Declaration of Coach John Long (Indiana, swimming).
6. Affidavit of counsel pursuant to CR 43.13 on behalf of Plaintiff Donovan Oday (Troy, men's basketball).
7. Affidavit of counsel pursuant to CR 43.13 on behalf of Plaintiff Garrett Helsel (Xavier, baseball)

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Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

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Plaintiffs submit these testimonies as additional evidence of the irreparable harm they will suffer from the NCAA's arbitrary decision to deny eligibility to members of the Class of 2022, despite the rule change that went into effect this year grating all tendent athletes a fifth year of eligibility.

Respectfully submitted,

/s/ Kirk A. Laughlin
Hans G. Poppe, KY Bar No. 88530
Kirk A. Laughlin, KY Bar No. 95596
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-and-

/s/ Ryan Downton
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Ryan@TheTexasTrialGroup.com
*Ryan Downton is licensed in Texas, not Puerto Rico
Counsel for Wells Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2026, a true and accurate courtesy copy of the foregoing was filed with the Court's e-Filing system, with notice sent out to all counsel of record:

/s/ Kirk A. Laughlin
Counsel for Wells Plaintiffs

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

DECLARATION OF PLAINTIFF
REESE RAGLAND

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes now Reese Ragland, a Plaintiff in the above-styled action, and hereby declares and certifies as follows:

1. My name is Reese Ragland and I run cross country and track for the University of Delaware.
2. I am in the class of 2022 and redshirted my outdoor season of senior year track to be able to have one season for a fifth year.
3. My sport is unique in that I could train all year with my team who is competing all year, but under the ever-changing NCAA rules I sometimes am able to run with my team before March when the outdoor season begins.
4. I have gotten the opportunity to race twice with my team during cross country this fall, representing the University of Delaware across my chest on my shirt.
5. After I had raced a second time I was told I was ineligible once again after the Kentucky Court of Appeals order. I had to tell my teammates that I wasn't able to race or travel with them anymore until further notice. I had to disappoint them as their faces dropped and as they asked me if anything had changed for me to be able to compete with them again, every single practice.
6. I thought I would only have outdoor track, but the NCAA gave me hope when they made

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changes toward a new 5-for-5 rule for collegiate competition.

7. I had been inspired by my teammates and opponents before me who took a 5th or 6th year to further their athletic and academic careers.
8. I also have advertised this opportunity to all of my teammates who are at least one year younger to think about using their 5th year to be able to not only compete but to maximize the opportunities the NCAA has granted them.
9. I hope this Friday, October 16, that I will be able to run with my team and lead them the way the 5th year athletes have led me in the past.
10. I hope the Court sees the unfairness shown to my class as the past few classes before us have been granted these five years and every class following us will as well.

I, Reese Ragland, declare under penalty of perjury that the factual statements contained above are true and correct to the best of my knowledge.



DATE: 10/15/2026

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v. **AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13**

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. The above declaration from Plaintiff Reese Ragland is a true and accurate reflection of the testimony counsel anticipated elucidating from Plaintiff had they had the time to testify during the injunction hearing on October 14, 2026.
2. Pursuant to CR 43.13, the undersigned affirms that Plaintiff Reese Ragland was only available remotely via Zoom on October 14, 2026 and was not within Jefferson County and is therefore absent for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

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Theresa Marie Shultz
Notary Public, State-at-Large

My Commission Expires: 2-17-27



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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

DECLARATION OF PLAINTIFF
D'ANGELO HUTCHINSON JR.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes now D'Angelo Hutchinson Jr., a Plaintiff in the above-styled action, and hereby declares and certifies as follows:

1. My name is D'Angelo Hutchinson Jr. I am a football player at the University of Cincinnati and was part of the Louisville football recruiting class of 2022.
2. I attended the injunction hearing on October 14, 2026. I wanted to explain my personal experience and provide facts to the Court, but there was not enough time for me to do so during the hearing.
3. During my time at Louisville, I competed alongside and against older players who had more college football experience, including 5th and 6th years. Some of the older safeties I competed with and against were Josh Minkins Jr, M.J. Griffin, Cam'ron Kelly, and Devin Neal.
4. During my first two years at Louisville, I had limited playing time and mainly contributed on special teams. There was a lot of competition at the safety position, including older 5th and 6th year players with more experience. I continued working hard and trying to earn my opportunity to play more on defense.
5. Playing this season would give me the opportunity to continue my college football career at Cincinnati and show what I can do on the field. I have put years of work into football,

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and I want the opportunity to compete, improve my game, and continue pursuing my goal of playing professionally.

6. I believe I can help my teammates through my experience, work ethic, and leadership. After spending four years playing college football at Louisville, I have learned a lot about preparation, competition, and staying focused through challenges. I can share what I have learned with the younger players, especially the safeties, and help them develop on and off the field.

7. If I am unable to play this season, I will lose an opportunity that I cannot get back. I have already spent four years working toward my goals in college football. Missing this season could affect my development, my ability to compete with my teammates, and my future opportunities to play professionally.

8. I also played through a labrum tear in my shoulder last season and continued competing through the entire season rather than sitting out. Playing through that injury was difficult, and I believe it affected my NFL journey because scouts evaluate players based on their performance and physical condition. I have already had to push through an injury while trying to show what I can do, and losing this season would take away another opportunity to demonstrate my ability. I cannot go back and make up these games later. The NCAA's rule seems to be punishing me for choosing not to redshirt during my injury last year.

9. This issue is urgent because football season has already started and I have a game this Saturday vs West Virginia. Every game I miss is an opportunity I cannot get back. The longer I must wait for a decision, the less time I have to compete and contribute to the team this season.

10. I have spent four years at Louisville working toward my goal of playing college football.

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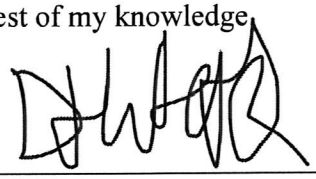
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During my first two years, I had limited playing time and mainly contributed on special teams, but I continued working hard and stayed committed to the game. Last season, I played through a labrum tear in my shoulder and continued playing for the entire season instead of sitting out. I kept competing despite the injury because I wanted to be there for my team and keep pursuing my goals. I believe the injury and the effect it had on me impacted my NFL journey and how scouts were able to evaluate me. Even with those challenges, I continued working toward an opportunity. I am now at Cincinnati and ready to compete and contribute to the team. I respectfully ask the Court to consider the time I have invested in football, the injury I played through, and the opportunities I could lose if I am not allowed to play this season.

I, D'Angelo Hutchinson Jr., declare under penalty of perjury that the factual statements contained above are true and correct to the best of my knowledge.



DATE: 10/15/26

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v. **AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13**

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. The above declaration from Plaintiff D'Angelo Hutchison is a true and accurate reflection of the testimony counsel anticipated elucidating from Plaintiff had he testified during the injunction hearing on October 14, 2026.
2. Pursuant to CR 43.13, the undersigned affirms that, following the injunction hearing, Plaintiff D'Angelo Hutchison departed the courtroom and was no longer within Jefferson County and is therefore absent from the County for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

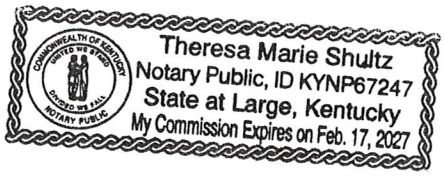
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Theresa M. Shultz
Notary Public, State-at-Large

My Commission Expires: 2-17-27



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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

DECLARATION OF PLAINTIFF
KATIE FICHTNER

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes now Katie Fichtner, a Plaintiff in the above-styled action, and hereby declares and certifies as follows:

1. My name is Katie Fichtner and I am a field hockey player at The Ohio State University in the Class of 2022.
2. I was in attendance during the injunction hearing on October 14, 2026, before the Court and intended to provide the following facts under oath before the Court; however, time constraints prevented me from doing so.
3. I competed against 5th and 6th year players all four years of my undergrad.
4. I struggled for playing time my freshman year against 5th years, but was lucky to get playing time when one of the girls starting before me tore her ACL.
5. Competing this season will benefit me this season for many reasons, but the biggest is to spend the last couple of weeks competing with the girls I love.
6. Participating this season will benefit my team, as they voted me captain this season for the third year in a row.
7. I will face irreparable harm of missing the ability to compete to play in the Big Ten Championship tournament, which is being hosted at my school this year, and in hopes to make the NCAA tournament. These memories and times will not be able to be given back

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to me.

8. This issue is extremely urgent, as I have a game tomorrow afternoon and am currently on the bus to Penn State.

9. Last year, I played with a 6th year player on my team who was granted a 6th year to compete for field hockey, even though she exhausted her five years of eligibility in ice hockey, and played 3 years of field hockey.

I, Katie Fichtner, declare under penalty of perjury that the factual statements contained above are true and correct to the best of my knowledge.

DATE: 10/9/2026

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v. **AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13**

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. The above declaration from Plaintiff Katie Fichtner is a true and accurate reflection of the testimony counsel anticipated elucidating from Plaintiff had she testified during the injunction hearing on October 14, 2026.
2. Pursuant to CR 43.13, the undersigned affirms that, following the injunction hearing, Plaintiff Katie Fichtner departed the courtroom and was no longer within Jefferson County and is therefore absent from the County for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

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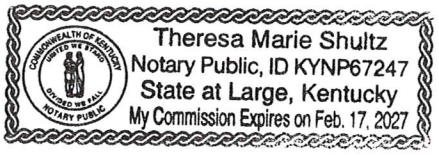
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Theresa Marie Shultz
Notary Public, State-at-Large

My Commission Expires: 2-17-27



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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

DECLARATION OF WITNESS
COACH JOHN LONG

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes now John Long, the Associate head swim coach at Indiana University, and hereby declares and certifies as follows:

1. My name is John Long and I am the associate head coach of the swimming team at Indiana University.
2. Kristina Paegle is a student-athlete on the swim team and is in the Class of 2022.
3. I was in attendance during the injunction hearing on October 14, 2026, before the Court and intended to provide the following facts under oath before the Court; however, time constraints prevented me from doing so.
4. During Kristina's time at Indiana she faced 5th and 6th year athletes on the national stage and also within our team. In addition, she had to race again athletes that had been pros and came back to college swimming.
5. Due to the number of 5th year athletes in the sport, she just missed being a 1st team All American and was competing against older athletes. She was 9th and 10th during multiple years and it takes top 8 to be 1st team all-american. Without the 5th years she would have been top 8.
6. Kristina was planning on getting her masters degree and is working toward making the Olympic team in 2028. By getting to be on the team, she is able to receive a scholarship

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for her education and alleviate the financial stress of preparing for that competition without any financial help. In addition, it gives her access to help with our medical team, nutrition, and sport psychology, all of which she would not have access to if she wasn't an active member of the team. Financial stress is the biggest reason athletes have to give up on their Olympic dreams and this gets her 1 step closer to her goals.

7. Kristina was a captain for the team during the 25-26 season and was a major impact on our team culture. She is a hard working and caring individual and makes the people around her better. The team would be benefit dramatically with her leadership.
8. If Kristina is unable to compete she will be out approximately $60,000 for the year between her cost of education and training expenses. This would have a major impact on her ability to make an Olympic team in 2028. A consistent and financially stable situation is critical to athlete success.
9. It is critically time sensitive that we work through these proceedings. We have a competition Friday, October 16th and also the following week on Friday, October 23rd. This is a very busy time of our season and it's important that she gets these opportunities so it provides Kristina with a fair number of competitions to prepare for the season.
10. As Kristina's coach I have seen a large number of athletes compete in their 5th year of eligibility and I know that all future athletes will receive 5 years. I think it would be unfair to denied her this opportunity. In addition, as a coach I frequently read the rule book. The rule book changes shows that athletes have 5 years of eligibility, without any stipulations as to when this would start. As the rule is written, Kristina should be eligible to compete.

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I, John Long, hereby I declare under penalty of perjury that the factual statements contained above are true and correct to the best of my knowledge.

Signed by:
John Long 10/15/2026
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DATE: 10/15/2026

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

DECLARATION OF PLAINTIFF
KRISTINA PAEGLE

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes now Kristina Paegle, a Plaintiff in the above-styled action, and hereby declares and certifies as follows:

1. My name is Kristina Paegle and I am a swimmer at Indiana University in the Class of 2022.
2. I was in attendance during the injunction hearing on October 14, 2026, before the Court and intended to provide the following facts under oath before the Court; however, time constraints prevented me from doing so.
3. During my time as a member of the Indiana University swimming and diving team, I competed both with and against 5th and 6th year seniors.
4. Competing alongside and against 5th and 6th year senior athletes affected the competitive opportunities available to me during my collegiate career, including missing out on opportunities to become an NCAA All-American and placing top 8. These athletes had additional years to train, develop, and compete at the collegiate level, while I was competing within the traditional period of collegiate eligibility.
5. Being permitted to compete this season would provide significant personal benefits to me. Continuing to train and compete in the collegiate environment is important to my goal of making the 2028 Olympic Team and would allow me to continue developing as an elite-level swimmer. Competing for Indiana University would also provide me access to

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coaching, training facilities, nutrition, sports medicine (especially related to treating my asthma), and other medical resources, and financial support associated with being a collegiate student-athlete. These resources would substantially reduce the financial burden I would otherwise face while continuing my education, training, and competitive swimming career. In addition, another season would allow me to continue developing personally, professionally, and as a leader.

6. My participation this season would also benefit my teammates and the Indiana University swimming and diving program. I served as a team captain last season and have developed experience leading and supporting my teammates in a highly competitive environment. If permitted to compete, I would continue mentoring younger student-athletes, particularly the freshmen and sophomores as they adjust to collegiate athletics. I would also contribute to our team and relay culture, placement at championship meets, and provide experienced leadership during practices and competitions, and help our team pursue its competitive goals. My experience at the collegiate and championship levels would allow me to serve as a resource and mentor for younger members of the team.

7. If I am unable to compete this season, I will experience significant harm that cannot be fully remedied later. I estimate that the financial impact of losing the support and resources associated with competing for Indiana University would be approximately $50,000-$60,000 for the year, including tuition for my master's degree, medical and sports medicine expenses, competition and travel expenses, food, rent, training, and other costs associated with continuing my education and competitive swimming career. I would also lose a season of high-level collegiate training and competition during a limited period of my athletic career. That lost competitive development is significant because I am continuing to pursue

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my goal of making the Olympic Team. I cannot recreate time or opportunities for these missed factors in a later year.

8. This matter is extremely urgent for me because my competitive season has already started, I have already competed at a swim mee this season and missed a chance to compete last weekend. I am scheduled to compete tomorrow, October 16th, 2026, at 5:30pm PST. Entries are due at 12am before competition. Without immediate relief, I will begin losing. Opportunities to compete this season including this upcoming competition.
9. When I began my collegiate athletic career, I expected that NCAA eligibility rules would be applied fairly and equally to the student-athletes competing under them. During my career, I competed with and against athletes who received fifth and sixth years of eligibility, which affected the competitive landscape and opportunities available to athletes like me. Now, every other athlete in classes below me get the opportunity to have a 5th year and that is the new normal. I am asking for the opportunity to compete this season and to receive fair and equal treatment regarding my own eligibility. The ability to compete would have a meaningful impact not only on my education and financial circumstances, but also on my continued development as an athlete, my Olympic aspirations, and my ability to contribute as an experienced leader and mentor to my teammates.

I, Kristina Paegle, declare under penalty of perjury that the factual statements contained above are true and correct to the best of my knowledge.

_____

DATE: October 15th, 2026

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v. **AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13**

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. The above declaration from Plaintiff Kristina Paegle is a true and accurate reflection of the testimony counsel anticipated elucidating from Plaintiff had she testified during the injunction hearing on October 14, 2026.
2. Pursuant to CR 43.13, the undersigned affirms that, following the injunction hearing, Plaintiff Kristina Paegle departed the courtroom and was no longer within Jefferson County and is therefore absent from the County for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

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Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

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Theresa Marie Shultz
Notary Public, State-at-Large

My Commission Expires: 2-17-27

Theresa Marie Shultz
Notary Public, ID KYNP67247
State at Large, Kentucky
My Commission Expires on Feb. 17, 2027

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13 ON BEHALF OF PLAINTIFF DONOVAN ODAY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. I am a council of record for Plaintiff Donovan Oday.
2. Plaintiff Oday was in attendance during the injunction hearing on October 14, 2026, before the Court and intended to provide the following facts under oath before the Court; however, time constraints prevented him from doing so.
3. Plaintiff Donovan Oday played basketball at McNeese State University in the 2022-23 season, at California State University, Fullerton in the 2023-24 and 2024-25 seasons, and
4. at Northern Kentucky University in the 2025-26 season. He competed for playing time against Zach Visentin, John Mikey Square, Zach Scott, and Tyron McMillan, who were in their fifth seasons of competition, and Zion Richardson, who was in his sixth season.
5. Plaintiff is currently enrolled at Troy University in Alabama and intends on playing men's basketball for Troy if granted a fifth year of eligibility.
6. Plaintiff will suffer irreparable harm if he is not permitted to play by being denied an opportunity to continue his college career, develop as a player for a potential professional basketball career, and develop the lifetime bonds, skills, and relationships available through college sports. a

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7. Pursuant to CR 43.13, the undersigned affirms that, following the injunction hearing, Plaintiff departed the courtroom and was no longer within Jefferson County and is therefore absent from the County for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

Notary Public, State-at-Large

My Commission Expires: 2-17-27

Theresa Marie Shultz
Notary Public, ID KYNP67247
State at Large, Kentucky
My Commission Expires on Feb. 17, 2027

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Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

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NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

LEVAVIUM WELLS II, *ET. AL.* PLAINTIFFS

v.

AFFIDAVIT OF COUNSEL PURSUANT TO CR 43.13 ON BEHALF OF PLAINTIFF GARRET HELSEL

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DEFENDANT

Comes the undersigned affiant, Kirk A. Laughlin, pursuant to Civil Rule 43.13, and hereby states as follows:

1. I am a council of record for Plaintiff Garrett Helsel.
2. Plaintiff Helsel was in attendance during the injunction hearing on October 14, 2026, before the Court and intended to provide the following facts under oath before the Court; however, time constraints prevented him from doing so.
3. Plaintiff Garrett Helsel played baseball at Southern Illinois University from 2022-25, then at Xavier University in the 2025-26 season. He competed for playing time against Taylor Brininga, John Stallcup, Nick Terrell, Luke Hammond, Evan Vassilou, and Cooper Robinson, each of whom was in his fifth season of competition, and Nick Boyle, who was in his sixth season.
4. If granted another year, he intends to remain at Xavier University for the 2026-27 season.
5. Plaintiff will suffer irreparable harm if he is not permitted to play by being denied an opportunity to continue his college career, develop as a player for a potential professional baseball career, and develop the lifetime bonds, skills, and relationships available through college sports.
6. Pursuant to CR 43.13, the undersigned affirms that, following the injunction hearing,

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Filed 26-CI-007009 10/16/2026 David L. Nicholson, Jefferson Circuit Clerk

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Plaintiff departed the courtroom and was no longer within Jefferson County and is therefore absent from the County for purposes of submitting an affidavit under CR 43.13.

Further, this affiant sayeth naught.

VERIFICATION

I, Kirk A. Laughlin, hereby affirm, subject to penalties for the crime of perjury, that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

KIRK A. LAUGHLIN

STATE OF KENTUCKY)
) ss:
COUNTY OF JEFFERSON)

Subscribed and sworn to before me by Kirk A. Laughlin on this 16th day of October 2026.

Notary Public, State-at-Large

My Commission Expires: 2-17-27

Theresa Marie Shultz
Notary Public, ID KYNP67247
State at Large, Kentucky
My Commission Expires on Feb. 17, 2027

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