

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2026-CA-_____

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

DEFENDANT-PETITIONER

v. On Motion from Jefferson Circuit Court, No. 26-CI-7009

LEVAVIUM WELLS III, DONOVAN ODAY, D'ANGELO
HUTCHINSON, KAYDEN CAMPBELL, MARK MITCHELL,
JUSTIN ALLEN, FRED KING, COLIN PORTER, ALBERT
VARGAS FRITO, JABARI MACK, THOMAS CASTELLANOS,
BILLY SMITH, SKYY CLARK, SET TRIMBLE, REESE
RAGLAND, JAYLEN WESTER, RYLEN SU'A-FILO,
MACKAVELLI MALOTUMAU, JOSIE GILVIN, JAWAUN
NORTHINGTON, CLAUDIA HOFMEISTER, LEVI SANDIDGE,
MACY WHISENAND, CARDELL BAILEY, DAMONI HARRISON,
EMMANUEL OKORAFOR, GARRETT HELSEL, JALYN BROWN,
JAVON JACKSON, KATIE FICHTNER, KRISTINA PAEGLE,
ORLANDO LOVEJOY, REGAN DANCER, OLIVIA ALBERT,
AIDAN HADAWAY, CAZEEM MOORE, ZOE HAMMMOND,
SOPHIE HARLAND, ALICE OTIS, DAVION CUNNINGHAM,
SANIAH TYLER, ALEX AFARI, JR., AND KALIB PERRY

PLAINTIFFS-RESPONDENTS

RAP 20(B) MOTION FOR RELIEF FROM TEMPORARY INJUNCTION

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CERTIFICATE OF SERVICE

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/s/ Bethany A. Breetz

Bethany A. Breetz

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INTRODUCTION

This is the second time the National Collegiate Athletic Association (the NCAA), movant here and defendant below, has sought relief from a Jefferson Circuit Court order granting an injunction to former student-athletes from the class of 2022 that upended the status quo and provided those student-athletes a fifth-year of eligibility despite the applicable rules. (**Appx.1** 10/16/26 Opinion Granting Temporary Injunction; **Appx.2**, 8/21/26 Order; **Appx.3**, *NCAA v. Wells*, 2026-CA-1107, 10/2/26 Order Granting Interlocutory Relief.) This Court reversed the injunction the first time, and the NCAA requests that it do so again.

Plaintiffs entered college in 2022. During each of the four years of their collegiate athletic careers, the NCAA Bylaws provided that they were entitled to participate in up to four seasons of intercollegiate competition over a five-year period, with various exceptions. After the exceptions became confusing and complicated, resulting in a host of lawsuits, the NCAA simplified its eligibility rule. But none of the previous exceptions applied to Plaintiffs and each and every one of them completed four years of intercollegiate competition.

In June 2026, after Plaintiffs had already concluded their collegiate athletic careers, the NCAA Division I Cabinet unanimously voted to adopt a far simpler age-based eligibility rule effective August 1, 2026. Under the new rule—the “Age-Based Eligibility Rule”—student-athletes entering college for the first time and those who had eligibility remaining under prior rules will have a five-year period to participate in intercollegiate competition, without a separate seasons-of-competition limit. That five-year period begins on the first day of the regular academic term in which the student-athlete first enrolls full-time at a collegiate institution, or the first day of the regular academic term after their nineteenth birthday, whichever comes first. The

new rule also eliminated all waivers other than for pregnancy, military service, and religious missions.

The Cabinet unanimously agreed that the new rule would not apply retroactively, meaning it does not apply to student-athletes whose eligibility expired following the 2025–26 academic year (students who competed in four seasons of college competition in any one sport). That decision is implicit in the text of the new rule in the Manual—the Cabinet adopts and enacts the NCAA’s DI eligibility rules through a legislative process and, as this Court has noted, legislation is presumptively prospective. But it is also expressly stated in the legislative proposal the Cabinet voted to approve. And if there were any doubt that the new eligibility rule does not apply to former student-athletes whose eligibility expired before the rule’s effective date, that doubt is dispelled by the plain text of the NCAA’s DI Manual, which make clear that “[o]nly a student-athlete who meets the governing athletics eligibility legislation and interpretation is eligible.” (Appx.8, Bylaw 12.01.1.)

Some former student-athletes who exhausted their eligibility during the 2025-26 school year after competing in college sports for four years sought injunctive relief in Jefferson Circuit Court because the new rules do not apply to them. They claim that they are third-party beneficiaries of both the new rules and the old ones, and that the NCAA has somehow “breached” these rules by refusing to give them an extra season of competition. They advance two theories for their breach of contract claims: (1) the NCAA has “breached” the new rule by refusing to deem them eligible because they claim the new rule does not specifically and explicitly say it does not apply to them (even though that argument inverts the presumption against retroactivity, and the prospective implementation is also made clear elsewhere in the rules and the enacting legislation), and (2) the NCAA “breached” other provisions of its Bylaws

containing broad and vague statements about fairness by enacting an eligibility rule that excludes them. According to Plaintiffs, because the NCAA previously granted waivers for an additional year of competition to different student-athletes with different circumstances (for example, those whose collegiate careers were interrupted by the COVID-19 pandemic or who began their college careers at junior colleges), it was “arbitrary” and “unfair” for the NCAA to craft a rule that did not also grant Plaintiffs an extra year to play college sports.

Plaintiffs’ theories are riddled with problems. First, this Court’s opinion dissolving the previous temporary injunction in this case stated unambiguously that the “purported latest version of Bylaw 12.6 . . . *does not apply to the respondents*” (Appx.3 at 20–21), and that ruling is law of the case that the NCAA’s new age-based eligibility rules do not apply to Plaintiffs. In addition, under Kentucky law Plaintiffs are plainly not third-party beneficiaries with standing to sue upon the NCAA’s eligibility rules. More fundamentally, Plaintiffs failed to present evidence establishing the most basic element of their claim—the existence of a contract or breach thereof. Plaintiffs’ parade of red herrings—that other student-athletes differently situated received additional eligibility—does not come close to showing that the NCAA failed to meet its alleged obligations with respect to Plaintiffs. Even if the Manual were a contract, Plaintiffs ignore the well-settled framework that applies to claims challenging the implementation and application of voluntary associations’ bylaws, under which their theories are not viable. And, in any event, none of the Plaintiffs’ alleged injuries resulted from actions that occurred in or were directed at Kentucky, and many Plaintiffs’ claims have no conceivable connection to this Commonwealth or Jefferson County. Yet they obtained injunctive relief, prohibiting the NCAA from enforcing its rules and allowing them to play an extra year of college sports. (Appx.1.) For a host of reasons, the injunction should be vacated.

STATEMENT OF THE CASE

A. The NCAA's previous rules allowed student-athletes to compete in four seasons of intercollegiate competition in any one sport.

The NCAA is a voluntary, self-governing association composed of member colleges, universities, and athletic conferences that come together to administer college athletics, led by its member schools, all of which are 4-year institutions. (**Appx.4**, Affidavit of Geoff Silver, ¶¶4–5.) The NCAA's employees work from the NCAA's headquarters in Indianapolis, Indiana, to provide support to member schools. (*Id.*, ¶9.) Each NCAA Division promulgates its own rules and operating guidelines. (*Id.* ¶6.) Representatives of the Division I member schools (the NCAA DI Cabinet) establish the policies and rules governing Division I competition, which are set out in the DI Manual. (*Id.* ¶¶8, 16.) The NCAA DI Cabinet is comprised of member representatives, including athletic directors, conference commissioners, faculty representatives, and student-athlete representatives. (*Id.* ¶16; **Appx.5** Commissioners' Statement, ¶3.)

Recognizing that the typical college experience lasts four years, but is sometimes extended, the NCAA's "Five-Year Rule" permitted student-athletes to compete in up to four seasons of intercollegiate athletic competition over a 5-year period. (**Appx.7**, Bylaw 12.6 from the 2025-26 DI Manual; Appx.4, ¶¶14–15.) The NCAA's eligibility rules also provided a variety of possible "waivers" of the Five-Year Rule, potentially permitting student-athletes to obtain an additional season of eligibility or an extension of their 5-year eligibility clock under various defined circumstances. (Appx.7 at 12.6.1.7, 12.6.4, 12.6.5, 12.6.6; Appx.4, ¶15.)

B. The NCAA's Division I eligibility rule is simplified.

Those waivers became a source litigation from student-athletes seeking additional seasons of competition, with lawsuits increasing after a revenue sharing model was created to provide payments to Division I student-athletes in collegiate sports, leading to destabilization in

the rules governing college sports. *See, e.g. Pavia v. NCAA*, 760 F.Supp.3d 527 (M.D.Tenn. 2024) (holding that eligibility rules counting junior college competition toward the 4-season limit on participation in Division I athletics was an unreasonable restraint of trade under the Sherman Act). Accordingly, on June 24, 2026, the Cabinet adopted a new age-based eligibility model. (Appx.4, ¶16.) Effective August 1, 2026, student-athletes now have 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 is earlier, and student-athletes may compete during that five-year period of eligibility without restriction, provided they meet all other eligibility requirements. (Appx.4, ¶17; **Appx.8**, 2026-27 DI Manual at Bylaw 12.6.) Waivers have been eliminated under this new rule other than defined cases involving pregnancy, military service, and religious missions. (Appx.4, ¶17; Appx.8 at Bylaws 12.6.6, 12.6.7.) This new rule was enacted through the prescribed legislative process for amending the DI Manual. (Appx.4, ¶18; Appx.7, Bylaw 9.2.) The new rules took effect on August 1, 2026, and are part of the 2026-27 NCAA Division I Manual. (Appx.4, ¶16; Appx.8 at Bylaw 12.6.)

The new eligibility rule is not retroactive and does not apply to student-athletes who exhausted their eligibility under the previous rules. The legislation approved by the Cabinet, Proposal 2026-44, stated this explicitly:

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.

(Appx.9, Proposal 2026-44.) Moreover, because the rules are legislation, the default presumption is that they operate prospectively. (Appx.3 (Ct. App. Order) at 19–20.) And while the Cabinet could have designed the new rules to have retroactive application, it chose not to.

The Cabinet had good reason for its decision. Applying the new rules retroactively would create chaos, destabilize rosters, and disrupt settled expectations of eligible student-athletes and NCAA member institutions. (Appx.4, ¶21; Appx.5, ¶9; **Appx.6**, DI Cabinet Statement.) When the Cabinet voted to approve the legislative proposal in June 2026, in most sports, NCAA member institutions had already made decisions about who would be on their roster and how much those student-athletes would be paid in revenue sharing dollars contributed by the member institutions. (*Id.*) Both incoming and transfer students had chosen schools to attend based, at least in part, on their opportunity to earn a roster spot and playing time. (*Id.*) Roster spots, playing time, and revenue sharing payments are all fixed. (*Id.*) They are zero-sum. (*Id.*)¹

The Cabinet and NCAA were clear and consistent that the new eligibility rule would not apply to student-athletes who had exhausted their eligibility under prior rules. On April 15, 2026, the Cabinet first announced that it was considering adoption of an age-based eligibility concept, stating that it “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.” (Appx.10, Report of the NCAA Div. I Cabinet, April 14–15, 2026.) On April 27, 2026, the NCAA Board of Directors first announced the planned implementation concept for the age-based eligibility model. The Board indicated that one of the “key elements to be included in future changes” was that “existing rules” would remain in place “for student-athletes competing in the 2025-26 academic year; *new rules are not expected to apply retroactively to student-*

¹ The United States Supreme Court has recently explained that “sports are generally zero sum,” because “someone wins and someone loses” with any change; any time an athlete makes a team, that athlete “takes a roster spot from another athlete.” *W. Virginia v. B. P. J. by Jackson*, 146 S. Ct. 2356, 2372, 225 L. Ed. 2d 1040 (2026).

athletes whose eligibility is or will be completed by the spring of 2026.” (Appx.11, Report of the NCAA Division I Board of Directors, April 27, 2026 (emphasis added); Appx.12, NCAA Staff Governance Update.)

A month later, the Cabinet published implementation guidance for how the new age-based eligibility rule was expected to apply, if passed:

	Which eligibility model applies?
Current student-athletes who initially enrolled full time at any collegiate institution (e.g., two-year, international, Division II/III) prior to the 2026-27 academic year.	
Student-athletes with eligibility remaining (time left in their period of eligibility and seasons of competition remaining).	Either the current rules OR new age-based model, whichever is most beneficial to the student-athlete. <i>*Any waivers (e.g., extensions, hardship waivers, delayed enrollment) for current student-athletes based on the current legislation must be submitted no later than July 31, 2026, and will not be available for competition or extenuating circumstances occurring beyond the 2025-26 academic year.</i>
Student-athletes who exhausted eligibility in 2025-26 (no time left in their period of eligibility and no seasons of competition remaining).	Current rules; no longer eligible.
Student-athletes who used final season of competition during 2025-26 but have time remaining in their period of eligibility.	Current rules; no longer eligible.

(Appx.13, Report of the NCAA Division I Cabinet May 22, 2026.) The report further reflects that “[a]s previously shared in the NCAA Division I Board of Directors April 27, 2026, meeting report the model *will not apply retroactively to student-athletes whose eligibility is or will be completed by spring 2026.”* (*Id.* (emphasis added); Appx.14, NCAA Staff, Governance Update, “Division I Cabinet continues discussions of age-based collegiate eligibility model,” May 22, 2026 (explaining that for “Student-athletes whose fourth season of collegiate eligibility was completed by spring 2026” they would have “no additional eligibility”).)

On June 5, 2026, the Cabinet again met to discuss the age-based eligibility model and published an updated implementation chart that contained the same guidance for student-athletes who had utilized four seasons of competition: they would be “no longer eligible.” (Appx.15,

Report of the NCAA Division I Cabinet June 5, 2026; Appx.16, NCAA Staff, Governance Update, “DI Cabinet modifies age-based eligibility concept,” June 5, 2026.)

The Cabinet’s intent was clear from the face of the approved legislation and its statements made in the leadup to that approval: the new model does not apply to student-athletes whose eligibility had already been exhausted under prior rules.

C. Student-athletes who played four years of college sports and graduated in 2026 want the new rule applied retroactively to them.

On August 12, 2026, 10 student-athletes who graduated high school in 2022 and who participated in four seasons of intercollegiate basketball, football, or baseball competition filed suit against the NCAA in Jefferson Circuit Court. (**Appx.17**, Complaint.) Plaintiffs claim that it is unlawful for the NCAA to not retroactively apply the new eligibility rule to the high school class of 2022 and sought to enjoin a variety of NCAA rules so that they would be eligible to compete in the 2026-27 season. (*Id.*; **Appx.18**, Motion at 6 and Memo. for TRO and Preliminary Injunction.)

Plaintiffs did not take issue with the new eligibility model in the abstract. Instead, based on a purported breach of contract and violation of the Kentucky Consumer Protection Act, Plaintiffs asked the court to issue a “TRO” and a “preliminary” and permanent injunction enjoining the NCAA from enforcing Bylaw 12.6, or any other bylaw, to preclude them from competing in Division I athletics “in the 2026-27 season on the basis that they have already competed in four seasons of competition” (in other words, ordering the NCAA to apply its 2026-27 eligibility rule retroactively and to make them eligible for another year), enjoining various other rules, and affirmatively ordering “the NCAA to open the transfer portal for all Plaintiffs.” (**Appx.17** at Prayer; **Appx.18** at Memo. 19–21.) Stated another way, although the June 2026 rules did not take away anything from Plaintiffs because they had no fifth season before or after

the June 2026 rule change, Plaintiffs asked the court to compel the NCAA to re-write the effective date provisions of its legislation so that they could play another year.

Plaintiffs conceded Kentucky has no general jurisdiction over the NCAA, asserting instead that Kentucky has specific jurisdiction due to “the damage to Plaintiffs arising out of and related to the NCAA’s contacts with Kentucky.” (Pl. Supplemental Briefing, Appx.20.) Notably, the complaint is devoid of any allegations tying the amendment of Bylaw 12.6 to Kentucky in any way or showing that any purported damage to Plaintiffs had anything to do with the NCAA’s actions in Kentucky. (Appx.17.)

D. The trial court erroneously entered Plaintiffs’ requested injunction, which this Court vacated.

Following a hearing on August 14, 2026, the court granted Plaintiffs’ motion. (Appx.2.) Although the trial court’s opinion styled it as granting a “temporary restraining order,” it was, in substance, a temporary injunction.

The court’s order opened the floodgates. The day of the hearing, the original Plaintiffs moved to amend the complaint to add 3 additional plaintiffs. (Amended Complaint, Appx.21.) Two days after the court’s order, Alex Afari (a University of Kentucky student-athlete with different counsel than the original plaintiffs) sought to intervene and to apply the TRO “and relief” to him. (Appx.22.) On August 26, 2026, the original 13 Plaintiffs filed a motion for leave to file a second amended complaint, adding another 24 prospective plaintiffs to the lawsuit and seeking to expand the injunction to them (and to the 3 Plaintiffs added in the first amended complaint). (2nd Am. Compl., Appx.23; Motion to Modify, Appx.24.) The NCAA opposed both motions. (Appx.25, Appx.26.) After an August 31 hearing, the trial court granted both motions on September 2, 2026. (Appx.27, Order Granting Mot. to Intervene and File 2nd Am. Compl.) The next day, Kalib Perry (with different counsel from the original Plaintiffs and Afari) filed a

motion to intervene, which the trial court granted on September 14, 2026 (Appx.28, Perry Mot. to Intervene; Appx.29, Order Granting Perry Mot. to Intervene).

On October 2, 2026, this Court entered an order vacating the trial court’s injunction. The Court correctly recognized that, among other things, the trial court’s order was a temporary injunction, notwithstanding the court’s styling of it as a “temporary restraining order,” and “based upon insufficient evidence.” (Appx.3 at 21–23.) In reaching those conclusions, this Court rejected Plaintiffs’ argument that under the text of the new Bylaw 12.6, they are eligible for a fifth year. (*Id.* at 20–21.) The Court explained that even assuming the Manual is a contract and Plaintiffs are third-party beneficiaries, “[n]othing in the text of that purported latest version of Bylaw 12.6 or anywhere else in the purported 2026-2027 NCAA Division I handbook . . . provides that this *legislation* was designed to have retroactive application.” (*Id.*) Thus, the new rule “does not apply to the” Plaintiffs. (*Id.* at 21.)

E. The trial court held an evidentiary hearing and entered a new temporary injunction.

After this Court vacated the original injunction, on October 12, the Wells’ Plaintiffs moved to file a Third Amended Complaint naming three additional student athletes who wanted to play tennis at UofL, basketball at Morehead State University, and basketball at Tulane. (Appx.30.) That motion was granted on October 15. (Appx.31.)

The trial court held an evidentiary hearing on October 14, 2026. (DVD of hearing is being filed conventionally.) Eight Plaintiffs testified at the hearing: Jawaun Northington (VR 10/14/26 at 1:11–1:14), Seth Trimble (*id.* at 11:14–11:30), Davion Cunningham (*id.* at 1:15), Olivia Albert (*id.* at 1:20–1:22), Sophie Harlan (*id.* at 1:22–1:25), Regan Dancer (*id.* at 1:26–1:30), Kalib Perry (*id.* at 1:33–1:40), and Alex Afari (*id.* at 1:40–1:49). Two coaches also testified: Pat Kelsey, the University of Louisville men’s basketball coach (*id.* at 11:50–12:17),

and Dennis Gates, the University of Missouri men’s basketball coach (*id.* 12:18–1:11). The court also heard testimony from Isaac Ellis, an incoming freshman basketball player at the University of Louisville. (*Id.* at 11:30–11:33.) Rather than presenting any evidence about the rule itself or its intended effect, the witnesses generally testified to their opinion that not giving an additional fifth year of eligibility to student-athletes in the class of 2022 who used all their eligibility in the four years they were students was unfair. (VR 10/14/26.) Nor did any witness testify that they understood the new rule to give Plaintiffs additional eligibility. *See* RAP 20(D) Motion at 9–10.

At the end of the hearing, the NCAA stated it had no objection to the court considering declarations from Plaintiffs who did not testify at the hearing. (VR 10/14/26 at 2:21–2:22.) Four Plaintiffs submitted declarations: D’Angelo Hutchinson, Reese Ragland, Katie Fichtner (and one of her coaches), and Kristina Paegle. (Appx.32, Pls. Notice of Filing Declarations.) Counsel for two Plaintiffs, Donovan Oday and Garrett Helsel, submitted affidavits “on behalf” of those Plaintiffs, but no declaration or actual statement from Oday or Helsel. (*Id.*) Twenty-seven Plaintiffs neither testified (or had a coach testify about them) nor submitted statements of any kind.

On October 16, 2026, the trial court entered a second temporary injunction granting Plaintiffs’ requested relief. (Appx.1.) The injunction not only required the NCAA to apply its new rule retroactively, but enjoined NCAA transfer rules, professional participation rules, and the rule of restitution—none of which were subject to independent claims for relief, and for which Plaintiffs offered no proof that the rules were illegal, against public policy, or arbitrarily enforced.

ARGUMENT

A. Plaintiffs failed to meet the standard for obtaining a temporary injunction.

Under Kentucky law, a trial court is required to deny injunctive relief unless: (1) the movant “presents ‘a substantial question’ on the underlying merits of the case,” meaning that “there is a substantial possibility that the movant will ultimately prevail”; (2) “the movant’s remedy will be irreparably impaired absent the extraordinary relief”; and (3) “an injunction will not be inequitable,” meaning it “will not unduly harm other parties or disserve the public.” *Price v. Paintsville Tourism Comm’n*, 261 S.W.3d 482, 484 (Ky. 2008) (citing *Cyprus Mountain Coal Corporation v. Brewer*, 828 S.W.2d 642 (Ky.1992) and *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky.App.1978)). Plaintiffs have failed to meet these requirements

B. Plaintiffs do not have a substantial possibility of prevailing on the merits.

Although the trial court found “that Plaintiffs have proven by clear and convincing evidence a substantial likelihood of success on the merits” of their breach of contract claims. (Appx.1. at 13), the trial court is wrong.

1. Plaintiffs’ claims have been foreclosed by the Court of Appeals’ decision dissolving the erroneously entered previous 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, despite the fact that 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. But those claims have been squarely foreclosed by the Court of Appeals’ opinion dissolving the 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.” (Appx.3 at 20–21 (emphasis added).) This Court

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 this Court 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-0748, 2025 WL 1415813, at *6 (Ky. App. May 16, 2025) (quoting *TECO Mechanical Contractor, Inc. v. Kentucky Labor Cabinet*, 474 S.W.3d 153, 158 (Ky. App. 2014)).²

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,”

² While *Svestka* is unpublished and, thus, nonbinding, it persuasively cites controlling published law.

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 sought and obtained the same relief—a fifth season under the 2026-27 rules—on the same legal theory and allegations that this Court of Appeals has already rejected. The Court of Appeals’ holding controls, and Plaintiffs’ are not and were not entitled to injunctive relief.

2. Plaintiffs have no breach of contract claim.

a. Kentucky principles of deference to voluntary associations foreclose court interference in association rules except in narrow and defined circumstances not present here.

This Court and the Kentucky Supreme Court have settled the legal framework that applies in cases, like this one, where a plaintiff’s suit seeks court intervention into a voluntary athletic association’s ability to self-govern. *See NCAA v. Lasege*, 53 S.W.3d 77 (Ky. 2001; *Kentucky High Sch. Athletic Ass’n v. Hopkins Cnty. Bd. of Ed.*, 552 S.W.2d 685, 690 (Ky. App. 1977), *overruled on other grounds by Lasege*, 53 S.W.3d at 89. Under Kentucky law, “[a]s a general rule, courts will not interfere with the internal affairs of voluntary associations.” *Hopkins Cnty.*, 552 S.W.2d at 687. “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.” *Id.* “In general, the members of such associations should be allowed to ‘paddle their own canoe’ without unwarranted interference from the courts.” *Lasege*, 53 S.W.3d at 83 (citation omitted).

Kentucky courts have recognized three categories of claims implicating athletic associations’ bylaws: those facially challenging the validity of a rule, those challenging the association’s interpretation of that rule, and those challenging the application of a rule whose meaning is not in question in an adjudicative proceeding. *See Hopkins Cnty.*, 552 S.W.2d at 687;

Lasege, 53 S.W.3d at 83–84. Each category of challenge has a different standard of review the trial court must apply.

Under the first category—when a plaintiff asserts a facial challenge to an association’s bylaw—the role for courts is limited. “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.” *Hopkins Cnty.*, 552 S.W.2d at 687. “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.*

Under the second category—when a plaintiff challenges the association’s interpretation of its rules—the court still must afford significant deference to the voluntary association; “courts 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 that interpretation is fair and reasonable.” *Id.*

Under the third category—when a plaintiff does not challenge the bylaw itself or its interpretation, but rather argues that the association has misapplied the bylaw in an adjudicative proceeding—“[c]laimants will generally demonstrate potential injuries which justify injunctive relief only when they can show a substantial probability that the athletic association’s ruling was arbitrary and capricious. . . . [A] ruling is arbitrary and capricious . . . only when it is unsupported by substantial evidence.” *Lasege*, 53 S.W.3d at 83, 85.

Here, only the second category is at issue. Plaintiffs offered no proof or argument that the non-retroactive application of the Age-Based Eligibility Rule is illegal or against public policy. Nor do Plaintiffs argue that the NCAA has erred by applying its rule in a manner unsupported by substantial evidence. Rather, Plaintiffs’ core contention is that the NCAA has

erred by interpreting its rules to their exclusion. This Court’s prior Order in this case, however, forecloses Plaintiffs’ theory as a matter of law, and Plaintiffs offered no proof at the hearing warranting departure from this Court’s prior holding.

b. This Court’s Order vacating the previous injunction forecloses Plaintiffs’ breach of contract theory.

Plaintiffs’ first breach of contract theory is that the NCAA’s new eligibility rules *do* apply to them because the Manual does not explicitly state they do not. (Appx.30 ¶¶ 122–24.) But this Court flatly rejected Plaintiffs’ theory in its order vacating the trial court’s first injunction. (Appx.3 at 15–21.) This Court explained that the NCAA’s bylaws are “legislation,” which under Kentucky law are presumed to apply prospectively and cannot be “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 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**,” provides that “[o]nly a student-athlete who meets the governing athletics eligibility *legislation and interpretations* is eligible for intercollegiate athletics participation.” (Appx.8, 2026-27 Manual at 33 (emphasis added).) The actual legislation approved by the 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.” (Appx.9.) Thus, contrary to Plaintiffs’ claim, 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 plainly fair and reasonable where this Court 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.

Finally, even if the 2026-27 Bylaw 12.6 did apply to Plaintiffs (and it does not), the trial court erred to the extent it found *all* of the Plaintiffs meet the rule's eligibility requirements. Under the 2026-27 Bylaw 12.6, a student-athlete's five-year eligibility period begins with (a) the regular academic term of an academic year in which they enroll full-time in college, or (b) the beginning of the regular academic year immediately after their 19th birthday, whichever is earlier. (Appx.8, Bylaw 12.6.) The vast majority of Plaintiffs presented no evidence whatsoever as to when they first enrolled full time in a collegiate institution or when they turned 19. And for many of those who testified or submitted declarations, there is insufficient evidence as to one or both of those requirements. Thus, even if the 2026-27 Bylaw 12.6 applied to Plaintiffs, the trial court's blanket finding that *all* Plaintiffs meet the rule's eligibility requirements is clearly erroneous.

c. Plaintiffs have no third-party beneficiary standing.

Directly quoting Plaintiffs' memorandum, the trial court's Opinion states that "Plaintiffs 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 NCAA Division I Manual." (Appx.1 at 13; *compare with* Appx.18, pp.8–9³.) But Plaintiffs failed to provide a

³ Plaintiffs also pointed to cases from other states where courts concluded student-athletes are intended third-party beneficiaries of the Manual. (Appx.18, p.9.) But, Kentucky law differs materially from the laws of those states (Appx.19, pp.18–19), and the trial court does not appear to have relied on those out-of-state cases.

copy of the purported “membership agreement,” or even quote or cite the provisions that purportedly made Plaintiffs third-party beneficiaries. Under Kentucky law, the party asserting a contract must prove that “an actual agreement existed between the parties,” setting forth “definite and certain terms”; an indefinite or unproven agreement “cannot constitute a legally enforceable contract.” *Quadrille Bus. Sys. v. Kentucky Cattlemen’s Ass’n, Inc.*, 242 S.W.3d 359, 363–64 (Ky. App. 2007). Plaintiffs failed to offer any proof of essential elements of a contract: “offer and acceptance, full and complete terms, and consideration.” *Energy Home, Div. of S. Energy Homes, Inc. v. Peay*, 406 S.W.3d 828, 834 (Ky. 2013). Plaintiffs cannot carry the “substantial question” burden on a contract they never even placed into evidence. And even assuming for the sake of argument that the NCAA’s Manual is, as Plaintiffs allege, incorporated into the purported “membership agreement,” then at most, Plaintiffs have supplied incomplete terms that are insufficient to establish the existence of a legally enforceable agreement.

Nor do the NCAA DI Bylaws (or Manual) identify any student-athlete as an express third-party beneficiary. Importantly, neither Plaintiffs nor the court explained how Plaintiffs fit within Kentucky’s narrow third-party beneficiary 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). Instead, the court’s injunction states: “Intended third-party beneficiaries have ‘standing to sue on the contract.’” (Appx.1 at 13, quoting *Presnell Const. Managers, Inc. v. EH Const., LLC*, 134 S.W.3d 575, 579 (Ky. 2004).) But the full quote from *Presnell* is: “Only a third-party who was intended by the parties to benefit from the contract, namely, a donee or a creditor beneficiary, has standing to sue on a contract; an incidental beneficiary does not acquire such right.” 134 S.W.3d at 579. And Plaintiffs are neither donee nor creditor beneficiaries, meaning they have no standing to sue on a purported contract with the

NCAA. Allowing any student-athlete to assert a claim under the Bylaws expands the NCAA's obligations to an infinite number of unidentified players for any possible grievance with the administration of college sports.

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 to the contract must have intended the third party to benefit from it; an incidental beneficiary does not acquire the right to sue on the contract. *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). 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 a donee nor creditor beneficiary of the Manual. While they summarily allege they are "intended third-party beneficiaries" (Appx.21, ¶ 55), they do not allege that they are donee or creditor beneficiaries, nor do they allege any facts from which it could be inferred they are such beneficiaries. The record contains no evidence, or even allegations, that the NCAA and its member institutions intended Plaintiffs 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 intercollegiate athletics. Nor is there any evidence or allegation that Plaintiffs are 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. Plaintiffs are neither creditor nor donee beneficiaries, and for that reason alone their breach of contract claim fails.

In any event, nothing in the Manual shows an intent to make Plaintiffs direct third-party beneficiaries. The trial court did not state its basis for finding Plaintiffs are third-party beneficiaries with standing to sue, and did not identify any provision of the Manual evidencing an intent to make Plaintiffs such beneficiaries. (Appx.1 at 13.) Nor could it, because “[a]t most, the principles set forth in the Manual . . . reflect an aspirational goal to conduct athletic programs in a manner that promotes NCAA student-athletes’ health, safety, and overall welfare, but do not plausibly demonstrate an intent to create a direct contractual obligation to do so on the part of the NCAA or its member schools to individual student-athletes.” *Doe 1 v. NCAA*, No. 1:23-CV-00542-SEB-MJD, 2024 WL 3293591, at *21 (S.D. Ind. July 2, 2024). “The Manual contains a variety of rules and bylaws governing the relationship between the NCAA and its member institutions,” and even if the trial court “infer[red] [those rules] are intended in some way to benefit NCAA student-athletes,” “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.” *Id.* at *20.

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. Even 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 Appx.7, 2025-26 Manual, Const. pmbl; Appx.8, 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. (Appx.7 and 8, Const., art. 1, §§ A, C, D, E at 2.) The Manual exists primarily to create a governance structure for educational institutions’ participation in student-athletics—not to create contract rights enforceable by student-athletes. To the extent that any benefits are owed, they are incident to NCAA participation and the duties run from *member institutions to student-athletes*, not from the NCAA directly. (See, e.g., Appx.7 and 8, 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 Appx.7 and 8, Bylaw 12.10.2 (“Any appeal to restore a student-athlete’s eligibility shall be submitted in the name of the institution by the president or chancellor (or an individual designated by the president or chancellor), faculty athletics representative, senior woman administrator or athletics director (for the men’s or women’s program).”).)

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’ third-party beneficiary claim fails for the same reason.

d. The implied covenant of good faith does not save Plaintiffs.

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 interpreting the new Bylaw 12.6 as not applying to Plaintiffs and choosing to apply the new age-based eligibility rules on a prospective basis. (*E.g.*, Appx.8, p.10.) 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). See also Appx.12 at 26 (same is true in Illinois). Other than in insurance contracts, Kentucky does not recognize an independent tort for breach of good faith and fair dealing. *Berla*, 456 S.W.3d at 25.

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. (Appx.7, Bylaw 9.2.) The NCAA followed the Manual’s amendment process, and there is no evidence or allegation otherwise. 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. This is so even where the contractual provision at issue is one that purports to grant to the defendant absolute discretion to take certain actions or engage in certain conduct under the contract; such a provision, stated simply, permits the defendant substantial latitude, and as long as the discretion is exercised as permitted under the contract, and without evident bad faith motive or malice, its exercise cannot be a breach of the more general implied promise of good faith and fair dealing.”).

The same is true with respect to 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.” (Appx.7 and 8, 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-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.

(Appx.9, 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.

e. Binding Kentucky precedent precluded the court from substituting its own policy judgments for that of the NCAA.

The trial court erred by substituting its own judgment as to the expediency and wisdom of the NCAA’s eligibility decisions. Voluntary athletic associations, and the NCAA specifically, “should be allowed to ‘paddle their own canoe’ without unwarranted interference from the courts.” *Lasege*, 53 S.W.3d at 83. In *Lasege*, the Supreme Court cautioned lower courts against substituting their own judgment for that of the NCAA when it comes to eligibility decisions. *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 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).

The NCAA explained its rationale for not applying the new rules to student-athletes who did not have remaining eligibility under the old rules: “applying the age-based eligibility model retroactively would destabilize college sports.” (Appx.4, Silver Affidavit ¶ 21.) When the Cabinet approved the new rules in June 2026, “[i]n most sports, member institutions ha[d] already decided who will be on their rosters for the 2026-27 academic year” and thousands of “[s]tudent-athletes ha[d] decided which schools to remain at, transfer to, or initially attend based on their expectation that a roster spot, and potentially playing time and revenue-sharing . . . will be available to them.” (*Id.*) Those “opportunities are all zero-sum,” and if the Class of 2022 had been “retroactively made eligible at the eleventh hour, it w[ould] create roster chaos.” (*Id.*) Doing so would “also fundamentally upend the settled reliance interest of hundreds of thousands of student-athletes and institutions who operated in reliance on the age-based rule not applying retroactively.” (*Id.*)

The trial court failed to give the NCAA the deference required by *Lasege* and *Hopkins County* by disregarding its reasons for not applying the new rule to the Class of 2022. Instead, the trial court found the NCAA’s decision to be “in bad faith” and “arbitrary” because it has previously granted eligibility waivers to student-athletes whose seasons were interrupted by the COVID-19 pandemic, or who had played professionally or in junior college “differently from Plaintiffs.” (Appx.1 at 15.) But it is unclear how it was “arbitrary” for the NCAA to treat student-athletes in markedly different circumstances differently from Plaintiffs; indeed, treating differently situated individuals differently based on their particular circumstances seems precisely the opposite of arbitrary.

The trial court further illustrated its apparent misunderstanding of the issue by setting up and taking down a straw man. The court perplexingly stated that it “disagrees that the NCAA has an unfettered, unencumbered, [sic] right to legislate and interpret its Bylaws in any manner it so chooses.” (Appx.1 at 14.) But the NCAA does not claim to have an “unfettered” or “unencumbered” right to legislate and interpret its Bylaws. Rather, the NCAA has simply (and correctly) pointed out that under Kentucky law, courts must grant deference to the NCAA’s interpretation of its internal governance rules. *Lasege*, 53 S.W.3d at 85.

In any event, what matters here is whether the NCAA’s rule and interpretation are “reasonable.” See *Hopkins Cnty.*, 552 S.W.2d at 687. The NCAA has articulated good reason for its decision not to apply the new eligibility rule to student-athletes who had no remaining eligibility after the 2025-26 academic year: retroactively making them eligible would have created roster chaos and been fundamentally unfair to the schools and student-athletes who had made decisions in reliance on the previous rules.⁴ At bottom, the trial court’s opinion reflects the court’s subjective belief that the NCAA’s decision is unfair to Plaintiffs. But the trial court cannot substitute its own judgment for that of the NCAA, even if it disagrees with the “expediency, practicability or wisdom” of the NCAA’s decisions. See *id.*

The trial court’s reference to the United States Supreme Court’s decision in *Loper Bright* further illustrates its deviation from *Lasege* and *Hopkins County*. The trial court held that the NCAA’s supposed claim of “universal authority to interpret the Bylaws”—a claim the NCAA has not made—“over a clear and unambiguous provision violates the spirit, if not the letter, of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).” (Appx.1 at 15 (quoting *Lorient v. NCAA*,

⁴ And this reasonableness must be judged based on the anticipated effect of the rule change on all student-athletes at the time it was adopted, not with hindsight for a select few who were offered roster spots months later.

No. 1:26-CV-94, 2026 WL 2958759, at *20 (N.D.W. Va. Sept. 30, 2026)).) In *Loper Bright*, the Court held the federal Administrative Procedure Act (APA) requires courts to exercise independent judgment in deciding whether a federal government agency has acted within its statutory authority, and courts may not defer to an agency interpretation of federal statutes simply because a statute is ambiguous. *Loper Bright* concerned Congress’s impermissible delegation of interpretative authority over agency regulations from the judiciary to the executive branch under the Administrative Procedure Act, which implicates separation of powers principles not germane to the law governing voluntary associations. 603 U.S. at 399–401. Why the trial court invoked *Loper Bright* is unclear, as this case does not involve a federal agency, statute, or the APA.

As best the NCAA can tell, the trial court’s reference to *Loper Bright* seems to be intended to say the court believed it does not owe any deference to the NCAA’s interpretation of its eligibility rules. But that view is squarely at odds with binding Kentucky precedent in *Lasege*. But that view is squarely at odds with binding Kentucky precedent in *Lasege* and *Hopkins County*, and it purports to give weight to *Loper Bright* while entirely ignoring its underlying reasoning. The trial court *does* owe deference to the NCAA’s interpretation of its rules, and the court clearly erred by failing to give the NCAA *any* deference whatsoever. The *very purpose* of forming a voluntary association is self-governance over association affairs, which is the root from which the deference principle has grown. The rationale underlying the non-delegation doctrine animated in *Loper Bright* has no purchase in the voluntary association context.

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 bylaws, 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).

3. Binding Kentucky Supreme Court precedent forecloses Plaintiffs’ request to enjoin any rules beyond Bylaw 12.6, including the NCAA’s “rule of restitution.”

At Plaintiffs’ request, the trial court enjoined Bylaws other than the Age-Based Eligibility Rule, including NCAA rules governing transferring between institutions, NCAA rules governing professional participation and agreements with agents, and Bylaw 12.9.4.2, sometimes referred to as the “Rule of Restitution.” (Appx.1 at 18.)⁵ The latter 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). The trial court failed to articulate any basis whatsoever for enjoining these rules—it made no findings and heard no evidence with respect to them, and Plaintiffs pleaded no claims arguing that the rules themselves were illegal, against public policy, or had been arbitrarily interpreted or applied. For these reasons alone, the court’s enjoinder of these rules must be vacated. *Id.* at 87 (“At the outset, we observe that the trial court’s order gives no indication that it engaged in a CR

⁵ The court also enjoined enforcement of the “ghost transfer” rule, which applied to rostering a student-athlete who did not enter the transfer portal. *Id.* The same analysis applies to the ghost transfer rule as applies to the Rule of Restitution.

65.04 analysis before enjoining the NCAA in this regard, and that reason standing alone would require us to vacate this portion of the injunction.”)

Plaintiffs’ argument for enjoining the Rule of Restitution lacks merit. 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. (Appx.30, ¶ 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-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.

As with 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 [injunction] 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. Thus, “[r]ather than changing the rules in the middle of the game, trial courts should consider the possibility that an erroneous decision could result in restitutionary sanctions against a student-athlete’s institution when they balance the equities.” *Id.* at 89. Accordingly, to the extent 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.

Accordingly, this Court should vacate the injunction against the Rule of Restitution, the Ghost Transfer Rule, and Bylaws regarding agents and playing or signing with a professional team.

4. The order was issued without jurisdiction.

Further, because the trial court lacked jurisdiction over the NCAA, the Plaintiffs do not have a substantial likelihood that they will prevail. Plaintiffs conceded Kentucky has no general jurisdiction over the NCAA, meaning they were required to demonstrate specific jurisdiction due to the damage to Plaintiffs arising out of and related to the NCAA’s contacts with Kentucky. (Appx.20.) Whether a Kentucky court may exercise personal jurisdiction over an out-of-state defendant is a question of law this Court reviews de novo, and Plaintiffs—not the NCAA—bear the burden of establishing that the assertion of jurisdiction is proper. *Braun v. Bearman Indus., LLC*, 740 S.W.3d 300, 305 (Ky. 2025). Because Plaintiffs did not, and cannot, carry their burden, the temporary injunction has no jurisdictional foundation and must be vacated.

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

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)). Stated another way, Kentucky’s long-arm statute “now reaches any activity so long as the assertion of personal jurisdiction would comport with due process and other constitutional requirements.” *Braun*, 740 S.W.3d at 305.

Plaintiffs do not contend that the NCAA is subject to general jurisdiction in Kentucky, so only specific personal jurisdiction is at issue.

“Kentucky has adopted the Sixth Circuit’s 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, 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). Thus, the jurisdictional issue is whether each Plaintiff has established sufficient ties between the NCAA, Kentucky, and Plaintiffs’ breach of contract 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. As held in *Aldrich v. NCAA*, 484 F. Supp. 3d 779, 795 (N.D. Cal. 2020), “[t]he NCAA legislates in Indiana, where it is headquartered,” so any alleged harm caused by its rulemaking decisions and eligibility rules “arises out of Indiana”; a contrary holding “would improperly subject the NCAA to jurisdiction anywhere.” Plaintiffs’ contract claims arise from legislation approved in Indianapolis, not from anything the NCAA did in the Commonwealth.

The circuit court’s contrary reasoning conflated unrelated forum activity with the claim-specific contacts that due process requires. The trial court “[f]ollow[ed] the logic of the *Godfrey v. NCAA* Order,” in finding personal jurisdiction over the NCAA as to Plaintiffs’ claims. (Appx.1 at 8.) But in *Godfrey*, the Georgia trial court’s “logic” was that “[t]he NCAA does not contest jurisdiction.” (Appx.33, Order in *Godfrey v. NCAA*.) The *Godfrey* court merely recited those plaintiffs’ allegations and found jurisdiction. (*Id.*) And the *Godfrey* order is presently stayed pending appeal, so it is unclear that it is even persuasive authority. (Appx.34, 9/9/26 Ga. Ct. App. Order Staying.)

In any event, the trial court essentially engaged in a general jurisdiction analysis. The NCAA’s purported “contacts” pointed to in the 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.” (Appx.1 at 8.) This “finding” is replete with errors.

First, there is ***no evidence of these purported contacts***. Plaintiffs did not present, and the trial court does not point to, anything in the record establishing that the NCAA “transacts

substantial business” in the forum, or that the NCAA, as opposed to its conferences and member institutions, “conducts athletic competitions, ticket and merchandise sales, television agreements, and other revenue generating activities in Kentucky,” or any of the other “findings” forming the basis of the court’s jurisdictional analysis.

Moreover, none of these “findings” establish that Plaintiffs’ contract claims arise from any NCAA contacts with Kentucky. Findings (a) and (c) describe generalized, continuous business activity—the hallmark of the general-jurisdiction inquiry, which Plaintiffs admit is not at issue here. Continuous contacts cannot supply specific jurisdiction unless the claim arises from them, and Plaintiffs’ contract claim does not. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 261–263 (2017). Finding (b) misattributes to the NCAA activity conducted by its conferences and member institutions, which are not parties to this case. Courts have squarely rejected the notion that this revenue stream ties a national athletics body to the forum. In a breach of contract case, “it is only the dealings between the parties in regard to the disputed contract that are relevant to minimum contacts analysis.” *Richardson v. Se. Conf.*, 612 F. Supp. 3d 753, 766 (N.D. Ill. 2020). Broadcasting programming into all fifty states and generating millions in 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” to count as the national body’s own forum contact, because it flows through the member institutions rather than from the athlete to the association. *Id.* at 772–73. The competitions, ticket sales, and television agreements the circuit court cited are the business of Kentucky’s universities and conferences—not NCAA conduct from which a contract claim about a nationwide bylaw could arise.

b. The trial court erroneously relied on an antitrust theory of jurisdiction that is not applicable here.

Perhaps most egregiously, the Jefferson Circuit Court alarmingly adopted the Georgia court’s finding 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.” (Appx.1 at 8.) In *Godfrey*, that finding was based on the Georgia plaintiffs asserting antitrust claims, but here, Plaintiffs assert only claims for breach of contract and violation of the KCPA—they do not assert antitrust claims of any kind.

In antitrust actions, a plaintiff may establish specific jurisdiction through the “purposeful direction” or “effects” test by showing the defendant committed intentional acts “expressly aimed at the forum state” that caused foreseeable in-forum harm. *See Wisne v. NCAA*, No. 1:26-CV-03063-CNS-KAS, 2026 WL 2214234, at *4 (D. Colo. July 31, 2026). The *Wisne* court applied that test expressly, “explaining that the ‘purposeful direction’ standard governs “antitrust actions, such as those alleging violations of Sections 1 and 2 of the Sherman Act.” *Id.* But since Plaintiffs’ do not assert antitrust claims, that test is irrelevant here. Moreover, even if some supposed “anticompetitive scheme” was directed at Kentucky or caused injury to persons “residing in, located in, or doing business throughout Kentucky” (which, again, there is *no evidence* of), most Plaintiffs do not reside in, are not located in, and do not do business in Kentucky, so their claims cannot possibly “arise from” such effects. The effects-based theory in *Godfrey* has no application here and the circuit court erred by importing it.

c. Plaintiffs’ alleged forum contacts cannot be attributed to the NCAA.

Finally, the circuit court erred by relying on allegations that Plaintiffs played for a Kentucky-based school or competed in Kentucky. The trial court found that all “players

involved in this suit have either played directly for a Kentucky University [sic] or played against Kentucky players in the Commonwealth.” (Appx.1 at 8–9.) However, for the vast majority of Plaintiffs, there is no evidence supporting either of these findings.

Only eight Plaintiffs testified at the October 14 hearing: Alex Afari, Jr., Olivia Albert, Davion Cunningham, Regan Dancer, Sophie Harlan, Jawaun Northington, Kalib Perry, and Seth Trimble. The University of Louisville’s men’s basketball coach, Pat Kelsey, testified that Plaintiffs Seth Trimble and LJ Wells will be on his roster if eligible. Likewise, the University of Missouri men’s basketball coach, Dennis Gates, testified that Plaintiff Mark Mitchell will be on his roster if deemed eligible. Four Plaintiffs submitted declarations after the hearing: Katie Fichtner, D’Angelo Hutchinson, Kristina Paegle, and Reese Ragland.⁶ Of those four, only Hutchinson, who stated he previously competed for the University of Louisville (and is currently competing for the University of Cincinnati), claimed even a tangential connection to Kentucky. (Appx. 30 at Hutchinson Decl.) Neither Fichtner, Paegle, nor Ragland state they ever competed against or attended a Kentucky school, nor that they ever competed in Kentucky.⁷ (Appx. 30 at

⁶ The NCAA did not object to a request from Plaintiffs’ counsel to submit declarations from Plaintiffs who did not testify at the October 14 evidentiary hearing in lieu of sworn affidavits. These four Plaintiffs submitted such declarations. Plaintiffs’ counsel submitted two affidavits of counsel “on behalf” of two others, Garrett Helsel and Donovan Oday. While the NCAA waived objection to Plaintiffs’ declarations, it did not waive objection to the impermissible affidavits submitted “on behalf” of Helsel and Oday, which are not competent evidence.

⁷ While these Plaintiffs allege attenuated and irrelevant contacts with Kentucky, there is no record evidence supporting their allegations. (Appx.30, ¶ 24 (alleging Ragland is “a resident of the Commonwealth,” despite attending the University of Delaware), ¶ 39 (alleging Fichtner played “in games against the University of Louisville and against Bellarmine University” at some unspecified point in her four years at Ohio State University), ¶ 40 (alleging Paegle participated in “two competitions against the University of Kentucky and two competitions against the University of Louisville” at some unspecified point in her four years at Indiana University).

Fichtner, Paegle, and Ragland Decls.) The 30 remaining Plaintiffs provided no evidence whatsoever.⁸

In sum, for 29 Plaintiffs, there is no evidence of any Kentucky connection whatsoever.⁹ Thus, the trial court’s finding that *all* of “the players involved in this suit have either played directly for a Kentucky University [sic] or played against Kentucky players in the Commonwealth” is clearly erroneous. (See Appx.1 at 8–9.)

In any event, those are the *Plaintiffs’* contacts, not the NCAA’s, and they cannot support jurisdiction over the NCAA. The specific jurisdiction inquiry “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, 571 U.S. 277, 284–286 (2014). “[T]he plaintiff cannot be the only link between the defendant and the forum”; “it is the defendant’s conduct that must form the necessary connection with 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

⁸ Eleven Plaintiffs purportedly signed unsworn “verifications” vaguely stating their belief that their *entire* Second Amended Complaint (which is not the operative complaint) is “true and correct”: Justin Allen, Albert Vargas Brito, Kayden Campbell, Thomas Castellanos, Skyy Clark, Fred King, Jabari Mack, Mark Mitchell, Collin Porter, Billy Smith, and Levavium Wells II. (See Appx.23.) As this Court recognized in its October 2 order vacating the trial court’s first injunction, these unsworn statements are not competent evidence. (Appx.3 at 23.)

In total, 29 Plaintiffs did not present evidence (did not testify, have another witness testify about them, submit a post-hearing declaration): Justin Allen, Cardell Bailey, Albert Vargas Brito, Jalyn Brown, Kayden Campbell, Thomas Castellanos, Skyy Clark, Josie Gilvin, Aidan Hadaway, Zoe Hammond, Damoni Harrison, Garrett Helsel, Claudia Hofmeister, Javon Jackson, Fred King, Orlando Lovejoy, Jabari Mack, Mackavelli Malotumau, Cazeem Moore, Donovan Oday, Emmanuel Okorafor, Alice Otis, Colin Porter, Levi Sandidge, Billy Smith, Rylen Su’A-Filo, Saniah Tyler, Jaylen Wester, Macy Whisenand.

⁹ For ease of reference, the NCAA has attached a matrix listing (1) each Plaintiff, (2) what, if any, evidence they introduced about themselves into the record below, (3) their current institution (evidenced or alleged), (4) their claimed Kentucky connection, and (5) the evidence, if any, of when they turned nineteen or first enrolled in college (which is discussed in more detail in § B.2.b above). (See **Appx.37.**)

291. The District of Colorado applied exactly this rule to the NCAA, rejecting jurisdiction where the plaintiff relied only on his own forum residence and identified no 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). That a student-athlete attended or competed against a Kentucky institution says nothing about the NCAA’s own affiliation with Kentucky.

The problem is compounded for the many Plaintiffs with no connection to Kentucky at all. The 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. 31, 2018) “persuasive and applicable to the facts in this matter.” (Appx.1 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 reached by the circuit court.

The 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. (Appx. 1 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. Moreover, before the Jefferson Circuit Court entered its Order, the Tenth Circuit stayed the district court’s decision in *Wisne*, finding that the NCAA had satisfied its burden as to each of the factors for a stay pending appeal. (Appx.35, *Wisne v. Brock*, 26-1309 (10th Cir. Aug. 21, 2026).)

* * * *

Plaintiffs’ contract claims do not arise from any NCAA contact with the Commonwealth, the antitrust theory applied by the circuit court is inapplicable, and Plaintiffs’ own forum contacts are not attributable to the NCAA. The circuit court had no personal jurisdiction over the NCAA, and its temporary injunction should be vacated on that ground alone.

5. Jefferson County is an improper venue.

Independent of the jurisdictional defect, the circuit court was not the proper venue for this action. Because “venue is a creature of statute,” Plaintiffs must identify the statutory basis for venue, *O’Bannon v. Allen*, 337 S.W.3d 662, 665 (Ky. App. 2011), and venue must be proper for 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.”). And as the parties invoking the Jefferson Circuit Court, Plaintiffs bear the burden of establishing that venue lay there.

Plaintiffs premise venue on two statutes, KRS 452.405 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.” (Appx30 ¶ 54.) Neither the statutes nor that theory places this suit in Jefferson County.

a. 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 association. (Appx30, ¶ 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 or evidence 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” there. 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 were applicable to Jefferson County-based Plaintiffs, it cannot supply venue for the many other Plaintiffs’ claims.

b. Each Plaintiff must independently establish venue, and the few Plaintiffs 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 Louisville Plaintiffs. They rest venue on three of their number—Jabari Mack, D’Angelo Hutchinson, and Kayden Campbell—who allegedly “competed for the University of Louisville,” and then sweep in “all other Plaintiffs whose institutions and opponents regularly compete in Jefferson County.” (Appx.30, ¶ 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, holding unequivocally that “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.

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 Commonwealth’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.

This Court 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 governing 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. Each Plaintiff must independently establish venue in Jefferson County, and the Louisville Plaintiffs cannot supply what the remaining Plaintiffs lack.

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.”¹⁰ With respect to most Plaintiffs, there is no evidence or allegation that they reside in Jefferson County. The only Plaintiffs who could even conceivably reside in Jefferson County, or whose claims could have conceivably arisen there, are those who claim to be enrolled at the University of Louisville or

¹⁰ 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. (Appx.30, ¶ 54.) And even if they had claimed venue under KRS 454.210(4), that argument fails for an even more basic reason: it only applies when personal jurisdiction exists, and, as explained above, the Circuit Court lacks personal jurisdiction over the NCAA here.

another institution located in Jefferson County. The remaining Plaintiffs lack even a colorable argument for venue there.

Student-athletes who reside outside of Jefferson County, Kentucky, and seek to play college sports outside Jefferson County, Kentucky, should seek injunctive relief in the state and county where they reside or seek to play college sports; or, more appropriately, in Indiana where the NCAA made the decisions at issue and there is personal jurisdiction over the NCAA. A Jefferson Circuit Court judge should not be issuing injunctions impacting Division I sports outside Jefferson County and even outside Kentucky.

C. The court erred in finding Plaintiffs adequately demonstrated harm—at least for 29 Plaintiffs.

To obtain injunctive relief, Plaintiffs were required to “clearly” show “immediate and irreparable injury” by “verified complaint, affidavit, or other evidence.” CR 65.04(1). But only 14 Plaintiffs provided evidence of any kind. Eight Plaintiffs testified at the October 14 evidentiary hearing. (Seth Trimble (VR 10/14/26 at 11:14–11:30), Jawaun Northington (*id.* at 1:11–1:14), Davion Cunningham (*id.* at 1:15–1:20), Olivia Albert (*id.* at 1:20–1:22), Sophie Harlan (*id.* at 1:22–1:25), Regan Dancer (*id.* at 1:26–1:30), Kalib Perry (*id.* at 1:33–1:40), and Alex Afari (*id.* at 1:40–1:49).) Other witnesses at the hearing provided testimony about 2 others. (*Id.* at 11:53:11–11:53:24 (Kelsey testifying Wells will be on University of Louisville roster if eligible); *id.* at 12:19:58–12:19:14 (Gates testifying Mitchell will be on University of Missouri roster if eligible).). And 4 Plaintiffs submitted unsworn declarations after the hearing. (*See* Appx.32.) There was *no evidence* presented as to the remaining 29 Plaintiffs: Justin Allen, Cardell Bailey, Albert Vargas Brito, Jalyn Brown, Kayden Campbell, Thomas Castellanos, Skyy Clark, Josie Gilvin, Aidan Hadaway, Zoe Hammond, Damoni Harrison, Garrett Helsel, Claudia Hofmeister, Javon Jackson, Fred King, Orlando Lovejoy, Jabari Mack, Mackavelli Malotumau,

Cazeem Moore, Donovan Oday, Emmanuel Okorafor, Alice Otis, Colin Porter, Levi Sandidge, Billy Smith, Rylen Su’A-Filo, Saniah Tyler, Jaylen Wester, and Macy Whisenand. Thus, those Plaintiffs’ claims of irreparable harm are entirely speculative—there was no evidence they are likely to imminently suffer any injury, much less the irreparable injuries they allege. Yet the trial court found that *all* “the Plaintiffs have established . . . they are likely to suffer irreparable harm.” (Appx.1 at 11.) That finding is clearly erroneous insofar as it includes Plaintiffs who did not testify, submit declarations, or otherwise provide evidence. With respect to these Plaintiffs, “there was **no evidence of record** that would have enabled the circuit court to” find irreparable harm, and “[t]he circuit court’s order was accordingly unsound” as to those Plaintiffs. (Appx.3 at 23 (emphasis in original).)

More fundamentally, Plaintiffs have no claim to harm because they received the full measure of eligibility promised to them under each version of the Manual in effect during their entire collegiate careers. When they entered the NCAA, they knew they had five years to compete in up to four seasons of competition. They got the benefit of those rules: they competed in four seasons of college athletics. That subsequent student-athletes (or earlier student-athletes) have different rules (some arguably better and some arguably worse) does not harm Plaintiffs (as any parent has repeatedly advised their children).

Finally, Plaintiffs’ delay in seeking relief cuts against a finding of any irreparable injury. “[A]n unreasonable delay in filing for injunctive relief will weigh against a finding of irreparable harm.” *Allied Erecting & Dismantling Co. v. Genesis Equip. & Mfg., Inc.*, 511 F. App’x 398, 405 (6th Cir. 2013). “[A]bsent a good explanation, a substantial period of delay ‘militates against the issuance of a preliminary injunction by demonstrating that there is no apparent urgency to the

request for injunctive relief.’” *Young v. Lumenis, Inc.*, 301 F. Supp. 2d 765, 772 (S.D. Ohio 2004) (delay was justifiable because plaintiff attempted to negotiate then gathered evidence).

Plaintiffs have known about the NCAA’s new age-based eligibility model since at least June 23, 2026, yet the initial thirteen Plaintiffs¹¹ waited seven weeks to seek relief from the trial court. (See Appx.17 and 21, filed August 12 and 14, 2026.) And while courts have found longer delays to be reasonable, “the length of the delay is not so significant, in and of itself, to rebut a finding of irreparable harm.” *Comfort Systems USA (Kentucky), Inc. v. AHM Bowling Green LLC d/b/a All Hours Mechanical*, No. 1:26-CV-0094-GNS, 2026 WL 2364301, at *7 (W.D. Ky. Aug. 14, 2026). Rather, the party’s reasoning for delay, and whether its delay is justified under the circumstances, is determinative. *Id.* But here, Plaintiffs needed little, if any, time to investigate their claims or consult with attorneys. Indeed, their complaint is virtually identical (and in many places word for word the same) as other complaints filed by Plaintiffs’ counsel—including one filed **on June 23, 2026** in Ohio. (Appx.36.) And there is no evidence that Plaintiffs’ delay was due to any attempt to resolve what they now claim is an emergency.

While the initial Plaintiffs’ seven-week delay is unreasonable, the remaining Plaintiffs’ additional delays cut even more clearly against them: Plaintiff Alex Afari, Jr. waited nearly two more weeks to intervene on August 23 (Appx.22), and the second round of additions to the original Plaintiffs¹² waited until August 27 to seek leave to join suit (Appx.23). Plaintiff Kalib

¹¹ Levavium Wells II, Donovan Oday, D’Angelo Hutchinson, Kayden Campbell, Mark Mitchell, Justin Allen, Fred King, Colin Porter, Albert Vargas Frito, Jabari Mack, Thomas Castellanos, Billy Smith, and Skyy Clark.

¹² Seth Trimble, Reese Ragland, Jawaun Northington, Jaylen Wester, Rylen Su’a-Filo, Mackavelli Malotumau, Josie Gilvin, Claudia Hofmeister, Macy Whisenand, Levi Sandidge, Cardell Bailey, Damoni Harrison, Emmanuel Okorafor, Garret Helsel, Jalyn Brown, Katie Fichtner, Kristina Paegle, Orlando Lovejoy, Regan Dancer, Olivia Albert, Aidan Hadaway, Cazeem Moore, and Zoe Hammond.

Perry waited yet another week after that and first sought to join as a plaintiff on September 3. (Appx.28.) And the most recent round of Plaintiffs¹³ did not seek relief until October 12—two months after this suit was initiated, and nearly four months after the NCAA adopted its new eligibility rules. (Appx.30.) These inexplicable delays are facially unreasonable and strongly weigh against any finding of irreparable harm.

Thus, to the extent Plaintiffs faced any alleged imminent harm because “practice ha[s] already begun,” (Appx.1 at 10), or “their seasons would be over before this case was finally adjudicated on the merits,” (Appx.1 at 6), that is solely a result of Plaintiffs’ own decisions to wait weeks and even months before filing suit. Plaintiffs could have sought relief any time after the Cabinet adopted the NCAA’s new eligibility rules in June 2026, yet they waited until the eve of their respective seasons—and for some, until after their seasons began—to seek injunctive relief. This unjustifiable delay prevented the NCAA from obtaining timely relief from the trial court’s first erroneously issued injunction: while the NCAA’s RAP 20 motions were pending, multiple Plaintiffs participated in NCAA DI competitions under the guise of being eligible per the trial court’s erroneous injunction. *See, e.g.*, VR 10/14/26 at 1:45:55–1:46:04 (Afari testifying he played in University of Kentucky football games this season against “Youngstown State, Alabama, Texas A&M, and South Alabama”). If Plaintiffs had not unreasonably delayed seeking relief, the trial court’s erroneous injunction would have been vacated before those contests took place, and the integrity of those contests would not have been compromised by ineligible participants. That same scenario is playing out again after the trial court’s second erroneous injunction was entered on October 16, 2026.

¹³ Javon Jackson (who was “inadvertently added” as a party to the Second Amended Complaint, subsequently voluntarily dismissed his claims, but is listed as a Plaintiff in the Third Amended Complaint, Appx.30, ¶ 38), Sophie Harlan, Alice Otis, Davion Cunningham, and Saniah Tyler.

Plaintiffs’ claim of imminent harm cannot be reconciled with their inexplicable delay in seeking relief. This Court should not permit Plaintiffs to sit on their hands for months only to manufacture an “emergency” by seeking relief on the eve of their respective seasons, especially where their unjustifiable delay has prejudiced the NCAA by preventing it from obtaining timely relief from the trial court’s erroneous orders and compromised the integrity of numerous athletic competitions.

D. The trial court erred in balancing the equities and finding that the NCAA had no interest weighing against injunctive relief.

The NCAA is harmed by the trial court’s erroneous interference with its governance and substitution of its (and Plaintiffs’) judgment over the appropriate eligibility rules for student-athletes. The trial court injected itself into a dispute over the applicability, validity, and interpretation of the rules governing a private, self-governing, voluntary association.

In *Lasege*, the circuit court contrasted plaintiff’s risk of irreparable injury with the NCAA’s interest, stating that “[t]he NCAA, on the other hand, will not suffer any potential harm by this court’s order.” 53 S.W.3d at 85. The Supreme Court, however, explained that the circuit court’s conclusion was “clearly erroneous, and accordingly, [] the trial court’s subsequent balancing of the equities suffers from an inherent computational error.”¹⁴ *Id.* “The NCAA unquestionably has an interest in enforcing its regulations.” *Id.* Similarly, here, the court “overvalued” Plaintiffs’ interests and undervalued the NCAA’s interest, *id.* at 86, in finding “the NCAA faces no comparable harm to that the Plaintiffs are facing.” (Appx.1 at 12.)

¹⁴ This error is further illustrated by the fact that when considering the parties’ claimed harms, the trial court’s “balancing” weighed the claimed harm of *all* Plaintiffs, even though, as explained above, there is *no evidence* from which the court could have found *any* harm to most Plaintiffs.

Member institutions and other student-athletes will also be harmed by the trial court erroneously permitting ineligible former student-athletes to compete. It is unfair to force member institutions who made roster, retention, and recruitment decisions based on the NCAA's rules to compete against rosters with these ineligible players. The same is true for current student-athletes who may lose playing time to Plaintiffs that current student-athletes counted on in making their collegiate decisions. (*See, e.g., Appx.38*, p.34 (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.”).)

The trial court found that “Plaintiffs have adequately demonstrated that there will be no comparable harm caused to other players if the Plaintiffs are allowed to compete.” (*Appx.1* at 11.) In support of that finding, the court pointed to testimony from four witnesses:

- Isaac Ellis, an incoming freshman basketball player for the University of Louisville, who the trial court characterized as testifying that “he was fine with [Plaintiff Seth] Trimble being allowed to come back to compete, as the benefits of Trimble’s presence and mentorship would outweigh any potential harm”;
- Daniel Hennes, the agent for Trimble, who the court characterized as testifying “that his experience has shown that even if there is loss of immediate playing time for an incoming player, studies have shown that in the future, incoming players like Ellis will actually gain *more* playing time”; and
- Pat Kelsey, the University of Louisville’s men’s basketball coach, and Dennis Gates, the University of Missouri’s men’s basketball coach, who the court characterized as testifying “that allowing the Plaintiffs to compete for a fifth year would not take roster spots or deprive other players.”

(*Id.* at 11–12.) The court’s finding is problematic for a few reasons. First, the court impermissibly assumed Ellis spoke for every incoming freshman and underclassman on each Plaintiff’s respective team. Ellis might personally believe Trimble’s “presence and mentorship would outweigh” any lost playing time or other harms, but there is no evidence that other Plaintiffs’ teammates feel the same way. Indeed, Ellis’s assessment of the effect of competing

for playing time with fifth-year players is precisely the opposite of that of the many Plaintiffs who allege they were harmed by their fifth-year teammates.¹⁵ Ellis’s testimony is, at most, evidence of Trimble’s specific circumstances, but it says nothing about the potential harm other Plaintiffs may cause to their hundreds of respective teammates.

The court’s extrapolation of Kelsey’s and Gates’s testimony to players other than their own is problematic for the same reasons. Assuming their testimony is true as to their respective teams, they do not speak for others. The evidence before the trial court was insufficient to support its sweeping finding that if made eligible, *none* of the Plaintiffs will displace another student-athlete from *any* team’s roster. Even if it is true that the Plaintiffs who plan to compete for Louisville’s and Missouri’s men’s basketball teams would not take a roster spot that would otherwise be filled, there is no evidence one way or the other as to any other Plaintiff, so the trial court’s finding as to those other Plaintiffs is clearly erroneous.

The trial court also failed to account for the fact that the NCAA, member institutions, and student-athletes who compete against Plaintiffs will be harmed by Plaintiffs’ participation—student-athletes who are ineligible under rules the membership passed and agreed to follow—in athletic contests. In *Lasege*, the Supreme Court identified the trial court’s failure to account for competitor institutions’ and student-athletes’ interests as error. *See Lasege*, 53 S.W.3d at 86 (“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 a U of L Men’s Basketball team with Lasege on the roster.”). If Plaintiffs compete only because of an injunction that is later reversed—as has already happened once in this case—they will have

¹⁵ The trial court’s finding that other student-athletes won’t be harmed by competing with Plaintiffs for playing time is difficult to reconcile with the court’s apparent acceptance of Plaintiffs’ allegations that they were injured by having to play alongside fifth-year players.

participated in contests for which they were not eligible, which will have an irreversible effect on contest outcomes, conference standings, team records, and postseason qualification. Those consequences cannot be cured by retrospectively declaring Plaintiffs ineligible.¹⁶ The games will have been played, the opportunities lost, and the competitive outcomes altered. The injunction therefore places the entire risk of an erroneous ruling on institutions and student-athletes who are not parties here. The trial court failed to consider (or ignored) these risks altogether.

At most, these competing claims of irreparable harm are in equipoise. If Plaintiffs are right and remain sidelined, they will lose some opportunities to compete this season but could be granted an additional year of eligibility following a trial on the merits. But if the NCAA is right and Plaintiffs are permitted to compete, ineligible athletes will have participated in contests whose results, opportunities, and competitive consequences cannot later be remedied. That equipoise does not support an injunction—Plaintiffs bear the burden of establishing that the equities favor extraordinary interim relief, the NCAA does not bear the burden of proving its irreparable harm outweighs theirs. And when either ruling carries risk, the equitable course is to preserve the status quo that existed before this litigation, not to impose a “temporary” injunction that effectively gives Plaintiffs the ultimate relief they seek.

CONCLUSION

Although the NCAA’s June 2026 bylaws change was prospective, the trial court made it “retroactive by decree,” essentially holding that “an association may not improve its rules going

¹⁶ Ordinarily, the NCAA would have *some* ability to remedy an ineligible athlete’s participation through its “Rule of Restitution.” But, as explained above, the trial court has enjoined the NCAA’s enforcement of this rule without any basis to do so and in contravention of binding Kentucky Supreme Court precedent. And even if the Rule of Restitution could be invoked, the Kentucky Supreme Court has described its ability to cure competitive imbalance “created by court orders” as “somewhat ham-fisted” given its *post-hoc* nature. *Lasege*, 53 S.W.3d at 86.

forward unless it improves them backward as well.” (Appx.12, p.34.) “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.” (*Id.*) If such allegations state “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.” (*Id.*) The NCAA “choice would be to freeze its rules or to litigate every amendment against everyone it ever governed,” which would not result in “fairer rules,” but in fewer rules, “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.”

This Court should not punish prospectivity or improvement. It should vacate the injunction entered by the trial court.

Respectfully submitted,

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COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2026-CA-_____

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

MOVANT

v.

On Motion from Jefferson Circuit Court
No. 26-CI-7009

LEVAVIUM WELLS II, ET AL.

RESPONDENTS

RAP 20(D) MOTION FOR EMERGENCY RELIEF

The National Collegiate Athletic Association (the NCAA), movant here and defendant below, pursuant to RAP 20(D), seeks emergency relief from the Court to maintain the status quo until the Court rules on the NCAA's RAP 20(B) motion for relief from the trial court's October 16, 2026, order granting injunctive relief to Plaintiffs (respondents here). (Appx. 1.)¹

The trial court has once again ignored Kentucky law in order to grant student-athletes temporary injunctive relief against the NCAA. Worse yet, it has compounded its error by choosing to ignore this Court's prior Order *in this case*, doing so based upon a purportedly "respectful" disagreement. Ignoring a binding Court of Appeals decision is not respectful; it is an affront to precedent and the rule of law. It was the trial court's job to apply the law, not to create it. The error should be immediately corrected through emergency relief.

This case arises from Plaintiffs quest for a fifth year of eligibility to participate in a fifth season of competition in NCAA sports. The rules that governed each season of Plaintiffs' participation in NCAA competition allowed them to participate in a maximum of four seasons of

¹ All references to Appx.# are to the appendix to the NCAA's RAP 20(B) motion.

competition. After the conclusion of the academic year in which each Plaintiff participated in his or her fourth and final season of competition, the NCAA Division I Cabinet voted to change the governing eligibility legislation, adopting a new “Age-Based Eligibility Rule” that permits new enrollees and student-athletes with eligibility remaining under prior rules to participate in up to five years of competition on a going-forward basis. Plaintiffs asked the trial court to compel the NCAA to apply its new rule retroactively to them. The trial court has now twice granted the requested relief despite Kentucky appellate precedent requiring the opposite result.

Plaintiffs previously sought, and were granted, a “TRO” providing the requested relief, which this Court vacated as an improper mandatory temporary injunction. (App.2.) In its Order vacating the TRO as a procedurally improper mandatory injunction, this Court held that Kentucky’s presumption against retroactivity applies to NCAA legislation, like the Age-Based Eligibility Rule. (Appx.3, 10/2/26 Order Granting Interlocutory Relief, at 16–21.) This Court held, as a matter of law, that conferring the benefits of the new rule upon Plaintiffs would necessarily be retroactive in effect because doing so “would create and apply new rights and new duties to events which occurred prior to the date of the amendment” and, as a result, the “latest version of Bylaw 12.6 . . . does not apply to the respondents[.]” *Id.* at 20–21.

That clear holding—on an issue of law, a legal interpretation of text—did not deter the trial court from granting relief once it had a second opportunity to do so. The trial court exceeded its lawful authority by taking this Court’s holding as a suggestion rather than deferring to it as the law of the case, explaining that while it “respects the Kentucky Court of Appeals’ opinion . . . it does not believe that the Plaintiff’s are seeking a retroactive application in their current request for injunctive relief.” (Appx.1 at 14.) But this Court’s Order gives no ground to

the trial court's contrary interpretation, the trial court's second temporary injunction depends on legal error, and it should be immediately stayed pending hearing by a three-judge panel.

This matter is a genuine emergency because the trial court's injunction takes immediate effect, forcing the NCAA to declare forty ineligible student-athletes eligible before this Court can review the order — and once they compete, “it will be practically impossible to unscramble the . . . results.” *NCAA v. Lasege*, 53 S.W.3d 77, 82–83 (Ky. 2001). Several Plaintiffs' seasons are already underway, including those competing in football, soccer, and cross-country. Most Plaintiffs will compete in basketball, the season for which starts in less than a week. Every contest involving an ineligible player will have a permanent asterisk; the NCAA cannot ensure competitive equity among participants in NCAA competition if teams and participants can flout rules they have agreed to abide by through protection of an erroneous court order.

Emergency relief is necessary because expedited appellate review cannot prevent irreparable harm to the NCAA. Even if review is expedited, a small handful of regular season wins can make or break whether schools qualify for post-season competition, and reaching the post-season, such as the NCAA men's basketball tournament, can have very significant financial implications for qualifying institutions. Once results are distorted by the participation of ineligible players, the NCAA's only option is to use its Rule of Restitution (which the trial court purported to enjoin—even though it does not come into effect until an erroneous injunction is vacated or reversed) to impose “the somewhat ham-fisted, post-hoc restitutionary measures it uses to correct competitive inequities created by court orders,” *Lasege*, 53 S.W.3d at 86. But, once ineligible participants are permitted to compete, no later judgment can correct the stain of the trial court's conferral of a competitive advantage among certain schools and student-athletes, with the harm falling hardest on schools and athletes who are not even parties here. The NCAA

“certainly has an interest in the proper application of [its] regulations to ensure competitive equity,” and “programs and student-athletes who, because of the temporary injunction,” will compete against teams with ineligible players likewise require relief. *Id.* at 86.

An immediate stay is also necessary to preserve this Court’s authority: the Court of Appeals has already set aside a temporary injunction in this very case, and absent a stay the trial court’s new injunction would grant the same relief this Court rejected. And the trial court granted relief *by expressly disregarding this Court’s interpretation of the NCAA eligibility rule at issue*. A stay is therefore essential to prevent irreparable harm before a 3-judge panel of this Court can rule on the NCAA’s RAP 20(B) motion and to give effect to this Court’s own prior judgment.

A. The NCAA changes its rules relating to Division I eligibility.

As explained in detail in the NCAA’s RAP 20(B) motion, in June 2026, the NCAA Division I Cabinet unanimously voted to implement a new age-based eligibility rule that gives student-athletes five years of eligibility during a five-year window beginning when they enroll in college or on their 19th birthday, whichever is earlier. (Appx.4, ¶16.) The new rule became effective on August 1, 2026. (*Id.*)

Previously, student-athletes were permitted four seasons of competition within five years, aligning the time permitted for intercollegiate athletics with the pursuit of an undergraduate education and normal degree progression; the former rules had a variety of waivers potentially allowing additional seasons. (*See, e.g.*, Appx.7, 2025-26 Manual, at Bylaws 12.6, 12.6.1, 12.6.11, 12.6.1.7, 12.6.3.1.) But those waivers became a source of litigation from student-athletes seeking additional seasons of competition, with lawsuits increasing after a revenue sharing model was created to provide payments to Division I student-athletes in collegiate sports, leading to destabilization in the rules governing college sports. *See, e.g., Pavia v. NCAA*, 760 F.

Supp. 3d 527 (M.D. Tenn. 2024) (holding that eligibility rules counting junior college competition toward the 4-season limit on participation in Division I athletics were an unreasonable restraint of trade under the Sherman Act). The new eligibility model eliminates all previously allowed waivers other than in cases of pregnancy, military service, and religious missions. (Appx. 4, p 17; Appx.8 at Bylaw 12.6.) The new model also removes the distinction between a season of competition and a year of eligibility that existed under the former rules, resulting in a simpler and more predictable eligibility period. (*Id.*)

The Cabinet unanimously decided not to apply the new rules retroactively. The legislation that the Cabinet voted upon and passed unanimously was clear: the new rules did not apply to student-athletes who did not have both seasons of competition and years of eligibility remaining at the conclusion of the 2025-26 academic year. (Appx. 9.) The NCAA was clear about this method of implementation in its communications; in advance of and after passage of the legislation, the NCAA's governance bodies ***repeatedly announced*** that the new rule would not grant additional eligibility to student-athletes whose eligibility expired in 2025-26—student-athletes who had received the full measure of eligibility permitted to them by the rules in effect throughout their careers. (Appx. 4–7, 10–16.)

The Cabinet determined that applying the age-based eligibility model retroactively would destabilize college sports. (Appx. 4, Affidavit of Geoff Silver.) In most sports, member institutions have already decided who will be on their rosters for the 2026-27 academic year. (*Id.*) Prior to passage, student-athletes had already decided which schools to remain at, transfer to, or initially attend based on their expectation that a roster spot, and potentially playing time and revenue-sharing authorized by the class-action settlement in *House v. NCAA*, No. 4:20-cv-03919-CW (N.D. Cal.) (the “House Settlement”), will be available to them. These opportunities

are all zero-sum. (*Id.*) The NCAA Bylaws cap the number of roster spots for each sport (see Bylaw 17.2), the minutes of playing time available to participants in an athletic contest are fixed, and the House Settlement caps the revenue share payments that an institution may pay to student-athletes in a given year. If a new class of student-athletes were retroactively made eligible at the eleventh hour when the Cabinet passed the new rules, it would have created roster chaos. (*Id.*) It would have also fundamentally upended the settled reliance interests of hundreds of thousands of student-athletes and institutions who operated in reliance on the age-based rule not applying retroactively. (*Id.*) Many student-athletes would likely have lost the opportunities that have been made available to them as a result, all to benefit a group of student-athletes who have received all of the seasons of eligibility to which they were entitled under the rules in effect for their entire collegiate careers. (*Id.*) For this reason, as Daniel Henes admitted on cross-examination at the temporary injunction hearing, no student-athlete’s status has been changed for the 2026-27 academic year; the first year in which a student-athlete will compete in a fifth season without a waiver is 2027-28. (VR 10/14/26 at 10:40:05–43.)

On June 23, 2026, after the Cabinet’s unanimous vote, the NCAA confirmed that the eligibility model applied only to existing student-athletes “with eligibility remaining,” and released a chart so indicating. (*Id.*) And the final NCAA legislation that was adopted said the same thing. (Adopted Final Div. I Prop. No. 2026-44, Appx. 9; 2026-27 Bylaw 12.6, Appx. 8.) After the first age-based eligibility lawsuit was filed the next day (*Borovicanin v. NCAA*, No. A 2603352 (Hamilton Cnty. Ct. Common Pls. June 24, 2026)), the Division I Cabinet issued a public statement that same day advising that it did “not intend to change course.” (NCAA DI Cabinet (@NCAA_PR) (6/24/26), https://x.com/NCAA_PR/status/2069909731364249863.)

B. The underlying lawsuit is filed, an injunction is issued, and this Court dissolves the injunction.

Months later, a number of former student-athletes who ended their college careers in 2026 after competing in 4 years of college sports sued the NCAA in Jefferson Circuit Court and sought injunctive relief because the new age-based eligibility rule does not apply to them. (Appx.17.) Comparing themselves to student-athletes with different circumstances (who competed during the Covid pandemic, for example), these former student-athletes claim that they are intended beneficiaries of the new rule. (*Id.*) But, under Kentucky law, the student-athletes are not third-party beneficiaries of the NCAA Manual, and the new rule—which was not made retroactive—does not apply to them. None of the former student-athletes were injured through any actions that occurred in Kentucky, many of them had no real ties to Kentucky, and the NCAA is an out-of-state defendant. Yet, in an August 21, 2026 order the former student-athletes obtained injunctive relief allowing them to play college sports for another year. (Appx.2.)

The NCAA sought relief from that order under RAP 20(B) and (D). *NCAA v. Wells*, 2026-CA-1107. RAP 20(D) relief was denied primarily due to a misunderstanding as to the nature of the order at issue and what the status quo was, with resultant jurisdictional consequences. (9/4/26 Order in *NCAA v. Wells*, 2026-CA-1107.) Specifically, the 20(D) order stated that “there is a significant question concerning whether the” order at issue was a restraining order or a temporary injunction, meaning there was a “question” as to whether the NCAA’s motion was “properly before” this Court. (*Id.* at 6.) That “jurisdictional issue weighs strongly against the granting of emergency relief.” (*Id.* at 7.) Failing to recognize that it was the circuit court’s order granting injunctive relief that changed the status quo, the RAP 20(D) order also “note[d] the harmful repercussions that could result from successive changes to the status quo pending resolution of the underlying RAP 20(B) motion.” (*Id.* at 6.)

Less than a month after the RAP 20(D) motion was denied, a 3-judge panel of this Court granted the NCAA's RAP 20(B) motion. (10/2/26 Order Granting Interlocutory Relief, Appx.3.) As this Court recognized from the outset, the circuit court's order "upended the status quo." (*Id.* at 2.) The "version of 2025-26 Bylaw 12.6 that was in effect prior to the rule change generally did not permit student athletes to engage in more than four years of competition," and "the June 23, 2026, amendment to that rule still did not permit student athletes who graduated high school in 2022 to engage in more than four years of competition." (*Id.* at 6–7.) "Permitting the high school class of 2022 to play a fifth season . . . would disrupt the status quo." (*Id.* at 7.)

In addressing Plaintiffs' "argument in defense of why — in their view — the circuit court's" order was a restraining order rather than a temporary injunction, this Court was required to review and address Plaintiffs' arguments relating to Bylaw 12.6 (mistakenly referred to in the order as 12.5) in the new 2026-27 Division I Manual. (*Id.* at 15–16.) Plaintiffs argued that the new Bylaw 12.6 "applies to all athletes with no limitation on when an athlete must enroll; that they are currently eligible under this rule; and the NCAA is breaching its current obligation to them under the 2026-2027 manual by declaring them ineligible." (*Id.* at 16.) But this Court "disagree[d]" with Plaintiffs' argument that "misinterprets this purported latest version of Bylaw 12.6." (*Id.*) As the rule "indicates, this latest version was most recently revised on June 24, 2026, and became 'effective' on August 1, 2026." (*Id.*) This Court then explained that the NCAA's "legislation" of "a new, age based eligibility model" was not retroactive; Plaintiffs failed to direct the Court to anywhere in the 2026-2027 Division I Manual that "expressly provides that this *legislation* was designed to have retroactive application"; and, therefore, the "purported latest version of Bylaw 12.6 (assuming it is operative) does not apply to the

respondents, and there is no merit to their argument that *not* giving them a fifth season would disrupt the status quo.” (*Id.* at 16–21.)

C. A second injunction is issued, from which the NCAA is seeking relief.

This Court concluded its order granting the NCAA’s motion for RAP 20(B) relief by stating that Plaintiffs were not precluded from, “upon proper motion, prospectively seeking” a temporary injunction from the circuit court. (*Id.* at 25.) While Plaintiffs did seek (and obtain) another temporary injunction, they presented no evidence that this Court was incorrect regarding its legal determination that current Bylaw 12.6 was prospective only (not retroactive) and does not apply to them. For example, Plaintiffs pointed to no provision in the 2026-2027 Division I Manual that “expressly provides that this *legislation* was designed to have retroactive application”; nor did they demonstrate that the “purported latest version of Bylaw 12.6” was anything other than it was purported to be. The proof presented by the NCAA to the contrary—all indicating that the new rule was not intended to apply to student-athletes who already exhausted their eligibility—was robust. (*See* Appx.4–6, 9–16.)

Rather than present any evidence about the rule itself or its intended effect, during the October 14, 2026, hearing, Plaintiffs introduced opinion evidence from an agent, two coaches, and some Plaintiffs that, generally, they believed it was unfair to not give an additional fifth year of eligibility to student-athletes in the class of 2022 who used all their eligibility in the four years they were students. (VR 10/14/26.) Although the circuit court stated that, “Plaintiff presented testimony from two basketball coaches who testified that in conjunction with discussions with their compliance offices, they relied upon the published plain text of Bylaw 12.6 to construct their rosters” (Appx.1 at 5), the court was wrong. Rather, one of the coaches, Pat Kelsey, testified that UofL has phenomenal compliance officers that he meets with constantly because nobody knows what the rules are in the current litigation environment. (VR 10/14/26 at 12:05–

07.) Kelsey and his team only started exploring what 5th-season students were available after student-athletes started filing lawsuits seeking an additional year of eligibility. (*Id.* at 12:11:39–12:12:38.) He said nothing about the “plain text” of Bylaw 12.6 or any NCAA Bylaw and his testimony was that he only began exploring guys with extra eligibility (former “professional guys” and 5th-season players) when he started hearing that they were eligible. (*Id.* at 12:07–12:12.) Indeed, far from testifying that the “plain text” of any rule caused him to roster 5th-season students, Kelsey testified that he did not know that 5th-season students might be eligible until the lawsuits regarding 5th-season students were filed, and that the only way those students can be eligible is through lawsuits. (*Id.* at 12:12:23–12:12:38; 12:13:16–12:13:30.) Nor did Coach Dennis Gates testify that he used the “plain text” of Bylaw 12.6 to create his roster. (*Id.* at 12:17–1:10:50.) Rather, he testified that he did not recall whether any compliance officer told him, before the age-based litigation began, that the new rule would apply to students who had completed four seasons of competition. (*Id.* at 12:41:31–12:41:43.) At best, coaches testified about confusion surrounding the new rule, and, although the Manual provides a process to seek an interpretation of a rule from the NCAA in the event of confusion about its meaning (Appx. 7 and 8 at Bylaw 9.3.1.2.1), no coach testified that his institution had sought such an interpretation. Students testified that they played against 5th-season students and believed that they were being treated unfairly, but said nothing about the “plain text” of Bylaw 12.6, and many even testified that they understood they could not have a fifth year under the old or new rules. (Jawaun Northington (VR 10/14/16 at 1:11–1:14), Seth Trimble (*id.* at 11:14–11:30), Davion Cunningham (*id.* at 1:15), Olivia Albert (*id.* at 1:20–1:22), Sophie Harlan (*id.* at 1:22–1:25), Regan Dancer (*id.* at 1:26–1:30), Kaleb Perry (*id.* at 1:33–1:40), and Alex Afari (*id.* at 1:40–1:49).)

In addition to failing to present any evidence contradicting this Court’s ruling that Rule 12.6 was not retroactive and did not apply to Plaintiffs, Plaintiffs failed to present any evidence that the “NCAA Division I handbook qualifies as a contract” or that Plaintiffs “qualify as ‘third-party beneficiaries’ of that contract.” (Appx. 3 at 20.) Thus, under both the law of the case and Kentucky law that only a donee or a creditor beneficiary is a third-party beneficiary of a contract, Plaintiffs simply have no claim for breach of contract. See RAP 20(B) Motion at 12–23. Because this Court also held that Plaintiffs are not “within the class of persons that the Kentucky Consumer Protection Act protects,” the only claim that Plaintiffs have is their flawed breach of contract claim.

Although the circuit court found that “Plaintiffs have a substantial likelihood of success on the breach of contract” claim, as demonstrated above and in the NCAA’s RAP 20(B) Motion, the trial court made fundamental errors of fact and law in reaching that conclusion. First, the Court of Appeals has already dissolved the prior injunction and held, as a matter of law, that the 2026-27 age-based eligibility rules do not apply retroactively to Plaintiffs—a ruling that is law of the case, forecloses any substantial question on the merits of both the breach-of-contract and KCPA claims, and binds the trial court on remand. Second, even if Plaintiffs could have developed proof to show that the NCAA unreasonably interpreted its Age-Based Eligibility Rule to Plaintiffs’ exclusion, Plaintiffs did not do so at the injunction hearing, instead relying upon their own subjective beliefs about what the rules *should be*. That is a policy question Kentucky law reserves to the members of the NCAA, not the courts. Third, the trial court lacks personal jurisdiction over the NCAA, an Indiana association whose challenged rule change was adopted in Indianapolis, and the players have suffered no actionable harm in Kentucky. Fourth, the equities and the absence of irreparable harm defeat the motion: a fifth season would upend the

settled roster, playing-time, and revenue-sharing expectations of more than 180,000 Division I student-athletes rather than preserve the status quo, and each Plaintiff must prove immediate, irreparable injury individually on evidence specific to that Plaintiff—a showing this non-class action cannot make collectively. The NCAA will suffer irreparable injury before a panel of this Court decides the RAP 20(B) motion.

RAP 20(D) is meant to provide relief “[i]f a movant will suffer injury before a motion under” RAP 20(B) “will be considered by a panel of the Court of Appeals.” While RAP 20(D) is entitled “Emergency Relief in Court of Appeals,” the word “emergency” does not mean, for example, that someone’s life is in peril, but that “irreparable injury” will occur before a RAP 20(B) motion can be decided by a 3-judge panel of this Court. Here, there is just such “irreparable injury.”

Indeed, in denying emergency relief on the NCAA’s previous RAP 20(D) motion, the order recognized “the harmful repercussions that could result from successive changes to the status quo pending resolution of the underlying RAP 20(B) motion.” (9/4/26 Order in *NCAA v. Wells*, 2026-CA-1107, at 6.) And a 3-judge panel of this Court determined that “[p]ermitting the high school class of 2022 to play a fifth season . . . would disrupt the status quo.” (Appx.3, 10/2/26 Order Granting RAP 20(B) Relief, at 7.) Here, Plaintiffs engaged in fall sports have had just such successive changes to their status. They could not play at the start of the season under the rules applicable to them until the circuit court’s August 21, 2026, order; they could play from August 21 to October 2; they could not play from October 2 until October 16; now they can play again for an indeterminate amount of time. And, while Plaintiffs in this case are being allowed to play (which necessarily takes playing time away from other players in sports such as football and soccer where only a specific number of players may be on the field at any one time), many other

schools against whom Plaintiffs are competing are abiding by the NCAA rules—that they all agreed to follow—and which prohibit members of the class of 2022 who already competed in four years from competing for a fifth year. *Cf. Lasege*, 53 S.W.3d at 85–86.

Rulemaking through judicial decree leads to chaos. As Pat Kelsey, the University of Louisville Men’s Basketball Coach, testified, UofL started exploring what 5th-season students were available once “guys started filing lawsuits” claiming they were being treated unfairly; he did not start recruiting 5th-season players until student-athletes filed lawsuits. (VR 10/14/26 at 12:11:39–12:12:38.) And the lawsuits (and rulings arising from them) create chaos:

[F]rom a coach’s standpoint, every time the NCAA says something, we all shrug our shoulders and [say] is that going to stand up, is that a rule? We don’t think there are rules right now. We don’t. . . . We want the chaos to end. Cuz nobody knows what the crap’s going on. Nobody. . . . All of a sudden 5th-year guys are starting to get eligible, we start recruiting those guys.

(*Id.* at 12:12:15–12:13:18.)

But, after acknowledging that the 5th-season guys were getting eligible through lawsuits, Kelsey testified: “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.” (*Id.* at 12:13:48–12:13:58.) The NCAA cannot enforce the rules, including the new Age-Based Eligibility Rule *because of* court intervention; trial courts are creating confusion, not solving it. (*Id.* at 12:14:08–12:14:25.) Student-athletes also discussed the chaos and stress created by the ever-changing rules that apply to them, which is the result of rulings in this case and others like it—not any statements or conduct of the NCAA. (Appx.32, Reese Ragland Declaration; VR 10/14/2026, 1:24:06-1:25:25 (Sophie Harlan).) While vehemently testifying that “we need rules,” Coach Kelsey wanted to “end the chaos” that is “creating all these court cases” by adopting his preferred solution: have the NCAA change the Age-Based Eligibility Rule at issue, months after the commencement of the current academic year (VR 10/14/26 at

12:15:10–12:16:24), which would punish the rule followers and benefit only those schools that have already broken the rules by bringing student-athletes who exhausted their eligibility back to campus. The doctrine of non-interference, if followed, would prevent such a result and allow the NCAA to hold all institutions to the rules they have agreed to follow.

Kentucky law allows the NCAA to enforce its rules. This Court has previously recognized that “courts are a very poor place in which to conduct interscholastic athletic events, especially because this type of litigation is most likely to arise at playoff or tournament time” or other chaotic times or chaotic circumstances, such as here, where the rules and roster slots are in flux at the beginning of the school year. *Kentucky High Sch. Athletic Ass’n v. Hopkins Cnty. Bd. of Ed.*, 552 S.W.2d 685, 690 (Ky. App. 1977), *overruled on other grounds by Lasege*, 53 S.W.3d at 89. Where, as here, injunctive relief “is granted erroneously, it will be practically impossible to unscramble” the impact. *Id.* “In almost every instance, the possible benefits flowing from a temporary restraining order or injunction will be far outweighed by the potential detriment to the Association, as well as to its member schools who are not before the court.” *Id.* “Only in rare instances would the granting of the temporary restraining order or temporary injunction be a proper remedy.” *Id.*; *see also Lasege*, 53 S.W.3d at 82–84. Similarly, injunctive relief is not proper here.

The need for a stay is immediate both because the result of impacted competition cannot be undone, but also because postseason competition begins next week in multiple affected sports. Women’s soccer conference-tournament play begins October 30 and continues through November 7. The Conference USA cross country championship is October 31, with NCAA regional and national championship competition following on November 13 and November 21.

Louisville football also returns from its bye to face Stanford on October 31, while Louisville men's basketball begins exhibition play October 28 and regular-season play November 2.

Thus, the trial court's order is already producing competitive consequences that no appellate ruling can fully reverse, and the impact of those consequences will only grow more acute as fall sports seasons enter post-season competition. Conference championships will be decided, tournament games will determine who advances, and remaining regular season contests will decide the postseason opportunities for which teams qualify. Once those events occur, a later decision cannot recreate the competition as it would have occurred absent the trial court's order. That is precisely the problem the Kentucky Supreme Court identified in *National Collegiate Athletic Ass'n v. Lasege*. Once postseason competition proceeds, the Court explained, "it will be practically impossible to unscramble the tournament results to reflect the ultimate outcome of the case." *Lasege*, 53 S.W.3d at 82–83.² The resulting injury also extends beyond the parties to opposing "programs and student-athletes" whose competitive opportunities are affected by the eligibility ruling. *Id.* at 86.

The October 31 weekend is therefore not simply another week on the athletic calendar; it is the point at which appellate review begins to lose its practical value. Once conference championships are run and post-season tournament games are played, the ultimate outcome of the season will be settled by contests undermined through the participation of ineligible competitors. As *Lasege* recognized, courts cannot later "unscramble" completed competition. A stay now preserves the Court's ability to decide the legal question before the trial court's order produces irreversible consequences in championship events.

² The NCAA contends that *any* competition with ineligible players irreparably harms its ability to ensure competitive equity, not just post-season competition. But the Kentucky Supreme Court certainly recognized that the harm is at its apex in post-season play.

To be clear, Kentucky law recognizes that the harm is most detrimental to championship events, but any one contest can make-or-break a season. Member institutions and other student-athletes who follow the rules will be harmed by the trial court erroneously permitting ineligible former student-athletes to compete. Every contest in which an ineligible player participates forces competitors to face an athlete who, if the injunction is later reversed, was never entitled to be on the field in the first place. The consequences of that participation are immediate and irreversible. Opponents may suffer losses, diminished playing opportunities, adverse effects on standings, postseason qualification, rankings, awards, records, scholarships, and recruiting, all because they were required to compete against a player later determined to be ineligible. Once those contests have been played, those opportunities are gone forever. Courts cannot replay games, restore lost victories, recreate athletic opportunities, or reconstruct the competitive conditions that would have existed absent the participation of an ineligible athlete. Thus, if Plaintiffs ultimately are found ineligible, the injury to the schools and student-athletes forced to compete against them will be permanent and incapable of repair.³

It is also unfair to the current student-athletes who will lose playing time to Plaintiffs. Those students made one of the biggest decisions of their lives—where to attend college—in reliance on the rules as they stood back in spring. Each Plaintiff who is permitted to compete will occupy a roster spot that current student-athletes counted on turning over when making their collegiate decisions. For example, Isaac Ellis, a freshman on UofL’s basketball team, testified that, when he found out in August (after the first Jefferson Circuit Court injunction) that a 5th-

³ Indeed, the trial court’s injunction magnifies this harm by erroneously prohibiting the NCAA from enforcing its “Rule of Restitution” (Appx.1, pp. 14), thereby stripping away the NCAA’s traditional means of protecting the fairness and integrity of competition when an eligibility ruling is later reversed. *See* RAP 20(B) Motion at 35–38.

season student would be returning to UofL he was “upset.” While he subsequently decided that playing with an experienced player could be a good experience, he admitted that he “considered the opportunity he would have to play as a freshman in deciding where to go,” a decision that was informed by the roster at the time he was recruited, which had just lost a talented senior at his position. (VR 10/14/26 at 11:30–11:34.)

The longer the upheaval and chaos created by an injunction picking and choosing rules that apply to some former student-athletes continues, the greater the harm to the NCAA, its members, the current student-athletes who will lose playing time to ineligible students who played four seasons of Division I sports, and the schools and student-athletes who are following the rules while competing against schools allowing 5th-season players.

Coach Kelsey called for an end to the chaos. The NCAA echoes his call. The only way to ensure consistent application of uniform eligibility rules is for courts to ***follow the law***, which requires deference to the NCAA unless its rules are unlawful, against public policy, or have been interpreted contrary to their plain language. The trial court did not do so. The NCAA asks this Court to, once again, clean up the chaos the trial court created.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 27, 2026, copies of this motion were sent by email to: Ryan Downton, ryan@thetexasastrialgroup.com; Hans G. Poppe, hans@poppelawfirm.com; Kirk A. Laughlin, kirk@poppelawfirm.com; Taylor K. Richard, taylor@poppelawfirm.com; Katherine E. Tapp, katherine@poppelawfirm.com; Trip Redford, cmr@kentuckylaw.com; Todd Forester, tforester@kentuckylaw.com; Abe Mashni, abe@kycriminaldefense.com; Marc Tawfik, Marc@aligned-law.com; and Judge Brian Edwards (AlexisCaudill@kycourts.net).

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