

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, AND JABARI MACK

PLAINTIFFS-RESPONDENTS

**RAP 20(B) MOTION FOR RELIEF FROM ORDER GRANTING TEMPORARY
INJUNCTION**

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CERTIFICATE OF SERVICE

I certify that on September 1, 2026, I sent copies of this motion were served by email to:
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Katherine E. Tapp (katherine@poppelawfirm.com), and Judge Brian Edwards
(BrianEdwards@kycourts.net, AlexisCaudill@kycourts.net).

/s/ Bethany A. Breetz
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INTRODUCTION

Students typically attend college for four years. A variety of events can, however, cause some students to take longer to graduate than the average student. Accordingly, for decades, the National Collegiate Athletic Association permitted student-athletes to compete in up to 4 seasons of intercollegiate-athletic competition in any one sport, but allowed student-athletes to complete those 4 seasons over a period of 5 years (or longer) through the “Five-Year Rule” and various exceptions to that rule. The exceptions, however, became confusing and complicated, resulting in a host of lawsuits, leading the NCAA to change and simplify the rule.

In June 2026, the NCAA Division I Cabinet unanimously voted to implement a far simpler age-based eligibility rule allowing 5 years of competition and eliminating all waivers other than pregnancy, military service, and religious missions. The Cabinet unanimously decided not to apply the new rules retroactively, meaning it does not apply to student-athletes whose eligibility expired following the 2025–26 academic year (students who competed in 4 seasons of college competition in any one sport).

Some former student-athletes who ended their college careers in 2026 and who competed in 4 years of college sports sought injunctive relief because the new rules did not apply to them. Comparing themselves to student-athletes with different circumstances (who competed during Covid or began their college careers at junior colleges, for example), these former students claimed that they are beneficiaries of the new rule, which expressly does not apply to them. And none of the former students were injured through any actions that occurred in Kentucky. Yet they obtained injunctive relief, allowing them to play college sports for another year and directing the NCAA to reopen the transfer portal for them. (**Appx.1.**) For a host of reasons, the injunction should be vacated.

STATEMENT OF THE CASE

A. The NCAA's rules allowed student-athletes to compete in 4 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.2**, 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-athletes. (*Id.* ¶16; **Appx.3** Commissioners' Statement, ¶3.)

Recognizing that the typical college experience lasts 4 years, but is sometimes extended, the NCAA's "Five-Year Rule" permitted student-athletes to compete in up to 4 seasons of intercollegiate athletic competition over a 5-year period. (**Appx.5**, Bylaw 12.6 from the 2025-26 DI Manual; Appx.2, ¶¶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.5 at 12.6.1.7, 12.6.4, 12.6.5, 12.6.6; Appx.2, ¶15.)

B. The NCAA's Division 1 eligibility rule is simplified.

After this framework became the subject of a great deal of litigation, on June 22, 2026, the Cabinet adopted a new age-based eligibility model. (Appx.2, ¶ 16.) Going forward, student-athletes will receive a five-year eligibility period beginning at the start of the academic year

following their 19th birthday or upon full-time enrollment at a collegiate institution, whichever is earlier, and student-athletes may compete during that five-year period of eligibility without restriction, provided they meet all other eligibility requirements. (*Id.* ¶17; **Appx.6**, 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.¶17; Appx.6 at 12.66, 12.67.) The new model was enacted through the process for amendment to the DI Manual. (Appx.2, ¶18; Appx.5, Bylaw 9.2.) The new rules took effect on August 1, 2026, and are part of the 2026-27 NCAA Division I Manual. (Appx.2, ¶16; Appx.6 at Bylaw 12.6.)

The Cabinet had good reason for its decision. Student-athletes who completed 4 seasons of intercollegiate competition before the 2026-2027 academic year received everything they could have expected under the rules that applied during their entire college athletics careers. Applying the rules retroactively would create chaos, destabilize rosters, and disrupt settled expectations. (Appx.2, ¶21; Appx.3, ¶9; **Appx.4**, DI Cabinet Statement.) In most sports, NCAA member institutions have already made decisions about who will be on their roster and how much student-athletes will be paid in revenue sharing dollars contributed by the member institutions. (*Id.*) Both incoming students and students in the transfer portal have 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

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).

C. Student-athletes who played 4 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 completed four seasons of intercollegiate basketball, football, or baseball competition during a four-year period filed suit against the NCAA. (**Appx.7**, Complaint.) Plaintiffs claim that the high school class of 2022 were excluded from the ability to play Division I sports for 5 years and sought relief from a variety of NCAA rules so that they would be eligible to play in the 2026-27 season. (*Id.*; **Appx.8**, Motion at 6 and Memo. for TRO and Preliminary Injunction.) Neither the complaint nor the motion were verified in any way. It is undisputed that none of the Plaintiffs were eligible to play a fifth season under the rules that applied to them during their entire college careers, and Plaintiffs got everything they were entitled to under the rules applicable to them.

Not a single plaintiff claims to be a citizen or resident of Jefferson County, or even Kentucky. Yet the complaint alleges that venue and jurisdiction are proper in Jefferson County, Kentucky, because three Plaintiffs (Jabari Mack, D’Angelo Hutchinson Jr., and Kayden Campbell) “competed for the University of Louisville” during at least part of their collegiate sports careers and the NCAA’s conduct affects “those Plaintiffs, and all other Plaintiffs whose institutions and opponents regularly compete in Jefferson County.” (*Id.* ¶23.) Of the other Plaintiffs, Levaviem Wells played from 2022-2026 at Northern Kentucky University; Donovan Oday played basketball for three seasons at two out-of state schools and one season at NKU; Fred King played out-of-state for three seasons before transferring to Murray State for 1 season; Colin Porter (who is “a native of Kentucky,” but fails to allege where he now resides), played four seasons out-of-state; Mark Mitchell, Justin Allen, and Albert Vargas Brito played basketball or football at out-of-state schools for four seasons. (*Id.* ¶¶ 10–19.) Most of the former student-athletes were not sure of where they would play if granted another year of eligibility, although

Allen indicated he “intends to return to the University of Wisconsin-Green Bay, which has a roster spot available for him” and Brito “might play” at out-of-state schools that “have shown interest” and “have a roster spot available” (*Id.*, ¶¶15, 18.) Not a single plaintiff indicated any current connection to Kentucky or harm to them in Kentucky from the NCAA’s actions in changing Bylaw 12.6.

Nor do Plaintiffs 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 by law, 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.7 at Prayer; Appx.8 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 sought to pick and choose the rules applicable to them so that they might play another year. To give them the relief requested, the court was required to impose new eligibility criteria for Plaintiffs that effectively creates a prophylactic permission for them to play.

Plaintiffs concede Kentucky has no general jurisdiction over the NCAA, asserting instead that they assert specific jurisdiction due to “the damage to Plaintiffs arising out of and related to the NCAA’s contacts with Kentucky.” (Appx.10.) 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.7.) During the hearing, Plaintiffs claimed that if Plaintiffs grew up or were recruited out of Kentucky, went to a school in Kentucky, or played in Kentucky against fifth- or sixth-year students, then school, they were “damaged” in Kentucky, and it doesn’t matter whether all of them were injured in Jefferson County. (VR 8/14/26 at 11:16:54–11:18:26 (dvd being filed conventionally).)

The NCAA opposed the motion on the following bases: lack of jurisdiction, Plaintiffs’ reliance on unsupported allegations; Plaintiffs’ lack of third-party beneficiary standing under the facts or Kentucky law; failure of their breach of contract and Consumer Protection Act claims; and failure to demonstrate the requirements to obtain injunctive relief. (Appx.9.) Allowing student-athletes who competed in 4 seasons of intercollegiate athletics and are no longer eligible to play—under either the old or new bylaw—to regain eligibility would throw collegiate athletics into disarray, forcing institutions to reconsider who gets rostered and who does not, who will get playing time and how much, and how much each student-athlete will be paid in revenue sharing. (Appx.2, ¶21; Appx.3, ¶9.) These institutional decisions will harm student-athletes who presently have security in their plans for the upcoming academic year. (*Id.*)

D. The trial court erroneously granted injunctive relief and a host of players seek to apply that order to themselves.

Following a hearing on August 14, 2026, the court granted plaintiffs’ motion. (Appx. A; DVD of hearing is being filed conventionally.) Although the trial court’s opinion says it is granting plaintiffs’ motion for a temporary restraining order, the opinion does more than simply restrain the NCAA to maintain the status quo. For example, the Opinion orders the NCAA “to open the transfer portal for all Plaintiffs....” (Appx.1 at 14.) While an “injunction may restrict or mandatorily direct the doing of an act,” a “restraining order shall only restrict the doing of an

act.” CR 65.01. And, although “[n]o restraining order or temporary injunction shall be granted except upon the giving of a bond by the applicant,” the court failed to require any bond.

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.16.) Two days after the court’s order, Alex Afari (with different counsel than the original plaintiffs) sought to intervene and to apply the TRO “and relief” to him. (Appx.17.) 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.18; Motion to Modify, Appx.19.) The NCAA opposed both Afari’s and Plaintiffs’ motions. (Appx.20, Appx.21.) A hearing was held August 31, with the trial court taking the motions under advisement.

ARGUMENT

A. The order at issue is an injunction, not a restraining order, and RAP 20 relief is available and appropriate.

1. RAP 20(B) relief is available.

Plaintiffs requested a temporary restraining order and temporary injunction, their proposed order was denominated as “GRANTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION,” and Plaintiffs’ sought and obtained more than simply restrictions on “the doing of an act.” CR 65.01. Distinguishing between TROs and temporary injunctions “is important, and not simply academic” because there is a right to seek appellate relief from a temporary injunction. *Kentucky High Sch. Athletic Ass’n v. Edwards*, 256 S.W.3d 1, 3 (Ky. 2008); RAP 20(A) and (B).

Yet, the trial court incorrectly called the order at issue a temporary restraining order, when, in fact, it was a preliminary injunction. Restraining orders “are ordinarily granted without notice to the defendant.” *Link v. Link*, 704 S.W.3d 698, 708 (Ky. App. 2024), quoting *Commonwealth v. Mountain Truckers Ass’n, Inc.*, 683 S.W.2d 260, 263 (Ky. App. 1984). Here, in contrast, the order was entered after a hearing and briefing by all parties.

More importantly, the order “mandatorily directs the doing of an act,” namely ordering the NCAA to “open the transfer portal for all Plaintiffs.” (Appx.1 at 14.) Nor does the order “merely preserve the status quo,” which is one of the equities to be weighed in determining whether to issue injunctive relief. *Maupin v. Stansbury*, 575 S.W.2d 695, 699 (Ky. App. 1978). Further, while the order ostensibly “restrains” the NCAA’s enforcement of some of its bylaws or “restrains” the NCAA from prohibiting certain conduct, the effect of the order is to make Plaintiffs’ eligible when they are ineligible, which is a mandatory act.. See, e.g. *Brown v. NCAA*, Hawaii, 8/25/26 Minute Order (Appx.11) (holding that, while plaintiff claimed to be seeking injunctive relief directing the NCAA to stop certain conduct to maintain the status quo, “the operative status quo is that Plaintiff is ineligible to participate during the 2026-27 academic year,” and Plaintiff seeks to alter the status quo and effectively restore his eligibility for competition, which “mandatory relief” is not available through a TRO); *Avila v. NCAA*, Cook County, Ill, 8/18/26 order denying TRO (Appx.12), pp.3-4, 12-14, 16 (holding, in a similar case, that “the relief Plaintiff seeks is mandatory, not prohibitory.”)

Where, as here, a party seeks (and obtains) both restrictions of an opposing party’s conduct and mandatory directions to the opposing party, the person has sought and obtained a temporary injunction, not a restraining order. CR 65.01, *Fields v. City of Hopkinsville*, 2021-CA-0547, 2023 WL 4139873, at *5 (Ky. App. June 23, 2023) (unpublished and non-binding);

Russell Cnty., Kentucky Hosp. Dist. Health Facilities Corp. v. Ephraim McDowell Health, Inc., 152 S.W.3d 230, 232 (Ky. 2004) (a TRO “may not be mandatory in character, and may only restrict the commission or continuance of an act.”).

2. RAP 20 relief is appropriate.

“Cases involving challenges to eligibility decisions made by voluntary athletic associations such as the NCAA “pose special difficulty.” *Nat’l Collegiate Athletic Ass’n v. Lasege*, 53 S.W.3d 77, 82 (Ky. 2001). “Challenges to a voluntary athletic association’s eligibility decision typically present issues which require considerable reflection. In general, the members of such associations should be allowed to ‘paddle their own canoe’ without unwarranted interference from the courts,” unless the NCAA acted “arbitrarily and capriciously toward student-athletes.” *Id.* at 83. “Longshot” claims, such as those here, “will not justify injunctive relief.” *Id.* at 83–84. A further difficulty with this type of case is that “circuit court determinations as to temporary injunctive relief” are “technically interlocutory but pragmatically final.” *Id.* at 84.

Under former CR 65.07, now RAP 20(B), this Court may reverse a trial court’s determinations in this type of case “where it appears that the circuit court has made clearly erroneous findings unsupported by substantial evidence,” with additional review in the Supreme Court appropriate when warranted by “extraordinary cause.” Where a trial court makes decisions like those here or in *Lesage* by “substituting its judgment for that of the NCAA,” “finding that the NCAA has no interest in th[e] case which weighs against injunctive relief,” and declaring an NCAA bylaw “invalid,” such a “combination of clearly erroneous conclusions constitutes extraordinary cause warranting CR 65.09 [RAP 20(F)] relief,” which is an even higher standard than that for RAP 20(B) relief. *Lasege*, 53 S.W.3d at 84. The NCAA is entitled to relief under RAP 20(F), meaning it is also entitled to relief under RAP 20(B).

B. The order was issued in violation of CR 65.05 and without jurisdiction.

1. The court’s personal jurisdiction analysis is fundamentally flawed.

The trial court’s first fundamental error was in determining it had personal jurisdiction. (Appx.1, pp.5–7.) 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.10.) Whether personal jurisdiction exists depends “on the relationship among the defendant, the forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (citation omitted). “To determine whether the exercise of personal jurisdiction comports with federal due process standards, Kentucky courts use a three-part test,” the second prong of which is whether the claims arise from Kentucky-related contacts. *Murphy v. Frontier Prof. Baseball, Inc.*, 601 S.W.3d 511, 515 (Ky. App. 2020). 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.” *Id.* at 516. Thus, the jurisdiction issue is whether Plaintiffs alleged any ties between the NCAA, Kentucky, and their two causes of action, which are purported breach of contract and violation of Kentucky’s Consumer Protection Act. (Appx.7, ¶¶ 79–92.) They did not.

It is undisputed that, at the time Plaintiffs were playing collegiate sports, fifth- and sixth-year student-athletes were allowed to play, so long as they met the governing bylaw’s requirements. Plaintiffs do not challenge those rules. Thus, their assertion that they were “harmed” in Kentucky by playing against student-athletes whose eligibility had been extended under the then rules (VR 8/14/26 at 11:16:54–11:18:26) makes no sense given that Plaintiffs are not challenging those fifth- and sixth-player’s right to play. Instead, Plaintiffs are claiming harm

because they are not included in the June 2026 rules change, which occurred *after* all Plaintiffs had completed their collegiate sports careers, and well *after* any alleged contact between Plaintiffs and Kentucky. The record contains no evidence, or even any allegations, that any of the Plaintiffs had Kentucky ties in June 2026, when Bylaw 12.6 was changed and they were purportedly harmed.

Further, some Plaintiffs' only connection with Kentucky is that they allegedly played games against Kentucky-based teams, and only one even alleges that those games took place in Kentucky. (Appx.7, ¶¶14, 15, 18.) As a Colorado state court aptly stated in a recent hearing, as to Plaintiffs "who may have played one or two games in the [forum state] over the course of their four year athletic careers, that is not enough." (Appx.13, *Branch, et al. v. NCAA*, No. 26CV32732, Denver District Court (Denver, CO), excerpts from 8/12/2026 Hearing Tr. at 4:15–18.) Because while "[t]hey came here to play the game," and it may have been "under the auspices of the NCAA rules[,] it was not the NCAA purposefully availing [itself] as to those particula[r] Plaintiffs and, in fact, even if it was, it wasn't as to the issues [i.e., retroactive application of the age-based rule] we're facing right now." (*Id.* at 4:18–21.) Likewise, the court recognized that simply living in the forum state or wanting to attend a forum state institution "is not enough for [the court] to exercise jurisdiction." (*Id.* at 5:7–9, 5:21–6:11.) The same is true here.

The Order states that "as 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, pp.6-7.) But in *Lee*, the court held there was no personal jurisdiction as to the claims of plaintiffs not domiciled in the forum state—directly opposite the result here. Accordingly, the trial court's

personal jurisdiction analysis is flawed from the start, as no Plaintiff here alleges he lives in Kentucky.

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, p.6.) 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, no Plaintiff is alleged to reside in Kentucky, and Plaintiffs do not assert any antitrust claims, but only breach of contract and KCPA claims. Moreover, hours before the Jefferson Circuit Court’s order was entered, 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.14, *Wisne v. Brock*, 26-1309 (10th Cir., Aug. 21, 2026).)

The trial court also “[f]ollow[ed] the logic of the *Godfrey v. NCAA* Order,” in personal jurisdiction over the NCAA as to Plaintiffs’ claims. (Appx.1, p.6.) But in *Godfrey*, the Georgia trial court’s “logic” was that “[t]he NCAA does not contest jurisdiction.” (Appx.15.) The *Godfrey* court there merely recited plaintiffs’ allegations and found jurisdiction. (*Id.*)

The trial court essentially engaged in a general jurisdiction analysis. The NCAA’s “contacts” pointed to in the Order are that the NCAA: “currently transacts substantial business within Kentucky,” “conducts athletic competitions, ticket and merchandise sales, television agreements, and other revenue generating activities in Kentucky along with its member institutions,” “has substantial and continuous contacts with Kentucky,” and “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.” (Order at 6.) This “finding” is replete with errors. First, Plaintiff’s individual claims do not arise from any business the NCAA conducted in Kentucky—the challenged eligibility rules were decided in Indiana. The NCAA also does not “conduct athletic competitions, ticket and merchandise sales” in Kentucky—its conferences and member institutions do, and they are not parties to this case. In any event, Plaintiffs’ claims arise from the NCAA’s new eligibility rules, not any “athletic competitions” or “ticket and merchandise sales, television agreements, [or] other revenue generating activities.” (*Id.*) And whether the NCAA has “substantial and continuous contacts with Kentucky” or not, those contacts cannot give rise to personal jurisdiction unless Plaintiffs’ specific claims arise from those contacts. They do not.

Finally, and 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.” (*Id.*) 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—Plaintiffs do not assert antitrust claims of any kind. 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,” 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.

Importantly, although Plaintiffs claim it would be “unfair” for them to have played against or competed with fifth-year players while not being given a fifth year themselves, playing against or competing with those 5th-year players during their college career is not the

injury they seek to remedy. Rather, here they participation in a fifth year of competition. Thus, for purposes of a personal jurisdiction analysis, the only contacts that matter are *the NCAA's* contacts with Kentucky that purportedly caused Plaintiffs to not be permitted to engage in a fifth year of competition. The NCAA's past decisions that allowed certain student-athletes to have a fifth year of eligibility such as the COVID waivers did not—and could not—impact Plaintiffs' eligibility. Plaintiffs' claims do not arise from those decisions— they arise from the NCAA's new age-based eligibility rules, which were promulgated from the NCAA's headquarters in Indiana, and which were “directed at nowhere in particular.”

For all the contacts they allege, Plaintiffs do not allege their claimed injury will even be “felt” in Kentucky—there is no allegation that *any* Plaintiff lives in Kentucky, is enrolled at a Kentucky college or university, or is being prevented from playing for a Kentucky-based member institution. Indeed, Mark Mitchell—one of the plaintiffs who obtained injunction relief allowing him to compete in Division I in 2026-2027 and whose limited connection to Kentucky is that he “played games against” UK and UofL while playing basketball for Duke and University of Missouri—used that injunction to commit to playing in Missouri this coming school year. See <https://dukewire.usatoday.com/story/sports/college/duke/mens-basketball/2026/09/01/mark-mitchell-makes-up-his-mind-returns-missouri/91557421007/>.

And even if Plaintiffs made allegations regarding additional Kentucky connections, such allegations would not matter, because the NCAA's new age-based model—which Plaintiffs point to as the source of their injury—was made in Indiana and directed at nowhere in particular. The trial court's reasoning would, essentially, eliminate the “arising from” prong of Kentucky's jurisdictional analysis and allow any college student-athlete who set foot anywhere in Kentucky

at any point during their collegiate years—like Mark Mitchell—to obtain an injunction in Jefferson Circuit Court.

2. The temporary injunction was issued without a bond being posted, in violation of CR 65.05.

Although CR 65.05(1) specifically directs: “No restraining order or temporary injunction shall be granted except upon the giving of a bond by the applicant, with surety, in such sum as the court or the officer to whom application is made deems proper, for the payment of such costs and damages as may be incurred or suffered by any person who is found to have been wrongfully restrained or enjoined.” In direct contravention of this clear requirement, the trial court issued the injunction without setting a bond, and no bond has been paid by Plaintiffs. (Appx.1.)

The Supreme Court has recognized that this Court has held that a “circuit court’s failure to order the parties to post an appellate bond as required by CR 65.05 was ‘alone fatal to enforcement of the trial court’s temporary injunction.’” *Caudill v. Sanitation Dist. No. 1 of N. Kentucky*, 2025-SC-0374, 2026 WL 490948, at *3 (Ky. Feb. 19, 2026) (unpublished and non-binding, but persuasively relying on the clear language of CR 65.05). The Supreme Court agreed with this Court, vacating the temporary injunction granted by the circuit court and holding that the circuit court’s failure to set a bond as required by CR 65.05 “was an abuse of the circuit court’s discretion.” *Id.* at **6–7. The same is true here.

C. The court erred in finding Plaintiffs adequately demonstrated harm.

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 Plaintiffs’ “verified” complaint contains no verifications and unsupported allegations are insufficient to “clearly” demonstrate entitlement to relief under CR 65. While “Verifications” were attached to the Motion for Temporary restraining Order and Preliminary Injunction, they

are insufficient under Kentucky law. (Appx.8.) Thus, Plaintiffs’ claims of irreparable harm are entirely speculative—there was no evidence that Plaintiffs are likely to imminently suffer any injury, much less the irreparable injuries they allege.

“‘Verification’ is defined as ‘a formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.’” *Taylor v. Kentucky Unempl. Ins. Comm’n*, 382 S.W.3d 826, 834 (Ky. 2012) (quoting Black’s Law Dictionary), *abrogated on other grounds by Louisville Hist. League, Inc. v. Louisville/Jefferson Cnty. Metro Govt.*, 709 S.W.3d 213, 223 (Ky. 2025). No such declarations exist here. The purported “verifications” attached to Plaintiffs’ amended complaint are not sworn—they are not notarized and bear no indication they were made under oath. Such statements are insufficient to verify Plaintiffs’ allegations because “[v]erification . . . requires the statement of a third party (i.e., the notary or officer administering the oath) showing that the declarant has sworn an oath to the truthfulness of what is asserted in the document.” *Williams v. Commonwealth*, No. 2017-CA-001794-MR, 2019 WL 4389159, at *3 (Ky. App. Sept. 13, 2019). Plaintiffs’ statements contain only their own purported signatures, and “[v]erification is not made by simply signing or affirming.” *Id.* (citing *Taylor*). Further, only one of “verifications” was signed in Kentucky (Boyd County) indicating, again, the lack of connection with Jefferson County or Kentucky.

Plaintiffs’ claimed harm is speculative here. Not a single Plaintiff indicates that, if granted eligibility, they have been promised a roster spot at any member institutions. Indeed, most state they are “not sure” where they would play, and do not allege any school they even might attend or that has a roster spot available for them. (Appx.7. ¶¶10–19.) A few merely say they “might play” somewhere, or that some schools have “shown interest,” but none allege firm

offers. (*Id.* ¶¶10, 17–19.) Plaintiffs allegations on this point are also contradictory. On one hand, they contend that “[w]ithout timely injunctive relief, schools considering Plaintiffs will fill [their] roster spots with other players” (Appx.8 (Memo), p.15), while at the same time claiming “Plaintiffs will not deprive any athletes of such a spot” because “they merely seek to obtain one of the last roster spots that coaches have held open hoping that the Class of 2022 will regain eligibility” (*id.* at 17). Plaintiffs cannot have it both ways. And while one identifies the school he “intends” to attend if granted another year of eligibility (University of Wisconsin-Green Bay), he does not say he has been offered a roster spot, or even that the school might be interested in him. (*Id.* ¶ 15.)

Absent an offer of roster spots, Plaintiffs cannot demonstrate that an injunction would redress their claimed harm—their ability to compete for an additional season would depend on facts and circumstances extrinsic to this proceeding and outside the control of this Court. “Harm from a lost season presupposes a season that would otherwise occur. Where no institution has enrolled the athlete, offered him a season, or been [definitively] identified by name, the causal chain between the challenged rule and the claimed injury has a gap in the middle of it.” (Appx. 12, p.31.)

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, even if Plaintiffs had provided non-speculative evidence of irreparable injury due to breach of contract or violation of the KCPA arising from actions in Kentucky (and they have not), their delay in seeking relief cuts against a finding of such 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 ‘mitigates 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 they waited seven weeks to seek relief from this Court. 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. And there is no evidence that Plaintiffs’ delay was due any attempts to resolve what they now claim as an emergency. Had Plaintiffs sought relief sooner, the NCAA would have had more time to prepare its response, and the trial court would have had the benefit of a more complete record and time to consider its decision before issuing the requested injunctive relief. To the extent Plaintiffs faced imminent harm

because “[s]chool is about to start” (Appx.8 p.2), that is solely a result of Plaintiffs’ own inexplicable decision to wait seven weeks before filing suit. Moreover, nothing is stopping Plaintiffs from enrolling **now** at their desired school and seeking eligibility later. The basketball season does not start until November, and the baseball season begins in February.

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.” *Lasege*, 53 S.W.3d at 85. Similarly, here, the court “overvalued” Plaintiffs’ interests and undervalued the NCAA’s interest, *id.* at 86, in finding “the NCAA’s argument that they will suffer harm if the Plaintiffs are granted their requested relief to be without merit.” (Appx.1, p.9.) Here, as in *Lasege*, this conclusion is “clearly erroneous, and accordingly, [] the trial court’s subsequent balancing of the equities suffers from an inherent computational error.” 53 S.W.3d at 85. “The NCAA unquestionably has an interest in enforcing its regulations.” *Id.*

Member institutions and other student-athletes will 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 roster spots to Plaintiffs that current student-athletes counted on in

making their collegiate decisions. *See, e.g.* Appx. 12, 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.”).

E. The trial court erred in determining Plaintiffs have a substantial possibility of prevailing on the merits.

The trial court found that “Plaintiffs are likely to succeed on the merits of two independent substantive claims—breach of contract/good faith and fair dealing and violation of the Kentucky Consumer Protection Act.” (Appx1, p.9.) The trial court is wrong. Indeed, every appellate court that has reviewed a trial court order granting an injunction due to the NCAA’s new age-based rule have stayed that injunction pending appeal because, among other reasons, the NCAA is likely to succeed on the merits. *See* Appx.14, *Wisne v. Brock*, 26-1309 (10th Cir., Aug. 21, 2026); **Appx.22**, 8/17/26 order staying in *Borovicanin v. NCAA* (Ohio); and **Appx.23**, 8/26/26 order staying in *Washington v. NCAA* (Tennessee).

1. Plaintiffs have no breach of contract claim.

a. Plaintiffs have no third-party beneficiary standing.

Directly quoting Plaintiffs’ memorandum, the Order 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, p.10; *compare with* Appx.8, pp.8–9².) But Plaintiffs failed to provide a copy of the membership agreement or even quote or cite the provisions that purportedly made

² Plaintiffs also pointed to cases from other states where courts concluded student-athletes are intended third-party beneficiaries of the Manual. (Appx.8, p.9.) But, Kentucky law differs materially from the laws of those states (Appx.9, pp.18–19), and the trial court does not appear to have relied on those -out-of-state cases.

Plaintiffs third-party beneficiaries. 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 Order stated: "Intended third-party beneficiaries have 'standing to sue on the contract.'" (Appx.1, p.10, 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." And Plaintiffs are neither donee nor creditor beneficiaries, meaning they have no standing to sue on a purported contract with the NCAA. Indeed, as a court in Cook County Illinois recently held, "asserted rights [as] a third-party beneficiary" in the Manual "presupposes" that plaintiff "is a student and is actually in college," when plaintiff "has not shown either"; "[a]n order certifying plaintiff eligible would certify him eligible for nothing in particular" and "would be an order about a hypothetical season, at a hypothetical school, under a hypothetical scholarship." (Appx.12, p.4, 17-18.) 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. For one, 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,” (Am. Compl. ¶ 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 are that whatever benefits Plaintiffs were supposedly intended to receive were not a gift, but based on their participation in intercollegiate athletics. Nor do Plaintiffs allege being a creditor of the NCAA or any member institution, much less that the NCAA or its members intended Plaintiffs to receive performance of the Manual in satisfaction for some debt owed to them.

The Manual reflects that it is primarily intended to create a governance framework for the sponsorship of DI sports, not to confer direct, enforceable contract rights to student-athletes. If the Manual is a contract, then “like other contracts [it must] be construed as a whole so as to give effect to the parties’ intent as expressed in the language they chose.” *Baker v. Magnum Hunter Prod., Inc.*, 473 S.W.3d 588, 592 (Ky. 2015); *Chicago Veneer Co. v. Anderson*, 105 S.W. 108,

109 (Ky. 1907) (intent of the parties “is to be collected, not from detached parts of the instrument, but from the whole of it, and to this end all parts of the writing, and every word in it, will, if possible, be given effect”). The NCAA’s member institutions created the Manual as a set of rules to which they agreed to be bound. (See NCAA Manual, Const. pmbl.) It imposes obligations on institutions as conditions of continued membership in the NCAA—not promises to deliver benefits to student-athletes. (*Id.*; see generally *id.*, Bylaw 12.) The NCAA’s “Principles,” described in Article I of the NCAA’s Constitution, highlight that it imposes “responsibilit[ies] of each member institution,” not rights guaranteed to student-athletes. (*Id.*, Const., art. 1, §§ A, C, D, E at 2.) 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., DI Manual, Const. art. I, ¶¶ A, C, D, E) (denoting the responsibilities of “each member institution” vis-à-vis student-athletes).

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.

b. 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 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.5, Bylaw 9.2.) The NCAA followed the Manual’s amendment process, and Plaintiffs do not allege 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.”).

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

While the NCAA’s membership acted in good faith and with sound reason in declining to apply the new age-based eligibility model retroactively, Plaintiffs’ legal theory would not be viable even if that were otherwise the case. 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).

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).

Here, Plaintiffs do not challenge whether the NCAA has correctly applied its new eligibility rules. Rather, Plaintiffs contend that the decision not to apply the new rules to them is, in their subjective opinion, unfair. As this Court explained in *Hopkins County*, that is not the type of lawsuit that Kentucky courts should entertain. 552 S.W.2d at 687. When a plaintiff challenges the wisdom of a voluntary association’s bylaw, the case presents a non-justiciable question of policy. *Hopkins Cnty. Bd. of Ed.*, 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.”). Whether the new age-based eligibility model should apply retroactively was, and remains, a policy judgment for the NCAA’s membership.

Entertaining Plaintiffs’ contract claim would set a dangerous precedent and likely result in a flood of lawsuits challenging NCAA rules. Under Plaintiffs’ theory, *any* NCAA rule could be “arbitrary” and subject to challenge simply because someone might make a different decision.

For example, why is the NCAA's shot clock 30 seconds when the NBA's is 24? That is not fair to teams who want to force their opponents to play at a faster pace. Why is the NCAA's three-point line closer to the basket than the NBA's? That is not fair to student-athletes who are better three-point shooters, whose skills would be more valuable if shooting threes were more challenging. Why does the NCAA only permit basketball players to accrue five fouls while the NBA allows six? That is not fair to more physical players who get in foul trouble more easily. These distinctions, under Plaintiffs' logic, are arbitrary—in the eyes of those whose interests are not served by the rules as they are and believe a different set of rules would be more “fair” to them.³ The eligibility rules pose the same problem: “Consider the line-drawing problems an analysis of eligibility rules might pose. [Is] a five-year limit on a college athlete's career [lawful]? If not, what about a four-year limit? Or if it does, what about a six-year limit? Is a 2.0 GPA requirement reasonable when a 2.5 GPA requirement might not be? Can colleges require twelve hours of academic credit per term?” *Pavia v. Natl. Collegiate Athletic Assn.*, 154 F.4th 407, 418 (6th Cir. 2025) (Thapar, J., concurring).

All rules—in any part of life—run the risk of being perceived as “arbitrary” insofar as they are contrived by the rule-makers. Like any democratic compact, the NCAA Bylaws exist because the NCAA's membership has come together, agreed to form an association to sponsor collegiate athletic programs, and promulgated rules that govern their participation in the association. The Bylaws do not have inherent legitimacy, rather, they derive their legitimacy by the consent of those governed by the rules—the NCAA members create the rules, agree to be

³ The fallout of Plaintiffs' theory would also not be limited to the NCAA—it would apply to the rules of *any* voluntary association. Under Plaintiffs' logic, an aggrieved parent could sue their local soccer club for adhering to the KYSA's “arbitrary” decision to use August 1 as the birthdate cutoff for its age divisions. See Kentucky Youth Soccer Association's State Rules, Section 2, <https://tinyurl.com/KYSA-Rules>.

bound by them, and may change the rules if the members decide a different set of rules would best serve the interests of the association. These Bylaws are the product of a democratic, legislative process through which the competing preferences of hundreds of member institutions are voiced, hashed out through informed discussion and debate, and voted upon, with the consensus reflected in the Bylaws in the Manual. What rules are “best” is a policy question Kentucky law leaves to the resolution of the association, not the courts.

d. Plaintiffs failed to establish a breach of contract.

Finally, the trial court erred in finding that Plaintiff were likely to succeed on their claims that the NCAA breached their contract by: (1) violating the “express textual commitments to fairness found in Articles 1-C and 1-D of the NCAA Constitution”; (2) refusing “to exercise discretionary waiver authority granted by Bylaws 12.6.6 and 21.6.1.7; (3) inconsistently applying the Manual’s “proportional framework under Bylaw 12.6.3.2.1; and (4) denying “the financial entitlement expressly conditioned on eligibility status under Bylaw 16.13.1.1.” (Appx.1, p.10.)

Fundamentally, “Plaintiffs who rode out their eligibility under the prior rule” in the prior contract “like the new rule better” and want the new contract to apply to them, but they are not entitled to a new contract. (Appx.13, pp.7-8.) Stated another way: “It bears emphasizing, because much of the argument in this case obscures it, that *under the rules in force during every day of [plaintiff’s] college career, he had no right to a fifth season*, and he “does not contend otherwise.” (Appx. 12, p.8.) Plaintiff “does not contend the NCAA counted a season it should not have counted, denied him a hardship waiver he should have received, or misapplied any Bylaw to his individual circumstances.” (*Id.*) Rather, there, as here, the “grievance is not with the application of the old rule,” but is “with the reach of the new one,” which expressly does not apply to Plaintiffs and is in the version of a Manual enacted after they left college that is not applicable to them. (*Id.*) The current NCAA Manual does not confer enforceable contract rights

on a person”—such as Plaintiffs here—“who is not enrolled at any member school at all.” (*Id.* at 20.) In other words, Plaintiffs cannot claim a protectable contract right because they are not governed by the Bylaws and no rights, obligations, or benefits flow to them from the bylaws; rather, they are aggrieved because they are not a part of the contract, not because the NCAA breached any obligation to them.

Regarding the trial court’s first finding, Article I-C does not apply to the NCAA. The first sentence vests the “responsibility of each *member*” to ensure the “integrity of intercollegiate athletics.” (Appx.5, p.2.) And when it discusses “[a]ll individuals associated with intercollegiate athletics programs and events” when describing “fairness,” it contextualizes the regulated individuals to “the rules of *their* conferences.” (*Id.*) By identifying “each member” and then classifying “all individuals” as it relates to “their conferences,” the Manual excludes the NCAA from governance under this provision. Similarly, the “fairness” sentence in 1-D applies to “institutions” and their “coaches and administrators,” not the NCAA. Accordingly, these are not specific standards providing a mechanism for enforcement by the court. More fundamentally, neither Plaintiffs nor the trial court explain why it is “fair” for student-athletes who competed for four seasons over four years beginning in 2022 (after most Covid-related shutdowns and restrictions had ended) to get the same treatment as student-athletes whose college careers were disrupted by a global pandemic. And Plaintiffs’ reliance on general principles and values—rather than specific language in specific provisions foreclosing the NCAA’s ability to set rules or entitling Plaintiffs to the relief they request—demonstrate that this is precisely the type of decision where the NCAA “should be allowed to ‘paddle their own canoe’ without unwarranted interference from the courts.” *Lasege*, 53 S.W.3d at 83.

As to the court’s second finding, Bylaws 12.6.6 and 12.6.1.7.1.3—which exist under the 2025-26 Manual but not under the 2026-27 Manual because waivers have been eliminated—do not authorize the Committee on Student-Athlete Reinstatement to *sua sponte* grant a class-wide waiver. It allowed student-athletes to receive an additional season of competition in “extenuating circumstances,” which are narrowly defined to encompass life events that made it impossible for a student-athlete to compete in a season of competition in which they were eligible, such as life-threatening injury or illness, extreme financial difficulties as a result of a specific event, or the institution dropping the student-athlete’s sport. (See Bylaw 12.6.6.1.) Plaintiffs identified nothing of the sort justifying them to receive more eligibility under the Manual. Moreover, for the Committee on Student-Athlete Reinstatement to exercise its “authority to review and grant a waiver” under Bylaw 12.6.6, it must have a waiver request to review and grant in the first instance. But Plaintiffs do not allege that any such waivers were ever sought on their behalf. The NCAA could not have refused to “exercise discretionary waiver authority” when it was never asked to do so.

Third, Plaintiffs erroneously claimed that the NCAA exercised its authority under Bylaw 12.6.6 “generously in favor of former professionals,” somehow violated Bylaw 12.6.3.2.1. (Appx.8, p.11.) But the NCAA does not grant discretionary waivers to permit former professionals to compete—those former professionals were eligible for competition under the NCAA’s express rules. Under the Bylaws, a student-athlete may play on a professional team before full-time college enrollment, provided that (1) their compensation does not exceed actual and necessary expenses, and (2) they forfeit a season of collegiate competition for any seasons of professional competition that occur more than one year removed from their high school graduation date. (See Bylaws 12.2.2.2.1, 12.6.3.2.1.) The former professional athletes pointed to

by Plaintiffs met these requirements. Thus, their intercollegiate athletic participation cannot constitute a breach of the NCAA's bylaws *because they are instances of the NCAA applying the rules as written*.

Concerning the fourth finding, Plaintiffs' allegations regarding Section 16.13.1 suffer the same shortcomings as Article I-C. It relies on permissive language—"[a]n institution *may* provide . . ."—but does not create any obligation on the NCAA. Because the NCAA does not have an obligation to Plaintiffs under the benefits-pool eligibility provision, it cannot be said that the NCAA breached any obligation to Plaintiffs.

Fifth, the Order violates elementary canons of contract interpretation. Specific provisions in a contract govern over the general, and contracts must be construed to avoid rendering any provision superfluous or meaningless. *Smith v. Crimson Ridge Dev., LLC*, 410 S.W.3d 619, 621 (Ky. App. 2013). Plaintiffs' theory and the Order contravene these basic tenets of contract law. The versions of the Manual that governed Plaintiffs' participation specifically guaranteed no more than four seasons of competition. An interpretation supplanting this specific requirement with generalized duties and inapplicable exceptions to guarantee Plaintiffs opportunity to compete for five seasons would render the express four-seasons limitation meaningless.

Accordingly, Plaintiffs have not articulated any coherent theory of breach—even if they could enforce the provisions of the NCAA Manual. They received the full measure of eligibility they were "promised" under the Manual: the opportunity to participate in four seasons of competition. The premise of Plaintiffs' contract claim is fundamentally flawed—they received exactly what they were promised under the "contract" they allege was breached.

2. Plaintiffs have no KCPA claim.

To maintain a KCPA claim, "an individual must fit within the protected class of persons defined in KRS 367.220." *Skilcraft Sheetmetal, Inc. v. Kentucky Mach., Inc.*, 836 S.W.2d 907,

909 (Ky. App. 1992). That class is anyone “who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss” due to “a method, act or practice declared unlawful by KRS 367.170.” KRS 367.220. Although the trial court found, without explanation, that “Plaintiffs are within the class of persons” protected by the KCPA (Appx.1, p.10), the trial court erred.

Plaintiffs did not purchase anything from the NCAA and did not claim they did. (Appx.8, pp.12–14.) “Claims may only be brought under the KCPA by individuals who personally purchase goods or services *from a merchant.*” *Keaton v. G.C. Williams Funeral Home, Inc.*, 436 S.W.3d 538, 546 (Ky. App. 2013) (emphasis added) (citing KRS 367.220(1)). In other words, a claim under KRS 367.220 lies only against the entity from whom the good or service at issue was purchased. And since Plaintiffs assert only that they “purchase[d]” their “education, room, board” from “their universities”—not the NCAA—their KCPA claims fail as a matter of law.⁴

Even assuming Plaintiffs did “purchase” an education, room, and board from their universities, and that those purchases were somehow attributable to the NCAA (they are not), Plaintiffs have not shown such purchases were primarily “for personal, family or household purposes” as required by KRS 367.220. *Suhail v. University of the Cumberlands* is instructive. 107 F. Supp. 3d 748 (E.D. Ky. 2015). In *Suhail*, the plaintiffs insisted that they “did not enroll in the [University’s] Program for commercial purposes” and that “[t]heir enrollment [was] part of their quest in obtaining higher education and possibly moving on to obtaining licensure and prescriptive authority in the future.” *Id.* at 759. Yet, “[e]ven considering these statements in the

⁴ Whether Plaintiffs “purchased” anything at all—“education, room, board,” or otherwise—from their universities is a fact in dispute. Plaintiffs, like many student-athletes, may well have received scholarships that covered those expenses. But since Plaintiffs have failed to submit any proof of these purported purchases, they have failed to meet their burden under CR 65 to show any likelihood of success on the merits of their KCPA claims.

light most favorable to the Suhails,” the court could not conclude “that the Suhails decision to pay tuition and seek a degree from the University was ‘*primarily* for personal . . . purposes.’” *Id.* (quoting KRS 367.220). The court recognized: “The impetus behind this lawsuit is that the Suhails have been unable to obtain licensure and prescriptive authority—recognitions that exist to qualify individuals for employment and compensation.” *Id.* Put differently, the plaintiffs had paid for their education to gain employment and compensation opportunities. The same is true of Plaintiffs here. Plaintiffs do not allege any personal purpose in seeking to obtain an additional year of eligibility, but the opportunity for additional compensation and career development. “Under these facts, they cannot maintain a claim under the KCPA.” *Id.*

Nor did Plaintiffs demonstrate that the NCAA engaged in any deceptive practices. While Plaintiffs premised their claim upon alleged misrepresentations made by the NCAA, they did not identify any specific representations that the NCAA made to them. Nothing in the record suggests that any NCAA representative made any representations directly to any of the Plaintiffs. Nor do Plaintiffs identify any published NCAA communications upon which they relied. It is more accurate to say that the Plaintiffs’ claims are not premised upon any representations of the NCAA, but their own misconceptions about what the NCAA’s rules are, and there is no telling from whom they drew those conclusions. Plaintiffs cannot sustain a claim based on alleged deceptive representations when they identify general sentiments they believed, but not actual representations made to them.

Further, Plaintiffs’ allegations regarding the NCAA’s “unfair” or “deceptive” conduct are facially nonsensical. Plaintiffs inaccurately contended that the NCAA has misrepresented that former professional athletes could not participate in collegiate athletics. That is factually inaccurate. ***Since 2010***, individuals who competed in sports professionally before their initial

full-time college enrollment, and who were not paid more than their reasonable and necessary expenses, have been eligible to compete in college sports so long as they did not exhaust their seasons of competition through professional competition. (Bylaw 12.2.2.2.1 (effective August 1, 2010).)

Plaintiffs accused the NCAA of being hypocritical by supporting the Protect College Sports Act (“PCSA”) while passing an inconsistent rule. (Appx.8, p.4.) Plaintiffs claimed that, unlike the NCAA’s 2026-27 Bylaws, the PCSA does not exclude the 2022 high-school class from participating in a fifth year of intercollegiate athletics—but that is a matter of implementation, not legislation. The eligibility provision in the PCSA is only one component of a comprehensive federal regulatory framework governing virtually every aspect of NCAA athletics, not a standalone eligibility measure.

<https://www.govtrack.us/congress/bills/119/hr9137/text#HEF7D86F96D2644CB8A0289CE5E94D7F2>. The bill regulates: NIL rights and athlete compensation; sports agents and agent registration requirements; academic protections; medical coverage requirements; health, wellness, and safety standards; mid-season coaching transitions; transfer rules and transfer protections; revenue-sharing limits (Section 115); recruiting regulations; anti-trust and liability provisions, among other things. *Id.* Endorsing the bill as a whole says nothing about the NCAA’s stance on the particulars regarding the implementation of new eligibility rules or laws. Moreover, the actual eligibility rules laid out in the PCSA are functionally identical to the NCAA’s rule. The only questions are how and when they will be implemented. While no one has any idea when, if ever, the PCSA will become law and what amendments will be made before it does, the bill will certainly not become law before the 2026-27 school year, which is what Plaintiffs here are ostensibly concerned about.

Plaintiffs also cannot satisfy the causation element of their KCPA claims because they fail to articulate how any of the foregoing alleged misrepresentations have caused them actual financial loss. *See* KRS 367.220 (defining the protected class as anyone who purchases goods or services *and* “thereby suffers any ascertainable loss”). None of the foregoing statements have any bearing upon Plaintiffs’ eligibility to participate in college sports during the 2026-27 academic year. Under the rules that have been in effect from Plaintiffs’ full-time enrollment at a collegiate institution through the conclusion of their eligibility, Plaintiffs were promised five years of eligibility to participate in up to four seasons of intercollegiate competition, and all have exhausted their eligibility under that model. They have not suffered any “loss” because they received the benefit of their alleged bargain.

In any event, Plaintiffs have not identified any ascertainable financial loss. While Plaintiffs contend that they have the opportunity to *gain* a benefit if they obtain additional eligibility (i.e., another year of “NIL and revenue-sharing income” (Am. Compl. ¶ 95)), they do not allege that they have suffered a *loss* due to the NCAA’s alleged misrepresentations.

To the extent Plaintiffs insinuate that, had they gone to play professionally for a year following high school, they would receive five seasons of collegiate eligibility, that is not the product of unfair or deceptive trade practices. The NCAA membership did not know, in the year 2022 when Plaintiffs alleged that the NCAA’s representations induced their enrollment, that they would embrace an age-based eligibility model in the summer of 2026. Without said knowledge, the NCAA’s alleged representations could not be “unfair” or “deceptive.” The NCAA, through the required legislative process described in Bylaw 9 of the Manual, passed the age-based eligibility model, which—under Kentucky law—was clearly within its right to do. Plaintiffs cannot demonstrate unfair and deceptive trade practices incident to the membership’s right to

self-governance through the NCAA. A “line-drawing decision is not arbitrary merely because it draws a line. Every prospective rule has an effective date, and every effective date leaves someone on the wrong side of it by a matter of months. The existence of a boundary is not proof of caprice.” (Appx.12, p.27.)

Moreover, Plaintiffs cannot demonstrate that they reasonably relied upon the alleged misrepresentations. The NCAA speaks with one voice regarding the provisions of its eligibility rules, and it does so through the Manual. Plaintiffs were required to sign student-athlete statements acknowledging that they understood these rules and agreed to follow them. (Appx.5. Bylaw 12.5.2). Plaintiffs’ allegations of the NCAA’s “unfair and deceptive” cannot be squared with the unambiguous provisions of the Manual.

F. Binding Kentucky Supreme Court precedent forecloses Plaintiffs’ request to enjoin the NCAA’s “rule of restitution.”

Upon Plaintiffs’ request, the trial court enjoined Bylaw 12.9.4.2, sometimes referred to as the “Rule of Restitution.” (Appx.1, pp. 11, 14.)⁵ That rule “allows the NCAA to seek restitution from member institutions who permit student-athletes found ineligible by the NCAA to compete for their athletic teams pursuant to court orders which are later vacated.” *Lasege*, 53 S.W.3d at 82 (describing the Rule of Restitution, which at the time was numbered Bylaw 19.8). According to Plaintiffs, unless the trial court enjoined the Rule of Restitution, schools may “decline to roster Plaintiffs and incur the risk of post-hoc NCAA punishment.” (Appx.8, p.20.)

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

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.

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.* As the Court noted, “such contractual risk allocation is no stranger to the courts.” *Id.* “In fact, contrary to the belief of the trial court 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. (Notably, here Plaintiffs were not required to, and did not, post a bond.)

Like the trial court in *Lasege*, Plaintiffs’ “belief that the NCAA’s Restitution Rule ‘thwarts the judicial power’ is simply without foundation.” *Id.* The Rule “does not purport to authorize interference with any court order during the time it remains in effect, but only authorizes restitutive penalties when a temporary restraining order is ultimately dissolved and the challenged eligibility rule remains undisturbed in force.” *Id.*

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 the rule “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.

In addition, the trial court (without mentioning the actual bylaws at issue or engaging in any analysis of any of the factual circumstances of any Plaintiff) enjoined the NCAA from prohibiting Plaintiffs from competing during the 2026-27 season on the basis that they “executed a professional contract or agent contract, or participated in any professional games or practices, so long as” they terminate the contracts and return a portion of the moneys received. (Appx.1, pp. 13-14.) Playing or signing with a professional team is governed by Bylaw 12.2 and the use of agents is governed by Bylaw 12.3. (Appx.6.) Even if the high-school class of 2022 is generally entitled to a fifth year of eligibility (which it is not), that does not mean that every member of the class of 2022 is eligible to compete in the NCAA. Whether any individual plaintiff is eligible requires further investigation and player-specific evidence, and rushing to judgment and applying the portions of the 2026-27 Bylaws Plaintiffs like and disregarding the portions they do not is inappropriate. As in *Lasege*, “In general, the members of” associations such as the NCAA “should be allowed to ‘paddle their own canoe’ without unwarranted interference from the courts.” 53 S.W.3d at 83.

Accordingly, this Court should vacate the injunction against the Rule of Restitution, the Ghost Transfer Rule, and Bylaw 12.2 and 12.3 regarding agents and playing or signing with a professional team.

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 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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