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CASE NO. 26-CI-007009

JEFFERSON CIRCUIT COURT
DIVISION ELEVEN (11)
JUDGE BRIAN EDWARDS

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LEVAVIUM WELLS II, *ET. AL.*

PLAINTIFFS

**PROPOSED SUPPLEMENTAL FINDINGS OF FACTS AND
v. CONCLUSIONS OF LAW**

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION

DEFENDANT

This matter came before the Court on Plaintiffs' motion for a temporary injunction, which was heard by the Court on October 14, 2026, during which time the testimonies of numerous witnesses were provided to the Court. The below supplemental fact findings concern the testimony provided during the injunction hearing, as well as conclusions of law therefrom.

SUPPLEMENTAL FINDINGS OF FACT

1. Coach Pat Kelsey testified that the NCAA had created chaos by refusing to grant a fifth seasons of competition to the Class of 2022 while granting it to nearly everyone they competed against. Coach Dennis Gates testified that the NCAA misled players in the Class of 2022 by allowing them to enter the transfer portal even though they had no eligibility at the time they entered. Daniel Hennes testified about the problematic timeline of the NCAA's rule change process. The testimony from Mr. Hennes, Coach Kelsey, and Coach Gates was very credible and the Court gives great weight to the entirety of it. The Court also found the testimony from Plaintiffs and their teammates highly credible.

2. In contrast, the NCAA's conflicting positions on the significant of the Manual itself are not credible. In initially opposing Plaintiffs 'request for injunctive relief, Geoff Silver, the NCAA's Vice President of Governance and Member Services, filed an affidavit stating:

- "The DI Manual sets out the fundamental policies and rules that govern DI athletic competition for more than 180,000 student-athletes" Aug. 18, 2026 NCAA ;s

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Response in Opposition to Plaintiffs' Motion for Restraining Order and Temporary Injunction at 46, para. 8.

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- “The DI athletics eligibility rules contained in the DI Manual determine who competes, against whom they compete, and under what circumstances they compete at the DI level.” *Id.* at para. 13.
- “Bylaw 12.6 of the 2025–26 DI Manual, referred to as the “Five-Year Rule,” governs student-athletes’ period of eligibility.” *Id.* at para. 14.
- “The new model will become part of the 2026-27 NCAA DI Manual.” *Id.* at para. 16

In the same document, the NCAA argued,

“[t]he 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. (*See* Bylaw 12.5.2). Plaintiffs’ allegations of the NCAA’s “unfair and deceptive” cannot be squared with the unambiguous provisions of the Manual.”

Id. at 31, para.

3. After forcefully arguing that the “unambiguous provisions of the Manual” govern this dispute, the NCAA lost credibility by attempting to run away from the unambiguous provisions of the 2026-27 Manual that it published in August of this year based on other documentation preceding publication of the Manual itself. The NCAA failed to bring a single witness to the hearing to defend (or explain) its position.

4. The Court accepts the NCAA’s original position, as expressed under oath by Mr. Silver, that the unambiguous text of the current Manual governs who can play collegiate sports in 2026-27. As a finding of fact, the Court reject the NCAA’s new position that extra-textual documents that predate publication of the Manual, such as Proposal 2026-44. The Court also rejects the deposition testimony from Jerry Vaughn, in a proceeding not involving any of these Plaintiffs or their attorneys. He was not subject to cross-exam before this Court and, as a result, the Court disregards his self-serving testimony in support of the NCAA’s new position in its entirety.

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5. The NCAA testified, through Mr. Silver, that Plaintiffs were required to signoff on the Manual each year – not various proposals buried on an NCAA website. As various witnesses testified, the NCAA's positions often seem to change with the wind. One day former professional basketball players are not eligible, the next they are. In early 2025, the NCAA was considering a move to the five year eligibility model. P. Ex. 2. In October 2025, the NCAA stated it would not implement such a model for the 2026-27 academic year. P. Ex. 3. In June 2026, it implemented that very model. In early April 2026, the Class of 2022 would be included in the new eligibility rules, in May 2026, they would not. In April 2026, the NCAA allowed members of the Class of 2022 to enter the transfer portal only to later tell them they could not play.

6. The Plaintiffs need not comb through the NCAA's press releases and proposals to find the rules that govern their eligibility. As the NCAA told this Court, it is the *Manual* itself that governs—the rulebook Plaintiffs were required to sign and agree to follow each year they competed. Plaintiffs are entitled to rely on the plain text of the 2026-27 *Manual*. Section 12.6 makes them eligible as it was written and published by the NCAA. The NCAA cannot avoid that fact

7. The Court also rejects the NCAA's argument that other players would be harmed by Plaintiffs participating in the 2026-27 season. No player who testified – including a non-Plaintiff who played the same position as one Plaintiff – agreed with the NCAA's position and the NCAA presented no other credible competent evidence on this topic.

SUPPLEMENTAL CONCLUSIONS OF LAW

1. Plaintiffs are Third-Party Beneficiaries of the Manual, which is a contract between the NCAA and its member schools. First, among other direct benefits to Plaintiffs, since 2025, the Manual includes provisions governing direct payment of monetary compensation from NCAA

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institutions to student-athletes. Second, the motivating purpose of the Manual is to provide rules by which student-athletes compete in NCAA competitions. The Manual would not exist but for student-athletes. Third, permitting athletes to sue to enforce their rights under the contract is consistent with the expectations of the NCAA and its member institutions – many of whom are supporting Plaintiffs in this lawsuit. Student-athletes have no recourse under the Manual, their rights are derivative of actions by their institutions – they must sue to enforce their rights.

2. As explained by the United States District Court for the Northern District of West Virginia, the Monroe, Indiana Circuit Court and the Chancery Court of Davidson County, Tennessee:

When reading the Bylaws at issue in this case, they are all largely devoted to regulating the eligibility, participation, welfare, and compensation of student-athletes. They repeatedly identify student-athletes as the objects of the Bylaws, indicating an intent to benefit them. The Bylaws are not limited to allocating rights and obligations among member institutions. Rather, they establish detailed rights, privileges, obligations, eligibility requirements, procedural protections, and benefits that directly govern the relationship between the NCAA and every student-athlete participating in NCAA competition. Those provisions demonstrate that student-athletes are not merely incidental beneficiaries of the contractual arrangement but are among its principal intended beneficiaries.

The Court further finds it significant that student-athletes are required to review and execute acknowledgments agreeing to comply with the NCAA Bylaws before participating in athletics at NCAA member schools. (Trial Testimony of Jerry Vaughn). This requirement demonstrates that the contractual framework was intended to operate directly upon student-athletes and not merely upon member institutions. Therefore, this Court finds that the Plaintiffs are the intended beneficiaries of the contracts at issue in this case.

Lorient v. NCAA, No. 26-cv-00094-JPB (N.D. W. Va. Sept. 30, 2026) at 48, *Daley v. NCAA*, No. 53C06-2609-PL-002418, at 22 (Ind. Cir. Ct., Monroe Cty. Sept. 23, 2026), Ex. 4, *Washington v NCAA*, Case No. 26-0896-III, Chancery Court of Davidson County, Tennessee, July 31, 2026 Order Granting Temporary Injunction; *See also Bloom v. Nat'l Collegiate Athletic Ass'n*, 93 P.3d 621, 623-24 (Colo. Ct. App. 2004) (“the NCAA’s constitution, bylaws, and regulations evidence

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a clear intent to benefit student-athletes”); *Battle v. Nat’l Collegiate Athletic Ass’n*, No. 5:24-cv-00107, 2024 WL 4685604, at *5 (N.D. W. Va. Nov. 4, 2024) (holding that student-athlete sufficiently alleged he was a third-party beneficiary to the Bylaws and Constitution of the NCAA); *Smith v. NCAA*, Case No. 2026-CP-39-00073 (S.C. Ct. C.P. June 12, 2026) (entering injunction on a claim for breach of NCAA Bylaws); *Borovicanin v. NCAA*, Case No. A2603352 (Ohio Ct. C.P. July 9, 2026) (order granting preliminary injunction: “the NCAA Manual and Bylaws are clearly intended to benefit student-athletes”).

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3. Requiring student-athletes in Kentucky to signoff on the Manual and agree to follow the rules set forth therein and then telling student-athletes they are not entitled to rely on the rules set forth therein violates Kentucky public policy.

4. The NCAA’s interpretation of Bylaw 12.6 in the 2026-27 Manual is not fair or reasonable.

5. Applying the 2026-27 Manual to all student-athletes enrolled in college as of August 1, 2026 is not a retroactive application of the Manual. However, even if it were, it would violate Kentucky law as not fair or reasonable. The NCAA is applying the rule “retroactively” to all other athletes who enrolled under the old rules and against whom Plaintiffs competed: the Classes of 2023, 2024, and 2025. Only the Class of 2022 is purportedly excluded from any retroactive application. That is not fair or reasonable.

6. The NCAA’s actions in granting former professional athletes eligibility to play in 2026-27, while denying that opportunity to Plaintiffs is arbitrary and capricious.

7. Allowing nearly all athletes against whom Plaintiffs competed five years of eligibility while denying Plaintiffs the same opportunity is unfair, arbitrary, and capricious.

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For the foregoing reasons, and for those reasons stated in any prior fact findings on this motion for a preliminary injunction, **IT IS HEREBY ORDERED** that Plaintiffs' and Intervening Plaintiffs' motion for a temporary injunction is **GRANTED**.

This, the _____ day of _____, 2026.

JUDGE, JEFFERSON CIRCUIT COURT

TENDERED BY:

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