

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	Civil Action No. _____
CLEMSON UNIVERSITY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>SUMMONS</b>
	)	
ATLANTIC COAST CONFERENCE,	)	
	)	
Defendant.	)	
_____	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated: March 19, 2024

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Axton D. Crolley

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	Civil Action No. _____
CLEMSON UNIVERSITY,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	
vs.	)	<b>(Declaratory Judgment Action under</b>
	)	<b>Section 15-53-10 et seq. of S.C. Code of</b>
ATLANTIC COAST CONFERENCE,	)	<b>Laws)</b>
	)	
Defendant.	)	<b>(Non-Jury)</b>
	)	

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Plaintiff Clemson University (“*Clemson*” or the “*University*”) files this Complaint against Defendant Atlantic Coast Conference (“*ACC*” or the “*Conference*”) for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, and alleges as follows:

**INTRODUCTION**

1. The ACC has publicly asserted that the ACC irrevocably owns the media rights of member institutions to home games played through 2036, even if the institution ceases to be a member of the Conference. The ACC has also claimed that member institutions must pay an exorbitant \$140 million penalty to leave the Conference, and that members owe the Conference fiduciary duties, specifically with respect to obligations created by their grant of media rights to the Conference.

2. Each of these erroneous assertions separately hinders Clemson’s ability to meaningfully explore its options regarding conference membership, to negotiate alternative revenue-sharing proposals among ACC members, and to obtain full value for its future media rights. As detailed below, collegiate athletics is at a crossroads. Without clarity as to its legal rights and obligations, Clemson cannot protect and advance its interests, or the interests of its

student-athletes, in current and ongoing negotiations within the Conference, with the Conference's existing media partner ESPN, and in collegiate athletics more generally.

3. Accordingly, Clemson seeks a declaration of its rights relating specifically to (a) the scope of Clemson's grant of certain media rights to the Conference, (b) the invalidity and unenforceability of the exorbitant withdrawal penalty that the Conference claims any member of the ACC, including a public university, must pay to leave the Conference, and (c) the non-existence of fiduciary duties that the Conference claims ACC members owe to the Conference and the absence of a breach of any legal duty or obligation that Clemson might owe to the ACC by filing this lawsuit.

#### ***The Grant of Media Rights***

4. Clemson granted certain media rights to the ACC in an agreement executed in 2013 and amended in 2016. That agreement provides, however, that Clemson granted the Conference only such media rights as were "***necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in [certain, specifically identified media agreements between the Conference and ESPN].***" (Emphasis added). The ACC has repeatedly ignored this qualification in interpreting the scope of the grant of rights and the rights consequently retained by Clemson.

5. The proper scope of Clemson's grant of rights can only be understood by reference to certain media agreements between the Conference and ESPN—agreements that are not within public view. Those agreements reveal that Clemson's grant of media rights to the ACC was more limited than the ACC maintains.

6. Properly understood, "the contractual obligations of the Conference" did not include providing media rights to games played by a school ***after*** that school exits the

Conference. The media rights to games played *while Clemson is a member of the ACC* are the only rights necessary for the ACC to perform the Conference's obligations under the ACC's media agreements with ESPN. The media rights to games played at a time when Clemson is not a member of the ACC were never a part of any grant of rights.

7. The ACC's contention about the scope of rights granted, which is wrong, must be corrected now.

### ***The Withdrawal Penalty***

8. The ACC asserts that any ACC member school must pay an unconscionable and unenforceable withdrawal penalty equal to the amount of three times the ACC's total operating budget (a figure currently exceeding \$140 million) to leave the Conference.

9. Though described by the ACC as "liquidated damages" or as a form of alternative performance, the sum that the ACC insists a member pay upon withdrawal from the Conference is an exorbitant penalty that is not connected to any economic harm that the Conference might suffer, is not connected to a continuation of the relationship, and has ballooned to the point of unconscionability since it was first adopted in September 2011. As such, the penalty is void as against public policy and unenforceable as a matter of law.

### ***Fiduciary Duties***

10. The ACC has recently claimed in court filings that its members owe the Conference fiduciary duties arising from the ACC Constitution, the ACC Bylaws, and statutory and common law, including duties allegedly arising from the characterization of the ACC as a joint venture and from the good faith and fair dealing obligations of parties to a contract. The ACC has gone even further and sued another conference member for allegedly breaching duties owed to the Conference by challenging the enforceability of the grant of media rights to the

Conference. Clemson disagrees and asserts that no such fiduciary duties are imposed by the ACC Constitution, the ACC Bylaws, or any applicable statutory, common, or other law. Moreover, Clemson has not breached any legal duty owed to the ACC by filing this lawsuit—which does not challenge the enforceability of the grant of media rights but merely seeks a declaratory judgment regarding the scope of rights granted.

**A LIVE, JUSTICIABLE CONTROVERSY EXISTS**

11. The ACC’s misconstruction of Clemson’s grant of media rights, its stated intention to impose a withdrawal penalty that has escalated to exorbitant levels in recent years, and its attempt to unilaterally impose non-existent fiduciary duties on Conference members each separately injures Clemson and its students, student-athletes, coaches, and faculty. Significant competition exists among athletic conferences for member schools, sales of tickets, sales of broadcasting rights, advertising and sponsorships, and opportunities for members to compete in lucrative athletic contests. Conference realignment continues to occur with increasing frequency as various conferences and universities seek the affiliations and memberships that best enable them to compete with other universities, with the private sector, and with other forms of sports and entertainment products. The ACC’s actions interfere with Clemson’s free exercise of its rights and are fatally detrimental to Clemson’s efforts to ensure that its athletic programs can continue to compete at the highest level, which is critically important to Clemson even beyond athletics.

12. In public statements, including statements provided to and published by various media outlets, and most recently in a lawsuit filed by the ACC against Florida State University (“Florida State”),<sup>1</sup> the ACC has repeatedly asserted that the media rights granted to the

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<sup>1</sup> Before filing its original complaint and commencing the lawsuit against Florida State, the ACC

Conference by member institutions like Clemson include rights to games that such institutions play even after an exit from the Conference and that members are required to pay an approximately \$140 million exit fee to leave the ACC.

13. The ACC’s lawsuit against Florida State was filed in response to Florida State’s efforts to explore the possibility of leaving the ACC without paying the exit fee. In its lawsuit, the ACC alleges that seeking a declaratory judgment related to the grant of rights violated fiduciary duties that the Conference now claims Florida State—and all other ACC members—owe to the ACC.

14. The ACC’s erroneous assertions and related actions concerning media rights, the withdrawal penalty, and non-existent fiduciary duties diminish the value of Clemson’s future media rights. They have a chilling effect on Clemson’s ability to explore and pursue an exit from the ACC, or to negotiate alternative revenue-sharing proposals among ACC members. They interfere with Clemson’s free exercise of its rights to disassociate from the Conference in the best interests of Clemson, its students, and its athletics program.

15. Additionally,

[REDACTED]

[REDACTED] In this way too, the ACC’s misinterpretation of the scope of the grant of rights impairs Clemson’s rights, including its right to negotiate now for a more favorable treatment of its future

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did not hold a vote requesting that its members, including Clemson, approve of the lawsuit against Florida State. Nor has Clemson ever authorized the ACC’s lawsuit against Florida State.

media rights, either with ESPN, other Conference Members, or even other collegiate athletic conferences beyond the ACC.

16. Without a judicial declaration of its legal rights, which have been openly challenged by the ACC, Clemson is unable to pursue a wide range of strategic alternatives that may be necessary for its continued success in collegiate athletics and as an institution. By espousing an inaccurate interpretation of the grant of rights agreements and allowing that interpretation to proliferate throughout the media, the ACC has cast a harmful cloud of doubt on Clemson's ability to engage in meaningful discussions with other conferences and media providers regarding potential future collaborations and/or to negotiate alternative revenue-sharing proposals among ACC members. For Clemson to move ahead and ensure that it may continue to act in furtherance of its institutional mission, that cloud must be lifted.

17. Similarly, but separately, the prospect that a public institution of higher education in South Carolina might possibly be required to pay an unconscionably high withdrawal penalty—one that has ballooned in size since it was first adopted—chills Clemson's ability to explore options that are in its best interests and to negotiate to protect the best interests of its students, student-athletes, faculty, and alumni, and diminishes the value of Clemson's media rights and athletic brand.

18. Further, the prospect that Clemson might be subjected to claims that it breached non-existent fiduciary duties by filing this lawsuit, which seeks only to determine the scope of its legal rights and obligations, creates an immediate, justiciable controversy as to the existence of such duties.

19. For the foregoing reasons, singularly or collectively, and on the further basis of the facts and circumstances described throughout this Complaint, a real, actual, substantial, and



justiciable controversy exists between Clemson and the ACC and is appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*

20. Accordingly, Clemson seeks a declaration from this Court that: (i) the media rights Clemson granted to the ACC do not include any Clemson games that are played after Clemson ceases to be a member of the ACC; (ii) Clemson is not required to pay the ACC the withdrawal penalty, as such a payment is an unenforceable penalty in violation of public policy; and (iii) Clemson owes no fiduciary duties to the ACC or its other members and has breached no legal duty or obligation it might owe to the ACC by filing this lawsuit.

#### **PARTIES**

21. Clemson is a public institution of higher education in South Carolina, and Clemson's principal campus is in Pickens County, South Carolina.

22. The ACC is an unincorporated nonprofit association organized and existing under the laws of the State of North Carolina, including North Carolina's version of the Uniform Unincorporated Nonprofit Association Act, N.C. Gen. Stat. §§ 59B-1, *et seq.* (the "UUNAA"). The ACC is governed by a constitution (the "ACC Constitution") and bylaws (the "ACC Bylaws"). The ACC's principal place of business is in Charlotte, North Carolina.

23. As an unincorporated association, the ACC's citizenship is that of its members. The ACC has 15 members: Clemson; Boston College; Duke University; Florida State; the Georgia Institute of Technology; the University of Louisville; the University of Miami; the University of North Carolina; North Carolina State University; the University of Notre Dame du Lac ("Notre Dame");<sup>2</sup> the University of Pittsburgh; Syracuse University; the University of

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<sup>2</sup> All of Notre Dame's athletics programs compete in the ACC, except for football (which is independent) and men's ice hockey (which competes in the Big Ten athletic conference).



Virginia; Virginia Polytechnic Institute and State University; and Wake Forest University.<sup>3</sup>

### **JURISDICTION AND VENUE**

24. This Court has subject matter jurisdiction over this dispute. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of provisions of the contracts described below.

25. This Court has general and specific personal jurisdiction over the parties to this action.

26. South Carolina courts may exercise personal jurisdiction over an association or other entity where the cause of action arises from the entity's contacts in the State, including transacting any business in the State, contracting to supply services or things in the State, entering into a contract to be performed in whole or in part by either party in the State, and more. S.C. Code Ann. § 36-2-803 (2005).

27. The ACC derives substantial revenue through its advertising, promotion, merchandising, marketing, broadcasting, and events conducted within the State of South Carolina. Among other things, the ACC sponsors, hosts, and generates income from athletic events held within Pickens County, South Carolina. Each of the member institutions in the ACC has athletic teams that compete in events in South Carolina.

28. Furthermore, the ACC is subject to this Court's personal jurisdiction because, among other things,

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<sup>3</sup> On September 1, 2023, the ACC voted to add Southern Methodist University, Stanford University, and the University of California, Berkeley as new members of the ACC starting in the 2024-2025 academic year.

- a. the ACC has transacted business in South Carolina, and the claims and causes of action alleged here arise therefrom;
- b. the ACC has entered contracts to be performed at least in part by Clemson and/or other entities in South Carolina (including the agreements identified above and below), and the claims and causes of action alleged here arise therefrom; and/or
- c. the ACC has committed an act outside South Carolina causing wrongful injuries herein all while engaged in other persistent conduct or deriving substantial revenue from services rendered in South Carolina, and the claims and causes of action alleged here arise therefrom.

29. By engaging in the conduct described in this Complaint, from which the claims set forth herein arise and to which they relate, the ACC has purposefully availed itself of the privileges of conducting activities in the State of South Carolina such that due process authorizes the exercise of personal jurisdiction over it in this action.

30. Venue is appropriate in Pickens County because, among other things, the most substantial part of the acts and omissions giving rise to the causes of action pleaded in this Complaint occurred in Pickens County.

### **BACKGROUND**

#### ***The Current State of College Sports and the Revenue Gap***

31. Collegiate athletic conferences compete to have colleges and universities become conference members, with the conferences offering bundles of financial, reputational, and academic benefits as incentives to join. Conferences seek to attract the best potential member schools to join their conferences. Colleges and universities seek to join the conference that provides the best bundle of benefits for them and their constituents.

32. Collegiate athletic conferences like the ACC, the Big Ten, and the SEC enter into contracts with media providers who pay the conferences millions of dollars in exchange for the right to broadcast conference members' games. The conferences then distribute those media revenues to conference members.

33. The ACC is a party to certain media-rights contracts with ESPN. Under the terms of those agreements, ESPN compensates the ACC for the exclusive right to produce, distribute, and sublicense certain defined games involving Conference members. The ACC then distributes revenue generated by the agreements to its members, including Clemson.

34. Sports-generated revenues are crucial to Clemson, and the media-rights contracts between the ACC and ESPN generate a substantial amount of the sports-generated revenues Clemson receives. Clemson relies on such revenues to provide a world-class education for its students and student-athletes, fund scholarships and financial aid, pay faculty, coaches, and staff, grow its athletics program for both its male and female student-athletes, maintain and improve its campus, and meet the demands of potential financial obligations that may arise in college sports.

35. In the case of the ACC, the revenues generated by the media agreements between the ACC and ESPN are significantly lower than the revenues generated by media agreements negotiated by the Big Ten and the SEC with their media providers, resulting in a dramatic gap between the revenues paid by those other conferences to their members and the revenues paid by the ACC to its members. In the coming years, this already large revenue gap is only expected to grow.

36. In 2020, the SEC entered into an exclusive, 10-year media rights deal with ESPN that runs from 2024 to 2034 with a reported estimated value of \$3 billion. The Big Ten followed suit in 2022, agreeing to a seven-year deal with NBC, CBS, and Fox Sports that spans from 2023

to 2030. The Big Ten’s deal is reportedly worth more than \$7 billion and believed to be the most lucrative in college sports history.

37. In 2022 alone, the Big Ten’s total revenue from its media deal and other sources was reportedly \$845.6 million, and the SEC’s total revenue from its media deal and other sources was reportedly \$802 million. By contrast, the ACC’s total revenue was \$617 million. The annual revenue payout to each member of the three conferences was reported as follows:

- Big Ten: \$58.8 million;<sup>4</sup>
- SEC: \$49.9 million; and
- ACC: \$37.9 million to \$41.3 million.

38. As a result of the lucrative media deals struck by the Big Ten and the SEC, which have made them the two top-earning conferences, the revenue gap between them and the other college athletic conferences, including the ACC, will grow larger with the passage of time—to an estimated average of \$30 million per member institution per year.

39. As the revenue gap widens over the coming years, Clemson will fall behind its peer institutions.

## **THE GRANT-OF-RIGHTS AGREEMENTS**

### ***Background***

40. The ACC is a party to two contracts with ESPN involving media rights: the ESPN/ACC Amended and Restated Multimedia Agreement (dated July 8, 2010, as amended May 9, 2012, June 24, 2014, August 27, 2014, July 21, 2016, and August 10, 2016) (the “*Multimedia Agreement*”); and the ESPN/ACC Network Agreement (dated July 21, 2016) (the “*Network Agreement*”) (collectively, the “*ESPN Agreements*”).

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<sup>4</sup> Three Big Ten schools agreed to accept less from their conference.

41. In 2013, years after the Multimedia Agreement was adopted, at the urging of the Commissioner of the ACC, Clemson and the other members of the ACC executed an “Atlantic Coast Conference Grant of Rights Agreement” (the “*Grant of Rights Agreement*”).

42. The Grant of Rights Agreement is expressly and inextricably tied to and qualified by the ESPN Agreements. The agreements cannot be read in isolation, but must be read together, and any understanding of the media rights that Clemson granted to the ACC through the Grant of Rights Agreement must account for the fact that only rights necessary to enable the Conference and its members to perform under the ESPN Agreements were granted. Put simply, the Grant of Rights Agreement is not, as the ACC has claimed, a blanket grant of rights. It is explicitly limited by the ESPN Agreements.

43. In the Grant of Rights Agreement, each Member Institution, as defined therein, granted the following rights to the Conference:

all rights (the “Rights”) *necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement*, regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term . . . .

(Emphasis added). Similarly, the Grant of Rights Agreement provides that the grant of rights included “the right to produce and distribute all events of such Member Institution *that are subject to the ESPN Agreement.*” (Emphasis added). As explained more fully in paragraph 62 below, the phrase “regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term . . .” does not mean that the ACC has rights to games played while an institution is not a member of the Conference because those games are not subject to the ESPN Agreements.

44. In 2016, the ACC entered into the Network Agreement and again amended the Multimedia Agreement. Each Conference member, including Clemson, executed an

Amendment to the Grant of Rights Agreement, effective June 27, 2016, extending the Grant of Rights Agreement and reconfirming the scope of the grant of rights to be limited to only those rights necessary for the Conference to perform its obligations under the ESPN Agreements as then in effect.

45. The Grant of Rights Agreement and the 2016 Amendment are referred to collectively in this Complaint as the “*GOR Agreements.*”

46. The GOR Agreements have been made public. The ESPN Agreements, on the other hand, have not.

47. As a result of the secrecy surrounding the ESPN Agreements’ terms, the public, including media organizations and other collegiate athletic conferences and their members, have been unable to fully understand the vital issue of what rights Clemson has conveyed to the ACC and have, as a result, largely adopted erroneous characterizations that have chilled Clemson’s ability to pursue potential opportunities with other conferences and/or to negotiate alternative revenue-sharing proposals among ACC members.

48. In a July 2022 interview, ACC Commissioner Jim Phillips erroneously described the GOR Agreements as giving each current Conference member’s media rights to the ACC through 2036, regardless of whether the member leaves the ACC before then.

49. The ACC also has taken this incorrect position in recent court filings. For example, in opposing Florida State’s motion to dismiss the action the ACC filed against Florida State in North Carolina, the ACC erroneously claimed, “The Grant of Rights does not permit [withdrawal] because media rights remain with the ACC even after [a member institution] leaves.”

50. The Conference’s incorrect narrative about the terms and effect of the GOR Agreements and ESPN Agreements has been widely reported, thus perpetuating a popular misconception to the detriment of Clemson.

51. The media have repeatedly and mistakenly reported that Clemson has granted its media rights to the ACC through June 30, 2036, even for games played by Clemson were it no longer a member of the Conference. Because of this inaccurate description, it appears to other athletic conferences and third parties that Clemson cannot, as a legal matter, grant its media rights for future games to another collegiate athletic conference before June 30, 2036, even if Clemson leaves the ACC prior to that date. This public misconception regarding Clemson’s media rights interferes with Clemson’s pursuit of opportunities with other collegiate conferences and media providers regarding potential future collaborations.

***Rights Actually Granted by Clemson: What Do the ESPN Agreements Say?***

52. In the ESPN Agreements, [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]<sup>5</sup>

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<sup>5</sup> [REDACTED]



53. Thus, the ACC was required to provide only the rights necessary

[REDACTED]

[REDACTED]

55.

[REDACTED]

56.

[REDACTED]

[REDACTED]

57. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. Further demonstrating the absurdity of the ACC’s misinterpretation of the ESPN Agreements and the GOR Agreements, the ACC Constitution allows for members to be expelled by a three-fourths vote (excluding the vote of the school being expelled). *See* ACC Constitution § 1.4.4. Under the ACC’s interpretation of the GOR Agreements, the ACC would have the power to expel a member (without that member’s vote) while owning the rights to that former member’s future games for the next 12 years—an illogical outcome that is not supported by the GOR Agreements’ plain language.

61. Similarly, under the ACC’s reading of the GOR Agreements, Clemson could withdraw from the Conference, pay an exorbitant withdrawal penalty to the Conference, and join another conference, but the ACC would still own the media rights to broadcast Clemson’s home games through 2036. This nonsensical reading of the GOR Agreements is wrong, and inconsistent with the plain language of that agreement.

62. The Grant of Rights does provide that Clemson has granted certain rights to the ACC “regardless of whether [Clemson] . . . remains a member of the Conference during the entirety of the Term.” Grant of Rights § 1. The ACC has misconstrued this clause to mean that Clemson made a blanket grant of its media rights for the entire term of the GOR Agreements. In fact, the clause is preceded by qualifying language: “Each of the Member Institutions hereby . . . grants . . . rights . . . necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement . . . .” *Id.* When construed in connection with the ESPN Agreements, the “regardless” clause merely permits the ACC to fulfill its

contractual obligation to ESPN to ensure that ESPN can rebroadcast for the duration of the ESPN Agreements those Games that Clemson played while it was an ACC member, even if Clemson has since departed the Conference. And Clemson does not dispute its grant of media rights to those pre-departure games, if re-aired or reused in accordance with the terms of the ESPN Agreements, following any exit by Clemson from the ACC.

63. In short, it was not “necessary for the Conference to perform [its] . . . contractual obligations” under the ESPN Agreements that Clemson convey its media rights to the ACC for games played if and when Clemson is no longer a member of the ACC.

64. Accordingly, Clemson did not convey any such rights to the ACC.

#### THE UNENFORCEABLE WITHDRAWAL PENALTY

65. The ACC’s assertion that Clemson, a public university in the State of South Carolina, may not exit the Conference without paying an unconscionable and unenforceable penalty in the amount of three times the ACC’s total operating budget (the “*Withdrawal Penalty*”) is wrong. This penalty is currently estimated to be approximately \$140 million. The Withdrawal Penalty has no relationship to, and is in fact plainly disproportionate to, the actual damages, if any, that would flow from Clemson’s leaving the ACC. While the ACC Constitution refers to this sum as “liquidated damages,” it is plainly a penalty and, under the applicable law, penalties are unenforceable.

66. ACC Commissioner Jim Phillips, speaking in July 2022, referred to the Withdrawal Penalty as a “nine-figure financial penalty” that he believed would “hold[.]” (Emphasis added). The words “nine-figure financial penalty” evidence an unmistakable intent that the Withdrawal Penalty not act as liquidated damages to compensate the Conference for any financial harm that it might suffer, but rather as a mechanism to penalize any Conference Institution that seeks to leave the Conference.

67. This intent is further evidenced by the historical development of the Withdrawal Penalty, which was first implemented in response to a spate of conference departures and realignments and was rapidly increased in response to others.

68. In 2010 and 2011, the University of Colorado, the University of Utah, the University of Nebraska, Texas A&M University, and Texas Christian University all decided to move from various athletic conferences to other athletic conferences.

69. By September 2011, the University of Pittsburgh and Syracuse University decided to leave the Big East Conference to join the ACC. Public announcements of their plans came shortly thereafter, when the ACC's Council of Presidents met in September 2011.

70. Prior to this wave of significant conference realignment, the ACC Constitution contained no Withdrawal Penalty and instead, Section IV-5 of the ACC Constitution, which addressed the withdrawal of members from the Conference, provided:

To withdraw from the conference a member must file an official notice of withdrawal with each of the conference members and the commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.

71. In response to the trend of universities switching athletic conferences, the ACC amended Section IV-5 of the ACC Constitution in September 2011 to impose an exit fee equal to 1.25 times the Conference's annual operating budget. Section IV-5 was amended to read as follows:

To withdraw from the conference a member must file an official notice of withdrawal with each of the conference members and the commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.

Upon official notice of withdrawal, the member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to one and one-quarter (1-1/4) times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section V-1 of the Conference Bylaws, which is in

effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distribution otherwise due such member for any Conference year. Any remaining amount due shall be paid by the withdrawing member within 30 days after the effective date of withdrawal. The withdrawing member shall have no claim on the assets, accounts or income of the Conference.

72. At the time the ACC's Constitution was amended in September 2011, to first adopt an exit fee, the ACC's total operating budget was approximately \$16.6 million, fixing the exit fee at about \$20.75 million.

73. Although nothing had changed except that the University of Maryland was poised to leave the ACC for the Big 10 Conference, only a year later, on or about September 11, 2012, the ACC again purported to amend the ACC Constitution (the "**2012 Amendment**"). The 2012 Amendment purported to require a departing Conference Member to pay a fee in an amount equal to three times the ACC's total operating budget.

74. The ACC thereafter published a version of the ACC Constitution that included the following language, currently found in Section 1.4.5. of the ACC Constitution (the ACC Constitution's sections were re-numbered after the 2012 Amendment was adopted) ("**Section 1.4.5.**"):

To withdraw from the Conference, a Member must file an official notice of withdrawal with each of the Members and the Commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.

Upon official notice of withdrawal, the Member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to three times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section 2.5.1 of the Bylaws of the Conference (the "Bylaws"), which is in effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distributions otherwise due such Member for any Conference year. Any remaining amount due shall be paid by the withdrawing Member within 30 days after the effective date of withdrawal. The withdrawing

Member shall have no claim on the assets, accounts, or income of the Conference.

75. At the time of the 2012 Amendment, the ACC's total operating budget remained relatively unchanged from a year earlier, at approximately \$17.3 million. Nevertheless, the 2012 Amendment increased the exit fee from approximately \$20.75 million to almost \$51.9 million, 2.5 times the amount adopted just twelve months earlier.

76. Today, the ACC's total operating budget stands at approximately \$46.8 million, meaning that the Withdrawal Penalty has ballooned to a whopping \$140.4 million, more than 2.7 times *again* the exit fee that Clemson approved in 2012, and nearly *seven times* the exit fee first adopted in 2011.

77. The Withdrawal Penalty is not a predetermined measure of compensation for actual damages that might be sustained by the Conference in the event of a Member Institution's withdrawal from the ACC, nor does it have any connection to a continuation of the relationship.

78. Instead, the Withdrawal Penalty was adopted as a punitive measure aimed at discouraging and preventing Member Institutions from withdrawing from the ACC.

79. That the Withdrawal Penalty is not a predetermined measure of compensation for actual damages is plainly illustrated by the fact that Notre Dame, whose prominent football team does not compete in the ACC, would be required to pay the same Withdrawal Penalty as Clemson, despite not generating the same television revenue for the Conference because its football team has a separate media rights deal with NBC Sports.

80. In fact, the ACC would not suffer damages in an amount even remotely approaching the amount of the Withdrawal Penalty—if it suffers any damages at all—were Clemson to withdraw from the Conference. Under the Multimedia Agreement, [REDACTED]

[REDACTED]



[REDACTED]

81. Upon information and belief, enforcement of the Withdrawal Penalty would result in the largest payment ever made by a member institution to leave any collegiate athletic conference.

82. Upon information and belief, the ACC's excessive Withdrawal Penalty is significantly larger than that of comparable intercollegiate athletic conferences, as set forth in the table below:

Conference	Withdrawal Penalty
Big Ten	\$0
Big 12	An amount equal to revenues distributed to the departing member for the final two years of its membership in the conference
SEC	\$30 million if two years' notice provided; \$40 million if less than two years' notice is provided; and \$45 million if no notice is provided

83. Judged against these comparators, the Withdrawal Penalty that the ACC insists a member institution must pay to leave the Conference today has ballooned to a point that was unimaginable in 2012, and is unconscionable, unenforceable, and in violation of public policy, especially when sought to be imposed on a public university like Clemson.

#### **NON-EXISTENT FIDUCIARY DUTIES**

84. As alleged above, the ACC has recently asserted that, under the ACC Constitution, the ACC Bylaws, statutes, and the common law, Conference members owe

fiduciary duties to the ACC, including duties allegedly arising from the characterization of the ACC as a joint venture and from the good faith and fair dealing obligations of parties to a contract.

85. In fact, neither the ACC Constitution nor the ACC Bylaws contemplate or even mention, much less attempt to impose, any fiduciary duties on Clemson or any other Conference member.

86. Neither the UUNAA nor any other applicable statutes create any fiduciary duties that would be owed by the member of an unincorporated nonprofit association, like the ACC, to that association. Indeed, the UUNAA contains no rules concerning the internal governance of an unincorporated nonprofit association.

87. Clemson is not engaged in a joint venture with the ACC or the other members of the ACC.

88. The covenant of good faith and fair dealing inherent in contractual obligations is not a fiduciary duty.

89. No applicable common law or any other law creates any fiduciary duties that would be owed by the member of an unincorporated nonprofit association, like the ACC, to that association or its members, nor do the facts surrounding Clemson's membership and engagement with the ACC give rise to any such duty.

90. In short, notwithstanding the ACC's contentions to the contrary, neither Clemson nor any other member of the Conference owes fiduciary duties to the ACC or to the other members of the ACC. Nor does Clemson's filing this lawsuit breach any legal duty or obligation that it might owe to the ACC.

**PLAINTIFF'S FIRST CAUSE OF ACTION UNDER THE S.C. DECLARATORY  
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAWS**

**(THE GOR AGREEMENTS)**

91. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

92. The ACC contends that, in the GOR Agreements, Clemson transferred to the ACC all of Clemson's rights to produce, distribute, and sublicense any and all games involving Clemson that are played until the end of the GOR Agreements' term, irrespective of whether Clemson is still a member of the ACC. Reading the GOR Agreements together with the ESPN Agreements, as required by the language of the GOR Agreements, shows that the ACC's contention is incorrect.

93. According to the plain language of the pertinent agreements, as illustrated above, the only rights that Clemson transferred to the ACC were the rights to certain games played while Clemson was a member of the ACC and not to any other games, including, but not limited to, games played if and when Clemson is no longer an ACC member.

94. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of the GOR Agreements.

95. Clemson is entitled to, and the Court should enter, a declaratory judgment that the GOR Agreements are limited to only those rights needed to perform the ESPN Agreements and that the media rights Clemson granted to the ACC did not include any Clemson games that are played after Clemson ceases to be a member of the ACC.

**PLAINTIFF'S SECOND CAUSE OF ACTION UNDER THE S.C. DECLARATORY  
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAW**  
**(SECTION 1.4.5. AND THE WITHDRAWAL PENALTY)**

96. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

97. The ACC contends that Clemson must pay the Withdrawal Penalty described in Section 1.4.5. of the ACC Constitution to leave the ACC.

98. As shown above, the Withdrawal Penalty of Section 1.4.5. is unconscionable, unenforceable, and void as against public policy in the State of South Carolina, and Clemson should not be required to pay the Withdrawal Penalty to leave the ACC.

99. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of Section 1.4.5.'s Withdrawal Penalty.

100. Clemson is entitled to, and the Court should enter, a declaratory judgment that the Withdrawal Penalty is void and unenforceable as against public policy, and Clemson is not required to pay the Withdrawal Penalty.

**PLAINTIFF'S THIRD CAUSE OF ACTION UNDER THE S.C. DECLARATORY  
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAW**  
**(NON-EXISTENT FIDUCIARY DUTIES)**

101. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

102. The ACC contends that Clemson and other Conference members owe fiduciary duties to the ACC and other members.

103. Members of an unincorporated nonprofit association do not owe that association fiduciary duties under the common law, any statute, including the UUNAA, or any other

applicable law. Neither the ACC Constitution nor the ACC Bylaws expressly or impliedly create any fiduciary duties that Conference members, including Clemson, owe to the ACC or other members. In short, neither Clemson nor any other ACC member owes any fiduciary duties to the ACC or other duties on the grounds asserted by the ACC or other grounds, notwithstanding the ACC's contentions to the contrary.

104. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC regarding the non-existent fiduciary duties.

105. Clemson is entitled to, and the Court should enter, a declaratory judgment that Clemson does not owe any fiduciary duties to the ACC. Nor does Clemson's filing this lawsuit breach any legal duty or obligation that it might owe to the ACC.

#### **PRAYER FOR RELIEF**

WHEREFORE, Clemson respectfully requests that the Court:

1. Enter a declaratory judgment declaring that the GOR Agreements are limited to only those rights needed to perform the ESPN Agreements and that the media rights Clemson granted to the ACC did not include any Clemson games that are played after Clemson ceases to be a member of the ACC;
2. Enter a declaratory judgment declaring that Section 1.4.5.'s Withdrawal Penalty is void as an unconscionable and unenforceable penalty, the enforcement of which would violate public policy, and Clemson is not required to pay the Withdrawal Penalty;
3. Enter a declaratory judgment declaring that Clemson does not owe any fiduciary duties to the ACC and has not breached any legal duty or obligation it might owe to the ACC by filing this lawsuit;
4. Award the costs of this action to Clemson; and

5. Award such other and further relief in Clemson's favor as the Court deems necessary or proper.

March 19, 2024

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