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COURT OF COMMON PLEAS
HAMILTON COUNTY

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FILIP BOROVICANIN, et al.,	:	**Case No: A2603352**
Plaintiffs,	:	**Judge Christopher Wagner**
v.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	**ENTRY GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
Defendant.	:	
	:	

Sport is the most important of least important things.[1] With that in mind, the Court begins with two observations. First, the National Collegiate Athletic Association ("NCAA"), despite its arguments that it is a voluntary association, more resembles a highly profitable professional sports league. Second, the Court possesses no illusions that the parties' interests relate at all to academics. Except for one player, no attorney, coach, player, or even the Defendant seriously mentioned academic interests in college. The Plaintiffs herein seek equitable relief.

This matter came before the Court on Plaintiffs' Complaint and Motion for Temporary Restraining Order ("TRO") and Preliminary Injunction, filed June 24, 2026. This case came before the Court on the Court's assigned week as Equity Judge.

The Court held a Zoom hearing on June 24, 2026, at which counsel for both Plaintiffs and Defendant were present.[2] The Court denied the Motion for a TRO and set the matter for a Preliminary Injunction hearing on July 1, 2026. Plaintiffs filed their Amended Complaint on June 30, 2026.

[1] Although the exact origin of this sentiment is unknown, the quote has often been attributed to former Liverpool Football Club Manager Jürgen Klopp, who stated that soccer seems "the most important of the least important things." https://www.liverpoolfc.com/news/first-team/390397-jurgen-klopp-message-to-supporters.

[2] Each party was represented by local counsel and counsel not licensed in Ohio. Counsel not licensed in Ohio were permitted to appear on the Zoom call, but not to argue the motion. Since the hearing, all out-of-state counsel have applied for and receive *pro hac vice* admission.

I. Relevant Facts

This case involves twenty-four (24) basketball players, bringing this action to challenge the application of the NCAA's Seasons of Competition Rule, contained in NCAA Bylaw 12.6, as applied to these Plaintiffs. The NCAA's upcoming rule change, approved on June 23, 2026, will allow basketball players graduating high school after 2022 to compete in five seasons of competition without needing to "redshirt" ("the Rule Change").

For almost fifty (50) years, the NCAA has enforced a rule providing Division 1 ("D1") college athletes with a five-year window to exhaust their competition eligibility. However, the NCAA limited college athletes to competing in only four seasons of intercollegiate competition (the "Four Seasons Rule"). A college athlete was permitted to use a fifth year to compete in team activities, without, or with limited, participation in intercollegiate competition ("the Redshirt Rule") with the grant of a waiver by the NCAA.

In the summer of 2025, the NCAA began allowing basketball players to play a full professional season before entering college, then return to college and play in four seasons of competition. In April 2026, the NCAA announced that it would change its rules to allow players to compete in all five seasons of eligibility without the need for redshirting, beginning in August of 2026. The NCAA excluded athletes who graduated from high school in 2022 from a fifth year of eligibility, unless those athletes were previously redshirted by the Defendant.

Plaintiffs are a class of basketball players who graduated high school in 2022, and have played four seasons of competition. Some players have entered the Transfer Portal, believing that the NCAA would include them in the Rule Change, but others believed that were not permitted to enter the Transfer Portal until they first regained eligibility.

II. Procedural History

Plaintiffs filed their original Complaint on June 24, 2026, along with their Motion for TRO and Preliminary Injunction. In their original Complaint, Plaintiffs brought claims for (1) Breach of Contract, (2) violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*, and (3) Promissory Estoppel. Plaintiffs also filed a Memorandum of Law in Support of their Motion for TRO and Preliminary Injunction. As stated, the Court denied Plaintiffs' Motion for TRO by Entry on June 26, 2026, and set the matter for a Preliminary Injunction hearing on July 1, 2026.

Defendant NCAA filed a Response in Opposition to the Motion for Preliminary Injunction on June 30, 2026. Plaintiffs filed an Amended Complaint and Supplemental Memorandum of Law in Support of their Motion for Preliminary Injunction on the same day. In their Amended Complaint, Plaintiffs named additional Plaintiffs and removed Count Three from the original Complaint, Promissory Estoppel. Plaintiffs also filed a Reply in Support of their Motion for Preliminary Injunction on July 1, 2026. A hearing was conducted on July 1, 2026.

Prior to beginning the hearing on the Motion for Preliminary Injunction, the Court denied non-party Jerrod Calhoun's Motion to Quash a subpoena for his testimony at the hearing, and the Court determined that it did have jurisdiction over the parties to this case. Entries reflecting these decisions were filed on the docket on July 2, 2026. At the July 1, 2026 hearing, the Court heard arguments from counsel and testimony from player Michael "MJ" Collins; player Filip Borovicanin; player Evan Mahaffey; Coach Richard Pitino, head coach of Xavier Men's Basketball; Coach Dustin Ford, head coach of Akron Men's Basketball; Coach Jerrod Calhoun, head Coach of University of Cincinnati Men's Basketball, and college basketball agent Michael Naiditch. The Defendant called no witnesses.

In their Motion for Preliminary Injunction, Plaintiffs requested this Court enjoin Defendant NCAA from enforcing Bylaw 12.6, the "Intercollegiate Competition Rule," against them to deny Plaintiffs a fifth season of competition. Plaintiffs also requested relief from the Transfer Portal.

III. Legal Standard

The purpose of a preliminary injunction "is to preserve a status between the parties pending a trial on the merits." *P&G v. Stoneham*, 140 Ohio App.3d 260, 267 (1st Dist. 2000). Ordinarily, a party requesting a preliminary injunction must show that "(1) there is a substantial likelihood that the plaintiffs will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction." *Id.*

A party seeking a preliminary injunction must ordinarily prove the required elements by clear and convincing evidence. *Id.* at 267-68. Clear and convincing evidence requires more than a mere "preponderance of the evidence" but is less than the "beyond a reasonable doubt" standard required in criminal cases, and requires evidence "which will provide in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." C*incinnati Bar Ass'n v. Massengale*, 58 Ohio St.3d 121, 122 (1991).

A court may issue a preliminary injunction on one portion of the party's request, but deny the preliminary injunction as to another portion of the request. *See Brookville Equip. Corp. v. City of Cincinnati*, 2012-Ohio-3648 (1st Dist.) (Court of Appeals affirmed trial court's partial grant and partial denial of a TRO and preliminary injunction because the plaintiff did not establish the factors for a TRO or preliminary injunction weighed in favor of relief on a portion of the claim).

IV. Analysis

Plaintiffs' Amended Complaint brought claims of (1) Breach of Contract with respect to the NCAA Bylaws; and (2) Violation of the Ohio Consumer Sales Practices Act.

i. Plaintiffs Have a Substantial Likelihood of Success on the Merits

The Court finds that Plaintiffs have proven by clear and convincing evidence a substantial likelihood of success on the merits as to Count One, Breach of Contract. The Court finds that Plaintiffs failed to prove by clear and convincing evidence a substantial likelihood of success on the merits as to Count Two, violation of the Ohio Consumer Sales Practices Act ("CSPA") and no preliminary relief is granted as to Count Two.

The NCAA changed its Bylaws to allow student athletes to compete in five seasons of intercollegiate competition, with or without a waiver by the Defendants. Plaintiffs would have been permitted to take part in a fifth season of competition (and believed they would be able to take part in a fifth season), but the NCAA barred these Plaintiffs from benefitting from that change. Defendant's actions and decisions left the Plaintiffs' status in question until June 2026. Thus, injunctive relief is appropriate.

A. Breach of Contract

Count One of the Amended Complaint alleges that Plaintiffs are intended third-party beneficiaries of the agreement between the NCAA and its member institutions, which incorporates the NCAA's Bylaws as set forth in the NCAA D1 Manual. Plaintiffs allege that the NCAA has breached the implied covenant of good faith and fair dealing through three courses of conduct.

Every contract contains an implied duty of good faith and fair dealing. *Wells Fargo Bank, N.A. v. Daniels*, 2011-Ohio-6555, ¶ 14 (1st Dist.). That duty implies "honesty and reasonableness in enforcement of a contract" and "faithfulness to an agreed common purpose and consistency with

the justified expectations of the other party." *Id.*, quoting *Stephan Bus. Enters. v. Lamar Outdoor Adver. Co.*, 2008-Ohio-954, ¶ 19 (1st Dist.).

First, Plaintiffs allege that the NCAA violated the textual commitment to fairness from Article 1-C of the NCAA's Constitution. Plaintiffs allege that Plaintiffs spent four years competing against athletes who received an extra year of competition with COVID waivers. Then, the NCAA made the fifth season of competition permanent, but excluded the high school class of 2022.

Second, Plaintiffs allege that the NCAA refused in bad faith to exercise its discretionary waiver authority to grant the 2022 class an additional season of competition. Instead, Plaintiffs allege that the NCAA granted relief to former professional players, while denying relief to athletes who played minimal minutes as freshman and/or exceeded the number of games allowed for a medical redshirt.

Third, Plaintiffs allege that the NCAA applied its own Bylaws inconsistently to deny Plaintiffs a benefit that they were owed. Plaintiffs allege that the NCAA charged players who competed in paid professional games with zero seasons of competition, but charged Plaintiffs, with minimal uncompensated minutes of play their freshman seasons, with a full season of competition.

The Court finds, by clear and convincing evidence, that Plaintiffs have a substantial likelihood of success on the merits of their Breach of Contract claim.

First, the NCAA Manual and Bylaws are clearly intended to benefit student athletes. Only a party to a contract or an intended third-party beneficiary of a contract may bring a breach of contract action in Ohio. *Thornton v. Windsor House*, 57 Ohio St.3d 158, 161 (1991). The third party need not be identified in the contract, "as long as he is contemplated by the parties to the contract and sufficiently identified." *Chitlik v. Allstate Ins. Co.*, 34 Ohio App.2d 193, 196 (8th Dist.

1973). It must be shown that the contract was made and entered into with the intent to benefit the third person, not a mere incidental or indirect benefit. *Id.*

The NCAA Manual and Bylaws contemplate student athletes explicitly. The NCAA cannot exist without student athletes. Student athletes can now be paid directly by NCAA member schools, including for a players' "Name, Image, and Likeness Activities." The NCAA Manual includes provisions for student athlete well-being, provisions giving student athletes voting representation on the Division 1 Board of Directors, and a provision creating a point of contact for student athletes to report behavior inconsistent with the NCAA's Constitution.

Second, the NCAA's eligibility rules have been applied in an arbitrary and capricious manner. The Rule Change only affects 2022 high school graduates.[3] Students graduating high school prior to 2022 received COVID waivers, allowing them to play a fifth season without redshirting. Players who redshirted are able to play a fifth year of competition, but only if the player did not play a single minute of a single game or the student had a season-ending injury before playing 30% of their games. Students who graduated high school in 2022 and played professionally for the year following their graduation may play in the 2026-2027 season, but players who graduated high school in 2022 and played minimally in an NCAA basketball game in the year following their high school graduation cannot play in the 2026-2027 season (unless the player receives a waiver from the Defendant).

All three student athletes who testified at the July 1, 2026 hearing stated that they competed against players in their fifth and sixth years of competition. In this upcoming season of competition, NCAA basketball players will begin competing against players who had previously competed in (and presumably received compensation by) professional basketball leagues. Student

[3] Plaintiffs do not challenge the NCAA's determination to allow all athletes five years of eligibility.

athletes who played minimal minutes in their first and/or second season of competition, like Plaintiff Filip Borovicanin, applied for waivers but were denied.

Defendant argues mainly that, although Plaintiffs may believe that the Rule Change is unfair, Plaintiffs are just on "the other side of the coin" in this situation. (July 1, 2026 Transcript, p 173, lines 16-17). Defendant argued that some players benefit from rule changes, while some players feel slighted. True, a rule change will not always benefit all players. However, Defendant made a specific exclusion of players who graduated high school in 2022 then immediately began their first season of collegiate basketball. Students who graduated high school in 2022 and redshirted; took multiple years before starting college; played prep school basketball; or played professional basketball are eligible for the 2026-2027 season. Yet not the plaintiffs.

Therefore, the Court finds, by clear and convincing evidence, that Plaintiffs have a substantial likelihood of success on the merits of Count One, Breach of Contract.

B. Violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01, et seq.

The Court requested that the parties provide more regarding the Ohio Consumer Sales Practices Act through briefing and at the hearing, but the parties have not briefed or argued this claim in depth. As such the Court is not prepared to determine whether Plaintiffs have a likelihood of success on the merits of their CSPA claim. Therefore, the Court finds that Plaintiffs failed to prove by clear and convincing evidence a substantial likelihood of success on the merits as to Count Two, and no preliminary relief is granted as to Count Two.

ii. Plaintiffs Will Suffer Irreparable Injury if the Injunction is Not Granted

The NCAA argued that Plaintiffs entered the NCAA knowing they had five years to compete in up to four seasons of competition. Thus, the NCAA argued that the Plaintiffs got the

benefit they expected from the NCAA rules. Further, the NCAA argued that Plaintiffs can continue on with their professional careers; this is just the end of their college careers.

The NCAA misses the point about what the irreparable injury is to these Plaintiffs. Further, the NCAA seemingly appears to view players as fungible.

Again, the Court is under no illusion that academics play a role in the Plaintiffs request for injunctive relief. Plaintiffs are seeking to take part in a $1.3 billion organization, from which they claimed they have been arbitrarily and capriciously excluded. The Plaintiffs do not get five years of intercollegiate competition, but students immediately before them and all students after them will get those five years of intercollegiate competition, without having to redshirt.

In 2026, the NCAA Division 1 Men's Basketball Tournament (widely known as "March Madness") averaged 10.9 million viewers across cable and streaming services, with the championship game averaging 18.3 million viewers.[4] The 2026 women's national championship averaged 9.9 million viewers across networks.[5] March Madness provides another chance to play in the "big game" and to audition for the pro leagues, most especially the NBA, while at the height of their collegiate athletic career.

As the coaches testified in the July 1, 2026 hearing, certain teams have reserved a roster spot for this season, providing a potential spot for the Plaintiffs if they are granted eligibility.[6]

Therefore, the Court finds, by clear and convincing evidence, that Plaintiffs will suffer irreparable injury if the preliminary injunction is not granted.

[4] https://www.ncaa.org/championships/march-madness/expansion-what-to-know/.
[5] *Id.*
[6] As discussed in the following section, this supports the notion that no currently eligible players would be harmed by the Court granting the preliminary injunction.

iii. No Third Parties Will be Unjustifiably Harmed if the Injunction is Granted

The NCAA's arguments regarding harm to third parties revolves around the potential harm to already-eligible players. It is important to note that these Plaintiffs are not guaranteed a spot on any particular roster if they are granted eligibility. The three coaches who testified at the July 1, 2026 hearing stated that they currently have roster spot(s) open, and that the coaches would consider certain Plaintiffs for those spots. Plaintiffs are not asking to take a player's roster spot or to add an additional roster spot: Plaintiffs want the opportunity to compete for a currently available spot on the roster. By the Defendant's own statements prior to releasing this new rule, many of the witnesses were led to believe that these Plaintiffs would have another year of eligibility. Consequently, teams left a roster spot open.

Additionally, it is doubtful that the NCAA would be harmed at all by allowing these Plaintiffs a fifth year of eligibility. The *product* is still being produced. Defendants cite to a non-binding Florida case stating that the purpose of the NCAA could be harmed by "players being judicially granted eligibility status to which they are not entitled." *NCAA v. Bradley*, 429 So.3d 1128, 1135 (Fla. Ct. App. 2026). But the Court believes that the purpose (and reputation) of the NCAA could be just as harmed by the arbitrary denial of a class of players' fifth-year of eligibility and the use of thinly veiled threats against member institutions to ensure compliance.

Therefore, the Court finds, by clear and convincing evidence, that no third parties will be unjustifiably harmed if the preliminary injunction is granted.

iv. Public Interest Will be Served by the Injunction

The public interest is best served when the courthouse doors are open to all. The Court is especially concerned with Preliminary Injunction Hearing Exhibit 7, an NCAA letter sent on behalf of the NCAA D1 Board of Directors. The letter expresses the Board of Directors' concern

with student-athletes "rushing to the courthouse" to seek relief from the eligibility rules. Exhibit 7 states:

> Coaches and other athletics department officials who encourage these lawsuits, and even support them on the premise that it is to benefit only one student-athlete, are undermining the very rules their schools have voted to approve and abide by, and are depriving future student-athletes of meaningful opportunities to compete.

Disturbingly, Exhibit 7 ends with the promise that "[t]he Division 1 Board will explore fair ways to hold accountable institutions electing to not follow the rules that they have supported." (Emphasis added).

NCAA demonstrated its intentions through its counsel's questioning of the three men's basketball coaches. Three coaches testified at the July 1, 2026 hearing: Coach Richard Pitino, head coach of Xavier Men's Basketball; Coach Dustin Ford, head coach of Akron Men's Basketball; and Coach Jerrod Calhoun, head Coach of University of Cincinnati Men's Basketball. Counsel for the NCAA asked Coach Ford and Coach Calhoun about the recently-passed "ghost transfer rule," which imposes sanctions on coaches and universities if they put a player on their roster who was not in the Transfer Portal.[7]

The Court also takes into the account the Motion to Quash of Coach Jerrod Calhoun. After the Motion to Quash was denied, Coach Calhoun appeared for the hearing, represented by the Ohio Attorney General, counsel for the University of Cincinnati. At least one member institution was concerned about the ramifications of participating in the hearing.

Public interest "supports fair competition and equitable treatment of college athletes." *Smith v. NCAA*, Case No. 2026-CP-39-00073, Court of Common Pleas of South Carolina, 13th Judicial Circuit, June 12, 2026. Again, Plaintiffs are not necessarily guaranteed a spot on any team

[7] Coach Pitino testified that the student seeking to play at the Xavier University, Plaintiff Filip Borovicanin, entered the Transfer Portal this season.

if they are deemed eligible to play. Plaintiffs simply seek the *opportunity* to compete for a spot on a team.

As the United States Supreme Court recently recognized, sports "are generally zero sum." *West Virginia v. B.P.J.*, 2026 U.S. LEXIS 2884, *22-23 (June 30, 2026). Competition, defeat, and triumph are the nature of the game. "That hard reality of sports cannot be ignored or swept under the rug." *Id.* at *23.

Defendant claims to value competition. However, it is unclear how these rules, arbitrarily enforced against these Plaintiffs, promote competition.[8] Defendant argues that allowing these Plaintiffs an additional year of intercollegiate competition will harm other players, but Defendant also modified the Bylaws to now allow players who have played professionally to play at the college level, thereby making a mockery of the concept of student athletic competition.

Further, the NCAA rules put state-subsidized public institutions and religious institutions in a position of having to act as an enforcer of the NCAA rules while also subject to threats of "accountability" to the NCAA.[9]

Defendant raised the issue that the NCAA will become ungovernable if courts continue to strip them "of the authority that the rightfully have to enact their own rules." (July 1, 2026 Transcript, p 177, lines 19-22). The NCAA reminded this Court that it is a "voluntary membership organization." (July 1, 2026 Transcript, p 178, lines 1-5). To the extent, however, the NCAA proposes that this Court should "overlook its restrictions because they happen to fall at the

[8] As the United States Supreme Court noted in *NCAA v. Alston*, the NCAA "accepts that its members collectively enjoy monopsony power in the market for student-athlete services, such that its restraints can (and in fact do) harm competition." 594 U.S. 69, 90 (2021). Student athletes "have nowhere else to sell their labor." *Id.*

[9] In *Alston*, the United States Supreme Court noted that the NCAA "seeks immunity from the normal operation of the antitrust laws and argues, in any event, that the district court should have approved of all its existing restraints." 594 U.S. at 74.

intersection of higher education, sports, and money – we cannot agree." *NCAA v. Alston*, 594 U.S. 69, 94 (2021).[10]

The NCAA is a "voluntary membership organization" that controls, markets, and sells a product: student athletes. Despite arbitrarily excluding a class of athletes from taking part in a fifth season of intercollegiate competition, the NCAA seeks to evade judicial review and possibly punish member institutions for their participation in the legal process.

Therefore, the Court finds, by clear and convincing evidence, that the public interest will be best served by the issuance of the preliminary injunction.

V. Conclusion

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for Preliminary Injunction as to Count One, Breach of Contract. The Court has not seen sufficient evidence regarding Count Two, Violation of the Ohio Consumer Sales Practices Act, and will DENY Plaintiffs' Motion for Preliminary Injunction as to this claim.

The Court GRANTS Plaintiffs request for injunctive relief from Bylaw 12.6 and GRANTS Plaintiffs request for injunctive relief from the requirements of the Transfer Portal. Players had no reason to enter the Transfer Portal if they believed they were not eligible to play, therefore relief is granted for these Plaintiffs only.

The Court's findings are based on the limited record presented to the Court. This is a Preliminary Injunction, not a final judgment. The Court sets this matter for a Case Management Conference on August 4, 2026 at 2:00pm, at which time the Court shall issue a scheduling order

[10] Although *Alston* dealt with a different set of circumstances, the Court is mindful of the United States Supreme Court's warning that Judges must understand their limitations "as outsiders trying to understand intricate business relationships." 594 U.S. at 106.

providing the parties with adequate time to conduct full discovery in preparation for trial. If the parties wish to have the Case Management Conference sooner, they shall contact the Court.

Bond is set at $200,000.

IT IS SO ORDERED.

Judge Christopher Wagner

7/9/26

Date