

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

ANTE BRZOVIC,	)	
	)	Civil Action No.:
Plaintiff,	)	
v.	)	
	)	
NATIONAL COLLEGIATE	)	
ATHLETIC ASSOCIATION,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINT  
AND PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Plaintiff Ante Brzovic ("Brzovic"), a talented college basketball player at the College of Charleston ("C of C"), seeks a temporary restraining order and preliminary injunction to enjoin the National Collegiate Athletic Association ("NCAA") from enforcing NCAA Division I Bylaw 12.8.1 (the "Five-Year Rule") and related eligibility rules that arbitrarily limit his ability to compete in Division I basketball for the 2025-2026 season. These rules, which count Brzovic’s time at a Division II institution against his Division I eligibility despite the lack of comparable economic opportunities, violate Section 1 of the Sherman Act, 15 U.S.C. § 1, by imposing an unreasonable restraint of trade. Additionally, the NCAA’s denial of Brzovic’s waiver request—based on circumstances beyond his control during his Division II tenure—constitutes arbitrary and capricious conduct, supporting state law claims for tortious interference, breach of contract, and promissory estoppel.

Time is of the essence. Brzovic must decide by April 26, 2025, whether to enter the National Basketball Association ("NBA") Draft, a decision that hinges on his ability to maximize

his Name, Image, and Likeness ("NIL") earnings at the collegiate level—projected at more than one million dollars for an additional Division I season—and further his professional prospects. Without injunctive relief, Brzovic faces irreparable harm, losing a finite window to compete at the highest collegiate level and capitalize on economic opportunities. While Brzovic has entered his name in the NCAA Transfer Portal, allowing him to commit and enroll at a Division I institution of his choosing, following its closure on May 22, 2025, and earn the projected one million dollars, or more, in NIL compensation, no school is willing to formally present an offer to him until/unless the NCAA is enjoined from rendering Brzovic ineligible to participate during the 2025-26 basketball season. This Court should grant the requested relief to preserve Brzovic's rights and ensure fair competition, consistent with federal antitrust law and judicial precedent.

## **II. STATEMENT OF FACTS**

Brzovic, an international student from Croatia, was recruited by and enrolled at Southeastern Oklahoma State University ("SE Oklahoma"), a Division II school, in August 2020. Prior to arriving on campus, Brzovic had never stepped foot in the United States. Due to the difficulties college presents to most all incoming freshman, much less one starting college in a foreign country, coupled with his inability to converse in English, Brzovic received failing grades in three of his five classes in the fall of 2020, which rendered him academically ineligible to participate in athletics. SE Oklahoma approved his request for a grade change from "F" to "W" for those three classes. Brzovic's coach thought it best to redshirt him for the 2020-2021 season. Compl. at para. 3, 14. After redshirting the 2020-2021 season, he was required to play during the 2021-2022 season, during which he competed in 28 games, while experiencing significant mental stress, language barriers, and cultural adjustments that limited his development and precluded NIL opportunities available at Division I. *Id.* at para. 15. He was finally able to transfer to C of C, a

Division I institution, in May 2022, where he played three seasons (2022-2025), earning \$0 in NIL income in 2022-2023, \$75,000 in NIL income in 2023-2024 and \$300,000 in NIL income in 2024-2025. *Id.* at para. 16.

On March 21, 2025, C of C submitted a waiver to the “Five-Year Rule” under NCAA Division I Bylaw 12.8.1.7.1.1 (“Circumstances Beyond Control”), seeking an additional year of eligibility for Brzovic based on his unique challenges at SE Oklahoma. *Id.* at para. 17.<sup>1</sup> *See Exhibit A.* The waiver request included a personal statement signed by Brzovic. *Id.* As stated, he was seeking an additional year of eligibility because his journey “has been unique” and because he “lost critical years of exposure and development at the Division I level due to circumstances beyond [his] control.” *Id.* As C of C wrote in the waiver request, Brzovic’s adjustment to many circumstances, including but not limited to being an international college athlete “who began school in a new country, with a new language during the COVID-19 pandemic” along with absorbing a “great deal of stress and anxiety” should have been considered by the NCAA in rendering its decision. *Id.*

Following the submission, the NCAA unilaterally amended the submission to remove NCAA Division I Bylaw 12.8.1.7.1 as the applicable cite for the submission and changing it to NCAA Division II Bylaw 14.4.3.7 “Season of Competition Waiver.” *See Exhibit B; see Declaration of Kathleen Brown.* On March 25, 2025, the NCAA requested additional information from Brzovic related to his high school recruitment while in Croatia, which he promptly provided, and on April 1, 2025, the NCAA summarily denied Brzovic’s waiver request without citing any specific Bylaw or legislation. *Id.* at para. 18; *see Exhibit C.* Without relief from the denial, Brzovic will lose his chance to compete in 2025-2026, forgo projected NIL earnings of at least one million

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<sup>1</sup> Upon information and belief, NCAA institutions must initiate waiver requests on behalf of their athletes, as the athletes are not able to initiate the waivers themselves.

dollars, and miss critical exposure for a professional career. *Id.* at para. 8, 16; *see* Declaration of Adam Godes.

The NCAA, an unincorporated association governing over 1,100 member institutions, including Division I schools like C of C, enforces NCAA Division I Bylaw 12.8.1, which requires college athletes to complete four seasons of intercollegiate competition within five years from their first full-time enrollment at any NCAA collegiate institution. *Id.* at para. 1, 4; *see* **Exhibit D**. This "Five-Year Rule" counts Brzovic's Division II time against his Division I eligibility, despite Division II's differences in eligibility requirements and lack of comparable NIL opportunities. *Id.* para. 20. Following *NCAA v. Alston*, 594 U.S. 69 (2021) and the efforts of states across the country adopting NIL laws to restrict the NCAA from enforcing its prior prohibitions to restrict athletes from earning money from their fame, the NCAA lifted its NIL prohibition on July 1, 2021, but such opportunities remain almost exclusively available to Division I athletes, and that was certainly the case in the first season following the *Alston* ruling, which was Brzovic's first competitive year in Division II. *Id.* at para. 21.

This case, like the case of *Fourquarean v. NCAA*, No. 25-cv-68 (W.D. Wis. Feb. 6, 2025), is about whether the NCAA can arbitrarily limit the eligibility of a college athlete to play Division I basketball (whereas the *Fourquarean* matter relates to a Division I football player) as a result of such athlete's prior seasons playing in Division II. *See* **Exhibit E**. Specifically, this case, as is true in *Fourquarean*, challenges how the NCAA, which unquestionably exerts almost complete control over the career of every college athlete, can arbitrarily and capriciously deny a college athlete the ability to participate in the economic, developmental, and other meaningful opportunities available only to Division I college athletics based solely on the athlete's prior participation in Division II college athletics, even though Division II does not offer the same opportunities.

### **III. LEGAL STANDARD**

To obtain a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm absent relief; (3) a balance of equities favoring the injunction; and (4) that the injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Reilly v. Cty. of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). The first two factors are "gateway" requirements; if met, the court balances all four factors to determine relief. *Ho-Ho-Kus, Inc. v. Sucharski*, No. 2:23-cv-01677, 2023 U.S. Dist. LEXIS 201393, at \*46-47 (D.N.J. Nov. 9, 2023). Brzovic satisfies all elements, warranting immediate injunctive relief.

### **IV. LEGAL ARGUMENT**

#### **A. Brzovic Has a Likelihood of Success on the Merits**

A "clear and convincing" proof of likelihood of success is required. *Mycalex Corp. v. Pemco Corp.*, 159 F.2d 907, 912 (4th Cir.1949). However, "[w]hen the balance of harms decidedly favors the plaintiff, he is not required to make a strong showing of a likelihood of success..." *James A. Merritt & Sons, Inc. v. Marsh*, 791 F.2d 328, 330 (4th Cir 1986). Plaintiff meets this standard across his Sherman Act and state law claims.

#### **1. Sherman Act Claim**

The NCAA is a non-profit, unincorporated association that currently maintains its headquarters in Indianapolis, Indiana. *See, Haw v. NCAA*, 309 A.3d 64, 73 (Maryland App. Ct, 2024). The NCAA describes itself as "a voluntary, self-governing organization of four-year colleges, universities and conferences committed to the well-being and development of student-athletes, to sound academic standards and the academic success of student-athletes, and to diversity, equity and inclusion." *Id.* at 73-74, citing the 2022-23 NCAA Division I Manual, Constitution, preamble.1 "The basic purpose of the Association is to support and promote healthy

and safe intercollegiate athletics ... as an integral part of the education program and the student-athlete as an integral part of the student body.” *Id.*

Currently, about 1,100 colleges and universities are members of the NCAA. *Haw, supra*, at 74. The NCAA organizes its member schools into three divisions, of which Division I has the largest and most competitive athletic programs. *Id.* “Division I teams attract the most money and the most talented athletes.” *Id.*, citing *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 79, 141 S. Ct. 2141, 2150, 210 L.Ed.2d 314 (2021). For its governance, the NCAA members have adopted a constitution controlling the structure and principles of the Association. *See, Haw, supra*, 309 A.3d at 74. Through a multi-tiered structure, the NCAA, its divisions, and its conferences issue rules and regulations (“bylaws”) governing athletic competitions among NCAA member schools. *Id.* The NCAA has established rules committees for each sport to “establish and maintain rules of play in its sport consistent with the sound traditions of the sport and of such character as to ensure good sportsmanship and safe participation by competitors.” *Id.*, citing 2022-23 NCAA Division I Manual, Operating Bylaws, § 21.6.1.3.

Among other matters, the NCAA's rules address the eligibility of college athletes, recruitment of college athletes by member institutions, and scholarships and other financial aid that member institutions may provide to college athletes. *Id.* The NCAA enforces its rules through an “Infractions Program,” which authorizes penalties or sanctions against member institutions for violations of NCAA rules. *Id.* at 75. Each NCAA member school is required to “hold itself accountable to support and comply with the rules and principles approved by the membership.” *Id.*

Section 1 of the Sherman Act prohibits contracts, combinations, or conspiracies that unreasonably restrain trade. 15 U.S.C. § 1. In the Fourth Circuit, such claims are evaluated under

the rule-of-reason analysis unless a per se violation is evident, requiring: (1) at least two persons acting in concert; and (2) imposing an unreasonable restraint on trade affecting interstate commerce. *Estate Constr. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 220-21 (4th Cir. 1994). The NCAA's bylaws, as horizontal agreements among member institutions, satisfy these elements, as recognized in *NCAA v. Alston*, 594 U.S. 69, 86 (2021), and *Fourquarean v. NCAA*, No. 25-cv-68, [D.E. 39] at \*7 (W.D. Wis. Feb. 6, 2025) (the "*Fourquarean Order*"). The crux is whether the restraint is unreasonable. Brzovic is likely to succeed because the Five-Year Rule, as applied to his Division II time, unreasonably restrains trade in the labor market for Division I basketball players. The Five-Year Rule pretends that athletic participation at a Division II college level affords athletes an equivalent opportunity as those participating in Division I, yet as a result of vast differences the respective division bylaws, in NIL compensation, and the soon to be implemented revenue sharing model between the Divisions (under the pending *House v. NCAA* settlement, with a hearing on the final approval of same scheduled for April 7, 2025) this is, at the very least, economically not true. The current NCAA Bylaws require the subtraction of a year of Division I eligibility and, in turn, a loss of the resulting NIL compensation (in this instance of at least one million dollars) and revenue-sharing opportunity related to that year from students based solely on their decision to attend a Division II school before transferring to a four-year Division I NCAA institution. The Sherman Act violations allowed by these bylaws should be prevented by this Court by enjoining their applications to Brzovic's eligibility.

**a. Relevant Market**

The relevant market is the nationwide labor market for Division I basketball players, where the NCAA exercises monopsony power. *NCAA v. Alston*, 594 U.S. at 90 ("The NCAA *accepts* that its members collectively enjoy monopsony power in the market for student-athlete services."). No

practical alternatives exist to Division I's unique benefits: elite coaching, national exposure, and significant NIL opportunities. *Id.* at 81 ("NCAA's Division I essentially *is* the relevant market for elite college [sport]."); Compl. at para. 8.

**b. Anticompetitive Effects**

Plaintiff must show a "substantial anticompetitive effect" in the relevant market—here, the market for Division I basketball college athlete services, as similarly defined in *Alston*, 594 U.S. at 81. The Fourth Circuit permits indirect evidence of market power plus harm to competition. *Dickson v. Microsoft Corp.*, 309 F.3d 193, 206 (4th Cir. 2002). The NCAA's monopsony power is undisputed (*Alston*, 594 U.S. at 90), and the Five-Year Rule harms competition by limiting Brzovic's Division I eligibility based on his Division II participation, where NIL opportunities were virtually nonexistent. Compl. at 29, 31. This mirrors findings in *Pavia v. Nat'l Collegiate Athletic Ass'n*, — F. Supp. 3d —, No. 3:24-cv-01336, 2024 WL 5159888, at \*9 (M.D. Tenn. Dec. 18, 2024) (the "*Pavia Order*"), where the court held that counting junior college time against Division I eligibility distorts the labor market by pushing athletes to Division I schools, even when other options (e.g., junior colleges) might better suit their needs. Similarly, in *Fourquarean*, the court found that applying the Five-Year Rule to Division II time "has an anticompetitive effect" by reducing eligibility and economic opportunities for athletes like Brzovic (*Fourquarean Order* at 10-11).

The restraint here reduces competition by limiting the pool of Division I athletes, harming team competitiveness (*Pavia Order* at 9). It deprives Brzovic of a fourth Division I season, unlike peers who started at Division I, costing Brzovic a substantial amount of NIL earnings, with offers on the table of at least one million dollars to date. Compl. at para. 9. It penalizes athletes for

attending Division II schools, despite their developmental benefits (e.g., Brzovic’s language and cultural adjustment). *Id.* at para. 15, 17.

### **c. Lack of Procompetitive Justification**

The NCAA may argue the Five-Year Rule promotes academic progress or amateurism, but these rationales are pretextual. The court in *Pavia* rejected similar justifications, noting inconsistencies with NCAA policies allowing exceptions for military service or transfers (*Pavia Order* at 11). The court in *Ohio v. NCAA*, 706 F. Supp. 3d 583, 596 (N.D.W. Va. 2023), found that eligibility restrictions do little to enhance academics when athletes still practice extensively. As stated by the court in *Fourquarean*, “there needs to be more meaningful exceptions to the Five-Year Rule to avoid unnecessary antitrust injury without an arguable procompetitive justification.” (*Fourquarean Order* at 17). As in *Fourquarean*, Defendant’s failure to adopt and apply *meaningful* exceptions to the Five-Year Rule here has prejudiced Plaintiff and will prejudice many other college athletes seeking to obtain a waiver for additional Division I eligibility in the future.

## **2. State Law Claims**

### **a. Tortious Interference**

Brzovic is likely to succeed on his tortious interference claim (Count III). He has opportunities to enter into NIL deals with third parties. Compl. at para. 65-72. The NCAA’s waiver denial, ignoring Division I Bylaw 12.8.1.7.1.1, interferes by preventing his participation and reducing his marketability.

### **b. Breach of Contract (Third-Party Beneficiary)**

The NCAA’s agreements with member institutions, including C of C, aim to benefit college athletes like Brzovic, which Plaintiff, as a beneficiary, can enforce. *See Bloom v. NCAA*, 93 P.3d

621, 623-24 (Colo. App. 2004). By arbitrarily denying his waiver, the NCAA has breached its duty to apply rules fairly, causing Brzovic harm.

### **c. Arbitrary Enforcement**

The NCAA's inconsistent application of Division I Bylaw 12.8.1.7.1.1—granting waivers to others (e.g., JuCo athletes) but not Brzovic—violates its duty to act non-arbitrarily. Compl. at para. 20, 30, 65; (*Fourquarean Order* at 18) (criticizing "wooden application" of Five-Year Rule).

### **B. Brzovic Will Suffer Irreparable Harm Absent Relief**

In *Direx Isreal, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 811 (4th Cir.1991), the Fourth Circuit outlined the precise analytical framework that courts must employ in determining whether to grant preliminary relief. First, the party requesting preliminary relief must make a "clear showing" that he will suffer irreparable harm if the court denies his request. *Id.* at 812–13. Irreparable harm requires injury that is "actual and imminent," not speculative. *Id.* at 812.

Plaintiff faces immediate harm. Without an injunction, Brzovic will lose his 2025-2026 season, a harm courts consistently deem irreparable due to the fleeting nature of collegiate athletics. *Ohio v. NCAA*, 706 F. Supp. 3d at 597 ("Courts have repeatedly found that '[c]ollege students suffer irreparable harm when they are denied the opportunity to play sports.") (citations omitted); *Fourquarean Order* at 20 ("Given the uncertainties in predicting the outcome of plaintiff's return to UW for another football season, therefore, the court agrees that at least a portion of the harm caused would be too speculative to assign a monetary value and is, therefore, likely to be an irreparable harm."). Brzovic faces immediate harm as the April 26, 2025 NBA Draft deadline looms, forcing a choice between forgoing one million dollars in NIL earnings or entering the draft prematurely. Compl.at para. 19. Monetary damages for lost NIL earnings, exposure, and NBA potential are insufficient and/or too speculative, as in *Fourquarean* (Order at 21) and *Ohio* (706 F.

Supp. 3d at 594). Furthermore, forcing Brzovic to wait past today for injunctive relief will place him in an impossible position, because college teams are, every minute, communicating with players in the NCAA Transfer Portal and negotiating terms of NIL deals with those players and their agents. Every minute lost is a lost opportunity for Brzovic as those teams fill their rosters with replacements for the talent they would otherwise receive if Brzovic had committed to their institutions. Based thereon, it is undisputable that Brzovic will suffer irreparable harm if Defendant's arbitrary and capricious decision to prevent him from continuing to play Division I basketball is upheld.

### **C. Balance of Equities Tips in Plaintiff's Favor**

If the Plaintiff establishes irreparable harm, "the *next* step then for the court to take is to balance the likelihood of irreparable harm to the plaintiff from the failure to grant interim relief against the likelihood of harm to the defendant from the grant of such relief." *Direx Israel*, 952 F.2d at 812.

The equities heavily favor Brzovic. He faces substantial, irreparable harm—lost eligibility, significant income, and career advancement—while the NCAA incurs no harm from allowing him to play, which would merely preserve the status quo pending litigation, and compliance with the law causes no harm. *Ohio*, 706 F. Supp. 3d at 600 ("A prohibition on enforcing [an eligibility rule] causes no harm to the NCAA or any other entity or individual."); *Calvert Health, LLC v. Four Leaf Liquidators, LLC*, No. 3:23-CV-00110, 2024 WL 69953, at \*10 (M.D. Tenn. Jan. 5, 2024). This narrow injunction affects only Plaintiff, minimizing NCAA disruption (*Fourquarean Order* at 21.). It also aligns with the NCAA's mission to support athlete well-being. Compl. at para. 80. If the balance tips decidedly in favor of the Plaintiff, "a preliminary injunction will be granted if the plaintiff has raised questions going to the merits so serious, substantial, difficult, and doubtful, as

to make them fair ground for litigation and thus more deliberate investigation.” *Direx Israel*, 952 F.2d at 813. However, “if the balance does not tip decidedly there must be a strong probability of success on the merits.” *Id.*

#### **D. The Public Interest Supports Injunctive Relief**

Enjoining the NCAA promotes free and fair competition in the Division I labor market, a public interest recognized in antitrust law. *Ohio v. NCAA*, 706 F. Supp. 3d at 600 (“Protecting competition in the labor market for NCAA Division I student-athletes serves the public’s interest in free and fair competition in labor markets.”). It ensures equitable treatment of athletes like Brzovic, enhancing competitive parity. Ensuring equitable eligibility aligns with *Fourquarean*’s public interest in college athlete opportunities (*Fourquarean Order* at 21) and *Ohio*’s emphasis on participation rights (706 F. Supp. 3d at 600). The injunction serves justice without destabilizing NCAA governance.

#### **E. Enjoining the Rule of Restitution**

To effectuate relief, the Court must enjoin NCAA Bylaw 12.11.4.2 (the “Rule of Restitution”), which punishes reliance on court orders if later vacated. *Ohio v. NCAA*, 706 F. Supp. 3d at 601-02 (enjoining the Rule of Restitution to prevent deterrence of challenges). Without this, Division I schools may bar Brzovic from playing despite an injunction, rendering relief illusory. The “Rule of Restitution” reads: “If a student-athlete who is ineligible under the terms of the bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Board of

Directors may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions . . .” Potential punishments under the Rule of Restitution include vacating wins, postseason bans, return of television revenue, and financial penalties, among others. To make a preliminary injunction meaningful in this case, Brzovic requests the Court enjoin the NCAA's application of the Rule of Restitution against him and any institution to which he enrolls/transfers because its "purpose is to punish challenges to the NCAA's anticompetitive rules by attempting to deprive courts of the ability to grant effective relief and depriving individual student-athletes and member institutions of the practical ability to rely on court orders in their favor." *See, State of Ohio, supra*, 706 F.Supp.3d at 601.

#### **VI. SECURITY PURSUANT TO FRCP 65(c)**

Under Fed. R. Civ. P. 65(c), security is discretionary. Plaintiff requests waiver of the security requirement, as the NCAA incurs no financial burden from non-enforcement of its bylaws, consistent with *Ohio, Fourquarean, and Pavia*.

#### **VII. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests this Court enter an order enjoining Defendant from enforcing the Five-Year Rule Waiver as to Brzovic pending entry by the Court of a final judgment in this Action. Further, Plaintiff respectfully requests that this Court enjoin Defendant from retaliating against Brzovic or any NCAA institutions by punishing them under the Rule of Restitution, NCAA Bylaw 12.11.4.2 for any conduction allowed by any temporary or preliminary injunctive relief that this Court may issue, and for any additional relief this Court deems necessary.

DATED: April 6, 2025

Respectfully submitted,

**THE PEPPER LAW FIRM, PA**

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