

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION**

STATE OF OHIO,  
STATE OF COLORADO,  
STATE OF ILLINOIS,  
STATE OF MINNESOTA,  
STATE OF MISSISSIPPI,  
STATE OF NEW YORK,  
STATE OF NORTH CAROLINA,  
STATE OF TENNESSEE,  
COMMONWEALTH OF VIRGINIA,  
STATE OF WEST VIRGINIA,  
DISTRICT OF COLUMBIA, and  
UNITED STATES OF AMERICA,

Civil No. 1:23-cv-100  
Judge John Preston Bailey

Plaintiffs,

v.

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION,

Defendant.

**UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM  
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States of America moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on May 30, 2024 (Dkt. No. 137-2) (attached as Exhibit A).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (“CIS”) filed in this matter on May 30, 2024 (Dkt. No. 138) explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a

Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the United States has satisfied the 60-day statutory public comment period requirement.

## **I. BACKGROUND**

On January 18, 2024, the United States joined Plaintiff States' Amended Complaint against Defendant National Collegiate Athletic Association ("NCAA"). The Amended Complaint alleges that the NCAA and its Division I members agreed to limit competition for college athletes in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Former NCAA Bylaw 14.5.5.1 (the "Transfer Eligibility Rule") unjustifiably restrained the ability of college athletes to engage in the market for their labor. The Transfer Eligibility Rule, which was in effect at the time the Amended Complaint was filed, imposed a one-year delay in the eligibility of certain college athletes transferring between NCAA member institutions and thus reduced competition in the labor market for college athletes. This rule increased the cost of college athletes transferring to different institutions and made Division I institutions less interested in recruiting college athletes. The Amended Complaint also alleges that NCAA Bylaw 12.11.4.2 (the "Rule of Restitution") furthers the anticompetitive effects of certain eligibility rules by deterring college athletes from challenging those rules. Under that rule, the NCAA can punish college athletes (and their associated institutions) that bring a legal challenge against the NCAA's eligibility rules and receive a court-ordered injunction barring enforcement of those rules, if the injunction is later overturned or stayed.

On May 30, 2024, the United States filed a proposed Final Judgment, a Stipulation and Order, and a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment. The Stipulation and Order, which was agreed to by the parties and which was entered

by the Court on May 31, 2024 (Dkt. No. 140), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA have been met. The proposed Final Judgment (1) permanently enjoins the NCAA from enforcing the Transfer Eligibility Rule or any substantially similar rule requiring college athletes to maintain a period of residence or refrain from competition because of a transfer between NCAA member institutions, (2) prohibits the NCAA from enforcing the Rule of Restitution related to a college athlete's participation in intercollegiate competition following a transfer in reliance on this Court's orders, and (3) requires the NCAA to issue an additional year of eligibility to any qualifying athlete who was previously deemed ineligible to participate because of the Transfer Eligibility Rule for a season or any portion of a season during or since the 2019-20 academic year. The proposed Final Judgment also contains provisions designed to make compliance with, and enforcement of, the Final Judgment as effective as possible. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

## **II. COMPLIANCE WITH THE APPA**

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a period of at least 60 days for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on May 30, 2024; published the proposed Final Judgment and CIS in the *Federal Register* on June 11, 2024 (*see* 89 Fed. Reg. 49194 (2024)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* for seven days during the period June 6, 2024 to June 12, 2024 and in *The Dominion Post* for nine days during the

period June 6, 2024 to June 20, 2024. The United States did not receive any comments during the public comment period.

### **III. STANDARD OF JUDICIAL REVIEW**

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, “shall consider”:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). Section 16(e)(2) of the APPA states that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2). In its CIS, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference. Dkt. 138 at 15-19.

### **IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST**

The United States alleges in its Amended Complaint that the NCAA’s former Transfer Eligibility Rule limited competition for college athletes and unjustifiably restrained the ability of college athletes to engage in a market for their labor by imposing a one-year delay in the

eligibility of certain college athletes transferring between NCAA member institutions. The Amended Complaint also alleges that the NCAA's Rule of Restitution furthers the anticompetitive effects of certain eligibility rules by deterring college athletes from challenging those rules. As explained in the CIS, the proposed Final Judgment is designed to remedy the anticompetitive effects of the conduct alleged by the United States by enjoining the NCAA from enforcing the Transfer Eligibility Rule or any substantially similar rule; prohibiting the NCAA from enforcing the Rule of Restitution related to a college athlete's participation in intercollegiate competition following a transfer in reliance on this Court's orders; and requiring the NCAA to issue an additional year of eligibility to any qualifying college athlete previously deemed ineligible to participate because of the Transfer Eligibility Rule during or since the 2019-20 academic year.

The public, including affected parties, has had the opportunity to comment on the proposed Final Judgment, and no comments were submitted. As explained in the CIS, entry of the proposed Final Judgment is in the public interest.

## **V. CONCLUSION**

For the reasons set forth in this Motion and Memorandum and in the CIS, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: August 29, 2024

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

/s/ Maximillian F. Nogay  
MAXIMILLIAN F. NOGAY  
*Assistant United States Attorney*

United States Attorney's Office  
Northern District of West Virginia  
P.O. Box 591  
1125 Chapline Street, Suite 3000  
Wheeling, WV 26003  
Tel: 304-234-0100  
Fax: 304-234-0110  
Email: max.nogay@usdoj.gov

/s/ James H. Congdon  
JAMES H. CONGDON\*  
*Trial Attorney*

United States Department of Justice  
Antitrust Division  
Media, Entertainment, and Communications Section  
450 Fifth Street, NW, Suite 7000  
Washington, DC 20530  
Tel: (202) 538-3985  
Fax: (202) 514-6381  
Email: james.congdon@usdoj.gov  
\* *pro hac vice*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION**

STATE OF OHIO,  
STATE OF COLORADO,  
STATE OF ILLINOIS,  
STATE OF MINNESOTA,  
STATE OF MISSISSIPPI,  
STATE OF NEW YORK,  
STATE OF NORTH CAROLINA,  
STATE OF TENNESSEE,  
COMMONWEALTH OF VIRGINIA,  
STATE OF WEST VIRGINIA,  
DISTRICT OF COLUMBIA, and  
UNITED STATES OF AMERICA,

Civil No. 1:23-cv-100  
Judge John Preston Bailey

Plaintiffs,

v.

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION,

Defendant.

**FINAL JUDGMENT AND PERMANENT INJUNCTION**

1. WHEREAS the Plaintiff States of Ohio, Colorado, Illinois, Minnesota, Mississippi, New York, North Carolina, Tennessee, and West Virginia; the Commonwealth of Virginia; the District of Columbia (collectively, “States”); and the United States of America have brought this action alleging violations of the Sherman Act, 15 U.S.C. § 1 et seq., against Defendant National Collegiate Athletic Association (“NCAA”).

2. WHEREAS Plaintiff States, through their respective Attorneys General, are duly authorized to bring suits for injunctive relief to enforce the Sherman Act pursuant to 15 U.S.C. §§ 1 and 26.

3. WHEREAS Plaintiff United States of America is duly authorized to bring suits for injunctive relief to enforce the Sherman Act pursuant to 15 U.S.C. §§ 1 and 4.

4. WHEREAS all parties consent to this venue and to the personal jurisdiction of the Court for purposes of this litigation, entry of the Final Judgment, and any subsequent litigation to enforce its terms.

5. WHEREAS this Court has subject matter jurisdiction over this action under 15 U.S.C. § 4 and 28 U.S.C. §§ 1331 and 1337(a), and in the case of Plaintiff United States, 28 U.S.C. § 1345.

6. WHEREAS the NCAA's member institutions and conferences have adopted rules and regulations governing certain aspects of college sports.

7. WHEREAS NCAA Bylaw<sup>1</sup> 14.5.5.1, herein referred to as the Transfer Eligibility Rule, provides that certain transfer students shall not be eligible for intercollegiate competition in Division I until they have fulfilled an academic "year of residence" at their new institution, unless they qualify for a transfer exception or secure a waiver.

8. WHEREAS Plaintiffs allege that the Transfer Eligibility Rule has unreasonably restrained competition for Division I student-athletes among schools and has prevented them from realizing the benefits of free and open competition for their athletic services.

9. WHEREAS Plaintiffs allege that the Transfer Eligibility Rule yields few, if any, procompetitive benefits.

10. WHEREAS Plaintiffs allege that, as a direct result of the NCAA's conduct, Division I student-athletes and consumers of college athletics have suffered and continue to suffer

---

<sup>1</sup> All references to "Bylaws" or "NCAA Rules" are to the *NCAA Division I 2023-24 Manual*.



antitrust injury due to the reduction in competition among member institutions for student-athletes' services.

11. WHEREAS Plaintiffs therefore allege that the Transfer Eligibility Rule is an illegal agreement to restrain and suppress competition in the nationwide market for Division I student-athletes' labor in intercollegiate athletics, in violation of Section 1 of the Sherman Act.

12. WHEREAS NCAA Bylaw 12.11.4.2, herein referred to as the Rule of Restitution, provides that, if a student-athlete obtains an injunction against the NCAA, and the student-athlete and his or her member institution conduct themselves in conformity with that injunction, the NCAA may nonetheless impose certain penalties on both the student-athlete and the member institution if the injunction is ultimately vacated, stayed, or reversed.

13. WHEREAS Plaintiffs allege that the Rule of Restitution deters member institutions from relying on court orders finding that the NCAA's rules are anticompetitive (or otherwise illegal) and, therefore, deprives courts of the ability to grant effective relief from violations of state and federal law.

14. WHEREAS Plaintiffs allege that for injunctive relief prohibiting enforcement of the Transfer Eligibility Rule to be effective, the NCAA must also be enjoined from enforcing the Rule of Restitution to punish member institutions or student-athletes who immediately participate in intercollegiate competition following a transfer.

15. WHEREAS following an evidentiary hearing, the Court entered a temporary restraining order and preliminary injunctive relief against the NCAA enjoining enforcement of the Transfer Eligibility Rule and the Rule of Restitution. Dkt. 39, 63.

16. WHEREAS Plaintiffs allege that absent permanent injunctive relief, Division I student-athletes will continue to suffer irreparable harm from the Transfer Eligibility Rule, whether by missing games that cannot be replayed, failing to secure name, image, and likeness ("NIL")

deals or professional opportunities that would otherwise be available, or foregoing transfer decisions they would otherwise pursue.

17. WHEREAS Plaintiffs allege that the balance of the equities favors issuing a permanent injunction, and issuance of a permanent injunction is in the public interest.

18. WHEREAS the United States and the NCAA have agreed to resolve this matter by entry of this Final Judgment.

**Accordingly, it is HEREBY ORDERED, ADJUDGED, AND DECREED:**

19. The foregoing recitals are incorporated and made a part of this Final Judgment.

20. The NCAA shall take all steps necessary to comply with the Stipulation and Order entered by the Court.

21. This Final Judgment resolves only the United States' claims with respect to the Transfer Eligibility Rule as applied to Division I student-athletes and does not affect other Bylaws or claims not made in this action. For the avoidance of doubt, this Final Judgment does not apply to any Bylaws of NCAA Division II or NCAA Division III nor does it resolve any antitrust claims regarding those rules.

22. The NCAA and any person or organization acting in concert with it (including but not limited to its officers, employees, staff, member institutions, councils, and committees), are permanently restrained and enjoined from:

- a. enforcing the Transfer Eligibility Rule, NCAA Bylaw 14.5.5.1, or any substantially similar rule requiring a Division I student-athlete to maintain a period of residence or otherwise refrain from competition solely because of a transfer between NCAA member institutions;

- b. enforcing the Rule of Restitution, NCAA Bylaw 12.11.4.2, on any Division I member institution or student-athlete related to a student-athlete's participation in intercollegiate competition following a transfer in reliance on this Court's temporary restraining order or preliminary injunction or this Final Judgment;
- c. taking any other action to retaliate against a Division I member institution for conduct related to the Transfer Eligibility Rule, including but not limited to (i) supporting a student-athlete who challenged the Transfer Eligibility Rule or (ii) permitting a student-athlete to compete during the period of this Court's temporary restraining order or its preliminary injunction in reliance on those orders; and
- d. taking any action to retaliate against any Division I student-athlete that transferred NCAA member institutions, including but not limited to those student-athletes who (i) challenged the Transfer Eligibility Rule, (ii) sought a waiver from the Transfer Eligibility Rule, or (iii) competed during the period of this Court's temporary restraining order or its preliminary injunction in reliance on those orders.

23. The NCAA shall provide an additional year of eligibility to any Division I student-athlete who was deemed ineligible to compete for a season or any portion of a season of competition occurring during or since the 2019-20 academic year because of the Transfer Eligibility Rule provided the student-athlete:

- a. transferred between two member institutions more than once;
- b. is currently enrolled at a Division I member institution; and
- c. is currently eligible to compete, or their eligibility expired at the end of a season of competition completed during the 2023-24 academic year.

For the avoidance of doubt, a Division I student-athlete described in this provision shall have no fewer than six calendar years to complete their four seasons of intercollegiate competition in any one sport (see NCAA Bylaw 12.8), instead of the five calendar years set forth under NCAA Bylaw 12.8.1.

24. For the purposes of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or vacated, upon written request of Plaintiffs and reasonable notice to the NCAA, the NCAA must:

- a. permit, subject to legally recognized privileges, authorized representatives of Plaintiffs to inspect all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the NCAA relating to any matters contained in this Final Judgment;
- b. permit, subject to legally recognized privileges, authorized representatives of Plaintiffs to interview, either informally or on the record, the NCAA's officers, employees, or agents relating to any matters contained in this Final Judgment; and
- c. submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

25. No information or documents obtained pursuant to this Final Judgment may be divulged by Plaintiffs to any person other than an authorized representative of Plaintiffs, except (a) in the course of legal proceedings to which the United States is a party, including grand-jury proceedings; (b) for the purpose of securing compliance with this Final Judgment; or (c) as otherwise required by law.

26. If the United States receives a request under the Freedom of Information Act, 5 U.S.C. § 552, for disclosure of documents or information obtained pursuant to this Final Judgment, the United States will act in accordance with that statute and with all applicable

Department of Justice regulations regarding the protection of confidential commercial information. When providing any documents or information to the United States pursuant to this Final Judgment, the NCAA should designate the confidential portions of such materials as provided by 28 C.F.R. § 16.7.

27. Within sixty (60) days of entry of this Final Judgment, the NCAA shall post a copy of this Final Judgment on its public web site.

28. The NCAA shall not take any action, nor adopt any rules, by-laws or policies that have the effect of undermining or circumventing the provisions of this Final Judgment.

29. The Court will retain jurisdiction for purposes of enforcing this Final Judgment and resolving any dispute that may arise under it.

30. Plaintiff United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. The NCAA agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and the NCAA waives any argument that a different standard of proof should apply. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition Plaintiffs allege was harmed by the challenged conduct. The NCAA agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

31. In connection with a successful effort by the United States to enforce this Final Judgment against the NCAA, whether litigated or resolved before litigation, the NCAA agrees to reimburse the United States for reasonable fees and expenses incurred by its attorneys, as well as all other costs including experts' fees, reasonably incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

32. Entry of this Final Judgment is in the public interest. The United States and the NCAA have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_, 2024

---

John Preston Bailey  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
CLARKSBURG DIVISION**

STATE OF OHIO,  
STATE OF COLORADO,  
STATE OF ILLINOIS,  
STATE OF MINNESOTA,  
STATE OF MISSISSIPPI,  
STATE OF NEW YORK,  
STATE OF NORTH CAROLINA,  
STATE OF TENNESSEE,  
COMMONWEALTH OF VIRGINIA,  
STATE OF WEST VIRGINIA,  
DISTRICT OF COLUMBIA, and  
UNITED STATES OF AMERICA,

Civil No. 1:23-cv-100  
Judge John Preston Bailey

Plaintiffs,

v.

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION,

Defendant.

**CERTIFICATE OF COMPLIANCE WITH PROVISIONS  
OF THE ANTITRUST PROCEDURES AND PENALTIES ACT**

The United States of America hereby certifies that it has complied with the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16 and states:

1. The United States joined Plaintiff States’ Amended Complaint on January 18, 2024, and filed the Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement on May 30, 2024.

2. Pursuant to 15 U.S.C. § 16(b), the proposed Final Judgment and the Competitive Impact Statement were published in the *Federal Register* on June 11, 2024 (89 Fed. Reg. 49194 (2024)), and copies of the proposed Final Judgment and Competitive Impact Statement were

furnished to all persons requesting them and made available on the Department of Justice Antitrust Division's website.

3. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Final Judgment and Competitive Impact Statement were published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, for seven days between June 6, 2024 and June 12, 2024, as well as in *The Dominion Post*, a newspaper of general circulation of the district in which the case was filed, for nine days between June 6, 2024 and June 20, 2024.

4. No determinative materials or documents within the meaning of 15 U.S.C. § 16(b) were considered by the United States in formulating the proposed Final Judgment, so none were furnished to any person pursuant to 15 U.S.C. § 16(b) or listed pursuant to 15 U.S.C. § 16(c).

5. As required by 15 U.S.C. § 16(g), on August 15, 2024, Defendant filed with the Court descriptions of any written or oral communications made by or on behalf of Defendant with any officer or employee of the United States concerning the proposed Final Judgment.

6. The public comment period specified in 15 U.S.C. § 16(b) commenced on June 20, 2024, and ran for at least 60 days.

7. The United States received no comments from members of the public concerning the proposed Final Judgment.

8. The parties have, therefore, satisfied all of the requirements of the APPA that were conditions for entering the proposed Final Judgment. Pursuant to the Stipulation and Order filed on May 30, 2024, and 15 U.S.C. § 16(e), the Court may enter the Final Judgment after it determines that the proposed Final Judgment serves the public interest.

9. The United States's Competitive Impact Statement demonstrates that the proposed Final Judgment satisfies the public interest standard of 15 U.S.C. § 16(e).



10. Pursuant to the Stipulation and Order dated May 31, 2024, Defendants stipulated that the Final Judgment could be filed with and entered by the Court, upon the motion of the United States or upon the Court's own motion, at any time after compliance with the requirements of the APPA, and without further notice to any party or other proceeding.

11. The United States requests that this Court enter the Final Judgment without further proceedings or hearings.

Dated: August 29, 2024

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

/s/ Maximillian F. Nogay  
MAXIMILLIAN F. NOGAY  
*Assistant United States Attorney*

United States Attorney's Office  
Northern District of West Virginia  
P.O. Box 591  
1125 Chapline Street, Suite 3000  
Wheeling, WV 26003  
Tel: 304-234-0100  
Fax: 304-234-0110  
Email: max.nogay@usdoj.gov

/s/ James H. Congdon  
JAMES H. CONGDON\*  
*Trial Attorney*

United States Department of Justice  
Antitrust Division  
Media, Entertainment, and Communications Section  
450 Fifth Street, NW, Suite 7000  
Washington, DC 20530  
Tel: (202) 538-3985  
Fax: (202) 514-6381  
Email: james.congdon@usdoj.gov  
\* *pro hac vice*