IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ZAKAI ZEIGLER,	)	
	)	
Plaintiff,	)	**No. 3:25-cv-00226**
	)	
v.	)	**The Honorable**
	)	**Katherine A. Crytzer**
NATIONAL COLLEGIATE	)	
ATHLETIC ASSOCIATION,	)	
	)	
Defendant.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

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INTEREST OF THE UNITED STATES

The United States, through the Antitrust Division of the U.S. Department of Justice, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to direct any officer of the Department of Justice to "attend to the interests of the United States in a suit pending in a court of the United States." The United States enforces the federal antitrust laws, including Section 1 of the Sherman Act, 15 U.S.C. § 1, and has a strong interest in its correct application.

The United States has a particularly strong interest in ensuring that student-athletes fully benefit from the nation's unique system of intercollegiate athletics. "There can be no question but that . . . the preservation of the student-athlete in higher education adds richness and diversity to intercollegiate athletics and is entirely consistent with the goals of the Sherman Act." *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 120 (1984). At the same time, college sports are "a massive business." *NCAA v. Alston*, 594 U.S. 69, 79 (2021). For instance, "[t]he NCAA's current broadcast contract for the March Madness basketball tournament is worth $1.1 billion annually" and college football earns hundreds of millions in revenues each year as well, and these amounts have "'increased consistently over the years.'" *Id.* at 79-80 (citations omitted). The antitrust laws therefore distinguish between those agreements between colleges that harm competition—and in turn harm student-athletes—from those that benefit competition. By protecting competition, the antitrust laws ensure that student-athletes benefit from the unique educational experiences afforded by America's intercollegiate athletic system.

Competition between schools for student-athletes is not limited to financial benefits—it includes the quality of experience enabled by a system of scholar athletics that maintains its defining connection between athletic competition and collegiate education. More than 500,000

student-athletes benefit annually from the opportunities afforded by the uniquely American system of scholar athletics. *NCAA Sports Sponsorship and Participation Rates Database, Overall Trends*, NCAA (last visited June 2, 2025), https://www.ncaa.org/sports/2018/10/10/ncaa-sports-sponsorship-and-participation-rates-database.aspx. For the vast majority of these students, the greatest reward for their participation is the educational experience of intercollegiate athletics.

The United States submitted an amicus brief in the Supreme Court in *Alston* discussing the importance of "flexible" antitrust analysis to preserve "the unique nature of intercollegiate athletics" while protecting athletes from the consequences of anticompetitive restraints of trade. Br. for the United States as Amicus Curiae Supporting Respondents at 13-14, *NCAA v. Alston*, 594 U.S. 69 (Nos. 20-512 & 20-520), https://www.justice.gov/atr/case-document/file/1376116/dl?inline. In deciding *Alston*, the Supreme Court reiterated that "the NCAA itself *is* subject to the Sherman Act." 594 U.S. at 96. The United States believes that *Alston*'s application of the rule of reason to NCAA restrictions on student-athletes can protect student-athletes by allowing those restrictions that genuinely redound to the benefit of student-athletes, while prohibiting those with net anticompetitive effects. We submit this Statement to affirm the importance of applying the flexible rule of reason to challenges under Section 1 of the Sherman Act to intercollegiate eligibility rules that may have both anticompetitive effects and procompetitive benefits in the labor market for student-athletes.

BACKGROUND

The four-year undergraduate bachelor's degree is the most common undergraduate degree in American collegiate education. *See, e.g.,* U.S. Dep't of Educ. Inst. of Educ. Scis., *Most Common Undergraduate Fields of Study*, Nat'l Ctr. for Educ. Stat. (last visited June 2, 2025),

https://nces.ed.gov/fastfacts/display.asp?id=37. Like tens of millions of other students, Zakai Zeigler completed his undergraduate degree in four years. Compl., Doc. 1, at ¶ 10. During those four years at the University of Tennessee, he combined his studies with college basketball, receiving between $150,000 and $500,000 a year in compensation for use of his name, image, and license (NIL). *Id.* at ¶ 27. Zeigler has now brought this case to challenge an NCAA rule that limits student-athletes to participating in only four seasons of intercollegiate competition within the five-year window of eligibility (the Four-Seasons Rule). *Id.* at ¶ 1. He alleges that the Four-Seasons Rule is an unreasonable restraint on student-athlete services and NIL compensation in violation of Section 1 of the Sherman Act and has sought a preliminary injunction to play college basketball for a fifth year as a graduate student, contending that would likely enable him to receive $2,000,000 to $4,000,000 in further NIL compensation. *Id.* at ¶¶ 5, 27-28, 97; Mot. for Prelim. Inj., Doc. 3; Mem. of Law in Supp. of Mot. for Prelim. Inj., Doc. 4, at 1-3. He does not challenge the "overall five-year window" for student-athlete eligibility. Compl. ¶ 8. In response, the NCAA defends the rule as necessary for preserving the connection of athletics to schools' educational missions. Resp. in Opp. to Mot. for Prelim. Inj., Doc. 27, at 4. The Court has scheduled a hearing on the preliminary injunction motion on June 6, 2025.

DISCUSSION

Whereas watching college sports is an important pastime for many Americans, for the athletes themselves the experience of playing college sports while earning a degree is a life-changing educational experience. Student-athletes benefit from the complementarity between their educations on and off the field, and while some student-athletes earn NIL Compensation, for most student-athletes the quality of that educational experience is the most significant economic return they earn for their efforts. The Sherman Act's rule of reason is sufficiently

flexible to account for the various situations that different cases challenging eligibility rules in college sports can present. Section 1 of the Sherman Act protects competition among colleges and universities for students' athletic labors while providing "ample latitude" to colleges and universities in maintaining an academic focus. *Bd. of Regents*, 468 U.S. at 120.

1. While Some Rules Harm Competition, Student-Athletes Can Benefit in the Labor Market from Rules Requiring Athletes to be Scholars.

Over the last century, colleges across the United States have developed an organized system of college athletics in which student-athletes pursue educational degrees while participating in organized sports. This was not always the case—when colleges first began hosting sporting events in the nineteenth century "schools regularly had 'graduate students and paid ringers' on their teams." *Alston*, 594 U.S. at 75 (quoting A. Zimbalist, *Unpaid Professionals* 7 (1999)). But over time, working through what became the NCAA, participating colleges and universities developed a comprehensive set of rules and regulations to promote both scholarship and athletics. *Id.* at 75-79.

The ringers of the 19th century college teams underscore why some degree of collaboration between schools is necessary to maintain the connection between scholarship and athletics. If an opposing school does not impose academic obligations on its players, it stands to gain a significant advantage on the field from a team of effectively professional athletes able to devote all of their time and energy solely to athletics. Likewise, if a school does not limit the years of participation, it could field more experienced players and obtain advantages over rivals, which would discourage other teams from fielding younger players. The on-field rivalry therefore makes it difficult for any one school to impose academic requirements unilaterally without some assurance that competing teams have similar rules. Thus, from the early days of

the NCAA, it has imposed a significant amount of "regulatory controls" as a "justifiable means of fostering competition among amateur athletic teams." *Bd. of Regents*, 468 U.S. at 117.

Many of those controls have focused on the connection between scholarship and athletics at the heart of intercollegiate sports, leading to potential procompetitive benefits in the student-athlete labor market. Maintaining an academic connection and a degree path can help improve the quality of experience for student-athletes and "integrate athletics with academics." *McCormack v. NCAA*, 845 F.2d 1338, 1345 (5th Cir. 1988). Promoting athletes' academic progress is important, in turn, to "prepare them to enter the employment market in non-athletic occupations." *Banks v. NCAA*, 977 F.2d 1081, 1090 (7th Cir. 1992). To that end, the NCAA requires student-athletes to (among other things) "attend class, maintain a minimum grade point average, and enroll and complete a required number of courses to obtain a degree." *Id.*

Moreover, the consumer appeal of college sports can be enhanced by maintaining its distinction from professional sports and their minor leagues. *See Alston*, 594 U.S. at 103; *Bd. of Regents*, 468 U.S. at 101-02. The greater the consumer appeal for college sports, the more the potential financial compensation for student-athletes, including NIL compensation. *See, e.g.*, *Gaines v. NCAA*, 746 F. Supp. 738, 746 (M.D. Tenn. 1990) ("This Court is convinced that the NCAA Rules benefit both players and the public by regulating college football so as to preserve its amateur appeal.").

And just as restrictions on such compensation can lead to harm in the relevant labor market for student-athletes, *Alston*, 594 U.S. at 86-87, increased financial benefits that accrue from the amateurism model can be a procompetitive benefit in the labor market for student-athletes. *Cf. Sullivan v. NFL*, 34 F.3d 1091, 1112-13 (1st Cir. 1994) (noting the jury may consider the NFL's argument "that the policy enhanced [its] ability to effectively produce and

present a popular entertainment product . . . to the extent the NFL's policy strengthens and improves the league, resulting in increased competition in the [relevant] market for ownership interests in NFL clubs through, for example, more valuable teams").

2. The Sherman Act's Rule of Reason Can Account for the Harms and Benefits to Student-Athletes of Rules Requiring Athletes to be Scholars.

Section 1 of the Sherman Act accounts for the benefits to student-athletes of rules that enhance the quality of the student-athlete experience because it examines both harms and benefits of a restraint to competition in the student-athlete labor market. Its "flexible Rule of Reason" can handle the myriad situations presented by student-athlete challenges to NCAA rules. *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 203 (2010) (citing *Bd. of Regents*, 468 U.S. at 101); *see Alston*, 594 U.S. at 97-98.

To prove a Section 1 violation, a plaintiff must show concerted action that unreasonably restraints trade. *Am. Needle*, 560 U.S. at 186. "A small group of restraints are unreasonable per se because they always or almost always tend to restrict competition and decrease output. . . . Restraints that are not unreasonable per se are judged under the 'rule of reason.'" *Ohio v. Am. Express Co.*, 585 U.S. 529, 540-41 (2018) (cleaned up).

The vast majority of restraints involving college sports "are subject to the rule of reason," because college sports is an industry in which some "horizontal restraints on competition are essential if the product is to be available at all." *Alston*, 594 U.S. at 88, 91. Within the rule of reason, "[w]hat is required . . . is an enquiry meet for the case, looking to the circumstances, details, and logic of a restraint." *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999). "At one end of the spectrum, some restraints may be so obviously incapable of harming competition that they require little scrutiny." *Alston*, 594 U.S. at 88. And, "at the other end," *id.*, where "an observer with even a rudimentary understanding of economics could conclude that the

arrangements in question would have an anticompetitive effect on customers and markets," *Cal. Dental*, 526 U.S. at 770, restraints may be condemned after a quick look. *See Bd. of Regents*, 468 U.S. at 94, 110-18 (condemning after a quick look the NCAA's telecast plan that "limit[ed] the total amount of televised intercollegiate football and the number of games that any one team may televise"); *Law v. NCAA*, 134 F.3d 1010, 1019-20 (10th Cir. 1998) (applying quick look to condemn rule limiting coaches' salaries).[1] Yet most restraints—"the great in-between"—will be subject to a fact-specific analysis under the rule of reason. *Alston*, 594 U.S. at 88.

Under the typical framework for applying the rule of reason, "the plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market." *Am. Express*, 585 U.S. at 541. The plaintiff can do so directly or indirectly. *Id.* If the plaintiff carries its burden, "then the burden shifts to the defendant to show a procompetitive rationale for the restraint." *Id.* "If the defendant makes this showing, then the burden shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means." *Id.* at 541-42. If the plaintiff fails to prove a viable less restrictive alternative, then the court must balance the anticompetitive and procompetitive effects. *Epic Games, Inc. v. Apple, Inc*., 67 F. 4th 946, 994 (9th Cir. 2023), *cert. denied* 144 S. Ct. 681, 682 (2024). But these steps do not "represent a rote checklist, nor may they be employed as an inflexible substitute for careful analysis." *Alston*, 594 U.S. at 97.

[1] Some restraints involving college sports may be per se unlawful because they have little or no connection to the schools' need to cooperate, e.g., if all colleges and universities in Michigan agreed to fix the price of tickets to football games. *Cf. MLB Props., Inc. v. Salvino*, 542 F.3d 290, 338 (2d Cir. 2008) (Sotomayor, J. concurring) ("a court may conclude. . . a challenged restraint is per se illegal" where it "is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture" and "has manifestly anticompetitive effects." (quotation marks omitted)).

In *Alston*, the Supreme Court applied the Sherman Act to the challenged NCAA rules. The Court unanimously affirmed the lower courts' rulings that "cut both ways," refusing "to disturb the NCAA's rules limiting undergraduate athletic scholarships and other compensation related to athletic performance," while also "str[iking] down NCAA rules limiting the education-related benefits schools may offer student-athletes—such as rules that prohibit schools from offering graduate or vocational school scholarships." 594 U.S. at 74. The Court recognized that "professional-level cash payments . . . could blur the distinction between college sports and professional sports and thereby negatively affect consumer demand," and yet the trial record revealed that only some of the challenged rules were "reasonable" to protect that interest. *Id.* at 84.

Importantly, for rules maintaining the *student*-athlete nature of college sports, the NCAA would have the opportunity under this framework to present evidence showing that the rules "yield a procompetitive benefit" by enhancing the quality of the experience for students in the relevant labor market where harm is alleged. *Alston*, 594 U.S. at 84, 99. *Board of Regents* expressly contrasted rules defining "the eligibility of participants" from the TV plan challenged in that case, suggesting that there may be procompetitive justifications for eligibility rules.[2] 468 U.S. at 117. And eligibility rules—like the scholarship rules upheld in the *Alston* litigation—not

[2] The United States does not take a position here on whether some NCAA rules may be quickly approved under the rule of reason because they are at the far end of *Alston*'s "spectrum" discussed above. *See Am. Needle*, 560 U.S. at 202 ("Football teams that need to cooperate are not trapped by antitrust law. [T]he special characteristics of this industry may provide a justification" for many kinds of agreements. The fact that NFL teams share an interest in making the entire league successful and profitable, and that they must cooperate in the production and scheduling of games, provides a perfectly sensible justification for making a host of collective decisions.") (citation omitted). We note, however, that those rules that are fundamental to the exercise of college sports would typically present procompetitive benefits enabling their approval under a fact-specific application of the rule-of-reason framework.

only can enhance consumer demand—potentially leading to greater compensation—but also can enhance quality in the labor market by preserving "the distinction between college sports and professional sports." 594 U.S. at 84; *cf. McCormack*, 845 F.2d at 1345 ("The eligibility rules create the product and allow its survival in the face of commercializing pressures."). Indeed, *Alston* recognized how its judgment allowed the NCAA to enforce rules defining "which benefits it considers legitimately related to education" to preserve the unique nature of its product. 594 U.S. at 106. It takes no great leap of logic to see how rules tying eligibility to education-related requirements could serve that goal as well, though of course the analysis will turn on the evidence presented.

We ask this Court to take into account the legal principles laid out above in applying the rule of reason. Whether and to what extent specific anticompetitive effects and procompetitive benefits arise from the Four Seasons Rule in the student-athlete labor market are factual questions to be answered based on the record at the upcoming hearing, and the United States takes no position on those facts. We urge the court, however, to consider how the rule may benefit competition in the relevant labor market, including by potentially enhancing the quality of the student-athlete experience.

CONCLUSION

In deciding the motion for a preliminary injunction, this Court should apply *Alston*'s flexible rule-of-reason approach under Section 1 of the Sherman Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2025, I caused the foregoing to be filed through this Court's CM/ECF filer system, which will serve a notice of electronic filing on all registered users, including counsel for all parties.

/s/ Nickolai G. Levin
Attorney