

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:24-CV-00238

REESE BRANTMEIER, on behalf
of herself and all others similarly
situated,

Plaintiff,

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,

Defendant.

**PLAINTIFF'S BRIEF IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

NATURE OF THE CASE	1
STATEMENT OF FACTS	2
I. The NCAA and Scholar-Athlete Compensation	2
II. Plaintiff’s Injury from the NCAA’s Restrictions	7
STANDARD OF REVIEW	12
I. Standard for Entry of Preliminary Injunction	12
II. Standard for Antitrust Violations.....	13
ARGUMENT	14
I. Plaintiff is Likely to Succeed on the Merits.	14
A. There Are Relevant Markets where Athletic Services Are Exchanged for Division I College Scholarships, in which the NCAA and its Members Have Market Power.....	14
B. The Prize Money Rules Have Anti-Competitive Effects in the Relevant Markets	17
1. Athletes Are Excluded from Intercollegiate Competition or Required to Forgo Prize Money to Enter Intercollegiate Competition.....	17
2. Student-Athletes Are Prohibited from Accepting Prize Money, Making Non-NCAA Tournaments Less Competitive.	18
C. Any Procompetitive Justifications for the Prize Money Rules Are Pretextual.....	19
1. “Preservation of Amateurism” or “the Need for Individual Members Of the NCAA to Prevent Pay-for-Play” is not a Defense to Preliminary Injunction, or a Coherent Concept...	19

2.	Preserving “Competitive Balance” Does Not Justify the Prize Money Rules.....	20
3.	Retaining the Distinction Between Amateur and Collegiate Sports Does Not Justify the Prize Money Rules	24
II.	Plaintiffs are Suffering and Will Continue to Suffer Irreparable Harm Without Injunctive Relief.....	25
A.	Plaintiff Brantmeier and Class Members are Excluded from Profiting from Competition in Non-NCAA Tournaments, Irrevocably Losing Income, and Are Forced to Choose Between Prize Money and Education	25
B.	Class Members Who Are Excluded from Intercollegiate Competition and from College Scholarships Are Suffering Irreparable Injury.....	26
III.	The Balance of Equities Favors Plaintiffs.....	27
IV.	Injunctive Relief Serves the Public Interest of Promoting Free and Fair Competition in NCAA Sports and Promoting Higher Education.	28
	CONCLUSION.....	28

GLOSSARY

Term	Definition
Individual Sports	Men's and women's tennis, golf, swimming, track and field, wrestling, gymnastics, skiing, fencing, indoor and outdoor cross country; women's bowling, triathlon, and equestrian; and coeducational rifle. See NCAA Bylaw 17.02.18.02.
NCAA	National Collegiate Athletic Association
NCAA Bylaws	NCAA Manual, p. 12-408.
NCAA Constitution	NCAA Manual, p. 2-11
NCAA Manual	<i>NCAA, Division I 2023-24 Manual</i> , available at https://www.ncaapublications.com/p-4673-2023-2024-ncaa-division-1manual.aspx .
NIL	Name, Image, and Likeness
Operation Gold	A program of the United States Olympic and Paralympics Committee that promotes training of potential Olympic athletes through, among other things, awarding money grants to exceptional athletes
PWBA	Professional Women's Bowling Association
Prize Money	A monetary award to an athlete based on place finish or performance in an athletics event. NCAA See NCAA Bylaws 12.1.2.4.1 and .2
Prize Money Rules	NCAA Bylaws 12.1.2.4.1 and .2
Proposed Class	Defined in Complaint, ¶ 112.
Student-Athlete	An individual who, while attending college, competes on the college' team in an NCAA sport.
USBC	United States Bowling Congress
USTA	United States Tennis Association

Plaintiff Reese Brantmeier (“Plaintiff” or “Brantmeier”), on behalf of herself and others similarly situated, respectfully submits this Brief and accompanying Exhibits in support of her Motion for Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

NATURE OF THE CASE

Brantmeier brought this action on behalf of a class of similarly situated National Collegiate Athletic Association (“NCAA”) Division I scholar-athletes competing in Individual Sports¹ who intend to participate in non-NCAA athletic events that award Prize Money (the “Proposed Class”). Complaint (“Compl.”), Doc. 1 at ¶ 1. The NCAA’s long-standing amateurism rules prohibit Student-Athletes who compete in Individual Sports from accepting “Prize Money” awarded for their performance in non-NCAA competitions. NCAA Bylaws 12.1.2 and 12.2.3; Compl. ¶¶ 44-47, Admitted.² With certain exceptions, a Student-Athlete forfeits eligibility for intercollegiate competition if they accept Prize Money. *Id.* If they lose their eligibility, Student-Athletes can also lose their education scholarships to an NCAA member institution.

¹Capitalized terms not defined in the text are defined in this brief’s Glossary, p. iv. All “¶” references refer to the Complaint.

² “Admitted” refers to admissions in Defendant’s Answer, Doc. 18, corresponding to the cited Complaint paragraph.

Compl. ¶ 5. Plaintiff and the Proposed Class seek injunctive relief from the remnants of the NCAA's archaic Prize Money rules so current and future Student-Athletes who complete in Individual Sports can retain Prize Money earned for their performances in non-NCAA competitions without affecting their NCAA eligibility. Compl. ¶¶ 136, 149.

STATEMENT OF FACTS

I. The NCAA and Scholar-Athlete Compensation

The NCAA comprises more than 1,100 colleges, universities, and athletic conferences throughout the United States and governs college sports. Compl. ¶¶ 26-27, Admitted. The NCAA's Constitution and Bylaws are adopted by the member institutions and enforced through the NCAA's established program. Compl. ¶ 39, Admitted. The NCAA Manual includes the NCAA's Constitution, operating Bylaws, and over 500 pages of promulgated regulations governing all aspect of college sports. The NCAA's members are classed into three divisions, including over 350 Division I institutions operating the highest level and most lucrative college athletic programs in the country. Compl. ¶ 27, Admitted.

The NCAA's amateurism rules have historically prohibited two categories of scholar-athlete compensation (1) compensation associated with the use of a Student-Athlete's name, image, and likeness ("NIL") rights, and

(2) compensation associated with “pay-for-play,” or member institutions directly paying Student-Athletes for their athletic services. ¶ Compl. 41, Admitted; NCAA Bylaw 12.1.2. At issue here are the NCAA’s “Amateur Status” and various “Exceptions to Amateurism Rules,” Bylaws 12.1.2 and 12.1.2.4, which govern Student-Athletes’ acceptance of Prize Money for athletic performance in non-NCAA competitions. Compl. ¶¶ 44-47, Admitted.

Student-Athletes are permitted to enter non-NCAA competitions against or with professional athletes. NCAA Bylaws 12.2.3.1 and .2. But a Student-Athlete forfeits collegiate eligibility if he or she receives pay in any form, including Prize Money, for their performance or participation in non-NCAA competitions. NCAA Bylaw 12.1.2(a). The NCAA’s primary exception to such prohibition is set forth in Bylaw 12.1.2.4:

12.1.2.4.1 Exception for Prize Money Based on Performance – Sports Other Than Tennis. In sports other than tennis, an individual may accept prize money based on place finish or performance in an athletics event. Such prize money may not exceed actual and necessary expenses and may be provided only by the sponsor of the event. The calculation of actual and necessary expenses shall not include the expenses or fees of anyone other than the individual (e.g., coach’s fees or expenses, family member’s expenses).

12.1.2.4.2 Exception for Prize Money—Tennis.

12.1.2.4.2.1 Prior to Full-Time Collegiate Enrollment. In tennis, prior to full-time collegiate enrollment, an individual may accept up to \$10,000 per calendar year in prize money based on place finish or performance in athletics events. Such prize

money may be provided only by the sponsor of an event in which the individual participates. Once the individual has accepted \$10,000 in prize money in a particular year, the individual may receive additional prize money on a per-event basis, provided such prize money does not exceed the individual's actual and necessary expenses for participation in the event. The calculation of actual and necessary expenses shall not include the expenses or fees of anyone other than the individual (e.g., coach's fees or expenses, family member's expenses).

12.1.2.4.2.2 After Initial Full-Time Collegiate Enrollment. In tennis, after full-time collegiate enrollment an individual may accept prize money based on place finish or performance in an athletics event. Such prize money may not exceed actual and necessary expenses and may be provided only by the sponsor of the event. The calculation of actual and necessary expenses shall not include the expenses or fees of anyone other than the individual (e.g., coach's fees or expenses, family member's expenses).

Id. Although the NCAA allows Student-Athletes to receive from non-NCAA competition reimbursement of their “actual and necessary” expenses incurred through their participation, the NCAA alone determines what constitutes “actual and necessary” expenses, and arbitrarily excludes many items such as expenses incurred more than two weeks before the beginning of a tournament and expenses for a parent traveling with a minor athlete to an out-of-town event. Brantmeier Decl. ¶¶ 26-28.

The NCAA's Prize Money restrictions are remarkably inconsistent and often turn on the specific non-NCAA competition at issue or the governing body's terminology for Prize Money awarded. For example, the NCAA allows

Student-Athletes to accept Prize Money administered and dispensed by Olympic governing bodies pursuant to its “Operation Gold” grant program. Compl. ¶ 52, Admitted. These grant programs have been expanded to account for certain other non-NCAA competitions outside the Olympics, including those administered by USA Swimming and USA Track and Field.³ Student-Athletes can accept payment of “actual and necessary expenses” approved by the U.S. Olympic Committee that are *not* associated with expenses of a particular tournament if the payment is labeled a “grant,” rather than “Prize Money,” even if the amount of the payment is based on performance in a specific event. NCAA Bylaw 12.1.2.4.7.

In recent years, the NCAA’s rules against Student-Athlete compensation have come under fire. Compl. ¶ 54, Admitted. As a result of recent litigation, the NCAA’s amateurism rules prohibiting educational-related compensation, NIL related compensation, and certain other benefits beyond “cost of attendance” scholarships have been struck down or suspended. Compl. ¶¶ 54-63, Admitted. In December 2023, NCAA President Charlie Baker proposed shifting the governance of college sports to allow high-revenue athletic programs to directly pay their Student-Athletes through annual trust funds—

³ Operation Gold Grants, USA Track & Field (Mar. 14, 2024), <https://www.usatf.org/programs/elite-athletes/operation-gold-grants>.

i.e., direct pay-for-play. *Id.* ¶ 64, Admitted. Unfortunately, and for reasons that are unclear, the NCAA's suspension of its prohibitions related to certain Student-Athlete compensation has not been extended to include its rules related to the acceptance of Prize Money earned in non-NCAA competitions. *Id.* ¶ 65, Admitted.

Going back decades, the highest and most prestigious levels of non-NCAA competition in Individual Sports have been open to college Student-Athletes, including, but not limited to, the Olympics, the U.S. Open Tennis Championships, the U.S. Swimming Championships, the U.S. Open Golf Championships, among others. *Id.* ¶ 48, Admitted. These competitions include prodigious Prize Money for individual performances.⁴ But the NCAA's arbitrary rules prevent Student-Athletes from accepting Prize Money, eliminating the earning ability of Student-Athletes competing in Individual Sports. *Id.* ¶ 50, Admitted.

⁴ 2023 US Open Prize Money and Player Compensation to Total \$65 Million, USOpen.org (Aug. 8, 2023), https://www.usopen.org/en_US/news/articles/2023-0808/2023_us_open_prize_money_and_player_compensation_to_total_65_million.html; Jessica Marksbury, Here's How Much Money Ever Player Made at the 2023 U.S. Open, Golf.com (June 18, 2023), <https://golf.com/news/how-much-money-every-player-made-2023-us-open/>.

II. Plaintiff's Injury from the NCAA's Restrictions

Brantmeier is a sophomore at the University of North Carolina at Chapel Hill (“UNC”) competing for its NCAA Division I women’s tennis team. Brantmeier Dec. ¶¶ 3-5. Brantmeier was a member of UNC’s 2023 NCAA Division I Women’s Tennis National Championship team, and, as of the date of the filing of the Complaint, Brantmeier was ranked No. 2 in singles and No. 1 in doubles by the Intercollegiate Tennis Association. *Id.* ¶¶ 6-7. Before her collegiate career, Brantmeier’s tremendous success as a high school Student-Athlete included qualifications to the U.S. Open. *Id.* ¶ 8.

At the 2021 U.S. Open, Brantmeier advanced to the third round of singles in the qualifying tournament. *Id.* ¶ 9. As a result of her performance, Brantmeier was entitled to receive a total of \$48,913.0 in Prize Money. *Id.* ¶¶ 10-11. But she was forced to forfeit much of the Prize Money earned lest she jeopardize her collegiate eligibility. *Id.* ¶¶ 13-14.

After Brantmeier enrolled at UNC in August 2022, the NCAA refused to certify her amateur status, challenging certain expenses she submitted during her 2021 U.S. Open participation. For example, the NCAA asserted that the 16-year old should have recovered only half of her hotel expense because her mother shared a room with her. *Id.* ¶ 15. Brantmeier attempted to resolve the

NCAA's refusal of certification in a reasonable timeframe, but the NCAA did not respond to her pleas for over five months. *Id.* ¶ 16. During those five months, Brantmeier was not allowed to participate in competitions with the UNC tennis team despite her repeated attempts to learn why the NCAA had not determined her eligibility. *Id.* ¶ 17.

In December 2022, the NCAA finally responded to Brantmeier's many inquiries, informing her for the first time that some of her expenses related to the 2021 U.S. Open Tournament would not be allowed, including 50% of the hotel room and Uber ride that she shared with her mother. *Id.* ¶¶ 15, 18-25. In January 2023, after requiring her to make a charitable contribution of \$5,100.00 related to the "challenged" expenses, the NCAA finally certified Brantmeier's eligibility and cleared her to play at UNC. *Id.* ¶¶ 26-27.

Brantmeier is not alone. Maya Joint is an incoming freshman student for the Fall 2024 semester at the University of Texas at Austin ("Texas"). Joint Dec. ¶ 3. As a high school senior, she was rated a five-star prospect and ranked the No. 3 recruit in the United States and No. 1 recruit in Michigan by the Tennis Recruiting Network. *Id.* ¶ 4. Over the course of her junior tennis career, she competed in many national and international tennis tournaments that awarded Prize Money based on each player's finish or performance in said competition. *Id.* ¶ 9. To preserve her eligibility to play collegiate tennis in the

United States, she forfeited thousands of dollars in Prize Money during her junior tennis career. *Id.* ¶¶ 10-12. For example, in January 2024, she received a qualifying wild card to compete in the prestigious Australian Open in Melbourne, Australia, which is one of the four “majors” of tennis, along with the French Open, U.S. Open and Wimbledon Championships. *Id.* ¶ 13. She advanced to the third round of singles in the 2024 Australian Open Qualifying Tournament and was entitled to receive \$45,163 (USD) in Prize Money. *Id.* ¶ 15. The NCAA’s Prize Money Rules only permitted her to accept \$5,929. *Id.* ¶ 16. This summer, Maya is competing in the Qualifying Competition for the 2024 Wimbledon Championships and plans to compete in the 2024 US Open Qualifying Tournament, which is set for August 19 through 22—both of which include significant Prize Money. *Id.* ¶ 17. The continued enforcement of the NCAA’s rules will have an immediate and damaging effect on her, as she will likely be forced to forfeit any Prize Money earned. *Id.* ¶ 18. The goal of earning an undergraduate degree and playing collegiate tennis drove Joint to enroll at Texas, but the NCAA’s Prize Money Rules, if not enjoined, will continually force her to choose between playing collegiate tennis and earning a college degree, or leaving school and “turning professional” in order to secure the Prize Money awarded in non-NCAA tennis tournaments. *Id.* ¶ 21, 23.

Jillian Martin is a national-level competitor in women’s bowling at the University of Nebraska, where she has a partial athletic and partial academic scholarship. Declaration of Jillian Martin (“Martin Decl.”) ¶ 4. She began competing in professional bowling tournaments sponsored by the Professional Women’s Bowling Association in 2019 and earned Prize Money of \$25,075 before entering college. *Id.* ¶ 8. She won the USBC Queens tournament in May 2024, entitling her to a grand prize of \$60,000. *Id.* ¶ 9. To maintain NCAA eligibility, she declined all the Prize Money she earned before college, and all the Prize Money during college except for reimbursement of “actual and necessary” expenses. Her winnings are held in an account controlled by the USBC, which does not earn interest, can be used only for educational expenses, and is forfeited after eight years from high school graduation if not used. Because Martin has a full scholarship to attend college, she has not withdrawn anything from this account to date, and these funds will likely be forfeited. *Id.* ¶ 10 and Exhibit B. Martin will compete in two additional tournaments between August 6 and 10, 2024 and intends to enter additional tournaments in Spring 2025. *Id.* ¶ 12. The financial loss caused by the Prize Money Rules are especially acute for Martin because her earning ability if she chooses to

bowl professionally after college is limited: in 2023, no one in the PWBA tour earned as much as \$100,000 in Prize Money.⁵

The NCAA's Prize Money Rules are causing real and tangible harm to Individual Sports Student-Athletes and not the athletes who have an opportunity to earn millions in NIL deals playing college football and basketball. The remaining Prize Money Rules constrain lower-earning Individual Sport athletes – particularly women – who have an even lower earning potential in professional sports and thus higher exposure to the effect of a career ending injury. Schwarz Decl. ¶ 30.

As a result of the NCAA's rules, Brantmeier and all other similarly situated Division I Student-Athletes have been and will remain forced to forfeit Prize Money earned through their success in non-NCAA athletic events, and will also be subject to the NCAA's arbitrary auditing of expenses submitted in conjunction with such rules. Brantmeier Decl. ¶¶ 28-30.

Plaintiff filed her Complaint on March 18, 2024, alleging antitrust violations by the NCAA and seeking injunctive relief from the NCAA's amateurism rules related to Prize Money acceptance. Compl. ¶ 136, 149. On April 11, NCAA's Motion to Transfer and consolidate certain other pending actions against the NCAA to the Northern District of California was denied by

⁵ See <https://pwba.com/2023-pwba-tour-sttistics>

the Judicial Panel on Multidistrict Litigation. *In re College Athlete Compensation Antitrust Litigation*, MDL No. 3105 (J.P.M.L. Apr. 11, 2024). The NCAA Answered the Complaint on June 26, 2024. Doc. 18.

STANDARD OF REVIEW

I. Standard for Entry of Preliminary Injunction

A plaintiff seeking injunctive relief must establish: (1) that [s]he is likely to succeed on the merits, (2) that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in [her] favor, and (4) that an injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted). Courts considering whether to grant injunctive relief must separately consider each *Winter* factor. *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013). Plaintiff must show that she is likely to succeed on the merits, but she need not show a certainty of success. *Id.*; *Roe v. United States*, 947 F.3d 207, 219 (4th Cir. 2020).

“The purpose of an injunction is to prevent future violations ... and it can be utilized even without a showing of past wrongs.” *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953). “A preliminary injunction can be granted, and very often is, in antitrust contexts, without having in hand all the evidence necessary for definitive resolution of the issues raised in the complaint.”

United States v. Siemens Corp., 490 F. Supp. 1130 (S.D.N.Y. 1980). “There must be, in such a case, sufficient evidence before the judge to persuade him that the issuance of the preliminary injunction is just in the premises.” *Id.*

II. Standard for Antitrust Violations

The Sherman Act, 15 U.S.C. § 1, prohibits contracts, combinations, or conspiracies that are an undue restraint of trade. *Ohio v. American Express Co.*, 585 U.S. 529, 540 (2018). Whether a restraint is undue for purposes of the Sherman Act is analyzed under the “Rule of Reason,” a three-step, burden shifting framework. *Id.* at 541; *NCAA v. Alston*, 594 U.S. 69, 97, 98 (2021) (analyzing antitrust challenges to certain rules of the NCAA restricting Student-Athlete compensation).

A recent federal court decision enjoining enforcement of certain NCAA rules explained:

The "three-step burden-shifting framework" of the Rule of Reason requires the plaintiff to first show "that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market." *Am. Express Co.*, 585 U.S. at 541. If the plaintiff satisfies this burden, the defendant must then "show a procompetitive rationale for the restraint." *Id.* The burden then "shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means." *Id.* at 542.

...
[T]he NIL-recruiting ban is, in effect, "an agreement among competitors to refuse to discuss prices with [recruits] until after negotiations have resulted in the initial selection of [a school]." *Nat'l Soc. of Pro. Eng'rs v. United States*, 435 U.S. 679, 692 (1978).

Such an agreement suppresses price competition by limiting negotiating leverage and, as a result, knowledge of value.

Tennessee v. NCAA, ___ F.Supp.3d ___, 2024 WL 755528 at *3 (E.D. Tenn. Feb. 23, 2024) (temporarily enjoining NCAA Bylaws that restricted NIL compensation in the pre-enrollment recruiting process of Student-Athletes). “These three 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.

ARGUMENT

I. Plaintiff is Likely to Succeed on the Merits.

A. There Are Relevant Markets where Athletic Services Are Exchanged for Division I College Scholarships, in which the NCAA and its Members Have Market Power

This case concerns the “college education market” for participants in Individual Sports, in which Division I colleges “compete to recruit the best high school players by offering them ‘unique bundles of goods and services’ that include not only scholarships but also coaching, athletic facilities, and the opportunity to face high-quality athletic competition.” *O’Bannon v. NCAA*, 802 F.3d 1049, 1056 (9th Cir. 2015)(“*O’Bannon II*”); Declaration of Andrew Schwarz ¶¶ 11, 36-44. In these markets, NCAA member institutions may be considered purchasers of athletic services, which the Student-Athletes provide in exchange for college amateurism rules and limit competition for athletic

scholarships, they form a monopsony.⁶ There is a different market for each of sports and gender divisions among the Individual Sports. The hallmarks of economic markets are present: Participants remain in the same market even when prices change significantly. Schwarz Decl. ¶ 38. Schwarz analyzes the woman's tennis market in depth and opines that the markets in other Individual Sports are expected to work in the same way. *Id.* ¶¶ 39-46. The NCAA and member institutions wield the market power to control compensation and exclude competition. *Id.* ¶¶ 47-52.

The award or withholding of athletic scholarships by NCAA Members constitutes “commercial activity” that is subject to antitrust laws. *Alston*, 594 U.S. at 94; *Tennessee*, 2024 WL 755528 at *3. Indeed, the quantity of economic activity is substantial. Over 350 colleges and universities are members of the NCAA Division I offer athletic scholarships in Individual Sports that are available in the United States. Compl. ¶ 26, Admitted. Division I schools spend over \$3 billion on financial aid for student-athletes, of which more than \$865 million is awarded to over 6,600 Individual Sports Student-Athletes. Schwarz Decl. ¶ 71-72. Revenue of Division I programs exceeds \$3 billion. *Id.* ¶ 67. The largest alternative organization, the NAIA, consists of much smaller colleges

⁶ Student-Athletes who seek to exchange their athletic labor for college scholarships might be considered either buyers or sellers. Schwarz Decl. ¶ 37; *O'Bannon II*, 802 F.3d at 1058.

that offer fewer athletic scholarships, as well as a lower level of competition, so they are not in the same market. *O'Bannon v. NCAA*, 7 F. Supp.3d 955, 967 (N.D. Cal. 2014), *aff'd.*, 802 F.3d 1049 (9th Cir. 2015)(“*O'Bannon I*”).

In antitrust terms, when these purchasers agree in concert to abide by the NCAA's rules, they collectively function as a monopsony or monopoly: as the only offerors of the highest level of competitive athletes seeking scholarships, they band together to set restrictive rules and govern the scholarships offered to competitors in Individual Sports. *Alston*, 594 U.S.at 82 (2021) (quoting *In Re: NCAA Grant-in-Aid Cap Antitrust Litig.*, 375 F.Supp.3d 1058, 1070 (N.D. Cal. 2019), *aff'd.*, 958 F.3d 1239 (9th Cir. 2015, *aff'd sub. Nom. NCAA v. Alston*) (“*Grant-in-Aid*”)) (“In short, the NCAA and its member schools have the power to restrain student-athlete compensation in any way and at any time they wish, without any meaningful risk of diminishing their market dominance.”). This is the principal market in which the NCAA imposes restraints to the detriment of Class Members. Because the market consists solely of NCAA Division I colleges, it follows naturally that the NCAA and its members have monopoly or monopsony power in these markets. Schwarz Decl. ¶ 47. Since the Prize Money Rules govern all Division I colleges, they cause a collective boycott by 100% of the participants in the markets. *Id.* ¶ 49. Schwarz

explains with respect to women's tennis that if each conference set its own rules, the market would be highly competitive, Schwarz Decl. ¶¶ 49-52.

B. The Prize Money Rules Have Anti-Competitive Effects in the Relevant Markets

1. Athletes Are Excluded from Intercollegiate Competition or Required to Forgo Prize Money to Enter Intercollegiate Competition.

The Prize Money Rules in the college education market function as a systematic boycott of any individual who has, at some point in their life⁷ accepted Prize Money exceeding the NCAA's arbitrary limits. The NCAA uses its market power to enforce the Prize Money Rules, which require NCAA colleges to engage in a group boycott of players deemed to be out of compliance with the rules. Schwarz Decl. ¶¶ 33, 47-48. The economic effect on athletes is obvious: they lose the opportunity to acquire a college education in exchange for athletic performance. Brantmeier, whose purported violations were not intentional, was required to sit out her first semester of college and donate over \$5,000 to a charitable organization to regain her collegiate eligibility to accept an athletic scholarship. The exclusion of competitors from athletic scholarships has an anticompetitive effect.

⁷ The boycott encompasses athletes who accepted Prize Money before the age of 18 and is potentially lifelong. *See* Prize Money Rules.

2. Student-Athletes Are Prohibited from Accepting Prize Money, Making Non-NCAA Tournaments Less Competitive.

The Proposed Class also includes individuals who are now receiving athletic scholarships but will become subject to the group boycott by all NCAA member institutions if they accept Prize Money. They seek injunctive relief so that they can compete in Prize Money events while enrolled in college. An injunction will increase competition in Prize Money tournaments, as more Student-Athletes will enter such competitions. Injunctive relief should have little, if any, negative effect on the competition in NCAA events, because Student-Athletes are already permitted to participate in non-NCAA competitions assuming they forego Prize Money. NCAA Bylaw 17.34.1.9. Instead, allowing Student-Athletes to participate in non-NCAA events would increase competition in NCAA events. If Student-Athletes could compete in occasional non-NCAA events and retain their Prize Money, more of them could afford to continue competing at the intercollegiate level and pursue their college degrees. This would result in better players staying in college for longer periods of time rather than being forced to abandon their educations to provide for themselves and their families. Overall, abolishing the Prize Money Rules would increase competition in both NCAA and non-NCAA events.

The Prize Money Rules also place anticompetitive restrictions on a market outside the NCAA: the market for Prize Money tournaments in each of the Individual Sports. Since Student-Athletes are precluded from accepting Prize Money, many will choose not to compete in those events. Inevitably, this means that such events are less appealing to sports fans, and less profitable to the sponsors of the tournaments.

C. Any Procompetitive Justifications for the Prize Money Rules Are Pretextual.

While Plaintiff does not yet understand what justifications, if any, the NCAA may offer in this litigation for preserving the remnants of the Prize Money Rules, it is safe to assume that the NCAA will continue to focus on the same issues it has raised in its prior opposition to injunctions granted to similarly situated Student-Athletes: preserving the concept of “amateurism;” preserving the competitive balance among Student-athletes; preserving the distinction between collegiate and professional competition; or safeguarding the interests of potentially vulnerable Student-Athletes. Courts in recent years have consistently rejected these ostensible NCAA goals as justification for anticompetitive rules. *See, e.g., Alston; O’Bannon II; and Tennessee.*

1. “Preservation of Amateurism” or “the Need for Individual Members Of the NCAA to Prevent Pay-for-Play” is not a Defense to Preliminary Injunction, or a Coherent Concept.

The NCAA has peddled the benefits of “amateurism” throughout its history and lists “Commitment to Amateurism” among the “Commitments to the Division I Collegiate Model” enumerated in the introduction to the NCAA Manual at xii; *see also* Doc. 18, Eighth Additional Defense (citing “need for institutional members of the NCAA to prevent play-for play” as an affirmative defense.)

The Supreme Court recognized that preservation of amateurism was part of the NCAA’s mission in *NCAA v. Univ. of Oklahoma*, 468 U.S. 85, 120A (1984), but held that preservation of amateurism could not justify the NCAA’s restrictions on television broadcast challenged in that case. More recently, courts have consistently rejected the “commitment to amateurism” as a justification for facially uncompetitive rules. The NCAA has never consistently defined “amateurism.” *See Alston*, 594 U.S. at 101 (rejecting potential defense because “the district court found that the NCAA had not adopted any consistent definition” of amateurism); *Ohio v. NCAA*, ___ F.Supp.3d ___, 2023 WL 9103711, at *7 (N.D.W.Va. Dec. 13, 2023) (“this Court cannot ascertain any coherent definition of amateurism”). Second, the Rule of Reason requires balancing anti-competitive effects against pro-competitive effects, and it is far

from obvious that “preservation of amateurism” has any pro-competitive effect, however important the goal may be to the NCAA. *O’Bannon II*, 802 F.3d at 1064 (“amateurism rules’ validity must be proved, not presumed”).

The large number of exceptions to the NCAA Prize Money Rules shows that the rules as currently constituted do not preserve “amateurism,” and do not prevent “pay-for-play.” Student-Athletes are permitted to profit from their celebrity through NIL monetization. They are permitted to accept money sufficient to reimburse themselves for specifically defined expenses relating to a specific event in which they compete (but not for expenses incurred in preparation for competition generally). They are permitted to accept prizes for participating in the Olympics from their national Olympic committees, even if that money awarded for receiving a medal, but they are not permitted to accept money awarded from other sources. The NCAA permits tennis players to accept up to \$10,000 annually in Prize Money before they enter college, but not during college, and permits tennis players to accept reimbursement for certain narrowly defined expenses but not for others. *See Brantmeier Dec.* ¶¶ 26-27 (player may accept Prize Money to defray cost of restringing tennis rackets only if incurred within 14 days before tournament). The rules allow swimmers to receive Prize Money (as defined in the NCAA Bylaws) from USA Swimming,

as long as it is called a “grant,” not a “prize.” The exceptions are so incoherent and pervasive that the remnants of the rule itself no longer make sense.

2. Preserving “Competitive Balance” Does Not Justify the Prize Money Rules

The NCAA has also argued that some trade restrictions are needed to preserve “competitive balance” among different NCAA teams, because very few Student-Athletes have sufficient skills to earn substantial amounts in professional, non-NCAA competitions that award Prize Money, and those few should not be permitted to dominate college sports. Several courts have rejected this argument, finding the proffered evidence insufficient to support it. *O’Bannon II*, 802 F.3d at 1072; *Grant-in-Aid*, 375 F.Supp.3d at 1070 n.12; *see also* Schwarz Decl. ¶¶ 54-64 (no evidence that Prize Money Rules and similar rules affect competitive balance in the NCAA).

The NCAA’s treatment of Olympic champions demonstrates that it considers participation by the top athletes in each sport to be a plus, not a detriment. NCAA Bylaws 12.1.2.1.4.1.2 (U.S. Olympic Committee Operation Gold awards) and 12.1.2.1.4.1.3 (comparable awards to competitors representing other nations). As with the awards prohibited by the Prize Money Rules, the amount of the award depends on the placement in a specific competition and is not limited to reimbursement of expenses. In all respects, these awards are Prize Money for athletic performance. They also involve

substantial amounts of money. Katie Ledecky received \$115,000 from Operation Gold following the 2016 Olympics for her performance in women's swimming events in 2016, before she enrolled in college. After accepting \$115,000, the NCAA still considered her an "amateur" for the purposes of its Prize Money Rules. As a result, she was allowed to compete for Stanford in the 2016-2017 and 2017-2018 seasons, winning the NCAA's Female Athlete of the Year award in her freshman year. Similarly, Joseph Schooling received \$740,000 from the Singapore Olympic Committee for winning a gold medal in men's swimming in 2016 and then competed for the University of Texas in 2017.⁸ The only meaningful distinction between these awards and those prohibited by the Prize Money Rules is that the recipients are world champions who dominate their sports and reduce competitive balance. Permitting this extraordinary group of athletes to retain Prize Money and continue competing for their colleges, while at the same time claiming that less dominant athletes in their sports cannot retain Prize Money because it would destroy the "competitive balance," demonstrates the absurdity of the NCAA's position.

⁸ Schwarz Decl. ¶ 32; Solomon, "NCAA Prez concerned by Texas Swimmer Paid \$740K for Winning Olympic Gold," available at <https://www.cbssports.com/college-football/news/ncaa-president-concerned-by-texas-swimmer-paid-740000-for-winning-olympic-gold/>

3. Retaining the Distinction Between Amateur and Collegiate Sports Does Not Justify the Prize Money Rules

The NCAA asserts that maintaining the distinction between college football and basketball and their professional counterparts is a procompetitive rationale for limiting compensation to Student-Athletes in those sports. Doc. 18 at 41, Seventh Additional Defense. In *Grant-in-Aid*, 375 F.Supp. 3d at 1082-83, the District Court accepted this argument. Relying solely on lay witness testimony, not economic modeling, the court reasoned that there would be less fan interest, and therefore less profitability, in these college sports if the players were perceived to be no different from the professionals. *Id.* The testimony on which the court relied was specific to the two “revenue” sports which are profitable for the NCAA and its members. *Id.* It is far less plausible with respect to Individual Sports programs that are not profit centers for the colleges and in fact, run substantial financial deficits. Moreover, there is a major distinction between professional football and basketball players paid a salary to be a member of a professional team, and Student-Athletes gifted enough to occasionally complete in non-NCAA tournaments while putting forth the time and effort to maintain their legitimate studies. A Student-Athlete who succeeds in a handful of non-NCAA tournaments without competing in a full pro circuit (thereby rendering student academic life impossible) would

generate more fan interest in NCAA athletics and potentially more revenue for NCAA members – not less. It is hard to understand how a college tennis player who performs well enough at the U.S. Open to earn Prize Money, and then returns to play for her college, would diminish fan interest in watching college athletics. The effect on college athletics would be just the opposite.

In addition, other NCAA rules, such as requirements that Student-Athletes attend class and make satisfactory progress toward their degrees to maintain eligibility, can accomplish this goal less restrictively. As discussed above, many Student-Athletes are already competing regularly in Prize Money tournaments, even though they must decline the prizes that they earn. There is no reason to believe that permitting them to retain their earnings would detract from the fans' experience of enjoying college sports. It is also plausible that an influx of well-known athletes with professional experience into college games would increase the popularity of college sports.

II. Plaintiffs are Suffering and Will Continue to Suffer Irreparable Harm Without Injunctive Relief.

A. Plaintiff Brantmeier and Class Members are Excluded from Profiting from Competition in Non-NCAA Tournaments, Irrevocably Losing Income, and Are Forced to Choose Between Prize Money and Education

Brantmeier competed successfully in the US Open tennis tournament before she started college and she intends to compete again this Fall (she can't

compete in the U.S. Open this Summer due to injury). Brantmeier Decl. ¶ 37. Joint and Martin have both qualified for, and intend to compete in, professional tournaments in August 2024. Joint Decl. ¶ 17; Martin Decl. ¶ 12. The USTA and PWBA are willing to compensate these Student-Athletes through Prize Money, but the Student-Athletes will have to decide whether to accept the Prize Money at the time of the tournament. There is no alternative remedy available to recover any Prize Money they voluntarily forego to maintain NCAA eligibility. Plaintiff estimates that over 100 individuals are in the same situation, many of whom are competing, and sacrificing Prize Money they have Earned, this Summer and Fall

B. Class Members Who Are Excluded from Intercollegiate Competition and from College Scholarships Are Suffering Irreparable Injury.

Athletes who would like to attend college but are deemed ineligible due to apparent violations of the Prize Money Rules are suffering ongoing injury as long as they are precluded from competing for scholarships and for NCAA teams. If they have been out of school for several years, starting college will be harder than it would have been right after high school. Athletic competition also becomes harder with aging.

III. The Balance of Equities Favors Plaintiffs.

There is no question that a preliminary injunction will benefit both athletes who were ineligible to compete in college, and Student-Athletes who were ineligible to accept Prize Money during their collegiate careers. It will also benefit consumers of sports—fans of both NCAA individual sports and professional Prize Money tournaments—who will enjoy a higher level of competition in both venues.

The cost of the injunction to the NCAA's members, if any, is unclear. The requested injunction does not require, or permit, NCAA Members to pay any additional amounts to players. It will likely reduce the expenses borne by the colleges associated with monitoring compliance with the byzantine Prize Money Rules by prospective and current Student-Athletes. As discussed, there is no reason to believe that the NCAA considers any effect on competitive balance to be a negative factor. To the contrary, allowing Student-Athletes to compete in non-NCAA events and retain Prize Money will allow Student-Athletes to stay in school to complete their educations, will improve the quality of the NCAA's product, will increase fan interest in NCAA athletics, and will generate more revenue for the NCAA and its member institutions. *See* Schwarz Decl. ¶¶ 57-65. In short, this is the rare injunction that imposes little, if any, cost on anyone.

IV. Injunctive Relief Serves the Public Interest of Promoting Free and Fair Competition in NCAA Sports and Promoting Higher Education.

An injunction will have three immediate effects: First, many excellent athletes who had lost their amateur status due to the Prize Money Rules will become eligible for college scholarships and will have an opportunity to graduate from college. Second, current Student-Athletes will be able to earn a living for themselves and their families by competing in non-NCAA tournaments while continuing to pursue their educations. Third, Student-Athletes will be motivated to compete in Prize Money tournaments in their sports, thereby improving the quality of competition in these events and the quality of the competition in NCAA events. All of these effects advance the public interest.

CONCLUSION

Plaintiff respectfully requests that the Court grant her Motion for Preliminary Injunction and enter an injunction restraining Defendant from enforcing its Prize Money Rules that restrict Division I Student-Athletes who compete in Individual Sports from accepting cash awards, bonuses, and other

monetary prizes awarded by third parties for their performance in non-NCAA competitions.

This the 2nd day of July 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2024, the foregoing was electronically filed with the Clerk of the U.S. District Court, Middle District of North Carolina, using the CM/ECF system, which will serve and send notification of such filing to all parties:

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CERTIFICATION OF WORD COUNT

I certify that this brief contains 6,221 words, excluding portions permitted to be excluded by Local Rule 7.3(d)(1). This was determined by word count software included in Microsoft Word.

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