

Peña enrolled at URI in 2022, where he played for the URI men’s varsity football team during the academic years 2022-2023, 2023-2024, 2024-2025, and 2025-2026. Compl. ¶ 10. Peña completed four seasons of competition as permitted under the NCAA’s former eligibility framework. *Id.* ¶ 13. Peña currently attends URI. *Id.* ¶¶ 9,12; Aff. of Ajanee Elijah Peña (“Peña’s

Aff.”) ¶ 2. URI has submitted an eligibility request for Peña to NCAA and awaits a final ruling. Compl. ¶¶ 75, 81. Peña has received confirmation from URI that he has a place on the URI men’s football roster subject to admission and full-time enrollment and eligibility confirmation from URI, the Coastal Athletics Conference, and the NCAA. *Id.* ¶ 78.

Carcel is currently a student at URI. *Id.* ¶ 14. Carcel graduated from high school in 2022, competed in the National Association of Intercollegiate Athletics (“NAIA”) for Keiser University in Florida during the academic years 2022-2023, 2023-2024, and 2024-2025. *Id.* ¶¶ 15-16. He currently has a position on the URI football team roster. *Id.* ¶ 17.

The NCAA is an unincorporated association that is the sole governing body for Division I intercollegiate athletics in the United States. (*See id.* ¶ 21; *see also* Def.’s Opp’n to Pls.’ Mot. for TRO and Prelim. Inj. (Def.’s Opp’n) Ex. 1 (Henderson’s Aff.), ¶ 6; Henderson’s Aff. Ex. B (2026-27 NCAA Division I Manual) 1.) URI is a Division I college and member of the NCAA. Compl. ¶ 24.

The NCAA Division I Manual establishes periods of eligibility for practices and competition in Bylaw 12.6. (*See* Henderson’s Aff. Ex. A (2025-26 NCAA Division I Manual), at 46; 2026-27 NCAA Division I Manual 43.) During the 2025-26 academic year, NCAA’s bylaws allowed for Division I athletes to participate in four seasons of their sport within five calendar years from when the student was first registered for a minimum full-time program of studies at the institution. (*See* 2025-26 NCAA Division I Manual 46.) The bylaw in effect during the 2025-26 academic year also allowed for a number of exceptions to the rule and eligibility waivers. *See id.* at 46-48. Students, like Plaintiffs, who competed in four seasons of their sport at a college institution within five years during the time the 2025-26 bylaws were in effect had exhausted their eligibility to compete after August 1, 2026. Therefore, both Peña and Carcel exhausted their

eligibility to play Division I football at the conclusion of their 2025 football season. Compl. ¶¶ 59-60, 74.

Peña participated in the 2025 season while injured. *Id.* ¶ 70. Due to the injury, he was unable to perform at professional football evaluation events in spring 2026. *Id.* ¶ 71. Thereafter, Peña sought football opportunities with the BC Lions of the Canadian Football League and the Baltimore Ravens. *Id.* ¶¶ 72-73. Neither provided him an opportunity in the professional sphere. *Id.*

Like Peña, Carcel completed his final season of eligibility under the 2025-26 bylaws. *Id.* ¶ 20. Thereafter, Carcel was offered a coaching position at Keiser University. *Id.* ¶ 66. He declined the offer to pursue another season at URI. *Id.* Carcel hopes to compete in the 2026-27 football season to gain film, statistics, development, and exposure for a chance to play professional football. *Id.* ¶¶ 63, 67.

In June 2026, the NCAA revised Bylaw 12.6 and adopted a new age-based eligibility bylaw. That age-based eligibility bylaw became effective August 1, 2026. *See* 2026-27 NCAA Division I Manual at 43. The revised bylaw—entitled the Five-Year Period of Eligibility Bylaw—provides that “[a]n individual’s period of eligibility for practice and competition shall be limited to five years.” *Id.* The five-year period of eligibility begins either at the start of the first term that an individual enrolls in a collegiate institution or the beginning of the next academic year after the individual turns nineteen. *Id.* at 43-44. Under the new effective bylaw, there are limited exceptions to the five-year period of eligibility *Id.* at 44-45.

The NCAA reported the amendments to the bylaw on June 23, 2026. *See* Henderson’s Aff. Ex. E (NCAA Article), 1. The following day, NCAA’s Division I cabinet issued a statement that was published to a verified account on X. The cabinet indicated that the bylaw was applied

prospectively. Specifically, the stated intent on the amendment “was for any rule change to apply going forward, and not retroactively to student-athletes whose eligibility is or will be completed by the spring of 2026 to avoid the impact retroactive application would have on other student athletes.” Henderson’s Aff. Ex. D (NCAA Division I Cabinet Statement), at 1. The amended bylaw was also accompanied by a transition guide through the NCAA Eligibility Center. Henderson’s Aff. Ex. C (NCAA Transition Guidance), 1.¹ The guidance reaffirmed that students who used their final season of eligibility under the 2025-26 bylaws before or during the spring 2026 semester retained no additional eligibility. *Id.* at 5-6; *see also* Compl. ¶ 43. Any student who retained eligibility under the previous bylaws was able to receive the benefit of either set of bylaws that provided the student a more favorable result. Compl. ¶ 44; *see also* NCAA Transition Guidance 6.

On July 31, 2026, a federal district court in Colorado certified a class of student-athletes who had previously competed in four seasons of collegiate sports and had exhausted their eligibility under the 2025-26 bylaws. *See* Def.’s Opp’n to Pls.’ Mot. for TRO (Def.’s Opp’n to TRO) Ex. 3. (*Wisne v. National Collegiate Athletic Association*, No. 1:26-cv-03063 (D. Colo. 2026)). The district court entered a class-wide preliminary injunction. *Id.* On August 21, 2026, the injunction was stayed by the Tenth Circuit pending disposition of the appeal where the court found that NCAA satisfied its burden of showing likelihood of success on the merits, irreparable injury, lack of injury to other parties, and public interest. Def.’s Opp’n Ex. 3 (*Wisne v. National Collegiate Athletic Association*, No. 26-1309 (10th Cir. 2026)).

Plaintiffs filed a two-count complaint against the NCAA on September 9, 2026. (*See* Docket.) Plaintiffs allege violation of the Rhode Island Antitrust Act G.L. 1956 §§ 6-36-2, 6-36-

¹ Where exhibits or other filed documents do not contain page numbers, the page numbers referenced correlate to the page in the PDF itself, and for exhibits page 1 is the first page after the page identifying and labeling the exhibit.

4, 6-36-7, 6-36-10 (Count I) and seeks declaratory judgment from the Court under G.L. 1956 § 9-30-1 (Count II). (*See* Compl. 14-17.) On September 14, 2026, Plaintiffs filed a Motion for Temporary Restraining Order and Preliminary Injunction, along with a supporting memorandum.² (*See* Pls.’ TRO Mot. 1.; *see also* Pls.’ Mem. in Supp. of Mot. for TRO and Prelim. Inj. (Pls.’ TRO Mem.) 1.) NCAA filed an opposition to Plaintiffs’ TRO Mot. on September 15, 2026. (*See* Def.’s Opp’n to TRO 1.) Plaintiffs filed a Reply Memorandum in Support of Their Motion for Preliminary Injunction on September 21, 2026. (*See* Pls.’ Reply Memorandum to Defendant’s Objection (Pl.’s Reply Mem.) 1.) NCAA also filed an opposition to Plaintiffs’ Motion for TRO And Preliminary Injunction on September 21, 2026. (*See* Def.’s Opp’n 1.)

II

Standard of Review

Rule 65 provides the court the ability to grant or deny temporary injunctive relief, and the decision is left to the sound discretion of the trial justice. *Hagenberg v. Avedisian*, 879 A.2d 436, 441 (R.I. 2005). In determining whether to issue a preliminary injunction, this Court must consider:

“whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.” *Vasquez v. Sportsman’s Inn, Inc.*, 57 A.3d 313, 318 (R.I. 2012) (quoting *Iggy’s Doughboys, Inc. v. Giroux*, 729 A.2d 701, 705 (R.I. 1999)).

A party need not “establish ‘a certainty of success[;]’ rather, ‘we require only that [it] make out a prima facie case.’” *DiDonato v. Kennedy*, 822 A.2d 179, 181 (R.I. 2003) (quoting *Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)).

² Plaintiffs’ motion for a temporary restraining order was partially granted and denied during the hearing on September 15, 2026. (*See* Hr’g Tr. 31:11-16, Sep. 15, 2026.)

“Prima facie evidence is [considered the] amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue.” *Paramount Office Supply Co., Inc. v. D.A. MacIsaac, Inc.*, 524 A.2d 1099, 1101 (R.I. 1987) (citing *Nocera v. Lembo*, 121 R.I. 216, 218, 397 A.2d 524, 526 (1979)). If the moving party can establish a likelihood of success on the merits and an immediate irreparable injury, the Court should examine the equities of the case by analyzing the hardship to the moving party if the injunction is not granted, the hardship to the nonmoving party if the injunction is granted, and the public interest in granting or denying the injunction. *Fund for Community Progress*, 695 A.2d at 521 (citing *In re State Employees’ Unions*, 587 A.2d 919, 925 (R.I. 1991)).

III

Analysis

Before addressing the issues relating to Plaintiffs’ requested injunctive relief, the Court will address the parties’ arguments concerning issues of comity pending a final decision in *Wisne, v. National Collegiate Athletics Association*, No. 26-1309 (10th Cir. 2026).

A

Comity

NCAA argues that the Court should decline to hear and stay this antitrust claim because *Wisne*, a certified class action, is pending in the Tenth Circuit. (*See* Def.’s Opp’n 7-8.) It is argued that the issue in *Wisne* relates to the same eligibility rule that is the subject of this action. *See id.* at 7. Furthermore, NCAA asserts that the final disposition in *Wisne* will bind Plaintiffs. *Id.* at 8.

Plaintiffs ask that the Court exercise their discretion not to stay the proceedings because “[t]he relief is confined to two players at a willing Rhode Island institution with positions already

available. Certification and the potential effect of a later class judgment do not themselves require automatic deferral of that immediate request.” Pls.’ Reply Mem. 9.

Comity is not a rule, or a precedent, but a “flexible doctrine.” *Boyer v. Bedrosian*, 57 A.3d 259, 283 n.36 (R.I. 2012). It makes no requirements of courts. *Id.* Rather, it permits but does not require a court to stay a proceeding “if a case involving the same parties and subject matter is pending in another court with overlapping jurisdiction.” *Id.* (citing *Halliwell v. Lippitt Realty Co., Inc.*, 121 R.I. 927, 927, 394 A.2d 708, 709 (1978)). Thus, “where the two courts’ jurisdictions overlap, principles of comity shall control and the court whose jurisdiction is first invoked should resolve the issues presented to it.” *Halliwell*, 121 R.I. at 927, 394 A.2d at 709 (citing *Fox v. Fox*, 115 R.I. 593, 350 A.2d 602 (1976)).

Here, there is no requirement that this Court exercise comity and stay proceedings pending a final decision in *Wisne*. The issues presented before this Court arise out of conduct which occurred in Rhode Island and involve residents of Rhode Island. The Plaintiffs are student-athletes at URI and allege a violation under Rhode Island law. This Court, having reviewed the substance and issues involved in this action, declines to exercise its discretion to stay this proceeding.

B

Dormant Commerce Clause

NCAA argues that the request for injunctive relief under the Rhode Island antitrust law is barred by the Dormant Commerce Clause. (*See* Def.’s Opp’n 8.) The NCAA notes that §§ 6-36-7(a)-(b) allow for suits where antitrust violations impact Rhode Island trade or commerce, notwithstanding any finding that the conduct affects interstate commerce. The statute, however, also directs Rhode Island courts to “compliment the laws of the United States” and “construe[] in

harmony with judicial interpretations” of federal statutes. Sections 6-36-2(a)(1), (b). Plaintiffs make no argument regarding whether the Dormant Commerce Clause bars their requested relief.

NCAA maintains that issuing a preliminary injunction overriding the application of the 2026-27 bylaw as a violation of Rhode Island law would be unconstitutional as an undue burden on interstate commerce. *Flood v. Kuhn*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972). The NCAA’s reliance on *Flood*, however, is unfounded because it involved a restriction on professional baseball players concerning the league’s reserve system which impacted a player’s ability to freely negotiate and contract with any team in the league. *Id.* at 265.

Here, while the NCAA has a strong interest in maintaining uniformity in the application of its rules and bylaws in Division I sports across all states, The NCAA is structured differently than professional baseball, and for a different purpose. For instance, professional baseball is comprised of a number of teams in various sub-leagues, each of which has a network of other minor league teams and professional organizations operating beneath them. The NCAA is a voluntary organization of colleges committed to the well-being of student athletes. *See* 2026-27 NCAA Division I Manual 1. Moreover, the purpose of professional baseball is for athletes to engage in competition as a career and a means to earn a living and “remains committed to making an impact in the communities of the U.S., Canada and throughout the world, perpetuating the sport’s larger role in society and permeating every facet of baseball’s business, marketing, community relations and social responsibility endeavors.” *About MLB*, Major League Baseball, <https://www.mlb.com/official-information/about-mlb?msocid=3cb25126f0ac664c0b2e46e4f17c677d> (last visited September 30, 2026). The NCAA’s purpose is to “provide student-athletes with the opportunity to participate in sports and compete as a vital, co-curricular part of their educational experience” and “to support and promote healthy and safe intercollegiate athletics, including

national championships, as an integral part of the education program and the student-athlete as an integral part of the student body.” *See* 2026-27 NCAA Division I Manual 1. Therefore, this Court cannot conclude that the NCAA would be faced with a patchwork of “state[wide] antitrust regimes” such as to bar the action. (Def.’s Opp’n 9.)

C

Reasonable Likelihood of Success on the Merits

1

Rhode Island Antitrust Law

Under the Rhode Island Antitrust Act, “[e]very contract, combination, or conspiracy in restraint of, or to monopolize, trade or commerce is unlawful.” Section 6-36-4. Furthermore, under this Act, it is unlawful to establish, maintain, or use a monopoly to exclude competition or control, fix, or maintain prices; or to attempt to do the same. Section 6-36-5. The Antitrust Act aims to “promote the unhampered growth of commerce and industry throughout the state by prohibiting unreasonable restraints of trade and monopolistic practices, inasmuch as these have the effect of hampering, preventing, or decreasing competition.” Section 6-36-2(a)(2). This Act is intended to “complement the laws of the United States governing monopolistic and restrictive trade practices” and “shall be construed in harmony with judicial interpretations of” the Sherman Antitrust Act. Sections 6-36-2(a)(1), (b); *UXB Sand & Gravel, Inc. v. Rosenfeld Concrete Corp.*, 599 A.2d 1033, 1035 (R.I. 1991).

Section 1 of the Sherman Act prohibits contracts “in restraint of trade or commerce among the several States[.]” *See* 15 U.S.C. § 1. The Supreme Court has recognized that at the time the Act was passed, “the phrase ‘restraint of trade’ is best read to mean ‘undue restraint.’” *Ohio v. American Express Co.*, 585 U.S. 529, 540 (2018) (quoting *Standard Oil Co. of N.J. v. United*

States, 221 U.S. 1, 59–60 (1911)). Thus, to prevail on a claim under the Sherman Antitrust Act, 15 U.S.C. § 1, a plaintiff must demonstrate both the existence of an agreement and an “unreasonable restraint[]” on trade. *Id.* (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 10, (1997)).

i

Monopsony Control Over the Market

The first element of the Antitrust Act claim requires the existence of a contract, combination, or conspiracy among the defendants. *Federal Trade Commission v. Qualcomm Inc.*, 969 F.3d 974, 988-89 (9th Cir. 2020). The NCAA enjoys monopsony (buyer-side monopoly) control in the relevant labor market because “it is capable of depressing wages below competitive levels and restricting the quantity of student-athlete labor.” *National Collegiate Athletic Association v. Alston*, 594 U.S. 69, 86 (2021).

Here, there is no dispute that members of the NCAA “enjoy monopsony power in the market for student-athlete services[.]” *Id.* at 90. Therefore, the first element is satisfied.

ii

Unreasonable Restraint on Commerce

The second element of a Sherman Antitrust Act § 1 requires that the restraint is an “unreasonable restraint” on competition. *American Express Co.*, 585 U.S. at 540 (internal quotation omitted).³ In performing an analysis, the rule of reason test applies. The rule of reason test employs a “three-step, burden-shifting framework[.]” *Id.* at 541. The steps are as follows:

³ Whether the rule unreasonably restricts trade is either analyzed under a “quick-look” or application of the more comprehensive “rule of reason” test. *National Collegiate Athletic Association v. Alston*, 594 U.S. 69, 88, 90 (2021). A quick look is appropriate in cases where restraints are at one of the “opposite ends of the competitive spectrum” and do not fall “in the great in-between.” *Id.* at 88. In his affidavit, Professor Zimbalist argues that rule of reason analysis is not necessary because the NCAA’s conduct is *per se* unlawful. (Zimbalist’s Aff. ¶¶ 8-9.) The Court

(1) “[T]he plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market. . .” (2) “If the plaintiff carries its burden, then the burden shifts to the defendant to show a procompetitive rationale for the restraint. . .” and (3) “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; *see also Alston*, 594 U.S. at 96-97; *Picard v. NCAA*, No. PC-2026-04733, Sep. 4, 2026, Stern, J., at 17.

Under the rule of reason test, the plaintiff bears the initial burden to define the relevant market. *Id.* at 542. This is required because “[w]ithout a definition of [the] market there is no way to measure” the NCAA’s “ability to lessen or destroy competition.” *Id.* at 543 (quoting *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172, 177 (1965)). The relevant market is defined as “the area of effective competition.” *Id.* (quoting *Walker*, 382 U.S. at 177.) As such, “[f]ailing to define a relevant market alone is fatal to an antitrust claim,” *Coronavirus Reporter v. Apple, Inc.*, 85 F.4th 948, 957 (9th Cir. 2023) (citing *Qualcomm Inc.*, 969 F.3d at 992) because “[w]ithout a defined relevant market in terms of product or service, one cannot sensibly or seriously assess market power.” *Id.* (citing *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 975 (9th Cir. 2023)).

iii

Relevant Market Definition

NCAA maintains that the Plaintiffs have failed to define a relevant market. (*See* Def.’s Opp’n 12.) Plaintiffs, on the other hand, assert that the relevant market has been defined as the NCAA Division I football-player services in the United States. (*See* Pls.’ Reply Mem. 3-4.) This,

and the parties disagree. A rule of reason analysis must be conducted. (*See* Def.’s Opp’n 12; Pls.’ Reply Mem. 2.)

according to the Plaintiffs, has been established through expert and lay witness testimony. The NCAA challenges the sufficiency of this evidence.

Antitrust law favors market realities over formalistic distinctions. *American Express Co.*, 585 U.S. at 542-43 (citing *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 466-67 (1992)). The relevant market is where substitutions in consumption and production are made to create effective competition. *Id.* at 543 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 571 (1966)). Products and services should be combined into a single market where it will reflect commercial realities. *Id.* at 543. Courts may not rely on the testimony of an expert to determine the relevant market where that expert provides no “economic analysis or data to support his market definition . . . to find a likelihood of success on the merits.” *Elad v. National Collegiate Athletic Association*, 160 F.4th 407, 417 (3d Cir. 2025).

Here, Plaintiffs offer the affidavit of Professor Andrew Zimbalist to present a “preliminary” opinion with respect to “the definition of the relevant market for purposes of Mr. [Peña] and Mr. Carcel’s antitrust claim[.]” Zimbalist’s Aff. ¶ 7. Professor Zimbalist opined that the relevant product market is the market for Division I college football player services in the United States. (See Zimbalist’s Aff. ¶ 43; Pls.’ Reply Mem. 3.) Professor Zimbalist maintains that Division I football is “economically distinct from all other levels of college football” based on Name, Image, and Likeness (“NIL”) compensation, revenue sharing exclusivity, NFL scouting, scholarship investment, coaching, and program budgets. See Zimbalist’s Aff. ¶ 43. Professor Zimbalist, however, cites to no mathematical or economic data in support of his conclusions. The affidavit is void of any independent economic analysis measuring cross-elasticity of demand. See *Epic Games, Inc.*, 67 F.4th at 975 (citing *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120 (9th Cir. 2018)).

In addition to the sufficiency of Professor Zimbalist's affidavit, Plaintiffs rely on differences within the institutional framework among Division I football to show competitive harm in the relevant market. *See* Pls.' Reply Mem. 5; Affidavit of James Fleming (Fleming's Aff.) ¶¶ 7-11. James Fleming testified that "[f]or all practical purposes, NCAA Division I college football is the principal source of the player pool from which professional football teams obtain players." *See* Fleming's Aff. ¶ 13. Therefore, according to the Plaintiffs, URI suffers a separate and distinct injury arising out of the 2026-27 eligibility bylaw from the larger Division I football programs and conferences, such as the Southeastern Conference or the Big 10 Conference. *See* Pls.' Reply Mem. 5. These programs "generally have greater publicity, television resources, and opportunities to attract highly recruited players[.]" *Id.* URI, on the other hand, "depend[s] on developing and retaining players over time." *Id.* It is the Plaintiffs' position that this difference in player selection processes demonstrates substantial anticompetitive harm in the relevant market. *Id.*; *see also* Zimbalist's Aff. ¶ 45.

Plaintiffs argue that the differences between Football Bowl Subdivision ("FBS") and Football Championship Subdivision ("FCS") programs demonstrate substantial anticompetitive effect in the market for Division I college football player services in the United States. It is clear, however, that distinction in the proposed market potentially results in an overinclusive relevant market area that is not defined by the Plaintiffs. NCAA's expert, Dr. Frederick Flyer, examines Professor Zimbalist's observation that the vast majority of NFL players came from Division I football programs, and not other divisions or leagues. Dr. Flyer points out in a table included in his affidavit that "92.3 [percent] of players on NFL rosters for the 2026 season are from FBS schools, and 80.4 [percent] of players are from schools in the Power 4 conferences alone." Def.'s Opp'n Ex. 2 ("Flyer's Aff.") ¶ 21. The fact that over 90 percent of NFL players come from FBS

programs and not FCS programs demonstrates that the two program types may be distinct markets. Similarly, Dr. Flyer agrees with Professor Zimbalist that Division I student-athletes received more than 99 percent of all compensation from NIL in 2024, however, he notes that Professor Zimbalist neglected to point out that when FBS and FCS schools are distinguished, one can see that 100 percent of all NIL compensation was received by FBS athletes, not FCS. Flyer's Aff. ¶ 22 (Table 2).

Here, the Plaintiffs failed to adequately define the relevant market area through an appropriate analysis. While Plaintiffs and NCAA agree that FCS programs are distinct from FBS programs in many ways that could isolate the two into separate markets, Plaintiffs fail to show a substantial anticompetitive effect under the rule of reason. Therefore, their claim of antitrust violation under Rhode Island and Federal law must fail. The failure to adequately define the relevant market is fatal to Plaintiffs' claim because the court cannot "seriously or sensibly assess market power" as required under the first step of the rule of reason. *Epic Games, Inc.*, 67 F.4th at 975.

iv

Substantial Anticompetitive Effect

In the event that Plaintiffs had adequately defined the relevant market, which they have not, they remain unable to establish a reasonable likelihood of success on the merits with respect to the first element of their claim. Plaintiffs argue that a substantial anticompetitive effect is established through direct evidence of adverse effects. Pls.' TRO Mem. 8-9. Plaintiffs claim that beyond the harm suffered by Messrs. Peña and Carcel, "[t]he exclusion removes an entire cohort of experienced players from the pool for which Division I institutions may compete." Pls.' Reply Mem. 4. This is supported by the conclusory statement of Professor Zimbalist that a decrease in

services of developed players and the inability of schools to recruit more senior players can have an anticompetitive effect even where the output—the number of roster spots—remains the same. (*See id.* at 5 (citing Zimbalist’s Aff. ¶ 28, n.4).) This record remains void of evidence that within the market, member institutions are unable to fill roster spots, field teams, or otherwise participate in scheduled games. Where the labor supply, the product offered by college football players is an input, the output is Division I college football competition. Dr. Zimbalist fails to identify any substantial anticompetitive effect on the market aside from his unsupported claims that other member institutions in the market share the harms suffered by Plaintiffs and URI. Plaintiffs make further argument that the restriction harms themselves and URI because URI reserved two otherwise unfilled roster spots for Plaintiffs, and the 2026-27 bylaw exclusions do not allow the two parties to contract for Plaintiffs’ services. (*See* Pls.’ TRO Mem. 5.) This is not market harm. Antitrust law requires the impairment of competition not impairment to individuals. *See UXB Sand & Gravel, Inc.*, 599 A.2d at 1038 (“The record indicates that UXB did not submit a pebble of evidence indicating injury to competition beyond the harm to its business and therefore failed to establish an antitrust violation under the rule of reason.”); *see also ERI Max Entertainment, Inc. v. Streisand*, 690 A.2d 1351, 1353 (R.I. 1997)

Furthermore, there is no evidence of increase in price. Within the college football context, an increase in price would look like a decrease in the value of student-athlete services. Professor Zimbalist posits that compensation suppression arises because but for the exclusion of Plaintiffs and similar student-athletes in the 2026-27 bylaw, NIL, revenue sharing payments from the *House v. NCAA* (N.D. Cal. 2025) settlement, and scholarships would be available to those excluded athletes. (*See* Zimbalist’s Aff. ¶ 29.) However, this again fails to demonstrate an anticompetitive effect in the market. Under the *House* settlement, “participating Division I institutions may share

revenue directly with student-athletes, subject to an annual cap” (which is estimated at about \$21.3 million per school for the 2026-27 academic year). *Id.* ¶ 14. There is no evidence provided by Plaintiffs that the market, outside from Plaintiffs and other athletes whose eligibility expired and was not renewed under the 2026-27 bylaws, will suffer any anticompetitive effect. The NCAA points out that a decrease in the supply of athletes receiving this compensation actually improves the market for other eligible athletes intended to benefit from the 2026-27 bylaw. (*See* Def.’s Opp’n 19.) Here, Plaintiffs failed to demonstrate substantial anticompetitive effect on the market and therefore they have failed to demonstrate reasonable likelihood of success on their merits.

v

Procompetitive Rationale

On a sufficient showing of substantial anticompetitive effect by the Plaintiffs, the burden of proof shifts to the NCAA to establish a procompetitive rationale for the restraint. *American Express Co.*, 585 U.S. at 541.

The NCAA asserts that the decision to apply the 2026-27 bylaw prospectively and not retrospectively, resulting in the exclusion of Plaintiffs and other 2022 graduates who participated in four seasons of play under the previous bylaws, has clear procompetitive benefits. (*See* Def.’s Opp’n 20.) Jennifer Henderson, the Managing Director of Division I Governance and Members Services at the NCAA, explains that the Division I Cabinet made a deliberate choice to apply the law prospectively and not retrospectively to avoid displacing younger student athletes and disrupting roster and compensation decisions already made by member institutions during the offseason prior to the enactment of the 2026-27 bylaw. (*See* Henderson’s Aff. ¶¶ 21-24; NCAA Division I Cabinet Statement at 1.) Furthermore, as discussed above, and acknowledged by Dr. Flyer, restricting the labor supply of eligible Division I football players, as the eligibility rules in

the 2026-27 bylaws does, would normally tend to increase competition among remaining players. This is true because the input of labor supply decreases while the demand for players among institutions and the output remain the same. (*See* Flyer’s Aff. ¶ 24.) Therefore, the NCAA has demonstrated procompetitive effects of the restraints imposed by the 2026-27 bylaws, satisfying their burden under step two of a rule of reason analysis.

vi

Less Anticompetitive Means

Finally, once the NCAA has shown a procompetitive rationale for the restraint, the Plaintiffs must demonstrate that less anticompetitive means could have been used to achieve the procompetitive effect. *American Express Co.*, 585 U.S. at 542. To meet this burden, the Plaintiffs must offer alternatives to the restriction that are “‘virtually as effective’” at supporting the identified procompetitive purpose and do not increase cost significantly. *Epic Games, Inc.*, 67 F.4th at 990 (quoting *O’Bannon v. National Collegiate Athletic Association*, 802 F.3d 1049, 1074 (9th Cir. 2015)). Plaintiffs propose a narrower alternative to prospective application of the 2026-27 bylaw that categorically excludes Plaintiffs. The proposed alternative would allow schools to certify that there is an available roster position open, that the school will be able to comply with roster and compensation limits, and the school will preserve the commitments to other student-athletes that the member institution has already made. (*See* Pls.’ Reply Mem. 6.) This offers a simple solution in the case of URI, who held open spots for both Plaintiffs and have kept those spots open. *See id.*

Plaintiffs’ proposed solution, however, is not viable. It cannot be proven virtually as effective at supporting the procompetitive purposes for the 2026-27 eligibility bylaws as described by the NCAA. The purpose of excluding former student-athletes who exhausted their eligibility

under the 2025-26 bylaws is to preserve competitive opportunities for all athletes who do retain eligibility under either of the two bylaws. (*See* NCAA Article at 2; NCAA Division I Cabinet Statement at 1.) Furthermore, the NCAA explained that it hoped to provide players and institutions with greater certainty “as they plan for college and make important decisions regarding enrollment, competition and degree completion.” *See* NCAA Article at 2 (internal quotation omitted).

Clearly, the NCAA intended for the rule to give students and member institutions the confidence to make roster decisions moving forward that adhered to the effective bylaws. Plaintiffs have failed to demonstrate that other member institutions have held open roster spots for otherwise ineligible players awaiting an exemption to the exclusion. When eligibility rules are established, there will always be some class of individuals who are excluded from receiving the benefits they desire. In Plaintiffs’ case, they had already been excluded, and continue to be excluded, from Division I football competition. Plaintiffs’ proposed alternative, though, would not promote clarity, consistency, and opportunity for the younger and incoming eligible student-athletes.

D

Irreparable Harm

To establish a showing of irreparable harm, “[a] party seeking injunctive relief must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.” *Finnimore & Fisher Inc. v. Town of New Shoreham*, 291 A.3d 977, 986 (R.I. 2023) (quoting *Nye v. Brousseau*, 992 A.2d 1002, 1010 (R.I. 2010)).

Here, Plaintiffs argue that the loss of a season of intercollegiate football competition constitutes irreparable harm because each game is an opportunity to compete, further develop, gain film, and gain exposure to recruiters. (*See* Pls.’ Reply Mem. 7.) They argue the harm is presently

threatened because both players were unable to receive the exposure they wanted during their final season of eligibility under the 2025-26 bylaws, and another season of competition will give them the chance to compete for an opportunity to play professional football. *See id.*

Plaintiffs competed in four seasons of intercollegiate football. Compl. ¶¶ 2, 10, 16-18. At the conclusion of the 2025-26 season, Plaintiffs both understood that their eligibility was exhausted. *Id.* ¶¶ 59, 74. Neither plaintiff was eligible to play in the 2026-27 season. In June of 2026, six months after the conclusion of Plaintiffs' eligibility, the NCAA adopted the new eligibility model to be administered prospectively. (*See* NCAA Division I Manual at 43; NCAA Article at 2; NCAA Division I Cabinet Statement at 1; NCAA Transition Guidance at 5-6.) The 2026-27 bylaws became effective in August 2026. (NCAA Division I Manual at 43.) Plaintiffs' aspirations are truly amazing. However, these continued aspirations are speculative.

Plaintiff Peña also faces another hurdle because his eligibility is contingent upon approval from the school, the conference, and the NCAA. Peña's Aff. Ex. A. Granting preliminary injunction therefore will not necessarily alleviate harm allegedly suffered by Mr. Peña.

Here, because the NCAA clearly articulated its rationale for applying the rule prospectively, and because Plaintiffs' eligibility ended under the 2025-26 bylaw, Plaintiffs have not demonstrated that they will suffer irreparable harm upon denial of their motions.

E

Balance of Equities

Once the Court is satisfied that Plaintiffs have shown a likelihood of success on the merits and irreparable harm, the Court must balance the equities at issue in the case by examining the

hardships faced by each party and the public interest in the Court's decision. *Gabriel v. Willis*, 326 A.3d 172, 177 (R.I. 2024) (quoting *Finnimore*, 291 A.3d at 983).

Plaintiffs seek to limit the enforcement of the 2026-27 bylaws' exclusion of Plaintiffs, allowing Plaintiffs to continue competition while the matter is adjudicated. NCAA demonstrated their desire to promote clarity and confidence for students and member institution's enrollment and roster decisions. (See NCAA Article at 2; NCAA Division I Cabinet Statement at 1.) The NCAA's interest in administration of their organization far outweighs Plaintiffs' interest in gaining exposure while proceedings continue, especially where the Tenth Circuit in *Wisne* stayed a preliminary injunction formerly granted to a class of which Plaintiffs are members, and where the federal court must rule on the same issue of law. Plaintiffs' interest in securing future opportunities to gain a professional resume is insignificant in comparison with the NCAA's interest in the uniform application of its rules, bylaws, and exclusions across all jurisdictions in the United States. A finding in a number of states that the NCAA's 2026-27 bylaw excluding student-athletes of Plaintiffs' class would make the administration of the organization's national bylaws impossible.

In connection with balancing the equities, the Court is obligated to consider, as an integral factor, the public interest. *In re State Employees' Unions*, 587 A.2d at 925 (citing *R.I. Turnpike & Bridge Authority v. Cohen*, 433 A.2d 179, 182 (R.I. 1981)). Courts do not interfere with the actions and decisions of voluntary organizations as long as their rules are reasonable and consistent with public policy. *King v. Grand Chapter of Rhode Island Order of Eastern Star*, 919 A.2d 991, 996 (R.I. 2007). For matters of public interest, the NCAA's administrative decisions are protected under a reasonability standard and weigh against Plaintiffs' personal harm in competing in football. Thus, the balancing of equities tips in the NCAA's favor.

F

Status Quo

Finally, the Court must be satisfied that the issuance of a preliminary injunction would maintain the status quo. *Carlton v. Avagyan*, 359 A.3d 508, 516 (R.I. 2026). In the instant case, that would mean a return to the positions of the parties at the time the new bylaws were enacted. *Id.* at 521. At that time, neither Plaintiff was eligible to compete in collegiate football. As such, the status quo remains that Plaintiffs are ineligible to compete in collegiate football.

IV

Conclusion

Plaintiffs clearly are dedicated young men who have had outstanding collegiate football careers. Nothing in this Decision should diminish their accomplishments. The Court recognizes their respective achievements and is sympathetic toward each because of the consequences of this Decision. However, after a complete analysis, this Court concludes that Plaintiffs' requests for a Temporary Restraining Order and Preliminary Injunction are **DENIED**. Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Pena and Carcel v. National Collegiate Athletic Association**

CASE NO: **WC-2026-0552**

COURT: **Washington County Superior Court**

DATE DECISION FILED: **October 8, 2026**

JUSTICE/MAGISTRATE: **Taft-Carter, J.**

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