

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

**FLORIDA STATE UNIVERSITY
BOARD OF TRUSTEES,**

Plaintiff,

v.

Case No. _____

ATLANTIC COAST CONFERENCE,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES, acting for and on behalf of its steward, FLORIDA STATE UNIVERSITY (“FLORIDA STATE”), files this Complaint for Declaratory Judgment against Defendant, ATLANTIC COAST CONFERENCE (“ACC”), and respectfully submits as follows:

INTRODUCTION

The stunning exclusion of the ACC’s undefeated football champion from the 2023-2024 College Football Playoff (“CFP”) in deference to two one-loss teams from two competing Power Four conferences crystalized the years of failures by the ACC to fulfill its most fundamental commitments to FLORIDA STATE and its members. Those fundamental commitments – explicitly made and acknowledged in writing by the ACC – include the ACC’s duty to “generate substantial revenues” for its members, a constitutional purpose “[t]o foster quality competitive opportunities for student-athletes in . . . championships,” a mission “to maximize athletic opportunities” for its student-athletes, and a vision “to be at the forefront in . . . athletic achievement.” The ACC has fumbled all four.

Indeed, through chronic fiduciary mismanagement and bad faith, the ACC has persistently undermined its members' revenue opportunities including by locking them into a deteriorating media rights agreement that will soon result in a vast annual financial gap between the ACC and other Power Five (soon to be Power Four) conferences. Those failures have, by design, coalesced with the ACC's efforts to effectively deprive ACC members of their fundamental right to withdraw, through the combination of an unconscionable Grant of Rights provision and a prohibitive Withdrawal Penalty that are unparalleled in the history of intercollegiate athletics.

The ACC's hotly contested vote last September to add three new members, instead of increasing the value of its existing members' media rights will further dilute these values and diminish the ACC's already deemed inadequate "strength of schedule" rating going forward. This will necessarily handicap ACC members vying for a position in future CFPs against peers from the other Power Four conferences, including peers with inferior won-loss records. Perhaps the most telling metric of the lack of media caché those new ACC members carry, one has forfeited all media payments otherwise due it as a "member" of the ACC, while the other two forfeited approximately 66% of that payout . . . for the next several years. In sum, the ACC has negotiated itself into a self-described "existential crisis," rendered itself fiscally unstable and substantially undermined its members' capacity to compete at the elite level. In doing so, the ACC violated the contractual, fiduciary and legal duties it owed its members.

The ACC's failures transcend this single national championship opportunity lost or even just football. The ACC's incompetence at the bargaining table unfairly impedes the overall institutional advancement of all its members, including FLORIDA STATE. By depriving its members of the full media value of their football programs the ACC has undermined its members' ability to fund other vital sports such as women's and Olympic sports as well as soccer, lacrosse, and tennis. FLORIDA STATE relied on the advice, expertise and representations of the ACC and

its media consultant with regard to media rights. The ACC, however, appeared dedicated to self-preservation and self-perpetuation over the fiscal well-being of its members. A conference so dedicated cannot endure. FLORIDA STATE has continually challenged the ACC to be better for all its members yet the ACC has rebuffed FLORIDA STATE's efforts.

The foregoing and what follows below, in *toto*, compel the FLORIDA STATE BOARD OF TRUSTEES to determine whether its steward can be withdrawn from the ACC before the damage to FLORIDA STATE becomes even more irreversible. To that end, the FLORIDA STATE BOARD OF TRUSTEES seeks guidance from this honorable court.

PARTIES

1. Plaintiff FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES (the "FLORIDA STATE BOARD OF TRUSTEES") is a public body corporate of the State of Florida pursuant to section 1001.72, Florida Statutes, having stewardship over and the capacity to sue on behalf of FLORIDA STATE. The FLORIDA STATE BOARD OF TRUSTEES and FLORIDA STATE both have their principal places of business in Leon County, Florida. The FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES, in a publicly noticed meeting on December 22, 2023, authorized the initiation of this action.

2. The ACC, a collegiate athletic conference, is a North Carolina unincorporated nonprofit association with its principal place of business in Charlotte, North Carolina. The institutions included within college athletic conferences are known as "members."

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this suit pursuant to section 26.012(2)(a) and (c), Florida Statutes.

4. Because the ACC is a citizen of every jurisdiction in which its members are citizens, and two ACC members are Florida citizens, this Court has personal jurisdiction over it.

5. Venue is proper pursuant to section 47.011, Florida Statutes.

FACTUAL BACKGROUND

6. The ACC itself was borne exclusively of original members that withdrew from another conference, with its 2020|2021 Manual stating that its formation was precipitated by “[t]he withdrawal of seven institutions from the Southern Conference early on the morning of May 8, 1953, during the Southern Conference’s annual spring meeting.” Ostensibly, those institutions withdrew for financial reasons.

7. Those seven withdrawing members became the charter members of the ACC. Since then, two – the University of South Carolina (“South Carolina”) and the University of Maryland (“Maryland”) – have withdrawn from the ACC.

8. South Carolina withdrew and ultimately joined the Southeastern Conference (“SEC”) while Maryland withdrew to join the Big Ten Conference (“Big Ten”). Ostensibly, both withdrew from the ACC for financial reasons.

9. FLORIDA STATE did not join the ACC until 1991.

10. The SEC, the Big Ten, the ACC, the Big 12 Conference (“Big 12”) and the Pac-12 Conference (“Pac-12”) have for decades been the five dominant college athletic conferences known as the “Power Five” (soon to be Power Four) conferences.

11. As discussed further below, the Pac-12 imploded due to the Pac-12’s failure to successfully exploit its members’ media rights. The four remaining conferences (SEC, Big Ten, Big 12 and ACC – the “Power Four”) are the largest and most financially impactful college athletic programs in America.

12. In the past four decades, no member of the SEC or the Big Ten has withdrawn.

13. In the past two decades, in contrast to the ACC, the SEC and the Big Ten have aggressively and repeatedly negotiated increasingly more lucrative media rights agreements, generating substantial revenues for their members, without locking them into the much longer-term media agreements the ACC negotiated. The SEC and the Big Ten are today considered the most powerful and fiscally sound collegiate athletic conferences in the United States.

14. This was not always the case. North Carolina's largest newspaper, the *News & Observer*, chronicled the decline of the ACC in the 21st century largely based on its failure to successfully exploit its members' media rights. "In 2002 the ACC and the Big Ten were more or less financial equals, separated by about \$6.5 million in favor of the Big Ten. About a decade later [2012], the once small and relatively insignificant monetary gap between the conferences had grown almost \$100 million wide." *How the ACC went from one of the most successful in college sports history to uncertain future*, A. Carter, *The News & Observer*, July 10, 2022 <https://www.newsobserver.com/sports/college/acc/article263200793.html>.

The ACC's Contractual Commitments To Its Members

15. According to an ACC Court filing in North Carolina, "[t]he Constitution of the ACC (the 'Constitution') is a contract" "pursuant to which the "ACC is organized by and operates." *Atlantic Coast Conference v. University of Maryland*, ACC Complaint, ¶¶ 8-9, Case No. 12CVS10736, Superior Court of North Carolina, Guilford County, 2012 WL 8305455 at * 3, Nov. 26, 2012 (hereinafter "*ACC v. Member Maryland*").

16. The ACC Constitution has always afforded its members the right to withdraw.

17. The first substantive section of the ACC Constitution establishes that "the purpose and function of the Conference [is] to enrich . . . its member institutions," which object is to be

achieved by, among other things, “[e]ncourag[ing] responsible fiscal management and further fiscal stability” and “[a]ddress[ing] the future needs of athletics.”

18. In that same first section, the ACC also promised to “[f]oster quality competitive opportunities for student-athletes in . . . championships.”

19. According to its *MISSION STATEMENT*, the ACC promised “[t]o maximize the . . . athletic opportunities that shape our leaders of tomorrow . . . in competition.” According to its *VISION STATEMENT*, the ACC promised its members “[t]o be at the forefront in . . . athletic achievement, and innovation.”

20. At all times relevant, the ACC admits to being a “common enterprise” obliged to “generate[] substantial revenue on which the member institutions rely each year.” *ACC v. Member Maryland*, ACC Complaint, ¶ 20.

21. To that end, Section 2.10.1 of the ACC Bylaws states “the Members have granted to the conference the right to exploit certain media and related rights of the Members (such rights, the ‘Media Rights’).”

22. The ACC has failed to exploit those media rights successfully, especially in comparison to its peer conferences.

Media Rights in the Current College Sports Landscape

23. Generally, two types of media rights agreements have evolved over the past two decades in college athletics: (i) national, and (ii) regional.

24. The national contracts encompass the “marquee” conference games of national significance and are commonly referred to as “Tier I” games, rights or agreements.

25. The regional contracts typically involve games that are generally considered only regionally (on a geographic basis) significant and/or are games involving less popular sports and are commonly referred to as “Tier III” games, rights, or agreements.

26. The Tier III rights agreements involve and include the development of a conference-affiliated, branded sports network, oftentimes distributed in a more limited geographic area, often referred to as “prestige” networks because members view them as an enhancement of their profile.

27. It is widely understood that approximately 80% of the media rights payments made to the Power Five (soon to be Power Four) Conference members are attributable to their Tier I rights while approximately 20% are attributable to their Tier III rights.

28. Since at least 2016, the Entertainment Sports Programming Network, Inc. (“ESPN”) and the ACC have recognized that football comprises approximately 80% of the value of each member’s overall athletic media rights.

The First ACC-ESPN Agreement and the Advent of Withdrawal Penalties

29. On July 8, 2010, by way of its hired media consultant, the ACC entered its first Multi-Media Agreement with the ESPN and ESPN Enterprises, Inc. (“2010 ACC-ESPN Multi-Media Agreement”).¹

¹ The ACC refuses to provide its members, much less the public, with a copy of the media rights agreements it with its media consultant negotiated, and to which its members are thus “committed.” Rather, members are only allowed to inspect the document at the ACC’s headquarters after first obtaining permission from the ACC and while under the ACC’s watchful eye, making it almost impossible for the members to ascertain whether the terms of “their” media rights agreement is competitive or at market. For example, to gather the information necessary to compose this pleading, attorneys on behalf of FLORIDA STATE had to make multiple trips to Greensboro, North Carolina to ascertain the “terms” of Florida State’s media rights within the ACC.

30. On the heels of finalizing that agreement, in September of 2011, apparently fearing that the terms of its new media rights agreement were not competitive with those of its peer conferences, the ACC implemented a sanction to penalize any withdrawing member.

31. Claiming to having performed an analysis to determine the enterprise cost of a member withdrawal, the ACC announced it had calculated that cost as exactly 1.25 times (1.25X) the ACC's total operating budget, which at the time would have meant a payment of approximately \$21 million.

32. On September 13, 2011, the ACC amended its Constitution to add this withdrawal penalty formula. *ACC Constitution*, § 1.4.5 (2011).

33. The following spring, the ACC and ESPN renegotiated the key terms of the existing agreement producing the May 9, 2012, ACC-ESPN Amendment (the "2012 ACC-ESPN Amendment"), which provided for a lengthy 15-year term, expiring June 30, 2027.²

34. The 2012 ACC-ESPN Amendment encompassed only Tier I rights and treated all members the same, meaning that all ACC members were homogenous with no members designated as preferred or "must keep" schools over others.

35. The 2012 ACC-ESPN Amendment set the initial per member Tier I rights annual payment at \$12,269,021. That amount increased by a rate 4.5% annually for the ensuing 15 years or through 2027. The scheduled per-member payment for the ACC's Tier I rights is \$19.9M for 2023-2024 .

² It is a widely repeated misconception that the ACC's multi-media rights agreement expires in 2036. As explained below, in truth, the multi-media rights agreement expires in 2027 unless ESPN chooses to exercise its unilateral option through 2036, a decision ESPN has no duty to make until February 2025, thanks to other additional of conference mismanagement detailed below.

36. Set forth in table form, the 2012 ACC-ESPN Amendment guaranteed Tier I payment structure per member for the period from 2012 to 2027 looked like this:

Year	2012 ACC-ESPN Amendment	
	Guaranteed	Tier I Rights Payment Per Member (12 Members)
	Cash Payment	% Growth
2012-13	\$12,269,021	4.50%
2013-14	\$12,821,127	4.50%
2014-15	\$13,398,077	4.50%
2015-16	\$14,008,991	4.50%
2016-17	\$14,631,036	4.50%
2017-18	\$15,289,432	4.50%
2018-19	\$15,977,457	4.50%
2019-20	\$16,696,443	4.50%
2020-21	\$17,447,782	4.50%
2021-22	\$18,232,933	4.50%
2022-23	\$19,053,415	4.50%
2023-24	\$19,910,818	4.50%
2024-25	\$20,806,805	4.50%
2025-26	\$21,743,111	4.50%
2026-27	\$22,721,551	4.50%

37. The terms of the 2012 ACC-ESPN Amendment included no adjustment to the rote 4.5% annual increase percentage for changing media market conditions.

38. In the constantly changing college sports media rights landscape, the more antiquated a Tier I rate structure is, the more out-of-market and uncompetitive any agreement predicated on such rates becomes, with the 2012 ACC-ESPN Amendment proof positive.

39. Following the pattern established the prior year, the following September, in recognition that its newly negotiated and excessively long-term media was not competitive and only *increased* the financial incentive for a member to withdraw, the ACC decided to ratchet up the withdrawal penalties.

40. On September 12, 2012, the ACC amended its Constitution to inflate its then one-year-old withdrawal penalty by 240%, making it “equal to three times [3X] the total operating

budget of the” enterprise, a budget that escalates each year, effectively increasing the withdrawal penalty each year, making no provision for future increases in the ACC’s budget, regardless of the amount or reasonableness of any such increases. ACC Constitution 1.4.5 (2012). Maryland opposed the exponential sanction increase and voted against the maneuver.

Charter ACC Member Maryland Withdraws and Promptly Gets Sued by the ACC

41. Neither the May 2012 ACC-ESPN Amendment nor the implementation of the exponentially more severe withdrawal penalty were enough to dissuade an ACC charter member, Maryland, from exercising its right to withdraw from the ACC.

42. On November 19, 2012, Maryland withdrew from the ACC for what was widely understood to be financial reasons in order to join the Big Ten.

43. About a week later, the ACC sued Maryland in North Carolina state court seeking to extract from Maryland the maximum withdrawal fee just enacted (which Maryland had opposed).

44. In that lawsuit, the trial Court labeled the withdrawal fee a “penalty” stating: “[T]he annual operating budget of the ACC for the 2012-2013 year was \$17,422,114. Multiplying this figure by the agreed upon factor of one and one-quarter makes the total withdrawal *penalty* \$21,777,642.50.” *Atlantic Coast Conference v. University of Maryland Board of Trustees*, 751 S.E.2d 612, 614 n.2 (NC App. 2013) (emphasis supplied). (The “*ACC Withdrawal Penalty*”.)

45. The Court of Appeals of North Carolina also declared the 2012 ACC Constitutional amendment a “penalty” as well: “[m]ultiplying the annual operating budget of the ACC for the 2012-2013 year by the new factor of three increases the total withdrawal penalty to \$52,266,342.” *Atlantic Coast Conference v. University of Maryland Board of Trustees*, 751 S.E.2d 612, 614 n.3 (NC App. 2013) (emphasis supplied). (Hereinafter “*Severe ACC Withdrawal Penalty*.”)

The ACC Seeks to Barricade the Exit Altogether With a Draconian Grant of Rights

46. In the wake of Maryland's withdrawal, ACC leadership concluded that even its new *Severe ACC Withdrawal Penalty* of nearly \$52.3 million was not sufficiently harsh to prevent its members from exiting the conference; that it still had not achieved the desired *in terrorem* effect.

47. In April of 2013, the ACC deviated from its pattern. Rather than add draconian penalties, *after* having committed the members to a new long-term media deal, this time the ACC sought to implement the greater sanction in a vacuum, before the members even had any media proposal before them. The ACC materialized a pact to be entered and maintained in secrecy labeled the "Atlantic Coast Conference Grant of Rights Agreement" (the "ACC GofR") the literal purpose of which was to trap the members in the conference for the duration of the 2012 ACC-ESPN Amendment, or through 2027, making it impossible for them to withdraw like Maryland just had.³

48. The ACC GofR does not purport to amend the ACC Constitution and Bylaws, and that publicly available contract nowhere sets forth the ACC GofR or any of its terms.

49. In presenting the 2013 ACC GofR, the ACC made no pretext that the additional, crippling penalties it leveled were in any way designed to compensate the ACC for a withdrawal.

50. Although the ACC GofR claimed to "provide[] valuable benefits to each Member Institution of the Conference," it articulated none. Indeed, the sole consideration recited in the ACC GofR were already existing media rights agreements. In other words, ACC members received no new consideration for the ACC GofR. The ACC GofR ran through June 30, 2027, similar to the 2012 ACC-ESPN Amendment.

³ The ACC refused to provide its members, much less the public, a copy of the ACC GofR. Members were only allowed to inspect the document at the ACC's headquarters after first obtaining permission and while under the ACC's watchful eye.

51. The ACC GofR purported to require that any member daring to withdraw would forfeit to the ACC all of its future media rights for the next 14 years (through June, 2027) “regardless of whether such member institution remains a member of the Conference during the entirety of the Term” for which the ACC would pay the departing member nothing. The ACC GofR did not amend the Constitution of the ACC which still allows members to come and go.

52. Assuming a member had withdrawn from the ACC in 2013, it would have faced a total penalty of \$234 million. The \$234 million penalty would be comprised of: (i) the Severe ACC Withdrawal Penalty of \$52 million; (ii) forfeiture of media rights media rights (\$12 million x 14 years = \$168 million); and (iii) forfeiture of a right to unreimbursed broadcast expenses⁴ totaling \$14 million. The following table depicts the dramatic increase in the penalty for withdrawal:

TRAJECTORY OF ACC-LEVIED "PENALTY FOR WITHDRAWING" 2010-2013		
Year	Penalty Amount	Source(s)
2010	\$0.00	ACC Constitution
9/13/2011	\$21,777,642.50	ACC Withdrawal Penalty
9/12/2012	\$52,266,342.00	Severe ACC Withdrawal Penalty
4/13/2013	\$234,266,342.00	ACC GofR + Severe ACC Withdrawal Penalty

The ACC’s Prestige Network Starts from Behind

53. The Big Ten has had a branded “prestige” network since 2006 (the “Big Ten Network”).

54. In 2013, the ACC learned that ESPN was negotiating with the SEC to create the “SEC Network”, and ACC leadership became anxious.

⁴ Under the ACC’s agreements with ESPN, conference members are to receive \$1 million each year as reimbursement for costs incurred by those conference members in connection with the broadcasting of games.

55. In 2013, the ACC presented a “Competitive Market Analysis” to its members supposedly “to evaluate the current-day competitiveness of the ACC and the long-term growth opportunities and positioning of the conference in the industry.”

56. The presentation asserted that “[t]he SEC will announce the planned launch of the SEC Network in partnership with ESPN in 2014.” The presentation went on to state “[i]f it is determined that an ACC Network can be a success, ESPN has indicated it will do a deal on the same terms and conditions as it has with the SEC on the SEC Network.”

57. In 2014, ESPN launched the SEC Network pursuant to a 20-year term agreement. The ACC placated the ACC members with the news a network agreement with ESPN was in the works for them.

58. In June of 2016, the ACC members were told that the launch of the ACC’s prestige network (referred to as the “ACC Network”) would be delayed three more years, or until 2019, due to the sequence of ESPN and Disney television distribution deals with ESPN/Disney’s major cable and satellite distributors.

59. Although such a projected launch date would be six years after the ACC members’ first request for such a network and would slot the ACC five years behind the SEC and 13 years behind the Big Ten, the ACC provided the members with no alternative.

The ACC Feigns “ESPN Ultimatum” and Enters a Disastrous Tier I Agreement

60. At about the time it announced the three-year delay in the prestige network launch, the ACC verbally represented to its members that ESPN had issued an ultimatum: unless each ACC member executed an extension of the ACC GofR, from 2027 to 2036, a full nine years beyond the then-expiration of ESPN’s Tier I agreement, ESPN would enter into no further media rights agreements with the ACC.

61. In June of 2016, the ACC wrote: “ESPN has informed the Conference that it will enter into the Prospective Agreements only if each of the Member Institutions agrees to amend the [ACC GofR] to extend the term thereof” through 2036 (the “ESPN Ultimatum”).

62. In reliance on the assumed truth of the ACC’s representations and faced with a \$234 million sanction if it did not capitulate, FLORIDA STATE’s then President voted to extend the ACC GofR to 2036 (the “2016 GofR Extension”).

63. Thereafter, on July 21, 2016, the ACC and ESPN signed (i) an Amended and Restated Multi-Media Agreement (the “2016 ACC Tier I Agreement”), and (ii) a Network Agreement (the “2016 ACC Network Agreement”) for the Prestige Network (collectively, the “2016 ESPN Agreements”). The ACC had 15 members when it signed the 2016 ESPN Agreements which would become important in the September 32023 vote to add three new teams.

64. The 2016 ESPN Agreements do not reference or incorporate the 2016 Grant of Rights Extension, but instead contained a grant-of-rights recital and representations similar to the provisions included in most media rights agreements involving multiple institutions not signatories to the agreement.

65. The 2016 ESPN Agreements obligated ESPN to pay the ACC a fee while ESPN delayed the launch of the ACC’s prestige network, the shorthand for which became “network placeholder consideration,” which ceased upon the launch of the ACC Network, which at that time was scheduled to take place in 2019.

66. The 2016 ACC Network Agreement granted ESPN the power to shut down the ACC Network even after launch under certain circumstances. In the event of such shutdown, ESPN would be obliged to start making the network placeholder consideration payments again, but only until June 30, 2027 (rather than to 2036).

67. The 2016 ACC Network Agreement included no guaranteed rights payments from ESPN beyond a \$1 million annual production fee paid to each member.

68. There is no guarantee that the 2016 ESPN Tier I Agreement will be in effect past 2027, and thus it contains no guaranteed payments to the ACC beyond June 30, 2027.

69. The 2016 ESPN Agreements treated all full ACC members the same, meaning each member, including new members, were completely interchangeable. So long as the ACC included at least 15 members, any member could withdraw without any financial consequence to the ACC, and each remaining member's share would not be affected.

70. Under the 2016 ESPN Agreements, the ACC had wide latitude as to potential future members, meaning the ACC is free to swap in schools whether or not from Power Five (soon to be Power Four) Conferences without repercussion.

71. But in the 2016 ACC Tier I Agreement, the ACC wholly neglected to negotiate new Tier I rates at then-market levels, meaning the members were left at the exact same financial terms that the ACC's media consultants had negotiated four years before, in the 2012 ACC-ESPN Amendment. This can be seen by comparing the two contracts side-by-side for annual per member payments:

Year	2012 ACC-ESPN Amendment		2016 ACC Tier I Agreement			
	Guaranteed Tier I Rights Per Member (12 Members)		Guaranteed Tier I Rights Paid Per Member (14.184 Members)			
	Cash Payment	% Growth	Cash Payment	% Growth	Add'l Notre Dame (.184 Member) Cash Payment	% Growth
2012-13	\$12,269,021	4.50%				
2013-14	\$12,821,127	4.50%				
2014-15	\$13,398,077	4.50%				
2015-16	\$14,008,991	4.50%				
2016-17	\$14,631,036	N/A	\$14,631,036	N/A	\$2,731,127 (18.4% of Member)	N/A
2017-18	\$15,289,432	4.50%	\$15,289,432	4.50%	\$2,854,027 (18.4% of Member)	4.50%
2018-19	\$15,977,457	4.50%	\$15,977,457	4.50%	\$2,982,459 (18.4% of Member)	4.50%
2019-20	\$16,696,443	4.50%	\$16,696,443	4.50%	\$3,116,669 (18.4% of Member)	4.50%
2020-21	\$17,447,782	4.50%	\$17,447,782	4.50%	\$3,256,919 (18.4% of Member)	4.50%
2021-22	\$18,232,933	4.50%	\$18,232,933	4.50%	\$3,403,481 (18.4% of Member)	4.50%
2022-23	\$19,053,415	4.50%	\$19,053,415	4.50%	\$3,556,637 (18.4% of Member)	4.50%
2023-24	\$19,910,818	4.50%	\$19,910,818	4.50%	\$3,716,686 (18.4% of Member)	4.50%
2024-25	\$20,806,805	4.50%	\$20,806,805	4.50%	\$3,883,937 (18.4% of Member)	4.50%
2025-26	\$21,743,111	4.50%	\$21,743,111	4.50%	\$4,058,714 (18.4% of Member)	4.50%
2026-27	\$22,721,551	4.50%	\$22,721,551	4.50%	\$4,241,356 (18.4% of Member)	4.50%
2027-28						
2028-29						
2029-30						
2030-31						
2031-32						
2032-33						
2033-34						
2034-35						
2035-36						
	N/A		Nothing unless ESPN in February 2025 exercises the Unilateral ESPN Nine-Year Option (§ 69)			

72. Perhaps most glaring, as the above chart demonstrates, (a) in 2016, the ACC negotiated NO guaranteed payments from ESPN for the nine-year period of extension mandated under the 2016 Grant of Rights, from 2027 to 2036; and (b) the ACC left in place an outdated and increasingly below market base payment rate (first negotiated in 2012), for 24 years – more than a generation.

73. For reasons never explained to FLORIDA STATE, the 2016 ACC Tier I Agreement granted ESPN a *unilateral* option to extend that Agreement with its already out-of-market rates *an additional nine years* beyond its expiration on June 30, 2027, or until 2036 (the “Unilateral ESPN Nine-Year Option”).

74. As a result, although the 2016 ACC Tier I Agreement locked down the ACC members for an unheard of 24 years (through 2036) at Tier I rates negotiated in 2012 (capped at 4.5% annual growth), which rendered the ACC unable to “market” its media rights for the period from 2027 to 2036, the Unilateral ESPN Nine-Year Option left ESPN free to walk away from the ACC (even at those below market rates) during that same nine year period.

75. To make matters worse, in advance, the ACC duped its members into extending the draconian Grant-of-Rights for the same nine year period, from 2027 through 2036, on the grounds it was the supposed mandatory pre-condition for the privilege of being bound to the 2016 ESPN Agreements.

76. The terms of the 2016 ESPN Agreements belie the existence of any ESPN Ultimatum in the first instance as they both contemplate and permit the withdrawal and addition of members interchangeably without financial consequence, as long as the number of members remains at least 15. No such provision would exist if, in truth, the ACC owned all 15 members' Tier I media rights through 2036 "regardless of whether such member institution remains a member of the conference during the entirety of the term." The 2016 ESPN Agreements would make no provision for withdrawal as it would have no bearing on the disposition of the withdrawing members media rights.

The Competitive Market Leaves the ACC Further Behind Yet The ACC Gratuitously Triples the Length of the Unilateral ESPN Nine-Year Option

77. In the past few years, the 2016 ACC Tier I Agreement rate escalators have failed to keep pace with the increasing value of media rights. Also, current projections indicate the Tier III payments under the 2016 Network Agreement will shortly plateau and begin to decline.

78. On December 10, 2020, ESPN announced a new 10-year SEC Tier I Agreement. The 2020 SEC Tier I Agreement was far more lucrative per member than the 2016 ACC Tier I Agreement which will expire in 2030, a full six years before the expiration of the extended 2016 Tier I Agreement, widening an already substantial gap between the ACC and other Power Four Conferences.

79. The ACC Network was finally launched in 2019, triggering a requirement that ESPN exercise its Unilateral ESPN Nine-Year Option by 2021. But without any apparent

instigation, the ACC Commissioner gratuitously extended that option exercise deadline for four additional years, or until February 2025.

80. On August 14, 2021, the Commissioner, without agreement from FLORIDA STATE, accomplished this extension by signing a formal amendment of the 2016 ACC Tier I Agreement drafted by ESPN. The ACC obtained nothing from ESPN in return.

81. Although the 2016 ACC Tier I Agreement was a “Material Media Rights Agreement” under ACC Bylaw 2.3.1.q., it appears the ACC never secured the “approval of two-thirds (2/3) of the Directors” to amend it as required by ACC Bylaw 2.10.3.

82. In an email dated August 13, 2021, the day before he signed the amendment, the ACC Commissioner described “the constantly changing media rights landscape and the continued fluidity surrounding collegiate athletics”, explaining that “the added time could potentially prove beneficial if we are able to work out a different arrangement with ESPN.”

83. The ACC has “worked out” no different arrangement with ESPN over the past two-plus years while the SEC and Big Ten were busy negotiating and securing more lucrative media rights agreements for their members.

The Other Conferences Negotiate and Re-Negotiate More Lucrative Media Deals

84. Under the 2016 ESPN Agreements, each full time ACC member is expected to be paid approximately \$33M in 2023.

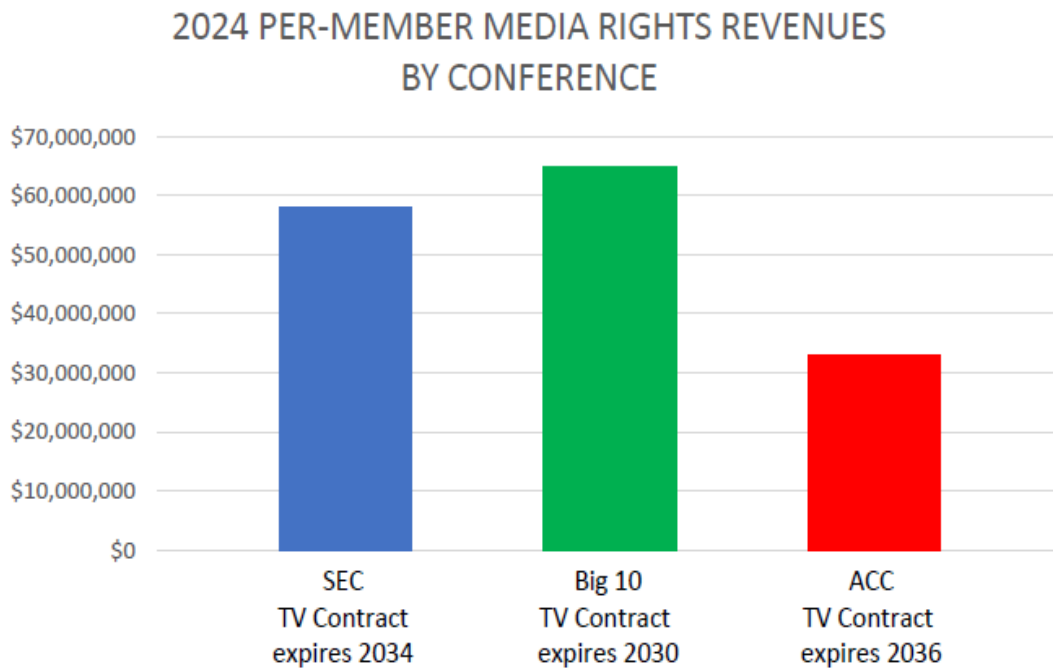
85. Notwithstanding the loss of its two signature members (the University of Texas and Oklahoma University) (*see*, ¶¶ 99, 100), the Big 12 negotiated a new Tier I agreement with ESPN and Fox Sports last year that pays its members substantially more annually than is paid to ACC members. That deficit will grow an additional \$11 million per annum per member in just two

years. This new agreement expires five years before the 2016 ACC Tier I Agreement, the payment structure of which was last negotiated in 2012.

86. In 2023, the Big Ten re-negotiated its Tier I media rights agreement, making that agreement far more lucrative than that of the ACC. The new Big Ten agreement expires in 2030, six years before that of the ACC.

87. This year, the SEC again re-negotiated its more lucrative 2020 Tier I Agreement with ESPN. That new SEC-ESPN agreement expires in 2034, two years before that of the ACC.

88. The ACC now stacks up this way when comparing the revenues being provided per member per year to the Big Ten and SEC:

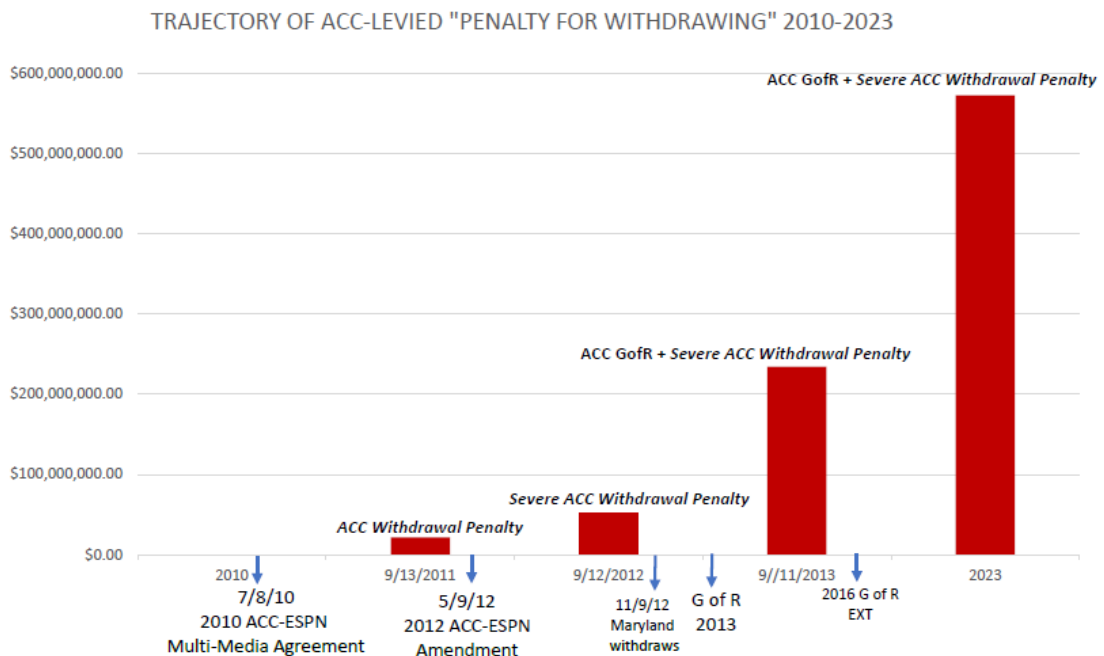


89. Since 2012, the SEC, the Big Ten and the Big 12 will each have had at least two (if not three) bites at the Tier I media rights apple with television networks before the ACC gets its first in 2036, and these conferences have used those opportunities to negotiate better terms to widen the gap between the compensation their members receive for their media rights and the compensation ACC members receive for their media rights. *See*, ¶ 88.

The Economic Cost of the ACC’s Existing Penalty Apparatus in 2023

90. The total operating budget for the ACC in 2023 was \$43.3 million. Under the *Severe ACC Withdrawal Penalty*, three times that amount is approximately \$130 million. Now, because of the ACC GofR Extension, ACC members face a withdrawal penalty of \$572 million, comprised of: (i) \$429 million for the forfeiture of media rights through 2036 (\$33M x 13 years) (ii) \$13 million for unreimbursed broadcast fees (\$1M x 13 years); and (iii) the Severe ACC Withdrawal Penalty of \$130 million. The runaway escalation of the withdrawal penalty package is depicted as follows:

TRAJECTORY OF ACC-LEVIED "PENALTY FOR WITHDRAWING" 2010-2023		
Year	Penalty Amount	Source(s)
2010	\$0.00	ACC Constitution
9/13/2011	\$21,777,642.50	<i>ACC Withdrawal Penalty</i>
9/12/2012	\$52,266,342.00	<i>Severe ACC Withdrawal Penalty</i>
9//11/2013	\$234,266,342.00	<i>ACC GofR + Severe ACC Withdrawal Penalty</i>
↓	↓	↓
2023	\$572,000,000.00	<i>ACC GofR + Severe ACC Withdrawal Penalty</i>



91. The ACC has never undertaken any analysis to determine whether its penalty apparatus in any way approximates the consequences to the ACC of a single member withdrawal.

92. Going forward, each member of the SEC and Big Ten will receive about approximately double that of each ACC member. Consequently, the additional economic cost of being an ACC member rather than a Big Ten or SEC member is roughly an additional \$30 million per year above and beyond the all the above penalties.

93. The egregiousness of the ACC's severe withdrawal penalty package is also demonstrated by its stark contrast with the withdrawal fees to be paid by SEC conference members, which is reported to be (i) \$30 million if the withdrawing member gives notice of its withdrawal at least two years prior to the effective date of the withdrawal; (ii) \$40 million if no notice or less than two years' notice of withdrawal is provided; and (iii) \$45 million if a member is deemed to have withdrawn without notice. *Report: SEC Added Withdrawal Fee of Up to \$45 Million in 2021*, Dan Lyons, *Sports Illustrated*, January 4, 2022 <https://www.si.com/college/2022/01/04/sec-adds-withdrawal-fee-conference-realignment-2021>.

94. By 2022, the ACC faced “an existential crisis” due to its precarious financial condition and fiscal instability.

95. As North Carolina's largest newspaper, the *News & Observer*, reported last summer “the ACC finds itself here, in a brewing existential crisis” due to its perilous financial and fiscal condition. *How the ACC went from one of the most successful in college sports history to uncertain future*, A. Carter, *The News & Observer*, July 10, 2022 <https://www.newsobserver.com/sports/college/acc/article263200793.html>.

96. FLORIDA STATE is a victim of chronic mismanagement by ACC leadership and finds itself unable to effectively evaluate alternatives while the Severe Withdrawal Penalties and the GofR hang over FLORIDA STATE's head. Therefore, those penalties effectively prevent FLORIDA STATE from realizing its market worth.

The ACC Mishandles the Sweeping Conference Realignment of the 2020's

97. As the *Raleigh News & Observer* noted in September of this year, "football is the end-all, be-all of college athletics at this point, the driving force behind every single decision made from realignment to television partners." *The ACC has a big Notre Dame problem, and it's not the 28-game football losing streak*, Luke Decock, *The News and Observer*, September 13, 2023 <https://www.newsobserver.com/sports/spt-columns-blogs/luke-decock/article278972299.html>.

98. Nothing demonstrates this more than the wave of conference realignments that began two years ago.

99. In 2021 the *New York Times* reported: "[s]tarting what would be the most consequential reordering of college sports conferences in about a decade", the University of Oklahoma and the University of Texas planned to withdraw from the Big 12. *Eyeing the SEC, Oklahoma and Texas Plan to Leave to Big 12*, June 26, 2021, Alan Binder and Kevin Draper, *New York Times*, <https://www.nytimes.com/2021/07/26/sports/ncaaf/oklahoma-texas.html#:~:text=Starting%20what%20would%20be%20the,league%20in%20the%20coming%20years>. Oklahoma and Texas had the most valuable Tier I rights in the Big 12.

100. About a year later, after the reported departure of Oklahoma and Texas from the Big 12, the University of California Los Angeles ("UCLA") and the University of Southern California ("USC") announced they were leaving the Pac-12 for the Big Ten. "A second round of power conference realignment in as many years is officially underway." *USC, UCLA to leave*

Pac-12 in 2024: College sports begins its latest seismic shakeup, June 23, 2022, David Cobb, *CBS Sports* <https://www.cbssports.com/college-football/news/usc-ucla-to-leave-pac-12-for-big-ten-in-2024-college-sports-begins-its-latest-seismic-shakeup/>. USC and UCLA at the time were believed to have the most valuable Tier I rights in the Pac-12.

101. In 2023, realignment accelerated as the Big Ten and Big 12 acquired the six remaining Pac-12 colleges with the most valuable Tier I media rights.

102. In addition to USC and UCLA, the Big Ten added the Pac-12's two top-ranked teams, the University of Washington (currently ranked number 2 and selected for the CFP) and the University of Oregon (currently ranked number 8). *See, College Football Playoffs Final Rankings*, <https://collegefootballplayoff.com/news/2023/12/3/cfp-rankings-2023-1203.aspx>.

103. On August 4, 2023, the Big 12 added from the Pac-12 the University of Arizona, Arizona State University, the University of Colorado, and the University of Utah, to become members of its athletic conference.

104. That left just four teams in the Pac-12: California Berkley ("California"), Stanford University ("Stanford"), Oregon State University ("Oregon State") and Washington State University.

105. Both the Big 12 and the Big Ten passed on all four of those remaining Pac-12 schools. It is widely believed that both conferences (and presumably the SEC) passed on California and Stanford based on their comparative lack of Tier I football media appeal.

106. The Big 12 has repeatedly passed over for membership a long-time football college school located in its home state of Texas, Southern Methodist University ("SMU"), even though the Big 12 recently invited three other members from SMU's conference, the American Athletic Conference, which has never been considered a Power Five (soon to be Power Four) Conference.

107. The then-Commissioner of the Big 12, Bob Bowlsby explained that decision: “I’ve known them both [the SMU President and Athletic Director] for a long time. I have great respect for them. But we went after the best athletes we could find, and it was the four [colleges] we got. They were the ones that bring the highest top-end and the most value.” <https://247sports.com/article/conference-realignment-bob-bowlsby-details-why-big-12-passed-on-smu-and-others-future-expansion-still-viable-173563791/>.

108. The ACC remained on the sideline while all the other Power Four Conferences built up their Tier I media football values.

109. Although clear by 2023 that a college athletic conference fulfilling its duty to enhance its revenue-generating prowess meant augmenting its football prowess, the ACC took a deliberate step in the opposite direction this past September.

110. In mid-August 2023, certain ACC members and one fractional member began to extol the esoteric virtues of Cal and Stanford. “This week the realignment circus moved over to whether Stanford and Cal – two of the four lonely teams still left in the Pac-12 – should join the ACC.” *Why College Football Cannot Help Itself*, August 15, 2023, Jason Gay, *Wall Street Journal* <https://www.wsj.com/sports/football/college-football-pac-12-collapse-cal-stanford-df172d69>.

111. As the Wall Street Journal put it: “[c]ollege sports can’t help it. The television money’s too good, the hubris too hubris-tastic, so the hypocrisy flourishes and the wrecking ball pushes on,” though it questioned the sanity of what right-thinking conference would want its marquee teams “to play in a half-empty former Pac-12 stadium.” *Id.*

112. Although Stanford and Cal are excellent schools with well-deserved outstanding academic reputations, they are each lacking in the lone metric that matters in the athletic conference market today, namely, Tier I media football appeal.

113. Of the four remaining Pac-12 teams, Oregon State stood alone having finished this season ranked number 22 in the polls, while Cal was ranked number 56 and Stanford number 94 (out of a possible 133). <https://theathletic.com/5110183/2023/12/04/college-football-rankings-fbs-washington-michigan/>. Just as last year, this year Stanford and Cal finished in the bottom half of the Pac-12 in football standings.

114. In demonstration that the ACC had missed the point of conference realignment, in making its ‘strategic’ conference realignment move, the ACC skipped over Oregon State in favor of Cal and Stanford, a recognition the ACC did not appreciate what had driven the Power Four Conference realignment in the first instance – Tier I media value in football.

115. The additions by the ACC were in fact self-serving and defensive as opposed to strategic, in that the addition of these three schools by the ACC was designed to insulate the ACC from falling below the fifteen member critical mass required by the 2016 ESPN Agreements should any members of the conference exercise their right to exit.

116. The additions of Cal, Stanford and SMU were made over the strenuous objections of FLORIDA STATE and other ACC member institutions. The ACC also tapped SMU, which has never been a member of a Power Five (soon to be Power Four) Conference and which the Big 12 had been passing on for years.

117. Simply stated, rather than improve its football media profile, the ACC consciously chose to diminish it, along with undermining the ACC’s “Strength of Schedule” potential.

118. Sports Illustrated labeled the ACC as the “Arbitrary Conglomerate of Colleges”. *Dear Cal, Stanford and SMU: The ACC Makes No Sense, but Welcome!*, Michael Rosenberg, *Sports Illustrated*, September 1, 2023 <https://www.si.com/college/2023/09/01/cal-stanford-smu-acc-expansion-makes-no-sense>.

119. As proof of the admitted trio's lack of football media value, the new members were compelled to buy their way into the ACC by agreeing to re-direct either all (in the case of SMU) or most (67% in the case of Cal and Stanford) of the ACC media revenues otherwise due them, to the other ACC members for the foreseeable future.

120. *The News & Observer* described it as a “rob-Peter-to-pay-Paul Ponzi scheme that basically takes money that would have been going to Cal and Stanford and SMU and gives it to everyone one else [in the ACC is a] bill that will come due over the next 13 years, when there are more mouths scabbling at a smaller pie.” *The ACC has a big Notre Dame problem, and it's not the 28-game football losing streak*, Luke Decock, *The News and Observer*, September 13, 2023, <https://www.newsobserver.com/sports/spt-columns-blogs/luke-decock/article278972299.html>.

121. Indeed, upon information and belief, in conjunction with the additions, the ACC made no effort to try to persuade ESPN that the additions merited increased per-member payments or otherwise extract any benefits from ESPN.

Florida State Tries To Work Internally Within the ACC

122. Over the past several years, FLORIDA STATE has worked behind-the-scenes within the ACC enterprise to bring about change and to try to find ways to enable the ACC to generate competitive revenues for its members.

123. FLORIDA STATE has had virtually no success in getting the ACC to come to grips with the destructive consequences its media agreements or its many other self-destructive acts. FLORIDA STATE's efforts have been met largely with inaction and/or summary dismissal by the ACC.

124. Unable to gain traction within the ACC, and having exhausted all available diplomatic avenues, the FLORIDA STATE President believed himself bound to explore every

available option, including the potential exercise of FLORIDA STATE’s fundamental ACC Constitutional right to withdraw. As is his mandate, he presented his dilemma to FLORIDA STATE BOARD of TRUSTEES in a meeting required to be public by Florida’s Constitution.

125. When word of those public deliberations was reported, ACC members were swift to condemn the President. North Carolina’s Director of Athletics told FLORIDA STATE to stop “barking like that” and just “[p]ay for the exit fee, wait for your grant of rights that you’ve given and then, in 2036, when those rights return to you, do whatever you want.” *“How the rest of the ACC is reacting to Florida State’s unhappiness*, Andrea Adelson and David Hale, ESPN Enterprises, Inc., August 6, 2023, https://www.espn.com/college-football/story/_/id/38135996/acc-florida-state-college-football-2023-conference-realignment; Andrea Adelson, ESPN Enterprises, Inc., August 3, 2023, https://www.espn.com/college-football/story/_/id/38129880/unc-ad-bubba-cunningham-critical-comments-florida-state-president.

126. More recently, reports that FLORIDA STATE enjoyed scant ACC support during the CFP Selection Committee deliberations earlier this month proved particularly disheartening for the student-athletes in whose name so much of this is done in the first place.

The FLORIDA STATE BOARD of TRUSTEES Faces a Hobson’s Choice

127. Under the ACC Constitution, “a Member must file an official notice of withdrawal with each of the Members and the Commissioner on or before August 15 for the withdrawal to be effective the following year.” ACC Constitution 1.4.5.

128. The FLORIDA STATE BOARD of TRUSTEES could not reasonably fulfill this duty of stewardship to FLORIDA STATE by submitting its petition to withdraw on August 14,

2023, without having first obtained a definitive understanding of the financial consequences of such a decision.

129. To assess those financial consequences, the FLORIDA STATE BOARD of TRUSTEES must first determine whether either or both the *ACC Severe Withdrawal Penalty* and/or the ACC GofR are legally enforceable against FLORIDA STATE.

130. Should the Court determine those penalties are unenforceable, then the FLORIDA STATE BOARD of TRUSTEES would be empowered to vote to withdraw FLORIDA STATE from the ACC.

131. To discharge effectively its duties, the FLORIDA STATE BOARD of TRUSTEES respectfully seeks that determination by this honorable Court.

COUNT I

THE ACC PUNISHMENTS ARE UNENFORCEABLE UNDER FLORIDA LAW AS UNREASONABLE RESTRAINT OF TRADE UNDER FLORIDA STATUTE 542.18

132. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

133. According to Florida Statute, Section 542.18, “[e]very contract . . . in restraint of trade or commerce in this state is unlawful.”

134. The punitive instruments of the ACC violate Section 542.18 because they prevent FLORIDA STATE from competing in the marketplace to obtain the best economic terms for its athletic media rights, its student-athletes, and its athletics programs in the relevant market. The punitive instruments are grossly excessive, overly broad, excessively long in duration and their anticompetitive effects vastly outweigh any alleged procompetitive benefits.

135. As the recent withdrawal of ten of the twelve members of the Pac-12 (and its near-total demise) demonstrate, the market for athletic media rights and athletic talent is competitive

and open, which benefits the student-athletes and each institution's athletic program. According to newspaper accounts, all ten members withdrew because the Pac-12 failed to exploit their athletic media rights and instead squandered them – the definition of a failed enterprise in the market of college athletic media rights.

136. The ACC's punitive restrictions do not increase competition for the athletic media rights of FLORIDA STATE or its student-athletes, as well as other members of the ACC. Instead, they suppress each member institution's ability to compete and reap the rewards of its success, including the demonstrated actual market value of their athletic media rights.

137. A relevant market that is negatively impacted by the ACC's punitive instruments is athletics and athletic media rights within the Power Four conferences, including but not limited to a member institution's ability to market its media rights and obtain compensation for those rights based on free and open competition.

138. Through the ACC GofR and the *Severe ACC Withdrawal Penalty*, the ACC seeks to wrongfully prohibit a member institution's ability to enter into negotiations within the relevant market because it deprives a withdrawing member of its valuable benefits for an undue period, suppresses the market for those media rights, and compromises and inhibits the trade and commerce surrounding those media rights. This retention stifles competition, which negatively impacts the member institution, as well as the market, which loses out on increased quality, access, and revenues that would benefit the member institutions as a whole that would result absent these restrictions.

139. The ACC GofR, by ensnaring the media rights of FLORIDA STATE for the next 13 years, whether or not it continues to be a member of the ACC, not only deprives FLORIDA STATE of the fruits of its labors, but completely negates the ability to exercise its rights and

participate in trade or commerce, and also precludes FLORIDA STATE from marketing its media rights to obtain the fair market value of those media rights.

140. Without its media rights – especially for the excessively long duration (13 years) – FLORIDA STATE will not be able to share in the revenues of any other conference’s media rights or independent, non-affiliated arrangements thereby precluding FLORIDA STATE from withdrawing from the ACC, an otherwise economically prudent and rational business decision. This stifles FLORIDA STATE’s ability to compete in the relevant market.

141. The *Severe ACC Withdrawal Penalty* is so exorbitant and disproportional to what FLORIDA STATE receives from the ACC for its media rights, that it restrains trade and restricts FLORIDA STATE from withdrawing from the ACC and competing on an equal footing for talent even within its home State rivals.

142. The *Severe ACC Withdrawal Penalty* and the ACC GofR, both individually and collectively, operate in a way that prevents FLORIDA STATE from competing and making the highest and best use of ITS media rights, and restrains the trade thereof which directly and adversely impacts not just FLORIDA STATE, but all its student-athletes, coaches, staff and employees connected with its athletic programs.

143. As set forth above, FLORIDA STATE clearly would suffer injury if it chooses to withdraw from the ACC and is forced to endure the anticompetitive effects of the ACC’s punitive instruments. The ACC’s punitive instruments prevent full and free competition, which could limit the quality of athletics, the ability to attract and retain players (which in today’s world are able to transfer among schools with little or no restriction), and the ability to properly fund Title IX athletic teams and athletic teams that do not normally receive media attention. This constitutes antitrust injury to the market as a whole.

144. Moreover, these anticompetitive effects are not outweighed by the pretextual argument that the GofR is necessary in order to secure a lucrative television rights agreement, because the ACC did not secure such an agreement. Other Power Four Conferences do not have a comparably draconian and restrictive GofR, and those conferences generate substantially more in revenue per member and attract teams and talent. This fact constitutes a natural experiment that demonstrates that unstifled competition will deliver maximum revenue and higher quality competition.

145. The injury suffered by, or that could be suffered by, FLORIDA STATE is of the kind that Section 542.18 was enacted to prevent and flows from what makes the ACC's actions and contract terms unlawful. The antitrust injury suffered by the market is also of the kind that Section 542.18 was enacted to prevent and flows from what makes the ACC's actions and contract terms unlawful.

146. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the *Severe ACC Withdrawal Penalty* and/or the ACC GofR are unreasonable restraints of trade under Florida law.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the *Severe ACC Withdrawal Penalty* and the ACC GofR are void, both individually and collectively, are unreasonable restraints of trade in the State of Florida and not enforceable in their entirety against FLORIDA STATE, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT II

THE ACC PUNISHMENTS ARE UNENFORCEABLE PENALTIES

147. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

148. The *Severe ACC Withdrawal Penalty* and the ACC GofR were not designed to, and do not, approximate any injury to the enterprise from a withdrawal, but rather were contrived as punitive penalties to be held over the heads of ACC members *in terrorem* to deprive those members of their lone remedy from enterprise mismanagement – withdrawal.

149. The potential damage suffered by the ACC by a withdrawing member is wholly disproportional to the punitive penalties the ACC seeks to levy.

150. The *Severe ACC Withdrawal Penalty* and the ACC GofR, both collectively and individually, are penalties not enforceable under Florida law.

151. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the punitive sanctions the ACC seeks to levy are penalties.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the *Severe ACC Withdrawal Penalty* and the ACC GofR, both individually and collectively, are not enforceable against FLORIDA STATE, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT III

THE ACC MATERIALLY BREACHED ITS CONTRACTS WITH FLORIDA STATE

152. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

153. Prior to July 1, 2023, the ACC materially breached its agreements with FLORIDA STATE in at least each and all the following ways:

- Failing to exploit FLORIDA STATE’s athletic program’s media rights, diluting those rights going forward, and failing to enrich FLORIDA STATE’s athletic programs to maintain their competitiveness;
- Failing to achieve “responsible fiscal management” and “further fiscal stability” of the “enterprise” so that the ACC now faces an “existential crisis”;
- Granting and then grossly mishandling the Unilateral ESPN Nine-Year Option with respect to FLORIDA STATE’s Tier I media rights;
- Amending the 2016 ACC Tier I Agreement without securing the approval of two-thirds of its Directors required under ACC Bylaw 2.10.3;
- Extending for no consideration the Unilateral ESPN Nine-Year Option under the 2016 ACC Tier I Agreement in August of 2021;
- Committing the ACC to a Tier I Agreement for an unheard-of period of 20 years at rates negotiated before year one while failing to secure a reciprocal commitment from ESPN for the last nine years (2027-2036) of that term;
- Undertaking the ill-conceived expansion of the ACC to include Stanford, Cal and SMU for the purpose of maintaining (in the event of a withdrawal of one or more members) the minimum number of members required by the ESPN agreements with the ACC, despite the absolute dilution in the per-member value of the ACC’s media rights;
- Diminishing the members’ ability to compete in championships; and
- Failing to protect the student-athletes’ hard-earned right to participate in championships.

154. Because the ACC committed these material breaches of contract for several years, FLORIDA STATE has been subsequently discharged and excused from performing any duties or obligations it may have otherwise owed to the ACC under any and all agreements between them, including all duties concerning notice of withdrawal.

155. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the ACC has materially breached its contractual duties owed to FLORIDA STATE.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the ACC has materially breached its contractual obligations to FLORIDA STATE

thereby subsequently relieving and excusing FLORIDA STATE from any and all obligations of performance under those contracts, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT IV

THE ACC BREACHED ITS FIDUCIARY DUTIES TO FLORIDA STATE

156. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

157. The ACC owed FLORIDA STATE several fiduciary duties especially with respect to securing, protecting and exploiting the athletic media rights entrusted to it by FLORIDA STATE and failing to protect and preserve the position of its undefeated football conference champion.

158. The ACC breached those duties by failing to negotiate and maintain market, competitive media rights agreements and terms and by diluting the value of FLORIDA STATE's athletic media rights and diminishing its national football stature.

159. At all relevant times, the ACC understood that FLORIDA STATE was relying upon the ACC to exploit and maximize its media rights entrusted to the ACC.

160. The ACC's breach of those fiduciary duties has harmed, if not permanently impaired, the athletic programs of FLORIDA STATE as well as squandered and diluted the media rights and reputation of FLORIDA STATE's athletic programs.

161. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the ACC has breached its fiduciary duties to FLORIDA STATE.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the ACC has breached its fiduciary duties to FLORIDA STATE thereby relieving and excusing FLORIDA STATE from any and all obligations of performance under any contracts

that may exist between it and the ACC, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT V

FUNDAMENTAL FAILURE OR FRUSTRATION OF CONTRACTUAL PURPOSE

162. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

163. FLORIDA STATE, in joining the ACC, bargained for the announced fundamental purpose stated in ACC's Constitution to achieve "responsible fiscal management and further fiscal stability" to, among other things, "[a]ddress the future needs of athletics" of FLORIDA STATE through the successful exploitation of the FLORIDA STATE'S athletic media rights and the protection of its status as an undefeated conference champion.

164. At all relevant times, the ACC understood itself to be an "enterprise" formed and obligated to generate substantial revenues on which each member would rely each year.

165. The ACC has admitted that it has failed in this fundamental purpose and placed the ACC in an existential crisis due to poor fiscal management and administration, which has rendered the ACC financially and fiscally unstable and its members not competitive.

166. As a consequence, there have been fundamental failures or frustrations of the ACC contracts and the "enterprise" which precludes any of its operating terms in its contracts from being enforced against FLORIDA STATE.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the ACC contract has suffered a fundamental failure or frustration of purpose and is thus unenforceable thereby relieving and excusing FLORIDA STATE from any and all obligations of performance under those contracts, and that in that event, FLORIDA STATE be deemed to have

issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT VI

THE ACC GofR IS UNENFORCEABLE FOR SEVERAL OTHER REASONS

167. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

168. The ACC GofR directly and materially contradicts not only the ACC Constitution, but also the 2016 Amended and Restated Multi-Media Agreement between the ACC and ESPN, both of which expressly afford and provide FLORIDA STATE the fundamental right to withdraw from the ACC.

169. The ACC GofR purports to subvert, if not eliminate, that fundamental rights of FLORIDA STATE, including its fundamental right to withdraw, though the ACC GofR makes no mention of either the ACC Constitution and Bylaws or the member withdrawal provisions negotiated into 2016 Amended and Restated Multi-Media Agreement between the ACC and ESPN.

170. Under the legal doctrine *generalialia specialibus non derogant* – that where there is a conflict between the general and specific, the specific provisions prevail – the ACC GofR can neither be read nor interpreted to subvert, usurp and/or amend the specific provisions of the ACC Constitution and Bylaws and/or the 2016 Amended and Restated Multi-Media Agreement between the ACC and ESPN.

171. Further, being just one of 15 members of the ACC, the sole remedy available to FLORIDA STATE (or any other member) in the event that the enterprise disadvantages it, financially or otherwise, is to withdraw.

172. The ACC GofR effectively deprives FLORIDA STATE of the only means it has to protect itself from being disadvantaged by the ACC.

173. In forming the ACC GofR, the ACC offered no new consideration to FLORIDA STATE, and/or the ACC GofR instead contained a false recital of consideration, and hence lacked the necessary consideration to form a binding contract.

174. For the period of the 2016 GofR Extension (2027-2036), the ACC failed to secure any guaranteed payments for that period and thus was it provided no consideration for the extension, for itself, or for its members.

175. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the ACC GofR is a contract, and that if it is, whether it is an enforceable contract *viz-a-viz* FLORIDA STATE.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the ACC GofR did not form a contract, or, in the alternative, that if the ACC GofR is a contract it is not enforceable *viz-a-viz* FLORIDA STATE, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

COUNT VII

THE ACC PUNISHMENTS VIOLATE FLORIDA PUBLIC POLICY AND ARE UNCONSCIONABLE

176. FLORIDA STATE realleges and incorporates paragraphs 1-131 above.

177. The *Severe ACC Withdrawal Penalty* and the ACC GofR, both individually and collectively, are injurious to the interests of Florida law as well as the Florida public and contravene the interest of Florida society in maintaining economically viable and fiscally sound institutions of post-secondary learning in the State of Florida.

178. The *Severe ACC Withdrawal Penalty* and the ACC GofR, both individually and collectively, are monstrously harsh, shocking to the conscience and the result produces a profound sense of injustice, and thus are unconscionable in practice and in theory.

179. An actual controversy exists between the ACC and FLORIDA STATE concerning the enforceability of the *Severe ACC Withdrawal Penalty* and/or the ACC GofR.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the *Severe ACC Withdrawal Penalty* and the ACC GofR, both individually and collectively, are not enforceable in their entirety against FLORIDA STATE, and that in that event, FLORIDA STATE be deemed to have issued its formal notice of withdrawal from the ACC under Section 1.4.5 of the ACC Constitution effective August 14, 2023.

Respectfully submitted,

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