

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CASE NO. 23-CA-002860

FLORIDA STATE UNIVERSITY
BOARD OF TRUSTEES,

Plaintiff,

v.

ATLANTIC COAST CONFERENCE,

Defendant.

AMENDED 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 Amended 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, bad faith, and self-dealing, the ACC has persistently undermined its members' revenue opportunities and streams including by demanding counterproductive "partnerships," locking them into a deteriorating media rights agreement that will soon result in an insurmountable annual financial gap between the ACC and other Power Five (soon to be Power Four) conferences and locking them into the ACC. Those failures have 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 college athletics.

The ACC's contentious 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. As perhaps the most telling metric of the lack of media cache 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 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 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 regarding media rights values. The ACC, however, appeared dedicated to self-preservation, self-perpetuation and self-dealing 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 UNIVERSITY BOARD of TRUSTEES to determine whether its steward can be withdrawn from the ACC before further damage to FLORIDA STATE. To that end, the FLORIDA STATE UNIVERSITY BOARD of TRUSTEES seeks guidance from the 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 BOARD of TRUSTEES, in a publicly noticed meeting on December 22, 2023, authorized the initiation of this action.

2. The ACC, a college 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, the Court has personal jurisdiction over it.

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

FACTUAL BACKGROUND

6. The ACC itself was born exclusively of original members that withdrew from another conference, with its 2023|2024 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.” Purportedly, 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”). Purportedly, 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”) were for decades the five dominant college athletic conferences, known as the “Power Five” conferences.

11. As discussed further below, the Pac-12 imploded due to its 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 from its conferences.

13. In the past two decades, in contrast to the ACC, the SEC and the Big Ten have aggressively and repeatedly negotiated increasingly 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 fiscally sound college 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*, July 10, 2022, A. Carter, *The News & Observer*, <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, Board of Regents, University System 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. Maryland et al.*”).

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...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 and Maryland Board of Regents*, 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 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 or are games involving less popular team matchups and/or team sports, commonly referred to as “Tier II and III” games, rights, or agreements.

26. The Tier II and 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 (now 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 2010 ESPN Agreement, “Raycom Partnership,” and New Withdrawal Penalties

29. In 1997, the ACC named as its Commissioner John Swofford (“Swofford”), who held that position until 2021.

30. Swofford was replaced as Commissioner by Jim Phillips (“Phillips”), who had for the previous 13 years overseen the Northwestern University football program as Athletic Director.

31. In 2005, the ACC extended a single invitation for a school to join the ACC as a new member. That invitation was extended to Boston College University (“Boston College”). At the time, Swofford’s son, Chad Swofford, was working in the Boston College Athletic Department.

32. In 2007, Chad Swofford left Boston College to take a position as Director, Business Development, at Raycom Sports located in Charlotte, North Carolina. Raycom Sports had for decades been providing extensive media services to the two main college athletic conferences of the south, namely the SEC and the ACC.

33. In 2008, Raycom Sports suffered a serious financial setback. According to the *Sports Business Journal*:

In August 2008, ESPN won the rights for all SEC content, meaning ESPN, not Raycom, would manage the conference’s syndicated product through its Charlotte-based ESPN Regional Television.

Raycom, which had handled the SEC’s syndicated rights since 1986, believed its history with the conference would be enough to carve out a package of games. [Ken] Haines [Raycom Sports’ CEO] and his staff were stunned to learn that they had been cut out of the deal between the conference [SEC] and ESPN.

The outcome took its toll on Raycom as 20 employees were cut. Once a giant in the college sports media business, Raycom was just a shell of its old self.

History with ACC secures future for Raycom, October 4, 2020, M. Smith and J. Ourand, *Sports Business Journal*, <https://www.bizjournals.com/washington/stories/2010/10/04/daily3.html?page=all> at p. 2.

34. Though just recently employed by Raycom Sports, Chad Swofford was spared in the employee cut.

35. Over the next two years, “under [its] expiring media contract with the ACC,” about “80% of Raycom’s annual revenue [came] from its business with the ACC.” As of 2010, “[t]he survival of Raycom Sports hinged on its 31-year relationship with the ACC.” (*Id.* at 2, 1.)

Without the ACC, Raycom's future would be bleak. CEO Ken Haines felt the pressure, as did his 50 employees, most of whom described it as a tense two years that led up to the ACC talks [in 2010].

(*Id.* at 2.)

36. According to the *Sports Business Journal*, page 4, Raycom Sports knew it could never compete monetarily for the media rights of the members of the ACC:

Knowing that the ACC planned to combine football and basketball in the new contract, Raycom resigned itself to the fact that it couldn't compete with bigger national sports networks for an all-in deal that ended up costing \$155 million a year.

37. But "keeping a piece of the ACC business was the only way" a "small regional TV syndicator" like Raycom Sports "could stay relevant in the multibillion-dollar college marketplace," so Raycom Sports changed the game:

The problem was that Raycom couldn't compete financially with bigger national TV networks, like ESPN and Fox, who also wanted the ACC's rights. So Raycom decided to rely on the deep, personal relationships it developed over its three-decade relationship with the conference.

(*Id.* at 1.) It worked.

38. Thereafter, Swofford made it clear to the potential bidders for its members' media rights, including Fox and ESPN, "how close Raycom was to the ACC. For example, Swofford's son, Chad, is Raycom's director of new media and has been with the company five years." (*Id.*)

Swofford let the strongest bidders, ESPN and Fox, know that he wanted to include Raycom, which went into the talks as a partner to both networks, rather than trying to bid against their deeper pockets.

(*Id.* at 3.)

39. Swofford was direct with John Skipper ("Skipper"), the then-executive vice president for content at ESPN. "Skipper recognized the power of those ties early in his talks with Commissioner John Swofford" as the fellow North Carolina graduates sat "on the brick patio...[u]nder the swaying pines trees" of North Carolina:

Skipper asked Swofford what ESPN could do to secure a deal.

‘It would be our preference,’ Swofford told Skipper, ‘if ESPN could construct something that would keep us in business with Raycom.’

‘So we did,’ Skipper said.

(Id. at 1.)

40. When the smoke cleared, with the ACC members’ Tier II and Tier III media rights as barter, Swofford cajoled ESPN into entering into a separate “sublicensing arrangement” with Raycom Sports under which ESPN sublicensed to Raycom Sports a package of content in exchange for which Raycom paid to ESPN a reported \$50 million a year, which “package” provided Raycom Sports “with more marketing and media rights than it had before, including syndication, ACC Properties and all digital rights.” *(Id. at 2.)*

41. With that arrangement, the “partnership” Swofford engineered for the benefit of Raycom Sports was born (hereinafter “Raycom Sports Partnership”). The Raycom Sports Partnership has cost each ACC member several million dollars and continues to depress the value of their media rights, and the cost and success of their prestige network through today.

42. The ACC members saw no part of the payment Raycom Sports made to ESPN for their media rights, which if divided among the then 15 members would exceed \$3 million per member.

43. Thanks to Swofford, with that deal, Raycom Sports claimed it survived despite ESPN’s efforts. “Haines acknowledges with a wry grin that Raycom’s new best friend, ESPN, is the same company that almost put him out of business.” *(Id.)*

44. On July 8, 2010, the ACC entered into its first contract with ESPN, which was negotiated by the ACC’s hired media consultant, Dean Jordan, and “constructed” to account for

the Raycom Sports Partnership. (“2010 ACC-ESPN Agreement”).¹

45. On the heels of finalizing the 2010 ACC-ESPN Agreement under the Raycom Sports Partnership in July, and apparently fearing that the terms of its new media rights agreement were not financially competitive with those of its peer conferences, in September of 2011 the ACC implemented a sanction to penalize any withdrawing member.

46. 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.

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

The 2012 ACC-ESPN Amendment, Market Reaction, and More Penalties

48. 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 in 2027, at the end of the 2026-2027 season or June of 2027.²

¹ The ACC refuses to provide its members, much less the public, with a copy of the media rights agreements 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 are 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.

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 conference mismanagement detailed below.

49. Although the 2012 ACC-ESPN Amendment addressed only Tier I rights, it carried forward the terms in the 2010 ACC-ESPN Agreement with respect to the Tier II and Tier III rights set aside for the Raycom Sports Partnership.

50. The 2012 ACC-ESPN Amendment treated all members the same, meaning that all ACC members were homogenous with no members designated as preferred or “must keep” schools over others.

51. 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.

52. 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%

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

54. One of the first articles analyzing the 2012 ACC-ESPN Amendment written just five days after it was executed stated the following:

The ACC's previous contract with ESPN essentially was outdated before it went into effect. Shortly after the ACC agreed to its initial deal with ESPN for \$155 million a year in 2010, the Pac-12 shocked the collegiate world with a 12-year deal with ESPN and Fox for \$250 million a year that reset the market.

One year later, ACC ups its rights fees by a third, May 14, 2012, M. Smith, *Sports Business Journal*, <https://www.sportsbusinessjournal.com/Journal/Issues/2012/05/14/Media/ACC.aspx> at p. 1.

55. The 2012 ACC-ESPN Amendment made up just part of the existing gulf, with Swofford acknowledging that he was hoping the ACC could remain “at least in the same neighborhood with our peers” (*id.*), but the ACC did not.

56. 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.

57. Upon further scrutiny, the negative reaction to the ACC's new 2012 ACC-ESPN Amendment was blunt. *Forbes* immediately published a series of articles condemning the deal from the perspective of the ACC members. *Did ACC Teams Get Ripped Off with New ESPN TV Contract*, May 9, 2012, C. Smith, *Forbes*, <https://www.forbes.com/sites/chris-smith/2012/05/09/did-acc-teams-get-ripped-off-with-new-espn-tv-contract/?sh=43e5e6934139>.

58. That article pointed out that the Big 12 “has reportedly agreed to a new deal with ESPN and Fox” in an amount that “when split among the Big 12's ten teams it is worth \$20 million per conference member, a cool \$3 million more than each ACC school will take home.” (*Id.* at 2.)

59. About three weeks later, *Forbes* published a third article on the topic: *The ACC's third tier rights and why they're killing the conference*, *Forbes*, June 4, 2012, C. Smith, <https://www.forbes.com/sites/chris-smith/2012/06/04/the-accs-third-tier-rights-and-why-theyre-killing-the-conference/?sh=4ea281776375>. “In short, the ACC is giving away more [than the Big 12] and getting back less,” while noting that “this isn’t the first time that John Swofford has left media rights on the table.” (*Id.* at 4.)

60. The article traced the shortcomings in the 2012 ACC-ESPN Amendment back to the 2010 ACC-ESPN Agreement, specifically the Raycom Sports Partnership. “When the ACC signed its previous ESPN contract a few years ago, Swofford insisted on maintaining a partnership with syndicator Raycom Sports, possibly giving away increased media rights revenues in the process.” (*Id.* at 4.)

61. According to page 4 of that *Forbes* article: “[t]he ACC television rights that Raycom secured [from ESPN] are credited with keeping the syndicator alive”, though it noted that “the ACC schools see none of the money” paid annually by Raycom Sports to ESPN for the ACC members’ media rights under the deal.

It’s rather surprising that a conference would so willingly take less TV money—the core source of revenue in collegiate athletics—just to keep a broadcast company from folding.

62. At the time Swofford explained his stubborn commitment to Raycom Sports was an emotional one: “It tugged at me,” *History with ACC secures future for Raycom*, October 4, 2010, M. Smith and J. Ourand, *Sports Business Journal*, <https://www.bizjournals.com/washington/stories/2010/10/04/daily3.html> at p. 2, other explanations have since surfaced:

There are, of course, plenty of conspiracy theories to explain Swofford’s irrational decision. Raycom Sports is based in North Carolina, and the ACC is often accused of favoring its four NC schools. Then there’s Swofford’s son, Chad Swofford, who is the Senior Director of New Media and Business Development at Raycom Sports (he was also employed by Boston College

athletics when the school received an invite from the ACC). But regardless of what theory you choose to believe, the ultimate conclusion is that the ACC has not been the best at negotiating its TV rights contracts.

The ACC's third tier rights and why they're killing the conference, June 4, 2012, C. Smith, *Forbes*, <https://www.forbes.com/sites/chris-smith/2012/06/04/the-accs-third-tier-rights-and-why-theyre-killing-the-conference/?sh=4ea281776375> at p. 4.

63. The final *Forbes* article concluded: “The end of the ACC as we know it seems inevitable, and the conference only has itself to blame.” (*Id.* at 6.)

64. In June of 2012, Chad Swofford was promoted to Senior Director, New Media and Business Development at Raycom Sports.

65. Following the pattern established the prior year, just over three months after the 2012 ACC-ESPN Amendment was signed, in recognition that its newly negotiated and excessively long-term media rights deal was not competitive and only *increased* the financial incentive for a member to withdraw, the ACC knew it had to ratchet up its withdrawal penalties.

66. 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, effectively increasing the withdrawal penalty each year. The effect of tying the withdrawal penalty to the ACC’s budget is that the increases in the budget trigger concomitant increases in the withdrawal penalty, regardless of whether the budget increase is reasonable and regardless of whether the resulting withdrawal penalty is reasonable or in any way approximates the supposed “damage” to the ACC if a member were to withdraw. ACC Constitution 1.4.5 (2012).

67. Maryland opposed the exponential sanction increase and voted against the maneuver.

Charter Member Maryland Withdraws and Is Promptly Sued by the ACC

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

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

70. About one week later, the ACC sued Maryland and its Board of Regents in North Carolina state court seeking to extract from Maryland the maximum withdrawal fee just enacted (which Maryland had opposed).

71. 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 Regents, University System of Maryland*, 751 S.E.2d 612, 614 n.2 (NC App. 2013) (emphasis supplied). (The “*ACC Withdrawal Penalty*”.)

72. 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 Regents, University System of Maryland*, 751 S.E.2d 612, 614 n.3 (NC App. 2013) (emphasis supplied). (Hereinafter “*Severe ACC Withdrawal Penalty*.”)

The ACC and Its Media Consultants Dangle a Prestige Network to the Members

73. Fearing a rush for the exits in the wake of the November 2012 Maryland withdrawal, Swofford and Dean Jordan went into action.

74. At about that time, it had become public knowledge that the SEC and ESPN were putting together a prestige network dedicated to just the SEC.

75. Unlike the SEC, ESPN had floated no similar sort of contractual network arrangement for the ACC, meaning the ACC was already taking the backseat compared to the SEC with respect to securing a prestige network.

76. On March 7, 2013, in an effort to pacify the members, Swofford through his media consultants 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.” *The ACC Defrauded FSU of Its Media Rights*, *Mtn Sports News*, https://big12insider.com/articles/acc_fraud.html, <https://big12insider.com/docs/maryland-acc-brief-exhibit-a.pdf>.

77. In truth, the “Competitive Market Analysis” was directed toward the issue of when the ACC leadership would secure from ESPN for the ACC a prestige network like the one that the SEC leadership had just secured for its members.

78. According to that March 7, 2013, presentation by Swofford’s media consultant “[t]here are currently two conference [prestige] networks and soon to be a third,” and explained that the “Big Ten Network is highly successful and has been since its launch in 2006. Since that time it has given the Big Ten a financial edge over all conferences.” (*Id.*)

79. As to the SEC prestige network, the presentation stated that “[t]he SEC will announce the planned launch of the SEC Network in partnership with ESPN in 2014.”

80. Swofford's media consultant stated: "[w]e project it will be a successful venture because of the ability of the SEC members to secure distribution in their respective states."

81. The presentation made no effort to explain why the SEC had been preferred over the ACC or whether the ACC would be able to secure distribution in their respective states for a potential ACC prestige network.

82. With respect to the ACC, the presentation stated:

ESPN has agreed to assess the market viability of an ACC [prestige] Network. Both the ACC and ESPN are currently developing business models and will be sitting down in the next 60-90 days to determine whether an ACC Network can be successful.

83. But Swofford and his media consultant assured the remaining ACC members that the ACC would not be left behind the SEC when it came to the "financial edge" that a prestige network put together by ESPN provided:

If it is determined that an ACC [prestige] network can be successful, ESPN has indicated it will do a deal on the same terms and conditions as it has with the SEC on the SEC Network.

84. With that written assurance, the next month (April of 2013) Swofford and his media consultant set out to lock down the members altogether.

The ACC Barricades the Exits with a Draconian Grant of Rights

85. As Maryland demonstrated, the ACC's media agreements were so deficient that it still made financial sense to pay tens of millions of dollars in penalties to escape them. In other words, the existing ACC penalties still had not achieved the desired *in terrorem* effect to lock in the remaining members.

86. ACC leadership realized that not even its new *Severe ACC Withdrawal Penalty* of nearly \$52.3 million would be enough to overcome the many defects that plagued the 2010 ACC-ESPN Agreement (with its Raycom Sports Partnership) and the 2012 ACC-ESPN Amendment.

87. To completely lock the exits, early within the “60-90 days” window during which ESPN was purportedly determining whether “an ACC Network can be successful,” Swofford and his consultant pressured the members to implement the ultimate sanction against any member seeking to withdraw.

88. In April of 2013, Swofford and his consultant materialized a draft of a secret pact supposedly for the benefit of the members, but in return offering nothing for the members in the form of consideration much less a sweetened medial deal.

89. Swofford and Dean Jordan double-teamed single members of the FLORIDA STATE BOARD of TRUSTEES in isolated individual meetings in an effort to coerce each member to accept the “Atlantic Coast Conference Grant of Rights Agreement” (the “ACC GofR”) to trap the members in the conference for the duration of the 2012 ACC-ESPN Amendment (*i.e.*, through June 2027), hoping to make it absolutely impossible for members to withdraw like Maryland just had.³

90. According to the pleadings filed by the ACC, “Florida State” was induced to execute “the Grant of Rights...with the expectation of receiving the benefits of different and enhanced agreements between the Conference and ESPN” and that “the ACC negotiated new contracts and agreements with ESPN” which would “significantly increase the revenues” paid to the “Member Institutions.”

91. In truth, as will be shown below, since May of 2012, about a year *prior* to the execution of the ACC GofR, the ACC has never negotiated any “new” agreement with ESPN to

³ For many years, the ACC refused to provide its members a copy of the fully executed 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.

increase by even \$1.00 the all-important Tier I media rights “revenues” to be paid to the “Member Institutions.”

92. Moreover, as will also be shown below, contrary to the assurances Swofford and his media consultant had provided members a month earlier, the ACC never secured from ESPN the “same terms and conditions” for the promised ACC prestige network that the SEC had obtained from ESPN in 2014.

93. The ACC GofR does not purport to amend the ACC Constitution and Bylaws, and that publicly available contract has never set forth any of the specifics of the ACC GofR or its terms.

94. In presenting the 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.

95. 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 the already existing media rights agreements. In other words, ACC members received no new consideration for the ACC GofR.

96. The ACC GofR purported to require that any member daring to withdraw from the ACC 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.

97. The ACC GofR ran through June 30, 2027, similar to the 2012 ACC-ESPN Amendment. Because the ACC GofR was tied to no pending media agreement at all, its sole purpose was just to lock up the remaining ACC members.

98. News accounts described how Swofford in 2013 was “[l]ocking the 15 ACC schools into a written agreement of loyalty.” It would have been far more beneficial for those members if in 2013 Swofford had devoted his energies to locking up a lucrative long term media rights agreement that would “significantly increase the [media] revenues” for its members instead of just “locking” them up.

99. 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 have been comprised of: (i) the Severe ACC Withdrawal Penalty of \$52 million; (ii) forfeiture of 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 Way Behind and Only Loses Ground

100. Within a month after the ACC GofR had locked down the remaining ACC members, it was exposed that any prestige network for the ACC would likely be stalled because of the Raycom Sports Partnership Swofford had engineered back in 2010:

Don’t expect an ACC-branded TV channel to be launched any time soon.

The biggest problem so far is a rights issue. ESPN needs to control the

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.

conference's syndicated rights to launch a channel. But those rights are tied up until 2027 through deals with Raycom and Fox Sports Net.

ACC network may stall over rights issues, May 20, 2013, M. Smith and J. Ourand, *Sports Business Journal*, <https://www.sportsbusinessjournal.com/Journal/Issues/2013/05/20/Media/ACC-net.aspx> at p. 1.

101. It was not just the Raycom Sports Partnership that stunted the development of an ACC prestige network, but also the fact that subsequent to obtaining its sublicense from ESPN, Raycom Sports had in turn sublicensed a substantial portion of those member media rights to ESPN's primary competitor, Fox Sports Net:

The main roadblock is rights. When it signed its ACC deal in 2010, ESPN and Charlotte-based Raycom Sports cut a deal that grants Raycom the ACC's digital and corporate sponsorship rights, plus a heavy dose of live football and basketball games. Through a sublicensing agreement, Raycom owns the rights to 31 live football games and 60 live men's basketball games.

Even if the conference is able to buy back those rights from Raycom, a second roadblock remains. Raycom sublicensed 17 of those football games and 25 of those basketball games to Fox, which carries the games on its regional sports networks throughout the ACC footprint. Live local sports programming is important to Fox's RSNs, and they are not likely to give up those games cheaply.

(*Id.* at 1.)

102. Because Raycom Sports had been cut out of the SEC media rights altogether in 2008, the SEC had no such baggage to contend with in working closely with ESPN to launch the SEC Network in 2014, in contrast to the ACC:

Those [Raycom Sports/Fox Sports Net] deals extend through 2027.

It's unlikely that ESPN will try to launch a channel [ACC prestige network] without those rights. ESPN bought all those rights—TV, digital sponsorship—together as it formed the SEC Network, which launches in August 2014.

ACC network may stall over rights issues, May 20, 2013, M. Smith and J. Ourand, *Sports Business*

Journal, <https://www.sportsbusinessjournal.com/Journal/Issues/2013/05/20/Media/ACC-net.aspx>
at p. 2.

103. Not surprisingly, “[i]ndustry insiders say there is no rush to put together an ACC channel, and that it likely would be 2016 or 2017 before one would launch, if then.” Indeed, as of the month after Swofford finagled the ACC GofR, “the only commitment ESPN has given the ACC is that it will discuss the benefits of launching a channel.” *Id.* at 1.

104. In May of 2014, ESPN formally announced the creation of the SEC Network pursuant to a 20-year term agreement.

105. After ESPN had announced the successful creation of the SEC Network, Swofford and his media consultant executed an agreement with ESPN which contained certain outlines for an ACC prestige network agreement with a purported targeted launch for 2016, which would put the ACC two years behind the SEC Network and ten years behind the Big Ten.

106. The June 24, 2014, arrangement with ESPN (“2014 ACC-ESPN Amendment”) generally outlined certain preliminary non-binding terms for a potential ACC prestige network and purported to partially compensate the members for the delayed launching of the prestige network with a payment known among the parties as the network placeholder consideration (“Network Placeholder Consideration”).

107. Under the label “Grant of Rights” fee, ESPN would pay the members the Network Placeholder Consideration for each year in which the launch of the ACC prestige network trailed that of the SEC.

108. For the year 2014 and the year 2015, ESPN was to pay each member just over \$1 million per member in Network Placeholder Consideration.

109. Not much was definitive under the June 14, 2014 ACC-ESPN Amendment except that in the event the ACC and ESPN failed to enter into an ACC prestige network agreement by March 1, 2016, the annual Network Placeholder Consideration ESPN would have to pay to the ACC, if the ACC prestige network remained unlaunched, would increase to \$42 million per year until its actual launch.

110. Once the ACC prestige network launched, the payments of the Network Placeholder Consideration would cease entirely, confirming that the payments were no “Grant of Rights” fee as claimed but rather compensation for the lengthy delay in the launch of the ACC prestige network.

111. Under no circumstances were the Network Placeholder Consideration payments to extend beyond 2027, regardless of whether any ACC prestige network existed.

112. When the ACC prestige network finally launched in 2019, ESPN terminated all of the Network Placeholder Consideration payments.

113. Though the June 14, 2014, arrangement addressed the June 2016 deadline for the ACC and ESPN to enter a definite prestige network agreement, it nowhere indicated that ESPN would never enter any such agreement absent a nine-year extension the ACC GofR, from 2027 to 2036.

114. In July of 2015, Chad Swofford was promoted to Vice President and General Manager, ACC Digital, at Raycom Sports.

Swofford Feigns an “ESPN Ultimatum” and Negotiates a Disastrous Tier I Deal

115. In June of 2016, Swofford delivered a one-two punch to the members with respect to the ACC prestige network. First, as presaged by the press in 2013, Swofford’s close ally and confidant, Skipper, appeared before the members to deliver the bad news that any ACC prestige

network would be delayed an additional three years, or until 2019, due to the sequence of ESPN and Disney television distribution deals with ESPN/Disney's major cable and satellite distributors.

116. Although such a projected launch date would leave the ACC a full five years behind the SEC and 13 years behind the Big Ten with respect to the "launch" of their respective prestige networks, Swofford and his media consultant provided the members with no alternative.

117. Needless to say, the "terms and conditions" the SEC secured from ESPN for its prestige network included no such baked-in three-year delayed launch.

118. Second, contrary to the terms of the 2014 ACC-ESPN Amendment, Swofford now represented to the members that ESPN had issued an ultimatum: unless each ACC member executed an extension of the ACC GofR for a full nine years beyond the then-expiration date, from 2027 to 2036, ESPN would enter into no further media rights agreements with the ACC, meaning there would be no prestige network for the ACC launched by ESPN.

119. 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").

120. In reliance on the truth of Swofford's representations, and faced with a then-\$234 million sanction if it did not capitulate, FLORIDA STATE's then President signed the ACC GofR to 2036 (the "ACC GofR Extension").

121. According to the pleading filed last month by the ACC, "Florida State" was induced to execute "the...Amended Grant of Rights [ACC GofR Extension] with the expectation of receiving the benefits of different and enhanced agreements between the Conference and ESPN" and that "the ACC negotiated new contracts and agreements with ESPN" which "significantly increase the revenues" paid to the "Member Institutions."

122. 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 ACC prestige network (collectively, the “2016 ESPN Agreements”).

123. The ACC had 15 members when it signed the 2016 ESPN Agreements which would become important in the September 2023 vote to add three new members.

124. The 2014 ACC-ESPN Amendment and the 2016 ESPN Agreements do not reference, mention, or incorporate the ACC GofR or the ACC GofR Extension (or any purported ESPN Ultimatum), but instead contain only a grant-of-rights recital and representations similar to the provisions typically included in most media rights agreements involving multiple institutions that do not execute the media agreement.

125. The 2016 ESPN Agreements did not increase the Network Placeholder Consideration payments while ESPN delayed the launch of the ACC’s prestige network which payments set by the 2014 ACC-ESPN Amendment, and thus provided no “increased” revenues in that respect.

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

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

128. 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.

129. 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 be unaffected.

130. Under the 2016 ESPN Agreements, the ACC had wide latitude as to potential future conference members, meaning the ACC, without any repercussions from ESPN, could swap in almost any football colleges for any current member regardless of what sort of football media value it generates.

131. In the 2016 ACC Tier I Agreement, the ACC neglected to negotiate any 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 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	N/A		Nothing unless ESPN in February 2025 exercises the Unilateral ESPN Nine-Year Option (§ 69)			
2028-29						
2029-30						
2030-31						
2031-32						
2032-33						
2033-34						
2034-35						
2035-36						

132. Perhaps most jarring, as the above chart demonstrates, (a) in 2016, the ACC negotiated NO guaranteed payments from ESPN for the nine-year period of extension

encompassed by the ACC GofR Extension—from 2027 to 2036; and (b) the ACC left in place an outdated and increasingly below market base Tier I payment rate (first negotiated in 2012 and capped at 4.5% annual growth) for 24 years—more than a generation, meaning the ACC negotiated NO increase in Tier I rates with ESPN, a far cry from the “significant increases” members were promised.

133. This also left the ACC unable to “market” its media rights for the period from 2027 to 2036; ESPN remains free to walk away from the ACC (even at those below market rates) scot-free during that nine year “extension” period.

134. This is a far cry from the “expectation” delivered to FLORIDA STATE when it was urged to sign the GofR Extension in 2016 for, namely, the assurance of “different and enhanced...new agreements [that] the ACC would negotiate with ESPN” that would “significantly increase the revenues.”

135. 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”).

136. The 2016 ACC Network Agreement does not include guaranteed fees to the ACC (other than a \$1 million per member production fee) but in its place contains a 50/50 net revenue share with ESPN. However, up to approximately \$64 million (*e.g.*, for the 2026-27 contract year) is deducted off the top from gross revenue due to the Raycom Sports Partnership deal (the “Raycom Sports Partnership Deduction”), thereby reducing the ACC members’ revenue share by \$32 million (\$64 million x 50%).

137. This means that the Raycom Sports Partnership arrangement results in approximately \$82 million of rights fees for ACC Tier II and III games going to third parties each year rather than the ACC (*e.g.*, \$32 million forfeited in 2026-2027 due to the Raycom Sports Partnership Deduction) and \$50 million in rights fees paid by Raycom Sports to ESPN for sublicensing a package of ACC games (which in turn Raycom Sports licensed to Fox Sports Network/Bally for a substantial profit not shared with the members).

138. On information and belief, the terms and conditions of the SEC Network Agreement with ESPN contain no such revenue haircuts.

139. The terms of the 2016 ESPN Agreements belie that ESPN ever issued any ESPN Ultimatum in the first instance, because those agreements both contemplate and permit the addition and subtraction of members interchangeably so long as 15 remain.

140. If the ACC truly owned and committed to ESPN all Tier I media rights of its then-members through 2036 “regardless of whether such member institution remains a member of the conference during the entirety of the term,” the agreements would not have provided for a member “withdrawal” as such a subtraction would not be possible.

141. Second, the termination of the payments of the Network Placeholder Consideration and the end of the guaranteed Tier I payments to the members in 2027 confirm that ESPN neither sought nor insisted on a member lockdown for the nine-year post-2027 period as ESPN was making no firm commitment to pay the ACC any monies after 2027.

142. The Grant of Rights provision actually contained in the 2016 ESPN Agreements had three conjunctive components: (a) that the Game had to have been played by a “Conference Institution;” (b) that the Game have been completed “during the Term” of the agreement; and (c) that ESPN had “the right to distribute in perpetuity” to that Game.

143. Once a member withdraws from the ACC, it ceases being a “Conference Institution” within the meaning of the 2016 ESPN Agreements. ESPN did not seek and was not claiming any rights with respect to the “Games” thereafter played by that non-member after it ceased being a “Conference Institution.”

144. What ESPN sought and secured by way of “the right to distribute in perpetuity” was not Games by a withdrawn former member played post-withdrawal through 2036, but rather the Games that member played while being a Conference Institution.

145. Lost time was not the only casualty to the members of the delay in launching the ACC prestige network as a consequence of the Raycom Sports Partnership:

Doubts (swirling around the launch of the ACC Network) bubbled to the surface earlier this year when ESPN President John Skipper stepped down....Skipper, who graduated from North Carolina and grew up in the state, enjoyed a close relationship with ACC Commissioner John Swofford. That unique bond was the driving force behind ESPN’s initial support of the ACC Network.

Lights. Camera. ACCtion!, August 6, 2018, M. Smith, *Sports Business Journal*, <https://www.sportsbusinessjournal.com/Journal/Issues/2018/08/06/Colleges/ACC-Network-ain-story.aspx> at p. 2.

146. By the time the ACC prestige network was finally ready to launch in 2019, the ACC members were forced to “spend a whopping \$110 million to \$120 million of their own money so they are prepared to produce live events and other programming,” an amount that was “four times what the SEC schools spent to get ready for that conference’s network launch in 2014.” (*Id.* at 1.)

147. Although “the ACC has pinned its financial future on the revenue it expects to generate from a conference branded linear network” (*id.*), at current revenue rates and faced with a steeply declining market for linear networks, it is unlikely that ACC members will recover these amounts under the 2016 ACC-ESPN Network Agreement.

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

148. 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 II-III payments under the 2016 ACC Network Agreement will shortly plateau and begin to decline.

149. 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 and 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.

150. The ACC prestige network was finally launched in 2019 (“ACC Network”), triggering a requirement that ESPN exercise its Unilateral ESPN Nine-Year Option by 2021, and terminating all payments by ESPN of the Network Placeholder Consideration.

151. On August 14, 2021, Phillips, without agreement from FLORIDA STATE, gratuitously extended what was a two-year option deadline for four additional years, or until 2025, by signing a formal amendment of the 2016 ACC Tier I Agreement drafted by ESPN. The ACC obtained nothing from ESPN in return.

152. 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.

153. 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.”

154. 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 Renegotiate More Lucrative Media Deals

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

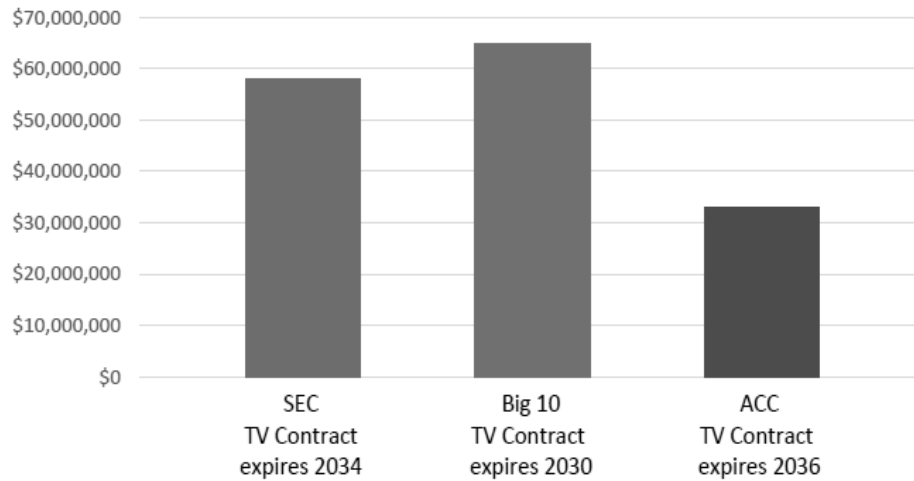
156. Notwithstanding the loss of its two signature members (the University of Texas and Oklahoma University) (*see*, ¶¶ 170-171), the Big 12 negotiated a new Tier I agreement with ESPN and Fox Sports last year that pays its members substantially more annually than is paid to ACC members. That deficit 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.

157. 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.

158. Also in 2023, 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.

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

**2024 PER-MEMBER MEDIA RIGHTS REVENUES
BY CONFERENCE**

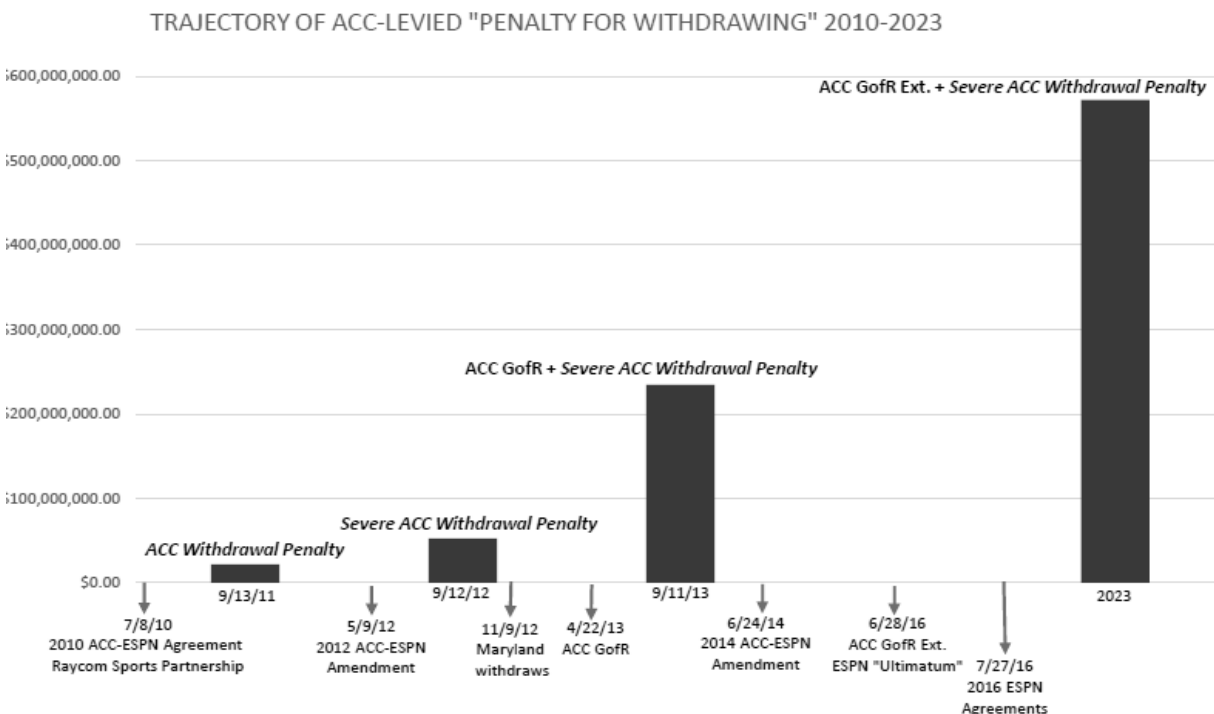


160. Since 2012, the SEC, the Big Ten and the Big 12 will each have had at least two (if not three) bites at the Tier I media rights apple with television networks before the ACC gets its first in 2036, and these conferences have used those opportunities to negotiate better terms to widen the gap between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

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

161. 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, assuming a value of \$33 million per year (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	ACC Withdrawal Penalty
9/12/2012	\$52,266,342.00	Severe ACC Withdrawal Penalty
9/11/2013	\$234,266,342.00	ACC GofR + Severe ACC Withdrawal Penalty
↓	↓	↓
2023	\$572,000,000.00	ACC GofR + Severe ACC Withdrawal Penalty



162. 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.

163. Going forward, each member of the SEC and Big Ten will receive approximately double the amount in fees as 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.

164. 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 are 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*, January 4, 2022, D. Lyons, *Sports Illustrated*, <https://www.si.com/college/2022/01/04/sec-adds-withdrawal-fee-conference-realignment-2021>.

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

166. 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*, July 10, 2022, A. Carter, *The News & Observer*, <https://www.newsobserver.com/sports/college/acc/article263200793.html>.

167. FLORIDA STATE is a victim of chronic mismanagement and self-dealing by ACC leadership and finds itself unable to effectively evaluate alternatives while the ***Severe Withdrawal ACC Penalties*** and the ACC 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 2020s

168. 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, September 13, 2023, L. Decock, *The News and Observer*, <https://www.newsobserver.com/sports/spt-columns-blogs/luke-decock/article278972299.html>.

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

170. 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, A. Binder and K. Draper, *New York Times*, <https://www.nytimes.com/2021/07/26/sports/ncaafootball/sec-big-12-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.

171. 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, D. 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.

172. 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.

173. In addition to USC and UCLA, the Big Ten added the Pac-12's two top-ranked teams, the University of Washington (ranked number 2 in the final AP ranking) and the University of Oregon (tied for number 6 in final AP ranking).

174. 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.

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

176. 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.

177. 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 Conference.

178. 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." *Conference realignment: Bob Bowlsby details why Big 12 passed on SMU and others, future expansion still viable*, October 21, 2021, D. Strake, *247Sports*, <https://247sports.com/article/conference-realignment-bob->

[bowlby-details-why-big-12-passed-on-smu-and-others-future-expansion-still-viable-173563791/](#)
at 1.

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

180. 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.

181. In mid-August 2023, Phillips and certain 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, J. Gay, *Wall Street Journal* <https://www.wsj.com/sports/football/college-football-pac-12-collapse-cal-stanford-df172d69>.

182. Of the four remaining Pac-12 teams, Oregon State stood alone having finished the 2023 season ranked number 27 in the final AP poll, while Cal was ranked number 60 and Stanford number 95 (out of a possible 133) in the final poll. *Ranking 133 college football teams after 2023-24 bowl seasons, from Michigan to Kent State*, January 10, 2024, C. Vannini, *The Athletic*, <https://theathletic.com/5191261/2024/01/10/college-football-team-rankings-fbs-postseason/>. Just as last year, this year Stanford and Cal finished in the bottom half of the Pac-12 in football standings.

183. Although Stanford, Cal, and SMU (which has never been a member of any Power Five (soon to be Power Four) Conference) 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. Despite that fact, in September 2023, over the strenuous objections of FLORIDA STATE and other ACC member institutions, the ACC added those institutions to its membership.

184. The additions by the ACC were in fact not about building the overall media value of the conference but rather self-serving, 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 if some members exercised their right to exit.

185. If two additions advance the ACC’s goals of self-preservation and self-perpetuation for the benefit of its leadership, then three is “better.”

186. Even excluding viewership figures for FLORIDA STATE from the ACC Network this season, here is how these schools stack up, or more importantly, fail to stack up, as for football viewership:

Team	Viewership
Florida State	42,940,000
Stanford	6,592,000
California	5,401,000
SMU	2,406,000

Including post season games, the gap explodes:

Team	Viewership
Florida State	60,360,000
Stanford	6,592,000
California	6,421,000
SMU	5,746,000

187. This alone demonstrates the ACC missed the point of conference realignment, and that its leadership deliberately decided to completely ignore its duty to the members to exploit their media rights. Indeed, the leadership chose the exact opposite and diluted those rights.

188. Simply stated, rather than improve its football media profile, the ACC consciously acted to diminish it, along with undermining the ACC's "strength of schedule" potential.

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

190. 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.

191. *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*, September 13, 2023, L. Decock, *The News and Observer*, <https://www.newsobserver.com/sports/spt-columns-blogs/luke-decock/article278972299.html>.

192. Indeed, in conjunction with the additions, the ACC apparently made no effort to try to persuade ESPN that the additions merited increased per-member payments or otherwise extract any sort of a benefit from ESPN.

FLORIDA STATE Tries to Work Internally within the ACC

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

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

195. 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.

196. When word of those public deliberations was reported, ACC members were swift to condemn FLORIDA STATE. 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*, August 6, 2023, A. Adelson and D. Hale, *ESPN Enterprises, Inc.*, https://www.espn.com/college-football/story/_/id/38135996/acc-florida-state-college-football-2023-conference-realignment; *Bubba Cunningham critical of comments from Florida St. president*, August 3, 2023, A. Adelson, *ESPN Enterprises, Inc.*, https://www.espn.com/college-football/story/_/id/38129880/unc-ad-bubba-cunningham-critical-comments-florida-state-president.

197. More recently, neither FLORIDA STATE nor the other members of the ACC were supported by Phillips in the lead up to the final CFP Selection Committee deliberations.

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

198. 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.

199. 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.

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

201. 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.

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

The ACC Has No Confidentiality Arrangement or Agreement with Its Members

203. Nothing within the ACC Constitution or Bylaws—the “contract by and among the member institutions, pursuant to which the members have agreed to conduct the business affairs of the ACC” and by which the ACC is organized by and operates” according to the pleading admissions of the ACC, *ACC v. Maryland et al*, at *2, ¶¶ 8-9—impose any sort of confidentiality

obligation on any member, including in the Bylaw section explicitly dedicated to the ACC “Media Rights Policy.” ACC Bylaw 2.10.

204. Neither the FLORIDA STATE BOARD of TRUSTEES nor FLORIDA STATE have ever been asked by either the ACC or ESPN to sign any sort of confidentiality or non-disclosure agreement, and no such agreement exists.

205. Neither the ACC GofR nor the ACC GofR Extension mentions anything regarding either confidentiality or trade secrets.

206. Neither the FLORIDA STATE BOARD of TRUSTEES nor FLORIDA STATE is a party to any agreement with ESPN.

207. Notwithstanding the absence of any sort of confidentiality agreement entered by the FLORIDA STATE BOARD of TRUSTEES or FLORIDA STATE, the ACC has on multiple occasions willingly provided FLORIDA STATE and its agents with access to the multi-media agreements at the ACC’s headquarters, including those involving ESPN.

208. Under Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes (Florida’s Public Records Act), the ACC GofR, the ACC GofR Extension, and all the multi-media agreements and their ancillary documents are public records. *See* §§119.01(3) and 119.07, Fla. Stat.; *see also NCAA v. Associated Press*, 18 So.3d 1201, 1207 (Fla. 1st DCA 2009), *rev. den.*, 37 So. 3d 848 (Fla. 2010).

209. There is no provision in Florida law by which the FLORIDA STATE BOARD of TRUSTEES or FLORIDA STATE is authorized to waive the applicability of Florida’s Public Records Act.

210. Florida Attorney General Ashley Moody has notified the ACC that the ACC GofR, the 2016 GofR Extension and the agreements between the ACC and ESPN are public records under

Chapter 119, Florida Statutes, and are the property of a public university and has demanded that those records be produced to the Florida Attorney General.

The ACC Files an Unprovoked Lawsuit against Its Member

211. At 4:55 PM on December 21, 2023, commenced an unprovoked legal process—filing a 33-page lawsuit against the FLORIDA STATE BOARD of TRUSTEES in North Carolina State Court—though the FLORIDA STATE BOARD of TRUSTEES has never entered any contract with the ACC (“Unprovoked ACC Complaint”).

212. Although the Unprovoked ACC Complaint spent paragraphs discussing the agreement between ESPN and the ACC, and alleged all “[t]he terms and conditions of the Media Rights Agreement and ACC Network Agreement are confidential and constitute a trade secret”, (*id.* at ¶ 84), the Unprovoked ACC Complaint nevertheless disclosed that “[b]oth agreements stipulate that their terms and conditions cannot be disclosed to the public and impose a confidentiality obligation of the Conference” thereby disclosing “terms and conditions” of the two agreements. (*Id.*)

213. The Unprovoked ACC Complaint also disclosed many more “terms and conditions” of the two agreements thereby injecting all the terms of those two agreements into the legal process. For example:

- That both agreements were “executed” on “July 21, 2016” and that “[t]hroughout the duration of these two agreements, the ACC will receive [monies] to distribute to its Members” (*id.* at ¶ 70);
- “Florida State...will receive [monies] through 2036” (*id.* at 2);
- That “the Media Rights Agreement contained a warranty by the Conference” and that Florida State was bound and subject to “warranties in the ESPN agreements” which Florida State could never “violate” (*id.* at ¶ 70 and p. 2);
- According to their terms and conditions, “[t]hese agreements were not possible without the Media rights ceded by the Grant of Rights” (*id.* at ¶ 13);

- That the terms and conditions of the ACC Network agreement “established the ACC Network as a joint venture”, and that “ESPN”, “the Conference” and the “Member Institutions” are now “bound...in a partnership” (*id.* at ¶¶ 14 and 50);
- That under the Network Agreement “Florida State received its pro rata share of the Rights Fee payments from ESPN” (*id.* at ¶ 64); and
- That “the ACC Network Agreement and the Media Rights Agreement” both “increased fees received by the Conference...which have been and will continue to be distributed by the Conference to its Members” (*id.* at ¶ 85).

214. Indeed, as a basis to justify the extraordinary relief the ACC is requesting in North Carolina court, in the Unprovoked ACC Complaint the ACC boasted about how “different and increasingly lucrative” all the terms and conditions of the two agreements are (*id.* at ¶ 138):

In exchange for the Grant of Rights and amended Grant of Rights, the ACC negotiated new contracts and agreements with ESPN, contracts and agreements which significantly increased the revenues paid to the Conference and distributed to its Member Institutions, including Florida State. The increase in revenues included specific payments for the Grant of Rights held by the ACC.

(*Id.* at ¶ 120.)

Under the [terms and conditions of] the ESPN contracts, the Conference is obligated to take all commercially reasonable actions to defend the Grant of Rights and the Amended Grant of Rights granted to ESPN under those contracts.

(*Id.* at ¶ 126.)

215. According to the Unprovoked ACC Complaint, “Florida State”, presumably as well as all the other ACC members, was given “the expectation of receiving the benefits of different and enhance agreements with the Conference and ESPN” as the inducement for them “to transfer the rights covered by...the Grant of Rights and Amended Grant of Rights.” (*Id.* at 142.)

216. The ACC publicly disclosed all the above terms and conditions *before* the FLORIDA STATE BOARD of TRUSTEES filed this action, thereby “opening the door” to all

terms and conditions of all the multi-media agreements, particularly those directly contradicting the ACC's allegations.

217. The Unprovoked ACC Lawsuit claims the ACC, a North Carolina voluntary unincorporated non-profit association "acting on its own behalf" and separate from its members, has a license to sue "one or more of its Member Institutions" (*id.* at ¶ 2), and in the process unilaterally "waive" those members' sovereign immunity. (*Id.* at ¶ 6.)

218. In contrast, in the ACC's Complaint filed against Maryland (also in North Carolina state court), the ACC admitted that although it was "its own legal entity" its authority extended only to "assert[ing] claims in its name on behalf of its members." (*ACC v. Maryland et al.* at *1, ¶ 3.)

219. In its pleadings, the ACC asserts the ACC members have unwittingly entered and become part of a North Carolina "common joint and joint venture" apparently existing beyond and outside the ACC Constitution and Bylaws, with a variety of undefined "fiduciary obligations," duties of "due care" "supplemented" by "principles of law and equity" to be developed *ad hoc*.

220. As a creation of its members, the ACC cannot operate outside of the ACC Constitution and Bylaws and concoct "duties" where they do not exist in the ACC Constitution and Bylaws.

221. The ACC was created by and exists solely for the benefit of its members and under its direction and control of the members. Not the other way around.

222. According to the provisions of the ACC Constitution as to which the ACC admits it is organized and must operate, before initiating the Unprovoked ACC Lawsuit, the ACC was "**Required**" to give notice and convene a "meeting" of its Board at which meeting the ACC had to secure an "Absolute Two-Thirds" majority (including all Directors "not present for such a vote")

for “the initiation of any material litigation involving the Conference.” ACC Constitution 1.6.2, “**Required Vote.**”

223. Nowhere in either of the two Complaints the ACC has now filed in the Unprovoked ACC Lawsuit does the ACC purport to have complied with this mandatory precondition or purport to assert that its members had prior notice of the lawsuit.

224. In contrast, in the *ACC v. Maryland et al.* Complaint, the ACC established that “[e]ach member other than defendant Maryland has specifically authorized the ACC to act in that capacity [pursue legal action] in this Action.” *ACC v. Maryland, et al.*, at *5, ¶ 39.

225. Two thirds of the ACC members are State institutions—encompassing the States of Florida, Georgia, Kentucky, North Carolina (twice), Pennsylvania, South Carolina, and Virginia (twice). This coming August, the ACC’s self-proclaimed unilateral power to waive State sovereign immunity (not provided for under the ACC Constitution) without member notice and/or approval will extend to the State of California as well.

226. To make matters even worse, the Unprovoked ACC Lawsuit rests on the predicate that a “breach [of] its contractual obligations” occurs any time a contracting party “*intends...to* challenge the validity or enforceability” of its contract. (*Id.* at 2.)

COUNT I

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

227. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

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

229. 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.

230. 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.

231. 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.

232. 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.

233. Through the ACC GofR, the ACC GofR Extension 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.

234. The ACC GofR and ACC GofR Extension, 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.

235. 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.

236. 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.

237. The *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension, 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.

238. 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.

239. Moreover, these anticompetitive effects are not outweighed by the pretextual argument that the ACC GofR and ACC GofR Extension 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 comparably lengthy, draconian, and restrictive grant of rights arrangements, 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.

240. 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.

241. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension 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*, the ACC GofR and the ACC GofR Extension 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 and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES, 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

242. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

243. The *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension 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.

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

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

246. 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*, the ACC GofR and the ACC GofR Extension, individually and collectively, are not enforceable against FLORIDA STATE, and that in that event and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES,

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

247. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

248. 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 sole 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;
- Failing to protect the student-athletes’ hard-earned right to participate in championships; and
- Initiating a lawsuit against the FLORIDA STATE BOARD of TRUSTEES without obtaining authority for such action from its members, as required by the ACC Constitution.

249. 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.

250. 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 and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES, 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

251. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

252. 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.

253. 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.

254. 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.

255. 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.

256. 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 and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES, 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

257. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

258. 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 FLORIDA STATE'S athletic media rights and the protection of its status as an undefeated conference champion.

259. 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.

260. 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.

261. 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 and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES, 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

262. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

263. The ACC GofR and the ACC GofR Extension, directly and materially contradict 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.

264. The ACC GofR purports to subvert, if not eliminate, the fundamental rights of FLORIDA STATE, including its fundamental right to withdraw, though neither the ACC GofR nor the ACC GofR Extension, makes any 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.

265. 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 and ACC GofR Extension 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.

266. 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.

267. The ACC GofR and the ACC GofR Extension effectively deprive FLORIDA STATE of the only means it has to protect itself from being disadvantaged by the ACC.

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

269. For the period of the ACC 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.

270. An actual controversy exists between the ACC and FLORIDA STATE concerning whether the ACC GofR and the ACC GofR Extension are contracts, and that if it is, whether they are an enforceable contracts *vis-a-vis* FLORIDA STATE.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the ACC GofR and the ACC GoR Extension did not form contracts, or, in the

alternative, that if the ACC GofR and the ACC GofR extension are contracts they are not enforceable *vis-a-vis* FLORIDA STATE, and that in that event and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD of TRUSTEES, 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

271. FLORIDA STATE realleges and incorporates paragraphs 1-226, above.

272. The *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension, 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.

273. The *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension, 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.

274. An actual controversy exists between the ACC and FLORIDA STATE concerning the enforceability of the *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension.

WHEREFORE, FLORIDA STATE requests entry of a judgment against the ACC declaring that the *Severe ACC Withdrawal Penalty*, the ACC GofR and the ACC GofR Extension, individually and collectively, are not enforceable in their entirety against FLORIDA STATE, and that in that event and upon a duly authorized affirmative vote by the FLORIDA STATE BOARD

of TRUSTEES, 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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January, 2024, a true and correct copy of the foregoing was served to the following:

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