

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG

ATLANTIC COAST CONFERENCE,

Plaintiff,

v.

CLEMSON UNIVERSITY,

Defendant.

COMPLAINT

The ACC is a great conference, and this increases the national exposure, brings in additional revenue and offers greater opportunity for student athletes. . . . For us and the Florida States and others, it stabilizes the conference long term.

James Clements, Clemson University President and then-Chair of the ACC's Council of Presidents, describing the ESPN Agreements and amended Grant of Rights, *ACC, ESPN partner for new conference channel*, ESPN.COM NEWS SERVICE, June 21, 2016.

NOW COMES the Plaintiff, the ATLANTIC COAST CONFERENCE (“the ACC” or “the Conference”), and, complaining of Defendant Clemson University¹ (“Clemson”), alleges that:

Summary of Claims

This case involves the integrity of contracts, and in particular the good faith and word of Clemson, a charter Member Institution of the ACC. Throughout the ACC’s history, Clemson has actively participated as a member institution in the management and development of the ACC. In 2012, Clemson voted to increase the withdrawal payment under § 1.4.5 of the ACC Constitution to “an amount equal to three times the total operating budget of the Conference.” Clemson also agreed in 2013 and 2016, along with every other Member of the ACC, to grant its media rights, “irrevocably and exclusively,” to all of its “home” games to the Conference through 2036, “regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term” (the “Grant of Rights”). Indeed, Clemson celebrated these developments.

As a result of these actions, through the Grant of Rights, Clemson has received more than [REDACTED] to date, and will receive [REDACTED]. Yet in the wake of conference realignment elsewhere and new media deals involving other conferences, Clemson has changed course and seeks not only a home in a more lucrative conference, but claims that the agreements which it publicly endorsed do not mean what they say. Clemson now takes the position that (1) the withdrawal payment it voted for is an unenforceable penalty and (2) its grant of rights to the ACC was neither irrevocable nor exclusive through 2036 (and regardless of whether it remains a member) despite the plain language of the agreement. In so doing, Clemson breached

¹ This lawsuit is against Clemson University’s Board of Trustees, “a body politic and corporate, under the name and style of Clemson University.” S.C. Code § 59-119-60.

its agreement to not “take any action, or permit any action to be taken by others subject to its control . . . that would affect the validity and enforcement” of the Grant of Rights.

Consequently, the ACC seeks (1) a declaration that the withdrawal payment is a valid and enforceable contract term applicable to Clemson; (2) a declaration that the plain language of the Grant of Rights means what it says and that Clemson’s grant of rights is exclusive and irrevocable through the term, regardless of whether Clemson remains a Member Institution; (3) a declaration that by accepting millions of dollars of benefits under the Grant of Rights and as a Member Institution that has operated under the Grant of Rights for more than a decade, Clemson is equitably estopped from attacking the validity of the withdrawal payment or the Grant of Rights or, in the alternative, has waived any right to do so; (4) a declaration that Clemson owes fiduciary duties to the ACC as a Member Institution; (5) damages for Clemson’s breach of the Grant of Rights; and (6) damages for Clemson’s breach of the covenant of good faith and fair dealing.

I. Parties, Jurisdiction, and Venue

A. The Parties

Atlantic Coast Conference

1. The ACC is an unincorporated nonprofit association under North Carolina law. The ACC currently has 15 Member Institutions: Boston College, Clemson University, Duke University, Florida State University, Georgia Institute of Technology, University of Louisville, University of Miami, University of North Carolina at Chapel Hill, North Carolina State University, University of Notre Dame (except for Football), University of Pittsburgh, Syracuse University, University of Virginia, Virginia Polytechnic Institute & State University, and Wake Forest

University.² The ACC's Board of Directors currently has 15 voting members, including the President of Clemson. Its headquarters and principal place of business is in Charlotte, Mecklenburg County, North Carolina. Since its inception over 70 years ago, the ACC's principal place of business and headquarters have been located in North Carolina.

2. As an unincorporated nonprofit association under North Carolina law, the ACC can sue in its own name and enter into contracts. N.C. Gen. Stat. § 59B-8. The ACC is a legal entity "separate from its members for the purpose of determining and enforcing rights, duties, and liabilities." N.C. Gen. Stat. § 59B-7(a). Consequently, the Conference may, acting on its own behalf, enforce its contractual obligations with one or more of its Member Institutions. N.C. Gen. Stat. § 59B-7(e).

3. On March 20, 2024, the ACC held a special meeting in which three-fourths of the ACC's member institutions waived the three-days' notice requirement under Section 1.5.1.5.1 of the ACC Constitution, and in which more than two-thirds of the ACC's member institutions voted to approve the filing of this Complaint.

4. The Conference is a party to the written contracts at issue and is therefore entitled to seek a declaration of its rights and other legal relations under these written contracts under N.C. Gen. Stat. § 1-254.

Clemson

5. Clemson is organized and exists under the laws of the State of South Carolina.

6. Clemson is a charter Member Institution of the ACC, which was founded in 1953.

² The ACC refers to its members as "Member Institutions," while its agreements with ESPN refer to the members as "Conference Institutions." "Member," "Member Institution," and "Conference Institution" will be used interchangeably in this Complaint.

7. Under the laws of the State of South Carolina, Clemson has waived its sovereign immunity for the claims at issue here. *See* S.C. Code § 59-119-60 (granting Clemson the power to contract and “sue and be sued and plead and be impleaded in its corporate name.”).

B. Jurisdiction

8. This Court has subject matter jurisdiction under N.C. Gen. Stat. §§ 7A-240 and 1-253 *et seq.*

9. Clemson is subject to the jurisdiction of the State of North Carolina in matters involving the ACC as a result of its continuous and systematic membership and governance activities within the ACC. These specific continuous and systematic actions in North Carolina arise out of its membership in and management of the Conference, and are the subject of this Complaint. Consequently, this Court may exercise personal jurisdiction over Clemson pursuant to N.C. Gen. Stat. § 1-75.4(1)(d), (4), and (5).

10. Clemson joined the ACC on May 8, 1953. Since then, Clemson has regularly attended meetings held in the State of North Carolina by the ACC.

11. Because the ACC is a North Carolina unincorporated nonprofit association, each of its Member Institutions is responsible for managing and overseeing its operations. Clemson has played an active role in the administration of ACC affairs. Clemson’s President is a Member of the Board of Directors, while Clemson’s Athletic Director, like the Athletic Director of all Member Institutions, serves on the Football and Basketball Committees. Each of Clemson’s Head Coaches serves on the committee for his or her particular sport. Currently, Clemson officers or representatives serve on at least 17 committees which govern and further the mission of the ACC. Some notable committees and positions on which Clemson officers and employees have served over the past decade include:

- a. Clemson's President served on the Executive Committee (2016-17, 2020-23) and as Chair of the Council of Presidents³ (2016-17);
- b. A faculty member of Clemson served on the Executive Committee (2017-2020), including as the President of the ACC (2018-19), and as a member of the Finance Committee (2016-19);
- c. The Athletic Director of Clemson has served on the Television or Media Committees from 2012 through 2024;
- d. A member of Clemson's athletic department served on the Constitution and Bylaws Committee (2012-15); and,
- e. A member of Clemson's athletic department served on the Finance Committee (2012-16, 2019-20).

12. The Conference generally holds two meetings of the Board of Directors per month, with three of these meetings held in person annually, often in North Carolina. Three of the four most recent in-person Board of Directors meetings were held in North Carolina: Charlotte, North Carolina (February 2023, May 2023, February 2024); Clemson's President attended the May 2023 and February 2024 meetings in person.

13. The ACC's Board of Directors is responsible for selecting the ACC's headquarters. In 2022, the Board, including Clemson's President, voted unanimously to relocate the ACC's headquarters and principal place of business from Greensboro to Charlotte, North Carolina. In doing so, the ACC, through its Board of Directors, accepted a financial incentive of \$15 Million created by the State of North Carolina, paid for by North Carolina taxpayers, and made available to an athletic conference that established or maintained its headquarters in North Carolina and held

³ The Council of Presidents was the equivalent of the ACC's current Board of Directors.

at least four men's and four women's basketball tournaments in North Carolina over the next ten years, and twenty other Championship events in North Carolina over the next twenty years. Session Law 2022-74, HB 103, Section 11.8(a). Thus, Clemson voted to accept benefits from North Carolina taxpayers through its role as a Member Institution of the Conference.

14. The contracts at issue, the Grant of Rights, Amended Grant of Rights, ACC Constitution, and ACC Bylaws, are North Carolina contracts that arose out of Clemon's membership in the Conference. Clemson executed the Grant of Rights and transmitted its signature pages to the ACC in North Carolina. As set forth in this Complaint and its exhibits, the Commissioner of the ACC did not execute the Grant of Rights or amended Grant of Rights until after each of the Member Institutions had signed. This final execution in North Carolina was the last act necessary for the formation of this contract and means that the Grant of Rights and amended Grant of Rights is a North Carolina contract governed by North Carolina law.

15. Between 2014 and 2016, the ACC entered into multiple agreements with ESPN⁴ for the Media Rights ceded by the Grant of Rights. These agreements were not possible without the Media Rights ceded by the Grant of Rights.

16. These agreements included an Amended Multimedia Agreement in 2014 (which was superseded by a Restated and Amended Multimedia Agreement in 2016), and an agreement establishing the ACC Network as a joint venture. Under these agreements, ESPN has paid and continues to pay the Conference a [REDACTED]. The Conference then allocates these [REDACTED] to its Member Institutions, including Clemson. Since signing the Grant of Rights agreement, Clemson has accepted more than [REDACTED] in distributions under these agreements.

⁴ "ESPN" refers to ESPN, Inc. and ESPN Enterprises, Inc.

17. The Member Institutions of the Conference, including Clemson, specifically authorized the ESPN Agreements.

18. Four ACC Member Institutions are located in North Carolina, and Clemson frequently travels to North Carolina to compete in ACC-sponsored and administered athletic events and athletic competitions against these four North Carolina Member Institutions. Additionally, many of the ACC's championships are conducted, held, and administered in North Carolina. For reference, the ACC Football Championship Game has been held in Charlotte, North Carolina, 13 times since its inception in 2005, and Clemson has competed in this Championship in North Carolina seven times, the last time occurring in 2022. Since 1991, the ACC's Men's and Women's Basketball Tournaments, in which Clemson regularly competes, have been held 25 times in North Carolina, including most recently in March 2023.

19. Under the Uniform Unincorporated Nonprofit Association Act, each Member Institution of the Conference is responsible for oversight and administration of the Conference. N.C. Gen. Stat. § 59B-1, *et seq.* Section 59B-7(e) further provides that each Member Institution has standing to assert a claim by the Conference in its own name and sue on the Conference's behalf. In addition, the Conference is given the statutory right to make claims against any of its Members. Consequently, a member of an unincorporated association in North Carolina consents to be sued by the unincorporated association for any claims against it by the unincorporated nonprofit association. Clemson, in exchange for its Membership in the Conference, was granted the right to sue in North Carolina courts on behalf of the Conference. The Conference was also given the explicit right to sue Clemson for any claims which it had arising out of Clemson's membership. Clemson therefore consented to jurisdiction in the courts of North Carolina for the claims of the ACC against it. *Farmer v. Troy University*, 382 N.C. 366, 370–71 (2022) *cert. denied*

(No. 22-787 May 30, 2023) (state university consented to sue and be sued in the courts of North Carolina by registering as a nonprofit corporation where the North Carolina Act provided that nonprofit corporations could sue and be sued);

20. The Conference further adopts by reference and incorporates the remaining paragraphs and attached Exhibits of this Complaint as evidence of Clemson's consent to jurisdiction in North Carolina and its specific consistent and systematic contacts with North Carolina arising out of its membership in the Conference.

C. Venue

21. As of August 1, 2023, the ACC's headquarters and principal place of business are located in Charlotte, North Carolina. According to N.C. Gen. Stat. § 59B-13, for purposes of venue, the ACC is a resident of Mecklenburg County, North Carolina.

22. This matter involves a dispute over whether the Grant of Rights and amended Grant of Rights entered into by Clemson and the Conference in 2013 and amended in 2016 is a valid contract which granted Clemson's Media Rights to the ACC. Media rights are a form of intellectual property. N.C. Gen. Stat. § 7A-45.4(a)(5).

23. This matter further involves a dispute that will necessitate reference to and interpretation of the law governing corporations (including unincorporated nonprofit associations) under N.C. Gen. Stat. § 7A-45.4(a)(1).

24. The amount in dispute that is the subject of this Complaint exceeds \$5,000,000, as the total Media Rights subject to the ESPN contracts and agreements that Clemson breached amount to [REDACTED].

II. Factual Background

A. The Formation, Purpose, and Structure of the ACC

25. The ACC is the country's most successful collegiate academic and athletic conference.

26. The ACC has led the Football Bowl Subdivision conferences in the best average rank in the *U.S. News and World Report* rankings for the past 17 years.⁵ It has a graduation success rate of 96% for all of its sports, and 147 of the teams in the ACC had a 100% graduation success rate. Seven of its 15 present Members have graduation rates of more than 91% for Football.

27. In the past two years and across all sports, ACC athletic teams have won 20 NCAA championships (including 14 championships in 2023), more than any other conference. The Conference has placed the second highest number of teams in the College Football Playoff and is tied for the second most national championships in Football over the past decade. In Men's Basketball, ACC teams appear in the Final Four on a consistent basis, and its programs have won more national championships than any other Conference over the past 30 years. In 2023, 24 ACC teams advanced to the finals or semi-finals of NCAA championships, and both the Men's Lacrosse and Women's Tennis Championships featured all-ACC finals. Eighteen ACC teams finished 2023 ranked first or second in the final 2023 polls, more than any other conference. The ACC sponsors 15 women's sports, the highest number among major conferences, and 28 sports overall.

⁵ In the most recent survey, 6 of the soon-to-be 18 Members of the Conference were ranked among the top 25 Universities in the country. No other FBS Conference had more than 3 universities in the top 25.

28. There are approximately 10,000 student-athletes participating in ACC-sponsored sports.⁶ More than 100 current or former ACC athletes from 15 sports are currently training on U.S. National Teams in an effort to qualify for the 2024 Olympics. At the 2023 FINA World Championships, 11 different ACC swimmers participated. Twenty-nine current and former ACC athletes represented nine countries at the 2023 Women's World Cup, five of whom played for the United States.

29. The ACC was founded on May 8, 1953, at the Sedgefield Inn near Greensboro, North Carolina. It consisted of seven Member Institutions: Clemson, Duke University, the University of Maryland, the University of North Carolina, North Carolina State University, the University of South Carolina, and Wake Forest University.

30. On June 14, 1953, the charter members adopted the first set of bylaws and a constitution. The current ACC Constitution is attached as **Exhibit 1** to this Complaint.

31. On December 4, 1953, the University of Virginia became the eighth Member Institution of the ACC. On May 28, 1954, the ACC elected its first commissioner and on July 1, 1954, the Office of Commissioner was established in Greensboro, North Carolina.

32. The ACC operated with eight Member Institutions until June 30, 1971, when the University of South Carolina withdrew.

33. Subsequently, the ACC expanded, adding the Georgia Institute of Technology in 1978, Florida State University in 1991, the University of Miami and Virginia Polytechnic Institute and State University in 2004, Boston College in 2005, the University of Notre Dame (except for

⁶ Beginning August 2, 2024, and with the addition of Stanford University, the University of California Berkeley, and Southern Methodist University, the ACC will have more than 12,000 student athletes.

Football), the University of Pittsburgh, and Syracuse University in 2013, and the University of Louisville in 2014.

34. Since August 1, 2023, the ACC's headquarters and principal place of business have been located in Charlotte, North Carolina.

35. The General Purpose for the ACC is set forth in its Constitution:

It is the purpose and function of this Conference to enrich and balance the athletic and educational experiences of student-athletes at its member institutions to enhance athletic and academic integrity among its members, to provide leadership, and to do this in a spirit of fairness to all.

ACC Constitution § 1.2.1. **Exhibit 1** at p. 10.

36. One of the ACC's governing principles is the concept of "Institutional Control." Through its governing body, each Member Institution must conduct its athletic programs in accordance with ACC and NCAA rules and regulations. ACC Constitution § 1.3. **Exhibit 1** at p. 10. Therefore, each Member Institution is subject to the ACC's rules and regulations.

37. The ACC is governed by a Board of Directors comprised of the presidents or chancellors of each Member Institution. A Chair and Vice-Chair are elected for two-year terms from among the Board of Directors' members. The Conference also has non-Board officers, including the Commissioner (who serves as President), a Secretary, a Treasurer, and such additional officers as the Board of Directors may designate from time to time. ACC Constitution §§ 1.51, 1.5.2. **Exhibit 1** at pp. 12-17.

38. The ACC Constitution addresses the withdrawal or resignation of Member Institutions. ACC Constitution § 1.4.5. **Exhibit 1** at p. 12. Withdrawal or resignation is permitted with notice by August 15th for an effective withdrawal date of June 30th of the following year. Upon receiving notice of withdrawal, the Member Institution may be removed from the Board of

Directors and all committees if the Conference determines that a conflict of interest exists. In addition, the withdrawing Member Institution must make a payment equal to three times the total operating budget of the Conference as of the date of the official withdrawal notice. The withdrawal payment may be deducted from distributions received by the withdrawing institution, but any remainder is due in full within 30 days of the withdrawal's effective date.

B. The ACC's 2010 Multi-Media Agreement with ESPN and the 2012 Amendment to the 2010 Multi-Media Agreement

39. On July 8, 2010, the ACC entered into its first Multi-Media Agreement with ESPN ("2010 Multi-Media Agreement") with the unanimous approval of its Member Institutions (including Clemson). Under the 2010 Multi-Media Agreement, the ACC granted ESPN the exclusive distribution rights to home or Conference-controlled Football Games, Men's Basketball Games, Women's Basketball Games, and Olympic Sports.

40. In exchange, ESPN agreed to pay the Conference a [REDACTED] beginning in [REDACTED], which would [REDACTED] the 2010 Multi-Media Agreement.

41. In 2012, through an Amendment and Extension Agreement, the ACC and ESPN agreed to extend the term of the 2010 Multi-Media Agreement until 2027, increasing the [REDACTED] to be paid such that, by the end of the term, ESPN would pay the ACC (for distribution to its Member Institutions) [REDACTED] annually.

42. Clemson's then-President was authorized to vote for and approve the 2010 Multi-Media Agreement on behalf of Clemson.

43. Clemson authorized, ratified, and otherwise approved the 2010 Multi-Media Agreement and Amendment.

C. The Withdrawal Payment and Alternative Performance

44. Following the approval of the 2010 Multi-Media Agreement, the Conference revised the withdrawal payment and alternative performance that a withdrawing Member must make if it chose to leave the Conference.

45. During a meeting of the Council of Presidents (now Board of Directors) on September 11-12, 2012, there was extensive discussion concerning whether the withdrawal payment and alternative performance should be increased to better protect the Conference from the potential negative impact that a withdrawal of a Member could cause, as well as to more appropriately compensate the Conference for some of the potential losses.

46. During this meeting, a media consultant provided information concerning the potential lost revenue to the Conference in the event a Member withdrew. That assessment indicated that the lost revenue in 2012 could range from \$6 Million to \$18 Million per year depending on the identity of the withdrawing Member - - and that these losses would occur over the 12-year life of the Media agreement, for a total of \$72 Million to over \$200 Million. These projected losses only reflected the loss of certain Media Rights payments.

47. The Council of Presidents further discussed the fact that other losses would also occur if a Member withdrew, ranging from NCAA Men's Basketball Tournament revenues (which are distributed over time on a unit basis), the potential inability to honor bowl agreements, lost revenues on individual campuses from ticket sales, and the harm to the Conference's reputation, image, and national brand.

48. Given the extent of potential loss if a Member withdrew, and while a recommendation was made to increase the amount of the withdrawal payment from 1 ¼ to 3 times

the Conference's annual operating budget, this increase was still insufficient to address the potential losses caused by withdrawal.

49. As a result of these discussions, the Council of Presidents, including Clemson's then-President, voted to increase the withdrawal payment to 3 times the Conference's annual operating budget.

50. Thus, the withdrawal payment is simply a vehicle through which a Member may choose to terminate its membership in the Conference by meeting the payment obligations rather than continuing to meet the obligations of a Member. It thus constitutes a form of alternate performance under the ACC Constitution and Bylaws and represents a fraction of the losses that would be caused to the Conference by the withdrawal of a Member.

51. The withdrawal payment, which is meant to provide an alternative means of performance for a Member who seeks to withdraw, is less than a single year of the athletic revenues generated by Clemson. In the context of agreements that will last several years and generate hundreds of millions of dollars, the withdrawal payment is a fraction of the total revenue to be paid to the Conference and received by its Members.

D. The 2013 Grant of Rights

52. In 2012, the University of Maryland announced its withdrawal from the ACC. In the same year, the ACC elected to add the University of Notre Dame (except for Football), the University of Pittsburgh, Syracuse University, and the University of Louisville as Member Institutions. Concurrently with these membership modifications, the ACC and ESPN began negotiations to amend the 2010 Multi-Media Agreement.

53. During this time period, other collegiate athletic conferences began to experience significant instability and realignment, which continues to this day. At this time, the Southeastern

Conference (“SEC”) added the University of Missouri and Texas A&M University (from the Big 12 Conference), while the Big Ten Conference added the University of Maryland (from the ACC), Rutgers University (from the Big East Conference) and the University of Nebraska (from the Big 12 Conference). The Pac-12 Conference and the Big 12 Conference were undergoing a similar realignment.

54. The instability and realignments in other college athletic conferences necessitated that, in order to secure a long-term media rights agreement and thus ensure the payment of predictable sums over time, the media rights granted had to be stable and constant over the same period of time. This stability provides ESPN with certainty regarding the games (and their participants) it has a right to broadcast, and it provides each of the Conference’s Member Institutions with certainty regarding the annual revenue that it can anticipate throughout the term of the agreement.

55. To facilitate this stability and certainty, each Member Institution that remained in or intended to join the ACC, including Clemson, entered into a written Grant of Rights agreement. Clemson did so on April 19, 2013. This Grant of Rights agreement is attached as **Exhibit 2** to this Complaint.

56. The Grant of Rights agreement is a written contract between the Member Institutions and the Conference in which each Member Institution granted the Conference its Media Rights⁷ and, in exchange, on behalf of the collective Member Institutions, the Conference negotiated revisions to the 2010 Multi-Media Agreement to increase the [REDACTED] paid. The Conference then distributed the funds to the Member Institutions.

⁷ These rights are for “home” games. A “home” game is any game which is either played at a Member’s home location or in which the Member is designated as the “home” team.

57. The Grant of Rights was intended to provide the necessary commitments for long-term agreements with ESPN by providing an assurance that the collection of Media Rights ceded to ESPN would remain unchanged if a Member Institution left the Conference. This thus bound the Member Institutions to one another, to the Conference, and ultimately to ESPN in a partnership.

58. By aggregating the Media Rights from each Member Institution, the Conference was able to increase the total value of those rights as opposed to the situation in which each Member, individually, was forced to negotiate and enter into individual agreements to broadcast those rights.

59. As set forth in the Grant of Rights agreement, in order to negotiate for increased payments for the Media Rights to be granted to ESPN, “each of the Member Institutions [including Clemson] is required to, and desires to, irrevocably grant to the Conference, and the Conference desires to accept from each of the Member Institutions, those rights granted herein.” **Exhibit 2** at p. 1.

60. The Grant of Rights further stipulated that it was irrevocable and exclusive for the duration of the ESPN agreement, regardless of whether a Member Institution withdrew from the Conference:

Grant of Rights. Each of the Member Institutions hereby (a) irrevocably and exclusively grants to the Conference during the Term . . . all rights (the “Rights”) necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement, *regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term*

Exhibit 2 at p. 2 ¶ 1 (emphasis added). This was repeated in ¶ 6:

Acknowledgements, Representations, Warranties, and Covenants. Each of the Member Institutions acknowledges that the grant of Rights during the entire Term is irrevocable and effective until the end of the Term *regardless of whether the Member Institution withdraws from the Conference during the Term or otherwise ceases to participate as a member of the Conference* in accordance with the Conference's Constitution and Bylaws.

Exhibit 2 at p. 3 ¶ 6 (emphasis added).

61. The rights granted under the Grant of Rights by each Member Institution of the ACC included “the right to produce and distribute all events of such Member Institution that are subject to the ESPN Agreement,” with each Member Institution acknowledging that the Conference “owns or will own the copyrights” associated with the rights granted to the Conference. **Exhibit 2** at p. 2 ¶¶ 1, 2.

62. The Grant of Rights further provided that each Member Institution “covenants and agrees that . . . it will not take any action, or permit any action to be taken by others subject to its control, . . . or fail to take any action, that would affect the validity and enforcement of the Rights granted to the Conference under this Agreement.” **Exhibit 2** at p.3 ¶ 6.

63. In short, each Member Institution agreed (1) to grant its athletic Media Rights to the Conference, (2) to make this grant irrevocable for the duration of the term of Grant of Rights, and (3) not to take any action that would affect the validity of the Grant of Rights or otherwise contest its validity.

64. Clemson agreed to and executed the Grant of Rights on April 19, 2013.

65. Clemson's then-President was authorized to agree to and execute the Grant of Rights on April 19, 2013 on behalf of Clemson.

66. The Grant of Rights contains a specific acknowledgement and warranty that the then-President of Clemson was authorized to agree to and execute the Grant of Rights:

[E]ach Member Institution represents and warrants to the Conference (a) that such Member Institution either alone, or in concert with an affiliated entity . . . has the right, power and capacity to execute, deliver and perform this Agreement . . . (b) that execution, delivery and performance of this Agreement . . . have been duly and validly authorized by all necessary action on the part of such Member Institution.

Exhibit 2 at p.3 ¶ 6.

67. On April 22, 2013, following the execution of the Grant of Rights by all Member Institutions, the ACC accepted and executed the Grant of Rights in Greensboro, North Carolina, with the signature of its Commissioner.

68. Along with other members, Clemson celebrated this agreement, noting specifically that it bound the membership together for the long term.⁸

E. The 2014 Second Amendment to the Multi-Media Agreement

69. Relying on the irrevocable and exclusive Grant of Rights, the Conference negotiated the Second Amendment to the 2010 Multi-Media Agreement, which went into effect on June 24, 2014. In addition to incorporating the changes in the ACC's membership, this amendment also increased the [REDACTED]. By the end of the term, 2026-2027, the total fees paid to the Conference under this agreement would have been in the hundreds of millions of dollars.

70. The increase in the fees paid to the Conference, which were then distributed by the Conference to the Member Institutions (including Clemson), is good and valuable consideration in support of the Grant of Rights.

⁸ Teel Time: More reaction to ACC's 'great strategic move' with grant of rights, DailyPress, April 23, 2013, <https://www.dailypress.com/2013/04/23/teel-time-more-reaction-to-accs-great-strategic-move-with-grant-of-rights/>.

71. The Second Amendment to the 2010 Multi-Media Agreement contained a specific representation and warranty from the Conference to ESPN, [REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attached as **Exhibit 3** to this Complaint is the relevant portion of the Second Amendment to the 2010 Multi-Media Agreement [REDACTED]

[REDACTED]

72. Following the ACC's acceptance of Clemson's Grant of Rights in 2013 and the implementation of the Second Amendment to the 2010 Multi-Media Agreement in 2014, Clemson received its pro rata share of the [REDACTED] payments from ESPN, totaling [REDACTED] of dollars. At no point did Clemson reject the distributions it received or contest the legality of the Grant of Rights it executed that made the Second Amendment to the 2010 Multi-Media Agreement possible.

73. In addition to entering into the Grant of Rights, the ACC's Member Institutions voted unanimously to amend the ACC's Bylaws to confirm that, pursuant to the Grant of Rights, the Member Institutions granted the ACC the right to market the Member Institutions' media and related rights. ACC Bylaws § 2.10.1. The ACC Bylaws as amended are attached to this Complaint as **Exhibit 4**.

F. The 2016 Agreements

74. In the years following, and into 2016, the ACC sought to generate additional revenue for its Members through a network partnership with ESPN. Because the Conference had already granted ESPN its Media Rights, the Conference sought a partnership with ESPN to establish the ACC Network, broadcast more ACC events, and share in the revenues from this new network.

75. As part of these agreements, ESPN agreed to extend and increase the [REDACTED] [REDACTED] until the establishment and launch of the ACC Network, which ultimately took place in 2019. On July 21, 2016, the parties executed an Amended and Restated ACC-ESPN Multi-Media Agreement (“2016 Multi-Media Agreement”) and an ACC-ESPN Network Agreement (“ACC Network Agreement”) (together “the ESPN Agreements”). Throughout the duration of these agreements, the ACC will receive [REDACTED] to distribute to its Members in the form of [REDACTED] [REDACTED] payments, Media Rights payments, and revenues from the ACC Network.

76. Clemson’s President was the Chair of the ACC’s Council of Presidents when these agreements were unanimously approved by the Members.

77. Following approval, Clemson’s President stated:

The ACC is a great conference, and this increases the national exposure, brings in additional revenue and offers greater opportunity for student athletes. . . . For us and the Florida States and others, it stabilizes the conference long term.⁹

⁹ James Clements, Clemson University President, *ACC, ESPN partner for new conference channel*, ESPN.COM NEWS SERVICE, June 21, 2016, https://www.espn.com/college-sports/story/_/id/17102933/acc-espn-agree-20-year-rights-deal-lead-2019-launch-acc-network.

78. Similar to the Second Amendment to the 2010 Multi-Media Agreement, the 2016 Multi-Media Agreement contained a warranty by the Conference [REDACTED]

[REDACTED]:

WARRANTIES

20.1 By Conference. [REDACTED]

[REDACTED]

79. The Conference further warranted that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] A copy of the Multi-Media Agreement warranties provision is attached to this Complaint as **Exhibit 5**.

80. The ACC Network Agreement included a similar warranty:

WARRANTIES

12.1 By Conference.

[REDACTED]

81. In addition, under the ACC Network Agreement, the Conference warranted that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A copy of the ACC Network Agreement warranties provision is attached to this Complaint as **Exhibit 6**.

82. In preparation for entry into the ESPN Agreements, on July 18, 2016, each Member Institution executed an “Amendment to Atlantic Coast Conference Grant of Rights Agreement” (“Amended Grant of Rights”). A copy of the Amended Grant of Rights is attached to this Complaint as **Exhibit 7**.

83. As a condition for entering into the 2016 Multi-Media Agreement and the agreement establishing the ACC Network, the Amended Grant of Rights states, “ESPN has informed the Conference that it will enter into the Prospective Agreements only if each of the Member Institutions agrees to amend the Original Grant Agreement to extend the term thereof.” **Exhibit 7** at p. 1.

84. The Amended Grant of Rights stipulates that the terms and conditions of the Grant of Rights “remain in full force and effect” unless “specifically modified by this Amendment.”

85. The Amended Grant of Rights did not modify the Grant of Rights provisions in which each Member Institution irrevocably assigned its Media Rights to the Conference,

regardless of whether it remained a Member of the Conference, and agreed not to take any action that would affect the validity of the Grant of Rights.

86. The Amended Grant of Rights did extend the “Term” of the Grant of Rights from June 30, 2027 to June 30, 2036.

█ This extension was necessary in order to establish and operate the ACC Network through 2036. █
█
█

88. The Grant of Rights was further necessary to provide content to the ACC Network for as long as that Network operated. Absent certainty as to the duration of the Grant of Rights, the ACC and ESPN could not establish the ACC Network, nor market it to cable providers. Consequently, the term of the Grant of Rights was extended to be coterminous with the life of the ACC Network under the Network Agreement.

89. As part of the extension of the Grant of Rights necessary to implement the 2016 Multi-Media Agreement and the ACC Network Agreement, ESPN agreed to █
█
█

█ providing a predictable and substantial source of revenue.

90. Before the execution of the Amended Grant of Rights and the ESPN Agreements, the Conference held a number of meetings with legal counsel for its Members, with the Presidents, with the Athletic Directors, and with the Faculty Athletics Representatives (“FAR”).

91. These meetings were in addition to on-campus meetings with various Presidents, campus stakeholders, and conference calls with attorneys for the Members.

92. For example, on June 21, 2016, the Conference's Television Committee met, which included Clemson's then-Athletic Director. After being briefed on the provisions of the ESPN Agreements, the ACC's Athletic Directors, including Clemson's then-Athletic Director, voted to approve the ESPN Agreements.

93. On June 22, 2016, the Conference also held a meeting of the FARs, including the FAR for Clemson. After being briefed on the provisions of the ESPN Agreements, the FARs (including Clemson's FAR) voted unanimously to move forward with the Agreements. The FARs were further advised that counsel for the ACC would be leading a call on June 24, 2016, with counsel for each Member to review the Amended Grant of Rights.

94. Then, on June 23, 2016, the Council of Presidents met to discuss the Amendment to the Grant of Rights and the ESPN Agreements. Clemson's then-Athletic Director and President attended that meeting.

95. The then-President of ESPN also attended the June 23 meeting and described ESPN's perspective on and the necessity for the new agreements.

96. The Conference's media consultant also gave the Presidents a review of the terms and conditions of the ESPN Agreements.

97. During the same meeting, the Presidents were advised that their attorneys would be holding a conference call with the counsel for the Conference to discuss the Amended Grant of Rights the next day, June 24, 2016.

98. On June 24, 2016, counsel for the Conference held conference calls with the attorneys for the Members to discuss the Amended Grant of Rights.

99. On June 29, 2016, Clemson accepted and executed the Amended Grant of Rights, extending the term of the Grant of Rights until June 30, 2036.

100. Clemson's President was authorized to enter into and accept the Amended Grant of Rights on behalf of Clemson.

101. On July 11 and 12, 2016, and before the Conference accepted the Amended Grant of Rights, a series of additional meetings were held to discuss the details of the ESPN Agreements. These included a meeting of the Council of Presidents that was attended by Clemson's President, and a meeting of the Conference's Television Committee attended by Clemson's Athletic Director, and its FAR.

102. At these meetings, the general terms of the agreements were reviewed with each Member Institution through its representatives, including Clemson.

103. Subsequently, each Member Institution, including Clemson, ratified the 2016 Multi-Media Agreement and the ACC Network Agreement.

104. Clemson's President was authorized to ratify and otherwise enter into and approve the 2016 Multi-Media Agreement and the ACC Network Agreement on behalf of Clemson.

105. After each Member Institution agreed to and executed the Amended Grant of Rights, the ACC accepted the amendment on July 18, 2016, in Greensboro, North Carolina, through the signature of its Commissioner.

106. The increased fees received by the Conference in connection with the ACC Network Agreement and the 2016 Multi-Media Agreement, including [REDACTED], which have been and will continue to be distributed by the Conference to its Members, is good and valuable consideration in support of the Amended Grant of Rights.

**G. Under the Grant of Rights, Amended Grant of Rights, and ESPN Agreements,
Clemson Athletics Experiences Unprecedented Success**

107. Since the execution of the Amended Grant of Rights, the entry into the 2016 Multi-Media Agreement (and extension of the option), the establishment of the ACC Network, and the

payment of a [REDACTED] by ESPN, Clemson has received more than [REDACTED] and the ACC as a whole has received more than [REDACTED].

108. Clemson's distributions from the ACC more than doubled over the 9-year period between its agreement to enter into the Grant of Rights and June 30, 2023. Over the past year alone, Clemson's distributions increased by nearly 20% over the prior year.

109. Since the 2013 execution of the Grant of Rights, and as a direct result of the stability provided by the ESPN Agreements under the Grant of Rights and Amended Grant of Rights, Clemson has prospered both financially and on the field. Clemson fields 19 sports teams with 450 student-athletes. During that period, Clemson won two national championships in Football and has participated in the College Football Playoff six times (the second-most in the country); won two national championships and finished as the national runner-up in Men's Soccer; won an individual national championship in Men's Golf; has made one "Sweet Sixteen" appearance in Men's Basketball; and made the national quarterfinals in Women's soccer. Upon information and belief, in 2022, Clemson's athletic department ranked 17th in the nation among public universities in total revenue, with \$158,283,618.¹⁰

H. Clemson Seeks Unequal Revenue Distribution

110. In July 2021, both the University of Texas and the University of Oklahoma announced their plans to withdraw from the Big 12 Conference to join the SEC beginning in 2025.¹¹ The date of their noticed withdrawal coincided with the termination of the Grant of Rights agreement for the Big 12, leaving the University of Texas and the University of Oklahoma free to market those rights.

¹⁰ *NCAA Finances: Revenue and Expenses by School*, <https://sports.usatoday.com/ncaa/finances>

¹¹ Each subsequently negotiated an earlier withdrawal date from the Conference.

111. Neither of these schools sued the Big 12 nor sought to breach their legal obligations or their grant of rights.

112. In July 2022, both the University of California at Los Angeles (“UCLA”) and the University of Southern California (“USC”) announced their plans to withdraw from the Pac 12 Conference to join the Big Ten Conference effective August 2024. The date of their withdrawal coincided with the termination of the Pac-12’s rights agreements, leaving UCLA and USC free to market those rights.

113. In response, on May 17, 2023, the Conference endorsed the concept of distributing a larger share of post-season revenues to the Members that generated those revenues, rather than equally among all Members. This was the first time in the Conference’s 70-year history that it had agreed to any form of unequal revenue distribution among Members.

114. Despite the Conference’s willingness to implement new revenue distribution models to reward success, Clemson wants more.

I. While Engaging in Discussions with the Conference, Clemson Prepares to Breach the Grant of Rights

115. On December 21, 2023, the ACC filed a Complaint for Declaratory Judgment against Florida State University (“FSU”) in Mecklenburg County, North Carolina. The Complaint sought declarations that the Grant of Rights agreements were valid and enforceable, and that FSU was barred by the doctrines of estoppel and waiver from challenging them.

116. On December 22, 2023, FSU breached the Grant of Rights agreements and filed a lawsuit in Tallahassee, Florida, challenging the validity of the agreements along with a number of other claims.

117. On January 17, 2024, the ACC filed an Amended Complaint against FSU, seeking not only declaratory relief, but also damages for breaches of the Grant of Rights, the ACC

Constitution and Bylaws, and injunctive relief for breach of FSU's fiduciary duties to the Conference.

118. Following the filing of these lawsuits, Clemson indicated a desire to work with the Conference regarding its own membership in the Conference and requested assurances of confidentiality and protections that the ACC would not file a lawsuit against it. The ACC agreed to work with Clemson, seeking a business solution rather than resorting to litigation.

119. While these assurances were being documented, and without provocation by the ACC, on March 19, 2024, Clemson filed a Complaint against the ACC in Pickens County, South Carolina, seeking (1) a declaration that—despite the Grant of Rights' plain language—Clemson has not, in fact, provided an irrevocable grant of rights to the ACC, regardless of whether it remains a Member Institution, (2) a declaration that—despite its vote to approve the withdrawal payment in September 2012 and its approval of the ACC's lawsuit against the University of Maryland to enforce same—the withdrawal payment is unenforceable, and (3) a declaration that—despite its status as a charter member who has managed the affairs of the conference since its inception 70 years ago and whose President currently sits on the Board of Directors—it owes the ACC no fiduciary duties. Clemson's Complaint is attached as **Exhibit 8**.

120. On information and belief, Clemson had authorized the filing of litigation against the Conference as early as 2023 and, while it indicated to the ACC a desire to engage in productive conversations, it was actually finalizing and preparing its lawsuit seeking to file first in South Carolina.

121. Notwithstanding its Complaint, Clemson certified just last year that its President had the mandate and support of the Board of Trustees "to operate a program of integrity in full

compliance with NCAA, Conference and all other relevant rules and regulations.” A copy of this is attached as **Exhibit 9** to this Complaint.

122. There is a real, live, justiciable dispute between Clemson and the ACC over Clemson’s contractual obligations under the ACC Constitution, ACC Bylaws, and Grant of Rights, all of which are subject to adjudication by this Court.

III. Claims for Relief

First Claim for Relief: Request for Declaratory Judgment that the Grant of Rights and Amended Grant of Rights are Valid and Enforceable Contracts

123. The ACC adopts by reference and incorporates the allegations of paragraphs 1 through 122 of the Complaint.

124. In the Grant of Rights and the Amended Grant of Rights, Clemson agreed to grant its athletic Media Rights “irrevocably” and “exclusively” to the Conference for the term.

125. In the Grant of Rights and Amended Grant of Rights, Clemson transferred its Media Rights to the Conference “regardless” of whether it remained a Member Institution during the term of the Grant of Rights and Amended Grant of Rights.

126. In the Grant of Rights and Amended Grant of Rights, Clemson transferred its Media Rights to the Conference through 2036 and specifically acknowledged that the transfer was valid even if it withdrew from the Conference as a Member Institution.

127. In exchange for the Grant of Rights and Amended Grant of Rights, the ACC entered into contracts and agreements with ESPN which significantly increased the revenues paid to the Conference and distributed to its Member Institutions, including Clemson. The increase in revenues included [REDACTED] held by the ACC.

128. Clemson’s Media Rights, a form of intellectual property, are worth in excess of \$5 Million. Clemson has received more than [REDACTED] under the Grant of Rights since 2013.

129. The Grant of Rights and amended Grant of Rights between Clemson on the one hand, and the ACC on the other, was and is supported by good and valuable consideration.

130. The ACC has not breached the Grant of Rights or Amended Grant of Rights. To the contrary, at all times relevant to the Complaint, the ACC has abided by the terms of the Grant of Rights and Amended Grant of Rights.

131. Clemson has breached the terms of the Grant of Rights and Amended Grant of Rights by filing its Complaint and challenging the validity of its irrevocable grant of rights, regardless of whether it remains a Member Institution.

132. Clemson's challenge to the Grant of Rights and Amended Grant of Rights further constituted a breach of its warranties to ESPN arising out of the ESPN Agreements. The ACC was an intended beneficiary of those warranties and has been damaged by these breaches.

133. Under the ESPN Agreements, the Conference is obligated to take all commercially reasonable actions to defend the Grant of Rights and Amended Grant of Rights and the rights granted to ESPN under those contracts.

134. The Conference is entitled to a declaration by this Court that the Grant of Rights and Amended Grant of Rights are valid and binding contracts, supported by good and adequate consideration, and that the Conference is and will remain the owner of the rights transferred by Clemson under the Grants of Rights through June 30, 2036, regardless of whether it remains a Member Institution.

Second Claim for Relief: Clemson is Estopped by Its Acceptance of Benefits (Quasi-Estoppel) or Has Waived by Its Conduct Any Challenge to the Grant of Rights and Amended Grant of Rights

135. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 134 of the Complaint.

136. The purpose of the Grant of Rights and Amended Grant of Rights was to permit the ACC to negotiate various agreements with ESPN and provide ESPN the Media Rights for its Member Institutions, including Clemson, in exchange for Rights Fees and other good and valuable consideration.

137. Since 2013, Clemson has received more than [REDACTED] in distributions from revenue generated by the Grant of Rights and Amended Grant of Rights, [REDACTED] [REDACTED], as a result of entering into the Grant of Rights and Amended Grant of Rights and transferring its Media Rights exclusively and irrevocably to the ACC for the term of these agreements.

138. Clemson had the option of accepting or rejecting the benefits resulting from the Grant of Rights and Amended Grant of Rights.

139. Clemson had the right not to enter into and execute the Grant of Rights or Amended Grant of Rights.

140. By accepting and retaining the benefits of the Grant of Rights and Amended Grant of Rights, Clemson ratified the validity and enforceability of the Grant of Rights and Amended Grant of Rights.

141. Clemson substantially and materially benefitted from the Grant of Rights and Amended Grant of Rights.

142. Clemson never objected to its share of the distributions generated by the Grant of Rights and Amended Grant of Rights, including payments specifically for the Grant of Rights and Amended Grant of Rights. It accepted all benefits derived from and made possible by the ACC Constitution and the Grant of Rights and Amended Grant of Rights.

143. By accepting the substantial benefits made possible by the Grants of Right and Amended Grant of Rights over a ten-year period, Clemson is equitably estopped from challenging the validity or enforceability of the Grants of Right and Amended Grant of Rights.

144. Having entered into the Grant of Rights and Amended Grant of Rights, accepted the benefits generated by the Grant of Rights and Amended Grant of Rights, and retained the benefits generated by the Grant of Rights and Amended Grant of Rights, Clemson is now estopped from contesting the validity or enforceability of the Grant of Rights and Amended Grant of Rights.

145. Clemson made a deliberate choice to transfer its Media Rights to the ACC for a specific term in order to negotiate different and increasingly lucrative multi-media agreements with ESPN, knowing that the transfer of these rights for a specific term would continue even if it ceased to be a Member Institution or chose to withdraw from the Conference.

146. In the Grant of Rights and Amended Grant of Rights, Clemson expressly and voluntarily relinquished its Media Rights to the ACC, with the understanding that the transfer of rights to the ACC would continue through June 30, 2036, regardless of whether it remained a Member Institution.

147. Clemson knowingly and voluntarily agreed in the Grant of Rights and Amended Grant of Rights to transfer ownership of its Media Rights to the ACC through June 30, 2036, knowing that the transfer and ownership would continue regardless of whether it remained a Member Institution of the Conference.

148. Clemson had full knowledge, actual or constructive, of the rights it transferred to the Conference in the Grant of Rights and Amended Grant of Rights, as well as the benefits that it would receive as a result.

149. Clemson intended to transfer the rights covered by these agreements to the Conference when it executed the Grant of Rights and Amended Grant of Rights, with the expectation of receiving the benefits of different and enhanced agreements between the Conference and ESPN.

150. Clemson intended for the Grant of Rights and Amended Grant of Rights to be enforceable and valid for the purpose of receiving the benefits generated by these contracts.

151. Clemson, through its conduct in accepting the benefits under the Grant of Rights and Amended Grant of Rights for more than a decade, led the ACC to reasonably understand that Clemson did not contest the validity or enforceability of the Grant of Rights or Amended Grant of Rights, as written.

152. By accepting the substantial benefits made possible by the Grant of Rights and Amended Grant of Rights over a ten-year period, Clemson has waived its right to contest the validity or enforceability of these contracts.

153. The ACC is entitled to a declaration that Clemson is estopped from challenging the validity or enforceability of the Grant of Rights or Amended Grant of Rights, or has waived its right to contest the validity or enforceability of the terms and conditions of these contracts as a result of its conduct, including its acceptance of benefits under these agreements, over nearly a decade.

Third Claim for Relief: Request for Declaratory Judgment that the Withdrawal Payment Provision of the ACC Constitution is a Valid and Enforceable Contract

154. The ACC adopts by reference and incorporates the allegations of paragraphs 1 through 153 of the Complaint.

155. Under § 1.4.5 of the ACC Constitution, “[t]o withdraw from the Conference, 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 June 30 of the following year.” **Exhibit 1** at p. 12.

156. Section 1.4.5 further provides that upon notice of withdrawal, “the Member will be subject to a withdrawal payment,” measured at “three times the total operating budget of the Conference” in effect as of the date of the notice. **Exhibit 1** at p. 12. The Conference has the right to offset the withdrawal payment against any sums due and owing to the withdrawing Member, with all sums to be paid within 30 days after the withdrawal effective date.

157. Section 1.4.5 of the ACC Constitution has tied the withdrawal payment to a multiple of the operating budget of the Conference since at least 2013.

158. The Conference was formed for the purpose of the long-term promotion of athletic competition among its Member Institutions in an appropriate and fair academic environment. Over the past twenty years, as revenue generated by college athletics, and in particular Football and Men’s Basketball, has increased, long-term stability became critical to the negotiation of new media agreements.

159. The ACC Constitution is a contract that reflects these long-term goals and needs. In particular, each of the Member Institutions agreed to be bound by the requirements for the admission and withdrawal of Member Institutions. The object of the ACC Constitution and these provisions, among others, is a recognition that the Member Institutions would be performing their obligations to each other over a lengthy period of time.

160. The withdrawal payment represents a valid, enforceable agreement for alternative performance, one that reflects the fact that this is a long-term contract between the Member Institutions. Thus, a Member Institution may choose to remain in the Conference, perform its obligations, and receive the benefits of Conference membership. Alternatively, a Member

Institution may ask to withdraw and, upon the payment of the withdrawal payment, will be able to leave the Conference and be relieved of its obligation to further perform in the future as a Member Institution.

161. The withdrawal payment thus reflects the long-term contractual relationship that was established by the ACC Constitution, one that required a significant investment by each of the Member Institutions in the Conference over a number of years and one that requires an ongoing investment to realize the benefits of Conference membership.

162. The withdrawal payment constitutes less than a single year of athletic revenues at Clemson. It is a small percentage of the total revenues that will be received by the ACC and its Members over the course of the ESPN Agreements.

163. The Conference is entitled to a declaration by this Court that the withdrawal payment set forth in §1.4.5 of the ACC Constitution is a valid and binding contractual provision, supported by good and adequate consideration.

Fourth Claim for Relief: Clemson Has Breached Its Promises in the Grant of Rights and Amended Grant of Rights Agreements

164. The ACC adopts by reference and incorporates the allegations of paragraphs 1 through 163 of the Complaint.

165. The Grant of Rights and the Amended Grant of Rights are a valid, enforceable contract between the ACC and Clemson.

166. In the Grant of Rights and Amended Grant of Rights, Clemson “covenants and agrees that . . . it will not take any action, or permit any action to be taken by others subject to its control, . . . or fail to take any action, that would affect the validity and enforcement of the Rights granted to the Conference under this Agreement.”

167. In the Grant of Rights and Amended Grant of Rights, Clemson also “irrevocably and exclusively grant[ed] [its Media Rights] to the Conference during the Term” of the ESPN Agreements.

168. Under North Carolina law, each contract has an implied duty of good faith and fair dealing. Thus, the Grant of Rights and Amended Grant of Rights require Clemson to act in good faith and on principles of fair dealing to accomplish the purpose of the contracts.

169. By filing its Complaint, Clemson took direct action that affects the validity and enforcement of the Grant of Rights and Amended Grant of Rights, and breached its contract with the Conference.

170. By filing its Complaint, Clemson has taken direct action that affects the irrevocability and exclusivity of the Grant of Rights and Amended Grant of Rights, and has breached its contract with the Conference.

171. By filing its Complaint, and taking the other actions set forth in this Complaint, Clemson breached its obligation of good faith and fair dealing under the Grant of Rights and Amended Grant of Rights. In particular, rather than act in good faith and deal fairly with the Conference to accomplish the ends of the Grant of Rights and Amended Grant of Rights, Clemson has actively breached and sought to prevent the goals of those contracts.

172. The Conference has been damaged by these breaches in an amount yet to be determined but which the Conference reasonably believes will be substantial.

Fifth Claim for Relief: Request for Declaratory Judgment that Clemson Owes Fiduciary Obligations to the Conference Under the ACC Constitution and Bylaws and North Carolina Law

173. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 172 of the Complaint.

174. The ACC is an unincorporated nonprofit association under North Carolina law and is governed by its Constitution and Bylaws. The Constitution and Bylaws are a contract by and between the ACC and a Member, including Clemson.

175. Each year, Clemson certifies that it has the mandate and support of the Board of Trustees “to operate a program of integrity in full compliance with NCAA, Conference and all other relevant rules and regulations.”

176. The ACC Constitution and Bylaws give Clemson the right to participate in the management of the affairs of the Conference and, since its inception, Clemson, its employees, and its Presidents have actively participated in the management of the affairs of the Conference.

177. As a Member of an unincorporated nonprofit association under North Carolina law, Clemson had the right to participate in the management of the affairs of the Conference. N.C. Gen. Stat. § 59B-2(1).

178. As a Member Institution, Clemson has the right to participate in and select individuals authorized to manage the Conference’s affairs and develop policies. N.C. Gen. Stat. § 59B-2(1).

179. As a Member Institution, Clemson has the authority to assert claims on behalf of the Conference. N.C. Gen. Stat. § 59B-7(e).

180. The rights and obligations of Members of an unincorporated nonprofit association under North Carolina law are further supplemented by principles of law and equity. N.C. Gen. Stat. § 59B-3.

181. Upon creating the ACC as a charter Member Institution, Clemson entered into a common and joint venture with the other Member Institutions, as expressed in the ACC’s Constitution. As a member of a common and joint venture, Clemson has a fiduciary obligation to

the other members of the common and joint venture, as well as to the Conference, to act in ways that advance the common and joint venture's goals and not act in ways that undermine or frustrate those goals.

182. The ACC Constitution and Bylaws, as well as the statutory and common law of North Carolina, impose a duty on Clemson to act in good faith, with due care, and in a manner that is in the best interests of the Conference while it is a Member of the Conference and charged with managing the Conference's affairs.

183. Under North Carolina law, when a member of a common and joint venture can no longer support the goals of the joint venture, it has an obligation to withdraw from the joint venture and not act in ways the frustrate the goals of the joint venture.

184. The Conference has adopted the method and form of governance of an incorporated body.

185. As a Member Institution, Clemson designated its President as a Member of the Board of Directors.

186. Members of the Board of Directors of the Conference owe a fiduciary duty under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, to the Conference and its Member Institutions to act for the benefit of the Conference in matters involving the Conference.

187. Members of the Board of Directors of the Conference owe a fiduciary duty to the Conference and its Member Institutions under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, not to undermine or frustrate the goals and viability of the Conference.

188. The ACC requests that this Court declare that, under the ACC Constitution and Bylaws, as well as principles of statutory and common law in North Carolina, Clemson owes fiduciary duties to the ACC as outlined above.

Sixth Claim for Relief: Clemson Has Breached Its Obligation of Good Faith and Fair Dealing Under the ACC Constitution and Bylaws

189. The ACC adopts by reference and incorporates the allegations set forth in paragraphs 1 through 188 of the Complaint.

190. The ACC Constitution and Bylaws is a valid and enforceable contract between the Conference and its Members.

191. Under North Carolina law, it is a basic principle of contract law that a party to a contract must act in good faith and on principles of fair dealing to accomplish the purpose of the contract.

192. Thus, in North Carolina, each contract has an implied duty of good faith and fair dealing.

193. Under the ACC Constitution and Bylaws, the Commissioner is charged with the duty to negotiate Media Rights agreements on behalf of the Conference. **Exhibit 1** at p. 13 §2.3.1.q and p. 39 §2.10.3. Clemson further agreed under the Bylaws that it had “granted to the Conference the right to exploit certain media and related rights” under the Grant of Rights. *Id.* §2.10.1. Clemson further agreed under the Bylaws that it had “granted to the Conference the right to exploit certain media and related rights” under the Grant of Rights. *Id.* §2.10.1.

194. Clemson’s actions as detailed in this Complaint violate its duty to act in good faith and fairly deal with the Conference.

195. To the contrary, and in violation of its obligations of good faith and fair dealing, Clemson has not acted in good faith and has not dealt fairly with the Conference.

196. The Conference has been damaged by Clemson's violation of its contractual obligations of good faith and fair dealing in an amount to be determined, but which the Conference reasonably believes will be substantial.

IV. Prayer for Relief

WHEREFORE, the Plaintiff prays that:

1. The Court issue a Declaration that the Grant of Rights and amended Grant of Rights is a valid and enforceable contract between Clemson and the ACC, that Clemson irrevocably and exclusively granted its rights to the ACC for the duration of the term, regardless of whether it remains a Member Institution, and issue all necessary injunctive decrees or relief to enforce this Declaration;
2. The Court issue a Declaration that Clemson is estopped from challenging the validity of the Grant of Rights and amended Grant of Rights under the doctrine of equitable estoppel or estoppel by acceptance of benefits;
3. The Court issue a Declaration that Clemson is barred from challenging the validity of the Grant of Rights and amended Grant of Rights and has waived its right to do so;
4. This Court issue a Declaration that the withdrawal payment established by the ACC Constitution is a valid and enforceable obligation;
5. The Court issue a Declaration that Clemson owes the ACC fiduciary duties under the ACC Constitution and Bylaws and North Carolina law;
6. The Conference have and recover of Clemson damages for its breaches of the Grant of Rights and Amended Grant of Rights in an amount to be proven at trial but which the Conference reasonably believes will be substantial;

7. The Conference have and recover of Clemson damages for its breach of its duty of good faith and fair dealing in an amount to be proven at trial but which the Conference believes will be substantial; and,

8. This Court order such further relief as it deems just and appropriate.

This 20th day of March 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ James P. Cooney III

James P. Cooney III (N.C. Bar No. 12140)

Sarah Motley Stone (N.C. Bar No. 34117)

Patrick Grayson Spaugh (N.C. Bar No. 49532)

301 South College Street, Suite 3500

Charlotte, North Carolina 28202-6037

Telephone: 704-331-4980

Jim.Cooney@wbd-us.com

Sarah.Stone@wbd-us.com

Patrick.Spaugh@wbd-us.com

Attorneys for Plaintiff Atlantic Coast Conference

Exhibit 1



CONSTITUTION

ACC MANUAL

2023 | 2024

CONSTITUTION

1.1 NAME

The name of this association shall be the Atlantic Coast Conference, hereinafter referred to as the “Conference”.

1.2 PURPOSE

1.2.1 General Purpose.

It is the purpose and function of this Conference to enrich and balance the athletic and educational experiences of student-athletes at its member institutions (collectively, the “Members”), to enhance athletic and academic integrity among its members, to provide leadership, and to do this in a spirit of fairness to all. The Conference aims to:

- a. Enhance the academic and athletic achievement of student-athletes;
- b. Increase educational opportunities for young people;
- c. Foster quality competitive opportunities for student-athletes in a broad spectrum of amateur sports and championships;
- d. Promote amateurism in intercollegiate athletics;
- e. Coordinate and foster compliance with Conference and NCAA rules;
- f. Stimulate fair play and sportsmanship;
- g. Encourage responsible fiscal management and further fiscal stability;
- h. Provide leadership and a voice in the development of public attitudes toward intercollegiate sports;
- i. Address the future needs of athletics in a spirit of cooperation and mutual benefit of the Members; and
- j. Promote mutual trust and friendly intercollegiate athletic relations between the Members.

1.2.2 Principle of Diversity, Inclusion and Equity.

The Conference and its Members are committed to diversity, inclusion, and equity among our student-athletes, staff, coaches, administrators, and leaders. The promotion of diversity, inclusion, and equity are integral to the structure, programs, legislation, and policies of the Conference and its Members.

1.3 INSTITUTIONAL CONTROL

There shall be institutional responsibility and control of intercollegiate athletics at the Member level. Each Member is responsible for conducting its intercollegiate athletics program in compliance with rules and regulations of the NCAA and the Conference. The Member’s CEO (as defined below) is ultimately responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures.

The Member’s responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the Member.

1.4 MEMBERSHIP

1.4.1 Current Membership.

The Conference is composed of the following Members:

| | |
|---------------------------------|---|
| Boston College | North Carolina State University |
| Clemson University | University of Notre Dame |
| Duke University | University of Pittsburgh |
| Florida State University | Syracuse University |
| Georgia Institute of Technology | University of Virginia |
| University of Louisville | Virginia Polytechnic Institute & State University |
| University of Miami | Wake Forest University |
| University of North Carolina | |

1.4.2 Required Teams.

Each member shall meet NCAA Division I Football Bowl Subdivision membership requirements regarding the minimum number of teams. Further, each Member shall have a men's and women's basketball team, a football team, and either a women's soccer team or a women's volleyball team.

1.4.3 Admission of New Members.

- a. Prior to considering admission of new Members, the Board (as defined in Section 1.5.1.1) shall consider the desirability of expansion generally and the ramifications of any potential expansion on Conference revenues, scheduling, student-athlete welfare, and the pool of prospective Members, among other issues.
- b. Prospective Members must be proposed for admission by three Directors (as defined in Section 1.5.1.2).
- c. Upon proper nomination for admission as outlined in Section 1.4.3(b), a prospective Member shall submit to the Conference office (Attention: Commissioner) an expression of interest for admission and all information the Conference has requested be included with such initial submission, including but not limited to, information regarding the institution's academic and athletic cultures, the most recent report of the accrediting agency for colleges and universities, the Equity in Athletics Disclosure Act (EADA) report, and the NCAA Committee on Institutional Performance report. The information will be distributed to the Board, and if authorized by the Board, the faculty athletics representatives, and athletics directors of all Members.
- d. Thereafter, the prospective Member shall promptly submit to the Conference such additional information as may be requested by the Conference.
- e. A favorable vote of three-fourths (3/4) of all the Directors is required to extend an invitation for membership to the Conference.
- f. Participation by the new Member in Conference revenues and all other terms and conditions under which the new Member will join the Conference, including the amount, payment schedule and other terms for any fee payable to the Conference by the new Member, will be determined by a favorable vote of three-fourths (3/4) of all the Directors at the time of admission. Any subsequent amendment to the agreement for participation by the new Member in Conference

revenues and all other terms and conditions under which the new Member joined the Conference are also determined by a favorable vote of three-fourths (3/4) of all the Directors.

1.4.4 Expulsion/Suspension/Probation of Members.

A Member may be expelled, suspended, or placed on probation by the Conference only upon the favorable vote of three-fourths of the Directors (excluding the Director appointed by the Member under consideration). To expel means a complete severance from the Conference in all sports. To suspend means a temporary severance under stated conditions from the Conference in one or more sports.

Among the reasons a Member may be expelled, suspended, or placed on probation for good cause is if it no longer participates in one or more sports which are required for membership in the Conference, if the Member is required by the NCAA to discontinue such required sport because of violations of NCAA regulations, or such Member or one or more of its sports programs becomes incompatible with the objectives of the Conference.

The effective date of any expulsion shall be June 30. In the event of expulsion, the Conference must provide the Member with the specific reasons for expulsion and a notice of expulsion on or before August 15 of the year preceding the June 30 expulsion date. The expelled Member will receive a proportionate share of the distribution made to Members with respect to the fiscal year ending on the June 30 expulsion date, unless its share has previously been reduced due to a suspension or probation, in which case it shall receive such reduced share.

In the event of suspension or probation, the Conference may enforce penalties immediately.

In any sport in which a Member is ineligible for postseason play because of violations of NCAA or Conference regulations, the Member may be suspended in that sport. If suspended, the Member shall not be eligible for the Conference championship in that sport and may be required to forfeit its share of any or all Conference revenues generated by that sport.

1.4.5 Withdrawal of Members.

To withdraw from the Conference, 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 June 30 of the following year.

Upon official notice of withdrawal, the Member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to three times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section 2.5.1 of the Bylaws of the Conference (the "Bylaws"), which is in effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distributions otherwise due such Member for any Conference year. Any remaining amount due shall be paid by the withdrawing Member within 30 days after the effective date of withdrawal. The withdrawing Member shall have no claim on the assets, accounts, or income of the Conference.

1.5 GOVERNANCE STRUCTURE

1.5.1 Board of Directors.

1.5.1.1 Authority. Except as otherwise provided in this Constitution, the Bylaws, or resolutions of

the board of directors of the Conference (the “Board”), all of the powers of the Conference shall be exercised by or under the authority of the Board, and all of the activities and affairs of the Conference shall be managed by or under the direction, and subject to the oversight, of the Board in accordance with this Constitution and the Bylaws. Notwithstanding anything to the contrary in the Constitution, Bylaws or such resolutions, or in the Sports Operations Code, General Policies and Procedures or otherwise in the Manual, the Board shall have the right to take any action or any vote on behalf of the Conference, and each Director shall have the right to take any action or any vote on behalf of the Member it represents, even if such right could be taken or exercised by another committee or person if the Board or such Director did not choose to exercise such right.

1.5.1.2 Composition, Terms and Vacancies. The Board shall be composed of a representative of each Member (each a “Director”), provided that each Director must be the most senior executive officer of such Member, whether such position is characterized as president, chancellor, chief executive officer or otherwise. In these capacities, these persons are occasionally referred to in this Constitution or the Bylaws as the “CEOs” of the Members they represent. The Commissioner shall also serve on the Board as an ex-officio, non-voting member and shall not be counted towards any quorum requirements. No election or appointment of any other Director shall be required or permitted. The term of each Director shall continue for so long as the Director is serving as the CEO of the Member it represents. If a vacancy occurs on the Board, other than due to the termination or withdrawal of a Member, the Member with a vacancy on the Board shall designate an individual to fill the vacancy on an interim basis until such time as a new CEO of such Member is appointed. Such interim appointee shall either be the acting or interim CEO of such Member or a person discharging a substantial portion of the duties of the CEO on an acting or interim basis. The remaining Directors shall have the authority, by majority vote, to remove from, or to refuse to recognize or seat on, the Board, any designee who fails to meet the criteria set forth in this Section 1.5.1.2.

1.5.1.3 Expelled and Withdrawing Member. The CEO of any Member that is expelled pursuant to Section 1.4.4 or withdraws from the Conference pursuant to Section 1.4.5 shall automatically cease to be a Director and such CEO and any other representative of such expelled or withdrawing Member that is then serving on any other Committee of the Conference shall automatically cease to be a member of such Committee, and shall cease to have the right to vote on any matter as of the effective date of the expulsion or withdrawal. During the period between delivery of a notice of expulsion or withdrawal and the effective date of the expulsion or withdrawal, the Board, the Executive Committee and any other Committee may withhold any information from, and exclude from any meeting (or portion thereof) and/or any vote, the Director and any other representatives of the expelled or withdrawing member, if the Board determines that (i) the relevant matter relates primarily to any period after the effective date of expulsion or withdrawal, (ii) such information is proprietary or confidential or (iii) such attendance, access to information or voting could present a conflict of interest for the expelled or withdrawing member or is otherwise not in the best interests of the Conference, as determined by the Board.

1.5.1.4 Chair and Vice Chair. The Board shall elect a chairperson of the Board (the “Chair”) and a vice chairperson of the Board (the “Vice Chair”) from among the Directors, each of whom shall serve for a term of two (2) years beginning on July 1 and ending on June 30, unless the Board determines a shorter term is appropriate. No Director shall be eligible to serve in the same position as Chair or Vice Chair for more than one (1) two (2)-year term unless a period of 6 years has passed since such Director last served in such position. For clarity, the foregoing sentence does not prevent a Director from serving one term as Chair and one term as Vice Chair within

such six-year time period. In the event of any vacancy in the position of Chair or Vice Chair, any successor selected by the Board who serves out the remaining term of his or her predecessor shall remain eligible to serve an additional full two-year term unless the unexpired term filled by such successor is 18 months or longer. The Chair shall preside at all meetings of the Board at which he or she is present, and the Vice Chair shall preside at all meetings of the Board at which the Chair is not present. The Board shall have the right to remove the Chair and/or the Vice Chair from such offices (but not the position of Director) at any time that the Board determines that such removal is in the best interests of the Conference.

1.5.1.5 Meetings of the Board.

1.5.1.5.1 Frequency; Notice and Participation. Unless the Board shall otherwise decide, the Board shall meet at least three (3) times each year, which generally shall include one meeting in the fall (the second Tuesday and Wednesday in September), one meeting during the Men's or Women's Basketball Conference Championship (alternating annually) and one meeting in May ("Regular Meetings"). The times and places of each Regular Meeting will be arranged by the Chair, who shall provide at least ninety (90) days' notice of each Regular Meeting to the Directors; provided that at the beginning of each one (1) year period beginning with the Annual Meeting (as defined below), the Chair may provide a single notice of all Regular Meetings for that year, or for a lesser period, without having to give notice of each meeting individually. Special meetings of the Board may be called at any time by the Chair, the Commissioner or at least two-thirds (2/3) of the Board. Special meetings also may be called by any three (3) Directors who serve on the Executive Committee pursuant to [Section 1.5.3.1\(iv\)](#) or by any three (3) Directors who do not also serve on the Executive Committee if they believe any item that is to be taken up by the Executive Committee (but has not yet been voted on by the Executive Committee) should instead be addressed by the full Board. Any special meetings shall be called upon at least three (3) days' notice (which notice shall state the purpose of the special meeting), unless notice is waived by three-fourths (3/4) of the Directors. Voting by proxy is not permitted. Any or all of the Directors may participate in and vote at any meeting of the Board by any means of communication by which all participants may simultaneously hear each other during the meeting and any Member attending by such means shall be deemed "present" for all quorum and voting purposes. Participation in a meeting by substitute representation is not permitted, unless determined otherwise in the specific case by the Chair, but in no event shall voting by a substitute representative be permitted.

1.5.1.5.2 Waiver of Notice. Before or after the date and time stated in the notice of any meeting of the Board, any Director may waive on such Director's own behalf any required notice of that meeting or any other required process with respect to any business to be conducted at that meeting by delivering to the Conference a written waiver of such notice or process by mail or by electronic transmission, which shall be filed with the corporate records of the Conference. Any Director who attends or participates in a meeting shall be deemed to have waived any required notice or process, unless the Director attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business at the meeting on the ground that the meeting is not permitted to be called or convened or the required process for any business to be conducted has not been followed. Any waiver of notice or process with respect to a Board meeting shall only be effective if waived (or deemed waived) by three-fourths (3/4) of all the Directors.

1.5.1.5.3 Method of Notice. Any notice, request, consent, or other communication to any Director shall be deemed given effectively on the date delivered if given in person or by e-mail, one (1) business day after being transmitted by a nationally recognized overnight delivery service, or five (5) business days after being sent by U.S. certified mail, return receipt requested, addressed to such Director at such Director's mail or e-mail address as it appears on the records of the Conference. Unless otherwise set forth in this Constitution or the Bylaws, any writing required or permitted hereunder may be in electronic form.

1.5.1.5.4 Action without Meeting. Any action of the Board required or permitted to be taken at any meeting of the Board may be taken without a meeting if each Director consents in writing or by electronic transmission and such writing or electronic transmission is filed with the corporate records of the Conference.

1.5.1.5.5 Annual Meetings. Unless the Board shall otherwise decide, a Regular Meeting occurring at any time between May 1 and May 31 of the calendar year shall constitute the annual meeting of the Board (the "Annual Meeting") and shall be deemed to constitute, unless the Chair shall designate otherwise, the annual meeting of the Members, which shall be held at a time and place fixed by the Chair.

1.5.1.5.6 Agenda. The agenda for each Board meeting shall be prepared by the Commissioner in consultation with the Chair and shall include all items submitted to the Commissioner by at least three (3) Directors no later than fifteen (15) business days before such meeting. The Commissioner shall be responsible for distributing the agenda to the Directors at least ten (10) business days before each Regular Meeting and at least two (2) calendar days prior to each special meeting of the Board. Except for Absolute Two-Thirds Matters (as defined below) and Absolute Three-Fourths Matters (as defined below), additional items may be added to the agenda at the meeting with the approval of the Board in accordance with Section 1.6.2. The Secretary (as defined below) shall cause draft minutes of each meeting of the Board and copies of all reports submitted at such meetings to be distributed to the Directors within thirty (30) days after the conclusion of each meeting. Any Director wishing to propose modifications to such draft minutes shall do so in a writing to the Secretary within the succeeding thirty (30) day period. The agenda for the next meeting shall include the adoption of such minutes, with such amendments as the Board may approve.

1.5.1.5.7 Attendees at Board Meetings; Executive Sessions. The Chair may invite persons other than Directors and the Commissioner to attend meetings of the Board, including, without limitation, the chairs of the Advisory Committees (as defined below), the officers of the Conference and any outside advisors or consultants to the Conference; provided that no such persons shall count toward a quorum nor be entitled to vote on any matter. The Board, at the request of the Chair or at least three (3) Directors, may meet in executive session in which one or more of such invited persons or the Commissioner may not be invited to attend. The Chair may, however, invite to such executive session internal or external counsel or any outside expert whose advice the Chair reasonably believes to be necessary or advisable to assist the Board in such executive session.

1.5.2. Officers.

1.5.2.1 Commissioner.

1.5.2.1.1 Appointment and Employment Terms. The Board shall appoint one person to serve as the chief executive officer and president of the Conference, who shall have the title of “Commissioner” (the “Commissioner”). A vote of at least two-thirds (2/3) of the Directors shall be necessary (a) to authorize the appointment, extension of the term, or removal of the Commissioner, and (b) in connection with any appointment or extension, to determine the Commissioner’s salary, other compensation and benefits, length of term in office, and other terms and conditions of employment; provided, that by a vote of at least two-thirds (2/3) of the Directors, the Board may delegate, within such parameters as it shall establish, final authority over the negotiation or modification of one or more of such employment matters and any related employment agreement to the Executive Committee or another committee formed for such purpose. Any terms and conditions of the Commissioner’s employment (including upon a removal) shall be subject to any contractual rights the Commissioner may have.

1.5.2.1.2 Authority and Duties. The Commissioner shall have general supervision and direction of the day-to-day activities and affairs of the Conference and shall have such other authority as the Board may determine from time to time. The Commissioner shall report to, and be subject to the direction and supervision of, the Board. The Commissioner shall perform such duties as are prescribed in Sections 2.2.1 and 2.3.1 of the Bylaws and such other duties and responsibilities as may be established by the Board from time to time.

1.5.2.2 Other Officers.

1.5.2.2.1 President. The Commissioner shall also serve as the President of the Conference and will have such duties as may be established by the Board or as are generally incident to the office of President.

1.5.2.2.2 Secretary. The Board shall appoint one person (who shall not be the Commissioner) to serve as the secretary of the Conference (the “Secretary”) under the supervision of the Board and the Commissioner. The Secretary shall attend all meetings of the Board and record all votes of the Board, prepare and retain in the Conference’s records the minutes of all meetings of the Board, and perform similar duties for all Committees if requested by such Committees, it being understood that each Committee shall have the authority to appoint a Committee designee to perform any or all of such tasks. The Secretary shall give, or cause to be given, notice of all meetings of the Board, and shall have charge of the books, records and papers of the Conference and shall see that the reports, statements, and other documents required by law to be kept and filed are properly kept and filed. The Secretary shall perform such other duties as may be established by the Board or the Commissioner or as are generally incident to the office of Secretary.

1.5.2.2.3 Treasurer. The Board shall appoint one person (who shall not be the Commissioner) to serve as the treasurer of the Conference (the “Treasurer”) under the supervision of the Board and the Commissioner. Subject to any applicable policies of the

Board, the Treasurer shall have custody of the Conference funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Conference, and shall keep the moneys of the Conference in one or more separate accounts to the credit of the Conference. The Treasurer shall have the authority to take all actions and to sign all agreements necessary or advisable to open and administer the Conference's bank accounts and shall disburse the funds of the Conference as may be ordered by the Board or the Commissioner, taking proper vouchers for such disbursements, and shall render to the Chair, the Vice Chair and the Board, at Regular Meetings, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Conference. The Treasurer shall perform such other duties as may be established by the Board or, subject to any applicable policies of the Board, the Commissioner or as are generally incident to the office of Treasurer.

1.5.2.2.4 Additional Officers. The Conference shall have such other officers (e.g., Vice President(s)) as may from time to time be appointed or elected by the Board or by the Commissioner (but only to the extent such authority has been granted to the Commissioner by the Board). Each officer shall have the authority to perform the duties set forth in this Constitution or the Bylaws or, to the extent consistent with this Constitution and the Bylaws, established by the Board, subject to any applicable policies of the Board, by the Commissioner. Except as set forth in this [Section 1.5.2](#), one person may simultaneously hold any two or more offices.

1.5.2.2.5 Appointment and Removal of Officers. Officers of the Conference (other than the Commissioner) shall be appointed by the Board at the Annual Meeting and shall continue in office from July 1 through June 30; provided, that in the event the Board shall fail to appoint a new officer to any office prior to June 30, the person holding such office shall continue to hold such office until the earlier of appointment of such person's successor or such person's removal, resignation, death, or incapacity. The Board shall have the right to remove any Officer of the Conference at any time that the Board determines that such removal is in the best interests of the Conference, subject to any contractual rights the individual may have with the Conference and, in the case of the removal of the Commissioner, the two-thirds (2/3) voting requirement under Section 1.5.2.1.1.

1.5.3. Executive Committee.

Unless otherwise determined by the Board, there shall be an executive committee (the "[Executive Committee](#)") consisting of the Chair, the Vice Chair and four (4) other Directors, who shall rotate among the Members in accordance with a rotation order determined by three-fourths (3/4) of the Board, provided that service as Chair or Vice Chair shall count as a rotation opportunity. If the election of a Chair or Vice Chair requires a change in the Executive Committee rotation, such change shall be determined by a majority of the Board. The Chair shall serve as chairperson and the Vice Chair as the vice chairperson of the Executive Committee. The Commissioner and the chairs of the AD Committee, FAR Committee and SWA Committee shall serve as ex-officio, non-voting members of the Executive Committee and shall not be counted towards any quorum requirements.

1.5.3.1 Duties. Between Board meetings, the Executive Committee shall serve as a forum for the Chair or the Commissioner to seek advice on strategic, operating, and other matters relating to the Conference. In addition, if requested by the Chair or requested by the Commissioner and approved by the Chair between Board meetings, the Executive Committee shall have the authority

to take any action on behalf of the full Board that could have been taken by the affirmative vote of a simple majority of the Directors at a meeting at which a quorum is present, excluding (i) the approval of the budget, (ii) the approval of any change in the rotation order of the Executive Committee, (iii) the approval of any matter that under applicable law must be approved by the Board (and may not be delegated to a committee) and (iv) the approval of any matter that at least three Directors serving on the Executive Committee request be submitted to the full Board (provided such request is made prior to any vote by the Executive Committee on such matter). For the avoidance of doubt, (a) except as provided in clause (iv) of the foregoing sentence, the Chair shall determine whether the Executive Committee may act on behalf of the Board between meetings or whether to call a special meeting of the Board and (b) the Executive Committee shall not have the authority to take any action that under this Constitution or the Bylaws would require the affirmative vote of more than a majority of the Directors who are present for such vote, including the Absolute Two-Thirds Matters and the Absolute Three-Fourth Matters. If an agenda for an Executive Committee meeting is prepared in advance of the meeting, the Commissioner shall, if practicable, distribute such agenda to the full Board prior to the Executive Committee meeting.

1.5.3.2 Term of Executive Committee Members. The Chair and Vice Chair shall each serve on the Executive Committee for the duration of their terms in such offices; any removal of a Director as Chair or Vice Chair also shall automatically be a removal from the Executive Committee unless the Board otherwise decides. The remaining members of the Executive Committee shall be Directors selected in accordance with the rotation described in [Section 1.5.3](#) and each shall serve a two (2) year term; provided that the Board shall have the right to create initial one-year terms for one or more members of the Executive Committee to create staggered terms and such initial one (1) year term shall not count against the aggregate two (2) year term limit described in the following sentence. Any Member whose Director has served one (1) two (2)-year term on the Executive Committee (including any Director completing a term as Chair or Vice Chair) shall not be eligible for reappointment on the Executive Committee until such Member is next in the rotation described in [Section 1.5.3](#), unless such Director has been elected Chair or Vice Chair in accordance with [Section 1.5.1.4](#).

1.5.3.3 Meetings of the Executive Committee; Executive Sessions. The Executive Committee may invite persons not on the Executive Committee to attend its meetings if such attendance is approved by the Chair (unless disapproved by a majority of the Executive Committee members), but such person shall not count toward a quorum nor be entitled to vote on any matter. The Executive Committee at the request of the Chair or at least three (3) Directors on the Executive Committee may meet in executive session in which one or more of such invited persons or the ex-officio members may not be invited to attend.

1.5.3.4 Vacancies. If a vacancy occurs in the positions of Chair or Vice Chair, the individual designated by the Board under [Section 1.5.1.4](#) to serve as his or her successor in such position shall serve on the Executive Committee for the remaining term that such person serves as Chair or Vice Chair. If a vacancy occurs in any other seat on the Executive Committee, other than due to the expulsion or withdrawal of a Member, then the individual designated by the Member to fill its vacancy on the Board in accordance with [Section 1.5.1.2](#) shall serve out the remaining term of the departing member of the Executive Committee. If a vacancy occurs on the Executive Committee (other than the Chair or Vice Chair) as a result of the expulsion or withdrawal of a Member, then such vacancy shall be filled in accordance with the rotation described in [Section 1.5.3](#) and service of the remaining term of the departing member of the Executive Committee

shall not count against the aggregate two (2) year term limit.

1.5.3.5 Notice and Conduct of Meetings; Quorum and Required Vote; Action without Meeting.

Meetings of the Executive Committee may be called by the Chair, the Commissioner or at three least Directors serving on the Executive Committee. Unless waived by all Directors on the Executive Committee, notice of any meeting of the Executive Committee shall be given at least three (3) days prior to such meeting. If all members of the Executive Committee are present at a meeting and no objection is made as to notice or the absence of any other required process, no notice or other process shall be required and any business authorized under this Constitution or the Bylaws may be transacted at the meeting. Except as otherwise provided by applicable law, this Constitution or the Bylaws, two-thirds (2/3) of all the Directors on the Executive Committee shall constitute a quorum and, if a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present and eligible to vote shall be the act of the Executive Committee. Voting by proxy is not permitted. Any or all members of the Executive Committee may participate in any meeting by any means of communication by which all participants may simultaneously hear each other during the meeting and any member attending by such means shall be deemed "present" for quorum purposes. Participation in a meeting by substitute representation is not permitted, unless determined otherwise in the specific case by the Chair, but in no event shall voting by a substitute representative be permitted. Any action of the Executive Committee required or permitted to be taken at any meeting of the Executive Committee may be taken without a meeting if all Directors on the Executive Committee eligible to vote consent thereto in writing or by electronic transmission and such writing(s) or electronic transmission(s) are filed with the records of the proceedings of the Executive Committee.

1.5.3.6 Notice of Executive Committee Decisions. The Chair will periodically provide the full Board with notice of all Executive Committee decisions that constitute action on behalf of the Board within a reasonable period of time after such decisions have been made, but in no event later than the date of the next Regular Meeting or special meeting of the Board.

1.5.4 Committees.

1.5.4.1 Establishment of Committees. The Board may from time to time establish committees of the Board (in addition to the Executive Committee, which has been established under Section 1.5.3) ("Committees"), on a standing or ad hoc basis, including but not limited to those expressly provided for in Section 2.4 of the Bylaws. At or about the time of the Annual Meeting, the Board shall elect the Directors to serve in any positions to be open on the following July 1 on any Committee comprised entirely of Directors. With respect to any Committee that is not comprised entirely of Directors and does not by its nature have a specified number of representatives per Member (e.g., FAR Committee, SWA Committee, AD Committee, Student-Athlete Advisory Committee), (a) the Members or their representatives may nominate individuals to serve on such Committees by submitting such nomination to the Commissioner and the Chair at least six weeks prior to the Annual Meeting, (b) the Commissioner and the Chair shall recommend to the Executive Committee the individuals to serve on each Committee by proposing a slate of nominees for the positions expected to be open on such Committee on the following July 1 at least two weeks prior to the Annual Meeting, and (c) each such Committee slate shall be subject to approval as a slate by the Executive Committee at or about the time of the Annual Meeting, with appointed persons to begin serving on the immediately following July 1. Each Committee shall have such authority as the Board may determine; provided, that, except as expressly provided in the Constitution or the Bylaws or by the Board, no Committee (including any

Committee described in Section 2.4 of the Bylaws) shall (i) be authorized to act on behalf of the Board, (ii) have the power to bind the Conference or (iii) have any power which is specifically required by law, this Constitution, the Bylaws or any resolution of the Board to be exercised by the full Board or the Executive Committee. Subject to the foregoing sentence, the establishment or disbanding of any Committee, other than those explicitly provided for in the Bylaws, shall not require an amendment of this Constitution or the Bylaws, and shall instead be accomplished by a vote of the Board in accordance with Section 1.6.2.

1.5.4.2 Terms and Vacancies. All Committee terms shall begin on July 1 and end on June 30. Directors serving on the Audit Committee, Finance Committee or Autonomy Committee shall serve for a two-year term and shall not be eligible to serve more than one such two-year term unless otherwise determined by a majority of the Directors. Members of Advisory Committees shall serve for so long as they remain the AD, FAR or SWA, as applicable, of the Member they represent. Persons who serve on a Committee by virtue of holding another position (e.g., Commissioner, chair of FAR Committee, etc.) shall serve on such Committee for so long as they remain in such position. All members of Committees not described in the foregoing sentences of this Section 1.5.4.2 shall each serve terms of three (3) years and shall not be eligible to serve more than two consecutive three-year terms; provided, that the Board shall have the right to create initial one (1) or two (2) year terms for one or more members of each Committee to create staggered terms and such initial one (1) or two (2) year terms shall not count against the aggregate six (6) year term limit. If a vacancy occurs on any Committee comprised entirely of Directors, the Board shall appoint a Director to fill the vacancy and such individual shall serve out the remaining term of the vacating member. If a vacancy occurs on any Advisory Committee, the relevant Member may designate an individual to fill the vacancy on an interim basis until such time as a new FAR, AD or SWA (as applicable) of such Member is appointed. If a vacancy occurs on any other Committee, the Executive Committee shall appoint an individual to fill the vacancy from nominations proposed by the Chair and the Commissioner and, where applicable, such individual shall serve out the remaining term of the vacating member. Such individual shall be selected from the same group of individuals (whether Directors, athletic directors, faculty athletic representatives, senior woman administrators, student-athletes or otherwise) as the vacating member, if applicable. In the case of a Committee established during the course of the year, members may be appointed to the Committee effective upon its formation and any period of service prior to the next July 1 shall not affect their ability to serve a term of up to three (3) years beginning on July 1 and shall not count against the aggregate six (6) year term limit.

1.5.4.3 Notice and Conduct of Meetings; Quorum and Required Vote; Action without Meeting. Meetings of a Committee may be called by the Chair, the chairperson of such Committee, the Commissioner, or a majority of the voting members of such Committee. Unless waived by three-fourths (3/4) of the voting members of a Committee, notice of any meeting of such Committee shall be given at least ten (10) days prior to such meeting. If all members of a Committee are present at a meeting and no objection is made as to notice or the absence of any other required process, no notice or other process shall be required and any business authorized under this Constitution or the Bylaws may be transacted at the meeting. Except as otherwise provided by applicable law, this Constitution or the Bylaws, two-thirds (2/3) of all the members of a Committee shall constitute a quorum and, if a quorum is present when a vote is taken, the affirmative vote of a majority of the members present and eligible to vote shall be the act of such Committee; provided that, with respect to any vote on a matter pertaining to a given sport, any Committee member who represents a Member that does not participate in such sport shall not count towards a quorum and shall not be entitled to vote on such matter. Voting by proxy is not permitted for

any Committee (except as provided below by a substitute representative for Advisory Committee meetings). Any or all members of a Committee may participate in any meeting by any means of communication by which all participants may simultaneously hear each other during the meeting and any member attending by such means shall be deemed “present” for quorum and voting purposes. Advisory Committee members are expected to participate in all meetings of such Advisory Committee; however, a substitute representative of a Member may participate in and vote at an Advisory Committee meeting if an illness or other exigent circumstance affects the ability of a Member’s representative to participate. Participation in a Committee meeting (other than Advisory Committee meetings) by substitute representation is not permitted, unless determined otherwise in the specific case by the Chair, but in no event shall voting by a substitute representative be permitted (except as provided above for Advisory Committee meetings). Any action of a Committee required or permitted to be taken at any meeting of such Committee may be taken without a meeting if all members of such Committee eligible to vote consent thereto in writing or by electronic transmission and such writing(s) or electronic transmission(s) are filed with the records of the proceedings of such Committee.

1.5.4.4 Rule and Procedures. Each Committee shall keep regular minutes of its meetings and report to the Board when required or requested to do so. The Board may adopt other rules and regulations for the conduct of any Committee business or meetings not inconsistent with this Constitution or the Bylaws, and each Committee may adopt such other rules and regulations not inconsistent with applicable law, this Constitution, or the Bylaws for the conduct of its business or meetings as such Committee may deem proper.

1.6 BOARD VOTING REQUIREMENTS

1.6.1 Quorum.

Except as provided under applicable law, this Constitution or the Bylaws, two-thirds (2/3) of all Directors present at a meeting of the Board shall constitute a quorum of the Board; provided that, in the case of any matter requiring the affirmative vote of more than two-thirds (2/3) of all Directors present, a quorum shall only exist if at least that number of Directors equal to such required vote is present.

1.6.2 Required Vote.

Each Director shall be entitled to one vote each. Except as otherwise provided herein or in the Bylaws, if a quorum is present when a vote of the Directors is taken, the affirmative vote of a majority of all Directors present for such vote shall be an act of the Board.

For the avoidance of doubt, all references in this Constitution or the Bylaws to the affirmative vote of:

- a. a majority or two-thirds (2/3) of all “Directors present”, shall mean a majority or two-thirds (2/3) of all the Directors who are present at a Board meeting at which a quorum exists;
- b. two-thirds (2/3) of all the Directors, shall mean two-thirds (2/3) of all the Directors of the Board, even if one or more of such Directors is not present for such vote (“Absolute Two-Thirds Matters”); and
- c. three-fourths (3/4) of all the Directors, shall mean three-fourths (3/4) of all the Directors of the Board, even if one or more of such Directors is not present for such vote (“Absolute Three-Fourths Matters”).

The Absolute Two-Thirds Matters are as follows: (i) any amendment to Article 2.5 of the Bylaws (Finances) including the Success Incentive Policy incorporated therein (except reduction of the percentages of revenue allocated to Success Incentives prior to July 1, 2029, as specified in Section 2.5.3.1), (ii) selecting or changing the location of the Conference office, (iii) entering into or amending any Material Media Rights Agreement (as defined in Section 2.3.1-(g)), (iv) the appointment, extension of the term, or removal of the Commissioner or the other matters set forth in Section 1.5.2.1.1, and (v) the initiation of any material litigation involving the Conference (but not, for clarity, the settlement of any litigation involving the Conference, which requires the affirmative vote of a majority of all Directors present for such vote).

The Absolute Three-Fourths Matters are as follows: (i) the admission of new Members to the Conference pursuant to Section 1.4.3 and the amendment of any agreement regarding the admission of new Members to the Conference, (ii) the expulsion, suspension, or probation of a Member pursuant to Section 1.4.4, (iii) any amendment of this Constitution, (iv) any amendment of the Bylaws (except amendments to Article 2.5 of the Bylaws (Finances), other than reduction of the percentages of revenue allocated to Success Incentives prior to July 1, 2029, as specified in Section 2.5.3.1), and (v) waiver of notice or other required process for a Board meeting pursuant to Section 1.5.1.5.2.

1.6.3 Constitution and Bylaws Amendments.

The initial draft of any proposed amendment to this Constitution or the Bylaws shall be submitted in writing to the Directors or their designees at least four weeks before the Board meeting at which such amendment shall be considered. Revised drafts reflecting material comments received within 14 days shall be sent to the Directors at least 10 days before the meeting; provided that motions for further amendments may be considered and adopted by the requisite vote at the meeting.

1.6.4 Waivers of Eligibility Rules.

An approved waiver of the ACC initial-eligibility rule requires an affirmative vote of two-thirds of the members of the FAR Committee present at a FAR Committee meeting and voting on the request and not less than a majority of the total members on the FAR Committee. All FAR Committee members, including the FAR representing the Member requesting the waiver, are eligible to vote. The FAR Committee may invite persons other than FARs to attend any such meetings of the FAR Committee, including any compliance expert or other advisor; provided that no such persons shall count toward a quorum nor be entitled to vote on any matter.

1.6.5 Sports Operation Code Amendments.

The Commissioner, after consultation with the ADs and SWAs, shall submit proposed amendments to the Sports Operation Code to the FAR Committee, which may adopt any such amendment by a majority vote of the FARs present and voting on the issue.

1.6.6 General Policies and Procedures Amendments.

Unless the Board decides it will vote on any such proposed amendments, the Commissioner, after consultation with the ADs and SWAs, shall submit proposed amendments to the General Policies and Procedures to the FAR Committee, which may adopt any such amendment by a majority vote of the FARs present and voting on the issue.

1.6.7 Effective Date of Amendments.

All amendments to the ACC Manual shall become effective July 1 following adoption unless otherwise noted in the proposed amendment or the resolution(s) adopting the proposed amendment.

Exhibit 2

ATLANTIC COAST CONFERENCE GRANT OF RIGHTS AGREEMENT

THIS ATLANTIC COAST CONFERENCE GRANT OF RIGHTS AGREEMENT (the "**Agreement**") is executed on _____, 2013, by and among the Atlantic Coast Conference, an unincorporated nonprofit association (the "**Conference**"), and each of the following entities: (i) Boston College, Clemson University, Duke University, Florida State University, Georgia Institute of Technology, University of Miami, University of North Carolina, North Carolina State University, University of Virginia, Virginia Polytechnic Institute and State University, and Wake Forest University (collectively, the "**Current Members**"), (ii) University of Pittsburgh, Syracuse University, University of Notre Dame du Lac, and University of Louisville (collectively, the "**Accepted Members**"), and (iii) any entities that are admitted as new members of the Conference hereafter and which become bound by this Agreement by executing a signature page or joinder agreement hereto as a condition to such admission (the "**Additional Members**" and, together with the Current Members and Accepted Members, each a "**Member Institution**" and collectively, the "**Member Institutions**").

RECITALS:

WHEREAS, the execution and delivery of this Agreement enhances the stability of Conference membership, confirms the commitment by each Member Institution to the other Member Institutions of the Conference, and thereby provides valuable benefits to each Member Institution of the Conference;

WHEREAS, the Conference has previously entered into the Multi-Media Agreement with ESPN, Inc. and ESPN Enterprises, Inc. dated as of July 8, 2010, as amended by the Amendment and Extension Agreement dated as of May 9, 2012 (as amended, collectively referred to as the "**Amended ESPN Agreement**");

WHEREAS, each of the Accepted Members has been accepted for membership in the Conference by the Current Members and each Accepted Member has agreed that its membership shall be effective on the date specified on its signature page to this Agreement;

WHEREAS, as a condition to the agreement of ESPN to offer additional consideration to the Conference as part of a further amendment to the Amended ESPN Agreement (the "**Additional Amendment**"; the Additional Amendment, together with the Amended ESPN Agreement, collectively, the "**ESPN Agreement**"), each of the Member Institutions is required to, and desires to, irrevocably grant to the Conference, and the Conference desires to accept from each of the Member Institutions, those rights granted herein; and

WHEREAS, the Conference and the Member Institutions desire to have this Agreement memorialize their understandings with respect to the matters set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing, the covenants set forth herein and in the ESPN Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and intending to be legally bound hereby, the undersigned each hereby agree with the Conference and with each other as follows:

1. Grant of Rights. Each of the Member Institutions hereby (a) irrevocably and exclusively grants to the Conference during the Term (as defined below) all rights (the "Rights") necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement, regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term and (b) agrees to satisfy and perform all contractual obligations of a Member Institution during the Term that are expressly set forth in the ESPN Agreement. The grant of Rights pursuant to this paragraph 1 includes, without limitation, (A) the right to produce and distribute all events of such Member Institution that are subject to the ESPN Agreement; (B) subject to paragraph 7 hereof, the right to authorize access to such Member Institution's facilities for the purposes set forth in and pursuant to the ESPN Agreement; (C) the right of the Conference or its designee to create and to own a copyright of the audiovisual work of the ESPN Games (as defined in the ESPN Agreement) of or involving such Member Institution (the "Works") with such rights being, at least, coextensive with 17 U.S.C. 411(c); and (D) the present assignment of the entire right, title and interest in the Works that are created under the ESPN Agreement. Notwithstanding any other provisions of this paragraph, the grant of Rights pursuant to this paragraph 1 shall not include any rights of a particular Member Institution to sports as to which the Conference and such Member Institution have agreed, as of the date of such Member Institution's execution of this Agreement or a joinder thereto, that such Member Institution will not participate as a member of the Conference. The grant of Rights pursuant to this paragraph 1 shall remain subject to the right to produce and distribute, by means of specified media, those events of such Member Institution during the Term which are reserved to the Conference and the Member Institution under the ESPN Agreement and which may be exercised as permitted by the ESPN Agreement and in accordance with Conference policy. Each Member Institution will cause any affiliated entity which has previously been granted any interest in the Rights, to grant such interest to the Conference to the extent necessary to allow the Member Institution to fully perform all of its obligations under this Agreement and provide the Conference with the Rights contemplated hereby.

2. Copyright Assignment and License. The Conference and each of the Member Institutions acknowledge that the Conference owns or will own the copyrights to the Works. Each Member Institution hereby grants to the Conference or its designee the right to create a copyright Work and, for the entire duration of the applicable event, the copyright in such Works. The Conference shall have the right to seek relief under 17 U.S.C. 411(c) for any interference with the Conference's federal copyright ownership interest in the Works created and/or Works to be created under the ESPN Agreement. Each Member Institution agrees to cooperate with the Conference in any such action, but at the Conference's sole expense. The rights assigned in the Works include, but are not limited to, all rights under the United States and/or foreign copyright laws; all reproduction, performance, display, distribution, and other intellectual property rights; the right to modify, distort, or alter the Works and future Works; and all so-called moral rights. To the extent moral rights may not be assigned, each Member Institution hereby waives the benefit or protection of same.

3. Execution of Additional Documents. If requested by the Conference, each Member Institution hereby agrees to execute and deliver all documents reasonably requested by the Conference to effectuate the intent of this Agreement, at the Conference's expense.

4. Additional Members. The Conference shall not admit a new member to the Conference unless and until (a) such new member agrees to become bound by this Agreement with respect to all sports in which it participates as a member of the Conference by executing a signature page or joinder agreement hereto as a condition to such admission and (b) grants to the Conference pursuant to this Agreement all Rights of such Member Institution with respect to such sports.

5. Term. The “Term” of this Agreement shall begin on the Effective Date and shall continue until June 30, 2027. The “Effective Date” means (a) for the Current Members, the date first set forth above, and (b) for Accepted Members and Additional Members, the date on which the Conference and a particular Accepted Member or Additional Member have agreed that the membership in the Conference shall become effective in accordance with the Conference’s Constitution and Bylaws, which date is set forth on the respective signature page hereof for each Accepted Member and shall be set forth on the signature page of this Agreement for each Additional Member. For clarity, all Accepted Members and Additional Members agree to be bound as of their signature hereon even though the term of their membership in the Conference has not yet begun.

6. Acknowledgements, Representations, Warranties, and Covenants. Each of the Member Institutions acknowledges that the grant of Rights during the entire Term is irrevocable and effective until the end of the Term regardless of whether the Member Institution withdraws from the Conference during the Term or otherwise ceases to participate as a member of the Conference in accordance with the Conference’s Constitution and Bylaws. Furthermore, each Member Institution represents and warrants to the Conference (a) that such Member Institution either alone, or in concert with an affiliated entity that has executed an agreement to be bound by the provisions of this Agreement, has the right, power and capacity to execute, deliver and perform this Agreement and to discharge the duties set forth herein; (b) that execution, delivery and performance of this Agreement and the discharge of all duties contemplated hereby, have been duly and validly authorized by all necessary action on the part of such Member Institution; (c) that execution and delivery of this Agreement by Member Institution and the discharge of duties contemplated herein by Member Institution will not, with or without the giving of notice or the lapse of time, or both: (i) violate or conflict with any of the provisions of the charter document, bylaws or other governing documents of such Member Institution; (ii) violate, conflict with or result in breach or default under, or cause termination of any contract, license, permit or other agreement, document or instrument to which Member Institution is a party or by which Member Institution may be bound; or (iii) violate any provision of any law, statute, rule, regulation, court order, judgment, or decree, or ruling of any governmental authority, by which Member Institution is a party or to which Member Institution may be bound; and (d) that Member Institution, either alone, or in concert with an affiliated entity that has executed an agreement to be bound by the provisions of this Agreement, owns all Rights granted to the Conference in paragraph 1 above. Each of the Member Institutions covenants and agrees that (x) it will not enter into any agreement that is inconsistent with the provisions of this Agreement, and (y) it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, that would affect the validity and enforcement of the Rights granted to the Conference under this Agreement.

7. Reasonable Access. Without any additional consideration or compensation to the Member Institutions, each of the Member Institutions agrees throughout the Term to provide ESPN and its sublicensees with reasonable access to its property and facilities, with appropriate ingress and egress, parking, facilities, utilities and lighting, and other support and assistance reasonably required by ESPN and its sublicensees to exercise the Rights as and to the extent provided in the ESPN Agreement.

8. Miscellaneous. This Agreement may not be modified or amended other than by an agreement in writing signed by duly authorized representatives of the Conference and each of the Member Institutions that are then members of the Conference. This Agreement may be executed in multiple counterparts and delivered by electronic or facsimile transmission. This Agreement, together with any substantially contemporaneous agreement between the Conference and an affiliated entity of a Member Institution relating to the Rights, sets forth the entire understanding of the parties hereto relating to the grant of Rights and related subject matter provided for herein and, effective as of the date first set forth above, supersedes all prior agreements and understandings among or between any of the parties relating to the grant of Rights and related subject matter provided for herein. The Recitals set forth above shall be deemed incorporated by this reference into and specifically made part of this Agreement. Should any provision of this Agreement be determined to be invalid or unenforceable, such shall not invalidate this Agreement, but such provision shall be deemed amended to the extent necessary to make such provision valid and enforceable and which as closely as possible reflects the original intent of the parties.

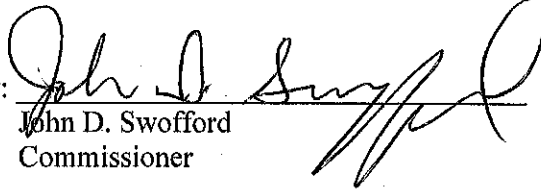
[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

THE CONFERENCE:

ATLANTIC COAST CONFERENCE

Dated: April 22, 2013

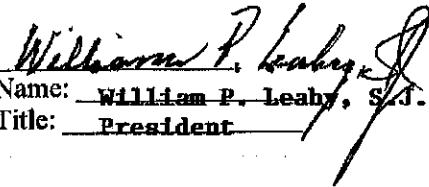
By: 
John D. Swofford
Commissioner

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

BOSTON COLLEGE

A Dated: April 19, 2013

By: 
Name: William P. Leahy, S.J.
Title: President

SIGNATURE PAGE TO
ATLANTIC COAST CONFERENCE
GRANT OF RIGHTS AGREEMENT
DATED 4-19, 2013

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

CLEMSON UNIVERSITY

Dated: 4 / 19, 2013

By: 
Name: James F. Barker
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

DUKE UNIVERSITY

Dated: APRIL 19, 2013

By: Richard A. Brodhead
Name: RICHARD A. BRODHEAD
Title: PRESIDENT,
DUKE UNIVERSITY

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

FLORIDA STATE UNIVERSITY

Dated: April 19 2013


By: Eric J Barron
Name: ERIC J BARRON
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

GEORGIA INSTITUTE OF TECHNOLOGY

Dated: April 19, 2013

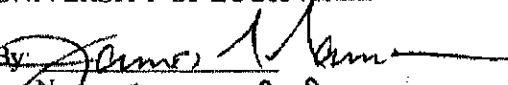
By: 
Name: G.P. Peterson
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF LOUISVILLE

Dated: April 19, 2013

By: 
Name: James R. Ramsey
Title: President

Date that Conference membership becomes effective:

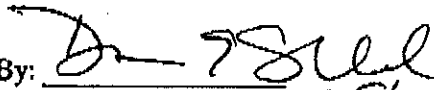
Expected July 1, 2014, pending withdrawal negotiations with the Big East Conference

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF MIAMI

Dated: April 19, 2013

By: 
Name: DONNA E. SHATATA
Title: PRESIDENT

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF NORTH CAROLINA

Dated: April 19, 2013


By: H. Holden Thorp
Name: H. Holden Thorp
Title: Chancellor

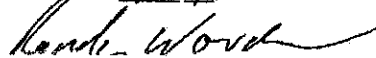
IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

NORTH CAROLINA STATE UNIVERSITY

Dated: April 19, 2013

By: 
Name: W. RANDOLPH WOODSON
Title: CHANCELLOR




IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF NOTRE DAME DU LAC

Dated: April 19, 2013

By: 
Name: Rev. John L. Jenkins; C.S.C.
Title: President

Date that Conference membership becomes effective: July 1, 2013

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF PITTSBURGH

Dated: April 19, 2013

By: Mark A. Nordenberg
Name: Mark A. Nordenberg
Title: Chancellor

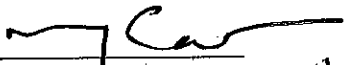
Date that Conference membership becomes effective: July 1, 2013

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

SYRACUSE UNIVERSITY

Dated: April 19, 2013

By: 
Name: Nancy Cantor
Title: Chancellor

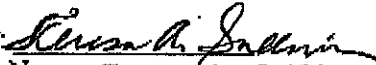
Date that Conference membership becomes effective: July 1, 2013

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF VIRGINIA

Dated: April 19, 2013

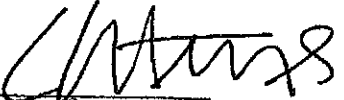
By: 
Name: Teresa A. Sullivan
Title: President, University of Virginia

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

Dated: 4 19, 2013

By: 
Name: Charles W. Steger
Title: President

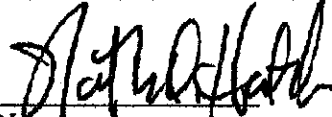
IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

WAKE FOREST UNIVERSITY

Dated: April 19, 2013

By:



Name: Nathan D. Hatch

Title: President

Exhibit 3
Filed Under Seal

Exhibit 4



BYLAWS

ACC MANUAL

2023 | 2024

2.9 APPEALS

2.9.1 Appeal Procedures.

The decision of the Commissioner or the Executive Committee in any proceedings under Bylaws Article 2.8 may be appealed. Such appeal must be made by the Member involved within 14 days after receiving, by registered mail or nationally recognized overnight delivery service, the notice of such action. Appeals from decisions about interpretations or violations of the Conference rules and regulations, or penalties imposed under these rules, shall be made to the Board or the Executive Committee (as applicable) through the Chair.

- a. Final appeal of a decision made by the Commissioner (or any subcommittee or special committee appointed by the Executive Committee) normally is heard by the Executive Committee; however, at the request of the appealing Member, the Board will hear the appeal in lieu of the Executive Committee. If the Executive Committee hears the appeal, the Executive Committee's decision may not be further appealed to the Board.
- b. Final appeal of an initial decision made by the Executive Committee will be heard by the Board.
- c. The committee hearing the appeal may, if it so chooses, modify the decision as to guilt and/or penalty but may not increase the penalty.
- d. Appeals shall be limited in scope and will not constitute a new complete hearing of the case. Notice of appeal shall state specifically the findings of violations or penalties or both on which the appeal is being made and the reasons why those items are being appealed.

2.9.2 Appellate Decision.

The decision as to the appeal shall be rendered only after affording any Member, employee, or student-athlete involved in the appealed portion of the case an opportunity to be heard and to be represented by legal counsel and must be rendered within a reasonable time after the hearing of the appeal. Such decision is final and is not subject to further appeal except under provision of [Section 2.9.3](#) (New Evidence or Prejudicial Error).

2.9.3 New Evidence or Prejudicial Error.

The Executive Committee or the Board, as applicable, shall consider a request to reopen a case upon receipt of new evidence of fact or of prejudicial error in the hearing or appeals procedure. A decision not to reopen a case is not subject to further appeal.

2.10 MEDIA RIGHTS POLICY

[Note: See [Section 2.12](#) of these Bylaws for provisions regarding the University of Notre Dame.]

2.10.1 Grant of Rights. The Members have granted to the Conference the right to exploit certain media and related rights of the Members (such rights, the "[Media Rights](#)"; and the agreement pursuant to which the Members granted such rights, the "[Grant of Rights](#)").

2.10.2 Revenues from Media Rights.

Unless otherwise determined by the Board, all revenues from the sale, licensing, distribution, and other exploitation of the Media Rights shall be deposited with the Conference.

Exhibit 5
Filed Under Seal

Exhibit 6
Filed Under Seal

Exhibit 7

**AMENDMENT TO
ATLANTIC COAST CONFERENCE
GRANT OF RIGHTS AGREEMENT**

This Amendment is entered into as of this ____ day of June, 2016, by and among the Atlantic Coast Conference, an unincorporated nonprofit association (the "Conference"), and each of the following entities: Boston College, Clemson University, Duke University, Florida State University, Georgia Institute of Technology, University of Miami, University of North Carolina, North Carolina State University, University of Virginia, Virginia Polytechnic Institute and State University, Wake Forest University, University of Pittsburgh, Syracuse University, University of Notre Dame du Lac, and University of Louisville (collectively, the "Member Institutions"), who are parties to that certain Atlantic Coast Conference Grant of Rights Agreement, dated as of April 19, 2013 (the "Original Grant Agreement")."

WHEREAS, the Conference is a party to a Multi-Media Agreement with ESPN, Inc. and ESPN Enterprises, Inc. (collectively, "ESPN"), dated as of July 8, 2010, as amended by the Amendment and Extension Agreement dated as of May 9, 2012, and by a Second Amendment to Multi-Media Agreement," dated as of June 24, 2014 (collectively, the "Original ESPN Agreement"); and

WHEREAS, the Conference has negotiated an Amended and Restated Multi-Media Agreement with ESPN (the "Restated Multi-Media Agreement") and a Network Agreement with ESPN. (collectively, the "Prospective Agreements"), which offer certain additional consideration to the Conference; and

WHEREAS, ESPN has informed the Conference that it will enter into the Prospective Agreements only if each of the Member Institutions agrees to amend the Original Grant Agreement to extend the term thereof, as provided herein;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The term "ESPN Agreement" in the fourth "Whereas" clause of the Original Grant Agreement is hereby amended to refer collectively to the Original ESPN Agreement and the Prospective Agreements.
2. Section 5 of the Original Grant Agreement is hereby amended by deleting the first sentence of the existing Section 5 in its entirety and substituting the following therefor:

"Term. The "Term" of this Agreement shall begin on the Effective Date and shall continue until June 30, 2036.
3. Except as specifically modified by this Amendment, the terms of the Original Grant Agreement will remain in full force and effect.

4. This Amendment is effective as of June 27, 2016.

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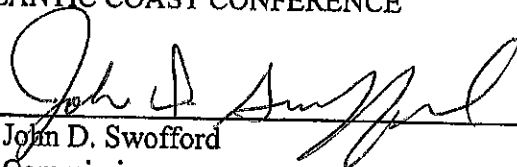
IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Amendment as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

THE CONFERENCE:

ATLANTIC COAST CONFERENCE

Dated: July 18, 2016

By:



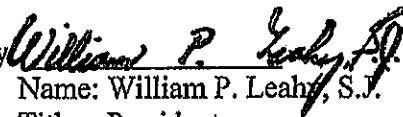
John D. Swofford
Commissioner

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

BOSTON COLLEGE

Dated: June 27, 2016.

By 
Name: William P. Leahy, S.J.
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

CLEMSON UNIVERSITY

Dated: June 29, 2016

By: James P. Clements
Name: James P. Clements, Ph.D.
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

DUKE UNIVERSITY

Dated: June 27, 2016

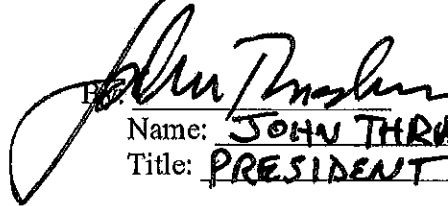
By: *Richard Brodhead*
Name: Richard H. Brodhead
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

FLORIDA STATE UNIVERSITY

Dated: June 28, 2016



Name: JOHN THRASHER
Title: PRESIDENT

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

GEORGIA INSTITUTE OF TECHNOLOGY

Dated: June 27, 2016


By: 
Name: G. T. PETERSON
Title: PRESIDENT

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF LOUISVILLE

Dated: June 27, 2016

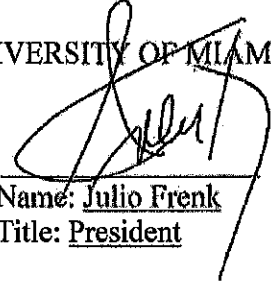
By: 
Name: _____
Title: _____

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF MIAMI

Dated: June 30, 2016


By: 
Name: Julio Frenk
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

NORTH CAROLINA STATE UNIVERSITY

Dated: June 29, 2016


By: 
Name: Scott R. Douglass
Title: Vice Chancellor

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL

Dated: June 27, 2016

By: 


Carol L. Folt
Chancellor

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF NOTRE DAME DU LAC

Dated: July 12, 2016


By: 
Name: John I. Jenkins, C.S.C.
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF PITTSBURGH

Dated: June 27, 2016

By: 
Name: Patricia Gally
Title: Chancellor

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

SYRACUSE UNIVERSITY

Dated: June 27, 2016

By: *Kent Syverud*
Name: Kent Syverud
Title: Chancellor & President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

UNIVERSITY OF VIRGINIA

Dated: June 27, 2016

By: *Theresa A. Sullivan*
Name: Theresa A. Sullivan
Title: President

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

VIRGINIA POLYTECHNIC INSTITUTE
& STATE UNIVERSITY

Dated: June 24, 2016

By: M. Dwight Shelton, Jr.
Name: M. Dwight Shelton, Jr.
Title: VP for Finance & CFO

IN WITNESS WHEREOF, the Conference and each of the Member Institutions have duly executed this Agreement as of the date set forth opposite their respective signatures below intending to be bound as of the date first set forth above.

MEMBER INSTITUTION:

WAKE FOREST UNIVERSITY

Dated: June 27, 2016


By: 
Nathan O. Hatch
President

Exhibit 8

| | | |
|----------------------------|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF PICKENS |) | |
| |) | Civil Action No. _____ |
| CLEMSON UNIVERSITY, |) | |
| |) | |
| Plaintiff, |) | COMPLAINT |
| |) | |
| vs. |) | (Declaratory Judgment Action under |
| |) | Section 15-53-10 et seq. of S.C. Code of |
| ATLANTIC COAST CONFERENCE, |) | Laws) |
| |) | |
| Defendant. |) | (Non-Jury) |
| |) | |

Plaintiff Clemson University (“*Clemson*” or the “*University*”) files this Complaint against Defendant Atlantic Coast Conference (“*ACC*” or the “*Conference*”) for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, and alleges as follows:

INTRODUCTION

1. The ACC has publicly asserted that the ACC irrevocably owns the media rights of member institutions to home games played through 2036, even if the institution ceases to be a member of the Conference. The ACC has also claimed that member institutions must pay an exorbitant \$140 million penalty to leave the Conference, and that members owe the Conference fiduciary duties, specifically with respect to obligations created by their grant of media rights to the Conference.

2. Each of these erroneous assertions separately hinders Clemson’s ability to meaningfully explore its options regarding conference membership, to negotiate alternative revenue-sharing proposals among ACC members, and to obtain full value for its future media rights. As detailed below, collegiate athletics is at a crossroads. Without clarity as to its legal rights and obligations, Clemson cannot protect and advance its interests, or the interests of its

student-athletes, in current and ongoing negotiations within the Conference, with the Conference's existing media partner ESPN, and in collegiate athletics more generally.

3. Accordingly, Clemson seeks a declaration of its rights relating specifically to (a) the scope of Clemson's grant of certain media rights to the Conference, (b) the invalidity and unenforceability of the exorbitant withdrawal penalty that the Conference claims any member of the ACC, including a public university, must pay to leave the Conference, and (c) the non-existence of fiduciary duties that the Conference claims ACC members owe to the Conference and the absence of a breach of any legal duty or obligation that Clemson might owe to the ACC by filing this lawsuit.

The Grant of Media Rights

4. Clemson granted certain media rights to the ACC in an agreement executed in 2013 and amended in 2016. That agreement provides, however, that Clemson granted the Conference only such media rights as were "*necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in [certain, specifically identified media agreements between the Conference and ESPN].*" (Emphasis added). The ACC has repeatedly ignored this qualification in interpreting the scope of the grant of rights and the rights consequently retained by Clemson.

5. The proper scope of Clemson's grant of rights can only be understood by reference to certain media agreements between the Conference and ESPN—agreements that are not within public view. Those agreements reveal that Clemson's grant of media rights to the ACC was more limited than the ACC maintains.

6. Properly understood, "the contractual obligations of the Conference" did not include providing media rights to games played by a school *after* that school exits the

Conference. The media rights to games played *while Clemson is a member of the ACC* are the only rights necessary for the ACC to perform the Conference's obligations under the ACC's media agreements with ESPN. The media rights to games played at a time when Clemson is not a member of the ACC were never a part of any grant of rights.

7. The ACC's contention about the scope of rights granted, which is wrong, must be corrected now.

The Withdrawal Penalty

8. The ACC asserts that any ACC member school must pay an unconscionable and unenforceable withdrawal penalty equal to the amount of three times the ACC's total operating budget (a figure currently exceeding \$140 million) to leave the Conference.

9. Though described by the ACC as "liquidated damages" or as a form of alternative performance, the sum that the ACC insists a member pay upon withdrawal from the Conference is an exorbitant penalty that is not connected to any economic harm that the Conference might suffer, is not connected to a continuation of the relationship, and has ballooned to the point of unconscionability since it was first adopted in September 2011. As such, the penalty is void as against public policy and unenforceable as a matter of law.

Fiduciary Duties

10. The ACC has recently claimed in court filings that its members owe the Conference fiduciary duties arising from the ACC Constitution, the ACC Bylaws, and statutory and common law, including duties allegedly arising from the characterization of the ACC as a joint venture and from the good faith and fair dealing obligations of parties to a contract. The ACC has gone even further and sued another conference member for allegedly breaching duties owed to the Conference by challenging the enforceability of the grant of media rights to the

Conference. Clemson disagrees and asserts that no such fiduciary duties are imposed by the ACC Constitution, the ACC Bylaws, or any applicable statutory, common, or other law. Moreover, Clemson has not breached any legal duty owed to the ACC by filing this lawsuit—which does not challenge the enforceability of the grant of media rights but merely seeks a declaratory judgment regarding the scope of rights granted.

A LIVE, JUSTICIABLE CONTROVERSY EXISTS

11. The ACC's misconstruction of Clemson's grant of media rights, its stated intention to impose a withdrawal penalty that has escalated to exorbitant levels in recent years, and its attempt to unilaterally impose non-existent fiduciary duties on Conference members each separately injures Clemson and its students, student-athletes, coaches, and faculty. Significant competition exists among athletic conferences for member schools, sales of tickets, sales of broadcasting rights, advertising and sponsorships, and opportunities for members to compete in lucrative athletic contests. Conference realignment continues to occur with increasing frequency as various conferences and universities seek the affiliations and memberships that best enable them to compete with other universities, with the private sector, and with other forms of sports and entertainment products. The ACC's actions interfere with Clemson's free exercise of its rights and are fatally detrimental to Clemson's efforts to ensure that its athletic programs can continue to compete at the highest level, which is critically important to Clemson even beyond athletics.

12. In public statements, including statements provided to and published by various media outlets, and most recently in a lawsuit filed by the ACC against Florida State University ("Florida State"),¹ the ACC has repeatedly asserted that the media rights granted to the

¹ Before filing its original complaint and commencing the lawsuit against Florida State, the ACC

Conference by member institutions like Clemson include rights to games that such institutions play even after an exit from the Conference and that members are required to pay an approximately \$140 million exit fee to leave the ACC.

13. The ACC's lawsuit against Florida State was filed in response to Florida State's efforts to explore the possibility of leaving the ACC without paying the exit fee. In its lawsuit, the ACC alleges that seeking a declaratory judgment related to the grant of rights violated fiduciary duties that the Conference now claims Florida State—and all other ACC members—owe to the ACC.

14. The ACC's erroneous assertions and related actions concerning media rights, the withdrawal penalty, and non-existent fiduciary duties diminish the value of Clemson's future media rights. They have a chilling effect on Clemson's ability to explore and pursue an exit from the ACC, or to negotiate alternative revenue-sharing proposals among ACC members. They interfere with Clemson's free exercise of its rights to disassociate from the Conference in the best interests of Clemson, its students, and its athletics program.

15. Additionally,

[REDACTED]

[REDACTED] In this way too, the ACC's misinterpretation of the scope of the grant of rights impairs Clemson's rights, including its right to negotiate now for a more favorable treatment of its future

did not hold a vote requesting that its members, including Clemson, approve of the lawsuit against Florida State. Nor has Clemson ever authorized the ACC's lawsuit against Florida State.

media rights, either with ESPN, other Conference Members, or even other collegiate athletic conferences beyond the ACC.

16. Without a judicial declaration of its legal rights, which have been openly challenged by the ACC, Clemson is unable to pursue a wide range of strategic alternatives that may be necessary for its continued success in collegiate athletics and as an institution. By espousing an inaccurate interpretation of the grant of rights agreements and allowing that interpretation to proliferate throughout the media, the ACC has cast a harmful cloud of doubt on Clemson's ability to engage in meaningful discussions with other conferences and media providers regarding potential future collaborations and/or to negotiate alternative revenue-sharing proposals among ACC members. For Clemson to move ahead and ensure that it may continue to act in furtherance of its institutional mission, that cloud must be lifted.

17. Similarly, but separately, the prospect that a public institution of higher education in South Carolina might possibly be required to pay an unconscionably high withdrawal penalty—one that has ballooned in size since it was first adopted—chills Clemson's ability to explore options that are in its best interests and to negotiate to protect the best interests of its students, student-athletes, faculty, and alumni, and diminishes the value of Clemson's media rights and athletic brand.

18. Further, the prospect that Clemson might be subjected to claims that it breached non-existent fiduciary duties by filing this lawsuit, which seeks only to determine the scope of its legal rights and obligations, creates an immediate, justiciable controversy as to the existence of such duties.

19. For the foregoing reasons, singularly or collectively, and on the further basis of the facts and circumstances described throughout this Complaint, a real, actual, substantial, and

justiciable controversy exists between Clemson and the ACC and is appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*

20. Accordingly, Clemson seeks a declaration from this Court that: (i) the media rights Clemson granted to the ACC do not include any Clemson games that are played after Clemson ceases to be a member of the ACC; (ii) Clemson is not required to pay the ACC the withdrawal penalty, as such a payment is an unenforceable penalty in violation of public policy; and (iii) Clemson owes no fiduciary duties to the ACC or its other members and has breached no legal duty or obligation it might owe to the ACC by filing this lawsuit.

PARTIES

21. Clemson is a public institution of higher education in South Carolina, and Clemson's principal campus is in Pickens County, South Carolina.

22. The ACC is an unincorporated nonprofit association organized and existing under the laws of the State of North Carolina, including North Carolina's version of the Uniform Unincorporated Nonprofit Association Act, N.C. Gen. Stat. §§ 59B-1, *et seq.* (the "UUNAA"). The ACC is governed by a constitution (the "ACC Constitution") and bylaws (the "ACC Bylaws"). The ACC's principal place of business is in Charlotte, North Carolina.

23. As an unincorporated association, the ACC's citizenship is that of its members. The ACC has 15 members: Clemson; Boston College; Duke University; Florida State; the Georgia Institute of Technology; the University of Louisville; the University of Miami; the University of North Carolina; North Carolina State University; the University of Notre Dame du Lac ("Notre Dame");² the University of Pittsburgh; Syracuse University; the University of

² All of Notre Dame's athletics programs compete in the ACC, except for football (which is independent) and men's ice hockey (which competes in the Big Ten athletic conference).

Virginia; Virginia Polytechnic Institute and State University; and Wake Forest University.³

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this dispute. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of provisions of the contracts described below.

25. This Court has general and specific personal jurisdiction over the parties to this action.

26. South Carolina courts may exercise personal jurisdiction over an association or other entity where the cause of action arises from the entity's contacts in the State, including transacting any business in the State, contracting to supply services or things in the State, entering into a contract to be performed in whole or in part by either party in the State, and more. S.C. Code Ann. § 36-2-803 (2005).

27. The ACC derives substantial revenue through its advertising, promotion, merchandising, marketing, broadcasting, and events conducted within the State of South Carolina. Among other things, the ACC sponsors, hosts, and generates income from athletic events held within Pickens County, South Carolina. Each of the member institutions in the ACC has athletic teams that compete in events in South Carolina.

28. Furthermore, the ACC is subject to this Court's personal jurisdiction because, among other things,

³ On September 1, 2023, the ACC voted to add Southern Methodist University, Stanford University, and the University of California, Berkeley as new members of the ACC starting in the 2024-2025 academic year.

- a. the ACC has transacted business in South Carolina, and the claims and causes of action alleged here arise therefrom;
- b. the ACC has entered contracts to be performed at least in part by Clemson and/or other entities in South Carolina (including the agreements identified above and below), and the claims and causes of action alleged here arise therefrom; and/or
- c. the ACC has committed an act outside South Carolina causing wrongful injuries herein all while engaged in other persistent conduct or deriving substantial revenue from services rendered in South Carolina, and the claims and causes of action alleged here arise therefrom.

29. By engaging in the conduct described in this Complaint, from which the claims set forth herein arise and to which they relate, the ACC has purposefully availed itself of the privileges of conducting activities in the State of South Carolina such that due process authorizes the exercise of personal jurisdiction over it in this action.

30. Venue is appropriate in Pickens County because, among other things, the most substantial part of the acts and omissions giving rise to the causes of action pleaded in this Complaint occurred in Pickens County.

BACKGROUND

The Current State of College Sports and the Revenue Gap

31. Collegiate athletic conferences compete to have colleges and universities become conference members, with the conferences offering bundles of financial, reputational, and academic benefits as incentives to join. Conferences seek to attract the best potential member schools to join their conferences. Colleges and universities seek to join the conference that provides the best bundle of benefits for them and their constituents.

32. Collegiate athletic conferences like the ACC, the Big Ten, and the SEC enter into contracts with media providers who pay the conferences millions of dollars in exchange for the right to broadcast conference members' games. The conferences then distribute those media revenues to conference members.

33. The ACC is a party to certain media-rights contracts with ESPN. Under the terms of those agreements, ESPN compensates the ACC for the exclusive right to produce, distribute, and sublicense certain defined games involving Conference members. The ACC then distributes revenue generated by the agreements to its members, including Clemson.

34. Sports-generated revenues are crucial to Clemson, and the media-rights contracts between the ACC and ESPN generate a substantial amount of the sports-generated revenues Clemson receives. Clemson relies on such revenues to provide a world-class education for its students and student-athletes, fund scholarships and financial aid, pay faculty, coaches, and staff, grow its athletics program for both its male and female student-athletes, maintain and improve its campus, and meet the demands of potential financial obligations that may arise in college sports.

35. In the case of the ACC, the revenues generated by the media agreements between the ACC and ESPN are significantly lower than the revenues generated by media agreements negotiated by the Big Ten and the SEC with their media providers, resulting in a dramatic gap between the revenues paid by those other conferences to their members and the revenues paid by the ACC to its members. In the coming years, this already large revenue gap is only expected to grow.

36. In 2020, the SEC entered into an exclusive, 10-year media rights deal with ESPN that runs from 2024 to 2034 with a reported estimated value of \$3 billion. The Big Ten followed suit in 2022, agreeing to a seven-year deal with NBC, CBS, and Fox Sports that spans from 2023

to 2030. The Big Ten’s deal is reportedly worth more than \$7 billion and believed to be the most lucrative in college sports history.

37. In 2022 alone, the Big Ten’s total revenue from its media deal and other sources was reportedly \$845.6 million, and the SEC’s total revenue from its media deal and other sources was reportedly \$802 million. By contrast, the ACC’s total revenue was \$617 million. The annual revenue payout to each member of the three conferences was reported as follows:

- Big Ten: \$58.8 million;⁴
- SEC: \$49.9 million; and
- ACC: \$37.9 million to \$41.3 million.

38. As a result of the lucrative media deals struck by the Big Ten and the SEC, which have made them the two top-earning conferences, the revenue gap between them and the other college athletic conferences, including the ACC, will grow larger with the passage of time—to an estimated average of \$30 million per member institution per year.

39. As the revenue gap widens over the coming years, Clemson will fall behind its peer institutions.

THE GRANT-OF-RIGHTS AGREEMENTS

Background

40. The ACC is a party to two contracts with ESPN involving media rights: the ESPN/ACC Amended and Restated Multimedia Agreement (dated July 8, 2010, as amended May 9, 2012, June 24, 2014, August 27, 2014, July 21, 2016, and August 10, 2016) (the “*Multimedia Agreement*”); and the ESPN/ACC Network Agreement (dated July 21, 2016) (the “*Network Agreement*”) (collectively, the “*ESPN Agreements*”).

⁴ Three Big Ten schools agreed to accept less from their conference.

41. In 2013, years after the Multimedia Agreement was adopted, at the urging of the Commissioner of the ACC, Clemson and the other members of the ACC executed an “Atlantic Coast Conference Grant of Rights Agreement” (the “*Grant of Rights Agreement*”).

42. The Grant of Rights Agreement is expressly and inextricably tied to and qualified by the ESPN Agreements. The agreements cannot be read in isolation, but must be read together, and any understanding of the media rights that Clemson granted to the ACC through the Grant of Rights Agreement must account for the fact that only rights necessary to enable the Conference and its members to perform under the ESPN Agreements were granted. Put simply, the Grant of Rights Agreement is not, as the ACC has claimed, a blanket grant of rights. It is explicitly limited by the ESPN Agreements.

43. In the Grant of Rights Agreement, each Member Institution, as defined therein, granted the following rights to the Conference:

all rights (the “Rights”) *necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement*, regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term

(Emphasis added). Similarly, the Grant of Rights Agreement provides that the grant of rights included “the right to produce and distribute all events of such Member Institution *that are subject to the ESPN Agreement.*” (Emphasis added). As explained more fully in paragraph 62 below, the phrase “regardless of whether such Member Institution remains a member of the Conference during the entirety of the Term . . .” does not mean that the ACC has rights to games played while an institution is not a member of the Conference because those games are not subject to the ESPN Agreements.

44. In 2016, the ACC entered into the Network Agreement and again amended the Multimedia Agreement. Each Conference member, including Clemson, executed an

Amendment to the Grant of Rights Agreement, effective June 27, 2016, extending the Grant of Rights Agreement and reconfirming the scope of the grant of rights to be limited to only those rights necessary for the Conference to perform its obligations under the ESPN Agreements as then in effect.

45. The Grant of Rights Agreement and the 2016 Amendment are referred to collectively in this Complaint as the “*GOR Agreements*.”

46. The GOR Agreements have been made public. The ESPN Agreements, on the other hand, have not.

47. As a result of the secrecy surrounding the ESPN Agreements’ terms, the public, including media organizations and other collegiate athletic conferences and their members, have been unable to fully understand the vital issue of what rights Clemson has conveyed to the ACC and have, as a result, largely adopted erroneous characterizations that have chilled Clemson’s ability to pursue potential opportunities with other conferences and/or to negotiate alternative revenue-sharing proposals among ACC members.

48. In a July 2022 interview, ACC Commissioner Jim Phillips erroneously described the GOR Agreements as giving each current Conference member’s media rights to the ACC through 2036, regardless of whether the member leaves the ACC before then.

49. The ACC also has taken this incorrect position in recent court filings. For example, in opposing Florida State’s motion to dismiss the action the ACC filed against Florida State in North Carolina, the ACC erroneously claimed, “The Grant of Rights does not permit [withdrawal] because media rights remain with the ACC even after [a member institution] leaves.”

50. The Conference's incorrect narrative about the terms and effect of the GOR Agreements and ESPN Agreements has been widely reported, thus perpetuating a popular misconception to the detriment of Clemson.

51. The media have repeatedly and mistakenly reported that Clemson has granted its media rights to the ACC through June 30, 2036, even for games played by Clemson were it no longer a member of the Conference. Because of this inaccurate description, it appears to other athletic conferences and third parties that Clemson cannot, as a legal matter, grant its media rights for future games to another collegiate athletic conference before June 30, 2036, even if Clemson leaves the ACC prior to that date. This public misconception regarding Clemson's media rights interferes with Clemson's pursuit of opportunities with other collegiate conferences and media providers regarding potential future collaborations.

Rights Actually Granted by Clemson: What Do the ESPN Agreements Say?

52. In the ESPN Agreements, [REDACTED]

[REDACTED]

[REDACTED]:

[REDACTED]

[REDACTED]⁵

⁵ [REDACTED]

53. Thus, the ACC was required to provide only the rights necessary

[REDACTED]

[REDACTED]

55.

[REDACTED]

56.

[REDACTED]

[REDACTED]

[REDACTED]

57.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

60. Further demonstrating the absurdity of the ACC’s misinterpretation of the ESPN Agreements and the GOR Agreements, the ACC Constitution allows for members to be expelled by a three-fourths vote (excluding the vote of the school being expelled). *See* ACC Constitution § 1.4.4. Under the ACC’s interpretation of the GOR Agreements, the ACC would have the power to expel a member (without that member’s vote) while owning the rights to that former member’s future games for the next 12 years—an illogical outcome that is not supported by the GOR Agreements’ plain language.

61. Similarly, under the ACC’s reading of the GOR Agreements, Clemson could withdraw from the Conference, pay an exorbitant withdrawal penalty to the Conference, and join another conference, but the ACC would still own the media rights to broadcast Clemson’s home games through 2036. This nonsensical reading of the GOR Agreements is wrong, and inconsistent with the plain language of that agreement.

62. The Grant of Rights does provide that Clemson has granted certain rights to the ACC “regardless of whether [Clemson] . . . remains a member of the Conference during the entirety of the Term.” Grant of Rights § 1. The ACC has misconstrued this clause to mean that Clemson made a blanket grant of its media rights for the entire term of the GOR Agreements. In fact, the clause is preceded by qualifying language: “Each of the Member Institutions hereby . . . grants . . . rights . . . necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in the ESPN Agreement . . .” *Id.* When construed in connection with the ESPN Agreements, the “regardless” clause merely permits the ACC to fulfill its

contractual obligation to ESPN to ensure that ESPN can rebroadcast for the duration of the ESPN Agreements those Games that Clemson played while it was an ACC member, even if Clemson has since departed the Conference. And Clemson does not dispute its grant of media rights to those pre-departure games, if re-aired or reused in accordance with the terms of the ESPN Agreements, following any exit by Clemson from the ACC.

63. In short, it was not “necessary for the Conference to perform [its] . . . contractual obligations” under the ESPN Agreements that Clemson convey its media rights to the ACC for games played if and when Clemson is no longer a member of the ACC.

64. Accordingly, Clemson did not convey any such rights to the ACC.

THE UNENFORCEABLE WITHDRAWAL PENALTY

65. The ACC’s assertion that Clemson, a public university in the State of South Carolina, may not exit the Conference without paying an unconscionable and unenforceable penalty in the amount of three times the ACC’s total operating budget (the “*Withdrawal Penalty*”) is wrong. This penalty is currently estimated to be approximately \$140 million. The Withdrawal Penalty has no relationship to, and is in fact plainly disproportionate to, the actual damages, if any, that would flow from Clemson’s leaving the ACC. While the ACC Constitution refers to this sum as “liquidated damages,” it is plainly a penalty and, under the applicable law, penalties are unenforceable.

66. ACC Commissioner Jim Phillips, speaking in July 2022, referred to the Withdrawal Penalty as a “nine-figure financial penalty” that he believed would “hold[.]” (Emphasis added). The words “nine-figure financial penalty” evidence an unmistakable intent that the Withdrawal Penalty not act as liquidated damages to compensate the Conference for any financial harm that it might suffer, but rather as a mechanism to penalize any Conference Institution that seeks to leave the Conference.

67. This intent is further evidenced by the historical development of the Withdrawal Penalty, which was first implemented in response to a spate of conference departures and realignments and was rapidly increased in response to others.

68. In 2010 and 2011, the University of Colorado, the University of Utah, the University of Nebraska, Texas A&M University, and Texas Christian University all decided to move from various athletic conferences to other athletic conferences.

69. By September 2011, the University of Pittsburgh and Syracuse University decided to leave the Big East Conference to join the ACC. Public announcements of their plans came shortly thereafter, when the ACC's Council of Presidents met in September 2011.

70. Prior to this wave of significant conference realignment, the ACC Constitution contained no Withdrawal Penalty and instead, Section IV-5 of the ACC Constitution, which addressed the withdrawal of members from the Conference, provided:

To withdraw from the conference a member must file an official notice of withdrawal with each of the conference members and the commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.

71. In response to the trend of universities switching athletic conferences, the ACC amended Section IV-5 of the ACC Constitution in September 2011 to impose an exit fee equal to 1.25 times the Conference's annual operating budget. Section IV-5 was amended to read as follows:

To withdraw from the conference a member must file an official notice of withdrawal with each of the conference members and the commissioner on or before August 15 for the withdrawal to be effective June 30 of the following year.

Upon official notice of withdrawal, the member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to one and one-quarter (1-1/4) times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section V-1 of the Conference Bylaws, which is in

effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distribution otherwise due such member for any Conference year. Any remaining amount due shall be paid by the withdrawing member within 30 days after the effective date of withdrawal. The withdrawing member shall have no claim on the assets, accounts or income of the Conference.

72. At the time the ACC's Constitution was amended in September 2011, to first adopt an exit fee, the ACC's total operating budget was approximately \$16.6 million, fixing the exit fee at about \$20.75 million.

73. Although nothing had changed except that the University of Maryland was poised to leave the ACC for the Big 10 Conference, only a year later, on or about September 11, 2012, the ACC again purported to amend the ACC Constitution (the "*2012 Amendment*"). The 2012 Amendment purported to require a departing Conference Member to pay a fee in an amount equal to three times the ACC's total operating budget.

74. The ACC thereafter published a version of the ACC Constitution that included the following language, currently found in Section 1.4.5. of the ACC Constitution (the ACC Constitution's sections were re-numbered after the 2012 Amendment was adopted) ("*Section 1.4.5.*"):

To withdraw from the Conference, 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 June 30 of the following year.

Upon official notice of withdrawal, the Member will be subject to a withdrawal payment, as liquidated damages, in an amount equal to three times the total operating budget of the Conference (including any contingency included therein), approved in accordance with Section 2.5.1 of the Bylaws of the Conference (the "Bylaws"), which is in effect as of the date of the official notice of withdrawal. The Conference may offset the amount of such payment against any distributions otherwise due such Member for any Conference year. Any remaining amount due shall be paid by the withdrawing Member within 30 days after the effective date of withdrawal. The withdrawing

Member shall have no claim on the assets, accounts, or income of the Conference.

75. At the time of the 2012 Amendment, the ACC's total operating budget remained relatively unchanged from a year earlier, at approximately \$17.3 million. Nevertheless, the 2012 Amendment increased the exit fee from approximately \$20.75 million to almost \$51.9 million, 2.5 times the amount adopted just twelve months earlier.

76. Today, the ACC's total operating budget stands at approximately \$46.8 million, meaning that the Withdrawal Penalty has ballooned to a whopping \$140.4 million, more than 2.7 times *again* the exit fee that Clemson approved in 2012, and nearly *seven times* the exit fee first adopted in 2011.

77. The Withdrawal Penalty is not a predetermined measure of compensation for actual damages that might be sustained by the Conference in the event of a Member Institution's withdrawal from the ACC, nor does it have any connection to a continuation of the relationship.

78. Instead, the Withdrawal Penalty was adopted as a punitive measure aimed at discouraging and preventing Member Institutions from withdrawing from the ACC.

79. That the Withdrawal Penalty is not a predetermined measure of compensation for actual damages is plainly illustrated by the fact that Notre Dame, whose prominent football team does not compete in the ACC, would be required to pay the same Withdrawal Penalty as Clemson, despite not generating the same television revenue for the Conference because its football team has a separate media rights deal with NBC Sports.

80. In fact, the ACC would not suffer damages in an amount even remotely approaching the amount of the Withdrawal Penalty—if it suffers any damages at all—were Clemson to withdraw from the Conference. Under the Multimedia Agreement, [REDACTED]

[REDACTED]

81. Upon information and belief, enforcement of the Withdrawal Penalty would result in the largest payment ever made by a member institution to leave any collegiate athletic conference.

82. Upon information and belief, the ACC's excessive Withdrawal Penalty is significantly larger than that of comparable intercollegiate athletic conferences, as set forth in the table below:

| Conference | Withdrawal Penalty |
|-------------------|--|
| Big Ten | \$0 |
| Big 12 | An amount equal to revenues distributed to the departing member for the final two years of its membership in the conference |
| SEC | \$30 million if two years' notice provided; \$40 million if less than two years' notice is provided; and \$45 million if no notice is provided |

83. Judged against these comparators, the Withdrawal Penalty that the ACC insists a member institution must pay to leave the Conference today has ballooned to a point that was unimaginable in 2012, and is unconscionable, unenforceable, and in violation of public policy, especially when sought to be imposed on a public university like Clemson.

NON-EXISTENT FIDUCIARY DUTIES

84. As alleged above, the ACC has recently asserted that, under the ACC Constitution, the ACC Bylaws, statutes, and the common law, Conference members owe

fiduciary duties to the ACC, including duties allegedly arising from the characterization of the ACC as a joint venture and from the good faith and fair dealing obligations of parties to a contract.

85. In fact, neither the ACC Constitution nor the ACC Bylaws contemplate or even mention, much less attempt to impose, any fiduciary duties on Clemson or any other Conference member.

86. Neither the UUNAA nor any other applicable statutes create any fiduciary duties that would be owed by the member of an unincorporated nonprofit association, like the ACC, to that association. Indeed, the UUNAA contains no rules concerning the internal governance of an unincorporated nonprofit association.

87. Clemson is not engaged in a joint venture with the ACC or the other members of the ACC.

88. The covenant of good faith and fair dealing inherent in contractual obligations is not a fiduciary duty.

89. No applicable common law or any other law creates any fiduciary duties that would be owed by the member of an unincorporated nonprofit association, like the ACC, to that association or its members, nor do the facts surrounding Clemson's membership and engagement with the ACC give rise to any such duty.

90. In short, notwithstanding the ACC's contentions to the contrary, neither Clemson nor any other member of the Conference owes fiduciary duties to the ACC or to the other members of the ACC. Nor does Clemson's filing this lawsuit breach any legal duty or obligation that it might owe to the ACC.

**PLAINTIFF'S FIRST CAUSE OF ACTION UNDER THE S.C. DECLARATORY
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAWS**

(THE GOR AGREEMENTS)

91. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

92. The ACC contends that, in the GOR Agreements, Clemson transferred to the ACC all of Clemson's rights to produce, distribute, and sublicense any and all games involving Clemson that are played until the end of the GOR Agreements' term, irrespective of whether Clemson is still a member of the ACC. Reading the GOR Agreements together with the ESPN Agreements, as required by the language of the GOR Agreements, shows that the ACC's contention is incorrect.

93. According to the plain language of the pertinent agreements, as illustrated above, the only rights that Clemson transferred to the ACC were the rights to certain games played while Clemson was a member of the ACC and not to any other games, including, but not limited to, games played if and when Clemson is no longer an ACC member.

94. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of the GOR Agreements.

95. Clemson is entitled to, and the Court should enter, a declaratory judgment that the GOR Agreements are limited to only those rights needed to perform the ESPN Agreements and that the media rights Clemson granted to the ACC did not include any Clemson games that are played after Clemson ceases to be a member of the ACC.

**PLAINTIFF'S SECOND CAUSE OF ACTION UNDER THE S.C. DECLARATORY
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAW**
(SECTION 1.4.5. AND THE WITHDRAWAL PENALTY)

96. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

97. The ACC contends that Clemson must pay the Withdrawal Penalty described in Section 1.4.5. of the ACC Constitution to leave the ACC.

98. As shown above, the Withdrawal Penalty of Section 1.4.5. is unconscionable, unenforceable, and void as against public policy in the State of South Carolina, and Clemson should not be required to pay the Withdrawal Penalty to leave the ACC.

99. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC over the interpretation, construction, and application of Section 1.4.5.'s Withdrawal Penalty.

100. Clemson is entitled to, and the Court should enter, a declaratory judgment that the Withdrawal Penalty is void and unenforceable as against public policy, and Clemson is not required to pay the Withdrawal Penalty.

**PLAINTIFF'S THIRD CAUSE OF ACTION UNDER THE S.C. DECLARATORY
JUDGMENT STATUTE, CHAPTER 53 OF S.C. CODE OF LAW**
(NON-EXISTENT FIDUCIARY DUTIES)

101. Clemson hereby incorporates by reference and re-alleges each of the preceding paragraphs of this Complaint.

102. The ACC contends that Clemson and other Conference members owe fiduciary duties to the ACC and other members.

103. Members of an unincorporated nonprofit association do not owe that association fiduciary duties under the common law, any statute, including the UUNAA, or any other

applicable law. Neither the ACC Constitution nor the ACC Bylaws expressly or impliedly create any fiduciary duties that Conference members, including Clemson, owe to the ACC or other members. In short, neither Clemson nor any other ACC member owes any fiduciary duties to the ACC or other duties on the grounds asserted by the ACC or other grounds, notwithstanding the ACC's contentions to the contrary.

104. A real, actual, substantial, and justiciable controversy, appropriate for judicial determination under the Uniform Declaratory Judgments Act, S.C. Code Annotated §§ 15-53-10, *et seq.*, exists between Clemson and the ACC regarding the non-existent fiduciary duties.

105. Clemson is entitled to, and the Court should enter, a declaratory judgment that Clemson does not owe any fiduciary duties to the ACC. Nor does Clemson's filing this lawsuit breach any legal duty or obligation that it might owe to the ACC.

PRAYER FOR RELIEF

WHEREFORE, Clemson respectfully requests that the Court:

1. Enter a declaratory judgment declaring that the GOR Agreements are limited to only those rights needed to perform the ESPN Agreements and that the media rights Clemson granted to the ACC did not include any Clemson games that are played after Clemson ceases to be a member of the ACC;

2. Enter a declaratory judgment declaring that Section 1.4.5.'s Withdrawal Penalty is void as an unconscionable and unenforceable penalty, the enforcement of which would violate public policy, and Clemson is not required to pay the Withdrawal Penalty;

3. Enter a declaratory judgment declaring that Clemson does not owe any fiduciary duties to the ACC and has not breached any legal duty or obligation it might owe to the ACC by filing this lawsuit;

4. Award the costs of this action to Clemson; and

5. Award such other and further relief in Clemson's favor as the Court deems necessary or proper.

March 19, 2024

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Axton D. Crolley

David E. Dukes
SC Bar No. 001783
E-Mail: david.dukes@nelsonmullins.com
B. Rush Smith III
SC Bar No. 012941
E-Mail: rush.smith@nelsonmullins.com
Axton D. Crolley
SC Bar No. 104111
E-Mail: axton.crolley@nelsonmullins.com
1320 Main Street | 17th Floor
Columbia, SC 29201
(803) 799-2000

WILLSON JONES CARTER & BAXLEY, P.A.

Charles F. Turner, Jr.
SC Bar No. 064996
E-Mail: cfturner@wjcblaw.com
325 Rocky Slope Road, Suite 201
Greenville, SC 29607
(864) 672-3711

ROPES & GRAY LLP

John P. Bueker
(*pro hac vice* motion forthcoming)
E-Mail: john.bueker@ropesgray.com
William T. Davison
(*pro hac vice* motion forthcoming)
E-Mail: william.davison@ropesgray.com
Prudential Center
800 Boylston Street
Boston, MA 02999
(617) 951-7000

Attorneys for Plaintiff

Exhibit 9



Governing Board Certification Form
Academic Year 2023-24

As Chair of the Governing Board at Clemson University,
(institution name)

I attest that:

- 1) Responsibility for the administration of the athletics program has been delegated to the CEO/President/Chancellor of the Institution.
- 2) The CEO/President/Chancellor has the mandate and support of the board to operate a program of integrity in full compliance with NCAA, Conference and all other relevant rules and regulations.
- 3) The CEO/President/Chancellor, in consultation with the Faculty Athletics Representative and the Athletics Director, determines how the institutional vote shall be cast on issues of athletics policy presented to the NCAA and the Conference.

Date Presented to the Governing Board: July 20, 2023

Signed: Kim A Wilkerson
(Chair of the Governing Board)

Signed: Jim P. Clement
(CEO/President/Chancellor of Member Institution)

Please mail or email completed form before October 13, 2023 to:

Tracey Haith
thaith@theacc.org
Atlantic Coast Conference
4512 Weybridge Lane
Greensboro, NC 27407