

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court Of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2026-CP-39-00073

Tristan Smith.....Respondent,

v.

National Collegiate Athletic Association.....Appellant.

NOTICE OF APPEAL

Defendant/Appellant, National Collegiate Athletic Association (“NCAA” or “Appellant”), by and through the undersigned counsel, hereby appeals the Order Granting Plaintiff/Respondent Tristan Smith’s Motion for Temporary Injunction entered on June 12, 2026, and the denial of NCAA’s timely Motion to Reconsider under Rule 59(e), the same being entered on August 12, 2026. Appellant received written notice of the entry of the Order denying its Rule 59(e) motion on August 12, 2026.

s/Gray T. Culbreath
John E. Cuttino, SC Bar No. 1519
Gray T. Culbreath, SC Bar No. 11907
Gallivan, White & Boyd, P.A.
1201 Main Street, Suite 1200
Columbia, SC 29201
jcuttino@gwblawfirm.com
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Attorneys for Appellant

September 8, 2026

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Sep 08 2026

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APPEAL FROM PICKENS COUNTY
Court Of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

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SC Court of Appeals

Case No. 2026-CP-39-00073

Tristan Smith.....Respondent,

v.

National Collegiate Athletic Association.....Appellant.

PROOF OF SERVICE

This is to certify that the undersigned counsel has caused to be served this day the original **Notice of Appeal** via electronic mail to the address stated in the Supreme Court Order 2022-05-06-03 and in accordance with Rule 262, SCACR and additionally via electronic mail to the following counsel of record in this matter as set forth below:

Mark A. Peper, Esq.
THE PEPPER LAW FIRM, P.A.
548 Savannah Highway
Charleston, SC 29407
mark@peperlawfirm.com

-and-

Darren A. Heitner, Esq.
HEITNER LEGAL, PLLC
215 Hendricks Isle
Fort Lauderdale, FL 33301
darren@heitnerlegal.com

Attorneys for Plaintiff/Respondent

A copy of the email serving the aforementioned to all counsel of record is attached hereto.

Respectfully submitted,

s/Gray T. Culbreath

John E. Cuttino, SC Bar No. 1519

Gray T. Culbreath, SC Bar No. 11907

Gallivan, White & Boyd, P.A.

1201 Main Street, Suite 1200

Columbia, SC 29201

jcuttino@gwblawfirm.com

gculbreath@gwblawfirm.com

Attorneys for Appellant

September 8, 2026

Jillian Hansen

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Sep 09 2026

From: Jillian Hansen
Sent: Tuesday, September 8, 2026 3:09 PM
To: 'mark@peperlawfirm.com'; 'darren@heitnerlegal.com'
Cc: Gray Culbreath; John Cuttino
Subject: 8644-7 Smith v. NCAA - Notice of Appeal
Attachments: [FINAL] Notice of Appeal with Exhibits.pdf; [FINAL] POS - Notice of Appeal.pdf
Categories: GTC

SC Court of Appeals

Good afternoon,

Attached hereto and served upon you, please find Appellant's Notice of Appeal and corresponding Exhibits A & B which will be submitted to the South Carolina Court of Appeals today. A copy of this message will be affixed to the Proof of Service, which will also be submitted today.

Kind regards,
Jillian



Jillian Hansen
Paralegal
jhansen@gwblawfirm.com

Gallivan, White & Boyd P.A.
1201 Main Street | Suite 1200 | Columbia SC 29201
803 724 1702 Direct | 803 779 1833 Main | 803 779 1767 Fax
Mailing Post Office Box 7368 | Columbia SC 29202

[vCard](#) | [BioURL](#) | [Website](#)

This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

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September 8, 2026

VIA HAND DELIVERY

Ms. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Tristan Smith v. National Collegiate Athletic Association*
Appellate Case No. TBD
Pickens County C/A No. 2026-CP-39-00073
GWB File No. 8644-7

Dear Ms. Kitchings:

Enclosed herewith, please find courtesy copies of Appellant National Collegiate Athletic Association's Notice of Appeal pursuant to Rules 240 and 263(b), SCACR, as well as the corresponding Proof of Service. These documents have already been submitted for electronic filing in accordance with Supreme Court Order 2022-05-06-03 and Rule 262, SCACR.

Also enclosed is my firm's check in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) for payment of the associated filing fee.

Please feel free to contact me should you have any questions.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Gray T. Culbreath

GTC/jh

Enclosures: As Stated

cc: All Counsel of Record (*via email only*)

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)
)
Tristan Smith,)
)
Plaintiff,)
)
v.)
)
National Collegiate Athletic Association,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2026-CP-39-00073

ORDER GRANTING
TEMPORARY INJUNCTION

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SC Court of Appeals SC Court of Appeals

In the instant matter, the National Collegiate Athletic Association (“NCAA”) denied Tristan Smith’s legislative relief waiver for the 2026-2027 football season, counting his junior college years at Hutchinson Community College (Fall 2022 to Spring 2024) against the NCAA’s Five-Year Rule. Mr. Smith asserts the NCAA’s denial of his waiver is a misapplication of its Bylaws; arguing the NCAA has selectively granted eligibility waivers to other similarly situated athletes who, like Mr. Smith, competed at junior college (“JUCO”) institutions before enrolling in a NCAA Division I program. Based on the NCAA’s previous granting of waivers, Mr. Smith claims the NCAA’s decision is unreasoned and the hallmark of capricious and arbitrary treatment.

As a result, Mr. Smith filed this action asserting several causes of action against the NCAA, primarily: 1) tortious interference with prospective business relations, and 2) breach of contract based on an implied third-party beneficiary claim; and requested this Court enter this temporary restraining order and injunction.

In South Carolina, a temporary restraining order and injunction are appropriate when: (1) the plaintiff will suffer immediate and irreparable harm absent relief; (2) the plaintiff is likely to succeed on the merits; and (3) no adequate remedy at law exists. *See County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002); *Compton v. SC Dep’t of Corr.*, 392 S.C.

361, 709 S.E.2d 639 (2011). South Carolina Courts recognize that granting a request for a temporary restraining order and preliminary injunction is an extraordinary equitable remedy designed to preserve the status quo and prevent permanent harm before a final adjudication on the merits of any case. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). Movants are required to make a showing of urgency and a clear demonstration that the injury cannot be remedied at a later date. *See County of Richland v. Simpkins*, 348 S.C.644, 560 S.E.2d 902 902 (Ct. App. 2002). Our Courts recognize that equitable intervention is appropriate when administrative remedies are exhausted or when pursuing further administrative review would be futile. *See Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 902 S.E. 2d 41 (2024).

In support of Mr. Smith's claims, he directs this Court's attention to the eligibility waivers granted to Malik Benson and Diego Pavia. The NCAA granted the eligibility waiver for both individuals. Mr. Benson's case is nearly identical to the present case. Mr. Benson also attended Hutchinson Community College, and like Mr. Smith, had two JUCO years counted by the NCAA. Nevertheless, the NCAA granted Mr. Benson the waiver and he was permitted to compete for the University of Oregon. The only material distinction the Court can identify between Mr. Benson's case, and the instant matter is that Mr. Smith's final Division I season falls in 2025-26 rather than 2024-25.

Courts nationwide have recognized that the loss of a season of athletic participation is a form of irreparable harm because it destroys a time-limited opportunity that no later remedy can recreate. *See State of Ohio v. Nat'l Collegiate Athletic Ass'n*, No. 1:23-cv-00100 (N.D.W. Va. Dec. 7, 2023)(cited as the hallmark case opining on the immediacy of the harm of losing even a single game.). Courts have consistently held that the loss of a season constitutes irreparable harm

especially where NIL earnings are tied directly to participation. *Id.* In the instant case, if Mr. Smith is prohibited from participating in the upcoming football season at Clemson University, Mr. Smith would lose personal development, experience, and professional prospects. As the district court found in the most recent decision issued on June 8, 2026 in the matter of *Sorsby vs. NCAA*, DC-2026-CV-0791, the irreparable harm includes, but is not limited to, benefits from the coaching staff, trainers and being a member of a Division I college; and being able to make an informed decision as to whether to enter the 2026 NFL Supplemental Draft.

While this Court has concerns regarding Mr. Smith's likelihood of success on the merits of his claims, the standard for assessing the likelihood of success on the merits does not require the applicant to prove their case conclusively. Rather, "when seeking a preliminary injunction, the plaintiff need not prove an absolute legal right; the plaintiff need only present 'a fair question to raise as to the existence of such a right'" *Levine v. Spartanburg Regional Services Dist., Inc.*, 367 S.C. 458, 626 S.E.2d 38 (2005). The determination of whether an injunction should be granted "should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. *Id.* Here, Mr. Smith has demonstrated to the Court's satisfaction a fair question to raise the existence of such a right under an implied third-party beneficiary contract theory.

Moreover, public interest supports fair competition and equitable treatment of college athletes. Especially those athletes who have overcome academic challenges to excel at the Division I level. There is no adequate remedy at law in this matter as Mr. Smith's loss of his final year of participating in this season cannot be remedied monetarily.

Finally, equity dictates granting Mr. Smith's request herein. See *Robinson v. Est. of Harris*, 389 S.C. 360, 371, 698 S.E.2d 801, 807 (2010)(citing *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d

6, 16 (Ct.App.2009)(stating Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.). Cases such as these must be determined on a case-by-case basis. Under these specific facts and circumstances, granting a temporary restraining order and injunction ensures a just result.

Based on the foregoing,

IT IS ORDERED:

1. The NCAA is restrained and enjoined from enforcing, applying, or attempting to enforce the November 14, 2025, denial of Mr. Smith's waiver declaring him ineligible to compete in the 2026 – 2027 football season of competition at Clemson University;
2. The NCAA is restrained and enjoined from threatening, initiating, or imposing any penalty, sanction, or adverse eligibility determination against Mr. Smith or Clemson University, its coaches, athletes, or staff, for allowing Mr. Smith to participate in games of competition;
3. The NCAA is restrained and enjoined from enforcing or attempting to enforce the NCAA Rule of Restitution (Bylaw 12.9.4.2) in connection with this Order;
4. The NCAA shall declare Mr. Smith immediately eligible for competition during the 2026 – 2027 season; and

This Order is effective immediately upon the posting of a surety bond in the amount of \$5,000.00 with the Clerk of Court and shall continue in full force and effect until a full trial on the merits or further order of this Court.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Pickens Common Pleas

Case Caption: Tristan Smith VS National Collegiate Athletic Association

Case Number: 2026CP3900073

Type: Order/Other

So Ordered

Jessica A. Salvini

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Tristan Smith,)
Plaintiff,)

vs.)

FINAL ORDER REGARDING
MOTION TO RECONSIDER

National Collegiate Athletic)
Association,)

Defendants.)

Case No.: 2026CP3900073

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SC Court of Appeals

A Rule 59 (e) SCRCP motion to reconsider and to alter or amend has been filed with the Court on July 2, 2026, and was served on the Court on July 2, 2026. As previously explained to Counsel, pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order in the Initial Order Regarding Motion for Reconsideration that it would decide the issues on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. The deadlines for filing written submissions regarding these motions have now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP, ¹ is respectfully DENIED.

AND IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.

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SC Court of Appeals

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.



Pickens Common Pleas

Case Caption: Tristan Smith VS National Collegiate Athletic Association
Case Number: 2026CP3900073
Type: Order/Other

So Ordered

Jessica A. Salvini

September 9, 2026

VIA S.C. COURTS E-FILEING PORTAL

Mr. Harold "Pat" Welborn, Jr., Clerk of Court
Pickens County Clerk of Court
P.O. Box 215
Pickens, SC 29671

Re: *Tristan Smith v. National Collegiate Athletic Association*
Appellate Case No. 2026-001989
Pickens County C/A No. 2026-CP-39-00073
GWB File No. 8644-7

Dear Mr. Welborn:

Enclosed herewith, please find courtesy copies of Appellant National Collegiate Athletic Association's Notice of Appeal pursuant to Rules 240 and 263(b), SCACR, as well as the corresponding Proof of Service. These documents have already been submitted for electronic filing with the Court of Appeals in accordance with Supreme Court Order 2022-05-06-03 and Rule 262, SCACR.

Please feel free to contact me should you have any questions.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Gray T. Culbreath

GTC/jh

Enclosures: As Stated

cc: All Counsel of Record (*via email only*)

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