

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV040918-590

ATLANTIC COAST CONFERENCE,

Plaintiff,

v.

BOARD OF TRUSTEES OF FLORIDA
STATE UNIVERSITY.

Defendants.

FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, the ATLANTIC COAST CONFERENCE (“the ACC” or “the Conference”), pursuant to N.C. Gen. Stat. § 1A-1, Rule 15(a) and, prior to a responsive pleading being served, amends its Complaint for Declaratory Judgment and files this First Amended Complaint against the Board of Trustees of Florida State University (“Florida State”):

Summary of Claims

This case involves Florida State’s serial breaches of critical legal promises and obligations which it made over the last 13 years to the ACC. In 2013 and 2016, Florida State, along with every other Member of the ACC, agreed to and executed a “Grant of Rights” in which it transferred the exclusive media rights to all its “home” games to the Conference (the “Media Rights”) through 2036. By aggregating their collective Media Rights in the Conference, the Members realized more value from those collective Media Rights than if they had each attempted to market them separately, and the media partners of the Conference were assured that they would have access to all home games of the Members throughout the length of the agreements. These aggregated Media Rights resulted in agreements and contracts between the ACC and ESPN that provided a predictable source of revenue to the ACC’s Members and which led to the creation of the ACC

Network. By the time these contracts end, the Conference will have distributed to its Members [REDACTED] Under these agreements, Florida State has received more than [REDACTED] to date, and will receive [REDACTED] more through 2036.

In signing the Grant of Rights and its amendment, Florida State promised that its Grant was “irrevocable” and “exclusive” through 2036. It further explicitly agreed that it would 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. Moreover, Florida State, the Conference, and the other Member Institutions, guaranteed in [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Now, nearly 13 years after entering into the Grant of Rights, and after receiving more than [REDACTED] in distributions from media contracts, Florida State has chosen to breach its contractual obligations. It has violated its contractual promise not to challenge the validity or enforceability of the Grant of Rights. It has breached its promise that its Grant was “irrevocable” and “exclusive.” And it has deliberately released confidential information to the public from those agreements, something which it also agreed not to do. Put simply, Florida State takes the position that it is bound by a contract only so long as it chooses.

Despite its actions and clear, direct, and material conflict of interest, Florida State continued and continues to participate in the management of the Conference. Thus, Florida State participates in deciding fundamental policy questions for the Conference, even as it breaches its contracts and seeks to undermine the Conference’s objectives and purpose. Florida State’s actions,

and its continued participation in the governance of the Conference, violate its fiduciary obligations to the Conference.

Consequently, the ACC seeks a declaration that its Grant of Rights, which Florida State agreed to on two separate occasions, is valid and enforceable. It also seeks a declaration that Florida State is equitably estopped from challenging the validity or enforceability of the Grant of Rights or, alternatively, has waived the right to do so by knowingly executing the Grant of Rights and then accepting hundreds of millions of dollars in benefits for more than a decade. The Conference further seeks damages for the multiple breaches of contract that Florida State has committed and all necessary injunctive relief to prevent future breaches. Finally, the Conference seeks permanent injunctive relief to prevent Florida State from continuing to disclose confidential information and to prevent Florida State from continuing to breach its fiduciary obligations to the Conference under the ACC Constitution and Bylaws and North Carolina law.

I. Parties, Jurisdiction, and Venue

A. The Parties

The 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.¹ The ACC's Board of Directors has 15 voting members, including the President of Florida State University. 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. As an unincorporated nonprofit association, 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. The Conference is a party to the written contracts that form the subject-matter of this Complaint 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.

Florida State University Board of Trustees

4. The Florida State University Board of Trustees is governed by the laws of the State of Florida. The Board of Trustees of Florida State ("Board of Trustees") oversees and manages the operations and affairs of Florida State University. According to its Mission Statement, Florida State University is an institution of higher education which aims to "preserve, expand, and disseminate knowledge in the sciences, technology, arts, humanities, and professions, while

¹ 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.

embracing a philosophy of learning strongly rooted in the traditions of the liberal arts and critical thinking.”

5. Florida State is an ACC Member Institution. The Board of Trustees ratified and approved of Florida State becoming a Member Institution of the ACC.

6. In accordance with the laws of the State of Florida, the Board of Trustees has the authority “to contract and be contracted with, to sue and be sued, to plead and be impleaded **in all courts of law or equity.**” Fla. Stat. § 1001.72(1) (emphasis added). Moreover, by choosing to be a member of the ACC, a North Carolina unincorporated nonprofit association, Florida State consented and agreed that the ACC could sue it for its claims. N.C. Gen. Stat. § 59B-7(e) explicitly provides that an unincorporated association “may assert a claim against a member or a person referred to as a ‘member.’”

B. Personal Jurisdiction

7. Florida State 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 Amended Complaint. Consequently, this Court may exercise personal jurisdiction over Florida State pursuant to N.C. Gen. Stat. § 1-75.4(1)(d), (4), and (5).

8. Since 1991, Florida State has been an ACC Member Institution. Throughout this time, Florida State has regularly attended ACC meetings held in the State of North Carolina.

9. Because the ACC is a North Carolina unincorporated nonprofit association, each of its Member Institutions is responsible for managing and overseeing its operations. Florida State has played an active role in the administration of ACC affairs. The President of Florida State is a

Member of the Board of Directors, while Florida State's Athletic Director, like the Athletic Directors of all Member Institutions, attends Athletic Director meetings and serves on the Football and Basketball Committees. Each of Florida State's Head Coaches serves on the committee for his or her respective sport. Currently, Florida State officers or representatives serve on at least 11 committees governing and advancing the mission of the ACC. In the past decade, Florida State officers and employees have served on the following notable committees and in the following positions:

- a. Florida State's current president served on the Finance Committee (2022-2023), and its previous president served as chair of the Council of Presidents (2018-2019) and as a member of the Executive Committee (2018-2019);
- b. A Florida State faculty member served on the Executive Committee (2013-2017), as the president of the ACC (2015-2016), and its current president is currently on the Finance Committee (and participated as recently as December 12, 2023);
- c. The Florida State Athletic Director served on the Television or Media Committees from 2013 to 2023; and,
- d. A member of the Athletic Department served on the Finance Committee (2012-2013 and 2016-2020), as well as the Constitution and Bylaws Committee (2012-2014 and 2016-2018).

10. 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: Durham, North Carolina (September 2022), and Charlotte, North Carolina (February 2023 and May 2023); Florida State's President attended each of these meetings either via Zoom or in person.

11. The ACC's Board of Directors is responsible for selecting the ACC's headquarters. In 2022, the Board, including Florida State'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 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, Florida State voted to accept benefits from North Carolina taxpayers through its role as a Member Institution of the Conference.

12. The contracts that Florida State is contesting, the Grant of Rights and amended Grant of Rights, are North Carolina contracts that arose out of Florida State's membership in the Conference. Florida State executed the Grant of Rights and transmitted its signature pages to the ACC in North Carolina. As set forth in this Amended 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.

13. Between 2014 and 2016, the ACC entered into multiple agreements with ESPN² 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.

14. 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

² "ESPN" refers to ESPN, Inc. and ESPN Enterprises, Inc.

Conference then allocates these [REDACTED] to its Member Institutions, including Florida State. Since signing the Grant of Rights agreement, Florida State has accepted more than [REDACTED] [REDACTED] in distributions under these agreements.

15. The Member Institutions of the Conference, including Florida State, specifically authorized the ESPN Agreements.

16. Four ACC Member Institutions are located in North Carolina, and Florida State 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 Florida State has competed in this Championship five times, the last time occurring on December 2, 2023. Since 1991, the ACC's Men's and Women's Basketball Tournaments, in which Florida State regularly competes, have been held 25 times in North Carolina, including most recently in March 2023.

17. North Carolina law specifically authorizes an unincorporated association to "assert a claim against a member or a person referred to as a 'member.'" N.C. Gen. Stat. § 59B-7(e). By being a Member Institution in the Conference and engaging in the activities of participating as a Member Institution and managing the Conference, Florida State consented to jurisdiction in the North Carolina courts for claims that the Conference had against it.

18. To the extent relevant, the Conference further adopts by reference and incorporates the remaining paragraphs and attached Exhibits of this Amended Complaint as evidence of Florida State's specific consistent and systematic contacts with North Carolina arising out of its membership in the Conference.

C. Subject-Matter Jurisdiction

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

20. This Court is authorized to declare the parties' rights and legal obligations and interpret the terms of the various contracts that are the subject of this Complaint.

21. Under the laws of the State of Florida, Florida State has waived sovereign immunity and consented to be sued when entering into contracts: the Florida State Board of Trustees has the authority "to contract and be contracted with, to sue and be sued, to plead and be impleaded **in all courts of law or equity.**" Fla. Stat. § 1001.72(1) (emphasis added). Florida State has thus waived sovereign immunity for the claims set forth in this Amended Complaint.

22. Florida State further consented to be sued in the State of North Carolina through its membership and leadership in the ACC, an unincorporated nonprofit association under North Carolina law, and under the plain language of Florida Statute § 1001.72(1), which permits Florida State to be sued in "all courts" regardless of the location of such courts.

23. 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. Florida State, 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 Florida State for any claims which it had arising out of Florida State's membership. Thus, the Conference has the right to make claims against Florida State in the courts of North Carolina. *See 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).

D. Venue

24. 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.

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

26. 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).

27. The amount in dispute that is the subject of this request for declaratory exceeds \$5,000,000, as the total Media Rights subject to the ESPN contracts and agreements that Florida State breached amount to [REDACTED]

II. Factual Background

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

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

29. 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.³ 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.

30. 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 won 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.

³ 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.

31. There are approximately 10,000 student-athletes participating in ACC-sponsored sports.⁴ 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.

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

33. 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 Amended Complaint.

34. 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.

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

36. 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

⁴ 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.

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

38. 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.

39. 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.

40. 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. 12-15.

41. 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

42. 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 Florida State). 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.

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

44. 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] [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.

45. Florida State's President was authorized to vote for and approve the 2010 Multi-Media Agreement on behalf of Florida State.

46. Florida State authorized, ratified, and otherwise approved the 2010 Multi-Media Agreement and Amendment.

C. The Withdrawal Payment and Alternative Performance

47. 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.

48. 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.

49. 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.

50. 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.

51. 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