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Can a sports sanction constitute an illegal work restriction? A review of NCAA v. Coach Todd McNair



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Can a sport governing body's sanctions against an individual – coach or player – constitute an illegal restriction on one's right to work? According to the court in McNair v. National Collegiate Athletic Association, the answer is yes (at least in California).

The University of Southern California (**USC**) Trojan football team dominated college football in 2005, with then Heisman Trophy winner Reggie Bush leading the Trojans to a National Championship. The glory of the victory waned shortly thereafter upon news that the National Collegiate Athletic Association (**NCAA**), the governing regulatory body for collegiate sports in the United States, had issued a “*notice of inquiry*” into the USC football and the men’s basketball program. After a protracted investigation and Infractions Hearing process, the NCAA Committee on Infractions issued its report (https://fs.ncaa.org/Docs/PressArchive/2011/Infractions/20110526_USC_Final_Public_Rep) declaring that USC had committed major violations of NCAA regulations in the operation of the football and the men’s basketball programs.¹ Among those sanctioned were USC former running-backs Coach, Todd McNair, who was found to have violated recruiting bylaws and rules against unethical conduct. The committee issued a one-year “*show-cause* (https://en.wikipedia.org/wiki/Show-cause_penalty)”² sanction against McNair, and USC declined to renew his contract. Ever since, McNair has been fighting the NCAA in court for “*ruining his career*,” as he claimed that the sanctions requiring NCAA member schools to disassociate from him prevented him from coaching college football and thereby violated California right to work laws.

This article examines the case, looking specifically at:

- The NCAA’s infractions case against USC;
- Coach McNair’s action against the NCAA;
- Did the NCAA “*Show-Cause Order*” sanction constitute an illegal work restraint?
- California’s right-to-work law and its impact on the NCAA’s sanctioning authority;
- Could California law invalidate NCAA sanctions?

THE NCAA INFRACTIONS CASE AGAINST USC

On June 10, 2010, the NCAA Committee on Infractions (<https://www.ncaa.org/governance/committees/division-i-committee-infractions>) (COI) issued its report (https://fs.ncaa.org/Docs/PressArchive/2011/Infractions/20110526_USC_Final_Public_Rep) finding that USC's football, men's basketball, and women's tennis programs committed various NCAA violations.³ Regarding the football program, the report found major violations involving Reggie Bush's relationship with player agents, Lloyd Lake and Michael Michaels, who had provided Bush and his family with cash, travel expenses, and a home where Bush's parents lived rent free for over a year.⁴

The NCAA determined that McNair, then running-backs coach at USC and a close friend of Bush, was aware of the benefits Bush was receiving and that McNair engaged in unethical conduct.⁵ The report stated that McNair "*knew or should have known*" about Bush's improper dealings and that McNair "*provided false and misleading information to the enforcement staff.*"⁶

The COI ruled that USC's failure to monitor and the nature of the benefits received by the high-profile athletes in question constituted a lack of institutional control.⁷ As sanctions, the NCAA imposed a two-year post-season bowl ban against USC, a loss of thirty football scholarships over the 2012-2014 seasons, and vacated all wins in which Bush participated in while ineligible, including the 2005 National Championship.⁸ Bush returned his Heisman Trophy from 2005. With respect to McNair, the NCAA imposed a one-year penalty and ordered that USC was required to show cause for "*why it should not be penalized further if it fails to permanently disassociate.*"⁹ Under the Show Cause Order, McNair was "*prohibited from engaging in any on or off-campus recruiting at USC.*" Further, the Show Cause Order applied if any other NCAA member institution sought to employ McNair and such institution had to comply with the penalty imposed and to show cause why that institution should demonstrate compliance with the "*penalties restricting the athletically related duties of [McNair].*"¹⁰

While the USC football program has since rebounded (winning the Rose Bowl in 2017

and remaining a top brand in collegiate athletics), and while Reggie Bush and USC Head Football Coach Pete Carroll landed lucrative careers in the NFL, McNair remained unemployed (<https://abc7.com/sports/bucs-hire-todd-mcnair-ex-usc-rb-coach-tied-to-reggie-bush-scandal/5057209/>) as a coach and spent the next seven years challenging the NCAA sanction against him.¹¹

COACH MCNAIR SUES NCAA

In 2011, McNair sued the NCAA for “*ruining his career*,” alleging defamation, negligence, and breach of contract claims and seeking \$27 million in damages in Los Angeles Superior Court.¹² McNair alleged that the NCAA’s charges of unethical conduct against him were erroneous, biased, and based on false accusations. He challenged the fairness of the COI deliberative process and contended that the sanctions irreparably harmed his reputation. In denying the NCAA’s request to seal the files, Judge Shaller ruled that the NCAA’s report with respect to McNair was “*malicious* (https://www.espn.com/espn/wire/_/section/ncf/id/8661366).”¹³ After a three week jury trial, the jury ruled (<https://www.foxsports.com/west/story/usc-coach-todd-mcnair-loses-defamation-lawsuit-against-ncaa-052218>) that McNair had not proven his case against the NCAA.¹⁴

Despite the jury verdict in the NCAA’s favor on the state common law claims, Judge Shaller (coincidentally a USC alum whom the NCAA had unsuccessfully tried to disqualify), separately issued a declaratory judgment ruling that the NCAA’s Show-Cause Order created an unlawful restraint on McNair’s ability to engage in his profession in violation of California statutory law.¹⁵ According to the court, the trial evidence proved that

*“[t]he penalty had the effect of restricting McNair’s ability to become employed at another NCAA member school during the one-year penalty period and was a substantial factor in McNair’s continuing unemployment at an NCAA member school . . .”*¹⁶

DID THE NCAA “*SHOW-CAUSE ORDER*” SANCTION CONSTITUTE AN ILLEGAL RESTRAINT?

Did the Show-Cause Order sanction that restricted McNair’s ability to work in NCAA college sports, and the stigmatizing effect of that sanction on his career, violate California law that protects the rights of persons to engage in their chosen occupation?

A show-cause order requires a school to demonstrate to the NCAA why it should not be subject to a penalty against a staff member found to have violated NCAA regulations.¹⁷ The penalty operates against the sanctioned individual and any NCAA member university that employs them.¹⁸ The penalty imposed against the coach stays with him or her for an established period of time and transfers to any school that hires the coach.¹⁹ As a result, it often diminishes a coach’s ability to retain their current job or be hired by other NCAA programs.²⁰

California’s Business and Professional Code, section 16600, states that “*every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.*”²¹ The statutory purpose is to promote open competition and employee mobility to pursue work of their choosing.²²

Judge Shaller determined that the NCAA sanction, which member institutions agreed to enforce, restricted ‘anyone,’ within the meaning of section 16600, not just parties to the contract between the NCAA and USC. The court noted that the Show Cause Order applied to all NCAA member schools. Accordingly,

“the [NCAA] penalty . . . had the effect of restricting McNair’s ability to become employed at another NCAA member institution during the one-year penalty period and was a substantial factor in McNair’s continuing unemployment at an NCAA member school.”²³

Noting that the state legislature “[i]ntended to broadly remove any impediments in contracts by which the right to engage in business and occupations of one’s choosing could be abridged,”²⁴ the court ruled that “McNair’s ability to practice his profession as a college football coach has been restricted, if not preempted, not only in Los Angeles and California, but in every state in the country.”²⁵ The court entered a declaratory judgment invalidating the NCAA Show Cause Order as an unlawful restraint on McNair’s right to work.²⁶

CALIFORNIA RIGHT-TO-WORK LAW’S IMPACT ON NCAA SANCTION AUTHORITY

The NCAA is a national association comprised of over 1300 public and private colleges and universities nationwide. These member institutions agree to abide by the NCAA bylaws and its sanctioning authority. The NCAA has historically been successful in defending itself against challenges to its enforcement powers. In 1979, the University of Nevada, Las Vegas (**UNLV**) men’s basketball coach, Jerry Tarkanian, challenged the NCAA’s show cause penalty against him as a Constitutional Due Process violation by arguing that the NCAA engaged in state action acting jointly with UNLV, a public institution, in enforcing the penalty.²⁷ Due process protections did not apply, however, because the U.S. Supreme Court held that the NCAA was a private association and that a public school’s act of complying with NCAA rules did not convert NCAA to a state actor.²⁸

Other plaintiffs have been similarly unsuccessful (<https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>) in challenging show cause orders on Constitutional, contract law, as well as tortious interference claims.²⁹ In Cohane v. NCAA (<https://law.justia.com/cases/federal/district-courts/new-york/nywdce/1:2004cv00181/49636/167/>),³⁰ former SUNY Buffalo head coach Timothy Cohane, under a show cause order due to a finding violation of NCAA rules,

lost his claim that NCAA and SUNY Buffalo acted together to deprive him of his liberty interest in his reputation without according constitutional due process and tortiously interfered with his contract with the institution.³¹ The court held that the defendants joint conduct did not amount to state action and that the mere loss of job prospects is not a specific and adverse action imposed by the defendants, but rather is a normal repercussion of damaged reputation.³² *Hairston v. NCAA* (<https://caselaw.findlaw.com/us-9th-circuit/1379880.html>), held that players were not third-party beneficiaries to assert a breach of contract claim under the NCAA rules.³³

An NCAA “*show cause order*” certainly flags the affected coach, yet is not necessarily a death knell (<https://www.usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273/>) to a career in college sports. Bruce Pearl, Kelvin Sampson, and Chip Kelly are a few notable coaches who received the show-cause penalty but did not end their coaching careers.³⁴ And a school seeking to hire an affected coach can demonstrate “cause” why the coach would not pose a threat to the program, such as imposing restrictions on recruiting. But, as Judge Shaller noted regarding McNair, the show cause order is

“[i]n essence equivalent to a college coaching career-terminating sanction since no NCAA member school, including USC, would likely risk the exposure to sanctions that would impact their athletic programs and lucrative media-related and athletic program income or status by even considering hiring or retaining McNair at any later date after sanctions expired because his reputation was tainted by the penalty.”³⁵

For the past few decades, the NCAA has in general remained successful in defending against challenges to its enforcement authority. However, the challenges continue to mount. Unlike previous decisions, Judge Shaller did not defer to the NCAA or acknowledge the NCAA’s role in protecting college sports.³⁶ The NCAA’s status as a private association was relevant in holding it subject to state law. The court cited the NCAA’s private actor status as grounds for rejecting the NCAA’s contention that its sanction is analogous to regulatory restrictions on the practice of

law, medicine, or accounting or to collective bargaining agreements which are authorized by federal or state legislation, as opposed to private contract. Professional sports leagues disciplinary sanctions are generally protected under federal law when they are a product of collective bargaining and accordingly preempt state law. For example, due to the federal statutory protection for collective bargaining rules, NFL rules withstood §16600 ([https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000199&cite=CABPS16600&originatingDoc=I5a17352005e911e91; \(sc.Keycite\)\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000199&cite=CABPS16600&originatingDoc=I5a17352005e911e91; (sc.Keycite)))) in *Hebert v. Los Angeles Raiders* ([https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005e911e91; \(sc.Keycite\)\)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005e911e91; (sc.Keycite)))).³⁷

COULD CALIFORNIA LAW INVALIDATE NCAA SANCTIONS?

California law does not govern other states. Yet, *McNair's* interpretation of the NCAA sanctions under relevant state law could impact future cases (<https://sportslawexpert.com/2018/12/12/california-judge-rules-ncaas-show-cause-order-violates-state-law/>) challenging the show-cause order under pro-employment policies against the NCAA's enforcement authority power.³⁸ In *Tarkanian*, the United States Supreme Court referred to the NCAA's status as a national entity as a critical fact.³⁹ The NCAA does not act under the color of any individual state's law. If California institutions are protected against show cause penalties, this would chip away at the NCAA's enforcement power.

The power given to the NCAA in *Tarkanian* has remained consistent historically. When the Nevada legislature enacted a statute requiring the NCAA to give additional due process protections to institutions, coaches, and student-athletes after *Tarkanian*, the NCAA won its challenge to that statute on the basis of the Dormant Commerce

Clause, with the court finding that the statute interfered with interstate commerce.⁴⁰ The Dormant Commerce Clause prohibits state laws that unduly burden interstate commerce. Notably, the NCAA did not argue Dormant Commerce Clause in *McNair*.⁴¹ According to the court, the NCAA “[c]annot because it is a non-profit, amateur organization, without collective bargaining agreements.”⁴² Further pressing the Dormant Commerce Clause argument could be the strongest grounds to challenge the California court’s ruling.⁴³

The ruling in *McNair* is based on California’s unique law which is notably favorable to individuals and an unusual application of the law to the NCAA.⁴⁴ The ruling may also be limited because the penalty is imposed through NCAA rules on other institutions that would hire McNair, and is not a non-compete agreement between McNair and USC or the NCAA.⁴⁵ The NCAA sanctions do not necessarily constitute a restraint on competition or on a direct employer-employee relationship.⁴⁶ As California sports attorney Danielle Ochs notes, “[t]his is really about a punitive rule of a third party organization that has members. It is an interesting application that I have never seen before.”⁴⁷

The NCAA’s justification for the show-cause penalty is to monitor coaches found to have violated association rules and thereby protect the integrity of sport.⁴⁸ If changes are made to the NCAA’s enforcement authority, changes should be nationally applicable. A scenario where California is immune from show-cause penalties could produce problematic results. For example, a ruling that would allow creating different standards for coaches in California and allow schools in California to hire coaches under the penalty would create significant problems for the NCAA. If the NCAA is to continue to have enforcement authority, changes should be nationally applied or run the risk of rendering an uneven playing field.

POST-SCRIPT NOTE MCNAIR’S NEW TRIAL

On January 16, 2019, Judge Shaller granted (<https://wearesc.com/wp-content/uploads/2019/01/McNair-Order-re-New-Trial.pdf>) McNair's Motion for New Trial on two grounds:

1. on the defamation claim, there was an "*insufficiency of the evidence to justify the verdict*"; and
2. Juror No. 2 should have been disqualified for implied bias. ⁴⁹

The court ruled that the NCAA's COI reports, which formed the grounds for sanction against McNair, was "*false*" in a material way and that the jury's ruling in favor of the NCAA was not substantiated by sufficient evidence. ⁵⁰ Secondly, Juror No. 2, who served as the presiding juror in deliberations and made the deciding vote in the 9-3 verdict in favor of the NCAA, was an attorney whose firm had previously participated as co-counsel for NCAA in this case and should have been disqualified. The show-cause penalty, which had been severed from the jury trial, "*remains unchanged.*" ⁵¹ The NCAA has also filed Notice of Appeal and Cross-Appeal. The saga continues.

REFERENCES

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² An administrative punishment ordering that any NCAA penalties imposed on a coach found to have committed major rules violations will stay in effect against that coach for a specified period of time—and could also be transferred to any other NCAA-member school that hires the coach while the sanctions are still in effect. https://en.wikipedia.org/wiki/Show-cause_penalty (https://en.wikipedia.org/wiki/Show-cause_penalty) (last accessed 16 April 2019)

³ Id.

⁴ Id. at 8.

⁵ Id.

⁶ Id. at 2.

⁷ Id.

⁸ Kyle Bonagura, What to know about Todd McNair vs. the NCAA, ESPN. Apr. 17, 2018, available at https://www.espn.com/college-football/story/_/id/23201815/todd-mcnair-vs-ncaa-reggie-bush-scandal-faq (https://www.espn.com/college-football/story/_/id/23201815/todd-mcnair-vs-ncaa-reggie-bush-scandal-faq).

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⁹ NCAA, USC Infractions Report, *supra* note 1 at 13. See also https://www.espn.com/college-football/story/_/id/23201815/todd-mcnair-vs-ncaa-reggie-bush-scandal-faq (https://www.espn.com/college-football/story/_/id/23201815/todd-mcnair-vs-ncaa-reggie-bush-scandal-faq).

¹⁰ NCAA Bylaw 19.01.4 (“[i]nstitutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.”)

¹¹ IN JANUARY 2019, MCNAIR WAS HIRED AS A RUNNING BACKS COACH FOR THE TAMPA BAY BUCCANEERS. SEE JENNA LAINE, BUCS HIRE TODD MCNAIR, EX-

USC RB COACH TIED TO REGGIE BUSH SCANDAL, ABC. JAN. 11, 2019, AVAILABLE AT [HTTPS://ABC7.COM/SPORTS/BUCS-HIRE-TODD-MCNAIR-EX-USC-RB-COACH-TIED-TO-REGGIE-BUSH-SCANDAL/5057209/](https://abc7.com/sports/bucs-hire-todd-mcnair-ex-usc-rb-coach-tied-to-reggie-bush-scandal/5057209/) ([HTTPS://ABC7.COM/SPORTS/BUCS-HIRE-TODD-MCNAIR-EX-USC-RB-COACH-TIED-TO-REGGIE-BUSH-SCANDAL/5057209/](https://abc7.com/sports/bucs-hire-todd-mcnair-ex-usc-rb-coach-tied-to-reggie-bush-scandal/5057209/)).

¹²Michael McCann, Ex-USC Coach Todd McNair Losing Trial to NCAA Shows Why Defamation Lawsuits Are Tricky, SI.com (May 21, 2018), <https://www.si.com/college-football/2018/05/21/todd-mcnair-usc-loses-ncaa-defamation-lawsuit>. (<https://www.si.com/college-football/2018/05/21/todd-mcnair-usc-loses-ncaa-defamation-lawsuit>).

¹³AP, Judge Says USC “Malicious” in Investigation, ESPN (Nov. 21, 2012), https://www.espn.com/espn/wire/_/section/ncf/id/8661366 (https://www.espn.com/espn/wire/_/section/ncf/id/8661366) ; see also ‘Judge: NCAA investigation of ex-USC assistant in Bush case ‘malicious’, ocregister.com, 21 Nov 2012, last accessed 16 April 2019, <https://www.ocregister.com/2012/11/21/judge-ncaa-investigation-of-ex-usc-assistant-in-bush-case-malicious> (<https://www.ocregister.com/2012/11/21/judge-ncaa-investigation-of-ex-usc-assistant-in-bush-case-malicious>).

¹⁴ AP, Jury Rules in Favor of Former-USC Coach Todd McNair Defamation Lawsuit, Fox Sports (May 22, 2018), <https://www.foxsports.com/west/story/usc-coach-todd-mcnair-loses-defamation-lawsuit-against-ncaa-052218>

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¹⁵McNair v. The Nat. Collegiate Athletic Ass'n, 2018 WL 6719796¶ 3 (Final Statement of Decision) (Oct, 9, 2018).

¹⁶ Id. at ¶ 18.

¹⁷ Id . Alex Kirshner, 'The NCAA's Method Of Blackballing Coaches Is Now Invalid In California', SBNATION, available at <https://www.sbnation.com/college-football/2018/10/10/17959082/ncaa-show-cause-todd-mcnair-california> (<https://www.sbnation.com/college-football/2018/10/10/17959082/ncaa-show-cause-todd-mcnair-california>) (last updated October 10, 2018).

¹⁸ Holt Hackney, California Judge Rules NCAA's Show Cause Order Violates State Law, Sports Law Expert, <https://sportslawexpert.com/2018/12/12/california-judge-rules-ncaas-show-cause-order-violates-state-law/> (<https://sportslawexpert.com/2018/12/12/california-judge-rules-ncaas-show-cause-order-violates-state-law/>). (Posted on December 12, 2018).

¹⁹ Id.

²⁰ Id.

²¹ Cal. Bus. & Professions Code, Sec. 16660.

²² Todd McNair vs. National Collegiate Athletic Association, supra note 14 at ¶ 12.

²³ McNair, supra note 15 at ¶ 3.

²⁴ McNair, supra note 15. Sierra Chinn-Liu, California State Court Rules that NCAA "Show Cause" Penalty Constitutes an "Unlawful Restraint" Under California Law, Seyfarth Shaw LLP (Oct. 22, 2018), <https://www.jdsupra.com/legalnews/california-state-court-rules-that-ncaa-37670/> (<https://www.jdsupra.com/legalnews/california-state-court-rules-that-ncaa-37670/>).

²⁵ McNair, supra note 15 at ¶ 8.

²⁶ McNair, supra note 15 at ¶ 2.

²⁷ See Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 181–82 (1988).

²⁸ Tarkanian, 488 U.S. at 193.

²⁹ Robert Harrington, The Show Must Not Go On: NCAA Faces Enforcement Hurdle Following Court's Prohibition Against Show Cause Penalties, NCBAR Blog (Jan. 7 2019), <https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/> (<https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>). U.S. Constitutional due process restrictions apply to “state actors”. U.S. Const’n., Amend. 14 (“No State ... shall deprive any person of life, liberty, or property without due process of law.”).

³⁰ See e.g., Cohane v. Nat'l Collegiate Athletic Ass'n, 612 F. App'x 41, 43 (2d Cir. May 15, 2015) (summary order).

³¹ Katelynn Hill, 2015 & 2016 Annual Surveys: Recent Developments in Sports Law, 27 Marq. Sports L. Rev. 543 (2017).

³² Id.

³³ 101 F.3d 1315 (9th Cir. 2015), <https://caselaw.findlaw.com/us-9th-circuit/1379880.html> (<https://caselaw.findlaw.com/us-9th-circuit/1379880.html>) (last accessed 16 April 2019)

³⁴ Nicole Auerbach, ‘The perception and reality of NCAA show-cause penalties’, usatoday.com, 27 May 2014, last accessed 16 April 2019, <https://www.usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273/> (<https://www.usatoday.com/story/sports/college/2014/05/27/ncaa-show-cause-penalty-bruce-pearl-kelvin-sampson/9632273/>); In 2014, Auburn hired Bruce Pearl as

its basketball coach despite five months remaining on Pearl's penalty resulting from infractions committed at Tennessee. Kevin Sampson was able to remake himself at Houston basketball, one year after his five-year show-cause penalty expired. In 2008, Sampson was forced to resign after the NCAA uncovered impermissible phone calls to recruits. Chip Kelly received an 18-month show-cause penalty at Oregon and after a brief period in the NFL, Kelly returned into college with UCLA.

³⁵ McNair, *supra* note 15 at ¶ 6.

³⁶Holt Hackney, California Judge Rules NCAA's Show Cause Order Violates State Law Sports Law Expert Posted on December 12, 2018

<https://sportslawexpert.com/2018/12/12/california-judge-rules-ncaas-show-cause-order-violates-state-law/> (<https://sportslawexpert.com/2018/12/12/california-judge-rules-ncaas-show-cause-order-violates-state-law/>). See e.g., *National Collegiate Athletic Association v. Lasege* (Ky. 2001) (holding that the “NCAA unquestionably has an interest in enforcing its regulations and preserving the amateur nature of intercollegiate athletics”); *National Collegiate Athletic Association v. Jones* (Tx. 1999) (regarding the NCAA as “preserving the proper balance between athletics and scholarship in intercollegiate athletics...[and]...the NCAA promulgates rules and regulations to prevent any member institution from gaining an unfair competitive advantage in an athletic program.”).

³⁷ 23 Cal.App.4th 414 (1991), [https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;\(sc.Keycite\)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;(sc.Keycite)_(https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;(sc.Keycite))) ([https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;\(sc.Keycite\)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;(sc.Keycite)_(https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994099320&pubNum=0004041&originatingDoc=I5a17352005;(sc.Keycite)))) (last accessed 16 April 2019)

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³⁹ Tarkanian, 488 U.S.at 193.

⁴⁰ See Nat'l Collegiate Athletic Ass'n v. Miller, 10 F.3d 633, 639 (9th Cir. 1993). Robert Harrington, The Show Must Not Go On: NCAA Faces Enforcement Hurdle Following Court's Prohibition Against Show Cause Penalties, NCBAR Blog (Jan. 7 2019), <https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>. (<https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>). (“And even if a plaintiff can establish a prima facie case for a given cause of action, a court simply may reject the claim as void against public policy.”); See, e.g., Bassett v. Nat'l Collegiate Athletic Ass'n, 528 F.3d 426, 438 (6th Cir. 2008).

⁴¹ McNair, supra note 14 at ¶ 17 (“NCAA has not raised the issue of the Commerce Clause as a basis for its defense to this action and cannot because it is a non-profit, amateur organization, without collective bargaining agreements.”).

⁴² McNair, supra note 14 at ¶ 17.

⁴³ Robert Harrington, The Show Must Not Go On: NCAA Faces Enforcement Hurdle Following Court's Prohibition Against Show Cause Penalties, NCBAR Blog (Jan. 7 2019), <https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>. (<https://ncbarblog.com/the-show-must-not-go-on-ncaa-faces-enforcement-hurdle-following-courts-prohibition-against-show-cause-penalties/>).

⁴⁴ Zachary Zagger, Calif. Ruling Hamstrings NCAA's Ability To Sanction Coaches, Law360 (October 17, 2018), <https://www.law360.com/articles/1092062/calif-ruling-hamstrings-ncaa-s-ability-to-sanction-coaches> (<https://www.law360.com/articles/1092062/calif-ruling-hamstrings-ncaa-s-ability-to-sanction-coaches>).

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. (quoting Leroy. “Another possibility is for the NCAA to seek a very narrow legislative ‘fix’ for the code, allowing them to maintain the show-cause penalty on the basis of a public interest in policing the employment of coaches...”).

⁴⁹ McNair v. NCAA, Ruling on Motion for New Trial (J.Shaller) (LA Super. Ct. Jan. 16, 2019) <https://wearesc.com/wp-content/uploads/2019/01/McNair-Order-re-New-Trial.pdf> (<https://wearesc.com/wp-content/uploads/2019/01/McNair-Order-re-New-Trial.pdf>).

⁵⁰ Id. at 5.

⁵¹ Id.

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