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1 Keith Beauchamp (012434)
2 COPPERSMITH BROCKELMAN PLC
3 2800 North Central Avenue, Suite 1200
4 Phoenix, Arizona 85004
5 T: (602) 381-5490
6 kbeauchamp@cblawyers.com

7 *Attorney for Petitioner*

8 **ARIZONA SUPERIOR COURT**
9 **MARICOPA COUNTY**

10 ESPN, Inc., a Delaware corporation,) No. CV2021-001709
11)
12) Petitioner,) **VERIFIED COMPLAINT FOR**
13) **STATUTORY SPECIAL ACTION**
14 v.)
15) (Tier 2)
16) ARIZONA BOARD OF REGENTS, a body)
17) corporate of the State of Arizona,)
18) Respondent.)

19 Petitioner ESPN, Inc. brings this statutory special action against Respondent Arizona
20 Board of Regents to compel its compliance with Arizona's Public Records Law, A.R.S. § 39-
21 121, *et seq.*, and alleges as follows:

22 **Parties, Jurisdiction and Venue**

- 23 1. Petitioner ESPN, Inc. ("ESPN") is a Delaware corporation.
24 2. Respondent Arizona Board of Regents ("Board") is a body corporate of the State
25 of Arizona, A.R.S. § 15-1625(A), and is a "public body" as defined by A.R.S. § 39-
26 121.01(A)(2).
3. Jurisdiction over this action is proper pursuant to A.R.S. §§ 39-121.02 and 12-
123, as well as Rule 4(a) of the Arizona Rules of Procedure for Special Actions.

1 Star (Feb. 11, 2019), available at [https://tucson.com/sports/arizonawildcats/basketball/despite-](https://tucson.com/sports/arizonawildcats/basketball/despite-recent-downturn-arizona-wildcats-will-still-lead-pac-12-in-attendance/article_5974a5f7-406c-515a-af36-c393f7cf2d4c.html)
2 [recent-downturn-arizona-wildcats-will-still-lead-pac-12-in-attendance/article_5974a5f7-406c-](https://tucson.com/sports/arizonawildcats/basketball/despite-recent-downturn-arizona-wildcats-will-still-lead-pac-12-in-attendance/article_5974a5f7-406c-515a-af36-c393f7cf2d4c.html)
3 [515a-af36-c393f7cf2d4c.html](https://tucson.com/sports/arizonawildcats/basketball/despite-recent-downturn-arizona-wildcats-will-still-lead-pac-12-in-attendance/article_5974a5f7-406c-515a-af36-c393f7cf2d4c.html).

4 11. Considering all these facts, there is a strong and undeniable public interest in the
5 Program and its future.

6 The Program in Turmoil

7 12. On April 6, 2009, the University announced that Sean Miller would be the
8 Program's next head coach. Mr. Miller had previously been head coach at Xavier University,
9 and had a reputation as a strong recruiter of high school talent.

10 13. Mr. Miller is set to be paid approximately \$2.8 million this year when combining
11 base salary and other incentives.

12 14. Emanuel "Book" Richardson served as an assistant coach for Mr. Miller at
13 Xavier and was hired as an assistant coach in the Program in 2013.

14 15. On September 26, 2017, the acting United States Attorney for the Southern
15 District of New York announced that Mr. Richardson had been indicted and arrested as part of
16 a federal investigation into the "dark underbelly of college basketball." Tom Winter & Tracy
17 Connor, *4 NCAA Basketball Coaches, Adidas Executive Charged in Bribe Scheme*, NBC News
18 (Sep. 26, 2017), [https://www.nbcnews.com/news/us-news/college-basketball-coaches-](https://www.nbcnews.com/news/us-news/college-basketball-coaches-allegedly-took-bribes-agents-deliver-athletes-n804781)
19 [allegedly-took-bribes-agents-deliver-athletes-n804781](https://www.nbcnews.com/news/us-news/college-basketball-coaches-allegedly-took-bribes-agents-deliver-athletes-n804781).

20 16. Several other assistant coaches from major men's basketball programs were
21 arrested as part of this significant federal investigation.

22 17. As the acting United States Attorney explained, "[t]he picture of college
23 basketball painted by the charges is not a pretty one—coaches at some of the nation's top
24 programs taking cash bribes, managers and advisers circling blue-chip prospects like coyotes,
25 and employees of a global sportswear company funneling cash to families of high school
26 recruits." *Id.*

1 18. This injected the University and Program into the national spotlight for all the
2 wrong reasons.

3 19. Shortly after Mr. Richardson's indictment and arrest, the University began the
4 process of terminating his employment and launched an "independent investigation" into the
5 allegations against him. See Zachary Ziegler, Arizona Public Media (Sep. 28, 2017),
6 [https://news.azpm.org/p/news-topical-edu/2017/9/28/117438-ua-begins-termination-process-](https://news.azpm.org/p/news-topical-edu/2017/9/28/117438-ua-begins-termination-process-on-assistant-basketball-coach/)
7 [on-assistant-basketball-coach/](https://news.azpm.org/p/news-topical-edu/2017/9/28/117438-ua-begins-termination-process-on-assistant-basketball-coach/).

8 20. On January 11, 2018, the University terminated Mr. Richardson. Caitlin Schmidt,
9 *UA fires assistant basketball coach Book Richardson after his appeal fails*, Ariz. Daily Star
10 Jan. 23, 2018), available at [https://tucson.com/sports/arizonawildcats/basketball/ua-fires-](https://tucson.com/sports/arizonawildcats/basketball/ua-fires-assistant-basketball-coach-book-richardson-after-his-appeal-fails/article_d22368ae-005e-11e8-9c31-4bdf6aac439.html)
11 [assistant-basketball-coach-book-richardson-after-his-appeal-fails/article_d22368ae-005e-11e8-](https://tucson.com/sports/arizonawildcats/basketball/ua-fires-assistant-basketball-coach-book-richardson-after-his-appeal-fails/article_d22368ae-005e-11e8-9c31-4bdf6aac439.html)
12 [9c31-4bdf6aac439.html](https://tucson.com/sports/arizonawildcats/basketball/ua-fires-assistant-basketball-coach-book-richardson-after-his-appeal-fails/article_d22368ae-005e-11e8-9c31-4bdf6aac439.html).

13 21. On January 22, 2019, Mr. Richardson pled guilty to one count of conspiracy to
14 commit bribery for "taking approximately \$20,000 in case bribes from athlete advisers in
15 exchange for using his position to influence [University] basketball players on his team to
16 retain the services of the advisers paying the bribes." Press Release, U.S. Attorney's Office,
17 Southern District of New York (Jan. 22, 2019), [https://www.justice.gov/usao-sdny/pr/emanuel-](https://www.justice.gov/usao-sdny/pr/emanuel-book-richardson-former-division-i-men-s-basketball-coach-pleads-guilty-bribery)
18 [book-richardson-former-division-i-men-s-basketball-coach-pleads-guilty-bribery](https://www.justice.gov/usao-sdny/pr/emanuel-book-richardson-former-division-i-men-s-basketball-coach-pleads-guilty-bribery).

19 22. As the U.S. Attorney's Office press release summarized the Complaint,
20 Indictment, statements made in court, and documents in the public record:

21 RICHARDSON, a former men's basketball coach at Arizona, agreed to accept cash
22 bribes in return for agreeing to exert his influence over student-athletes on
23 Arizona's Division I men's basketball team to retain the services of the bribe-
24 payers once the student-athletes entered the National Basketball Association
25 ("NBA").

26 Beginning in or around February 2017, and continuing into September 2017, when
RICHARDSON was arrested, RICHARDSON received approximately \$20,000 in
cash bribes from current and aspiring financial advisers and/or managers for
professional athletes in exchange for RICHARDSON's agreement to exert his
influence over certain student-athletes RICHARDSON coached at Arizona to

1 retain the services of the bribe payers once those players entered the NBA. For
2 example, in discussing his commitment to steering Arizona players to retain the
3 bribe payers upon entering the NBA, RICHARDSON told an undercover FBI
4 agent and others, during a recorded meeting, "I used to let kids talk to three or four
5 guys, but I was like, why would you do that? You know that's like taking a kid to
6 a BMW dealer, a Benz dealer, and a Porsche dealer. They like them all . . . You
7 have to pick for them." In return for the cash bribes RICHARDSON received,
8 RICHARDSON facilitated a meeting between the bribe payers and a relative of a
9 player attending Arizona for the purpose of pressuring that player to retain the
10 financial services of the bribe payers.

11 23. In June 2019, Mr. Richardson was sentenced to three months in prison and two
12 years of probation. *See* ESPN News Services, ESPN.com (June 6, 2019),
13 [https://www.espn.com/mens-college-basketball/story/_/id/26912543/ex-arizona-assistant-gets-](https://www.espn.com/mens-college-basketball/story/_/id/26912543/ex-arizona-assistant-gets-3-month-sentence)
14 [3-month-sentence.](https://www.espn.com/mens-college-basketball/story/_/id/26912543/ex-arizona-assistant-gets-3-month-sentence)

15 24. In a letter submitted to the district court in advance of Mr. Richardson's
16 sentencing, the University's general counsel noted that because of the negative publicity
17 associated with Mr. Richardson's arrest, "the recruitment effort for future players became
18 substantially more challenging" and the University "is also facing the prospect of potentially
19 significant sanctions and penalties from the NCAA flowing from the unlawful actions involved
20 in this case." *Id.*

21 25. Christian Dawkins, another assistant coach arrested, indicted, and convicted as
22 part of this federal investigation, has suggested that Mr. Miller is involved in bribery as well.
23 *See, e.g.,* Mark Schlabach, *Christian Dawkins details ties to Arizona. Sean Miller in new HBO*
24 *film*, ESPN.com (Mar. 17, 2020), [https://www.espn.com/mens-college-](https://www.espn.com/mens-college-basketball/story/_/id/28919170/christian-dawkins-details-ties-arizona-sean-miller-new-hbo-film)
25 [basketball/story/_/id/28919170/christian-dawkins-details-ties-arizona-sean-miller-new-hbo-](https://www.espn.com/mens-college-basketball/story/_/id/28919170/christian-dawkins-details-ties-arizona-sean-miller-new-hbo-film)
26 [film.](https://www.espn.com/mens-college-basketball/story/_/id/28919170/christian-dawkins-details-ties-arizona-sean-miller-new-hbo-film)

27 26. At a news conference in March 2018, Mr. Miller stated as follows: "I have never
28 knowingly violated NCAA rules while serving as head coach of this great program," and "I
29 have never paid a recruit, prospect or their family or representative to come to Arizona, and I
30 never will." Adam Zielonka, *Sean Miller, Arizona coach, doubles down: 'I've never paid a*

1 recruit,' AP News (March 1, 2018),

2 <https://apnews.com/article/d74e79e0e2591d45816df82cdfb31e86>.

3 **The NCAA Investigation and Notice of Allegations**

4 27. After the announcement of the federal investigation and resulting indictments,
5 the NCAA began its own investigation into the coaches and men's basketball programs that
6 had been implicated.

7 28. After that investigation concluded, the University received a "Notice of
8 Allegations" from the NCAA ("NOA") on or about October 23, 2020 related to the Program.
9 See Jeff Borzello, ESPN.com (Oct. 23, 2020), [https://www.espn.com/mens-college-](https://www.espn.com/mens-college-basketball/story/_/id/30175484/arizona-receives-ncaa-notice-allegations-men-basketball-team)
10 [basketball/story/_/id/30175484/arizona-receives-ncaa-notice-allegations-men-basketball-team](https://www.espn.com/mens-college-basketball/story/_/id/30175484/arizona-receives-ncaa-notice-allegations-men-basketball-team).

11 29. The NOA is believed to allege nine separate rules violations, five of which are
12 "Level One" allegations that could lead the NCAA to impose serious sanctions against the
13 Program. Pat Forde, *Arizona Charged With 9 Violations in Notice of Allegations*, SI.com
14 (Oct. 25, 2020), [https://www.si.com/college/2020/10/25/arizona-sean-miller-violations-ncaa-](https://www.si.com/college/2020/10/25/arizona-sean-miller-violations-ncaa-notice-of-allegations)
15 [notice-of-allegations](https://www.si.com/college/2020/10/25/arizona-sean-miller-violations-ncaa-notice-of-allegations).

16 30. Since its receipt of the NOA, the University has refused to release the NOA to
17 the public. See, e.g., Bruce Pascoe, *Citing 'best interest of the state,' Arizona denies public*
18 *records request for NCAA Notice of Allegations*, Ariz. Daily Star (Nov. 5, 2020), available at
19 [https://tucson.com/sports/arizonawildcats/basketball/pascoe/citing-best-interest-of-the-state-](https://tucson.com/sports/arizonawildcats/basketball/pascoe/citing-best-interest-of-the-state-arizona-denies-public-records-request-for-ncaa-notice-of/article_ea10068c-1fac-11eb-ad55-23e4a758bba8.html)
20 [arizona-denies-public-records-request-for-ncaa-notice-of/article_ea10068c-1fac-11eb-ad55-](https://tucson.com/sports/arizonawildcats/basketball/pascoe/citing-best-interest-of-the-state-arizona-denies-public-records-request-for-ncaa-notice-of/article_ea10068c-1fac-11eb-ad55-23e4a758bba8.html)
21 [23e4a758bba8.html](https://tucson.com/sports/arizonawildcats/basketball/pascoe/citing-best-interest-of-the-state-arizona-denies-public-records-request-for-ncaa-notice-of/article_ea10068c-1fac-11eb-ad55-23e4a758bba8.html).

22 31. The University ultimately requested that the NCAA's enforcement matter be
23 referred to and resolved by the Independent Accountability Resolution Process ("IARP"). The
24 matter currently remains pending.

25 32. On or about December 29, 2020, the University announced that it had self-
26 imposed a one-year ban on the Program's participation in postseason play in apparent response

1 to the contents of the NOA. See Jeff Borzello, *Arizona self-imposes one-year postseason ban*
2 *on men's basketball team*, ESPN.com (Dec. 29, 2020), [https://www.espn.com/mens-college-](https://www.espn.com/mens-college-basketball/story/_/id/30619929/arizona-self-imposes-one-year-postseason-ban-men-basketball-team)
3 [basketball/story/_/id/30619929/arizona-self-imposes-one-year-postseason-ban-men-basketball-](https://www.espn.com/mens-college-basketball/story/_/id/30619929/arizona-self-imposes-one-year-postseason-ban-men-basketball-team)
4 [team](https://www.espn.com/mens-college-basketball/story/_/id/30619929/arizona-self-imposes-one-year-postseason-ban-men-basketball-team).

5 ESPN's Public Records Request

6 33. On October 22, 2020, ESPN reporter Mark Schlabach—who has reported
7 extensively regarding the federal investigation and resulting NCAA investigation—submitted a
8 public records request to the University requesting “[a] copy of any notice of allegation
9 received by the University of Arizona regarding its men's basketball program from January 1,
10 2020 to present” (“Request”). A true and correct copy of the Request is attached as **Exhibit 1**.

11 34. On November 3, 2020, the University denied Mr. Schlabach's request (“Initial
12 Response”). A true and correct copy of the Initial Response is attached as **Exhibit 2**.

13 35. In the Initial Response, the University justified its refusal to produce the NOA as
14 follows:

15 The University of Arizona has requested to have the NCAA enforcement matter
16 referred to the NCAA's IARP process. As a result of that request, there remains the
17 possibility of additional investigation by the NCAA. Therefore, at this time, and
18 in accordance with NCAA bylaws, the University is not releasing the notice of
19 allegations (NOA) as it is in the best interest of the state for any additional
20 investigation to be completed before disclosures are made. Following the
21 conclusion of any additional investigation, the University is committed to releasing
22 the NOA as it recognizes the public interest in its disclosure

20 36. On January 21, 2021, counsel for ESPN communicated with the University's
21 outside counsel regarding the production of the NOA, and sent a letter demanding the NOA's
22 production by the following day at 3:00 PM (“Demand Letter”). A true and correct copy of the
23 Demand Letter is attached as **Exhibit 3**.

24 37. On January 22, 2021, counsel for ESPN sent a second communication via email
25 to the University's outside counsel regarding production of the NOA. A true and correct copy
26 of that email is attached as **Exhibit 4**.

1 38. On January 22, 2021, counsel for the University responded to the Demand Letter
2 and email (“Supplemental Response”). A true and correct copy of the Supplemental Response
3 is attached as **Exhibit 5**.

4 39. The Supplemental Response defended the University’s refusal to produce the
5 NOA on the following grounds:

6 First, as the University has previously acknowledged, it agrees that that there is a
7 public interest in this document and it intends to disclose it when permissible: –
8 the primary issue is the timing of that disclosure with respect to the ongoing
9 investigation by the Independent Accountability Resolution Panel (“IARP”). Thus,
to the extent your letter suggests that the University is taking the position that it
cannot disclose the NOA, that is incorrect.

10 Second, the University is not merely contending that NCAA Bylaw 19.01.3
11 prevents it from disclosing the NOA. Rather, that NCAA Bylaw, which mandates
12 that universities not disclose information about a pending case, arises in large part
13 from the NCAA’s desire to prevent a university’s action from having a negative
14 impact on its ability to thoroughly and effectively investigate a matter. As a state
15 institution, the University has a strong interest that this investigation into its
16 alleged actions not be hampered or undermined by premature disclosure of the
17 NOA. Hence, the University’s position remains that so long as the possibility of
18 additional investigation exists, which is the case with the IARP (as authorized by
19 the NCAA), the University will not disclose the NOA. We believe this position is
20 in the best interest of the state. However, once the investigative stage has
concluded, the University will promptly disclose the NOA. Had the University’s
request to the IARP been denied, it would have already produced the NOA as no
further investigation would have been undertaken. However, with the NCAA
referring this matter to the IARP, additional investigation through the IARP is
likely, and thus it may be several more months before the investigative stage is
completed with the IARP.

21 40. The Supplemental Response confirms that the NOA is a public record and that
22 the NCAA’s investigation has concluded.

23 41. Notwithstanding its purported concern that some potential future additional
24 investigation by the IARP might somehow be “hampered or undermined by premature
25 disclosure of the NOA,” the University has articulated no basis for that purported concern.
26

1 at Chapel Hill Public Infractions Decision (Oct. 13, 2017), *available at*

2 [https://www.ncaa.org/sites/default/files/Oct2017_University-of-North-Carolina-at-Chapel-](https://www.ncaa.org/sites/default/files/Oct2017_University-of-North-Carolina-at-Chapel-Hill_InfractionsDecision_20171013.pdf)
3 [Hill_InfractionsDecision_20171013.pdf](https://www.ncaa.org/sites/default/files/Oct2017_University-of-North-Carolina-at-Chapel-Hill_InfractionsDecision_20171013.pdf) at 5 (emphasis added).

4 50. Three years earlier, an NCAA enforcement officer testified under oath in
5 proceeding in Pennsylvania that while the NCAA does not release letters related to the
6 infractions enforcement process, “[m]any institutions do due to open records concerns.”
7 Deposition of David Berst (Nov. 12, 2014), Case No. 1 M.D. 2013 (Pa. Commw. Ct.), at 22-23,
8 *available at*

9 [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewj8q8](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewj8q8m2iLDuAhWAGVvkFHY8RDZgOFjAEegQIAhAC&url=https%3A%2F%2Fwww.ncaa.org%2Fsites%2Fdefault%2Ffiles%2F0211414DB.pdf&usg=AOvVaw3LKI7K0TTbpHgLigi3Y4Ii)
10 [m2iLDuAhWAGVvkFHY8RDZgOFjAEegQIAhAC&url=https%3A%2F%2Fwww.ncaa.org%2](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewj8q8m2iLDuAhWAGVvkFHY8RDZgOFjAEegQIAhAC&url=https%3A%2F%2Fwww.ncaa.org%2Fsites%2Fdefault%2Ffiles%2F0211414DB.pdf&usg=AOvVaw3LKI7K0TTbpHgLigi3Y4Ii)
11 [Fsites%2Fdefault%2Ffiles%2F0211414DB.pdf&usg=AOvVaw3LKI7K0TTbpHgLigi3Y4Ii](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewj8q8m2iLDuAhWAGVvkFHY8RDZgOFjAEegQIAhAC&url=https%3A%2F%2Fwww.ncaa.org%2Fsites%2Fdefault%2Ffiles%2F0211414DB.pdf&usg=AOvVaw3LKI7K0TTbpHgLigi3Y4Ii).

12 51. In addition, other member schools involved in this same NCAA investigation
13 have released the Notices of Allegations against them to the public.

14 52. Specifically, the University of Louisville,¹ North Carolina State University,² and
15 the University of Kansas³ all released the Notices of Allegations they received from the NCAA
16 and made them publicly available shortly after receipt, presumably in accordance with the
17 public records law in their home states and the spirit of transparency.

18 53. Indeed, the University of Louisville has an entire website dedicated to the Notice
19 of Allegations and its responses and makes all relevant documents readily available to the
20 public. *See* University of Louisville, Update on NCAA Notice of Allegations,
21 <http://louisville.edu/ncaa> (last visited Jan. 22, 2021).

22 54. Even if NCAA Bylaw 19.01.3 purported to require the University to keep the
23 NOA confidential, the bylaws of the NCAA – a private membership organization of which the

24 _____
25 ¹ <https://louisville.app.box.com/s/kic1mnmv26inmg41yexuyask7cnrn28lc>

26 ² <https://www.documentcloud.org/documents/6189012-NC-State-Notice-of-Allegations.html>

³ <https://publicaffairs.ku.edu/sites/publicaffairs.ku.edu/files/docs/NOA%20to%20KU.pdf>

1 any person at all times during office hours".) The PRL presumes that all records are "open to
2 the public for inspection as public records." *Carlson v. Pima Cty.*, 141 Ariz. 487, 490 (1984).

3 59. The PRL exists to "open agency action to the light of public scrutiny" and "allow
4 citizens 'to be informed about what their government is up to.'" *Scottsdale Unified Sch. Dist.*
5 *No. 48 of Maricopa Cty. v. KPNX Broad. Co.*, 191 Ariz. 297, 302 ¶ 21 (1998) (citations omitted).

6 60. There is thus a "clear policy favoring disclosure" of public records. *Carlson*, 141
7 Ariz. at 490-91.

8 61. The NOA is in the University's possession.

9 62. The NOA is a public record.

10 63. Because the NOA is a public record, it is subject to a strong presumption in favor
11 of its disclosure. *Judicial Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 396, ¶ 10 (App. 2011).

12 64. Consequently, the University can withhold the NOA only if "privacy,
13 confidentiality, or the best interests of the state outweigh the policy in favor of disclosure."
14 *Griffis v. Pinal Cty.*, 215 Ariz. 1, 6 ¶ 16 (2007).

15 65. "The public's right to know any public document is weighty in itself," and is
16 particularly strong where "the public documents are of broad and intense interest." *Phoenix*
17 *Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶¶ 30, 32 (App. 2001) (noting that a
18 controversial state standardized test "has been the subject of significant public debate").

19 66. The contents of the NOA are a matter of broad and intense public interest.

20 67. A public body may refuse to produce public records only after satisfying its
21 burden of establishing that the "best interests of the state" (or another countervailing interest)
22 outweighs the strong presumption in favor of disclosure. *Phoenix Newspapers, Inc. v. Ellis*,
23 215 Ariz. 268, 273 (App. 2007) (citation omitted) (holding that party arguing against disclosure
24 of public records has the burden of showing the probability that specific, material harm will
25 result from disclosure to support claim that production would be detrimental to best interests of
26 the state).

1 68. A public body always bears the burden of overcoming the presumption of
2 disclosure. *Judicial Watch, Inc.*, 228 Ariz. at 395 ¶ 10; *Hodai v. City of Tucson*, 239 Ariz. 34,
3 41 ¶ 20 (App. 2016). To carry this burden, a public body must demonstrate specific material
4 harm or risks to privacy, confidentiality, or the best interests of the state. *Hodai*, 239 Ariz. at 41
5 ¶ 20. And “[b]ecause it is always possible to argue that public records contain nondiscoverable
6 matter, argument alone would always allow nonrevelation.” *Star Publ’g Co. v. Pima Cty. Atty’s*
7 *Office*, 181 Ariz. 432, 434 (App. 1994).

8 69. A public body fails to meet its burden of overcoming the presumption in favor of
9 disclosure when it puts forth only “global generalities” of harm. *Judicial Watch, Inc.*, 228 Ariz.
10 at 400 ¶ 29. The public body must come forward with “a factual basis why a particular record
11 ought not be disclosed to further an important public or private interest.” *Star Publ’g Co.*, 181
12 Ariz. at 434 (citations omitted).

13 70. Here, the University’s justification for withholding the NOA consists entirely of
14 “generalities” and lacks any “factual basis.”

15 71. Even if the IARP were to conduct an additional investigation, the University has
16 not articulated how such an investigation would be hampered by disclosure of the NOA.

17 72. Even if the IARP’s potential future investigation were to be somehow hampered
18 by the NOA’s release, the University has not articulated how that would constitute specific,
19 material harm sufficient to outweigh the strong public interest in favor of public disclosure. *See*
20 *Cox Ariz. Publ’ns, Inc. v. Collins*, 175 Ariz. 11, 14 (1993) (holding that “reports of ongoing
21 police investigations are generally not exempt from [the PRL]” and that a public body seeking
22 to withhold such a document must “specifically demonstrate how production of the documents
23 . . . would be ‘detrimental to the best interests of the state’”).

24 73. The University’s unsupported justifications for withholding the NOA do not
25 satisfy its heavy burden under the PRL. *Compare Hodai*, 239 Ariz. at 39-40 ¶¶ 10-13 (public
26 body produced an affidavit from the FBI explaining why releasing certain records would be

1 harmful to law enforcement activities); *Ariz. Bd. of Regents v. Phoenix Newspapers, Inc.*, 167
2 Ariz. 254, 255 (1991) (Board presented specific evidence that revealing names of “prospects”
3 for university president positions “reduces the number of applicants by one-fourth, in effect
4 skimming the cream off the pool of prospects”).

5 74. The University has thus wrongfully withheld the NOA in violation of the PRL.

6 75. Because this is a statutory special action, Petitioner is entitled to a “speedy return
7 date” on its Application for Order to Show Cause. Ariz. R. P. Spec. Action 4(c); *see also* Ariz.
8 R. Civ. P. 6(d) (authorizing a superior court judge to “issue an order requiring a party to show
9 cause why the party applying for the order should not have the relief therein requested”).

10 **Prayer for Relief**

11 WHEREFORE Petitioner respectfully requests that this Court provide the following
12 relief on an expedited basis:

13 A. Enter an order compelling Respondent to comply with A.R.S. § 39-121, *et seq.*,
14 and to immediately provide access to (or copies of) the public records requested by Petitioner;

15 B. Enter an order directing Respondent to pay Petitioner’s reasonable attorneys’ fees
16 and costs pursuant to A.R.S. §§ 39-121.02(B), 12-341, 12-348, 12-2030, the private attorney
17 general doctrine, Rule 4(g) of the Arizona Rules of Procedure for Special Actions, or any other
18 applicable provision of law or equitable principle; and

19 C. Grant Petitioner such other and further relief as the Court deems just and proper.

20 Respectfully submitted this 29th day of January, 2021.

21 **COPPERSMITH BROCKELMAN PLC**

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23 

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25 _____
26 Keith Beauchamp

Attorneys for Petitioner

Exhibit 1

Exhibit 1

From: Schlabach, Mark <Mark.Schlabach@espn.com>
Sent: Thursday, October 22, 2020 1:34 PM
To: Bentson, Teri J - (terim) <terim@arizona.edu>
Subject: Open records request from ESPN

October 22, 2020

Teri: Pursuant to the state open records law Ariz. Rev. Stat. Ann. Secs. 39-121 to 39-122, I write to request access to and a copy of:

1. A copy of any notice of allegation received by the University of Arizona regarding its men's basketball program from January 1, 2020 to present.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees.

I would request your response within ten (10) business days.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Thank you for your assistance.

Sincerely,

Mark Schlabach
One ESPN Plaza
Bristol, CT 06010
706-474-9141

Exhibit 2

Exhibit 2

November 3, 2020

Mark Schlabach
ESPN
One ESPN Plaza
Bristol, CT 06010
Email: Mark.Schlabach@espn.com

Re: Public Records Request dated October 22, 2020

Dear Mr. Schlabach:

This letter responds to your public records request dated October 22, 2020 directed to the University of Arizona (UA), seeking the following:

“A copy of any notice of allegation received by the University of Arizona regarding its men's basketball program from January 1, 2020 to present.”

The University of Arizona has requested to have the NCAA enforcement matter referred to the NCAA's IARP process. As a result of that request, there remains the possibility of additional investigation by the NCAA. Therefore, at this time, and in accordance with NCAA bylaws, the University is not releasing the notice of allegations (NOA) as it is in the best interest of the state for any additional investigation to be completed before disclosures are made. Following the conclusion of any additional investigation, the University is committed to releasing the NOA as it recognizes the public interest in its disclosure.

In providing this information to you, your public records request set forth above is considered fulfilled and closed in accordance with Arizona public records laws.

Sincerely,



Teri Bentson
Coordinator, Public Records



Exhibit 3

Exhibit 3

COPPERSMITH
BROCKELMAN

LAWYERS

Keith Beauchamp
kbeauchamp@cblawyers.com
PH. (602) 381-5490
FAX (602) 224-6020

2800 North Central Avenue, Suite 1900
Phoenix, AZ 85004
CBLAWYERS.COM

January 21, 2021

Via Email Only

Gregg E. Clifton
Jackson Lewis
2111 E. Highland, Suite B-250
Phoenix, AZ 85016
Gregg.clifton@jacksonlewis.com

Re: Public Records Request of Mark Schlabach and ESPN

Dear Mr. Clifton:

As you know, this firm represents ESPN and its reporter Mark Schlabach (collectively, "ESPN") in their efforts to obtain public records from the University of Arizona ("University"). Arizona's Public Records Law, A.R.S. § 39-121, *et seq.* ("PRL"), required the University to promptly respond to ESPN's October 22, 2020 request for "[a] copy of any notice of allegation received by the [University] regarding its men's basketball program from January 1, 2020 to present" ("Request") by providing responsive materials. Nearly three months later, it has still failed to do so.

We will neither belabor the point nor mince words: the notice of allegations ("NOA") is unquestionably a public record under the PRL, and the University's invocation of NCAA bylaws as a basis for withholding that document is without merit. The bylaws of the NCAA – a private membership organization of which the University is a member – cannot supersede the statutory obligation found in the PRL.¹

Even if NCAA bylaws could in theory trump an Arizona statute, the bylaws would not shield the NOA from disclosure in this instance. First, the assertion in the University's

¹ See, e.g., *Moorehead v. Arnold*, 130 Ariz. 503, 505 (App. 1981) ("The promise of confidentiality standing alone is not sufficient to preclude disclosure. [] If the promise of confidentiality were to end our inquiry, we would be allowing a city official to eliminate the public's rights under A.R.S. § 39-121"); *Johnson Utilities L.L.C. v. Town of Queen Creek*, No. 1 CA-CV 18-0201, 2019 WL 949188, at *2 (Ariz. Ct. App. Feb. 26, 2019) ("the Agreement is void to the extent that it would . . . prevent the Town from disclosing documents that it should otherwise disclose under the public records law"); *Nat'l Collegiate Athletic Ass'n v. Associated Press*, 18 So. 3d 1201, 1208–09 (Fla. Dist. Ct. App. 2009) (holding, in the context of NCAA investigatory documents, that "[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private").

November 3, 2020 letter that “there remains the possibility of additional investigation by the NCAA” is inaccurate. The University requested that the enforcement matter be referred to the Independent Accountability Resolution Process, so any additional investigation would be conducted by an independent Complex Case Unit, not the NCAA.

Second, NCAA Bylaw 19.01.3 does not compel the University to withhold the NOA, as evidenced by the fact that other NCAA members who were part of the same overarching (but now concluded) investigation have disclosed the NOA’s they received and their respective responses thereto without any complaint by the NCAA. The University of Louisville,² North Carolina State University,³ and the University of Kansas⁴ all released the notices of allegations they received from the NCAA and made them publicly available shortly after receipt, presumably in accordance with the public records law in their home states and the spirit of transparency. The public record is replete with instances of other universities making public their NOA’s in similar circumstances. The University cannot seriously contend that Bylaw 19.01.3 operates as a bar to disclosure here.

Arizona’s PRL is a tool of transparency to ensure that the public is “informed about what their government is up to,” *Scottsdale Unified Sch. Dist. No. 48 of Maricopa Cty. v. KPNX Broad. Co.*, 191 Ariz. 297, 302 ¶ 21 (1998) (citation omitted), and can “monitor the performance of government officials and their employees,” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351 ¶ 33 (App. 2001) (citation omitted). Here, the public has little idea about what its government officials at the University have done, or stand accused of doing.

In sum, the University possesses public records outlining serious allegations against its men’s basketball program, which will pay its head coach \$2.8 million in salary this year alone. The public interest in understanding those allegations is acute, given the University’s recent announcement of a self-imposed postseason ban in apparent response to the NOA’s contents. See Jeff Borzello, Arizona self-imposes one-year postseason ban on men’s basketball team, ESPN.com (Dec. 29, 2020), https://www.espn.com/mens-college-basketball/story/_/id/30619929/arizona-self-imposes-one-year-postseason-ban-men-basketball-team.

On behalf of ESPN, we demand the production of the NOA no later than **3:00 p.m. on Friday, January 22, 2021**. If the University fails to do so, ESPN will likely file a statutory special action and seek its attorneys’ fees and costs in connection with that action.

² <https://louisville.app.box.com/s/kic1mmv26inmg41vexuyask7cnrn28lc>

³ <https://www.documentcloud.org/documents/6189012-NC-State-Notice-of-Allegations.html>

⁴ <https://publicaffairs.ku.edu/sites/publicaffairs.ku.edu/files/docs/NOA%20to%20KU.pdf>

Gregg E. Clifton
January 21, 2021
Page 3

Please call or email with any questions or concerns. My mobile number is (480) 332-5512.
We look forward to the University's prompt production of the requested records.

Sincerely,



Keith Beauchamp

KB:slm

Exhibit 4

Exhibit 4

From: Keith Beauchamp
Sent: Friday, January 22, 2021 12:28 PM
To: Clifton, Gregg E. (Phoenix)
Subject: RE: Denial of ESPN public records request

Gregg, following up on our conversation and my letter of yesterday, I wanted to make these supplemental points in advance of today's deadline.

Notwithstanding NCAA Bylaw 19.01.3, the NCAA understands that its public institution members are required to comply with state laws regarding the disclosure of public records. For example, in a 2017 Public Infractions Decision related to the University of North Carolina at Chapel Hill issued by the Division I Committee on Infractions ("COI"), the NCAA acknowledged that "institutions should uphold their confidentiality requirements under NCAA bylaws where consistent with legal obligations." NCAA, University of North Carolina at Chapel Hill Public Infractions Decision (Oct. 13, 2017), *available at* https://www.ncaa.org/sites/default/files/Oct2017_University-of-North-Carolina-at-Chapel-Hill_InfractionsDecision_20171013.pdf at 5 (emphasis added).

Three years earlier, an NCAA enforcement officer testified under oath that while the NCAA does not release letters related to the infractions enforcement process, "[m]any institutions do due to open records concerns." Deposition of David Berst (Nov. 12, 2014), Case No. 1 M.D. 2013 (Pa. Commw. Ct.), *available at* <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj8q8m2iLDuAhWAGVkfHY8RDZgQFjAEgQIAhAC&url=https%3A%2F%2Fwww.ncaa.org%2Fsites%2Fdefault%2Ffiles%2F0211414DB.pdf&usq=AOvVaw3LKl7K0TTbpHgLigi3Y4ii>.

Not surprisingly, in light of the above, we are unaware of any instance in which the NCAA has sanctioned or even threatened to sanction a university for complying with its obligations under a pertinent state public records statute.

Notably, other member schools involved in this same NCAA investigation have made public the Notices of Allegations against them. Specifically, the University of Louisville, North Carolina State University, and the University of Kansas all released the Notices of Allegations they received from the NCAA and made them publicly available shortly after receipt, presumably in accordance with the public records law in their home states. Indeed, the University of Louisville has an entire website dedicated to the Notice of Allegations and its responses and makes all relevant documents readily available to the public. *See* University of Louisville, Update on NCAA Notice of Allegations, <http://louisville.edu/ncaa> (last visited Jan. 22, 2021).

Of course, as a predicate matter of law, even if the NCAA did claim that its bylaws prevented disclosure (which it has not done), those bylaws cannot take precedence over the University's obligations under the statute.

I trust that the University will take this information into account as today's deadline approaches.

Best regards,

Keith Beauchamp

Coppersmith Brockelman PLC
602.381.5490 (direct)
480.332.5512 (mobile)
2800 N. Central Ave., Ste. 1900
Phoenix, AZ 85004
cblawyers.com

Exhibit 5

Exhibit 5

JacksonLewis

Jackson Lewis P.C.
2111 E. Highland Avenue, Suite B250
Phoenix Arizona 85016
(602) 714-7044 Direct
(602) 714-7045 Fax
jacksonlewis.com

Via Electronic Mail

January 22, 2021

Keith Beauchamp
Coppersmith Brockelman PLC
2800 N. Central Ave., Ste. 1900
Phoenix, AZ 85004
kbeauchamp@cblawyers.com

Re: Response to Letter Requesting Release of NOA

Dear Mr. Beauchamp:

On behalf of the University of Arizona, we acknowledge receipt of your letter on behalf of ESPN and Mark Schlabach demanding release of the NCAA's Notice of Allegations against the University of Arizona. Having reviewed it, there are a few things I would like to clarify. First, as the University has previously acknowledged, it agrees that there is a public interest in this document and it intends to disclose it when permissible: – the primary issue is the timing of that disclosure with respect to the ongoing investigation by the Independent Accountability Resolution Panel ("IARP"). Thus, to the extent your letter suggests that the University is taking the position that it cannot disclose the NOA, that is incorrect.

Second, the University is not merely contending that NCAA Bylaw 19.01.3 prevents it from disclosing the NOA. Rather, that NCAA Bylaw, which mandates that universities not disclose information about a pending case, arises in large part from the NCAA's desire to prevent a university's action from having a negative impact on its ability to thoroughly and effectively investigate a matter. As a state institution, the University has a strong interest that this investigation into its alleged actions not be hampered or undermined by premature disclosure of the NOA. Hence, the University's position remains that so long as the possibility of additional investigation exists, which is the case with the IARP (as authorized by the NCAA), the University will not disclose the NOA. We believe this position is in the best interest of the state. However, once the investigative stage has concluded, the University will promptly disclose the NOA. Had the University's request to the IARP been denied, it would have already produced the NOA as no further investigation would have been undertaken. However, with the NCAA referring this matter to the IARP, additional investigation through the IARP is likely, and thus it may be several more months before the investigative stage is completed with the IARP.

It has been nearly three months since the University's initial response to your client explaining this position. The University remains committed to providing this document to you (and other requestors) upon conclusion of any IARP investigation, and we anticipate that it will

likely be a few more months before that may occur. We are also happy to share more details about the timing as we learn of it. In the meantime, however, we hope that you can understand the competing interest confronting the University currently, which is its strong desire for an effective, unimpeded investigation that gets to the bottom of any wrongdoing that may have occurred.

If you believe that additional discussion of this issue would be helpful, I would be happy to have another call. Thank you for your consideration of these points.

Sincerely,

/s/ *Gregg E. Clifton*

Gregg E. Clifton

Attorney at Law

602-714-7073 Direct

Gregg.Clifton@jacksonlewis.com

Jackson Lewis P.C.

GEC/at

VERIFICATION

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I, Peter E. Scher, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. Civ. P., as follows:

I am Assistant Chief Counsel for Petitioner ESPN, Inc. I have read the foregoing Verified Complaint for Statutory Special Action and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of January, 2021.

DocuSigned by:
Peter E. Scher
5DC3F79F4BD04AC...

Peter E. Scher