

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

GARRETT SNODGRASS, GARRETT
NELSON, ETHAN PIPER, NOA POLA-
GATES, ALANTE BROWN, BRANT
BANKS, BRIG BANKS, and JACKSON
HANNAH,

Plaintiffs,

vs.

THE BIG TEN CONFERENCE, INC.,

Defendant.

CASE NO. CI20-_____

COMPLAINT

JURY DEMAND

COME NOW the Plaintiffs, Garrett Snodgrass, Garrett Nelson, Ethan Piper, Noa Polagates, Alante Brown, Brant Banks, Brig Banks, and Jackson Hannah (collectively "Student Athlete Plaintiffs"), by and through their undersigned attorneys, and for their Complaint against The Big Ten Conference, Inc., state and allege as follows:

INTRODUCTION

1. This is a case in which a powerful collegiate athletic conference contends that its student athletes have no rights. The Big Ten Conference, Inc. ("Big Ten") recently announced a decision to cancel or postpone the 2020 fall Big Ten football season and has refused to release specific details regarding the process utilized in reaching its decision. Although the Big Ten commissioner, Kevin Warren, announced that a "vote" of Big Ten presidents and chancellors was held, representatives from multiple member institutions have made public statements to the contrary. Even though its decision significantly and directly affects the rights and opportunities of student athletes at its member institutions, the Big Ten has rejected calls for transparency and refuses to provide documents supporting its claim that a vote was taken or that a proper process

was followed. As a result of the failure of process, the Student Athlete Plaintiffs have been irreparably harmed.

PARTIES

2. Garrett Snodgrass ("Snodgrass") is a college football player enrolled at the University of Nebraska-Lincoln. Snodgrass is a current resident and citizen of Nebraska and is domiciled in Nebraska.

3. Garrett Nelson ("Nelson") is a college football player enrolled at the University of Nebraska-Lincoln. Nelson is a current resident and citizen of Nebraska and is domiciled in Nebraska.

4. Ethan Piper ("Piper") is a college football player enrolled at the University of Nebraska-Lincoln. Piper is a current resident and citizen of Nebraska and is domiciled in Nebraska.

5. Noa Pola-Gates ("Pola-Gates") is a college football player enrolled at the University of Nebraska-Lincoln. Pola-Gates resides in Nebraska and is a citizen of Arizona and is domiciled in Arizona.

6. Alante Brown ("Brown") is a college football player enrolled at the University of Nebraska-Lincoln. Brown resides in Nebraska and is a citizen of Illinois and is domiciled in Illinois.

7. Brant Banks is a college football player enrolled at the University of Nebraska-Lincoln. Brant Banks resides in Nebraska and is a citizen of Texas and is domiciled in Texas.

8. Brig Banks is a college football player enrolled at the University of Nebraska-Lincoln. Brig Banks resides in Nebraska and is a citizen of Texas and is domiciled in Texas.

9. Jackson Hannah ("Hannah") is a college football player enrolled at the University of Nebraska-Lincoln. Hannah resides in Nebraska and is a citizen of Tennessee and is domiciled in Tennessee.

10. The Big Ten Conference ("Big Ten") is an athletic conference incorporated under the laws of the State of Delaware with its principal place of business in Rosemont, Illinois. The Big Ten accordingly is a citizen of Delaware and Illinois. The Commissioner of the Big Ten is Kevin Warren ("Commissioner Warren").

JURISDICTION AND VENUE

11. Venue is proper pursuant to Neb. Rev. Stat. 25-403.01 as more fully set forth below.

12. The Big Ten is subject to personal jurisdiction in this State because it transacts a substantial amount of business in Nebraska and has continuous and systematic business contacts with the forum, including but not limited to Lancaster County, Nebraska; it regularly and routinely sends corporate representatives into the State of Nebraska, including but not limited to Lancaster County, Nebraska, for purposes of transacting business within the State; it advertises within the State of Nebraska; and one of its member institutions is the University of Nebraska located in Lincoln, Lancaster County, Nebraska.

13. The Big Ten regularly hosts Big Ten events in Lancaster County, Nebraska, including athletic contests for the University of Nebraska. The Big Ten has also hosted events elsewhere in Nebraska such as the 2019 Big Ten baseball tournament. The Big Ten's revenue is generated, in part, from student athletic competitions held within Lancaster County, Nebraska.

14. The purported decision at issue in this case was to be made by the Big Ten's Council of Presidents and Chancellors, which is comprised of a representative from each

member institution of the Big Ten, including a representative from the University of Nebraska who, upon information and belief, acted from within the State of Nebraska at relevant times.

15. The Big Ten has sufficient minimum contacts with the State of Nebraska that maintenance of this lawsuit in Nebraska does not offend traditional notions of fair play and substantial justice.

FACTUAL BACKGROUND

16. On August 5, 2020, the Big Ten released a revised football schedule for the 2020 fall season, which included ten games against Big Ten opponents for each team in the conference. Pursuant to the August 5 revised schedule, all Big Ten teams could begin preseason practice by Friday, August 7, and the first Big Ten regular season football game was scheduled for September 3.

17. Six days later -- on August 11, 2020 -- the Big Ten announced the cancelation and/or postponement of the 2020 fall football season.

18. According to Commissioner Warren, the Big Ten Bylaws ("Bylaws") grant the Big Ten Council of Presidents and Chancellors ("Council") the "ultimate authority and responsibility for Big Ten Conference governance." Upon information and belief, the Big Ten Conference Handbook ("Handbook") also vests ultimate authority and responsibility in Big Ten governance in the Council.

19. The Big Ten represents to the public that the Council "holds ultimate authority and responsibility for Big Ten Conference governance."

20. Upon information and belief, the Big Ten governing documents, including the Bylaws and/or Handbook ("Governing Documents"), provide that the Council is required to vote on all matters involving enforcement of the Big Ten Bylaws, Rules, Agreements, or Appendices

which would: (a) reduce the amount of revenue to be received by a member, (b) reduce the number of sporting events in a member's schedule, or (c) deprive participation of a member's team in a telecast of a sporting event. Upon information and belief, a vote on the above-described matters "may take effect only upon the vote of not less than sixty percent (60%) of the entire Council." Because the Council has fourteen members, any vote on these matters would require at least nine votes of support before it would be valid and effective.

21. Upon information and belief, the Handbook provides that "[a] major function of the Commissioner is to facilitate communication and understanding among the Conference constituencies," including its student athletes.

22. According to Commissioner Warren, the Council "voted" on whether to cancel the 2020 fall football season and the Council members overwhelmingly "voted" in favor of canceling the 2020 fall football season.

23. Upon information and belief, the Council did not actually vote on whether to cancel the 2020 fall football season.

24. Joan Gabel ("Gabel") is President of the University of Minnesota and serves as the University of Minnesota's representative on the Council. Gabel has been publicly quoted as stating the Council did not vote on the decision to cancel or postpone the 2020 fall football season.

25. Samuel L. Stanley, Jr. ("Stanley") is President of Michigan State University and serves as Michigan State University's representative on the Council. Stanley has been publicly quoted as stating the Council did not take a formal vote on the decision to cancel or postpone the 2020 fall football season.

26. Sandy Barbour is Athletic Director at Penn State University. Barbour has been publicly quoted as stating it is "unclear" whether the Big Ten allowed Council members to vote on the decision before it was announced by Warren.

27. Athletic directors at all fourteen Big Ten member institutions were in favor of playing the 2020 fall football season.

28. At present, peer conferences intend to move forward with the 2020 fall football season. Among others, the SEC, ACC, and Big 12 have all announced modified schedules for their fall season. Member institutions of those conferences have also announced their intent to allow fans to attend games. Of the 130 FBS football teams, 77 continue to prepare for a fall season.

29. The Big Ten refuses to allow the Student Athlete Plaintiffs to participate in any 2020 fall football contests.

30. The Big Ten's decision will have a significant detrimental impact on the University of Nebraska and the Student Athletes. Beyond the direct impact on the Student Athlete Plaintiffs and their teammates, the decision of the Big Ten to forego football in the fall of 2020 also has a direct and significant impact on businesses in Lancaster County and the greater Nebraska community.

31. The Big Ten's flawed and ambiguous decision-making process has caused and will continue to cause irreparable harm to the Student Athlete Plaintiffs, for which they have no adequate remedy at law. While other student athletes in other conferences will be able to continue growth and development and showcase their talent through their fall seasons, the Student Athlete Plaintiffs will be unable to participate in any games, showcase their talent to

professional scouts, or effectively develop their brand to set them up to market their name/image/likeness under recent changes in Nebraska law.

COUNT I

TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCIES

32. The Student Athlete Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-31 above as though fully set forth herein.

33. The Student Athlete Plaintiffs had legitimate business expectancies, including but not limited to opportunities to play professional football, and opportunities to market themselves and develop their brand for multiple purposes including so that they can effectively market their name/image/likeness rights when the legal right to do so becomes effective under the Nebraska Fair Pay to Play Act, LB 962, which was passed by the Nebraska Legislature in 2020 and signed into law by Governor Ricketts on July 24, 2020.

34. There are limited opportunities for the Student Athlete Plaintiffs to develop their brand and market themselves, and the loss of an opportunity to compete in the fall along with other conferences, with national team and individual awards no longer available, will damage the Student Athlete Plaintiffs' opportunities for professional football prospects and further damage their opportunities to prepare themselves for taking advantage of the Nebraska Fair Pay to Play Act that affords them rights to market their name/image/likeness in years to come. As Nebraska football players, the Big Ten's prohibition on playing any football games in the fall of 2020 eliminates the primary, if not sole, manner in which the Student Athlete Plaintiffs can develop their brand and market themselves. The Big Ten's prohibition further reduces the ability of the Student Athlete Plaintiffs now and in the future to develop their brand and market themselves.

The Student Athlete Plaintiffs' rights under the Nebraska Fair Pay to Play Act give rise to a reasonable expectation of financial benefit.

35. The Big Ten is aware of the existence of the Student Athlete Plaintiffs' legitimate business expectancies.

36. The Big Ten intentionally interfered with the Student Athlete Plaintiffs' legitimate business expectancies and such interference was unjustified. For example, the announced decision was not the product of a vote of the Council and/or was in violation of the Bylaws and Handbook.

37. The Big Ten's interference was also unjustified because, upon information and belief, the Big Ten's decision to cancel the fall 2020 football season was arbitrary and capricious and was based on flawed data that has no application to the present setting. Upon information and belief, the Big Ten relied heavily on a study of the health effects of COVID-19 that involved COVID-impacted patients who bear little resemblance to the Student Athlete Plaintiffs, who are much older than the Student Athlete Plaintiffs, and who are not in similar physical condition as the Student Athlete Plaintiffs. Upon information and belief, the study relied upon has no clinical significance. The purported reliance on such data, which has been sharply criticized nationally and internationally by numerous medical professionals, is also unreasonable and unjustified, and arbitrary and capricious, because it does not take into account significant countervailing safety issues that actually render the college football environment a *safer* place for the Student Athlete Plaintiffs when compared to an environment where college football is not being played.

38. Despite being requested to disclose the particulars of the vote referenced above and the medical data relied upon for its decision, the Big Ten has wholly refused to produce any such data or information. For example, the Big Ten has refused to produce the particulars of the

supposed vote its own Commissioner claims has occurred but which has been called into question by multiple representatives of Big Ten member institutions.

39. The Big Ten's interference proximately caused damages to the Student Athlete Plaintiffs, and the Student Athlete Plaintiffs seek nominal damages. The Student Athlete Plaintiffs hereby stipulate, represent, and agree that they will neither seek nor accept damages of \$75,000 or more in this action.

40. The Student Athlete Plaintiffs have no adequate remedy at law.

41. The Student Athlete Plaintiffs are also entitled to temporary and permanent injunctive relief as more fully set forth herein.

COUNT II

BREACH OF CONTRACT

42. The Student Athlete Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-41 above as though fully set forth herein.

43. A principal reason the Big Ten exists is to provide opportunities to its student athletes and to benefit its student athletes. The Big Ten's Governing Documents are prepared for the purpose of providing an elite environment for its student athletes, so that student athletes can be successful on the field and in the classroom, and so that the student athletes' activities and competitions can be governed by a fair system of governance where each member institution has the right to formally vote on major decisions that will significantly impact the student athletes.

44. An important function of the Governing Documents is to benefit student athletes. The Governing Documents evidence a clear intent to benefit student athletes within the conference, and the Governing Documents contemplated the rights and interests of Big Ten student athletes and provided for their rights and interests. The Big Ten and University of

Nebraska clearly intended to confer a benefit on student athletes by providing for orderly administration, operation, and governance of athletic contests for member institutions.

45. The Big Ten has made numerous public statements confirming that its core mission is to benefit student athletes at its member institutions, including the Student Athlete Plaintiffs. The Big Ten has stated that its "primary responsibility is to make the best possible decisions in the interest of [its] students, faculty, and staff." The Big Ten has publicly stated that the health and welfare of its student athletes are "at the center of every decision [it] make[s]" and "at the center of [the] decision-making process" regarding fall 2020 sports. The Big Ten has publicly stated that it understands and appreciates what participation in sports means to its student athletes and that it therefore must make the best decisions possible for its student athletes so that they can excel in all areas of their lives.

46. The Student Athlete Plaintiffs are third party beneficiaries under the Governing Documents. The Student Athlete Plaintiffs' status as third party beneficiaries affords them certain rights thereunder, including but not limited to the right to expect the Big Ten will follow its own governing documents and all of its other rules, regulations and guidelines; will not make arbitrary and capricious decisions; and when a vote on a decision as momentous as canceling all fall sports is announced, will conduct an actual vote. The Big Ten's actions and decisions significantly impact the Student Athlete Plaintiffs.

47. In addition, the Student Athlete Plaintiffs and the Big Ten have agreed to perform certain obligations. Among other things, the Student Athlete Plaintiffs agreed to subject themselves to certain rules and regulations, while the Big Ten has agreed to coordinate athletic competitions including football subject to conference rules and requirements. The Big Ten has a

duty of good faith and fair dealing not to render arbitrary and capricious decisions that are based on flawed and/or incomplete data and which negatively impact the Student Athlete Plaintiffs.

48. The Big Ten breached its express and implied contractual obligations by reaching a decision that was not properly voted upon by its Council leadership and thereby not following established procedures and guidelines for the decision-making process, and further by relying upon incomplete and flawed data which negatively impacted the Student Athlete Plaintiffs.

49. The Student Athlete Plaintiffs were damaged by the Big Ten's breach, and the Student Athlete Plaintiffs seek nominal damages in this action. The Student Athlete Plaintiffs hereby stipulate, represent, and agree that they will neither seek nor accept damages of \$75,000 or more in this action.

50. The Student Athlete Plaintiffs have no adequate remedy at law.

51. The Student Athlete Plaintiffs are also entitled to temporary and permanent injunctive relief as more fully set forth herein.

COUNT III

DECLARATORY JUDGMENT

52. The Student Athlete Plaintiffs incorporate by reference the allegations set forth in Paragraphs 1-51 above as though fully set forth herein.

53. This action is brought pursuant to the Declaratory Judgment Act, Neb. Rev. Stat. § 25-21,149, to determine the rights and obligations of the parties hereto.

54. Based on the public statements identified above, the Council did not vote on whether to cancel or postpone the 2020 fall football season. The Big Ten has been unwilling and/or unable to produce any records evidencing any such vote.

55. The failure of the Big Ten to hold a vote on the purported decision to cancel the 2020 fall football season is a violation of the Governing Documents and the decision should be declared invalid and unenforceable.

56. The Student Athlete Plaintiffs have no adequate remedy at law.

57. The Student Athlete Plaintiffs are entitled to temporary and permanent injunctive relief as more fully set forth herein.

IRREVOCABLE DAMAGES LIMITATION

58. The Student Athlete Plaintiffs hereby irrevocably stipulate, represent, and agree that they do not seek damages of \$75,000 or more in this action and will never seek, collect, recover, or accept damages valued by them at \$75,000 or more in this action.

PRAYER FOR RELIEF

WHEREFORE, the Student Athlete Plaintiffs respectfully request an Order declaring invalid the Big Ten's purported decision to cancel the 2020 fall Big Ten football season; awarding temporary and permanent injunctive relief, including an Order enjoining the Big Ten from implementing and enforcing its decision reached in violation of the Big Ten Governing Documents and based on incomplete and/or flawed data; awarding damages for breach of contract and tortious interference in an amount less than \$75,000; and providing for such other and further relief as the Court deems fair and just.

Dated this 27th day of August, 2020.

Respectfully submitted,

GARRETT SNODGRASS, GARRETT NELSON,
ETHAN PIPER, NOA POLA-GATES, ALANTE
BROWN, BRANT BANKS, BRIG BANKS, and
JACKSON HANNAH, Plaintiffs

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