

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE NATIONAL COLLEGIATE ATHLETIC)	
ASSOCIATION ATHLETIC GRANT-IN-AID)	MDL-2541
ANTITRUST LITIGATION)	
)	

**RESPONSE OF THE NCAA TO THE STATEMENTS OF KENDALL
GREGORY-MCGHEE AND THE MINNESOTA PLAINTIFFS**

Preliminary Statement

Two new lawsuits have been filed since April 10th, when defendant National Collegiate Athletic Association (“NCAA”) submitted its opposition to the motion by the plaintiff in *Alston v. NCAA*, No. 4:14-cv-01011-CW (N.D. Cal.) to transfer *Jenkins v. NCAA*, No. 3:14-cv-01678-FLW-LHG (D.N.J.), to the Northern District of California pursuant to 28 U.S.C. §1407.

On April 17th, in the Northern District of California, Kendall Gregory-McGhee sued the NCAA and the same five athletic conferences named as defendants in *Alston* and *Jenkins*, in a case captioned *Gregory-McGhee v. NCAA*, No. 4:14-cv-01777-CW (N.D. Cal.). The *Gregory-McGhee* complaint is virtually identical to the complaint in *Alston*. On the following day, Gregory-McGhee submitted a statement to this Panel supporting plaintiff Alston’s motion to transfer.

On April 25th, in the District of Minnesota, seven current and former college athletes sued the NCAA, the five conferences named as defendants in *Alston*, *Jenkins*, and *Gregory-McGhee*, and six additional conferences, in a case captioned *Floyd v. NCAA*, No. 0:14-cv-01290 (D. Minn.). Even though they filed their action in Minnesota, the *Floyd* plaintiffs promptly developed a strange aversion to their own choice of forum, filing a statement with this Panel on

May 12th supporting the centralization of all four pending cases in the Northern District of California.

With the addition of the *Gregory-McGhee* and *Floyd* cases, there are now twenty-five parties in the four pending actions. As shown below and in the attached map and chart, the locations of the fourteen new parties in *Floyd* and *Gregory-McGhee* (eight new plaintiffs and six new defendants) only strengthen the conclusion that the Northern District of California is inconvenient and that, if centralization were appropriate, a location such as Indianapolis would be a far more convenient forum. No party seeking centralization in California actually resides there. In fact, the only two parties located there oppose centralization in California. Nineteen of the parties are located on the East Coast, the Midwest or the Southeast. And two of the four remaining parties, all of which are located in Colorado and West Texas, also oppose centralization of these cases in California.¹

To be sure, the NCAA continues to oppose centralization. Even if the Panel were persuaded that centralization is desirable, however, California would be an inappropriate forum. No plaintiff seeking centralization has any connection with California, and centralization there would be unduly burdensome for the overwhelming majority of the defendants.

I. Centralization of These Four Cases Is Still Unnecessary.

These four cases continue to raise many “individualized issues” and are therefore not good candidates for centralization in a single forum. *In re Chilean Nitrate Prods. Liability Litig.*, 787 F. Supp. 2d 1347, 1347 (J.P.M.L. 2011).

¹ As the attached chart shows, ten of the twenty-five parties are located more than 2,000 miles from Oakland, and twenty-three of the parties are located more than 900 miles from Oakland.

The *Alston* and *Gregory-McGhee* complaints challenge only the NCAA bylaw placing certain limits on athletic grants-in-aid (*see Alston* Compl. ¶ 143; *Gregory-McGhee* Compl. ¶ 125), but the *Jenkins* complaint challenges nineteen separate NCAA bylaws and mounts a sweeping attack on the continued importance and vitality of amateurism in college athletics (*see Jenkins* Compl. ¶ 42). Moreover, while *Jenkins* seeks only injunctive relief, the plaintiffs in *Alston* and *Gregory-McGhee*, in addition to injunctive relief, seek certification of a damages class. The putative classes in these three cases also differ. The *Jenkins* plaintiffs seek to represent classes comprising all Division I Football Bowl Subdivision football players and all Division I men's basketball players, whereas *Alston* and *Gregory-McGhee* limit their putative classes only to football players who received grants-in-aid from institutions that are members of the five original conference defendants.

The *Floyd* plaintiffs take the broadest approach, seeking both damages and injunctive relief on behalf of larger putative classes and suing more defendants. The classes they seek to certify include all Football Bowl Series college football players, all Division I-A men's basketball players, and all Division I-A women's basketball players. And, in addition to the NCAA and the five conferences sued in the first three actions, the *Floyd* plaintiffs have named six new conference defendants.

In light of these significant differences, centralization of the four cases will neither further the convenience of the parties and witnesses nor promote the just and efficient conduct of the actions. In light of the small number of pending actions, any efficiencies that might be achieved through transfer and consolidation can similarly, and more properly, be achieved through informal cooperation of counsel. *See In re Facebook Use of Name & Likeness Litig.*, 816 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011).

Accordingly, the pending motion to centralize these matters should be denied.

II. The Northern District of California is Not The Most Convenient or Appropriate Forum

Even if centralization were warranted, the Northern District of California is not an appropriate forum. In fact, the two new suits—and specifically the location of the parties in *Gregory-McGhee* and *Floyd*—overwhelmingly tip the scales against the Northern District of California as a convenient or appropriate forum.

The plaintiffs in *Gregory-McGhee* and *Floyd* have no connection whatsoever to California. Gregory-McGhee lives in Aurora, Colorado, and was formerly a student at the University of Minnesota. The Minnesota plaintiffs live in Minnesota, South Dakota, Arkansas, Texas and Georgia, and attend (or attended) schools in Minnesota, Florida, Arkansas, Texas and Georgia. Thus, none of the parties advocating centralization in the Northern District of California has any connection to that forum. As the NCAA has previously explained, “courts have held that ‘substantially less deference is warranted when the forum preferred by the plaintiff is not his home forum.’” *Treppel v. Reason*, 793 F. Supp. 2d 429, 436 (D.D.C. 2011) (citing *Reiffin v. Microsoft Corp.*, 104 F. Supp. 2d 48, 53 (D.D.C. 2000)).

Moreover, as a review of the attached map and chart demonstrate, California cannot in any respect be characterized as convenient for most of the defendants, especially the six conferences now named as defendants in the *Floyd* action. These conferences are located in Rhode Island, Georgia, Texas, Ohio, Colorado and Louisiana. With the addition of these six new defendants, the convenience of the parties and witnesses, the location of evidence, and the nexus to the principal issues all establish that the Southern District of Indiana is the most convenient and appropriate forum for these proceedings.

Having no personal connection to California, Gregory-McGhee and the Minnesota plaintiffs extol Judge Wilken's experience with *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, Case No. 09-01967 CW (N.D. Cal.), as a basis for centralizing these cases in the Northern District of California. But the specific issues in the *Name & Likeness* proceedings, and Judge Wilken's experience with those issues are not sufficiently similar to the issues presented in the four cases under consideration to justify transfer of these actions to the distant and inconvenient Northern District of California. The *Name & Likeness* cases challenge the alleged commercial use of student-athletes' names, images, and likenesses in videogames and broadcasts. They do not challenge the NCAA bylaws limiting athletic scholarships to grant-in-aid and prohibiting student-athletes from receiving compensation for their athletic performance.

Moreover, to the extent that Judge Wilken has gained general knowledge of the NCAA's rules and operations by presiding over the *Name & Likeness* proceedings, that experience is indistinguishable from the experience of several judges in the Southern District of Indiana. *See, e.g., Rock v. NCAA*, No. 1:12-cv-1019-JMS-DKL, 2013 WL 4479815 (S.D. Ind. Aug. 16, 2013) (Magnus-Stinson, J.) (denying motion to dismiss antitrust challenge to NCAA regulations on quantity and duration of athletic scholarships); *Agnew v. NCAA*, No. 1:11-CV-0293-JMS-MJD, 2011 WL 3878200 (S.D. Ind. Sept. 1, 2011) (Magnus-Stinson, J.) (dismissing antitrust challenge to the NCAA regulations capping the number of scholarships given per team), *aff'd*, 683 F.3d 328 (7th Cir. 2012); *George v. NCAA*, No. 1:08-cv-1684-WTL-JMS, 2009 WL 6965794 (S.D. Ind. Sept. 25, 2009) (Lawrence, J.) (granting NCAA's motion to dismiss allegations of an illegal gambling operation), *aff'd*, 439 F. App'x 544 (7th Cir. 2011); *NCAA v. Coors Brewing Co.*, No. IP 02-1325-B/S, 2002 WL 31431479 (S.D. Ind. Oct. 25, 2002) (Barker, J.)

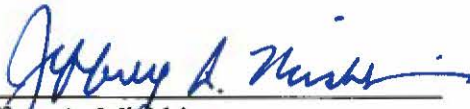
(remanding a dispute involving Coors' improper use of NCAA tournament tickets as a prize in commercial promotions).

Accordingly, the Northern District of California is not the most convenient and appropriate forum in which to centralize these cases. By far, most of the parties—and their witnesses and documents—are located in the eastern half of the United States. If the Panel is inclined to centralize these cases, then it should do so in a district that is more centrally located and accessible to the majority of parties and their witnesses. As demonstrated on the attached map and chart, the most convenient and appropriate centralized forum for these proceedings would be the Southern District of Indiana.

Conclusion

For the foregoing reasons, the motion to centralize these matters in the Northern District of California for coordinated or consolidated pretrial proceedings should be denied.

Respectfully submitted,



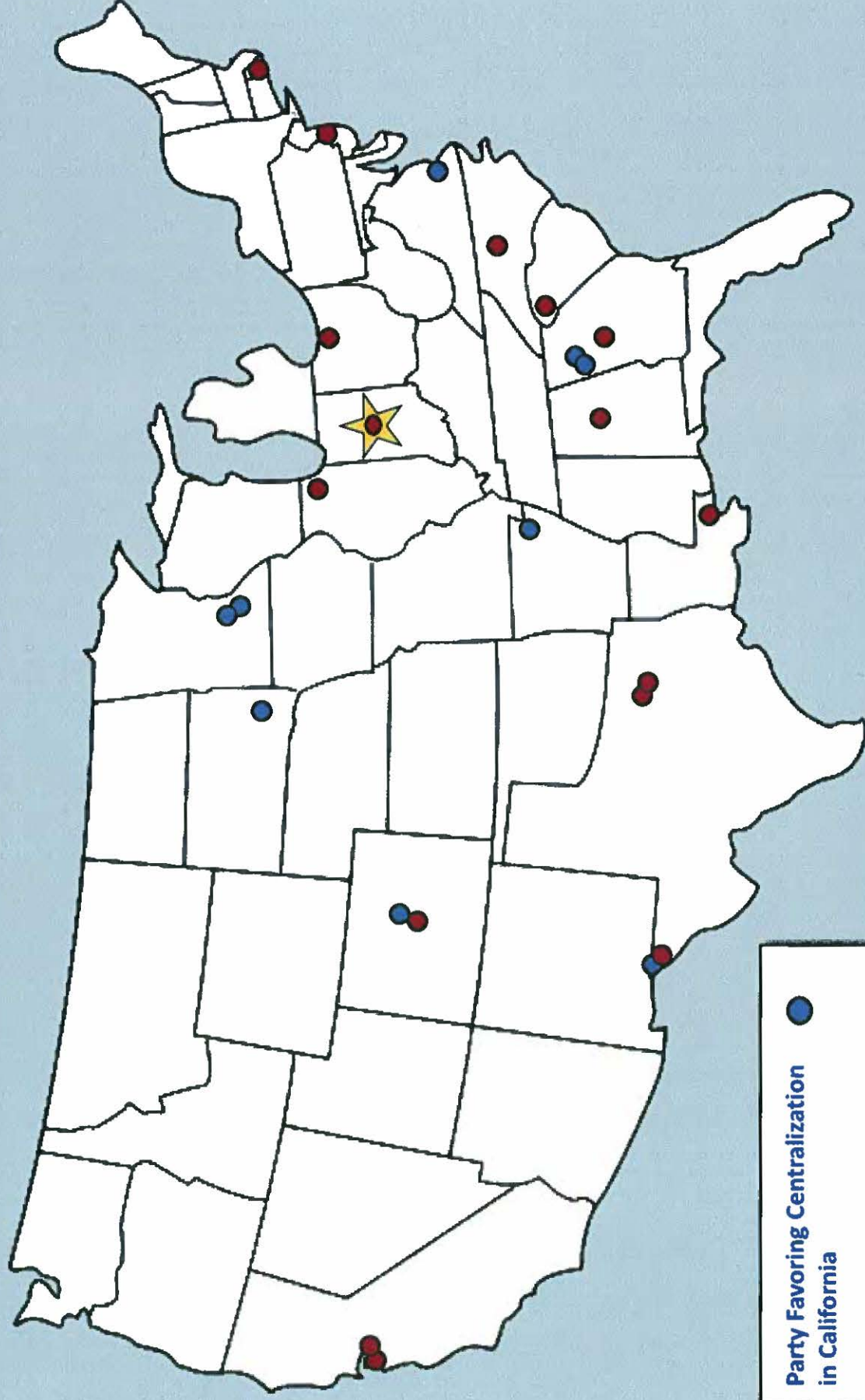
Jeffrey A. Mishkin
SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

Four Times Square
New York, N.Y. 10036
Telephone: (212) 735-3230
Facsimile: (917) 777-3230
jeffrey.mishkin@skadden.com

Counsel for Defendant National Collegiate
Athletic Association

Dated: May 20, 2014

Indiana is More Convenient Than California



	Party (location)	Miles to Indianapolis	Miles to Oakland
1	Alston, Shawne (Newport News, VA)	556	2,490
2	American Athletic Conference (Providence, RI)	784	2,677
3	Atlantic Coast Conference (Greensboro, NC)	431	2,331
4	Atlantic Sun Conference (Macon, GA)	499	2,192
5	Bennett, Duane (Minneapolis, MN)	512	1,575
6	Big Ten Conference (Rosemont, IL)	178	1,836
7	Big 12 Conference (Irving, TX)	769	1,466
8	Bohannon, John (El Paso, TX)	1,264	987
9	Conference USA (Irving, TX)	769	1,466
10	Davenport, Chris (Fairburn, GA)	438	2,123
11	Floyd, Sharif (St. Louis Park, MN)	514	1,570
12	Gregory-McGhee, Kendall (Aurora, CO)	991	948
13	Holliday, Ashley (Mableton, GA)	421	2,118
14	Jenkins, Martin (Clemson, SC)	396	2,194
15	Mid-American Conference (Cleveland, OH)	263	2,156
16	Moore, Johnathan (New Brunswick, NJ)	621	2,541
17	Mountain West Conference (Colorado Springs, CO)	999	948
18	NCAA (Indianapolis, IN)	0	1,926
19	Pac-12 (Walnut Creek, CA)	1,926	13
20	Perry, Kevin (El Paso, TX)	1,264	987
21	Southeastern Conference (Birmingham, AL)	434	2,003
22	Stone, Chris (Jonesboro, AR)	368	1,745
23	Sun Belt Conference (New Orleans, LA)	714	1,917
24	Theret, Kyle (Sioux Falls, SD)	605	1,391
25	Tyndall, William (Berkeley, CA)	1,938	5
	AVERAGE DISTANCE	706.16 miles	1,664.2 miles