

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CORTEZ BRAHAM, Jr., TATUO
MARTINSON,

Plaintiffs - Appellees,

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,

Defendant - Appellant.

Nos. 25-5040,
25-5962

D.C. Nos.
3:25-cv-00253-
MMD-CSD
2:25-cv-01376-
RFB-DJA

OPINION

Appeals from the United States District Court
for the District of Nevada
Miranda M. Du & Richard F. Boulware, II, District Judges,
Presiding

Argued and Submitted March 13, 2026
Las Vegas, Nevada

Filed September 9, 2026

Before: Mark J. Bennett and Gabriel P. Sanchez, Circuit
Judges, and David A. Ezra, District Judge.*

* The Honorable David A. Ezra, United States District Judge for the
District of Hawaii, sitting by designation.

Opinion by Judge Sanchez

SUMMARY**

Antitrust / Mootness

The panel dismissed as moot consolidated appeals by the NCAA from preliminary injunctions in antitrust actions under § 1 of the Sherman Act, allowing college football players to play in the 2025 season.

The panel concluded that the appeals were moot because the injunctions had already expired and the players' collegiate careers were over. Therefore, no effective relief could be granted to the NCAA. The panel further held that the NCAA failed to meet its burden to demonstrate that the mootness exception for controversies capable of repetition yet evading review should apply.

COUNSEL

Gregg E. Clifton (argued), Lewis Brisbois Bisgaard & Smith LLP, Phoenix, Arizona; Brandon D. Wright, Lewis Brisbois Bisgaard & Smith LLP, Reno, Nevada; John M. Samberg, John Samberg Attorney at Law, Reno, Nevada; for Plaintiffs-Appellees.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Rakesh Kilaru (argued), Wilkinson Stekloff LLP, Washington, D.C.; John M. Naylor and Jennifer L. Braster, Naylor & Braster, Las Vegas, Nevada; Ben D. Kappelman and F. Matthew Ralph, Dorsey & Whitney LLP, Minneapolis, Minnesota; for Defendant-Appellant.

OPINION

SANCHEZ, Circuit Judge:

Famously, in sports, “it ain’t over ‘til it’s over.”¹ But, in this case, it’s over. The game clock has run out on the 2025 college football season. With these appeals, the NCAA attempts one last Hail Mary pass: asking us to reverse the preliminary injunctions granted to these college football players that allowed them to play in the now complete 2025 season. Because these injunctions have already expired and these players’ collegiate careers are over, no effective relief can be granted to the NCAA. We therefore dismiss these appeals as moot.

I.

Plaintiff-Appellees Cortez Braham and Tatuo Martinson (“Plaintiffs”) are college football athletes who began their collegiate careers in 2019 at junior colleges but subsequently transferred to and played for NCAA Division I colleges. Plaintiffs each completed their five years of collegiate enrollment eligibility as maximally permitted under the

¹ Yogi Berra, *The Yogi Book: “I Really Didn’t Say Everything I Said”* 121 (1998).

NCAA's rules. *See* NCAA Bylaw 12.8 (Five-Year Rule).² Both players filed separate lawsuits in the U.S. District Court of Nevada during the summer of 2025, requesting injunctive relief against the NCAA so that they could compete in a sixth year of eligibility in the upcoming 2025 college football season. Plaintiffs alleged that the NCAA's rule allowing for only five years of eligibility, which includes years spent at junior colleges, was anticompetitive under Section 1 of the Sherman Act. *See* 15 U.S.C. § 1.

Shortly thereafter, each Plaintiff moved for a preliminary injunction requesting that the NCAA be enjoined from enforcing against each Plaintiff (1) the Five-Year Rule, and (2) the Rule of Restitution³ which allows the NCAA to punish member institutions that disobey its eligibility rules. Both district courts granted Plaintiffs' requests for preliminary injunctions. Per the terms of these injunctions, both Plaintiffs subsequently played in the 2025 college football season, which has completed. Plaintiffs then filed motions to dismiss the NCAA's respective appeals as moot because the terms of the preliminary injunctions have expired. We consolidated the NCAA's appeals.

² The Five-Year Rule permits student-athletes to compete in only four seasons of any one sport and requires that those four seasons must be completed within five calendar years from enrolling in a collegiate institution. The Five-Year Rule incorporates seasons played and years enrolled at any full-time collegiate institution (including junior colleges), regardless of whether it is part of the NCAA.

³ The Rule of Restitution allows the NCAA to penalize a member school if that school allows a student-athlete to participate in intercollegiate competition following a court order or injunction and that injunction is subsequently voluntarily vacated, stayed or reversed.

II.

Article III’s “case-or-controversy” requirement bars federal courts from deciding “‘questions that cannot affect the rights of litigants in the case before them.’” *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (per curiam) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (per curiam)). For that reason, an interlocutory appeal of the denial of a preliminary injunction is moot when a court “can no longer grant any effective relief sought in the injunction.” *Smith v. Helzer*, 95 F.4th 1207, 1212 (9th Cir. 2024) (quoting *Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016)). “The party asserting mootness bears the burden of establishing that there is no effective relief that the court can provide.” *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006). Once mootness is found, the burden shifts to the party opposing mootness to demonstrate that an exception to mootness applies. *See Native Vill. of Nuiqsut v. Bureau of Land Mgmt.*, 9 F.4th 1201, 1209 (9th Cir. 2021).

As Plaintiffs correctly explain, because they both completed their 2025 college football seasons, the terms of the injunctions against the NCAA have expired.⁴ “When an

⁴ The NCAA acknowledges that the bulk of each of the district courts’ injunctions have expired due to the conclusion of the 2025 college football season. Yet the NCAA contends that the appeal is not moot because the injunctions continue to bar the NCAA from enforcing the Rule of Restitution against the nonparty college institutions for which Plaintiffs competed during the 2025 season. We disagree. As the 2025 season has ended, and so too Plaintiffs’ alleged antitrust injuries, these preliminary injunctions do not extend indefinitely to nonparties who might be subject to a Rule of Restitution action by the NCAA. *See Robinson v. Nat’l Collegiate Athletic Ass’n*, 172 F.4th 271, 283 n.6 (4th Cir. 2026). (“[T]he penalties that rule would otherwise impose can have no effect on the Players regardless of our decision today, and it therefore does not contribute to keeping this appeal a live controversy.”)

appealed injunction expires by its own terms, the appeal generally becomes moot.” *Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 857 (9th Cir. 2022). Yet, the NCAA argues its appeals should not be dismissed as moot under the exception to mootness for disputes that are capable of repetition yet evading review. We disagree.

“[T]he capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). The exception applies only “when (1) the challenged action is too short in duration to be fully litigated before cessation or expiration, *and* (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.” *Foster v. Carson*, 347 F.3d 742, 746 (9th Cir. 2003) (internal quotations omitted) (quoting *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1098 (9th Cir. 2000)). As we explain below, the NCAA fails to meet its burden.

Plaintiffs insist that their injuries are not capable of repetition as to them because they have completed their 2025 seasons, have exhausted their eligibility for college football completely, and therefore their collegiate football careers have come to an end. The NCAA does nothing to rebut these facts and makes no argument that these Plaintiffs may pursue further eligibility or seek injunctions in the future. Rather, the NCAA argues that the exception to mootness should apply because the NCAA, as the defendant, will be subject to similar lawsuits by *other* plaintiffs in the future. However, “the possibility of a future controversy between a complaining party and some other person, not a party to the current lawsuit, does not fulfill the case or controversy requirement of article III.” *Lee v. Schmidt-Wenzel*, 766 F.2d

1387, 1390 (9th Cir. 1985). As we have explained, “[i]n order to apply the ‘capable of repetition’ doctrine to private parties, there must be a reason to expect that there will be future litigation of the same issue between *a present complaining party and a present defending party*.” *Id.* (emphasis added).

That the capable-of-repetition doctrine is focused on the parties to the action has been demonstrated repeatedly by the Supreme Court. Take *Los Angeles v. Lyons*. 461 U.S. 95 (1983). In *Lyons*, plaintiff Lyons sued the Los Angeles Police Department for damages and injunctive relief for placing him in a chokehold during a traffic stop. *Id.* at 98–99. The Court found that Lyons lacked standing to pursue injunctive relief. *Id.* at 111–12. In explaining why the court of appeals misapplied the capable-of-repetition-yet-evading review exception to the injunctive relief claim, the Court noted that the exception did not apply, in part, because Lyons had not demonstrated that it was sufficiently likely that Lyons himself would again be choked by the Los Angeles Police Department. *Id.* at 109, 112. Under the NCAA’s theory, the Court would have looked to see if other nonparty plaintiffs might suffer chokeholds and bring similar lawsuits against the Los Angeles Police Department. But that was not the Supreme Court’s analysis, which focused its capable-of-repetition inquiry only on the plaintiff and defendant before it.

The same was true in *DeFunis v. Odegaard* where the Court declined to apply the capable-of-repetition exception for a plaintiff whose lawsuit challenging a law school’s admissions policy finally reached the Supreme Court on the eve of his law school graduation. 416 U.S. 312, 319 (1974) (per curiam). As the Court explained in dismissing his appeal as moot, the plaintiff “will never again be required to

run the gantlet of the Law School's admission process, and so the question is certainly not 'capable of repetition' so far as he is concerned." *Id.* The *DeFunis* Court also reasoned that future challenges raised by other prospective students would not necessarily evade review. *Id.* But that was simply an *additional* reason supporting the Court's refusal to apply the capable-of-repetition exception. *See id.*

Finally, in *Honig v. Doe*, the Supreme Court held that the capable-of-repetition exception to mootness applied for one plaintiff who faced a likelihood of experiencing the wrong again, but denied the exception for a second plaintiff who had aged out such that a repeat of the harm was not possible. 484 U.S. 305, 318–20 (1988). That the Supreme Court analyzed mootness on a party-by-party basis in the consolidated appeal reinforces the conclusion that the capable-of-repetition inquiry is party-specific.

The NCAA cites two cases in support of its argument that where the defendant-appellant has a reasonable likelihood of being subject to future similar lawsuits by other nonparty plaintiffs, the defendant-appellant satisfies the capable-of-repetition prong. *See A.D. ex rel. L.D. v. Hawaii Dep't of Educ.*, 727 F.3d 911, 914 (9th Cir. 2013); *Where Do We Go Berkeley*, 32 F.4th at 859.⁵ These cases do not support the NCAA's cause.

A.D. involved the interplay between the Individuals with Disabilities Education Act ("IDEA"), a federal statute that entitled a disabled individual to free public education until he turns 22 years old, and a Hawaii statute that restricted

⁵ A third case relied upon by the NCAA, *Shell Offshore, Inc. v. Greenpeace, Inc.*, is distinguishable because the defendant-appellant argued, and the court held, that the wrong was capable of repetition as to the specific parties to that action. 709 F.3d 1281, 1288 (9th Cir. 2013).

public education to students under the age of 20. 727 F.3d at 912–13. A 20-year-old plaintiff received notice from the Hawaii Department of Education that his schooling would terminate and sued under the IDEA, seeking a stay-put order so that he could remain enrolled in school until he turned 22 years old. *Id.* at 913. By the time we resolved his appeal, the plaintiff had turned 22 years old and had indisputably aged out under the IDEA. *Id.* at 914. Because he had aged out of federal protection, we agreed that this plaintiff would never again face the same injury. *Id.* Nonetheless, we held that the Hawaii Department of Education met its burden of establishing the capable-of-repetition-yet-evading-review exception to mootness. We reasoned that it was reasonably likely the agency would be subject to future lawsuits by other plaintiffs, and because every plaintiff who turns 20 will necessarily age out of their injury within two years under the IDEA, the “litigation window might never stay open long enough” to review these disputes. *Id.*

A.D. is distinguishable from these appeals because there was no dispute in *A.D.* that the harm the plaintiff experienced, as well other potential plaintiffs, was necessarily time-limited: every such plaintiff would age out of their injury at age 22 regardless of whether the plaintiff won or lost on the merits of their claim. Here, in contrast, plaintiffs do not *always* automatically “age out” of their asserted injury—their alleged right to compete in an additional season of college football—before appellate review can be obtained. Rather, these plaintiffs expressly challenge the legality of the NCAA’s Five-Year Rule and therefore plaintiffs’ cases or controversies against the NCAA remain live on appeal. Indeed, the NCAA asserts that preliminary injunctions have been *denied* in the “overwhelming majority” of cases brought by similarly

situated plaintiff student-athletes. Presumably, an interlocutory appeal in those cases would remain live on appeal as well. Moreover, under the same Five-Year Rule theory that Plaintiffs are pursuing here, other plaintiffs can and have sought multiple seasons of additional collegiate eligibility. *See, e.g., Robinson*, 172 F.4th at 283–84 (4th Cir. 2026) (finding a similar appeal capable of repetition where it was “likely that the [plaintiff] Players will return to court seeking similar injunctive relief for [another] college football season”). Therefore, unlike the circumstances in *A.D.*, even if we find these appeals here moot, there are other potential appeals in other cases against the NCAA where it may not be so.

In *Where Do We Go Berkeley*, we held that the defendant-appellant had met their burden to establish the capable-of-repetition-yet-evading-review exception where an injunction had expired prior to appellate review. 32 F.4th at 857–59. The defendant argued that the action was capable of repetition because the plaintiffs had asked for an extension of the injunction once and may do so again. *Id.* at 857. We agreed, finding that because an extension had already been requested and granted, it was reasonably likely to recur in the same case. *Id.* at 858. The dispute was reasonably likely to recur because new people could join the suits or file suits of their own, and “another preliminary injunction—either in this case or in a similar case—would be similar enough to count as a recurrence.” *Id.* at 858–59. Unlike *Where Do We Go Berkeley*, here the NCAA has made no effort to argue that similar injunctions or extensions are likely to recur in Braham’s and Martinson’s cases. *See id.*

Neither *A.D.* nor *Where Do We Go Berkeley* stand for the broad proposition that the NCAA asks us to adopt—*i.e.*, that a defendant-appellant can satisfy the capable-of-repetition

exception to mootness merely by demonstrating that the defendant has a reasonable likelihood of being subject to future similar lawsuits by other nonparty plaintiffs. To agree with the NCAA's position would turn the relevant capable-of-repetition doctrine on its head by taking the focus away from the parties to the action and the plaintiff's complained-of wrong, and instead making the specter of litigation by any nonparty against the defendant the wrong itself.

Indeed, both *A.D.* and *Where Do We Go Berkeley* tied their holdings at least in part to the plaintiff's injury,⁶ and for good reason. There is no basis in law for completely divorcing the capable-of repetition prong from the parties to the action and the plaintiff's injury, contrary to the NCAA's argument. *See, e.g.*, 13C Fed. Prac. & Proc. Juris. § 3533.8 (3d ed.) (“[I]t is . . . required that the plaintiff will be affected by the predicted repetition.”); Tyler B. Lindley, *The Constitutional Model of Mootness*, 48 B.Y.U. L. Rev. 2151, 2158 (2023) (describing the “requirement that a plaintiff have suffered harm or be sufficiently likely to suffer harm in the future”).

Accordingly, because the NCAA has not demonstrated that the Plaintiffs here are reasonably likely to be subjected to the same action again, the NCAA has failed to demonstrate that these actions are capable of repetition.

⁶ *A.D.* justified extending the mootness exception only after it determined all similarly stated plaintiffs' injuries would necessarily expire prior to appellate review. 727 F.3d at 914. *Where Do We Go Berkeley* extended the mootness exception only after finding it was likely for the injunction to reoccur in the case before it. 32 F.4th at 858.

III.

The NCAA has failed to meet its burden to demonstrate that the mootness exception for controversies capable of repetition yet evading review should apply to these appeals. We dismiss the NCAA's appeals of these expired injunctions as moot and vacate the district courts' orders pursuant to the doctrine of *Munsingwear* vacatur. See *NASD Disp. Resol., Inc. v. Jud. Council of State of Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)).

DISMISSED.