

FOR PUBLICATION

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

NOAH BLYTHE,

Plaintiff - Appellee,

v.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,

Defendant - Appellant.

No. 26-1106

D.C. No.
3:26-cv-00100-
ART-CSD

OPINION

Appeal from the United States District Court
for the District of Nevada
Anne R. Traum, District Judge, Presiding

Argued and Submitted April 7, 2026
San Francisco, California

Filed September 9, 2026

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

Opinion by Judge Sanchez;
Concurrence by Judge Bennett

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

SUMMARY**

Antitrust

In an antitrust case under § 1 of the Sherman Act, the panel vacated the district court’s order preliminarily enjoining the NCAA from enforcing against college baseball player Noah Blythe its Five-Year Rule, which limits collegiate athletes to only four seasons of eligibility within five years of college enrollment.

The panel vacated the preliminary injunction in a prior order, and it provided the full rationale for that decision in its opinion.

Joining other circuits, the panel held that the Five-Year Rule is a commercial restraint subject to the Sherman Act. The panel held that under *NCAA v. Alston*, 594 U.S. 69 (2021), so long as non-compensation-related NCAA eligibility rules, such as the Five-Year-Rule, affect commerce, they are not immune from antitrust scrutiny.

The panel held that the district court nonetheless erred in finding that Blythe established a likelihood of success on the merits of his Sherman Act claim given the sparse evidentiary support for his motion for a preliminary injunction. The district court erred in defining the relevant market as the Division I collegiate baseball labor market, and it further erred in finding that Blythe met his burden to prove a substantial anticompetitive effect in that market. Given the dearth of evidence of anticompetitive effects offered by

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

Blythe, the district court erred in finding that he showed a likelihood that the Five-Year Rule constitutes an unreasonable restraint on trade or commerce.

Concurring, Judge Bennett wrote that he concurred in the majority's merits analysis of Blythe's claim under § 1 of the Sherman Act and agreed that the injunction should be vacated, but he disagreed with the majority's decision to reach the issue of whether the Five-Year Rule is a commercial rule subject to the Sherman Act.

COUNSEL

Steven A. Caloiaro (argued), Dickinson Wright PLLC, Reno, Nevada, for Plaintiff-Appellant.

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:

Plaintiff Noah Blythe is a college baseball player who sued the National Collegiate Athletic Association (“NCAA”) asserting that the NCAA’s Five-Year Rule violates Section 1 of the Sherman Act. *See* 15 U.S.C. § 1. We previously vacated the district court’s preliminary injunction. *See* Order, *Blythe v. NCAA*, No. 26-1106 (9th Cir. Apr. 8, 2026). We now provide our full rationale for that decision. We hold that the NCAA’s Five-Year Rule, which limits collegiate athletes to only four seasons of eligibility within five years of college enrollment, is a commercial restraint subject to the Sherman Act. But we conclude that the district court erred in finding that Blythe established a likelihood of success on the merits of his Sherman Act claim given the sparse evidentiary support for Blythe’s motion for a preliminary injunction.

I.

NCAA’s Bylaw 12.6, which contains the Five-Year Rule, governs seasons of competition and years of eligibility in college athletics. It provides in relevant part:

12.6 Seasons of Competition: Five-Year Rule. A student athlete shall not engage in more than four seasons of intercollegiate competition in any one sport An institution shall not permit a student-athlete to represent it in intercollegiate competition unless the student-athlete completes all

seasons of participation in all sports within the time periods specified below:

12.6.1 Five-Year Rule. A student-athlete shall complete the student-athlete's seasons of participation within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program of studies in a collegiate institution, with time spent on an official religious mission, in the armed services or with recognized foreign aid services of the U.S. government being excepted. For international students, service in the armed forces of the student's home country is considered equivalent to such service in the United States.

12.6.1.1 Determining the Start of the Five-Year Period. For purposes of starting the count of time under the five-year rule, a student-athlete shall be considered registered at a collegiate institution (domestic or foreign . . .) when the student-athlete initially registers in a regular term (semester or quarter) of an academic year for a minimum full-time program of studies, as determined by the institution, and attends the student's first day of classes for that term.

These rules apply equally to all collegiate institutions, and Bylaw 14.02.4 defines "collegiate institutions" as institutions of higher education that (1) are accredited by an entity recognized by the Department of Education and are

“legally authorized to offer at least a one-year program of study creditable toward a degree,” (2) “[c]onduct[] an intercollegiate athletics program, even though the institution is not accredited at the college level and authorized to offer at least a one-year program of study creditable toward a degree,” or (3) are “located in a foreign country.” Bylaw 14.02.4 defines “intercollegiate competition” as any athletic competition at either two-year or four-year collegiate institutions.

At the time Blythe filed this lawsuit and sought injunctive relief, he had completed his five years of collegiate enrollment eligibility as maximally permitted under the NCAA’s rules. Blythe initially enrolled in Hawaii Pacific University in 2020, a NCAA Division II baseball college, where he began his collegiate baseball career. After his first year, Blythe transferred and completed three years of eligibility at University of Antelope Valley (from 2021 to 2023), a California Pacific Conference college baseball school associated with National Association of Intercollegiate Athletics rather than the NCAA. University of Antelope Valley closed during his final baseball season there, and he transferred back to Hawaii Pacific University in 2024 where he completed his fifth year of eligibility.

Blythe then transferred to the University of Nevada, Reno (“UNR”), a NCAA Division I baseball school, and UNR applied for a waiver of the Five-Year Rule on Blythe’s behalf in the hopes that he could compete in the 2026 collegiate baseball season.¹ UNR’s request was denied by the conference, as was its appeal to the NCAA.

¹ The NCAA accepts eligibility-waiver applications only from its member institutions and not directly from the student-athletes.

Blythe then filed his complaint in district court against the NCAA. Relevant to this appeal, Blythe asserted a claim that the NCAA's Five-Year Rule violated Section 1 of the Sherman Act, and he moved to enjoin the NCAA from enforcing its Five-Year Rule so that he could compete in the 2026 baseball season. The district court granted Blythe's motion and imposed a preliminary injunction. The NCAA appealed, and moved for an expedited resolution of its appeal, which we granted.

At the time we heard oral argument in April 2026, Blythe was playing in the ongoing 2026 college baseball season at UNR pursuant to the terms of the district court's injunction. We vacated the injunction on April 8, 2026, and noted that this opinion would follow.

II.

"We review a district court's grant of a preliminary injunction for an abuse of discretion. A district court abuses its discretion if it 'base[s] its decision on an erroneous legal standard or on clearly erroneous findings of fact.'" *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1017 (9th Cir. 2016) (alteration in original) (citation omitted) (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1119 (9th Cir. 2009)).

A "preliminary injunction is 'an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.'" *Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 10 F.4th 905, 911–12 (9th Cir. 2021) (quoting *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir.

2012)).² The party seeking an injunction “must satisfy *Winter*’s four-factor test. A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (internal quotations omitted) (citing *Winter v. NRDC*, 555 U.S. 7, 20 (2008)). “The first factor under *Winter* is the most important—likely success on the merits.” *Id.* “Because it is a threshold inquiry, when ‘a plaintiff has failed to show the likelihood of success on the merits, we ‘need not consider the remaining three [*Winter* elements].’” *Id.* (quoting *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 944 (9th Cir. 2013)).

Although we hold that the district court correctly found that the NCAA’s Five-Year Rule is a commercial restraint subject to the Sherman Act, we vacate the injunction because Blythe failed to demonstrate a likelihood of success on the merits of his claim. The district court abused its discretion in holding otherwise given that Blythe presented almost no evidence to support his claim.

² We need not decide whether the injunction at issue here is a mandatory or prohibitive injunction. Under the typical standard of review applied to prohibitive injunctions or the heightened standard of review applied to mandatory injunctions, see *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023), overruled on other grounds by *Arizona All. for Retired Americans v. Mayes*, — F.4th —, No. 22-16490, 2026 WL 2277101 (9th Cir. Aug. 7, 2026), the outcome of this case is the same.

III.

Section 1 of the Sherman Act applies only to “restraint[s] of trade or commerce.” 15 U.S.C. § 1. The NCAA argues that the district court erred in finding the Five-Year Rule is a commercial restraint subject to the Sherman Act. We disagree.³

In 2021, the Supreme Court initiated a sea change in antitrust law concerning college athletics in *National Collegiate Athletic Association v. Alston*. 594 U.S. 69 (2021). *Alston* rejected the NCAA’s argument that the NCAA’s educational compensation rules were noncommercial amateurism rules, explaining that the rules “affect interstate trade and commerce and are thus subject to the Sherman Act.” *Id.* at 94. The Supreme Court refused to extend any “sort of judicially ordained immunity from the terms of the Sherman Act for its restraints of trade—that we should overlook its restrictions because they happen to fall at the intersection of higher education, sports, and money.” *Id.* Though *Alston* did not reach non-compensation-related

³ The NCAA principally relies on *O’Bannon v. National Collegiate Athletic Association*. 802 F.3d 1049 (9th Cir. 2015). But *O’Bannon* does not control the outcome of this case. In *O’Bannon*, we held that the NCAA’s compensation rules are commercial rules subject to antitrust scrutiny, rejecting the NCAA’s argument that its compensation rules were merely noncommercial eligibility rules. *Id.* at 1053. In dicta, distinguishing the facts presented from a now-overturned Third Circuit case, *O’Bannon* suggested that there may be some noncommercial “true ‘eligibility’ rule[s], akin to the rules limiting the number of years that student-athletes may play collegiate sports or requiring student-athletes to complete a certain number of credit hours each semester.” *Id.* at 1066 (discussing *Smith v. NCAA*, 139 F.3d 180, 185 (3d Cir. 1998), *overruled by Elad v. Nat’l Collegiate Athletic Ass’n*, 160 F.4th 407 (3d Cir. 2025)). The NCAA ignores, however, that this was not a holding in *O’Bannon*, and therefore the district court did not err by ignoring this dictum.

rules, like the Five-Year Rule at issue in this appeal, its reasoning suggests that so long as NCAA eligibility rules affect commerce, they are not immune from antitrust scrutiny.

We join our sister circuits which have unanimously held that the Five-Year Rule is a commercial restraint subject to the Sherman Act. See *Elad v. Nat'l Collegiate Athletic Ass'n*, 160 F.4th 407, 415 (3d Cir. 2025); *Fourqurean v. Nat'l Collegiate Athletic Ass'n*, 143 F.4th 859, 868 (7th Cir. 2025); *Robinson Nat'l Collegiate Athletic Ass'n*, 172 F.4th 271, 289 (4th Cir. 2026). The Third Circuit reversed its prior precedent holding otherwise and held that the district court properly found the Five-Year Rule commercial, noting that “[i]n light of changed market realities, and the NCAA’s ability to reframe even compensation rules as eligibility rules, we can no longer *per se* exclude all NCAA-labeled eligibility rules from Sherman Act scrutiny without first asking whether the specific rule at issue is commercial.” *Elad*, 160 F.4th at 415. *Elad* explained that the district court properly found the Five-Year Rule

commercial because it interferes with [the plaintiff’s] desire to compete in NCAA Division I athletics and profit from that participation. Stated differently, [the plaintiff] alleges that the JUCO Rule limits his participation in a labor market. And the Supreme Court has long recognized that restraints on labor through association rulemaking that “unduly interfere with the free exercise of the[] rights by those engaged, or who wish to engage, in trade and commerce” are subject to the Sherman Act.

Id. at 415 (citing *Anderson v. Shipowners' Ass'n of Pac. Coast*, 272 U.S. 359, 362–63 (1926)). Likewise, the Seventh Circuit held that the district court properly applied the rule of reason to the Five-Year Rule and noted that

to the extent the NCAA is attempting to “re-label [the Five-Year Rule] as a product feature and declare [it] ‘immune from § 1 scrutiny,’ *Alston*, 594 U.S. at 101, 141 (quoting *Am. Needle, Inc. v. NFL*, 560 U.S. 183, 199 n.7 (2010)), the Supreme Court already rejected this type of maneuver in *Alston*. The key question for determining whether the Five-Year Rule is so incapable of harming competition so as to justify quick-look approval is whether college football can proceed without this rule. *See id.* at 91. The NCAA has not offered any argument or evidence that its member schools would disband their football teams if the NCAA eliminated this rule.

Fourquarean, 143 F.4th at 868. And the Fourth Circuit reasoned that the Five-Year Rule “limit[s] college athletes’ participation in a labor market.” *Robinson*, 172 F.4th at 289 (citing *Elad*, 160 F.4th at 415). “This restraint on labor through association rulemaking interferes with student athletes’ free exercise of their rights to engage in commerce (i.e., participate in Division I football).” *Id.* at 289–90 (citing *Anderson*, 272 U.S. at 362–63 (applying section 1 of the Sherman Act to shipping associations’ restrictions on seamen’s access to the labor market); *Radovich v. Nat’l Football League*, 352 U.S. 445, 448–54 (1957) (applying section 1 to the professional football association’s

blacklisting of players who played football for a rival professional football conference). We find our sister circuits' reasoning persuasive and, for the same reasons, hold that the Five-Year rule is a commercial rule subject to review under the Sherman Act. Thus, we turn to the merits of Blythe's claim.

IV.

To satisfy the threshold inquiry of demonstrating a likelihood of success on the merits, a plaintiff must proffer evidence that is at least sufficient to raise serious questions going to the merits. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Mazurek v. Armstrong*, 520 U.S. 968, 976 (1997) (per curiam) (reversing court of appeals decision holding that plaintiffs had shown a likelihood of success “merely by alleging” their claim and without “rely[ing] on any evidence”); *Gonzalez v. Arizona*, 485 F.3d 1041, 1050 (9th Cir. 2007) (holding that plaintiffs had not demonstrated a likelihood of success on the merits because there was “no evidence in the record . . . to support [their] conclusion”); *K-2 Ski Co. v. Head Ski Co.*, 467 F.2d 1087, 1088–89 (9th Cir. 1972) (holding that “[a] verified complaint or supporting affidavits may afford the basis for a preliminary injunction,” but not if the facts alleged “consist largely of general assertions which are substantially controverted by counter-affidavits”). We conclude that the district court erred in finding that Blythe established a likelihood of success on the merits of his Sherman Act claim given that Blythe proffered almost no evidence to support his claim.

A.

The Sherman Act only prohibits restraints of trade or commerce that are undue. *Alston*, 594 U.S. at 81. There is

“a three-step, burden-shifting framework” for “distinguish[ing] between restraints with anticompetitive effect that are harmful to the consumer and restraints stimulating competition that are in the consumer’s best interest.” *Id.* at 96 (alteration in original) (internal quotations omitted) (quoting *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018)). Under this framework, “the plaintiff has the initial burden to prove that the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market.” *Am. Express Co.*, 585 U.S. at 541. “Should the plaintiff carry that burden, the burden then shifts to the defendant to show a procompetitive rationale for the restraint. If the defendant can make that showing, the burden shifts back to the plaintiff to demonstrate that the procompetitive efficiencies could be reasonably achieved through less anticompetitive means.” *Alston*, 594 U.S. at 96–97 (internal quotations omitted) (quoting *Am. Express Co.*, 585 U.S. at 541–42).

1.

Before a court can assess whether a rule has an anticompetitive effect, it “must first define the relevant market.” *Am. Express Co.*, 585 U.S. at 542. Without defining the relevant market, “there is no way to measure the defendant’s ability to lessen or destroy competition.” *Id.* at 543 (cleaned up) (quoting *Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965)). The validity of the “relevant market” is “a factual element rather than a legal element.” *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038, 1045 (9th Cir. 2008) (citing *High Tech. Careers v. San Jose Mercury News*, 996 F.2d 987, 990 (9th Cir. 1993)).

“The relevant market is defined as ‘the area of effective competition,’ meaning ‘the arena within which significant substitution in consumption or production occurs.’” *Robinson*, 172 F.4th at 293 (quoting *Am. Express Co.*, 585 U.S. at 543). “The outer boundaries of [the relevant] market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.” *Newcal Indus., Inc.*, 513 F.3d at 1045 (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962)). “In the labor market context, as here, the market is comprised of those employers seen by workers as reasonably good substitutes.” *Fourquarean*, 143 F.4th at 869–70 (citing *Todd v. Exxon Corp.*, 275 F.3d 191, 202 (2d Cir. 2001)). The relevant market also “encompasses notions of geography,” and a “geographic market extends to the ‘area of effective competition’ where buyers can turn for alternate sources of supply.” *Oltz v. St. Peter’s Cmty. Hosp.*, 861 F.2d 1440, 1446 (9th Cir. 1988) (cleaned up) (quoting *Moore v. James H. Matthews & Co.*, 550 F.2d 1207, 1218 (9th Cir. 1977)). And it “must ‘correspond to the commercial realities of the industry.’” *Am. Express Co.*, 585 U.S. at 544 (quotation marks omitted) (quoting *Brown Shoe Co.*, 370 U.S. at 336).⁴

⁴ Thus, as aptly pointed out by the Fourth Circuit in a similar context (student-athlete football players challenging the Five-Year Rule), the relevant market analysis likely requires the resolution of numerous critical questions:

For example, is the correct market definition that of all college football (i.e., including NCAA Division I, II, and III as well as JUCOs) or is it just NCAA Division I? Are players from Division II and III schools reasonable substitutes, such that these schools should be part of the market definition? What about JUCOs? Are any athletes choosing JUCOs over Division I

The NCAA contends that the district court erred at this threshold step by relying on *Alston*, other district court orders, and Blythe's argument in his motions and unverified allegations in his complaint, rather than any evidence presented by Blythe concerning the relevant market. We agree. In defining the relevant market as the "Division I collegiate *baseball* labor market," the district court relied on *Alston* and other district court preliminary injunction orders that also relied on *Alston* to define college *football* or *basketball* labor markets in those cases. These markets are not interchangeable. *Alston*'s market definition was cabined to "athletic services in men's and women's Division I basketball and FBS football," and in no way discussed college baseball or its markets. *Alston*, 594 U.S. at 81.

More importantly, the district court's cursory analysis of the relevant market in Blythe's action, and the evidence that Blythe presented to the district court to define the relevant

schools and, if not, is it because of the JUCO Rule? How does the availability of revenue-sharing change the market's recruitment? How does foreclosing experienced former JUCO players from their would-be third and fourth years of NCAA competition affect the Division I football labor market? Do NCAA Division I football teams compete with NFL teams for players post-*Alston*?

Robinson, 172 F.4th at 294 n.15. The NCAA here poses additional questions that may need to be answered in defining the relevant market: Are any athletes choosing professional baseball leagues over Division I schools? Does the alleged labor market extend to foreign student athletes and institutions? We do not purport to identify all the questions that would need to be resolved to define the relevant market here. Rather, like the court in *Robinson*, we pose these questions to demonstrate that "there are many aspects of the market that should be considered when finalizing a market definition." *Id.*

market, fall far short of what is necessary under Supreme Court authority. *See Am. Express Co.*, 585 U.S. at 541 (“The rule of reason requires courts to conduct a fact-specific assessment of market power and market structure to assess the restraint’s actual effect on competition.” (cleaned up)); *Alston*, 594 U.S. at 93 (“Whether an antitrust violation exists necessarily depends on a careful analysis of market realities. If those market realities change, so may the legal analysis.” (citation omitted)).

Recently, the Third, Fourth, and Seventh Circuits reversed the grant of preliminary injunctive relief against the NCAA by district courts that had similarly relied on *Alston* to define the relevant labor market for NCAA Division I football. *See Fourquarean*, 143 F.4th at 870; *Elad*, 160 F.4th at 417; *Robinson*, 172 F.4th at 293–94. In finding that the district courts had abused their discretion, our sister circuits explained that “[r]eliance on a previously accepted market, without inspection of current market realities, is antithetical to antitrust legal principles.” *Elad*, 160 F.4th at 417. Rather, the “[r]ule-of-reason analyses under Section 1 of the Sherman Act,’ when relying on a showing of market power, ‘require a well-defined relevant market and cannot rely on antiquated market definitions accepted on different evidence and in a different posture.’” *Robinson*, 172 F.4th at 294 (alteration in original) (quoting *Elad*, 160 F.4th at 417). “[W]hether an antitrust violation exists necessarily depends on a careful analysis of market realities,” *Fourquarean*, 143 F.4th at 870 (quoting *Alston*, 594 U.S. at 93), and “[t]he market realities for college sports have changed in the four years since *Alston*” because the profit opportunities plaintiff sought from another season of college football play “did not exist pre-*Alston*,” *id.*

Blythe’s evidentiary offering to define the relevant market here is as paltry as that of the plaintiffs in *Elad*, *Fourquarean*, and *Robinson*. Even if *Alston* had discussed the college baseball market, the NCAA correctly points out that the realities of college athletics as it stood in *Alston* have dramatically changed in the subsequent five years. For example, before *Alston*, the NCAA capped the education-related benefits permitted for student-athletes—the subject of the injunction affirmed by *Alston*. 594 U.S. at 74, 107. It was only after *Alston* that the NCAA began allowing student-athletes to earn compensation for their athletic performance and their name, image, and likeness (NIL), unrelated to their education. See *Fourquarean*, 143 F.4th at 864.

Despite these far-reaching changes to college athletics, Blythe presented almost no concrete evidence to define the alleged collegiate baseball market, let alone its changes post-*Alston*. Blythe attached as an exhibit the 2024–25 Opendorse Report which provides some generalized statistics about the current state of the collegiate NIL market at large. Beyond some statistics about average NIL compensation for college baseball (among other sports), this report contains nothing to assist the district court in defining the purported relevant market—the collegiate baseball labor market. This report is inadequate for defining that market: it does not address market dynamics, the relevant market participants, or whether any market participants are employers seen as reasonably good substitutes. For the same reasons, Blythe’s evidence showing that “71 percent of all 2025 MLB Draft picks were drafted out of DI baseball teams” fails to define the relevant market.

The district court also cited Blythe’s declaration for the fact that Blythe “personally observe[d] that despite playing

at an elite level in the NAIA and Division II programs, he was never offered an NIL opportunity.” As the NCAA aptly explains, “[t]he personal observations of a single player who was unable to previously obtain NIL compensation and a single statistic that measures NIL compensation for DI athletes is not the market evidence or economic data needed to support a definition of the relevant market.” Indeed, Blythe presented no evidence regarding how to define the relevant labor market as a whole, including any concrete demonstration of what other employers might be acceptable or unacceptable substitutes (*e.g.*, professional baseball leagues or other college baseball leagues).

Finally, Blythe asserts that the Five-Year Rule is a horizontal restraint and therefore the market definition requirements should be loosened. We disagree. Only where “horizontal restraints involve agreements between competitors not to compete in some way” has the Supreme Court “concluded that it did not need to precisely define the relevant market to conclude that th[o]se agreements were anticompetitive.” *Am. Express Co.*, 585 U.S. at 543 n.7 (discussing *FTC v. Indiana Federation of Dentists*, 476 U.S. 447 (1986), and *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643 (1980) (*per curiam*)). In *Alston*, where the NCAA had not contested the market definition and the Supreme Court had evaluated the NCAA’s “admitted horizontal price fixing,” 594 U.S. at 86, the Supreme Court nevertheless stated that “[w]hether an antitrust violation exists necessarily depends on a careful analysis of market realities,” *id.* at 93. This pronouncement defeats Blythe’s argument for a lesser market definition requirement in this case. Moreover, for the reasons discussed below, it is not immediately apparent that the Five-Year Rule is anticompetitive such as would warrant

a less precise market definition. Therefore, we conclude that the district court erred in defining the relevant market.

2.

Even had the district court adequately defined the relevant market, the court further erred in finding that Blythe met his burden to prove a substantial anticompetitive effect in that market. Blythe provided no evidence beyond his own personal exclusion from that market to support his claim. As the Seventh Circuit recently explained,

To establish the theory of anticompetitive effects, . . . [the plaintiff] would need to show that the Five-Year Rule creates, protects, or enhances the NCAA's dominant position in the market—and thus the NCAA's ability to depress student-athlete compensation below the competitive level—by making it more difficult for the NCAA's existing or potential rivals to compete against the NCAA. But [the plaintiff] relies solely on his own exclusion from participating in college football as proof of anticompetitive effects. He is not a rival of the NCAA, and he has not drawn a link from his exclusion to an adverse effect on an existing or potential rival of the NCAA.

Fourquarean, 143 F.4th at 870. Blythe, like the plaintiff in *Fourquarean*, presents no evidence beyond his own exclusion which would allow the district court to conclude that the Five-Year Rule depresses labor compensation or has any other anticompetitive effect on the market. Indeed, the district court relied entirely on other cases finding

anticompetitive effects and discussed no evidence presented by Blythe.

Blythe argues that the Five-Year Rule is a horizontal restraint that harms competition by excluding from the market a whole cohort of student-athletes seeking to sell their labor. While it is true that a restraint causing substantial anticompetitive harm to sellers is cognizable under the Sherman Act, *see O'Bannon*, 802 F.3d at 1070–71 (discussing in the context of price-fixing), Blythe presents no evidence to establish either directly or indirectly that the student-athlete sellers/laborers are substantially anticompetitively harmed by the Five-Year Rule “as a whole” in the relevant market. *See Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 985 (9th Cir. 2023) (quoting *PLS.Com, LLC v. Nat’l Ass’n of Realtors*, 32 F.4th 824, 839 (9th Cir. 2022)). In fact, as the Seventh Circuit explained, the Five-Year Rule may actually increase competition in some ways: “Under ordinary principles of supply and demand, a restraint that limits the supply of workers in a labor market [like the Five-Year Rule] would increase, not decrease, worker compensation.” *Fourquarean*, 143 F.4th at 871.⁵ That Blythe was personally injured by the Five-Year

⁵ Blythe cites *Connell Construction Company, Inc. v. Plumbers & Steamfitters Local Union No. 100* for the proposition that the Supreme Court found a union agreement with various contractors to make nonunion subcontractors “ineligible to compete for a portion of the available work” substantially anticompetitive. 421 U.S. 616, 625 (1975). But *Connell* merely determined that such an agreement between unions and private contractors was not exempt from federal antitrust scrutiny under the organized labor exemption. *Id.* at 622. Having declared the agreement not exempt, the Supreme Court remanded “for consideration whether the agreement violated the Sherman Act.” *Id.* at 637. *Connell* does not support Blythe’s proposition, nor does he cite any other caselaw

Rule does not evidence the Rule’s anticompetitive effect on the market as a whole. *Cf. McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 812 (9th Cir. 1988) (“The elimination of a single competitor, without more, does not prove anticompetitive effect.”); *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1200 (9th Cir. 2012) (“Plaintiffs may not substitute allegations of injury to the claimants for allegations of injury to competition.”).

Given the dearth of evidence of anticompetitive effects offered by Blythe, the district court erred in finding that Blythe showed a likelihood that the Five-Year Rule constitutes an unreasonable restraint on trade or commerce—and thus a likelihood of success on the merits of Blythe’s Sherman Act claim, on which the preliminary injunction rests. Because Blythe failed to demonstrate a likelihood of success on the merits, we need not reach the remaining *Winter* factors. *See Garcia*, 786 F.3d at 740.

VACATED.

finding similar restraints limiting workforce eligibility to be anticompetitive.

BENNETT, Circuit Judge, concurring:

I concur in the majority’s merits analysis of Blythe’s claim under Section 1 of the Sherman Act, and thus I agree that the injunction should be vacated. I disagree, however, with the majority’s decision to reach the issue of whether the Five-Year Rule is a commercial rule subject to the Sherman Act. I would not decide that issue. First, it is unnecessary to resolve the issue to decide this appeal. Second, the antitrust analysis is “sensitiv[e]” to “market realities.” *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 93 (2021). But, as noted by the majority, Blythe offered only “sparse evidentiary support” below. Maj. Op. 4. I therefore believe that the more prudent course would have been to assume without deciding that the Five-Year Rule is a commercial rule.