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**PETITION FOR RECONSIDERATION OF THE
UNIVERSITY OF SOUTHERN CALIFORNIA PUBLIC
INFRACTIONS REPORT (JUNE 10, 2010)**

Submitted to the NCAA Committee on Infractions on behalf of
Petitioners University of Southern California and Reginald A. Bush, II

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PETITION FOR RECONSIDERATION

The University of Southern California (“USC”) and Reginald A. Bush, II (“**Bush**”), through undersigned counsel, respectfully petition under NCAA Bylaw 19.11.4 (2023) for reconsideration of the 2010 decision of the Committee on Infractions vacating wins of the USC football team and vacating Bush’s personal records and eligibility (Penalty Nos. 5 and 8 only). *See* NCAA Committee on Infractions, UNIVERSITY OF SOUTHERN CALIFORNIA PUBLIC INFRACTIONS REPORT 57–58 (June 10, 2010) (“**Report**”).

USC joins in this Petition insofar as its participation is required to overcome any standing issue and joins in the request to vacate Penalty Nos. 5 and 8. *See* NCAA June 21, 2022 letter Re: Bush Reconsideration Request. USC defers to Bush and undersigned counsel for the substance of the Petition.

Substantial new information, which emerged in the litigation between the NCAA and former USC assistant football coach Todd McNair, revealed that the Report misrepresented the testimony of the critical witness in the investigation related to the allegations and penalties involving Bush. Indeed, NCAA investigators conducted the unsworn interview of that witness so unprofessionally that a court concluded his testimony was entirely unreliable. That alarming revelation negates the Report’s conclusions about Bush, which rest on the witness’s testimony as the “linchpin” and which Bush has steadfastly denied. The recent disclosures thus demonstrate both “new information that is directly related to the decision” and “prejudicial error in processing of the case,” each an independent ground for reconsideration under NCAA rules. *See* NCAA Bylaw 19.11.4.1 (2023). Accordingly, this petition should be granted for reconsideration of Penalty Nos. 5 and 8 only.

BACKGROUND

Bush was a student at the University of Southern California from 2003 to 2005. As a running back on the football team, Bush enjoyed one of the most successful individual careers in the history of college football. USC won the 2005 BCS National Championship, and the following season Bush was awarded the Heisman Trophy. In 2010, however, the NCAA Committee on Infractions (“**Committee**”) issued a report concluding that Bush violated NCAA amateurism rules and that USC failed to maintain adequate institutional control. The Committee

imposed a number of penalties on USC, including (as relevant here) vacating USC's wins in games in which Bush played and was purportedly ineligible—including all of the 2005 Heisman campaign—and vacating Bush's individual records in those games. As a consequence of that decision, the Heisman Trophy Trust demanded that Bush relinquish his Heisman Trophy, which he reluctantly did and the only player in history to do so.

In the same Report, the Committee also found that a USC assistant coach, Todd McNair (“**McNair**”), had been aware of some of Bush's alleged infractions. But in years-long judicial proceedings that resulted in a settlement in mid-2022, two California state courts found that the Report's claims about McNair were untrue. Most troublingly, the courts concluded that the Report had misrepresented the testimony of the central witness in the investigation, a convicted felon named Lloyd Lake. Mr. Lake was the key witness and admitted “linchpin” against Bush. USC and Bush accordingly now seek reconsideration of the Report's findings against them and the associated penalties (Nos. 5 and 8 only).

A. Bush's Records and Achievements

Bush was born in 1985 in San Diego. His mother, Denise Griffin, has long served the community as a sheriff's deputy and a corrections officer. His biological father left the family when Bush was just an infant. But his stepfather, LaMar Griffin, a school security guard, came into his life when he was two years old. Bush considers LaMar Griffin to be his father.

Bush grew up poor. His family lived in an impoverished part of San Diego where children were targets for drug traffickers and gangs. Although his parents worked hard, they could not earn enough money to move to a different neighborhood. From an early age, Bush's home life was troubled. As a child, he had a difficult and contentious relationship with LaMar Griffin. Like many boys in similar situations, Bush for a period resented his father because he was not Bush's biological father. His parents would often explode into heated arguments, although things never turned physical. Because of what he felt to be “negative energy” in his home, Bush dreamed of escaping to a different, more stable environment.

Then he discovered football. At the age of nine he joined the local Pop Warner team. He was asked to play running back. His innate talent for the position instantly emerged. In the second game he ever played, he rushed for 540 yards and scored eight touchdowns. As he continued to compete and improve, he became something of a

local star—a young kid from a poor part of town who had the potential to be the greatest player that San Diego had ever produced. His dream was to play football in college, like his heroes Marshall Faulk of San Diego State and Eddie George of Ohio State.

Bush's financial circumstances forced him to develop his talent largely on his own. Unlike children for more affluent families, he did not attend elite football camps or participate in other programs that cost money that his parents didn't have. But he took the opportunities where he could find them. Each summer he attended a free football camp organized by former San Diego Charger Martin Bayless. He would look back on those camps as the highlights of his childhood. One summer he even met future NFL Hall of Famer Junior Seau.

From 1999 to 2003, Bush attended Helix High School in La Mesa, California. By his sophomore year, Bush was the starting running back on the varsity team. That year the team won the state championship. The team did it again his junior year. In fact, Bush lost only one game his entire high school career: the state championship his senior year. In 2003, the website Rivals.com rated him as a five-star recruit and the top running back in the country.

As early as his sophomore year, Bush began receiving college recruiting letters. By his junior year, scouts and midlevel coaches were calling him and attending his games. During his senior year, it was head coaches in the stands.

Bush initially narrowed down his college choices to five schools. USC was not on the list. But then USC assistant coach Ed Orgeron visited Bush and convinced him to tour the campus. On that visit, Bush fell in love with USC—recalling years later how it just “felt right” there. He marveled at the pageantry of the university and valued its proximity to South-Central Los Angeles, where he had family. Without consulting his parents, he decided to attend USC and play under coach Pete Carroll.

During his freshman year at USC, Bush was the football team's back-up running back. He had an up-and-down season. Vowing to improve in his sophomore year, he dedicated himself to a rigorous summer training regimen. It paid off. In the 2004 season, he rushed for 908 yards and tallied an additional 509 yards receiving. He finished fifth in voting for the Heisman Trophy, college football's greatest individual honor. USC capped the season by defeating the University of Oklahoma in the 2005 BCS National Championship.

Bush's junior season (2005) was one of the greatest single seasons in NCAA history. He rushed for 1,740 yards and 16 touchdowns. He caught 37 passes for 478 yards and two more touchdowns. He was a unanimous first-time All-American. And this time he won the Heisman Trophy, with nearly 90 percent of first-place votes. USC ultimately qualified again for the BC National championship, but lost to the University of Texas.

Yet despite his incredible success on the field and his national profile, Bush struggled financially. He initially lived in a dormitory on campus. But after the roof caved in, he was relocated to off-campus housing. He was given a stipend of \$1000 a month to cover all living expenses, including rent of \$740. He was required to allocate the other \$260 for utilities, gas, and food each month. His car repeatedly broke down, and he often could not afford repairs. Unlike many students, he received no financial support from his parents. He thus found himself in the same situation as many star student-athletes from disadvantaged backgrounds: Even though he could expect to earn millions of dollars once he turned professional, he had difficulty making ends meet while in college.

Eight days after the 2006 BCS National Championship, Bush declared for the NFL Draft. The New Orleans Saints selected him with the second overall pick. He went on to play 11 years in the NFL, winning the Super Bowl in 2009. He retired in 2017.

B. Lloyd Lake

Lloyd Lake is a former gang member who has served prison time for domestic violence and drug trafficking. When Bush was a boy, the Griffins became friends with Lake and his family, including his father, a businessman who sold a sports-balm product, and his sister, who was a television news anchor in San Diego.

Bush himself first met Lake during his sophomore year in high school when Lake and his father showed up out of the blue at one of Bush's football practices with their pet Rottweilers. The memory stands out for Bush because one of the dogs bit his hand. As Lake recalled later, he and his father tried to convince Bush to use the sports-balm product. **Appendix A** (Tr. of Recorded Interview, Lloyd Lake (Nov. 6, 2007)), at 3 (“**Lake Tr.**”).

The Griffins and the Lakes regularly socialized. The families spent time at each other's homes, barbecuing and watching football. Bush saw Lake as a family friend. Even as a high school student, however, Bush was aware that Lake had been

accused of criminal activity and had served time in prison. It was widely known that he had served a six-month sentence relating to a drug trafficking offense. While Bush was willing to look past Lake's personal history, he did not see Lake as a legitimate businessman, despite Lake's efforts to market his father's sports-balm product. But because his parents had a relationship with Lake's family, Bush trusted him.

While Bush was still in high school, Lake was indicted and was ultimately sent to prison for two years. *See* Lake Tr. 4–5. LaMar Griffin and Lake's father maintained a relationship during that time. *Id.* at 5. According to Lake, when he was released from prison during Bush's sophomore year at USC, he began spending time with LaMar Griffin and then eventually reconnected with Bush. Soon after, Lake claimed to NCAA investigators, Griffin and Lake decided to start a sports agency, later named New Era, that would feature Bush as its first client. *Id.* at 12. Lake claimed that he introduced the Griffins to Michael Michaels, a San Diego businessman who owned the Sycuan Casino Resort, during a San Diego Charters game in fall 2004, as a potential investor in the business. *Id.* at 10. Lake alleged that a few weeks after the meeting, he and Michaels obtained the consent of Bush (then nineteen years old) to the sports-agency idea during a short conversation in the parking lot outside his parent's home, without his parents present. *Id.* at 12.

According to Lake's story, over the ensuing months, he and Michaels provided benefits to Bush and his parents on the understanding that the sports-agency venture would move forward, including inviting Bush's parents to live in a house owned by Mr. Michaels for a period of months after they had been evicted. *See* Lake Tr. at 83-84. But after Bush turned professional in 2006, he did not seriously consider New Era and ultimately selected a different agency. Both Michaels and Lake then filed lawsuits in California state court against Bush and the Griffins. Bush reached confidential settlements with Michaels in 2007 and with Lake in 2010. Notably, Bush did not admit in either settlement that he had ever agreed to form a sports agency with the men.

C. The NCAA Investigation

In 2006, the NCAA opened an investigation into USC that focused on Bush, a men's basketball player, and a women's tennis player. Lake was interviewed in November 2007—eight days after he had filed the lawsuit against Bush and his parents seeking hundreds of thousands of dollars in compensation. *See* Lake Tr. 1. The interview was conducted by two NCAA officials: Angie Cretors, an assistant director of agent, gambling and amateurism activities, and Rich Johanningmeier, an

associate director for enforcement. Lake was accompanied by two attorneys who were also representing him in the lawsuit. During the interview, Lake claimed that Bush had entered into an agreement to form a sports marketing agency with Lake and Michaels in 2004; requested and received cash and other gifts from Lake at various points in 2004 and 2005; and then refused to compensate Lake and Michaels for those gifts after choosing a different agency. The interview was transcribed, but it was not conducted under oath. It was subject to a confidentiality agreement that barred the NCAA from sharing the transcript with USC, the institution under investigation, without the consent of Lake’s attorneys. Lake Tr. 2.

As a California district court would later conclude, the “sloppy” Lake interview fell far short of professional standards for conducting investigations and as a result the Report was false in several material ways. **Appendix B** (Ruling on Motion for New Trial, *McNair v. National Collegiate Athletic Ass’n*, No. BC462891 (Jan. 16, 2019)) 4–5 (“**Dist. Ct. Op.**”). The “unprofessional interview taken by NCAA investigators,” the court explained, “was done informally, was not under oath, and . . . was done by NCAA investigative personnel who clearly were not prepared . . . and were making jokes and interruptions during the interview that obscured the actual answers.” *Id.* at 5. The interviewers continually asked leading questions, suggesting a preordained conclusion that Bush had violated NCAA rules. They interrupted Lake repeatedly before he could finish his answers. Lake’s counsel made personal representations as to key facts. One of his attorneys also spurred him to make certain claims, and he was permitted to confer with his counsel in the middle of the interview.

The interviewers spent little time scrutinizing Lake’s credibility, including his criminal record, his pending lawsuit against Bush, and his failure to produce financial documentation of alleged payments. Indeed, some of the key allegations—most notably, that Bush had orally entered into an agreement to form a sports marketing agency—were stated vaguely and with little detail. Rather than seeking further clarification, hard facts or actual evidence supporting such key claims, the NCAA investigators accepted Lake’s assertions at face value.

In addition, during the interview, Lake revealed that he had secretly recorded two conversations with Bush and two conversations with LaMar Griffin—likely a criminal offense under California law. Cal. Penal Code § 632. But instead of reporting Lake’s crime to the appropriate law-enforcement authorities, it appears that the NCAA investigators may have proceeded to listen to the illegally created recordings

at the conclusion of the interview. *See* Lake Tr. 157–158.

NCAA investigators also interviewed some of Lake’s relatives after he told them they would corroborate his story. It is not clear whether those interviews were transcribed. The NCAA investigators did not interview Michaels.

Bush agreed to sit for an interview in April 2009. To Bush’s recollection, the interview was not transcribed. During the interview, Bush “denied entering into any type of agreement with [Lake and Michaels], or anyone else associated with their attempts to form a sports agency.” Report at 10. He explained that he knew the men through his parents, that his family’s relationship with Lake went back years, and that he regularly communicated with Lake over the phone and via text message. *Id.* He also acknowledged that in some conversations he had discussed the possibility of forming a sports agency with Lake in the future. *Id.* But he made clear that he never agreed to do so. Indeed, knowing Lake’s dearth of business or sports-marketing experience and his criminal record, Bush never seriously entertained the possibility of putting his career in the hands of Lake or New Era rather than an established agency.

The Committee on Infractions held a hearing on the allegations in February 2010. USC officials testified at the hearing, but neither Lake nor Michaels appeared. The Committee apparently did not review the full transcript of Lake’s testimony. Rather, the NCAA enforcement staff presented only “a portion” of the interview to the Committee through a “Case Summary.” Report 7, n.1. It appears that the Committee may have considered a summary of Bush’s interview as well. *See id.* at 10.

D. The 2010 Report

The Committee issued the Report in June 2010. The Report discussed allegations involving the USC football team, the USC men’s basketball team, and the USC women’s tennis team. It imposed 23 penalties on USC. Report 57–63.

As relevant here, the Committee made two key findings involving Bush.¹ The first was that that Bush had “entered into an agreement with Lake and Michaels to establish a sports agency to negotiate future marketing and professional sports

¹ For ease of reading, this petition replaces the Report’s anonymous references to particular individuals (e.g., “student-athlete 1” for Bush) with the individuals’ names.

contracts.” Report at 4. That finding rested exclusively on the testimony of Lake. *Id.* Because of that purported agreement, the Committee found that certain benefits provided to Bush and his parents violated NCAA amateurism rules against receiving benefits from agents. The second finding was that a sports marketer for whom Bush completed a summer internship had provided benefits to Bush’s parents and friends. As to that finding, with one exception, the Committee did not find that Bush had been aware of the allegedly improper benefits.

Sport Marketing Agency. With respect to Lake’s alleged sports marketing agency, the Report explained that “[t]he question facing the committee was whether [Bush] agreed to become involved with the proposed agency and, if so, when that happened.” Report at 12. The Report then concluded that Bush had agreed to form a sport agency with his parents, Lake, and an investor group led by Michaels. But the Report did not cite any documentary evidence that Bush had ever signed such an agreement or otherwise signaled his consent. *Rather, the only direct evidence that Bush agreed to form a sports agency was the testimony of Lake—the full transcript of which the Committee did not review.*

Lake claimed that Bush “gave his consent” to the plan to form a sports agency during a meeting with Lake and Michaels at his parents’ residence on an unspecified date. Report 8. Lake also claimed that he and Bush had “agreed that everything would be done with cash and that [Bush’s] name would not appear on any documents”—an allegation that conveniently explained why Lake could not identify a single document relating to the formation of a sports agency that bore Bush’s signature, or any written record of his purported involvement whatsoever. *Id.* at 9. The Report also cited even more attenuated evidence of Bush’s supposed consent to forming an agency that likewise depended exclusively on Lake’s testimony. For example, Lake testified that Michaels had told him that he “would not commit and provide funds unless [Bush] was ‘on board’”—hearsay that the Report did not corroborate. *Id.* at 12.

The Report recounted the enforcement staff’s summary of supposedly corroborative testimony from Lake’s family members. The Report did not evaluate whether their relationship to Lake, or Lake’s violent criminal background, might have influenced their testimony. But in any event, so far as the Report recounts, none of the other witnesses claimed to possess any direct knowledge that Bush had agreed to form a sports agency or had even been aware of that an agency had been established. The Report states that Lake’s sister recalled only having discussed the agency with the Griffins, not Bush. *Id.* at 9. Her former husband likewise acknowledged that he

had “never personally met [Bush]” and apparently made no claim about Bush’s participation or knowledge. *Id.* at 10

Apart from Lake’s testimony, the Report reasoned that “[t]he agreement may be inferred from [Bush’s] subsequent conduct and acceptance of benefits.” *Id.* at 10. It is not clear what “conduct” the Report was referring to. And the Report did not discuss whether Bush’s alleged “conduct and acceptance of benefits” was equally consistent with a social relationship with a longtime family friend.

Moreover, substantial questions were raised about whether Bush had actually accepted all of the benefits described in the Report. USC vigorously contested many of those allegations, and a number of the Report’s findings about benefits rested, again, exclusively on Lake’s testimony. For example, the most significant alleged gift to Bush was an unquantified “substantial payment” towards the purchase of a used car valued at \$15,000 or \$16,000. Report at 16. Lake claimed that he had obtained cash from his sister for the car and had provided it to LaMar Griffin. *Id.* Lake further claimed that he had paid for approximately \$8,000 in improvements to the car with money that he obtained from his mother. *Id.* at 17.

USC told the Committee that there was “no basis to conclude that [the finding] is substantially correct” and pointed out that Lake had furnished “no supporting documentation to corroborate the purchase.” Report at 16. Bush explained to NCAA investigators that he had purchased the vehicle using \$4,000 in savings, \$4,000 from his parents, and a \$9,000 loan. *Id.* at 18. But the Report dismissed Bush’s explanation because he had not “provide[d] financial records to substantial his account of the purchase,” (*Id.* at 18) even though the Report credited Lake’s testimony despite the fact that he likewise had “provided no supporting documentation, such as bank withdrawal records.” *Id.* at 18.

The Report found only four other putative benefits that Bush allegedly received:

- The Report found Bush “used” a San Diego hotel room—to change clothes—before attending a birthday party in March 2005. Report 5, 19.
- The Report found that on the same date in March 2005, Lake provided Bush with a limousine service to travel from the hotel room to a San Diego nightclub to attend the birthday party. The Report did not identify the value of that benefit, nor did the Report discuss whether Lake had independently purchased the limousine service and merely invited Bush to ride along with a larger group (which is in fact what

happened). Report at 5, 19.

- The Report found that, also in March 2005, Michaels had paid for two nights' lodging in a hotel to Bush, at a value of \$564. Report 4, 19–20. Bush explained to NCAA investigators that the two-night stay was a birthday present from Michaels, whom he regarded as a family friend. *Id.* at 19. But because the Committee was not presented with evidence that Michaels had given similar gifts to Bush “before he became recognized as an athlete,” the Report rejected that explanation. *Id.* at 20.
- The Report found that in June 2005, while Lake was incarcerated, Lake's former girlfriend transferred \$500 from Lake's bank account to Bush's bank account. Report 6, 21–22. USC objected that Lake “provided no corroborating records” of the supposed transaction. *Id.* at 21. But, yet again, the Report nevertheless credited Lake's claim on the ground that the ex-girlfriend had known that Bush banked at Washington Mutual.

Remarkably, the Report found that one of Lake's allegations was not sufficiently corroborated to credit. Lake claimed that Bush stayed for two nights in a San Diego hotel room. Report 19. Bush steadfastly denied that he had ever stayed overnight in the room, and the Report found that the evidence that Bush had stayed overnight was insufficient. *Id.* Despite finding that Lake's claim on this issue was not believable, the Report did not consider whether that unsupported accusation cast doubt on his credibility with respect to the other allegations.

More broadly, the Report conducted virtually no analysis of the credibility of Bush's explanation that Lake and Michaels were family friends and that he understood the relatively modest gifts to have been provided in that capacity, not because of a nonexistent business relationship. The Report briefly acknowledged that Bush had first met Lake through his stepfather in 2001, when Bush was still in high school. Report 7. It also acknowledged that Michaels was a friend of Lake. *Id.* at 7. But the Report conducted no analysis of whether the alleged benefits were consistent with gifts from family friends to a underprivileged college student who, despite his national fame, had barely enough money to afford living expenses.

The Report also found that Lake and Michaels had provided benefits to Bush's parents. Report 5–6, 14–16, 20–21, 22–23. Those alleged benefits consisted of (i) rent-free lodging in a house owned by Michaels for a period of months and some furnishings for that home (which the Report did not find that the Griffins

retained after Michaels evicted them); (ii) funds for travel to the 2005 BCS National Championship Game and a 2005 road game at University of Hawaii. *Id.* But the Report did not find that Bush was aware of either set of benefits.

The Report also gave little consideration to Lake's credibility in light of his "troubled past," *i.e.*, his "prior criminal convictions" for drug trafficking and assault. Report 7. Nor did the Report analyze the plausibility of his story in light of that personal history. As USC told the Committee, Lake's "extensive criminal background [and] his history of gang-related and violent activity . . . make it highly unlikely that [Bush] would have chosen [Lake] as his agent during the fall of 2004." *Id.* at 11. The Report nevertheless declared Lake "credible" because "what transpired was confirmed by members of his family, telephone records and compelling circumstantial evidence." *Id.* at 7. As explained above, however, none of the other evidence discussed in the Report supported the conclusion that Bush had "agreed to become involved with the proposed agency"—the question that the Committee had identified as critical. That conclusion rested solely on Lake's allegations. And the Report did not discuss whether Lake had an incentive to fabricate claims about Bush, such as Bush's refusal to capitulate to Lake's demands for hundreds of thousands of dollars or a desire for notoriety or lucrative publishing deals that he could secure by positioning himself a key player in the downfall of a famous athlete.

Based largely on Lake's claims, the Committee found a violation of NCAA Bylaw 12.3, entitled "USE OF AGENTS." Report 10. The "General Rule" under that provision states that "[a]n individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport." NCAA Bylaw 12.3.1 (eff. Aug. 1, 2004). A subsection entitled "Benefits from Prospective Agents" states that "[a]n individual shall be ineligible per Bylaw 12.3.1 if he or she (or his or her relatives or friends) accepts transportation or benefits from . . . [a]ny person who represents any individual in the market of his or her athletics ability" or "[a]n agent" NCAA Bylaw 12.3.1.2 (eff. Aug. 1, 2004). The Report concluded Bush's alleged agreement to form a sports agency with Lake and Michaels and subsequent acceptance of benefits from the men violated these rules.

Ornstein Internship. The Report's second adverse finding about Bush also originated with accusations made by Lake. Report 29. They related to an internship Bush had with a marketing company run by Michael Ornstein in the summer of 2005.

Id. 27–36. The Report found that the agency had qualified as a representative of USC’s interests because the internships were available only to student-athletes. *Id.* at 31. That finding made applicable an NCAA rule barring representatives of institution’s athletics interests from providing special benefits to student athletes. NCAA Bylaw 16.02.3 (2004). The Report, however, made no finding that Bush was aware of that alleged exclusivity.²

The Report then found that sports marketers associated with the agency, including Ornstein, had provided certain improper benefits. Report 28–29, 31–36. But with one exception, all of those benefits were provided to other people, not Bush himself, and the Report made no finding that Bush was aware of those benefits.

Most of the benefits arose out of the Heisman Trophy ceremony in New York City in November 2005. The Report found that the agency had paid for two \$400 roundtrip airline tickets for two individuals to attend the ceremony—one of the other agency interns, who the Report claimed was one of Bush’s friends, as well as another asserted friend. Report at 34–35. The Report also found that the agency had paid \$150 in airline service fees for Bush’s parents and that Ornstein had used his credit card to reserve a room for his parents (which Bush’s family ultimately paid for). *Id.* at 35–36. The Report separately found that the agency had paid for transportation of Bush’s family to a road game at the University of California at Berkeley in November 2005 valued at \$850. An Ornstein associate adamantly maintained that Bush’s family had repaid that amount, but the Report rejected that explanation, in part because it questioned the validity of the documentation of the repayment that had been provided. *Id.* at 31–34.

The Report found that Bush had received only one benefit from Ornstein: payment for repairs to his car. Report 36. But the Report did not specify the amount of that alleged payment, and it identified no documentary evidence to support the

² USC argued and continues to assert there was no evidence that Bush had agreed to form a sports agency and therefore that there was no basis to find that he had violated the cited bylaws or was ineligible for the 2004 season (before the Report alleged he accepted any benefits), including the 2005 BCS National Championship game. Report 7. But USC advanced the position that Bush was ineligible for competition during the 2005 season because of benefits that he had allegedly received (although USC contested certain alleged benefits, including those associated with Bush’s purchase of a used car). *Id.* at 7, 16. USC contended that those benefits violated a separate bylaw that generally prohibits “[p]referential treatment, benefits or services because of the [student’s] athletics reputation or skill or pay-back potential as a professional athlete.” NCAA Bylaw 12.1.2.1.6 (eff. Aug. 1, 2009); *see* NCAA Bylaw 12.1.1.1.6 (eff. Aug. 1, 2004) (same).

finding. In fact, the finding rested exclusively on the testimony of a sports memorabilia dealer who claimed that he had been present at an un-named “New York bar” with Ornstein “around the time of the 2005 Heisman Trophy presentation” and had overheard a cell phone conversation between Ornstein and Bush, “the subject of which was the payment for repairs to [Bush’s] vehicle by [Ornstein].” *Id.* The Report rejected Bush’s explanation that he had paid for the repairs himself on the ground that he had not provided documentation to support his recollection. *Id.*

Todd McNair. In addition to the findings against Bush, the Report found USC assistant football coach Todd McNair had become aware of Bush’s alleged violations of NCAA rules in January 2006 and lied to the NCAA enforcement staff about his knowledge. Report 23–27. That finding was based on a two-minute phone call between McNair and Lake at 1:30 in the morning of January 8, 2006. *Id.* at 23. The Report claimed that Lake testified he had called McNair to convince him to intercede with Bush about adhering to the purported agency agreement. *Id.* at 26. The Report found that “the conversation occurred as described by [Lake] and, therefore, that [McNair] violated NCAA ethical conduct legislation (Bylaw 10.1-(d)) by providing false and misleading information to the enforcement staff regarding the call and his knowledge of [Lake’s] activity.” *Id.* at 27.

Penalties. The Report determined that USC should be held accountable for Bush’s alleged violations. The Report found that USC had displayed a “lack of institutional control” because it had failed “to recognize warning signs, to be proactive in monitoring its athletics program and to follow through on information regarding possible rules violations.” Report 56. That finding appeared to depend to a large degree on the Committee’s finding that McNair had been aware of the violations. *See id.* at 61. In assessing penalties, the Report also determined that USC was a “repeat offender” because it had been found liable for rules violations in the past— twice in the 1950s and twice in the 1980s. *Id.* at 3, 57.

The Report imposed 23 penalties on USC, some of which were related to the men’s basketball and women’s tennis teams. With respect to the football team, the Report:

- Barred USC from postseason play in the 2010 and 2011 seasons (Penalty No. 4); Vacated all wins in which Bush played while allegedly ineligible (Penalty No. 5);
- Vacated the individual records of Bush and required recon-figuration of

USC's records to reflect the vacated wins (Penalty No. 8);

- Limited football scholarships for three academic years beginning in 2011 (Penalty No. 9);
- Imposed a fine of \$5000 (Penalty No. 13);
- Required the disassociation of Bush from USC (Penalties Nos. 15 and 18);³
- Prohibited non-institutional personnel (with certain exceptions) from traveling on team charters, attending practices, and gaining other access to the team from 2010 to 2014 (Penalty No. 20); and
- Required USC to inform recruits about the violations and penalties and annually publicize that information (Penalty No. 21).

Report 57–61. The Report also imposed a “one-year show cause period” on McNair, during which time he was barred from engaging in recruiting activities (Penalty No. 22). *Id.* at 61–62.

E. The Heisman Trophy Trust

After the Report was issued, Bush had a phone interview with representatives of the Heisman Trophy Trust, the organization that awards the Heisman Trophy. The representatives told Bush that they intended to strip him of the award. That was the first time in the 75-year history of the award that the Heisman Trophy Trust had requested the return of a trophy. Given that threat, and to avoid further controversy, in September 2010 Bush reluctantly relinquished his Heisman Trophy. It was crushing. He had put in years of work to becoming the best college football player in the country. Now he was left without any formal recognition for his immense accomplishments.

Eleven years later, in July 2021, the Heisman Trophy Trust issued a statement about Bush in light of a recent change to NCAA rules about student-athlete compensation. The statement cited a rule printed on the ballot used by voters for the Heisman Trophy, which states in part that “[t]he recipient must be in compliance with the bylaws defining an NCAA student athlete.” The statement explained that “Bush’s 2005 season records remain vacated by the NCAA and, as a result, under the rule set forth by the Heisman Trust and stated on the Heisman Ballot, he is not eligible to be awarded the 2005 Heisman Memorial Trophy.” But, the statement said, “[s]hould the

³ The Report noted that Penalties Nos. 13 and 15 were “Institution imposed.”

NCAA reinstate Bush’s 2005 status, the Heisman Trust looks forward to welcoming him back to the Heisman family.”

F. The McNair Litigation

In June 2011, McNair sued the NCAA for libel, slander, and other claims in California state court. **Appendix C** (Complaint for Damages, *McNair v. NCAA*, Case No. BC462891 (Sup. Ct. Cal., Cnty. Of Los Angeles, June 3, 2011)) (“**McNair Complaint**”). After years of pretrial proceedings, the defamation claims were tried to a jury in 2018. Although a divided jury returned a verdict for the NCAA, the trial court granted a new trial for (among other grounds) insufficiency of the evidence that the Report’s statements about McNair were true. Dist. Ct. Op. 1–5.

In an accompanying opinion, the district court concluded that the trial record contained insufficient evidence that McNair knew of the purported agreement to form a sports agency and the benefits allegedly provided to Bush. The court reviewed the transcript of NCAA investigators’ interview with Lake—the key witness against both McNair and Bush. The court found that the Report had misrepresented what Lake had said about the key phone call with McNair in January 2006. Dist. Ct. Op. 4. Although the Report claimed that Lake had called McNair to discuss Bush’s agreement to form the sports agency (as reflected in phone records), Lake had not in fact said that. *Id.* Instead, the investigators had falsely told Lake that it was McNair who called him, and “Lake was attributing a motive to McNair for the reason why McNair purportedly called him.” *Id.* Of course, the court observed, “there was no such phone call initiated by McNair, and McNair could have had no purpose in making an unmade phone call.” *Id.*

Even more significantly, the court found that “the interview does not state that McNair and Lake discussed the agency agreement between Lake and Reggie Bush during the phone call, even though the report states that the reason that Lake called McNair was to get him to adhere to the agency agreement.” Dist. Ct. Op. 4. The court explained that “it appears that Lake was merely assuming that McNair ‘knew’ about the money that Reggie Bush allegedly took and the agreement between Bush and Lake, not because of anything said during the phone conversation.” *Id.*

More generally, the court described the interview as “sloppy” and “unprofessional” and “full of interruptions.” Dist. Ct. Op. 4–5. The “interview was done informally, was not under oath, and . . . was done by NCAA investigative personnel who were clearly not prepared, as they were mistaken as to basic facts

pertaining to the phone call of 1/8/2006 and were making jokes and interruptions during the interview that obscured the actual answers.” *Id.* at 5. Moreover, “[t]he answers made by Lake to interview questions were unclear and unresponsive to the point of being unreliable and lacking in any value,” and “non-responsive and speculative responses by Lake were recorded as being true.” *Id.* at 4. Had they been “made in a court of law,” Lake’s “non-responsive” and “impossible vague” answers “would have been stricken.” *Id.* at 5. Ultimately, the court held, the Report produced a “fictional account” that “gave evidentiary weight to statements that were not made,” and the NCAA’s attempts to justify “the variance between the actual content of the Lake interview and the [Report] as ‘paraphrase’” were “ludicrous.” *Id.*

In February 2021, the California Court of Appeals affirmed the District Court Opinion overturning the verdict. **Appendix D** (*McNair v. NCAA*, No. B295359, 2021 WL 405876 (Cal. Ct. App., 2d Dist. Feb. 5, 2021)) (“**Ct. App. Op.**”). In the course of its analysis, the court explained that “[s]ome voting members of the [Committee on Infractions] expressed difficulty with the interviews of McNair and Lake,” with members noting that “the record was ‘recklessly’ constructed” and another stating that “the investigation had ‘fallen short.’” *Id.* at *5. The court held that the NCAA had failed to rebut McNair’s “credible denials . . . that he knew about the NCAA violations” because “it relied solely on Lake’s vague, unresponsive, unreliable, and inadmissible interview responses, that in any event did not substantively support the operative statement.” *Id.* at *9.

The NCAA and McNair entered into a confidential settlement agreement in July 2021.

SUMMARY

The Committee should grant reconsideration of the Report’s findings and penalty determinations Nos. 5 and 8 as they relate to Bush and the USC football program. The Committee should then vacate Penalty No. 5 and the portion of Penalty No. 8 pertaining to Bush based on the new evidence and prejudicial errors in the Report.

I. The criteria for granting reconsideration of the Report are met. The revelations from the McNair litigation both “demonstrate the existence of new evidence that is directly related to the decision” and “show that there was prejudicial error in processing the case” resulting in the Report—each an independently

sufficient basis for reconsideration. NCAA D1 COI Internal Operating Procedures (“COI OPI”) § 5-17-1 (2021); *see* NCAA Bylaw 19.11.4.1 (2023). California courts have now found in the McNair litigation that the “sloppy” and “unprofessional interview [of Lloyd Lake] taken by NCAA investigators” was replete with errors, that the Report materially misrepresented Lake’s “non-responsive and speculative responses” and thus was false in several material ways. Dist. Ct. Opp. 4–5.

Those same serious problems infected the portions of the interview pertaining to Bush’s knowledge and conduct. Most significantly, a fair reading of the transcript of Lake’s interview shows that there was no persuasive basis to conclude that Bush had agreed to form a sports agency with Lake and Michaels—the finding that the Report itself describes as central to its conclusion that Bush had intentionally violated NCAA rules in allegedly accepting benefits from the men. *See* Lake Tr. And in any event, the Report’s errors with respect to McNair alone warrant reconsideration, because the finding that McNair knew about the alleged agency agreement was critical to the Report’s determination that USC could be held accountable for the alleged rules violations and was an important factor in the penalty analysis.

II. On reconsideration, the Committee should vacate the Report’s Penalty No. 5, which vacated the wins of USC’s football team in games where Bush participated while assertedly ineligible, as well as the portion of Penalty No. 8 that vacated Bush’s personal records. The judicial findings in the McNair litigation and a review of the Lake interview shows that key aggravating factors that the NCAA has applied in imposing penalties— including “serious intentional violations” and “direct involvement of a coach”—lack sufficient evidentiary support on the record here. In reconsidering the appropriate penalty, the Committee should also take account of the recent developments in federal antitrust law and the significant and overdue change that the NCAA made to its rules about player compensation.

REASONS FOR GRANTING THE PETITION

I. The Criteria for Granting Reconsideration Are Met

This Committee should grant the petition for reconsideration. Under NCAA Bylaw 19.11.4.1, “[a] hearing panel may reconsider a decision upon a showing of new information that is directly related to the decision or upon a showing that there was prejudicial error in processing the case.” NCAA Bylaw 19.11.4.1 (2023). Both grounds for reconsideration are present here. California courts have found in the McNair litigation that NCAA investigators conducted a “sloppy” and

“unprofessional” interview of the key witness in the matter— Lloyd Lake—that produced answers that “were unclear and unresponsive to the point of being unreliable and lacking in any value,” and that the Report misrepresented what Lake had told investigators and was “false in several material ways.” Dist. Ct. Op. 4. That finding both reveals a significant flaw at the heart of the process used to find that petitioners had violated NCAA rules and qualifies as significant new information that bears on the accuracy of the Report’s findings. *See* Report 7 n.1.

A. The McNair Litigation Revealed the NCAA Investigators Conducted a “Sloppy” and “Unprofessional” Interview of Key Witness Lloyd Lake and That the Report Materially Misrepresented His Testimony

In the McNair litigation, the district court found, and the court of appeals affirmed, that the Report had significantly misrepresented Lake’s testimony to NCAA investigators about a key phone call involving McNair. As the court of appeals explained, “the only support for the [Report’s] finding that McNair ‘had knowledge’ of NCAA violations was [a] late-night call” between Lake and McNair in January 2006, and “[t]he only evidence adduced about what was said during the late-night call was the transcript of Lake’s interview,” but the district court had “reasonably found [that the transcript of Lake’s interview] did not support the [Report’s finding].” Ct. App. Op. *8.

Moreover, the district court concluded that Lake’s interview was “sloppy” and “unprofessional.” Dist. Ct. Op. 4. As a result, his answers “were unclear and unresponsive to the point of being unreliable and lack in any value.” *Id.* The interview “was done informally, was not under oath . . . and was done by NCAA investigative personnel who were clearly not prepared . . . and were making jokes and interruptions during the interview that obscured the actual answers.” *Id.* at 5. “It should have been obvious to the NCAA,” the district court concluded, “that the statements made by Lake in response to the investigators[’] questions were non-responsive and that if made in a court of law would have been stricken.” *Id.* Ultimately, the Report presented “a fictional account of the Lake version of the phone call.” *Id.*

Those are significant new revelations that bear directly on the accuracy of the Report’s findings as well as the integrity and fairness of the procedure that ultimately resulted in significant reputational harm to Bush and USC. And indeed, as explained below, the same kinds of errors and omissions relating to the Lake interview that undermined the Report’s conclusions about McNair cast overwhelming doubt on its

central conclusions about Bush.

The Report's findings about Bush hinged on Lake's testimony—the transcript of which has now been made public in the McNair litigation. The “linchpin” of the Report's conclusion that Bush had violated amateurism rules was its conclusion that he had “agreed to form a sports agency with [Lake and Michaels].” Report 12. That conclusion was based principally on the following summary of Lake's testimony:

Lake reported that, in the fall of 2004, he and Bush's stepfather engaged in discussions about the possible business opportunities the step-father would have when Bush became a professional. The two concluded that the establishment of a sports agency would be a mutually beneficial endeavor for all involved as it would allow Bush to avoid paying high commissions to an established sports agency. **Lake reported that Bush and his stepfather told Lake to recruit the necessary individuals to establish an agency.**

Shortly thereafter, again in the fall of 2004, Lake contacted his friend, Michaels, about investing in the sports agency. Michaels had ties with a local investor group that owns and operates a resort in the San Diego area. Michaels was involved in the business aspects of that enterprise. Lake arranged for Bush's mother and stepfather to meet Michaels in the investor group's sky box at a San Diego Charger's [*sic*] home game in October 2004. Lake said that, during the early planning stages, Michaels made it clear that his investor group would provide financial support to the agency only if Bush made a personal commitment to the agency. **Lake reported that, a few weeks later, Bush gave his consent to establish the sports agency when he, Michaels and Bush met at Bush's parents' residence.** Report at 8 (emphases added).

As with Lake's testimony about McNair, however, his actual answers about whether Bush “gave his consent” to form a sports agency are far vaguer and more equivocal than what this passage of the Report states, and they differ in material respects.

For example, the Report suggests that Lake testified that he had discussed forming the agency with Bush before approaching Michaels and before the alleged meeting at the Chargers game, claiming that Bush told Lake to “recruit the necessary

individuals to establish an agency.” Report 8. But nowhere did Lake say anything like that. His testimony was only that he had spoken to LaMar Griffin (not Bush) about a potential sports agency before approaching Michaels. He only “guess[ed]” that La- Mar Griffin had discussed the matter with Bush, and he said nothing about Bush seeking to recruit other individuals to fund the supposed venture:

LL: I guess him and Bush already talked about it to maybe save some of his money for his marketing and, and commissions for a agent [*sic*], so. Lake Tr. 9.

More broadly, the Report presents the initial discussions between Lake, LaMar Griffin, and Michaels leading up to the alleged meeting with Bush as far more concrete than what Lake described. Lake explained that after he was released from prison in 2004, he began “hanging out” with Griffin at his home and “talking and conversating more and more.” Lake Tr. 9. Griffin was “kind of like lonely” so Lake would “swing by, watch TV with him, maybe a football game.” *Id.* Griffin had “watched what Lake’s dad was doing with his [sports balm] product and he wanted to get in- volved in some type of business” *Id.* at 10. During those informal conversations Griffin had raised the possibility of starting various kinds of ventures. The two men “talked about real estate, uh, sports agency, music, different types of things that they want- ed to get into.” *Id.* at 9. Griffin also “talked about maybe a McDonald’s; he talked about other things but at the end [a sports agency] was probably what made the most sense.” *Id.* at 8. It was at that point in the testimony that Lake “guess[ed]” that Griffin had talked to Bush about the sports agency idea. *Id.*

Lake then claimed that Griffin had met with Michaels at a San Diego Chargers game. The Report describes this meeting as the “early planning stages” for the proposed sports agency, a phrase connoting some level of formality and a detailed discussion. Report at 8. But what Lake actually described had a very different character. When asked by an NCAA investigator “how serious was the conversation at the Chargers’ game about going into [the] sports marketing,” he said: “It wasn’t too serious.” Lake Tr. 10. In fact, he did not appear to even know what had been discussed: “I **guess** when LaMar Griffin and Michaels got to talking the sports agency seemed like the thing to do ‘cause Michaels affiliated [*sic*] with [the] Sycuan [Casino Resort] and, you now, they had plenty of money if we were gonna do it. So I **guess** that’s what they end up running with.” *Id.* at 10 (emphases added). When NCAA investigators pressed Lake to say that the parties had conducted at least an “informal

discussion of the business deal,” he resisted even that soft characterization: “It wasn’t too much . . . talk about business . . . Michaels met ‘em at the game and it wasn’t too much talk at the game, just the introduction.” *Id.* at 11–12. No one would reasonably describe that kind of interaction as the “early planning stages” of a new multi-million-dollar business.

That mischaracterization of the level of formality of the initial meeting is significant, because the notion that the parties had already engaged in concrete discussions about the agency (and that Bush was aware of those discussions) formed the backdrop for the Report’s finding that Bush had consented to the purported scheme a few weeks later. Had the Report explained that the “planning” up to that point had consisted of little more than “conversating” while watching television and an introduction “that wasn’t too serious,” Bush’s purported “consent” would have been understood in a different light. In particular, Bush might have been viewed simply as favoring the aspiration of starting a sports agency at some point in the future—after he turned professional—rather than acceding to a plan to immediately do so.

And indeed, Lake’s actual testimony about Bush’s “consent” is far more consistent with a future aspiration than a current plan. Lake claimed that “a couple weeks” after the Chargers game, he and Michaels met with Bush, which happened “[a]fter some conversation in between about doing it.” Lake Tr. 12. (The investigators inexplicably did not follow up with Lake about who was involved in that “conversation in between” or what was said). The Report states that when Bush met with Lake and Michaels at his “parents’ residence” he “gave his consent to establish the sports agency”—again suggesting a level of formality and deliberation consummate with launching a new business. Report 8. But here again, Lake’s actual answers paint a far different picture. According to his testimony, Bush—a teenager at the time—had a conversation with Lake and Michaels “in the parking lot” of his parents’ house, without either of his parents present, that lasted as little as ten minutes. *Id.* Indeed, Lake and Michaels deliberately chose to exclude Bush’s father from the conversation: “[H]e wasn’t even out there when we were talking,” Lake explained, “because we didn’t wanna have him.” *Id.* (The investigators, again inexplicably, did not follow up with any questions about why the men wanted to discuss a complex, multi-million-dollar business arrangement with a teenager without his parents present—just one example of their consistent failure to scrutinize whether Lake and Michaels might have been trying to take advantage of

Bush and his parents, rather than the other way around).

Lake then vaguely described a brief conversation in the parking lot:

Well, I remember [Michaels] asked him like, you know, basically tell him what his dad was talking about and, uh, he asked Bush were you serious about it that you wanna go and get involved before he, you know, tried to make something happen. And Bush said yeah, and it just moved on from there. Bush was like, yeah, I really wanna do this. I wanna be in the business and really entrepreneur-type stuff, so. Lake Tr. at 12.

The NCAA investigators did not ask any follow-up questions probing precisely what Bush had expressed in this alleged exchange, despite Lake's muddled description. They did not ask whether, like Griffin's conversation with Michaels at the Chargers' game, the discussion with Bush "wasn't too serious." And they did not attempt to determine whether Lake and Michaels—a **violent former gang member** and a wealthy businessman, respectively—had pressured the teenage Bush into expressing some sort of consent to the idea.

Later in the interview Lake again testified that Bush had expressed "yeah, you know, I wanna do it, a sports agency." Lake Tr. 33. But as Lake started to clarify that Bush had told him that he "didn't wanna get involved just --" the investigators interrupted Lake with a question about the length of the conversation. *Id.* They never asked Lake to finish what he was going to say about Bush's desire not to "get involved." Instead, the investigators asked whether Bush had provided "any other insight into what he wants [the sports agency] to be, who he wants to be involved," Lake said "No." *Id.* at 34. Refusing to take "No" for an answer, the investigators pressured Lake to come up with something else that Bush had said about the sports agency, but he reiterated, "No, that's it." *Id.*

Despite Lake's testimony that Bush had expressed nothing more specific than a general interest in starting an agency, the investigators then pressed Lake to suggest that Bush had said something concrete about the nature of the proposed agency during the meeting:

[Investigator]: 'cause Lloyd, when you talked about sports agency, what was, what was the understanding that you had or what did Bush say because sports agency could be, you know, a, a lot of different things, representing, marketing, it could be ---

[Lake]: It was all those, it was all one stop; marketing, contracts.

[Investigator]: So your understanding at that time and Bush's understanding was you guys were gonna put together and develop a,

a complete.

[Lake]: Yeah, his family, his family, he like, I can't be on it but my family gets half my percentage when we can do it right, the percentage in his family. You're always covering it up. Lake Tr. at 34.

This portion of Lake's testimony—to the extent that his muddled and nonresponsive statements indicate that Bush expressed a desire for a particular financial arrangement—contradicted Lake's previous statement that Bush had said nothing more at the meeting than that he favored the idea of starting a sports agency. Yet the investigators did not ask any follow-up questions to reconcile that contradiction, nor did they inquire into how much of Lake's claim was simply his “understanding” of what Bush wanted, as opposed to something that Bush had actually expressed. They did not even repeat the actual question asked—what the proposed agency would do—which Lake had completely failed to answer. (A truthful answer to that question likely would have revealed that the “proposal” was so amorphous and aspirational that no legally recognizable agreement to form an agency had been formed at the time of the short conversation in the parking lot.) Instead, remarkably, one of the investigators summarized what *she thought* Lake had meant and did not even bother to ask whether he agreed with her characterization, but rather simply moved on to a different line of questioning:

[Investigator]: You wanna break, you eyeing it? Uh, so he, ***he goes along with this and says his family's gonna be involved*** and, because I wanna ask this question, was that the first time he had met Michaels? Lake Tr. at 34 (emphasis added).

No professional investigator would ask one question (about the nature of the agency) and then, after receiving a nearly inscrutable answer to a different question entirely (about the financial structure of the agency) that contradicted the witness's previous statement, announce a conclusion about what the witness might have meant and then move on to other topics. The district court in the McNair litigation thus had ample reason to call this a “sloppy” and “unprofessional interview”—if anything, a generous characterization of what transpired.

Virtually the entire basis for the Report's claim that Bush had “agreed to form a sports agency” with Lake and Michaels was premised on this testimony. As with Lake's statements about McNair at issue in the defamation case, Lake's statements “were unclear and unresponsive to the point of being unreliable and lacking in any value.” Dist. Ct. Op. 4. The interview was seriously “botched,” *id.* at 5, because the investigators failed to meaningfully explore any alternative explanations for the alleged statements that did not fit their preordained narrative. Most critically, the investigators did not explore whether Bush's statements might have merely expressed

that he would like to start a sports agency *in the future*, after turning professional, or were otherwise aspirational or noncommittal.

Nor did the investigators ask why a wealthy businessman and a convicted felon would have sought to obtain a teenager's consent to starting a major venture that could have an enormous impact on his career (to say nothing of his college eligibility) in a parking lot without his parents present. And the Report failed to explain why the vague and non-responsive answers of a convicted felon with a massive litigation interest in establishing that he had provided benefits to Bush in exchange for an agency agreement should have been credited over the clear, consistent, and adamant denials of Bush—an upstanding alumnus who had never been in legal or academic trouble nor had ever been found to have violated NCAA rules or cheated the game of football in any way—that he had never consented to forming a sports agency with Lake and Michaels.

Apart from Lake's self-serving, vague, and internally contradictory testimony, the only other consideration that the Committee cited to establish that Bush knowingly entered into an agreement to form sports agency was the following sentence: "The agreement may be inferred from [Bush's] subsequent conduct and acceptance of benefits." Report 4. It was a remarkable exercise in circular reasoning: Bush's acceptance of benefits violated NCAA rules because he entered into an agreement to form sports agency, and that agreement may be inferred from his acceptance of benefits. Such facially flawed reasoning would never have been accepted in any ordinary adjudicatory proceeding.

The Report nowhere seriously addresses Bush's explanation for the few benefits that he acknowledged receiving—that Lake was a longtime family friend, who had known his parents for years, and he understood that the benefits had been provided in that capacity. Notably, even fully crediting all the Report's claims about the benefits (some of which Bush steadfastly denied), the benefits allegedly conferred on Bush personally were limited—and fully consistent with a family friend occasionally helping out a college student from a poor family. Those alleged benefits were two nights in a Las Vegas hotel room for his birthday; the use of a San Diego hotel room to change clothes and a limousine ride to a party; a gift of \$500; and help with a down payment and improvements on a nearly decade-old used car.

Significantly, the Report did not claim that Bush was aware of the benefits allegedly given to his parents, such as the living arrangement they had made with Michaels after they were evicted from Reggie's childhood home. That is little

surprise, many college students have no insight into their parents' financial affairs. The Report provides no reason to think that Bush was any different.

Apart from the asserted benefits, the Report does not identify any other "conduct" consistent with an agreement by Bush to form a sports agency. The Report claims that an operating agreement was formalized in January 2005, but the Report does not assert that Bush signed that agreement or was even aware of it. Report at 8, 13. And importantly, Lake testified that the agency conducted no operations during the period in which Bush was still subject to amateurism rules: "I mean, we weren't even, like, when we first started we weren't doing any recruiting or anything till Bush was eligible. That's when we started." Lake Tr. 100. The supposed agency never even secured office space. *Id.* at 100–101. The lack of any concrete operations makes it even less likely that Bush would have become aware that an agency had been formed; the supposed agency was not doing anything. Yet the Report inexplicably fails to describe that part of Lake's testimony.

Thus, in marked contrast to the narrative described in the Report, the critical finding that Bush had consented to the formation of a sports agency comes down to this: a felon's vague recollection of a short conversation in a parking lot with a teenage Bush (from which his parents had been excluded) where he may have done nothing more than express an aspirational interest in forming a sports agency *at some point*; an operating agreement that Bush did not sign or even apparently know about; and a purported agency that conducted no operations whatsoever during the relevant period. Yet the Report frames the evidence as far more concrete and certain, and gives no weight to Bush's adamant denials that he ever consented to the formation of an agency.

Even putting aside the serious discrepancy between what Lake said in the interview and what the Report recounted, Lake's interview suffered from elementary flaws that undermine the reliability of Lake's answers. Throughout the interview, both the investigators and Lake's counsel engaged in a range of irregular (and at times inappropriate) conduct:

- As the district court in the McNair defamation case found, the interview "was done informally, was not under oath, and . . . was done by NCAA investigative personnel who clearly were not prepared . . . and were making jokes and interruptions during the interview that obscured the actual answers." Dist. Ct. Op. 5. The investigators repeatedly interrupted Lake when he was providing critical information about Bush's knowledge and conduct, and they often failed to ask

obvious follow-up questions. *See, e.g.*, Lake Tr. at 113-114 (Lloyd Lake discussing the relationship between Bush and McNair); *Id.* at 116 (Lloyd Lake discussing trip to Ferrari dealership).

- The interviewers asked leading questions apparently designed to guide Lake to their preordained conclusion: that Bush had intentionally violated NCAA amateurism rules. *See, e.g., Id.* at 55 (“AC: And Reggie called, did Reggie call you and tell you I bought it, I got it?”); *Id.* at 56 (“AC: And so when you’re asking, when you ask your sister, I’m assuming she took that out of a bank account.”).
- Lake’s attorneys (who were also representing him in a just-filed lawsuit seeking hundreds of thousands of dollars) made representations about the facts to the investigators. *See, e.g., Lake Tr.* 104 (attorney Paul Wong testifying that Lake’s mother purchased furniture on a credit card); *Id.* at 151 (extended discussion by attorney Brian Watkins of alleged threats to Lake by Bush’s attorney); *cf. Id.* at 106 (attorney Brian Watkins urging Lake to discuss a particular incident that he had not raised).
- In the middle of the interview, Lake’s attorneys asked to speak with him privately, but the investigators gave no admonition against discussing the facts of the case, and there is no apparent assurance that Lake was not coached on his answers during the break. Lake Tr. 79 (Paul Wong: “I wanna talk to the client for a little bit”). In addition, the interviewers allowed Lake to go off the record to take a cell-phone call in the middle of the interview. *Id.* at 91.
- Lake revealed during the interview that he had made secret recordings of two phone calls with Bush and two with LaMar Griffin. Lake Tr. 157–158. That conduct was likely a criminal offense under California law. *See Cal. Penal Code* § 632. Yet instead of reporting Lake’s crimes to the appropriate law-enforcement authorities, the NCAA investigators apparently decided to listen to the illegally created recordings themselves after the conclusion of the interview. *Id.* at 158.⁴

The Lake interview (and as a result the Report) also suffered from another problem: The interviewers made nearly no effort to scrutinize Lake’s account or test his credibility. Several key areas went entirely unexplored. For example, the Report noted that Lake had “filed a civil suit against Bush and his family.” Report at 8. But the interviewers did not endeavor to determine whether Lake’s pending lawsuit—

⁴ On the advice of counsel, NCAA enforcement staff did present those tapes to the Committee. Report 7 n.1.

filed a week before the interview—had influenced his testimony. In that lawsuit, Lake alleged that Bush and his parents were indebted to him and New Era for “cash payments advanced to [them] for living expenses and other things.” *Lake v. Griffin*, Nos. D053583, D054311, 2009 WL 5067634, at *1 (Cal. Ct. App. 4th Dist. Dec. 28, 2009). But the investigators did not ask Lake whether the claims he made about Bush’s supposed assent to the agreement to form the sports agency and his receipt of benefits were important to the legal theories he was advancing in the case; how much compensation he was seeking in his suit; or whether his attorneys had coached him on answers.

Similarly, although USC had told NCAA enforcement staff about Lake’s “extensive criminal record” and “his history of gang-related and violent activity” (Report 11) the investigators failed to inquire into that criminal history or determine whether Lake had ever previously given false statements or testimony in connection with investigations. The Report gave no apparent weight to Lake’s history of violence and legal violations, noting only that he had “admitted to the NCAA staff that he had prior criminal convictions” and that “[b]ecause of his troubled past, he realized that his credibility would be challenged.” Report 7. The Report did not explain why that history should not in fact fatally undermine his credibility, or even explain which crimes Lake had been convicted of—crimes that included not only drug trafficking, but also domestic violence. *See* Katie Thomas, *Lawsuit May Force Ex-U.S.C. Star to Talk*, N.Y. TIMES (Feb. 10, 2008). Nor did the Report explain that Lake claimed that he had formed a sports agency with Bush immediately upon being released from a two-year prison term, as he told investigators, Lake Tr. 4–5, or that shortly after that period Lake was sent back to prison for breaking his girlfriend’s arm. *Id.* at 140. The Report also expressed no concern that Lake did not corroborate his claims with financial records, while inexplicably discounting Bush’s testimony on precisely that basis.

More generally, neither the investigators conducting the questioning, nor the drafters of the Report examined the possibility that Michaels and Lake were exploiting an unsophisticated teenager and his low-income parents by manipulating them into going along with a business venture that would line the pockets of the two men while enormously disadvantaging Bush himself. But that is exactly what Lake’s testimony appears to depict: a nineteen-year-old cornered in a parking lot by a wealthy businessman and a former gang member to obtain his “consent” to put his enormously valuable marketing rights into their completely inexperienced hands.

The sloppy and unprofessional interview of Lloyd Lake, and the way in which his answers were overstated or at times misrepresented in the Report, warrant reconsideration of the sanctions related to Bush. A fair review of the interview transcript casts substantial doubt on the Report’s conclusion that Bush “agreed to become involved with the proposed agency.” Report 12. For the reasons discussed below it is highly likely that the Committee would have reached a different conclusion about the appropriate penalties without that finding. Accordingly, the errors associated with the Lake interview were both “directly related” to the Committee’s decision and “prejudicial,” satisfying both alternative prongs of the standard for reconsideration under the NCAA Bylaws. *See* NCAA Bylaw 19.11.4.1 (2023).

B. The Misrepresentations and Procedural Irregularities Related to McNair Alone Warrant Reconsideration

Even ignoring the significant flaws in Lake’s testimony about Bush and the way that testimony was depicted in the Report, reconsideration would be warranted based solely on the judicial conclusions that the Report’s findings with respect to McNair were untrue and that the Report was “false in several material ways.” Dist. Ct. Opp. 4.

The findings against McNair were critical to the Committee’s authority to impose sanctions on USC. As the California Court of Appeals explained, “[t]o make a finding against an institution such as USC, the NCAA had to find either a loss of institutional controls or that an employee knew about a rules violation and failed to report it.” Ct. App. Opp. *5. The Committee’s finding of lack of institutional control rested in large part on the Report’s now-discredited conclusion that McNair knew about Bush’s purported violations of amateurism rules. *See* Report 61 (“In maintaining institutional control and a rules compliant athletics program, institutions must rely on the efforts of coaches and staff to abide by the rules and to share any information they have regarding potential rules violations. McNair had knowledge that Bush and Lake and Michaels likely were engaged in NCAA violations.”). Indeed, the Report’s findings about McNair were the Report’s only basis to conclude that *anyone* at USC knew about the alleged violations.

The judicial determination in the McNair litigation— adopted by four different jurists—that the Report identified no evidence that McNair had the requisite knowledge is thus a sufficient ground to reconsider the penalties that the Report imposed relating to Bush. Those penalties were as a formal matter imposed on USC

itself, despite their enormous practical impact on Bush. But now that it has been established in court that McNair did not know about the alleged violations, there does not appear to have been a sufficient basis to penalize USC in connection with Mr. Bush and the football program. For that reason, the conclusion by California courts that the statement about McNair’s knowledge was false constitutes “new information that is directly related to the decision” and justifies reconsideration. NCAA Bylaw 19.11.4.1 (2023).

Even if the Committee would still have authority to impose penalties against USC without the McNair findings, as a matter of punitive discretion, those penalties should be reconsidered. Important aggravating factors for penalties include “a finding of failure to monitor or a lack of institutional control” and “direct involvement of a coach or high-ranking school administrator.” *Georgia Institute of Technology, Public Infractions Appeals Committee Report* 14–15 (Mar. 9, 2012). The Committee expressly cited the first factor as an important consideration for the penalties against USC, and it seems likely that the second factor played a role as well. But in light of the McNair judicial decisions, those considerations now merit little or no weight. Accordingly, it is necessary, at a minimum, to conduct a fresh assessment of the appropriate penalties in light of the now substantially different factual record.

The McNair findings also justify reconsideration on the ground of prejudicial procedural error. NCAA Bylaw 19.11.4.1 (2023). The judicial findings revealed that the interview of Lake was “sloppy” and “unprofessional” and replete with irregularities and interruptions. They also established conclusively that his testimony about McNair was misrepresented in the Report. That error prejudiced USC and Bush insofar as the findings against McNair were important considerations in the finding that USC lacked institutional control and in the penalties imposed against USC related to its football program and Bush.

Finally, a separate but significant aspect of the McNair litigation further warrants reconsideration. The courts found that the Report had misrepresented what Lake had told investigators—in particular, that he had never said that he had discussed the alleged agency agreement with McNair during the key phone call in January 2006. But even though the Report was published in 2010, and McNair and the NCAA engaged in widely reported litigation for nearly a decade over the veracity of the findings, Lake never came forward publicly to explain that the Report had misrepresented what he said about the phone call. That glaring failure to correct the record—despite the error’s devastating impact on McNair’s career—casts further

doubt on Lake's motives and credibility.

II. Penalty No. 5 and the Portion of Penalty No. 8 Pertaining to Bush Should Be Vacated

The Committee should vacate the Report's penalties that vacated USC's wins and Bush's personal records from the games in which he was purportedly ineligible (Penalties Nos. 5 and 8). When the record evidence is considered in light of the flaws exposed by the McNair judicial proceedings and the problems with the Lloyd Lake interview discussed above, those two severe penalties are not reasonably proportionate to any remaining rules violations. In particular, there is insufficient evidence that Bush *intentionally* broke NCAA rules. Vacating those two penalties, moreover, would not affect the other 21 penalties imposed on imposed on USC. And the NCAA has vacated penalties in previous cases where procedural problems came to light that involved exponentially more serious misconduct.

In reconsidering the appropriate penalty, the Committee should also take account of major recent developments in United States antitrust law and the NCAA's related changes to their rules about student-athlete compensation. *See Nat'l Collegiate Athletic Ass'n v. Alston*, 210 L. Ed. 2d 314, 141 S. Ct. 2141 (2021). Were Bush a college student today, he would be entitled to sign multimillion dollar endorsement deals and would not have been tempted to accept even small benefits from a man like Lloyd Lake. That reality should be factored into the Committee's analysis of the severity of his purported violations.

A. NCAA Rules and Precedents Support Vacating the Penalties

The NCAA bylaws provide that “[i]f reconsideration is granted, the panel [of the Committee on Infractions] may reduce or eliminate a penalty but may not prescribe any new penalty.” NCAA Bylaw 19.11.4.1.2 (2023). Because this case involves conduct that occurred before October 30, 2012, the appropriate penalties are either “the penalties set forth in [the current bylaws] or the penalties that would have been prescribed pursuant to the [2012 bylaws], whichever is less stringent.” NCAA Bylaw 19.9.1 (2021). The discussion here accordingly cites provisions from both the current bylaws and the 2012 bylaws.

Under the 2012 bylaws, in deciding whether to vacate a team or individual records, the Committee must take into account whether the violations involved

“academic fraud, serious intentional violations, direct involvement of a coach or high-ranking school administrator, a large number of violations, competition while academically ineligible, a finding of failure to monitor or lack of institutional control, a repeat violator, or a case in which vacation or a similar penalty would be imposed if the underlying violations were when vacation of a similar penalty would be imposed if the underlying violations were secondary [*i.e.*, relatively minor].” NCAA Bylaw 19.5.2(h) (2012); *see* Georgia Institute of Technology, *Public Infractions Appeals Committee Report* at 14–15 (Mar. 9, 2012). Under the current bylaws, vacation of records is reserved for matters involving “extenuating circumstances.” NCAA Bylaws 19.12.2, 19.12.8(g) (2023). Under either set of bylaws, vacating records is a serious penalty that requires a significant violation.

In this case, a fair application of the factors and standards set out in the bylaws, considered in light of the revelations of the McNair litigation and the major flaws in the interview of Lloyd Lake, strongly favor vacating the penalties imposed on USC that related to Bush (Nos. 5 and 8).

Academic fraud. The Report did not claim that Bush engaged in academic fraud.

Serious intentional violations. Bush did not intentionally violate NCAA rules. Contrary to the findings in the initial report, which rested on Lake’s flawed testimony, Bush never knowingly entered into an agency agreement with Lake and Michaels, and he was not aware that they had formed a sports agency and thus would be considered “agents” or “person[s] who represent[] any individual in the market of his or her athletics ability.” NCAA Bylaw 12.3.1. Accordingly, the Report’s key finding—that Bush “agreed to become involved with the proposed agency” in 2005, Report 12—was unsupported by the evidence presented to the Committee.

Before the Committee USC argued that in allegedly accepting certain benefits, Bush had violated a separate NCAA bylaw that prohibits receiving “[p]referential treatment, benefits or services because of the [student’s] athletics reputation or skill or payback potential as a professional athlete.” NCAA Bylaw 12.1.2.1.6 (2009); *see* NCAA Bylaw 12.1.1.1.6 (2005) (same). But Bush did not intentionally violate that prohibition either. To the extent he received any benefits at all from Lake, he understood such minimal benefits to have been provided to him on account of his family’s longstanding friendship with Lake, which went back to his early high school days. If Lake had a different understanding of the purpose of the benefits, Bush was not aware of it and there’s no reliable evidence otherwise.

The Report also found that Bush's internship with Ornstein's agency violated NCAA rules because the internship was not made available to students other than USC athletes. But the Report did not find that Bush was aware of that alleged fact. Nor did the Report find that Bush was aware of the benefits that Ornstein allegedly provided to Bush's parents or two other students (one of whom was also an intern), which all related to travel. And although the Report found that Bush had received an unspecified amount of money from Ornstein for car repairs, that was based exclusively on the claim by a sports-memorabilia dealer that he had overheard a cell-phone conversation between Ornstein and Bush at a "New York bar," and Bush denied the accusation. That is hardly creditable evidence.

Direct involvement of a coach or high-ranking school administrator. McNair's alleged knowledge of Bush's improper benefits presumably informed the Committee's penalty determination. But multiple courts have now concluded that the conclusion was based on a misrepresentation of Lake's testimony. There is no basis to conclude that any coach or school administrator was involved in the alleged violations. This factor thus weighs strongly in favor of a reduced penalty.

A large number of violations. For the reasons discussed above, there is substantial reason to doubt that many of the benefits cited in the Report actually violated NCAA rules. The cited evidence that a real sports agency was formed and operating is paper thin, and many of the contested claims about benefits relied exclusively on Lake's suspect testimony. Both Bush and Ornstein vigorously contested the claims about benefits supposedly provided by Ornstein's agency to Bush and his family. At a minimum, the number of *intentional* violations by Bush is small—indeed, zero.

Competition while academically ineligible. The Report did not claim that Bush competed with academically ineligible.

Ineligible competition in a case that includes a finding of failure to monitor or a lack of institutional control. Although the Report found that USC had a lack of institutional control with respect to the football team, that finding appeared to rely in substantial part on the now-discredited findings against McNair. To the extent that Committee would still find a lack of institutional control for other reasons, that factor is at a minimum seriously diminished. And it would be particularly unfair to vacate Bush's records—a penalty that as a practical matter falls most heavily on Bush personally—if the Committee were to conclude that he engaged in no intentional violations, even if it continued to find that USC had lacked the requisite level of

institutional control.

When vacation of a similar penalty would be imposed if the underlying violations were secondary. The Report made no claim about this factor.

Mitigating Considerations. On the other side of the penalty analysis, the consequences of vacating Bush's records and USC's wins has been enormously painful for Bush. Not only was his reputation tainted, even though he never cheated the game, but he was forced to relinquish his Heisman Trophy. As a poor child in San Diego, he dreamed about becoming a college star. He worked incredibly hard to hone his talents and reach his goals. Nothing was handed to him. Yet, based on the questionable testimony of a convicted felon, all of that was taken away from him. That devastating impact on a good person should be considered reassessing the penalties. *See* NCAA Bylaw 19.12.4.1(i) and 19.12.4.2(g) (2023) (providing that "[o]ther factors warranting a lower penalty range" should be considered in mitigation analysis). So should Bush's voluntary submission to an interview, clean prior record, and lack of intent. *See* NCAA Bylaw 19.12.4.2 (2023).

In short, the new revelations substantially change the multi-factor penalty analysis and disfavor the extreme sanction of the vacation of USC's wins and Bush's records and eligibility.

B. Recent Developments in Federal Antitrust Law and NCAA Rules Warrant Reconsideration of the Penalties Pertaining to USC and Bush

Another factor related to Bush's alleged acceptance of benefits should play a role in the reconsideration of the appropriate penalties in this matter. In recent years, courts and commentators have increasingly scrutinized the NCAA's restrictions on student-athlete compensation. The most accomplished student-athletes, such as Bush, generate millions of dollars for NCAA member-institutions and other entities. Yet NCAA amateurism rules have traditionally denied them most forms of compensation for their efforts. But two developments in 2021 have fundamentally changed the rules that govern student-athlete compensation in a way that should bear on how Bush's alleged violations are viewed and assessed.

First, in June 2021, the Supreme Court of the United States unanimously upheld a ruling that the NCAA and certain member institutions had violated Section 1 of the Sherman Antitrust Act by colluding to deny athletes certain education-related forms of compensation. *See **Appendix E** Nat'l Collegiate Athletic Ass'n v. Alston*, 210 L. Ed. 2d 314, 141 S. Ct. 2141 (2021) ("**Alston Op.**"). By the time that case

reached the Supreme Court, the only justification that the NCAA offered for the restrictions at issue was that they “preserve amateurism”—*i.e.*, that they enable the NCAA to “provide a unique product” by ensuring that “amateur college sports” are “distinct from professional sports.” *Id.* at 10. The Supreme Court rejected that justification. It affirmed a lower court’s conclusion that “the NCAA had not adopted any consistent definition” of amateurism—assertedly the defining feature of the “product”—even though the preservation of amateurism was its basis for denying compensation to student-athletes. *Id.* at 18.

More broadly, the Court explained that the NCAA’s restrictions on athlete compensation must be judged under the “rule of reason,” meaning that the restrictions must generate procompetitive benefits that cannot reasonably be achieved through less anticompetitive means and must otherwise be reasonable. *Alston* Op. 15–18. As a result, all of the NCAA’s compensation rules are now vulnerable to legal challenge, and for the first time the NCAA will be required to defend those restrictions under the ordinary rules of competition that govern other businesses.

Although the Supreme Court’s opinion addressed only education-related benefits, Justice Brett M. Kavanaugh forcefully explained in a concurring opinion why the NCAA’s remaining limitations on student-athlete compensation are vulnerable to challenge. As he wrote, “the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenues for colleges every year,” with “enormous sums of money flow[ing] to seemingly everyone except the student athletes.” *Alston* Op. (Kavanaugh, J., concurring), at 22. While “[c]ollege presidents, athletic directors, coaches, conference commissioners, and NCAA executives take in six- and seven-figure salaries,” the “student- athletes who generate the revenues, many of whom are African American and from lower-income backgrounds, end up with little or nothing.” *Id.* at 22. Justice Kavanaugh wrote that the NCAA’s only justification for that state of affairs—that denying athletes compensation for their work is “the defining feature of college sports”—is “circular and unpersuasive.” *Id.* at 22. The NCAA’s restrictions on compensation “would be flatly illegal in almost any other industry in America,” he observed. *Id.*

The second development happened nine days after the Supreme Court’s decision in *Alston*. The NCAA adopted an interim rule allowing student-athletes to obtain benefits for their names, images, and likenesses. That change has produced immediate, significant changes for student-athletes. For example, the winner of the

2021 Heisman Trophy—Alabama sophomore quarterback Bryce Young—signed endorsement deals worth nearly a million dollars before the beginning of his first season as a starter, even though by any account he had far less name recognition than Bush did in 2005 and 2006. See Alex Scarborough, *Alabama QB Bryce Young approaching \$1M in endorsement deals, says head coach Nick Saban*, ESPN (July 20, 2021).

These developments bear directly on the appropriateness of the penalties related to Bush. The complete bar on most forms of compensation for student-athletes while Bush was a USC student arguably violated federal antitrust law. That should be considered in deciding whether the harsh penalties imposed on Bush were warranted. Indeed, had the new NCAA rule allowing athletes to sign endorsement deals been available in the 2000s, Bush would have almost certainly signed lucrative endorsement deals securing for him at least a fraction of the tremendous value that his own efforts produced for others. It is unlikely that star college athletes would have been tempted to accept benefits on the order of \$500 or a night in a hotel room if they had been allowed to engage in ordinary free-market transactions to license their names and images. As one commentator has put it, by “cutting [student-athletes] completely out of the financial success of college sports, the NCAA created an underground economy” that encouraged athletes to obtain benefits elsewhere. Jemele Hill, *Give Reggie Bush His Heisman Back*, THE ATLANTIC (July 3, 2021). That was especially true for athletes from low-income families who struggled to afford to live on elite college campuses, where many fellow students enjoyed financial support from their parents.

Assuming *arguendo* that the allegations were true, in Bush’s case, it is unlikely he would have been tempted to accept relatively modest benefits from men he considered to be family friends if he had signed the sort of endorsement deals that a player of his stature would have commanded. Immediately after he declared for the NFL draft, Bush signed a multi-million-dollar endorsement deal with Adidas to develop his own cleats. During his first year in the NFL, he signed multiple endorsement deals with General Motors, Pepsi, Pizza Hut, and Subway. But instead of earning income through such endorsements while eligible to play college football, Bush was forced to get by on a \$1000 per month stipend, the majority of which was devoted to rent. Had the endorsement opportunities been available to him during his Heisman season or before, he would not have been in the position where accepting modest gifts from a man like Lloyd Lake was attractive.

The Committee should take serious account of that context when deciding an appropriate penalty. Bush was vulnerable to men like Lloyd Lake only because the NCAA had in place a restrictive rule on athlete compensation that it no longer believes to be just or appropriate. That should be deemed a significant—indeed, controlling—mitigating factor.

III. At a Minimum, the Committee Should Conduct a Full Review of the Matter

If the Committee elects not to immediately vacate the penalties pertaining to USC and Bush, it should conduct a full review of the investigation and the conclusions in the Report as they relate to him. In conjunction with that review, Bush would welcome the opportunity to speak with the Committee. Petitioners also request that the full record compiled by the NCAA enforcement staff, including transcripts of all witness interviews that were transcribed and any documentary evidence, be made available to them so that the investigation can be scrutinized through a fair process of adversarial testing.

CONCLUSION

The Committee should grant the petition for reconsideration of the Report and vacate Penalty No. 5 and the portion of Penalty No. 8 that pertains to Bush.

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Respectfully submitted,

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