

Courts have held that the general principles of judicial non-interference with the internal decisions of private associations do not apply where a dominant organization's decisions effectively prevent individuals from participating in an important activity, including a profession or sport. Although the bylaws of the National Collegiate Athletic Association ("NCAA") give it unfettered power, it remains subject to judicial review when its decisions violate constitutional or statutory limits, or principles of contract law, or where they are inconsistent with the organization's own rules. General principles of equity permit injunctive relief where an applicant can meet the appropriate standards. Similarly, courts have struck down or severely limited, on grounds of public policy, a sporting associations' effort to entirely preclude judicial review by an express "waiver of recourse" clause, unless there exists an agreed upon alternative dispute resolution process that provides for independent impartial review consistent with the requirements of the Federal Arbitration Act ("FAA"). The NCAA, however, effectively precludes judicial review via Bylaw 19.7 (the "Restitution Rule"), which permits the NCAA to impose severe financial penalties on a member school that allows an athlete to participate pursuant to a court order, if an appellate court has overturned the initial court's ruling. Further, the NCAA's reinstatement process for resolving eligibility disputes lacks the independent impartial review necessary to insulate the process from judicial review under the FAA. This article analyzes these oft-distinct strands of private association law and the requirements of the FAA and concludes that the Restitution Rule constitutes an improper waiver of recourse. Finally, this article suggests that the NCAA can achieve its legitimate aim of quick and definitive resolution of eligibility disputes by affording student-athletes the right to submit the dispute to binding arbitration before a neutral, expert arbitrator (or panel of arbitrators) consistent with the requirements of the FAA.