IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

FILIP BOROVICANIN,	:	APPEAL NO. C-260335 TRIAL NO. A-2603352
MALIK MESSINA-MOORE,	:	
MJ COLLINS, JR.,	:	
KOLBY KING,	:	*JUDGMENT ENTRY*
JAVON BENNETT,	:	
CHEVALIER EMERY, JR.,	:	
JALEN QUINN,	:	
SAVANNAH WHITE,	:	
DONOVAN BROWN,	:	
CHRISTIAN HENRY,	:	
ZIARE WELLS,	:	
CRISTIAN CARROLL,	:	
SHAWN PHILLIPS, JR.,	:	
CADEN POWELL,	:	
JOSH REED,	:	
NATHANEAL JOHNSON,	:	
ELMORE JAMES,	:	
CJ JONES,	:	
TOM HOUSE,	:	
ANTWONE WOOLFOLK,	:	
KEYSHAWN HALL,	:	

OHIO FIRST DISTRICT COURT OF APPEALS

TAVARI JOHNSON, :

AMANI LYLES, :

and :

EVAN MAHAFFEY, :

Plaintiffs-Appellees, :

vs. :

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, :

Defendant-Appellant. :

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 10/2/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: _____
Judge

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OHIO FIRST DISTRICT COURT OF APPEALS

TAVARI JOHNSON,	:
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and	:
EVAN MAHAFFEY,	:
Plaintiffs-Appellees,	:
vs.	:
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:
Defendant-Appellant.	:

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: October 2, 2026

The Texas Trial Group and *Ryan Downton*, *Ashbrook Byrne Kresge Flowers LLC, Shams H. Hirji, Joseph P. Ashbrook*, and *Jacob P. Meckler*, and *Rittgers Rittgers & Nakajima, Charles M. Rittgers* and *Jonathan E. Specht,* for Plaintiffs-Appellees,

Squire Patton Boggs, Lauren S. Kuley, Colter Paulson, Ellen H. Phillips, Nathaniel L. Truitt, Keith Shumate, Kathryn M. Brown, and *Erin K. Hassett, Holland & Knight LLP, Taylor J. Askew* and *David Zeitlin,* and *Wilkinson Stekloff LLP, Rakesh N. Kilaru* and *Max J. Warren*, for Defendant-Appellant.

CROUSE, Presiding Judge.

{¶1} Defendant-appellant the National Collegiate Athletic Association ("NCAA") appeals from the trial court's entry granting a preliminary injunction to plaintiffs-appellees, a group of 24 student-athletes seeking to be deemed eligible to participate in a fifth season of intercollegiate athletic competitions. The injunction enjoined the NCAA from enforcing Bylaw 12.6 and denying plaintiffs a fifth season of athletic competition, as well as from enforcing the Transfer Portal requirements with respect to plaintiffs. Because the trial court abused its discretion in granting the injunction, we reverse the lower court's judgment and remand this cause for further proceedings.

I. A Rule is Changed and a Lawsuit is Filed

{¶2} The plaintiffs graduated high school and entered college in 2022. At the time that they began their collegiate athletic careers, the NCAA Bylaws provided that they were entitled to participate in four seasons of intercollegiate competition over a five-year period.

{¶3} Bylaw 12.6 provided that "[a] student-athlete shall not engage in more than four seasons of intercollegiate competition in any one sport." And Bylaw 12.6.1 provided, "A student-athlete shall complete the student-athlete's seasons of participation within five calendar years from the beginning of the semester or quarter in which the student-athlete first registered for a minimum full-time program of studies in a collegiate institution . . . ."

{¶4} This past June, the NCAA approved a rule change that implemented an age-based model to determine a student-athlete's athletic eligibility. Under the new rule, which revised Bylaw 12.6, student-athletes are entitled to participate in five seasons of athletic competition. The five-year eligibility period begins to run upon the

earlier of the student-athlete's full-time enrollment in college or the beginning of the academic year after the student turns 19.

{¶5} Pursuant to the legislation that enacted the revised rule, it took effect August 1, 2026, but only applied to student-athletes who had eligibility remaining as of that date.[1] Bylaw 12.01.01 confirms that this legislation governed a determination of an athlete's eligibility to participate. It provides that "[o]nly a student-athlete *who meets the governing athletics eligibility legislation* and interpretations is eligible for intercollegiate athletics participation in a particular sport." (Emphasis added.)

{¶6} At the end of the 2025-2026 athletic year, each of the 24 plaintiffs had exhausted the four years of athletic eligibility that they were accorded pursuant to Bylaw 12.6 at the time that they enrolled in college. As such, they were not entitled to participate in a fifth season of athletic competition pursuant to revised Bylaw 12.6.

{¶7} Unhappy with their exclusion from a fifth year of eligibility, the plaintiffs filed a complaint against the NCAA asserting claims for breach of contract and a violation of the Ohio Consumer Sales Practices Act ("OCSPA"). The contract allegedly breached was the NCAA's manual, which set forth the organization's Constitution and Bylaws. The plaintiffs argued that the NCAA arbitrarily and capriciously applied Bylaw 12.6 to them to exclude them from participating in a fifth season of athletic competition. They compared themselves to student-athletes who graduated prior to 2022 and were granted extra seasons of competition because of a COVID-era waiver, former professional basketball players who were allowed to enroll in college after playing professionally without losing a season of collegiate competition, and student-athletes graduating high school after 2022, who would be

[1] *See* Division I Proposal 2026-44 https://web3.ncaa.org/lsdbi/search/proposalView?id=109394 (accessed Sept. 29. 2026) [https://perma.cc/DS8R-5YNA].

eligible under the new rules for a fifth year of athletic competition. The plaintiffs claimed that because they were still within five years of enrolling in college for the first time, they should be eligible for a fifth season of competition under revised Bylaw 12.6.

{¶8} In support of the breach-of-contract claim, the complaint alleged that the NCAA breached the implied covenant of good faith and fair dealing that accompanies every contract, and that it did so through three independent courses of conduct, each rooted in specific provisions of the NCAA manual.

{¶9} First, the complaint alleged that the NCAA violated its own express textual commitments to fairness set forth in Article 1-C and Article 1-D of the NCAA's Constitution. Article 1-C states that all individuals associated with intercollegiate athletics "should adhere to such fundamental values as respect, fairness, civility, honesty, responsibility, academic integrity, ethical conduct and the rules of their conferences." Article 1-D provides that intercollegiate athletics shall be conducted "in a manner designed to protect, support and enhance the physical and mental health and safety of student-athletes" and mandates that "coaches and administrators exhibit fairness, openness and honesty in their relationship with student-athletes."

{¶10} In support of this alleged breach, the complaint asserted that the plaintiffs spent four years competing against athletes who had received an extra year of competition because of COVID-era waivers. They were then "carved out" of the permanent fifth season of competition that the NCAA implemented, which allegedly resulted in an outcome that was not fair, open, or honest.

{¶11} Second, the complaint alleged that the NCAA "refused in bad faith to exercise discretionary waiver authority expressly granted in the Bylaws." In support of this allegation, the plaintiffs relied on Bylaws 12.6.6 and 12.6.1.7.1.3, which allowed student-athletes to be granted an additional season of competition under certain

circumstances, including participating in a limited amount of competition during a season and circumstances of extraordinary or extreme hardship.[2] The complaint asserted that the covenant of good faith and fair dealing required the NCAA to exercise its discretion in granting waiver requests honestly and consistently, and that by exercising its waiver authority in favor of former professional athletes and against those similarly situated to the plaintiffs, who had played minimal minutes as a freshman and/or exceeded the number of games allowed to be granted a medical redshirt, it failed to do so.

{¶12} Third, the complaint alleged that the NCAA applied its own Bylaw framework inconsistently, denying plaintiffs the benefit they were owed. The argument offered in support of this alleged breach was twofold. The complaint first asserted that, when it came to former professional players, the NCAA abandoned the framework set forth in Bylaw 12.6.3.2.1 for determining how to charge seasons of competition to student-athletes who participated in organized competition prior to enrolling in college. In turn, the complaint asserted, "the NCAA applied the most punishing possible interpretation to Plaintiffs," counting a single minute of play in a single game as a full season of eligibility. The complaint also asserted that by "arbitrarily truncating Plaintiffs' eligibility," the NCAA denied plaintiffs financial entitlement that was conditioned on eligibility.

{¶13} As relevant to this appeal, the complaint requested injunctive relief. The plaintiffs asked the trial court to enjoin the NCAA from enforcing Bylaw 12.6 and denying them a fifth season of athletic eligibility. They also asked it to enjoin the NCAA

[2] These waiver provisions were contained in the 2025-2026 manual, but were amended in conjunction with the new age-based eligibility model and, in their former form, are not in the 2026-2027 manual.

from applying the Transfer Portal requirements to them to prevent them from playing for any NCAA Division 1 school because they did not enter the Transfer Portal.[3] In accordance with their requested relief, plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.

{¶14} The NCAA opposed the motion for a preliminary injunction. It argued that the trial court lacked personal jurisdiction over the NCAA and that an injunction was not warranted because the plaintiffs were not likely to succeed on the merits of their claims.

{¶15} Attached to the NCAA's response was an affidavit from Geoff Silver, Vice President of Division I Governance and Member Services for the NCAA. The affidavit discussed the process by which the eligibility rule change was implemented, as well as the decision not to apply the rule retroactively. It provided that the NCAA cabinet had unanimously voted to implement the new age-based eligibility model, which eliminated the need for an athlete to obtain a waiver for additional eligibility, except in "clearly defined cases involving pregnancy, military service, and religious missions," and that the cabinet's decision not to apply the new age-based eligibility model retroactively was also unanimous.

{¶16} Silver stated,

> [A]pplying the age-based eligibility model retroactively would destabilize college sports. In most sports, member institutions have already decided who will be on their rosters for the 2026-27 academic year. Student-athletes have decided which schools to remain at, transfer to, or initially attend based on their expectation that a roster spot, and

[3] The NCAA requires players to enter the Transfer Portal by a certain date to be eligible to be rostered at a different college or university the following year.

> potentially playing time and revenue-sharing authorized by the class-action settlement in *House v. NCAA*, No. 4:20-cv-03919-CW (N.D. Cal.) (the "*House* Settlement"), will be available to them.
>
> . . .
>
> If a new class of student-athletes is retroactively made eligible at the eleventh hour, it will create roster chaos. It will also fundamentally upend the settled reliance interests of hundreds of thousands of student-athletes and institutions who operated in reliance on the age-based rule not applying retroactively. Many student-athletes would likely lose the opportunities that have been made available to them as a result, all to benefit a group of student-athletes who have received all of the seasons of eligibility to which they were entitled under the rules in effect for their entire collegiate careers.

The affidavit further provided that waivers had only been requested by NCAA member institutions for four of the 24 plaintiffs, and that all requests had been denied.

{¶17} The NCAA also submitted a "declaration of conference commissioners" in support of their opposition to the plaintiffs' motion for a preliminary injunction. In this declaration, the commissioners of the Atlantic Coast Conference, the Big Ten Conference, the Big 12 Conference, the Pac-12 Conference, the Southeastern Conference, and the Big East Conference avowed their support for the NCAA's recent change to the eligibility rules, including the decision not to apply the rule change retroactively. They stated,

> Representatives from our Conferences were heavily involved in the DI Cabinet's extensive process for developing and thinking through the age-based model. Our Conferences are extremely supportive of the

rule change and believe that the rule will benefit the student-athlete body and bring stability and predictability to the eligibility sphere. The age-based eligibility model, like the Five-Year Rule and other eligibility rules, was enacted through the NCAA membership's legislative process, and reflects the informed judgment of hundreds of educational institutions to protect the distinctive character of collegiate athletics and the opportunities it presents for college athletes.

. . .

We fully agree with the Cabinet's decision not to retroactively apply the new rule change to student-athletes whose eligibility is or will be exhausted by spring 2026. Engaging in such retroactive applicability would have detrimental consequences for member institutions in our conferences, for student-athletes, and for college sports in general. Allowing these student-athletes to stay and compete for an additional fifth year that their schools' athletic departments did not previously plan for would create significant roster instability. These student-athletes would potentially take roster spots from individuals to whom the spots were previously promised. In particular, there would be detrimental consequences for incoming student-athletes.

. . .

And the decision to have the rule take effect in the 2026-27 academic year ensures balance and equity: providing benefits to generations of forthcoming student-athletes, while honoring the settled expectations of student-athletes who had—and knew they had—only four seasons of competition, and incoming student-athletes entering

college sports for the first time.

{¶18} The trial court denied the motion for a temporary restraining order. It also issued an entry finding that it had personal jurisdiction over the NCAA.

{¶19} At a hearing on the motion for a preliminary injunction, testimony was offered from three of the plaintiffs, from Ohio Division 1 men's basketball coaches Richard Pitino, Jerrod Calhoun, and Dustin Ford, and from an agent that represented several of the plaintiffs. Collectively, the testimony from the three coaches established that they had at least one available roster spot remaining on their teams for the 2026-2027 season, and that they would consider one of the plaintiffs to fill the available spot or spots. The testimony offered by the plaintiffs addressed their desire to play a fifth year and the path of their collegiate-athletic careers, including which institutions they had attended and competed on behalf of, the amount of time they played in a season, and the age of the players they competed against. They also testified about the amount of Name, Image, and Likeness ("NIL") money that they had previously earned and hoped to earn if permitted to play a fifth year.

{¶20} At the close of the hearing, the plaintiffs moved pursuant to Civ.R. 65(B)(2) to consolidate the hearing on the preliminary injunction with a hearing on the merits. The NCAA opposed the plaintiffs' request, arguing that it was only served with notice of the lawsuit one week before the hearing and that it needed additional time to prepare. The trial court denied the motion to consolidate.

{¶21} The court subsequently issued an entry granting the plaintiffs' motion for a preliminary injunction and enjoining the NCAA from enforcing Bylaw 12.6 and denying plaintiffs a fifth season of athletic competition, as well as from enforcing the Transfer Portal requirements with respect to plaintiffs. The court found that the plaintiffs had a substantial likelihood of succeeding on the merits of their breach-of-

contract claim and establishing that the NCAA had violated the covenant of good faith and fair dealing.[4] The court found that the NCAA manual and Bylaws were intended to benefit student-athletes, and that the NCAA applied the eligibility rules in an arbitrary and capricious manner because the only group of students that it negatively affected were 2022 high school graduates.

{¶22} The trial court further found that the plaintiffs would suffer irreparable injury if an injunction were not granted, noting that they "are seeking to take part in a $1.3 billion organization," that no third parties would be unjustifiably harmed if the injunction was granted, and that public interest would be served by an injunction.

{¶23} The NCAA appealed the trial court's entry granting the preliminary injunction, and it moved for a stay pending appeal. The plaintiffs opposed the motion for a stay. After considering the factors set forth in Loc.R. 7 and the parties' filings, this court issued an entry granting the motion for a stay pending appeal.

II. Appellate Jurisdiction/Final Order

{¶24} The plaintiffs argue that this court lacks jurisdiction to consider the NCAA's appeal because the trial court's entry granting the preliminary injunction was not a final, appealable order. While the appeal was pending, we issued an order provisionally determining that we had jurisdiction and allowing the appeal to proceed. For the following reasons, we affirm our provisional determination and hold that we have jurisdiction to consider the NCAA's appeal.

{¶25} Our appellate jurisdiction is limited to the review of final judgments issued by lower courts. Ohio Const., art. IV, § 3(B)(2). R.C. 2505.02 guides our determination as to whether a judgment is final and appealable. The parties agree that,

[4] The court found that the plaintiffs had failed to prove by clear and convincing evidence a substantial likelihood of success on the merits of the OCSPA claim.

because the entry appealed from is one that grants a preliminary injunction, our analysis is governed by R.C. 2505.02(B)(4). This section provides that a final order is

> An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
>
> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

R.C. 2505.02(B)(4). An entry will only be considered final and appealable if it satisfies both prongs of R.C. 2505.02(B)(4). *Preterm-Cleveland v. Yost*, 2022-Ohio-4540, ¶ 12 (1st Dist.).

{¶26} The first prong is met when "there existed nothing further for the trial court to decide with respect to the provisional remedy." (Cleaned up.) *Doe v. Columbus*, 2026-Ohio-1095, ¶ 14; *accord Preterm* at ¶ 13. The trial court in this case gave no indication that its decision was tentative or that the court intended to revisit it prior to a hearing on the merits regarding a permanent injunction. The first prong set forth in R.C. 2505.02(B)(4)(a) has therefore been met. *See Doe* at ¶ 15 ("[A]lthough the trial court could theoretically revisit its order issuing the preliminary injunction, the practical result of its order prevents any further opportunity for the city to obtain a judgment denying the preliminary injunction"); *Preterm* at ¶ 14 ("Here, the trial court's decision is, as best we can tell, final with respect to issuing the preliminary injunction. By that, we mean that the trial court gave no indication that its decision was tentative or contingent in any manner.").

{¶27} To satisfy the second prong of R.C. 2505.02, a party must show that it cannot obtain a meaningful or effective remedy if it is forced to wait until after final judgment is issued to appeal. Generally, where a permanent injunction has also been sought, a party cannot satisfy R.C. 2505.02(B)(4)(b) because "an appeal after issuance of the permanent injunction will provide the meaningful and effective remedy." *Preterm* at ¶ 18-19. While "some delay would occur between the preliminary and permanent injunction, [] that delay must be measured against providing the appellate court a complete record on appeal and avoiding piecemeal appeals." *Id.* at ¶ 19. Here, the plaintiffs have moved for a permanent injunction that requests the same relief as was afforded by the preliminary injunction. While this cuts against a finding that the NCAA cannot obtain a meaningful or effective remedy absent an immediate appeal, several other considerations factor into our determination.

{¶28} Where a preliminary injunction maintains the status quo pending a ruling on the merits of the action, courts have found that the order granting the injunction is not final and appealable. *Preterm*, 2022-Ohio-4540, at ¶ 21 (1st Dist.). The term "status quo" has been defined in the context of a preliminary injunction as the "last, actual, peaceable, uncontested status which preceded the pending controversy." (Cleaned up.) *Id.*

{¶29} The trial court's ruling in this case *altered* the status quo. Prior to the granting of the injunction, the plaintiffs had exhausted their eligibility and could not play in the upcoming 2026-2027 athletic season. But after the injunction, the plaintiffs were granted a fifth year of athletic eligibility.

{¶30} Courts have further held that "an immediate appeal might be warranted if 'the proverbial bell cannot be unrung.'" *Preterm* at ¶ 24, quoting *State v. Muncie*, 91 Ohio St.3d 440, 451 (2001). In *Muncie*, the court held that an order "compelling the

involuntary administration of psychotropic medication" satisfied this requirement. *Muncie* at 452.

{¶31} The effects of the injunction issued in the case at bar do not have the same impact on a person's liberty interest as those in *Muncie*. But if the injunction remains in effect, the "proverbial bell cannot be unrung." *See Muncie* at 451. The 2026-2027 athletic season has already begun and rosters have likely been, or will imminently be, finalized. If roster spots are given to plaintiffs and relief cannot be obtained by the NCAA until an appeal after final judgment, it will likely be too late to rescind the spots and give them to other eligible players. This is not a situation in which monetary damages would compensate for any harm caused by an improperly issued injunction.

{¶32} The effect of the denial of an immediate appeal in this case is similar to that recognized in *Ohio House Republican Alliance v. Stephens*, 2024-Ohio-3416 (10th Dist.). In *Stephens*, the trial court granted a preliminary injunction that enjoined the defendants, several of which were State representatives, "from operating or otherwise making expenditures or transfers of funds from the Ohio House Republican Alliance ('OHRA') Legislative Campaign Fund ('LCF') for the pendency of this case." *Id.* at ¶ 1. The Tenth District held that the trial court's order granting the preliminary injunction was a final and appealable order pursuant to R.C. 2505.02(B)(4) because appellants would be denied a meaningful remedy even if they ultimately succeeded before the trial court. *Id.* at ¶ 11. The court explained:

> Representatives are elected once every two years, rendering any one representative's control of the fund transitory and contingent on the next election cycle. Insofar as appellants are concerned, then, the only effective relief would be to regain access to OHRA funds with enough

> time to make expenditures in support of candidates currently running for office. Given the trial court's acknowledgement "[t]he election cycle could be over before the final outcome of this case," appellants' only means of an effective remedy is by the present appeal.

Id.

{¶33} In the matter at hand, team rosters are only set once a year. If a roster is finalized while the litigation is pending, the NCAA cannot be afforded meaningful relief even if it is ultimately successful in defending plaintiffs' breach-of-contract and OCSPA claims.

{¶34} We accordingly hold that the NCAA would not be afforded a meaningful or effective remedy following an appeal after final judgment. The trial court's entry satisfies both prongs of R.C. 2505.02(B)(4) and is a final, appealable order.

III. Preliminary Injunction

{¶35} In its sole assignment of error, the NCAA argues that the trial court erred in granting the preliminary injunction.

{¶36} A party seeking a preliminary injunction must establish the following elements by clear and convincing evidence: (1) a substantial likelihood that the party will prevail on the merits, (2) that the party will suffer irreparable injury if the injunction is not granted, (3) that no third parties will be unjustifiably harmed if the injunction is granted, and (4) that the public interest will be served by the injunction. *Cincinnati v. State*, 2024-Ohio-2425, ¶ 23 (1st Dist.). All four factors must be balanced, and no single factor is dispositive. *Id.*

{¶37} We review the trial court's decision to grant a preliminary injunction for an abuse of discretion. *Id.* at ¶ 24. "The term 'abuse of discretion' implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Garry v. Borger*,

2023-Ohio-905, ¶ 14 (1st Dist.), citing *Berk v. Matthews*, 53 Ohio St.3d 161, 169 (1990). An abuse of discretion occurs when "a court exercis[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. However, whether the plaintiffs are likely to succeed on the merits is a legal determination that we review de novo. *Cincinnati* at ¶ 24.

A. Likelihood of Success on the Merits

{¶38} The first factor to be considered is whether the plaintiffs have a substantial likelihood of succeeding on the merits of their breach-of-contract claim.

{¶39} Plaintiffs do not challenge the NCAA's implementation of the age-based model to determine eligibility. Their argument, rather, is that the NCAA committed a breach of contract and violated the covenant of good faith and fair dealing by excluding only those student-athletes who graduated high school in 2022 and competed in four seasons of athletic eligibility without redshirting from the benefit of this new rule.

Personal Jurisdiction

{¶40} We first turn to the NCAA's argument that the trial court did not have personal jurisdiction over it. The NCAA argues that the trial court improperly focused on the plaintiffs' connections to Ohio, rather than the NCAA's. The plaintiffs, in turn, argue that the NCAA cannot challenge the trial court's finding on personal jurisdiction because it did not separately appeal the trial court's entry determining that it had personal jurisdiction over the NCAA. Plaintiffs alternatively argue that the NCAA purposefully availed itself of the privilege of conducting activities within Ohio by enforcing its Bylaws within Ohio.

{¶41} The trial court's finding regarding personal jurisdiction was interlocutory and not, standing alone, a final appealable order. *See Gardner v. Ford*,

2015-Ohio-4242, ¶ 4, 11 (1st Dist.) (an entry denying a motion to dismiss for lack of personal jurisdiction is not a final order). When the NCAA subsequently appealed the trial court's entry granting a preliminary injunction, it did not need to also separately appeal the interlocutory order finding personal jurisdiction. *See Accu-Check Instrument Serv., Inc. v. Sunbelt Business Advisors of Cent. Ohio*, 2009-Ohio-6849, ¶ 23 (10th Dist.) ("Although App.R. 3(D) provides that a notice of appeal shall designate the judgment, order or part thereof appealed from, it does not require an appellant to separately identify each interlocutory order issued prior to a final judgment."). Furthermore, the question of jurisdiction over the defendant is relevant to the question of whether a plaintiff has a substantial likelihood that they will prevail on the merits. *See Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 554 (6th Cir. 2021) ("In addition to demonstrating a likelihood of success on the substantive claims, a plaintiff must also show a likelihood of success of establishing jurisdiction."); *U.S. Assn. of Importers of Textiles and Apparel v. U.S. Dept. of Commerce*, 413 F.3d 1344, 1348 (Fed.Cir. 2005) ("The question of jurisdiction closely affects the [plaintiff's] likelihood of success on its motion for a preliminary injunction.").

{¶42} The NCAA is not a resident of Ohio. As such, an Ohio trial court will only have personal jurisdiction over the NCAA where "(1) the long-arm statute, R.C. 2307.382, and the Rules of Civil Procedure confer jurisdiction and (2) the exercise of jurisdiction comports with due process under the Fourteenth Amendment to the United States Constitution." *LG Chem, Ltd. v. Goulding*, 2022-Ohio-2065, ¶ 10. A court's exercise of jurisdiction will comport with due process when the defendant has "minimum contacts with the forum state such that the maintenance of the suit is reasonable and does not offend traditional notions of fair play and substantial justice." (Cleaned up.) *Id.* at ¶ 11, citing *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 316

(1945).

{¶43} Personal jurisdiction may be general or specific. *Id.* at ¶ 12. Specific jurisdiction is at issue here. A court may lawfully exercise specific jurisdiction over a defendant if the defendant has "taken 'some act[ion] by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum state.'" *Id.* at ¶ 13, quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). "Purposeful availment occurs when the defendant deliberately reaches out beyond its home—by, for example, exploiting a market in the forum state or entering a contractual relationship centered there." (Cleaned up.) *Id.* at ¶ 13. Where a defendant has purposefully availed itself of the privilege of conducting activities in the forum state, the plaintiffs' claims must arise out of those contacts. *Id.* "When there is no connection between the plaintiffs' claims and the nonresident defendant's contacts with the forum state, specific jurisdiction is lacking regardless of the extent of the defendant's unconnected activities in the state." *Id.*

{¶44} It is the NCAA's position that the trial court lacks personal jurisdiction over it because the new eligibility rules do not specifically target Ohio. According to the NCAA, its conduct only affects Ohio as a "side effect" of conduct that affects the entire country. We cannot agree. Taken to its logical extreme, under the NCAA's argument, it could only be sued in its home state of Indiana.

{¶45} Multiple Ohio universities are member institutions of the NCAA. To remain part of, or be affiliated with, the NCAA, these universities are subject to the NCAA's rules, including rules on eligibility. The NCAA purposefully availed itself of the privilege of conducting activities in Ohio by transacting business with its member institutions in the state. And this relationship is directly related to the plaintiffs' lawsuit, as they allege a breach of contract regarding the eligibility rules in the manual

between the NCAA and its member institutions.

{¶46} In *Wisne v. NCAA,* 2026 U.S. Dist. LEXIS 171332 (D.Co. July 31, 2026), the Colorado District Court found that it had personal jurisdiction over the NCAA in a lawsuit filed by student-athletes challenging the NCAA's implementation of the five-year eligibility rule. The court held that the named plaintiff in the class-action lawsuit had adequately shown "that the NCAA purposefully directed its activities towards Colorado in a manner that injured him and gave rise to this lawsuit." *Id.* at *12. It elaborated,

> The Rule that Plaintiffs challenge has, and will, reach colleges and universities nationwide, including colleges and universities in Colorado. Plaintiff Wisne has, and will, certainly feel its effects in Colorado. This evidence supports Plaintiffs' allegation that the NCAA both "transacts business" and has "substantial contacts" with Colorado, but also that its allegedly "anticompetitive scheme was directed at and has the intended effect of causing injury" to individuals domiciled here.

(Cleaned up.) *Id.* at *13. The court further noted that the plaintiffs had pled that the NCAA "transacts business in the state, organizes events here, that its allegedly anticompetitive scheme was directed at Colorado, which is home to several NCAA and Division I schools, and that the NCAA knew its anticompetitive scheme would affect colleges and collegiate athletes in Colorado." *Id.* at *14.

{¶47} As in *Wisne*, the rule that plaintiffs challenge will reach universities and colleges across the country, including Ohio, and the plaintiffs will continue to feel its effects here. The plaintiffs have also alleged that the NCAA transacts substantial business in Ohio, including conducting athletic competitions, ticket and merchandise sales, television agreements, and other revenue-generating activities with its member

institutions.

{¶48} We accordingly hold that the trial court did not err in finding that it had personal jurisdiction over the NCAA. *See LG Chem*, 2022-Ohio-2065, at ¶ 10.

Breach-of-Contract Claim

{¶49} The NCAA contends that the manual setting forth the institution's Constitution and Bylaws is not a contract.

{¶50} Numerous courts have treated the NCAA manual and the rules contained within as a contract. In *Natl. Collegiate Athletic Assn. v. Tarkanian*, 488 U.S. 179, 183 (1988), the Court held that "[b]y joining the NCAA, each member agrees to abide by and to enforce" the rules adopted by the organization. *See also Natl. Collegiate Athletic Assn. v. Lasege*, 53 S.W.3d 77, 87 (Ky. 2001) (same). And in *Hispanic College Fund, Inc. v. Natl. Collegiate Athletic Assn.*, 826 N.E.2d 652, 658 (In.App. 2005), the court held that "the articles of incorporation and bylaws of a not-for-profit corporation are generally considered to be a contract between the corporation and its members and among the members themselves." (Cleaned up.) For purposes of this appeal, we assume, without deciding, that the NCAA manual operates as a contract between the NCAA and its member organizations.

{¶51} The NCAA next argues that, if the manual does constitute a contract, plaintiffs are not intended third-party beneficiaries of that contract.

{¶52} This argument is critical, because the plaintiffs only have standing to bring a breach-of-contract claim if they are third-party beneficiaries of the contract. *Thornton v. Windsor House, Inc.*, 57 Ohio St.3d 158, 161 (1991) ("Only a party to a contract or an intended third-party beneficiary of a contract may bring an action on a contract in Ohio."). While "performance of a contract will often benefit a third person," no duty to that person is created unless there was an intent to benefit him. (Cleaned

up.) *Paul Cheatham I.R.A. v. Huntington Natl. Bank*, 2019-Ohio-3342, ¶ 29. Under the intent-to-benefit test, "there must be evidence, on the part of the promisee, that he intended to directly benefit a third party, and not simply that some incidental benefit was conferred on an unrelated party by the promisee's actions under the contract." *Trinova Corp. v. Pilkington Bros., P.L.C.*, 70 Ohio St.3d 271, 278 (1994).

{¶53} Courts are divided on this question. Some have held that "the NCAA's constitution, bylaws, and regulations evidence a clear intent to benefit student-athletes." *Bloom v. Natl. Collegiate Athletic Assn.*, 93 P.3d 621, 623-624 (Co.App. 2004).

{¶54} Other courts have reached the opposite conclusion. In *Doe v. Natl. Collegiate Athletic Assn.*, 2024 U.S. Dist. LEXIS 116341, *66 (S.D.In. July 2, 2024), the court held, "At most, the principles set forth in the Manual, as quoted in Plaintiffs' Amended Complaint, reflect an aspirational goal to conduct athletic programs in a manner that promotes NCAA student-athletes' health, safety, and overall welfare, but do not plausibly demonstrate an intent to create a direct contractual obligation to do so on the part of the NCAA or its member schools to individual student-athletes."

{¶55} And yet other courts have assumed, without deciding, that the student-athletes were intended third-party beneficiaries. In *Hall v. Natl. Collegiate Athletic Assn.*, 985 F.Supp. 782, 796-797 (E.D.Ill. 1997), the court held, "There can be no doubt that an important function of the NCAA and its constitution, bylaws, and regulations, is to benefit student athletes" but that it was not clear if this fact was "sufficient to elevate a student from an incidental to an intended beneficiary." The *Hall* court stated that, for purposes of the opinion, "the Court will assume that the [plaintiffs] have some likelihood of success in proving that student athletes are third-party beneficiaries to the contract among the NCAA and all its members." *Id.* at 797.

{¶56} We prefer this third approach. For purposes of this opinion, we assume, without deciding, that the plaintiffs are intended third-party beneficiaries of any contract between the NCAA and its member institutions.

{¶57} The plaintiffs' breach-of-contract claim sounds in the implied duty of good faith and fair dealing. "In addition to a contract's express terms, every contract imposes an implied duty of good faith and fair dealing in its performance and enforcement." *Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, ¶ 42; *see Finn v. Seiser*, 2024-Ohio-5288, ¶ 29 (1st Dist.). The term "good faith" indicates "an implied undertaking not to take opportunistic advantage in a way that could not have been contemplated at the time of drafting, and which therefore was not resolved explicitly by the parties." (Cleaned up.) *Brendamour v. Indian Hill*, 2022-Ohio-4724, ¶ 19 (1st Dist.). We have recognized that "good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." (Cleaned up.) *Lawarre v. Fifth Third Secs., Inc.*, 2012-Ohio-4016, ¶ 34 (1st Dist.).

{¶58} As previously explained, the crux of the plaintiffs' argument is that the NCAA violated the implied covenant of good faith and fair dealing by arbitrarily and capriciously excluding them from participating in a fifth season of athletic competition. They argue that the NCAA treated them differently than student-athletes who graduated prior to 2022 and were granted extra seasons of competition because of a COVID-era waiver, former professional basketball players who were allowed to enroll in college after playing professionally without losing a season of collegiate eligibility, and student-athletes graduating high school after 2022, who would be eligible under the new rules for a fifth year of athletic competition.

{¶59} The NCAA is "a voluntary, self-governing organization of four-year

colleges, universities, and conferences." *See* Preamble to the NCAA Constitution. Courts will not interfere with the actions of a voluntary association proceeding under its own rules absent mistake, fraud, collusion, or arbitrariness. *Ohio High School Athletic Assn. v. Judges of the Court of Common Pleas of Stark Cty.*, 173 Ohio St. 239, 247 (1962); *Lough v. Varsity Bowl*, 16 Ohio St.2d 153 (1968), syllabus; *Hoinke Classic, Inc. v. Pape*, 1997 Ohio App. LEXIS 4181, *4 (1st Dist. Sept. 19, 1997). This principle has been previously applied to the NCAA. In *Lasege*, the Kentucky Supreme Court held that "the members of such associations should be allowed to 'paddle their own canoe' without unwarranted interference from the courts," but that "relief from our judicial system should be available if voluntary athletic associations act arbitrarily and capriciously toward student-athletes." *Lasege*, 53 S.W.3d at 83; *see also Cole v. Natl. Collegiate Athletic Assn.*, 120 F.Supp.2d 1060, 1071-1072 (N.D.Ga. 2000) ("In addition, the NCAA's rules and decisions regarding the concerns and challenges of student-athletes are entitled to considerable deference and this court is reluctant to replace the NCAA subcommittee as the decision-maker on private waiver applications.").

{¶60} The plaintiffs argue that, following the decision of the United States Supreme Court in *Natl. Collegiate Athletic Assn. v. Alston*, 594 U.S. 69 (2021), the NCAA should no longer be treated as a voluntary association that is accorded deference without interference from courts. We do not read *Alston* so broadly. In *Alston*, an antitrust case, the Court considered whether the NCAA had violated the Sherman Act. *Id.* at 80. The Court held, generally, that the NCAA was not exempt from the rule-of-reason analysis applicable to restraints challenged under the Sherman Act. *Id.* at 87-90. *Alston* dealt specifically with the standard of review applicable to NCAA actions on antitrust matters. It did not speak to the deference that should be accorded

the NCAA regarding enactment and application of its governing rules, particularly those involving a student-athlete's eligibility.

{¶61} Because the NCAA is a voluntary association, its actions and decisions flowing from the application of its own rules are entitled to deference. Under this principle, the plaintiffs cannot succeed on the merits of the breach-of-contract claim unless they establish that the NCAA either acted arbitrarily in denying them a waiver under the old rules or in excluding them from the benefit of the revised eligibility rules.

{¶62} The trial court found that the NCAA acted arbitrarily and capriciously by barring only the plaintiffs—2022 high school graduates—from benefiting from the revised eligibility rules. This determination was not supported by the facts in the record and we cannot accept it.

{¶63} Vice-President Silver's affidavit established that the NCAA cabinet voted unanimously to implement the new age-based eligibility model and not apply it retroactively. Silver stated that to apply the new rule retroactively would destabilize college sports and create roster chaos, explaining that most student-athletes had decided which schools to remain at, transfer to, or initially attend based on their expectation of an available roster spot, and potential availability of playing time and revenue-sharing.

{¶64} The statement from the conference commissioners avowing their support for the NCAA's revision of the eligibility rules, including the decision not to apply the rule change retroactively, also supports a determination that the NCAA did not act arbitrarily. The commissioners shared the NCAA cabinet's concerns that allowing the plaintiffs a fifth year of eligibility would cause significant roster instability and create detrimental consequences for incoming student-athletes. Incredibly telling is the commissioners' statement that applying the rule only to student-athletes who

had not already exhausted their athletic eligibility "ensures balance and equity" by "providing benefits to generations of forthcoming student-athletes, while honoring the settled expectations of student-athletes who had—and knew they had—only four seasons of competition, and incoming student-athletes entering college sports for the first time."

{¶65} We understand the plaintiffs' frustration with their exclusion from the new eligibility model. But we are also mindful that at the time the plaintiffs began their collegiate athletic careers, they understood that they were entitled to four years of athletic eligibility within a five-year period. And that is what they received.

{¶66} Nor does the record reflect that the NCAA acted arbitrarily in denying the plaintiffs the benefit of a waiver or that it breached any provision of the manual in doing so. First, the trial court made no finding that the NCAA arbitrarily denied waivers to these plaintiffs or breached a specific provision of the manual. Rather, the trial court's arbitrariness finding concerned the NCAA's breach of its textual commitment to fairness and its decision not to apply the benefit of the revised eligibility rule to plaintiffs. Second, the record is sparse on details with respect to the denial of waivers to the plaintiffs. It reflects only that just four of the 24 plaintiffs applied for a waiver, and that plaintiff Filip Borovicanin attempted three times to obtain a waiver based on both the minimal playing time that he received during his first year of eligibility and his mental health, but that each requested waiver was denied.

{¶67} While the record contains evidence that waivers were denied, it contains no evidence about the reason for the denials. Absent such evidence, the record contains no factual support for a determination that the waivers were arbitrarily denied or that the NCAA violated the implied covenant of good faith and fair dealing.

{¶68} Because the record contains no evidence that the NCAA acted arbitrarily or capriciously, the trial court erred in finding that the plaintiffs had a substantial likelihood of succeeding on the merits of their breach-of-contract claim. *See, e.g., Ulliman v. Ohio High School Athletic Assn.*, 2009-Ohio-3756, ¶ 63-65, 68-69 (2d Dist.) (holding that no evidence was presented to show that a transfer rule was adopted in violation of the athletic association's regulations and that, in finding that the rule was arbitrary, "the trial court did not rely on facts or evidence showing irregularity in the rule-making or decision processes" but instead "relied on its own opinion").

{¶69} We briefly address the plaintiffs' contention that under the revised rule in the 2026-2027 manual, the NCAA did not actually exclude them from a fifth year of eligibility. Revised Bylaw 12.6 provides that,

> An individual's period of eligibility for practice and competition shall be limited to five years. An individual's five-year period of eligibility begins with the earlier of the following:
>
> (a) The regular academic term (semester or quarter) of an academic year in which the individual enrolls in a collegiate institution (domestic or foreign; see Bylaw 14.02.4) in a minimum full-time program of studies and attends a class in that term while enrolled full time; or
>
> (b) The beginning of the regular academic year immediately after the individual's 19th birthday.

{¶70} To determine to whom revised Bylaw 12.6 applies, one must consider Bylaw 12.01.01, which provides, "Only a student-athlete *who meets the governing athletics eligibility legislation* and interpretations is eligible for intercollegiate athletics participation in a particular sport." (Emphasis added.) The Bylaws plainly

state that the governing legislation sets forth who is eligible for intercollegiate athletic participation. And the governing legislation provides that the new rule, effective August 1, 2026, may only be applied "to student-athletes with eligibility remaining (seasons and period of eligibility) who initially enrolled full time in any collegiate institution before August 1, 2026." The plaintiffs' argument that they are not excluded under the age-based eligibility model is, therefore, incorrect.

{¶71} Having determined that the trial court erred in finding that the plaintiffs had a substantial likelihood of succeeding on the merits of their breach-of-contract claim, we now consider the remaining preliminary-injunction factors.

B. Irreparable Injury

{¶72} The second factor to be considered is whether the plaintiffs will suffer an irreparable injury if the injunction is not granted. The trial court found that the plaintiffs would suffer such injury because they are seeking to take part in a $1.3 billion organization and have been excluded from a fifth year of doing so. The record supports this finding.

C. Unjustifiable Harm to Third Parties

{¶73} We next consider whether the plaintiffs have established that no third parties will be unjustifiably harmed by an injunction. The trial court found that no third parties would be so harmed because all three coaches who testified indicated that they had an available roster spot remaining. The coaches' testimony supported the trial court's finding that the plaintiffs would not take a roster spot from another player to whom the spot had been promised.

{¶74} But the trial court only considered one type of harm to other student-athletes—loss of an available roster spot. The trial court did not consider that the plaintiffs, if granted a fifth year of eligibility, might take playing time from other

student-athletes. And the loss of playing time directly impacts the ability of other student-athletes to take part in the $1.3 billion organization that the court recognized when considering whether the plaintiffs had been irreparably harmed.

{¶75} Both Silver's affidavit and the declaration of the conference commissioners discussed the potential consequences to other student-athletes if the plaintiffs were given a fifth year of eligibility. We hold that the record supports a determination that this group would be unjustifiably harmed if an injunction were granted.

D. Public Interest

{¶76} Last, we must consider whether public interest will be served by the injunction. The trial court found that public interest "supports fair competition and equitable treatment of college athletes." We agree. But fairness is in the eyes of the beholder. There is no such thing as a perfectly fair NCAA rule change. Roster spots, playing time, and resources are limited. So, while a new rule creates an opportunity for some players, it inevitably leaves others at a disadvantage.

{¶77} The trial court also found that it is in the public interest to prevent the NCAA from evading judicial review. But, under current case law, voluntary associations are not insulated from judicial review. Rather, they are given considerable deference, unless and until they act arbitrarily and capriciously. It is certainly in the public's interest not to have piecemeal litigation in multiple courts across the country concerning whether certain players are eligible to participate in a fifth year of athletic competition. This leads to inconsistent legal rulings. It is arguably preferable to have a voluntary association interpret and apply its own rules for the sake of uniform enforcement and predictability.

{¶78} Thus, this factor is either neutral or tips slightly in favor of the NCAA.

IV. Conclusion

{¶79} Based on the foregoing, we hold that the trial court abused its discretion in granting the plaintiffs' motion for a preliminary injunction. Our decision is based on the record that was presented to the trial court at this stage of the proceedings. The parties remain free to introduce additional evidence and supplement the record at a hearing on the merits.

{¶80} We sustain the assignment of error, reverse the trial court's judgment, and remand this cause for further proceedings.

Judgment reversed and cause remanded.

NESTOR and **MOORE, JJ.,** concur.