

# **Commonwealth of Kentucky**

## **Court of Appeals**

NO. 2026-CA-1107-I

NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION

MOVANT

v. ON MOTION FOR INTERLOCUTORY RELIEF  
ARISING FROM JEFFERSON CIRCUIT COURT  
ACTION NO. 26-CI-007009

LEVAVIUM WELLS, III; ALBERT  
VARGAS FRITO; COLIN PORTER;  
D'ANGELO HUTCHINSON;  
DONOVAN ODAY; FRED KING;  
JABARI MACK; JUSTIN ALLEN;  
KAYDEN CAMPBELL; MARK  
MITCHELL; THOMAS  
CASTELLANOS; BILLY SMITH;  
SKYY CLARK; SETH TRIMBLE;  
REESE RAGLAND; JAYLEN  
WESTER; RYLEN SU'A-FILO;  
MACKAVELLI MALOTUMAU; JOSIE  
GILVIN; JAWAUN NORTINGTON;  
CLAUDIA HOFMEISTER; LEVI  
SANDIDGE; MACY WHISENAND;  
CARDELL BAILEY; DAMONI  
HARRISON; EMMANUEL  
OKORAFOR; GARRETT HELSEL;  
JALYN BROWN; KATIE FICHTNER;  
KRISTINA PAEGLE; ORLANDO

RESPONDENTS

LOVEJOY; REGAN DANCER;  
OLIVIA ALBERT; AIDAN  
HADAWAY; CAZEEM MOORE; ZOE  
HAMMOND; SOPHIE HARLAN; AND  
ALEX AFARI, JR.

ORDER  
DENYING MOTIONS TO DISMISS;  
DENYING MOTION FOR SANCTIONS; DENYING MOTION TO  
SUPPLEMENT; AND GRANTING MOTION FOR INTERLOCUTORY RELIEF

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BEFORE: COMBS, McNEILL, AND MOYNAHAN, JUDGES.

COMBS, JUDGE: Restraining orders are not appealable, and their only permissible function is to protect the public interest. The court has previously held that the function of a restraining order is to protect the public interest, and not to protect the interests of the parties to the litigation. <sup>1</sup> The court has previously held that the function of a restraining order is to protect the public interest, and not to protect the interests of the parties to the litigation. most<sup>1</sup> of the above-captioned respondents filed below.

The National Collegiate Athletic Association (“NCAA”) filed a motion on September 1, 2026, contesting the order on the basis that, despite the styling, the order is essentially a temporary injunction and is therefore subject to our review because it upended the status quo. Furthermore, it contends that if the

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<sup>1</sup> The ten respondents who advanced the motion that the circuit court granted on August 21, 2026, were Levaviem Wells, III, Donovan Oday, D’Angelo Hutchinson, Kayden Campbell, Mark Mitchell, Justin Allen, Fred King, Colin Porter, Albert Vargas Frito, and Jabari Mack. On September 2, 2026, the circuit court then entered an order which “adopted” the August 21, 2026 order to apply to respondents Thomas Castellanos, Billy Smith, Skyy Clark, Seth Trimble, Reese Ragland, Jaylen Wester, Rylen Su’a-Filo, Mackavelli Malotumau, Josie Gilvin, Jawaun Northington, Claudia Hofmeister, Levi Sandidge, Macy Whisenand, Cardell Bailey, Damoni Harrison, Emmanuel Okorafor, Garrett Helsel, Jalyn Brown, Katie Fichtner, Kristina Paegle, Orlando Lovejoy, Regan Dancer, Olivia Albert, Aidan Hadaway, Cazeem Moore, Zoe Hammond, Sophie Harlan, and Alex Afari, Jr.

circuit court's order qualifies as a temporary injunction, it is contrary to the law, unsupported by the evidence, and must be vacated. The respondents, on the other hand, argue the circuit court's order is exactly what it is labeled and that this proceeding must accordingly be dismissed. Respondent Alex Afari, Jr., has moved for sanctions because he believes the circuit court's order was obviously an uncontestable restraining order.<sup>2</sup> Furthermore, on September 24, 2026, the respondents filed an additional motion with this Court asking for leave to supplement the record with September 14, 2026, order of the circuit court which set a bond of \$1,000 relative to this "restraining order."

Upon review, we deny the respondents' motions because the circuit court's order was indeed a temporary injunction. Having reviewed the record and being otherwise sufficiently advised, the motion for interlocutory relief shall be, and hereby is, GRANTED. The August 21, 2026 Order is DISSOLVED.

#### **I. THE CIRCUIT COURT ENTERED A TEMPORARY INJUNCTION**

Much of the background in this case appears on the face of the circuit court's August 21, 2026, order. The circuit court's order references the NCAA's Division I 2025-2026 Manual – a manual that was filed of record and indisputedly

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<sup>2</sup> Afari filed a motion on September 2, 2026, for this Court to both dismiss and issue sanctions against NCAA. The other respondents filed a motion on September 4, 2026, that only asked for the dismissal of this action.

authentic. Of particular relevance to this proceeding is NCAA Division I 2025-26 Manual, Operating Bylaw Article (hereinafter “2025-26 Bylaw”) 12.6. We will quote and emphasize the relevant parts of the order in our analysis below. The circuit court’s order reads as follows:

**OPINION AND ORDER GRANTING PLAINTIFFS’  
MOTION FOR TEMPORARY RESTRAINING  
ORDER**

This matter comes before the Court on Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction Allowing Plaintiffs to Play Collegiate Sports against the Defendant, the National Collegiate Athletic Association (NCAA). On August 14, 2026, the Court held a hearing on the matter at which the parties argued their respective positions. After hearing oral arguments and carefully reviewing the pleadings and relevant case law, the Court will grant the Motion for entry of a Temporary Restraining Order.

**SUMMARY OF FACTS AND PROCEDURAL  
HISTORY**

The NCAA oversees competition across more than 1,100 member institutions, roughly 350 of which compete at the Division I level. Each conference is bound by the overarching rules imposed by the NCAA’s Division I Board of Directors. In the matter of *NCAA v. Alston*, 594 U.S. 69 (2021), the United States Supreme Court affirmed that college sports operate as a commercial enterprise. As a component of the landmark *House v. NCAA* settlement, a revenue-sharing model was created under which Division I schools are now authorized to make direct cash payments of up to \$20.5 million annually to their student athletes effective July 1, 2025.

*For nearly 5 decades, NCAA Bylaw 12.6, has stated that a student athlete shall complete his/her permitted 4 years of competition within five years from the time the student athlete first registers in a collegiate institution. However, following a unanimous vote by the NCAA Division I Cabinet on June 23, 2026, student athletes would be provided the opportunity to compete for a 5 year period of time which would begin upon fulltime college enrollment or the academic year following the student-athlete's 19<sup>th</sup> birthday (whichever occurs first). This new provision would be available for athletes who graduated high school after 2022 but would not be available to athletes who graduated in 2022.*

Prior to June 23, 2026, all athletes were only permitted four seasons of competition within five years; now, each athlete (other than those who completed high school in 2022) is permitted to compete in all five years. Until June 23, 2026, the Redshirt Rule<sup>3</sup>] permitted an athlete to practice with a team, but sit out games, preserving the season for later use. For sports other than football and men's wrestling, an athlete cannot play a single minute of a game without consuming a season of competition, unless he or she sustains a season-ending injury after playing in fewer than 30 percent of the team's games. During the period of time associated with the world's COVID pandemic which included the period

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<sup>3</sup> As the respondents explained on p. 4 of their Amended Complaint, the "Redshirt Rule" is not a discrete NCAA Bylaw but rather a term of art describing how a college athlete may preserve a season of competition by not competing (or minimally competing) under several interrelated provisions of the NCAA Division I Manual. A redshirt year may occur in multiple ways including, *inter alia*:

- Institutional Redshirt (Non-Participation): A student-athlete withheld from competition for a season does not use a season of competition unless competition thresholds are crossed. *See* 2025-26 Bylaw 12.6.1.7.1(a);
- Sport-Specific Exceptions: Certain sports, such as football, permit limited competition without triggering use of a season (e.g., competition in up to four games). *See* 2025-26 Bylaw 12.6.3.1.6; and
- Academic Redshirts: First-year students admitted as "academic redshirts" must serve a year of residence before competing, preserving their seasons of competition. *See* 2025-26 Bylaw 14.3.1.2.

of time that many of the Plaintiffs in this action were beginning their collegiate careers, the NCAA provided an exception to the “four year” competition rule and allowed all athletes enrolled in NCAA institutions a fifth season of competition. In addition, athletes who finished high school in 2021 and began their collegiate careers in junior college were given the opportunity to compete for four years on top of the time they competed at the junior college level.

Accordingly, both student-athletes graduating from high school prior to 2022 as well as student-athletes graduating from high school after 2022 have been virtually universally given the opportunity to compete at the collegiate level for more than 4 years whereas *the Plaintiffs are being expressly barred from such an opportunity subsequent to the aforementioned June 23, 2026 vote*. More succinctly, every athlete enrolled during the rule change deliberation process, is entitled to the new, more favorable rule, *except* those from the Class of 2022. In summation, Plaintiffs assert that the NCAA’s “Five-for-Five” Eligibility Rule *grants* all current NCAA Division I athletes in the high school graduating classes of 2023, 2024, and 2025, five years to compete in NCAA sports following their high school graduation date, while intentionally excluding Plaintiffs and all other athletes in the Class of 2022, even though they remain within the criteria of being less than 24 years old and within five years of college enrollment. *Currently*, practice for fall sports has begun and *Plaintiffs are not eligible to participate*.

Order at pp. 1-3 (emphases added).

We pause here to identify the two dispositive points in this proceeding. As the circuit court itself noted in the third paragraph of its order: (1) the version of 2025-26 Bylaw 12.6 that was in effect prior to the rule change

generally did not permit student athletes to engage in more than four years of competition;<sup>4</sup> and (2) the June 23, 2026, amendment to that rule still did not permit student athletes who graduated high school in 2022 to engage in more than four years of competition. As far as the high school class of 2022 was concerned, there was no *loss* of an *opportunity* for them because nothing changed, and the new rule did not, as the circuit court surmised, “bar” them from doing anything they previously had a right to do. Permitting the high school class of 2022 to play a fifth season – the very relief the respondents were requesting in their joint motion for a “temporary restraining order and preliminary injunction” – would disrupt the status quo.

We now return to the circuit court’s August 21, 2026, order. Drawing upon the allegations from the respondents’ joint complaint, the circuit court noted that “[t]he majority of the players involved in this suit have either played directly for a Kentucky university (Wells II, Oday; D’Angelo Hutchinson, Jr.; Campbell; King; and Mack) or played against Kentucky players in the Commonwealth of Kentucky.”<sup>5</sup> It described how the respondents who had filed the joint complaint would suffer “irreparable harm” if they were not granted a restraining order:

The harm to these Plaintiffs can be summarized in three partes: 1) the *loss* of a once-in-a-lifetime season and

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<sup>4</sup> There were exceptions to this rule, but they are not germane.

<sup>5</sup> Order at p. 6.

developmental *opportunity*; 2) immediate and unrecoverable NIL and revenue-sharing harm; and 3) impaired professional trajectory and reputational harm.

Order at p. 7 (emphases added).

The circuit court then balanced this harm against the harm it perceived the NCAA would suffer if a restraining order granted the respondents their requested relief:

### **Balance of Equities**

#### *Detriment to the Public Interest*

The NCAA *governs* college athletics for over 500,000 student-athletes across 1,100 member institutions. Courts and the public have a substantial interest in ensuring that this body *applies its rules* consistently and *exercises its discretionary authority* in good faith. The public interest is also served by ensuring that the commercial transformation of college athletics-which has produced billions of dollars in revenue-does not proceed at the expense of an arbitrarily selected group of student athletes who have in the past and will potentially continue to contribute towards the generation of that value.

#### *Harm to the Defendant*

The Court finds that the NCAA's argument that they will suffer harm if the Plaintiffs are granted their requested relief to be without merit. There are numerous examples of the NCAA *allowing* athletes to compete in excess of 4 years including but not limited [to] the aforementioned COVID year *exceptions*, the Junior College time *exemption*, the *subjective* awarding of "Red-Shirt" years to student athletes, and the *allowing* for some individuals to be *given* extra years to play in

college who had already played in professional leagues. Additionally, the NCAA has already *changed* the rule on a go-forward basis for all athletes graduating from high school in 2023 or later.

...

Ultimately, the Court finds that the equities strongly favor Plaintiffs in that for Plaintiffs, their eligibility is based on a narrow window of time in which they can play at the collegiate level, whereas for the NCAA, it would suffer no comparable hardship from injunctive relief.

Order at 8-9 (Emphases added).

Again, it appears the circuit court understood that the respondents were challenging the status quo. It noted that the NCAA governs college athletics, applies rules, and exercises discretionary authority; and that in doing so, the NCAA has exercised its authority to give athletes – *other than the respondents* – rights not otherwise permitted by its rules by making exceptions, exemptions, awards, allowances, and rule changes. The unfairness the respondents perceived from not receiving an exception, exemption, award, or rule change that would allow them a fifth season was the very foundation of the two causes of action they asserted against the NCAA in this litigation; *i.e.*, (1) breach of contract and (2) violations of Kentucky’s Consumer Protection Act (KCPA), KRS<sup>6</sup> 367.170 *et seq.*

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<sup>6</sup> Kentucky Revised Statute.

Their overarching argument underlying these claims, as set forth in the “preliminary statement” of their pleading, was:

In light of Defendant’s rule change allowing all athletes graduating high school after 2022 to compete in five seasons of competition without needing to “redshirt,” the NCAA’s application of Bylaw 12.6 to Plaintiffs unfairly limits the number of games they can participate in during their “five-year eligibility window” and unfairly denies them a benefit—a fifth season of competition—that the NCAA now affords to every other class of student-athlete, while unjustifiably restraining Plaintiffs’ ability to earn money through use of their name, image, and likeness (“NIL”) connected to their work as Division I athletes.

NCAA athletes have a reasonable expectation that they will be treated fairly by the NCAA and that NCAA rules will be applied consistently, regardless of the athlete’s background before they attend an NCAA school, and regardless of the year in which they graduated from high school. For the last four years, 2022 high school graduates have been competing against older, stronger, and more experienced players allowed five (and even six) seasons of competition due to a Covid era waiver granted to all athletes graduating high school and enrolling in college between 2017 and 2020. The NCAA has finally codified the five years of competition on a permanent basis, with a final vote on June 23, 2026. But in doing so, the NCAA intentionally excluded all current college seniors that are part of the high school Class of 2022 and have not redshirted. That decision violates the covenant of good faith and fair dealing under Kentucky law in connection with the NCAA’s Division I Manual/Bylaws—a contractual agreement between the NCAA and its member schools of which all Division I athletes are intended third-party beneficiaries.

Amended Complaint at pp. 1-2.

And that, in turn, leads to the “Substantial Question” leg of the circuit court’s analysis. With respect to the respondents’ two claims, it explained in relevant part:

Plaintiffs are intended third-party beneficiaries of the membership agreement between the NCAA and its member institutions, which incorporates the NCAA Bylaws as set forth in the NCAA Division I Manual.

...

[T]he Court finds that Plaintiffs have demonstrated a likelihood of success on their claim that the NCAA breached this contract by demonstrating: 1) violations of the NCAA’s own express textual commitments to *fairness* found in Articles 1-C and 1-D of the NCAA Constitution; 2) a bad faith *refusal* by the NCAA to *exercise discretionary waiver authority* granted by Bylaws 12.6.6 and 12.6.1.7; 3) the NCAA’s inconsistent application of the Manual’s own proportional framework under Bylaw 12.6.3.2.1; and 4) the NCAA’s denial of the financial entitlement expressly conditioned on eligibility status under Bylaw 16.13.1.1.

...

[T]he Court finds that Plaintiffs are within the class of persons that the Kentucky Consumer Protection Act protects. The NCAA has *reversed its prior course* over the past year and allowed individuals who competed in leagues as professional basketball players to return to college without counting their professional seasons against their allotted seasons of competition, along with *allowing everyone other than the Class of 2022 an opportunity* to play five years. *This conduct is unfair and unconscionable, as the NCAA is applying a benefit to every class except for the Class of 2022.*

Order at 10-11 (emphases added).

In other words, the circuit court once again acknowledged that the unfairness the respondents perceived from not receiving an exception, exemption, award, or rule change that would allow them a fifth season was the foundation of the two causes of action they asserted against the NCAA in this litigation. It found merit in those claims.

Having completed its analysis, and having found in favor of the respondents, the circuit court then proceeded to grant these respondents a right that no rule of the NCAA had *ever before* granted them. It directed the NCAA – by the mechanism of a restraining order – to disrupt the status quo by *giving* the respondents an array of exceptions, exemptions, awards, and rule changes that would allow them a fifth season:

IT IS HEREBY ORDERED THAT Plaintiffs' Application for a Temporary Restraining Order is GRANTED.

- Defendant NCAA, and its officers, agents, employees, representative, successors, assigns, and all persons acting in concert or participation with it, are hereby temporary restrained from enforcing NCAA Bylaw 12.6, or any other NCAA bylaw, to preclude Plaintiffs from competing in NCAA Division I athletics during the 2026-2027 season on the basis that the Plaintiffs have already competed in four seasons of competition.
- Defendant NCAA, and its officers, agents, employees, representatives, successors, assigns,

and all persons acting in concert or participation with it, are hereby temporarily restrained from prohibiting any Plaintiff from participating at any NCAA Division I institution during the 2026-2027 season on the basis that the Plaintiff did not enter the NCAA transfer portal.

- Defendant NCAA, and its officers, agents, employees, representatives, successors, assigns, and all persons acting in concert or participation with it, are hereby temporarily restrained from prohibiting any Plaintiff from participating at any NCAA Division I institution during the 2026-2027 season on the basis that they played at a junior college prior to starting their NCAA careers and counting their first season of junior college competition against their years of NCAA eligibility and start of their eligibility clock.
- Defendant NCAA, and its officers, agents, employees, representatives, successors, assigns, and all persons acting in concert or participation with it, are hereby temporarily restrained from prohibiting Plaintiffs from competing in NCAA Division I athletics during the 2026-2027 season on the basis that the Plaintiffs executed a professional contract or agent contract, or participated in any professional games or practices, so long as Plaintiffs terminate all such contracts and return any money received (other than reasonable and necessary expenses) within seven days of entry of this Order.
- Defendant NCAA is further temporarily restrained from enforcing NCAA Bylaw 12.9.4.2 (the Rule of Restitution) and the ghost transfer rule against:
  - a. Plaintiffs;

- b. Any NCAA member institution or coach for which Plaintiffs choose to compete during the 2026-2027 season; and
- c. Any NCAA member institution or coach that competes against Plaintiffs.

The NCAA is ordered to open the transfer portal for all Plaintiffs for one week from entry of this Order.

Order at pp. 13-14.

The circuit court then concluded its order with the following statement:

This Temporary Restraining Order shall remain in effect until further order of the Court or until determination of Plaintiffs' request for a Preliminary Injunction.

IT IS FURTHER ORDERED that all parties shall contact the Court's administrative assistant via email to schedule a hearing to address Plaintiff's [*sic*] request for additional relief.

Order at p. 14. In a September 2, 2026, order, the circuit court then "adopted" its "temporary restraining order" to apply to Afari and the additional named respondents.

As stated, the NCAA has founded this challenge to the circuit court's August 21, 2026, order on the premise that the document qualifies as a temporary injunction, not a restraining order. And, as stated, we agree that it qualifies as a temporary injunction. The decisive factor is not the proceeding that led to the order, what the circuit court labeled its order, how the circuit court chose to word

the relief its order provided, or what proceedings the circuit court believed would follow the order. The decisive factor is what the circuit court's order ultimately *did*; and what it *did* – as we have discussed at length – was to *disrupt the status quo* by giving the respondents a right they never had before. A restraining order cannot disrupt the status quo. A temporary injunction can. As a matter of law, the circuit court's August 21, 2026, order was, therefore, a temporary injunction.

Nonetheless, the respondents have raised what appears to be an entirely new argument in defense of why – in their view – the circuit court's August 21, 2026, order was a restraining order. They represent that on or about August 17, 2026, the NCAA published and distributed its new 2026-2027 Division I Manual, which provides:

**Five-Year Period of Eligibility.** 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:  
(Revised: 7/31/14, 6/6/25 effective 7/1/25, 6/24/26 effective 8/1/26).

- (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.

Bylaw 12.5 (Italics in original).

Their argument is that this provision applies to all athletes with no limitation on when an athlete must initially enroll; that they are currently eligible under this rule; and the NCAA is breaching its current obligation to them under the 2026-2027 manual by declaring them ineligible. Respondent Br.<sup>7</sup> at 20-21. In further support of that point, they add, “The NCAA’s own 2026-27 rule does not contain any limiting language that would *prohibit* the Rule from applying to Respondents.” Respondent Br. at 18 (emphasis added). In other words, it appears that they believe this purported latest iteration of Bylaw 12.6 effectively vested them with a new right to a fifth season – and that *not* giving them a fifth season would disrupt the status quo.

We disagree. Even if it were proper for us to consider this new argument, and even if what the respondents have directed us to is the set of NCAA rules applicable to the 2026-2027 season, the respondents’ argument misinterprets this purported latest version of Bylaw 12.6. As this rule indicates, this latest version was most recently revised on June 24, 2026, and became “effective” on August 1, 2026. Both the 2025-2026 Division I Manual and the 2026-2027 Division I Manual state that they are composed of “legislation” and that Bylaw 12.6 is an example of that “legislation.” The word “legislation” has meaning that cannot be ignored.

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<sup>7</sup> “Respondent Br.” refers to the brief filed by all of the respondents except Afari.

To somewhat reiterate what the circuit court explained in its order, the NCAA is the “standard-setting body” for collegiate athletics, “compris[ing] about 1,100 colleges and universities, organized into three divisions.” *Nat’l Collegiate Athletic Ass’n v. Alston*, 594 U.S. 69, 76 and 79, 141 S.Ct. 214, 1210 L.Ed.2d 314 (2021). The purposes of the NCAA include, among others, formulating and publishing rules of play governing intercollegiate athletics and supervising the conduct of and establishing eligibility standards for regional and national athletics events. To do so, it “legislates” through bylaws or by resolutions; and its “legislation,” which is separately applicable to each division and compiled in division-specific manuals, is then adopted and applied by its member institutions. *See* NCAA Division I 2025-26 Manual, § II.<sup>8</sup> The member institutions of the

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<sup>8</sup> NCAA Division I 2025-26 Manual, § II, provides in relevant part:

## **II. ORGANIZATION OF THE NCAA MANUAL**

Divisions I, II and III each have a separate Manual that contains legislation specific to the applicable division and does not contain legislation pertaining only to one or both of the other divisions. However, legislation that includes references to one or both of the other divisions will appear in its entirety. In addition, since each division’s Manual does not contain legislation specific to the other divisions, some bylaws may have gaps in the numbering sequence.

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### **Operating Bylaws**

Articles 8 through 21 are the operating bylaws, which consist of legislation adopted by the membership to promote the principles enunciated in the constitution and to achieve the Association’s purposes.

NCAA enact “legislation” at an annual convention; all NCAA “legislation” must be adopted by a vote of the active members; and NCAA “legislation” consists of both substantive rules and a procedural enforcement program. *See* 2025-26 Bylaws (hereinafter “2025-26 Bylaw”) 9, 9.02, 9.1, 9.2, and 9.3 (delineating the NCAA’s “legislative authority and process,” including “conventions and meetings,” “amendment processes,” and “other legislative and amendment procedures.”).

Again, until recently at the Division I level, the NCAA had determined eligibility based on a rule that had permitted student-athletes to compete in up to four seasons of intercollegiate athletic competition over a five-year period beginning from their initial full-time enrollment at a collegiate institution. *See* 2025-26 Bylaw 12.6 (providing in relevant part, “A student-athlete shall not engage in more than four seasons of intercollegiate competition in any one sport.”); *see also* 2025-26 Bylaw 12.6.1 (“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 . . .”).

On June 24, 2026, the NCAA then adopted (through its “legislation”) a new, age-based eligibility model. The model provides that, beginning in the fall of 2026, NCAA Division I student-athletes will receive a five-year eligibility

period beginning at the start of the academic year following their 19th birthday or upon full-time enrollment at a collegiate institution, whichever comes sooner, and student-athletes may compete during that five-year period of eligibility without restriction, provided they meet all other eligibility requirements. *See* June 24, 2026 NCAA News post on X;<sup>9</sup> *see also* <https://www.ncaa.org/eligibility-center/division-i-and-division-ii-age-based-eligibility-rules> (last visited Sept. 8, 2026). The NCAA clarified, however, that student-athletes who had used their final season of competition (under previous rules) during the 2025-26 academic year would receive no additional eligibility. *See* <https://www.ncaa.org/division-i-adopts-age-based-eligibility-model> (last visited Sept. 8, 2026).

We have repeatedly emphasized the word “legislation” for an important reason:

Kentucky law prohibits the amended version of a statute from being applied retroactively to events which occurred prior to the effective date of the amendment unless the amendment expressly provides for retroactive application. KRS 446.080(3). *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company, Ky.*, 983 S.W.2d 493 (1998). This is a very fundamental principle of statutory construction in Kentucky. The courts have consistently upheld this admonition and have declared there is a strong presumption that statutes operate prospectively and that retroactive application of statutes will be approved only if it is absolutely certain the legislature intended such a result. This is particularly true

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<sup>9</sup> NCAA attached a copy of its X post as “exhibit 4” to the appendix of its RAP 20(B) motion before this Court. Its authenticity is not disputed.

when the *legislation* is substantive and not remedial, and new rights and new duties are created.

*Commonwealth of Ky. Dep't of Agric. v. Vinson*, 30 S.W.3d 162, 168 (Ky. 2000)). (emphasis added). This principle regarding how “legislation” must be interpreted is recognized throughout our system of courts. *See, e.g., Landgraf v. USI Film Prods.*, 511 U.S. 244, 280, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994) (“If [a] statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.”); *see also id.* at 286 (“The presumption against statutory retroactivity is founded upon sound considerations of general policy and practice and accords with long held and widely shared expectations about the usual operation of legislation.”).

With that in mind, even if the NCAA Division I handbook qualifies as a contract, and even if the respondents qualify as “third-party beneficiaries” of that contract, we must presume that the drafters of that contract: (1) understood the meaning of the word “legislation,” (2) understood the rules of interpretation courts apply to “legislation;” and, as such, (3) intended their “legislation” to only create and apply new rights and new duties to events which occurred prior to the effective date of the amendment where the amendment expressly provides for retroactive application. Here, applying the purported latest version of Bylaw 12.6 to the respondents would create and apply new rights and new duties to events which occurred prior to the effective date of the amendment. Nothing in the text of that

purported latest version of Bylaw 12.6 or anywhere else in the purported 2026-2027 NCAA Division I handbook that the respondents have directed us to expressly provides that this *legislation* was designed to have retroactive application. Therefore, that purported latest version of Bylaw 12.6 (assuming it is operative) does not apply to the respondents, and there is no merit to their argument that *not* giving them a fifth season would disrupt the status quo.

Lastly, the respondents claim that “vacating the order now would change the status quo again, interrupt ongoing athletic opportunities, and impose precisely the kind of irreversible harm the circuit court sought to prevent.”

Respondent Br. at 19-20. At best, it appears the respondents are arguing this Court should hold that what the circuit court rendered was a restraining order. To the extent this reasoning qualifies as an argument under our civil rules, however, it is enough to reject it by noting that *two wrongs do not make a right*. In summary, the NCAA is contesting a temporary injunction; we consequently have jurisdiction over the NCAA’s contest; and, accordingly, the respondents’ motions to dismiss and for sanctions are denied.

## **II. THE CIRCUIT COURT IMPROPERLY GRANTED A TEMPORARY INJUNCTION.**

Having determined that the circuit court’s August 21, 2026, order was a temporary injunction, we will now discuss the next aspect of the NCAA’s contest. The NCAA argues the circuit court’s temporary injunction was improper

because it was based upon insufficient evidence. We agree. We turn first to our standard of review:

A temporary injunction may be issued by the trial court when the plaintiff has shown irreparable injury, that the various equities involved favor issuance of the relief requested and that a substantial question exists on the merits. *Maupin v. Stansbury*, 575 S.W.2d 695, 697 (Ky. App. 1978). “Although not an exclusive list, [in balancing the equities] the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Id.* To grant relief, a trial court must conclude “that an injunction will not be inequitable, *i.e.*, will not unduly harm other parties or disserve the public.” *Price v. Paintsville Tourism Comm’n*, 261 S.W.3d 482, 484 (Ky. 2008). To satisfy the “substantial question” prong of the temporary injunction analysis, the trial court must determine there is a “**substantial possibility**” that the plaintiff “will ultimately prevail on the merits.” *Norsworthy v. Kentucky Bd. of Medical Licensure*, 330 S.W.3d 58, 63 (Ky. 2009) (emphasis added). A trial court's order granting injunctive relief is reviewed for abuse of discretion. *Price*, 261 S.W.3d at 484. “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

*Beshear v. Acree*, 615 S.W.3d 780, 829-30 (Ky. 2020) (emphasis in original).

As discussed at length, the circuit court incorrectly believed it could permit the high school class of 2022 to play a fifth season through the device of a restraining order rather than a temporary injunction. That was the styling of the circuit court’s order; that was the “standard” (*i.e.*, CR 65.03) the circuit court

outlined and followed in its order; and that was the only relief the circuit court announced it was contemplating during its August 14, 2026, hearing regarding the respondents' motion for interlocutory relief – a hearing which, it reminded those in attendance, it could have held *ex parte* because it related solely to a restraining order.

Furthermore, the circuit court's "summary of facts" set forth in its order should not be confused with "findings of fact" – which our civil rules require circuit courts to provide in an order granting a temporary injunction. *See* CR 52.01. Findings of fact must be based upon *evidence*. Here, the circuit court took no evidence during the August 14, 2026, hearing. Its order was summary in nature, based entirely upon oral arguments, pleadings, and what it deemed relevant case law. And, while the circuit court drew all of its facts from a joint pleading the respondents *styled* as a verified complaint (and a verified pleading *can* constitute evidence equivalent to an affidavit) the respondents' joint pleading also did not constitute evidence because it was not, in actuality, "verified" within the meaning of Kentucky law: none of the respondents who filed the pleading provided signatures that were notarized or otherwise sworn before an authorized officer. *See Taylor v. Kentucky Unempl. Ins. Comm'n*, 382 S.W.3d 826, 834 (Ky. 2012), *abrogated on other grounds by Louisville Hist. League, Inc. v. Louisville/Jefferson Cnty. Metro Gov't.*, 709 S.W.3d 213, 223 (Ky. 2025) (explaining that

“verification” is “a formal declaration made in the presence of an authorized officer, such as a notary public, by which one swears to the truth of the statements in the document.”).<sup>10</sup>

In short, although the circuit court attempted to “balance the equities” between the parties consistently with *Maupin*, 575 S.W.2d 695 (as required in the context of both restraining orders and temporary injunctions), there was **no evidence of record** that would have enabled the circuit court to do so for purposes of granting a temporary injunction. The circuit court’s order was accordingly unsound.

It is unnecessary to address any more of the substance of this matter, and we decline to do so absent a more developed record. Parenthetically, we reiterate that no evidentiary hearing was conducted below, and the Kentucky Supreme Court has explained that “evidentiary hearings at which witnesses testify and are cross-examined are the preferred procedure to resolve motions for a temporary injunction.” *Beshear v. Goodwood Brewing Co., LLC*, 635 S.W.3d 788, 797 (Ky. 2021). The circuit court itself also appears to have understood in its order

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<sup>10</sup> Respondent Afari filed a verified intervening complaint. However, even if his verified complaint could have supported a temporary injunction, it clearly did not support the one at issue here because he filed his intervening complaint *two days after* the circuit court had already entered its August 21, 2026, temporary injunction. In any case, Afari makes no argument in opposition to the NCAA’s contention that the circuit court could not have properly entered a temporary injunction, and we deem his failure to make any such opposing argument a confession of error. *See* RAP 31(H)(3).

that an evidentiary hearing would be necessary before it could properly grant the respondents a “preliminary injunction;” *i.e.*, a temporary injunction.<sup>11,12</sup>

### III. CONCLUSION

For the foregoing reasons, we DENY the respondents’ respective September 2, 2026, and September 4, 2026, motions to dismiss; we DENY respondent Afari’s September 2, 2026, motion for sanctions; we DENY as MOOT the respondents’ September 24, 2026, motion to supplement the record;<sup>13</sup> and we GRANT the petitioner’s September 1, 2026, motion for interlocutory relief pursuant to RAP 20(B). The August 21, 2026, order is hereby DISSOLVED.

To be clear, nothing stated herein precludes the respondents from, upon proper motion, prospectively seeking CR 65.04 relief (*i.e.*, a temporary injunction) from the circuit court.

ENTERED: 10/02/2026

  
HON. SARA WALTER COMBS

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<sup>11</sup> See Order at p. 14.

<sup>12</sup> Our civil rules do not authorize the granting of what the circuit court described as “preliminary injunctions” or “temporary restraining orders.” They provide for “temporary injunctions” and “restraining orders.” See CR 65.04 and CR 65.03.

<sup>13</sup> We take judicial notice of the circuit court’s September 14, 2026, order. See *Polley v. Allen*, 132 S.W.3d 223, 226 (Ky. App. 2004) (“A court may properly take judicial notice of public records and government documents, including public records and government documents available from reliable sources on the internet.”). However, considering our disposition, it is unnecessary to grant the respondents’ motion to add that order to the record before us.

JUDGE, COURT OF APPEALS

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