

IN THE SUPREME COURT OF OHIO

OHIO HIGH SCHOOL ATHLETIC :
ASSOCIATION :

Relator, :

Case No. 06-1974

v. :

THE HONORABLE GENE DONOFRIO, :
et al., :

Respondents. :

RELATOR'S MEMORANDUM IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS

Melvin D. Weinstein (0012174)
(Counsel of Record)
KEGLER, BROWN, HILL & RITTER
CO., L.P.A
65 East State Street, Suite 1800
Columbus, OH 43215
Telephone: (614) 462-5400
Fax: (614) 464-2634
mweinstein@keglerbrown.com

Robert Budinsky (0007099)
131 West Federal St.
Youngstown, OH 44503
Telephone: (330) 740-2180
Fax: (330) 740-2182

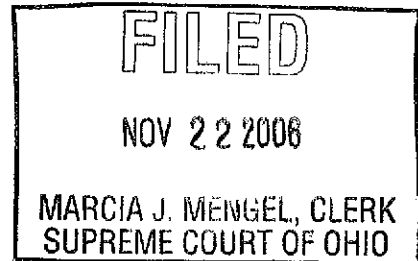
Steven L. Craig (0025114)
437 Market Ave. North
Canton, OH 44702-1543
Telephone: (330) 456-0061
Fax: (330) 456-1344
scraig@craig-law.net

Attorney for Respondents

Attorneys for Relator

Christopher J. Barozzi (0078109)
HARRINGTON, HOPPE & MITCHELL,
LTD.
2235 E. Pershing St., Suite A
Salem, OH 44460
Telephone: (330) 337-6586
Fax: (330) 337-6662

*Attorneys for Interested Party Richard
Justin Johnson*



I. Introduction.

In seeking dismissal of Relator's Complaint for Writ of Prohibition, Respondents make arguments that are not only inconsistent, but are at odds with the record of proceedings in this case and Ohio law. Moreover, contrary to Supreme Court Rule of Practice X, Section 7, Respondents make factual contentions that are unsupported by any affidavits, citations to the record, or evidence of any kind.

Ultimately, Respondents' Memorandum demonstrates precisely what Relator alleged in its Complaint for Writ of Prohibition: by granting a "stay" of the trial court's denial of injunctive relief, Respondents effectively reversed the trial court and are imposing an injunction of indefinite duration against Relator. Indeed, Respondents concede that their "intent" in granting the stay was to enjoin Relator. (Respondents' Memorandum in Support of Motion to Dismiss ("Mem.") at 8). Although they attempt to justify their action by asserting that they had the power to grant an injunction under App.R. 7(A), they ignore the fact that appellant Richard Justin Johnson ("Johnson") failed to provide any affidavits, sworn statements or all relevant portions of the record with his motion for injunctive relief, and Respondents therefore had no evidence before them upon which to base an injunction, as required by App.R. 7(A).

Although it was perhaps for that very reason that Respondents chose to couch their order as a "stay" of the trial court's denial of a preliminary injunction, their use of a stay as a means to enjoin Relator is contrary to Ohio law. *See, e.g., Olen Corp. v. Franklin County Bd. of Elections* (1988) 43 Ohio App.3d 189, 198, 541 N.E.2d 80 ("[s]taying the denial of injunctive relief does not create an affirmative injunction.") Moreover, Respondents unquestionably lacked the power and authority to issue a "stay" that had the

“effect and intent” of an injunction where they had no evidence before them that justified an injunction. Relator has no adequate remedy at law for such action, and consequently the writ of prohibition sought by Relator should be granted.

II. Respondents Wrongly Argue That Relator Has An Adequate Remedy At Law.

At the outset, Respondents argue that Relator “is attempting to have this Court reach the merits of the underlying appeal by way of collateral attack on Respondents, rather than utilization of an available legal remedy of appeal from either the October 13, 2006 judgment, or a later adverse final judgment, in the event that Respondents would reverse the trial court.” (Mem. at 3). There are two fundamental flaws in Respondents’ argument.

First, what Respondents did in their October 13, 2006 Journal Entry was to “grant a stay of the order dissolving the temporary restraining order and denying a preliminary injunction pending this appeal.” (Ex. “A” hereto, certified copy of Oct. 13, 2006 Journal Entry at 3). Respondents cite no authority for their contention that an order granting a stay of proceedings is immediately appealable pursuant to R.C. 2505.02. To the contrary, this Court held in *Community First Bank & Trust v. Dafoe* (2006), 108 Ohio St.3d 472, 2006-Ohio-1503, 844 N.E.2d 825, at ¶¶31-32, that a stay of proceedings (including claims against non-bankrupt parties) pending determination of the bankruptcy of another party was “not an ancillary proceeding pursuant to former R.C. 2505.02(A),” and was “not a final order subject to appeal under former R.C. 2505.02.”

Moreover, Respondents’ claim that Relator has an adequate remedy of appeal from a “later adverse final decision, in the event the Respondents would reverse the trial court,” is completely contrary to the position Respondents took in granting a stay to Johnson in the first place. In granting their stay, Respondents declared that “if a stay is not granted

[Johnson] will be denied an effective remedy on appeal.” (Ex. “A” hereto, Oct. 13, 2006 Journal Entry at 3). If Respondents’ ultimate reversal of the trial court’s order denying an injunction, at the conclusion of Johnson’s appeal, would not constitute “an effective remedy on appeal” for Johnson, then the ultimate reversal of Respondents’ order granting a stay, at the conclusion of Relator’s appeal, could not constitute “an effective remedy on appeal” for Relator either, for the very same reason: the 2006-2007 school year will be over by the time Johnson’s appeal is decided. Respondents cannot have it both ways.¹

III. Respondents Had No Authority To Grant A Stay That Had The “Effect And Intent” Of “The Issuance Of An Injunction.”

As noted above, although Johnson filed a “Motion for Immediate Injunctive Relief During Pendency of Appeal” in the Court of Appeals (Ex. “B” hereto, certified copy of Johnson’s Motion), what Respondents instead granted was a “stay” of the trial court’s order denying a preliminary injunction and dissolving the temporary restraining order. Indeed, in their Journal Entry, Respondents repeatedly characterized their action as a “stay.” (Ex. “A” hereto, October 13, 2006 Journal Entry, at 1, 3).

Now, however, perhaps recognizing that they lacked the power to impose injunctive relief by means of a “stay,” Respondents suggest that they really did not grant a stay; they say that while their order “was couched in terms of a stay of the order appealed, the effect and intent was the issuance of an injunction [.]” (Mem. at 8). That is precisely the point raised by Relator in its Complaint for a Writ of Prohibition: namely, that Respondents *did* grant injunctive relief, and that they lacked the power to do so. Surprisingly, Respondents completely ignore the fact that they could not issue an injunction, through means of a stay or

¹In any event, this Court stated in *State, ex rel Ohio High School Athletic Association vs. Judges of the Court of Common Pleas of Stark County* (1962), 173 Ohio St. 239, 249, 181 N.E.2d 261, that “[e]ven where there is an adequate remedy by way of appeal, this court may, in its discretion, issue a writ of prohibition.”

otherwise, where Johnson failed to satisfy the requirements of App.R. 7(A) and Respondents had no evidence before them upon which to base an injunction.

App.R. 7(A) requires that where, as here, the facts are disputed, a motion for preliminary injunction “*shall be supported* by affidavits or other sworn statements or copies thereof.” (emphasis supplied). However, Johnson’s Motion was accompanied by neither affidavits nor sworn statements. (See Ex. “B” hereto). App.R. 7(A) further requires that “[w]ith the motion shall be filed such parts of the record as are relevant and as are reasonably available at the time the motion is filed.” Here, the only part of the record Johnson supplied with his motion was a single, unauthenticated exhibit from the preliminary injunction hearing. In fact, the record of the trial court’s proceedings had not been transmitted to Respondents by the time they had rendered their decision.² Thus, Respondents could not and did not issue a preliminary injunction under App.R. 7(A) because they had no evidence before them upon which to do so.

Finally, recognizing that they cannot reverse the trial court’s denial of injunctive relief absent a finding of an abuse of discretion, which in turn requires a finding that the trial court’s decision was “unreasonable, arbitrary, or unconscionable,” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, Respondents claim that they determined, for purposes of justifying their grant of injunctive relief, “that the judgment of the trial court ‘may well be determined to be arbitrary.’” (Mem. at 2). However, that is *not* what they stated in their Journal Entry; what they instead stated was that *Relator’s action* in rescinding its age exemption to Johnson “may well be determined to be arbitrary,” even

²The record of proceedings from the trial court was not filed with the Court of Appeals until November 15, 2006. (Ex. “C,” hereto, certified copy of Court of Appeals Docket).

though, as shown above, they had absolutely no evidence before them upon which to base such a conclusion. (Ex. "A" hereto, Oct. 13, 2006 Journal Entry at 3).³

IV. Respondents Make Factual Arguments Without Supporting Them As Required By S.Ct. Prac. R. X, Section 7.

Lastly, Respondents claim that Relator's allegations in its Complaint of the potential impact Johnson's playing could have on "member schools eligibility for playoff contention" are "wholly without merit." (Mem. at 4). Respondents follow that claim with a lengthy statement of purported facts, accompanied by two attached pages excerpted from what appears to be a fourteen page printout from Relator's web site, and then assert that Salem High School could not "impact the playoff potential of any member team." (*Id.* at 5).

There are two fundamental problems with Respondent's argument. First, S.Ct. Prac. R. X, Section 7, requires that where an agreed statement of facts is not submitted to this Court, evidence must be "submitted by affidavits, stipulations, depositions and exhibits." Instead, Respondents have simply made assertions, treating them as facts, without supporting them in any fashion. Accordingly, those factual assertions must be disregarded for purposes of Respondents' Motion.

In any event, Respondents' factual assertions are ultimately wrong. While Respondents correctly state that Salem High School won only one football game this season, and that that victory was over Campbell Memorial High School, what they fail to note is that that victory occurred on October 6, 2006, after Johnson had filed his Notice of Appeal and two of the Respondents had issued a "temporary stay of the order denying a preliminary

³Notably, while Respondents stated in their Journal Entry that "there is no specific stated rule or by-law which clearly grants the authority exercised by the assistant commissioner" with respect to Johnson (Oct. 13, 2006 Journal Entry at 2-3), and repeat that statement in their Memorandum (Mem. at 2), they later concede that the Commissioner *did* have such authority, stating that "[t]here is no question that [Relator] has authority to determine eligibility requirements for the participants in interscholastic competition." (Mem. at 3).

injunction[.]” ordering that the trial court’s temporary restraining order remain “in full force and effect.” (Ex. “D” hereto, certified copy of October 6, 2006 Journal Entry; emphasis in original). Respondents also fail to point out that as a consequence of their temporary stay, Johnson not only played in that football game against Campbell Memorial High School, but scored three touchdowns and rushed for 194 yards, leading to Salem High School’s victory. (Ex. “E” hereto, Affidavit of Henry Zaborniak, Jr., with Salem News article attached).

Further, Respondents’ wrongly contend that Salem High School’s victory could not “impact the playoff potential of any member team” (Mem. at 5). As stated in the affidavit of Steven L. Craig, filed with Relator’s Complaint, “[w]hether a school’s football team does or does not make the football playoff depends on the number of first and second level computer points the school earns during the regular season.” (Aff. at ¶22). Salem High School’s record this season, including specifically its victory over Campbell Memorial High School, did have an impact on the first and second level points accumulated by its competitors, and thus affected whether those competitors, and other schools as well, qualified for the playoffs, and how they were seeded if they did qualify. (Ex. “E” hereto, Aff. of Henry Zaborniak, Jr., at ¶4).

First level points are earned for each game a team wins. (*Id.* at ¶15). Second level points are earned for each game a defeated opponent wins (full value), each game a defeated opponent ties (half value), each game a tied opponent wins (half value) and each game a tied opponent ties (1/4 value). (*Id.*) Each of Salem High School’s opponents who defeated Salem picked up full value second level points as a result of Salem’s victory over Campbell Memorial High School, and those points, when added to their respective totals, affected which schools did, in fact, qualify for the playoffs and how they were seeded. (*Id.* at ¶16).

Although the football season has now concluded for Salem High School, the potential adverse impact of Respondents' continuing injunction has not ended. Respondents' "stay" was not limited to the football season; Respondents have expressly "given permission [to Johnson] to participate in interscholastic athletics until further order from this Court or the Ohio Supreme Court." (Ex. "A" at 3). Johnson ran track for Salem High School in the 2005-2006 school year, and in fact, represented Salem High School in the 100 yard dash in the Sectional meet. (Zaborniak Aff., attached hereto as Ex. "E," at ¶7). Under Respondents' order, he will be allowed to run track for Salem High School in the spring of 2007. His participation in track and field can have the very same impact on students who compete against him in track events, including students from his own school and other schools, as Johnson's participation in football had. (*Id.* at ¶8). Thus, Respondent's injunction, through their improper use of a stay of proceedings, presents a continuing substantial risk of harm to third parties and the general public.

V. Conclusion

For all the reasons stated herein, Respondents' Motion to Dismiss should be overruled.

Respectfully submitted,



Melvin D. Weinstein (0012174)
(Counsel of Record)
Stephen C. Barsotti (0075038)
KEGLER BROWN HILL & RITTER CO., LPA
65 East State Street, Suite 1800
Columbus, OH 43215
Telephone:(614) 462-5400
Fax: (614) 464-2634

Steven L. Craig / mdu

Steven L. Craig (0025114)
437 Market Ave. North
Canton, OH 44702-1543
Telephone: (330) 456-0061
Fax: (330) 456-1344

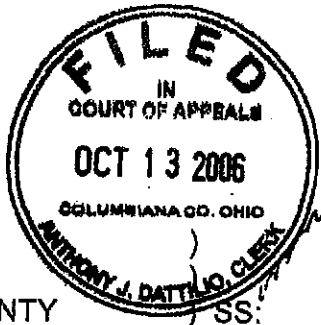
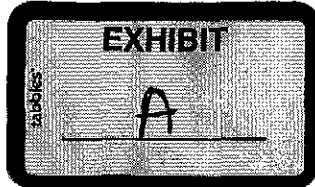
Attorneys for Relator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by Regular U.S. Mail this 22nd day of November upon Robert Budinsky, Esq., 131 West Federal St., Youngstown, OH 44503, attorney for Respondents, and upon Christopher J. Barozzi, Esq., Harrington, Hoppe & Mitchell, LTD, 2235 E. Pershing St., Suite A, Salem, OH 44460, attorney for Interested Party Richard Justin Johnson.

Melvin D. Weinstein

Melvin D. Weinstein



mak

STATE OF OHIO
COLUMBIANA COUNTY

IN THE COURT OF APPEALS OF OHIO
SEVENTH DISTRICT

RICHARD JUSTIN JOHNSON,
PLAINTIFF-APPELLANT,

VS.

CASE NO. 06-CO-56
JOURNAL ENTRY

OHIO HIGH SCHOOL ATHLETIC
ASSOCIATION,
DEFENDANT-APPELLEE.

Hearing on appellant's Motion for Relief Pending Appeal was conducted before this Court on October 12, 2006. Presenting argument on behalf of appellant was Attorney Christopher J. Baronzzi. Presenting argument on behalf of appellee Ohio High School Athletic Association was Attorney Steven Craig.

On consideration of appellant's motion, the arguments of counsel and the specific facts of this case, it is ordered that the judgment of the trial court dissolving its temporary restraining order and denying a preliminary injunction is stayed during the pendency of this appeal.

Because a stay is granted based, in part, on a showing by appellant of the likelihood of success on appeal, it is necessary for us to review certain facts pertinent to this matter. In so doing, we note that this order is based on the underlying facts limited to this case. Appellee OHSAA originally granted an age exemption to appellant to participate in interscholastic athletics for Salem High School in the current school year.



2006 CO
00066
00060484277
JE

1

STATE OF OHIO
COLUMBIANA COUNTY, ss.

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURT'S OFFICE.

Nov 20 2006

ANTHONY J. DATTILIO, CLERK OF COURTS

BY: *[Signature]* DEPUTY CLERK

This exemption was revoked ten months later during the football season. By-law 4-2-1 of the OHSAA declares that students who attain the age of 19 before August 1 are ineligible to participate in interscholastic athletics unless an exemption is granted because the student has a "disability" as defined by 42 U.S.C. Section 12102(ADA) and the Commissioner determines, in his sole discretion, that certain criteria are met. Thus, the rule's application to the facts of this case are brought into question by this appeal. The exemption was granted on November 28, 2005, after an application was made and letters of support were submitted by two coaches from other schools in the same conference as Salem High School. An assistant commissioner granted appellant's exemption based on information submitted in the application and following her own investigation.

Several games into the 2006 football season, the assistant commissioner reopened the matter and conducted a further inquiry after receiving a complaint by a non-conference school where a basketball player did not receive a similar exemption. She then reversed her prior determination and revoked the exemption mid-season. It is apparent, however, that the same facts were available to the assistant commissioner when she made the initial determination of eligibility ten months prior and issued the exemption.

While the Commissioner is vested with the authority to "take the initiative in enforcing the Bylaws and Regulations and promoting the purpose of the Association" Article 6-1-1 (Constitution of the OHSAA), there is no specific stated rule or by-law which

clearly grants the authority exercised by the assistant commissioner under the facts of this case.

While we are limited in our review on a stay request, ultimately we can only reverse the trial court in these matters where a decision is arbitrary or capricious. It appears that the action of the appellee in reversing its decision ten months after granting an exemption based on the same facts in existence when the exemption was originally granted may well be determined to be arbitrary.


Pursuant to rule, appellant has established a likelihood of success on appeal and if a stay is not granted appellant will be denied an effective remedy on appeal. Appellant will suffer irreparable injury if a stay is not granted, no third parties will be unjustifiably harmed and the public interest will be served by the stay.

Consequently, this Court grants a stay of the order dissolving the temporary restraining order and denying a preliminary injunction pending this appeal.

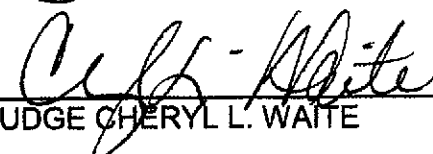
Appellant is given permission to continue to participate in interscholastic athletics until further order from this Court or the Ohio Supreme Court.



JUDGE GENE DONOFRIO



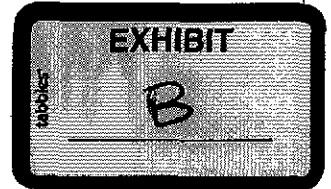
JUDGE JOSEPH J. VUKOVICH



JUDGE CHERYL L. WAITE

SEVENTH DISTRICT COURT OF APPEALS

IN THE COMMON PLEAS COURT
COLUMBIANA COUNTY, OHIO



RICHARD JUSTIN JOHNSON

FILED

Trial Court Case No. 06 CV 831

COLUMBIANA COUNTY
COURT OF COMMON PLEAS

Plaintiff/Appellant

OCT - 6 2006

Court of Appeals Case No.

2006-CO-56

v.

ANTHONY J. DATTILIO
CLERK
(CMC)

APPELLANT'S MOTION FOR
IMMEDIATE INJUNCTIVE
RELIEF DURING PENDENCY
OF APPEAL

OHIO HIGH SCHOOL ATHLETIC
ASSOCIATION

Defendant/Appellee

Now comes Appellant, Richard Justin Johnson, by and through counsel and hereby asks this court to grant him immediate relief upon appellant's sole assignment of error; the Trial Court erred in denying Appellant's request for a preliminary injunction and in dissolving the Temporary Restraining Order.

As more fully explained in the attached Memorandum in Support, the Trial Court abused its discretion in failing to grant the injunctive relief requested by Appellant. This Court should grant Appellant immediate injunctive relief during the pendency of this appeal.

Respectfully submitted,

Christopher J. Barozzi (0078109)
HARRINGTON, HOPPE & MITCHELL, LTD.
2235 E. Pershing Street, Suite A.
Salem, Ohio 44460
Phone: 330-337-6586
Fax: 330-337-6662
Counsel for Plaintiff, Richard Justin Johnson

STATE OF OHIO
COLUMBIANA COUNTY, ss)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY
OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE.

Nov 20 2006

ANTHONY J. DATTILIO, CLERK OF COURTS

BY:
DINA SMITH, DEPUTY CLERK



2006 CO
00056
00038604300
M

MEMORANDUM IN SUPPORT

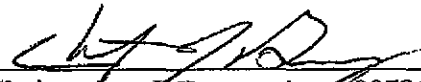
App. R. 7(A) authorizes this Court to grant Appellant immediate injunctive relief. App. R. 7(A) provides, in part, "A motion . . . for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal may be made to the court of appeals or to a judge thereof" Appellant has filed an appeal of the trial court's October 5, 2006 decision denying Appellant a preliminary injunction and dissolving the Temporary Restraining Order previously granted by the trial court.

As stated in the Civil Docketing Statement filed herewith, the trial court's decision relative to the preliminary injunction is a final appealable order pursuant to O.R.C. §2505.02(A)(3) and (B)(4). Specifically, the trial court's decision denying Appellant's request for a preliminary injunction is a final order because it unequivocally denied Appellant's request for temporary injunctive relief and also because Appellant will not be afforded a meaningful or effective remedy by an appeal following a judgment on the permanent injunction. This case asked the trial court to grant injunctive relief to allow Appellant, a nineteen year old high school senior to play football for the remainder of his senior year. Appellant's eligibility was first confirmed by Appellee in late 2005 but then revoked by Appellee on September 22, 2006, in the middle of Appellant's senior football season. Because of Appellee's actions, Appellant was forced to sit out for one whole game before the trial court granted a Temporary Restraining Order allowing Appellant to play one more game. Unfortunately, the trial court then denied further injunctive relief and declared Appellant ineligible. Without injunctive relief from this Court, Appellant will not have a meaningful right of appeal because his team's last home game is tonight and is also the Salem High School homecoming game. Indeed, there are only four football games left this entire season. Without immediate injunctive relief, Appellant will not get his due process until after the football season has ended and the issue is moot.

Here is a substantial likelihood that Appellant will prevail on the merits of this appeal because the Trial Court abused its discretion in failing to recognize clear and convincing evidence that (1) Appellee's decision to revoke Appellant's eligibility to play high school football was arbitrary and based

upon mistake and (2) Appellant satisfies the criteria entitling Appellant to an exception to Appellee's age restriction. Further, Appellant will suffer irreparable injury if injunctive relief is not granted, the injunctive relief will not cause substantial harm to others and the injunctive relief will serve the public interest. Each of these elements is discussed more fully in the attached *Plaintiff's Brief in Support of Request for Preliminary Injunction*.

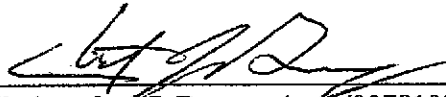
Respectfully submitted,



Christopher J. Baronzzi (0078109)
HARRINGTON, HOPPE & MITCHELL, LTD.
2235 E. Pershing Street, Suite A.
Salem, Ohio 44460
Phone: 330-337-6586
Phone: 330-337-6662
Counsel for Plaintiff, Richard Justin Johnson

CERTIFICATE OF SERVICE

A copy of the foregoing *Notice of Appeal* was served by facsimile and regular U.S. mail, this 6th day of October, 2006, to Attorney Steven Craig, 437 Market Avenue North, Canton, Ohio 44702-1543.



Christopher J. Barozzi (0078109)

HARRINGTON, HOPPE & MITCHELL, LTD.

2235 E. Pershing Street, Suite A.

Salem, Ohio 44460

Phone: 330-337-6586

Phone: 330-337-6662

Counsel for Plaintiff, Richard Justin Johnson

STATE OF OHIO)
)
COUNTY OF COLUMBIANA)

IN THE COURT OF COMMON PLEAS

RICHARD JUSTIN JOHNSON)

Plaintiff

FILED
COLUMBIANA COUNTY
COURT OF COMMON PLEAS
OCT 04 2006

CASE NO. 06 CV 831

JUDGE DAVID TOBIN

v.

OHIO HIGH SCHOOL ATHLETIC)
ASSOCIATION)

PLAINTIFF'S BRIEF IN SUPPORT OF
REQUEST FOR PRELIMINARY
INJUNCTION


ANTHONY J. DATTIIO
Defendant)
CLERK)
(SCB))

Now comes Plaintiff, Richard Justin Johnson, by and through counsel, and hereby asks this Court to enter its Order granting Plaintiff a preliminary injunction prohibiting Defendant from preventing Plaintiff's participation in interscholastic high school athletics until such time as this Court can render a decision on Plaintiff's request for a permanent injunction.

A preliminary injunction is proper in this case because Plaintiff has shown a substantial likelihood of success on the merits by demonstrating that Defendant's decision to revoke Plaintiff's eligibility was arbitrary and based upon mistake. Further, Plaintiff has shown that he will suffer irreparable injury if the preliminary injunction is not granted, that the preliminary injunction will not cause substantial harm to others and the preliminary injunction will serve the public interest.

For all of these reasons, as more fully explained in the attached Memorandum in Support, Plaintiff respectfully asks this Court to grant Plaintiff a preliminary injunction as requested above.

Respectfully submitted,



Christopher J. Baronzzi (0078109)
HARRINGTON, HOPPE & MITCHELL, LTD.
2235 E. Pershing Street, Suite A.
Salem, Ohio 44460
Phone: 330-337-6586
Phone: 330-337-6662
Counsel for Plaintiff, Richard Justin Johnson

MEMORANDUM IN SUPPORT

II. LAW AND ARGUMENT

Courts consider four factors in determining whether a preliminary injunction should be issued:

- (1) Whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits;
- (2) Whether the plaintiff has shown that irreparable injury will result if the preliminary injunction is not granted;
- (3) Whether issuance of a preliminary injunction will cause substantial harm to others; and
- (4) Whether a preliminary injunction will serve the public interest.

See Martin v. Lake Mohawk Property Owner's Assoc., 2005-Ohio-7062, *5 (Seventh Dist.); Corbett v. Ohio Bldg. Auth. (1993), 86 Ohio App.3d 44 (Tenth Dist.). In considering whether interim injunctive relief is appropriate, "no one factor is dispositive as the court balances the equities involved." Martin, at *5. Ultimately, the Court has discretion to determine if there is clear and convincing evidence to support the issuance of temporary injunctive relief. *Id.*

Here, Plaintiff, Richard Justin Johnson (hereafter "J.J." or "J.J. Johnson", satisfies the standard for a preliminary injunction and this Court should maintain the relief it granted through the existing Temporary Restraining Order until final adjudication of this case on the merits.

A. J.J. Johnson Has Demonstrated A Substantial Likelihood of Success on the Merits of this Case.

It is apparent that Defendant, the Ohio High School Athletic Association's (hereafter "OHSAA"), decision to revoke J.J. Johnson's eligibility for interscholastic high school athletics was arbitrary and/or based on a mistake of fact about whether J.J. Johnson satisfies the criteria to qualify for the exception to the age restriction in the OHSAA Bylaws.

OHSAA Bylaw 4-2-1 contains the age restriction at issue in this case and also sets forth the applicable exception to that age restriction. Bylaw 4-2-1 provides:

If a student enrolled in high school attains the age of 19 before August 1, the student shall be ineligible to participate in high school interscholastic athletics for the school year commencing in that calendar year.

EXCEPTION: If the student is a "child with a disability" as that term is defined at 42 U.S.C. Section 12102 (ADA) and the Regulations promulgated thereunder, and the student's specific disability has contributed significantly to the student's inability to meet the requirements of this bylaw, that student may be declared eligible by the Commissioner if, in the Commissioner's sole discretion, the Commissioner determines that:

- a) the student does not pose a safety risk to himself/herself or others; and
- b) the student does not enjoy any advantages in terms of physical maturity, mental maturity or athletic maturity over other student-athletes; and
- c) the student's participation does not affect the principles of competitive equity; and
- d) the student's participation does not displace another student-athlete; and
- e) there is no evidence of "red-shirting" or other indicia of academic dishonesty.

The Ohio Supreme Court recognizes this Court's authority to take corrective action when the OHSAA acts upon a mistake or has made an arbitrary decision. See State ex rel. Ohio High School Athletic Ass'n. v. Judges of the Court of Common Pleas of Stark Cty., 173 Ohio St. 239, Paragraph three of the Syllabus (1962). The Ohio Supreme Court recognizes, "'Arbitrary' means 'without adequate determining principle; * * * not governed by any fixed rules or standard.'" Sandusky Properties v. Aveni, 15 Ohio St.3d 273, 275 (1984) citing Black's Law Dictionary (5th Ed.). Proof that the OHSAA's decision to revoke J.J. Johnson's eligibility is arbitrary was brought to light during testimony about the process by which the OHSAA revoked J.J. Johnson's eligibility and through the OHSAA Commissioners' testimony about how they interpret the OHSAA's Bylaws relative to this case. Here, the OHSAA only challenges J.J.'s ability to meet prongs (b), (c) and (d) of the exception criteria, respectively referred to herein as the "athletic maturity prong," "competitive equity prong" and "displacement prong."

1. **J.J. Johnson satisfies the “displacement prong” of the exception criteria and the OHSAA’s interpretation and application of the “displacement” prong of the exception criteria is arbitrary.**

There is clear and convincing evidence that the OHSAA commissioners interpreted and applied Bylaw 4-2-1 in this case so as to give them unfettered discretion with respect to their decision to revoke J.J. Johnson’s eligibility. Assistant OHSAA Commissioner Debbie Moore, Ph.D. was qualified by defense counsel as an expert in the interpretation and application of Bylaw 4-2-1, including the exception contained therein. It is apparent through Dr. Moore’s testimony at the hearing on the preliminary injunction and her revocation letter of September 22, 2006 (Hearing Exhibit B, attached hereto) that her determination that J.J. Johnson did not meet the displacement prong of the exception criteria was instrumental in her decision to revoke J.J. Johnson’s eligibility. However, in a revealing moment of testimony during cross examination, Dr. Moore admitted that under her literal interpretation of the displacement prong of the exception criteria in this case, no student athlete could ever satisfy the exception criteria. Under Dr. Moore’s interpretation, the exception criteria are nothing more than a sham to give the appearance that OHSAA decisions are based upon those fixed, predictable rules and standards. When the OHSAA makes such an unreasonable interpretation of the exception criteria and no student athlete can satisfy the criteria, the ostensible “criteria” are transformed into a front to mask unfettered discretion to make arbitrary decisions such as the decision to revoke J.J. Johnson’s eligibility.

When Defense counsel attempted to interpret the displacement prong more reasonably, he was met with overwhelming evidence that J.J. does not displace another player and therefore meets that prong of the criteria. Specifically, there was testimony from Head Coach Miller, J.J. and fellow teammate, Cory Rickman, that when J.J. does not participate in a play, starters and other players that may or may not play regardless of J.J.’s participation simply get shifted around to fill that position. J.J. testified under oath that he perceived a shortage of players for the tailback position. Also, in a particularly revealing moment during Defense counsel’s cross examination of Head Coach Miller, Coach Miller testified that during the last game, every player on his team got to play. J.J. also

participated in the last game under the authority of the Temporary Restraining Order issued by this Court.

2. J.J. Johnson satisfies the "competitive equity prong" of the exception criteria.

With respect to the "competitive equity prong" of the exception criteria, there is absolutely no testimony that it is unfair competition when J.J. Johnson participates on the Salem High School varsity football team. There was ample testimony that J.J. Johnson is not faster, stronger or bigger than other kids in Salem's football Division or even other kids on J.J. Johnson's team. J.J. Johnson can not single-handedly decide the outcome of an athletic competition. To the contrary, Head Coach Miller humbly testified that Salem High School's varsity football team has a 0-6 record despite J.J.'s best efforts in five out of those six games.

It should also be observed that the competitive equity prong of the exception criteria does not limit consideration to solely the competitive equity of others. The OHSAA seems to have wholly neglected to consider whether it is fair to J.J. Johnson to first declare him eligible for athletic competition in his senior year of high school, to allow him to play roughly half of that season of football and to then abruptly revoke their decision in the middle of the season, on a Friday.

3. J.J. Johnson satisfies the "athletic maturity prong" of the exception criteria and the OHSAA's interpretation and application of the "athletic maturity prong" of the exception criteria is arbitrary.

With respect to the "athletic maturity prong" of the exception criteria, there was also no testimony that J.J. Johnson enjoys any "advantages" in terms of his athletic maturity over other student athletes. It is undisputed that J.J. Johnson is a good high school football player. However, there was no testimony that J.J. possesses any inherent athletic maturity that any other starting, senior, high school football player with the same amount of football experience would not possess.

Although the OHSAA emphasizes the awards and honors J.J. received during his junior year, there was testimony that these awards and honors were received, in no small part, as result of J.J.

Johnson benefiting from an experienced and successful football team and offensive line. Indeed, there was testimony that other students also received honors and awards for their success and participation on the football team during J.J. Johnson's junior year. This Court heard testimony that this year, without the benefit of an experienced team and offensive line, J.J.'s statistics are comparable to his teammates' statistics. Finally, there was testimony from J.J. and Head Coach Miller that J.J. struggles with certain mental aspects of the game. In particular, J.J. does not learn new or complex plays as quickly as his teammates. There is overwhelming evidence that J.J. Johnson does not enjoy any inherent advantages in terms of physical, mental or athletic maturity over other student athletes.

Also, with respect to the "athletic maturity prong" of the exception criteria, the OHSAA again takes a disturbing and arbitrary position. The OHSAA Commissioners testified that they interpret the exception criteria to allow only the most inept, impotent and disabled student to have the opportunity to participate in interscholastic athletics. With all due respect to the Commissioners, the undersigned fails to recognize how the Commissioners can reasonably interpret the plain language of Bylaw 4-2-1 to support such a position. The "athletic maturity prong" prohibits application of the exception criteria to student athletes who do not "enjoy any advantages in terms of athletic maturity...over other student athletes." The "athletic maturity prong" does not require application to only student athletes who suffer a disadvantage in terms of athletic maturity compared to other student athletes.

Further, through such an interpretation, the Commissioners appear to be discriminating between classes of disabled student athletes despite the clear mandates in State and Federal law defining who is disabled and therefore deserving of accommodation. In granting exceptions under Bylaw 4-2-1, the Commissioners are disregarding the plain language of the exception criteria and are using their own discretion and making decisions about which disabled student athlete should be allowed to participate without reference to the fixed standards of the exception criteria. Such action virtually defines an arbitrary decision, as set forth by the Ohio Supreme Court. See *Sandusky Properties, supra*.

4. The procedure used by the OHSAA's to revoke J.J. Johnson's eligibility proves that the decision to revoke his eligibility is arbitrary.

It is apparent that the sole reason for the OHSAA's reconsideration of their decision regarding J.J. Johnson's eligibility was because of complaints voiced by a disgruntled principal from another high school when the OHSAA Board of Control affirmed an OHSAA decision denying an exception to a student from that school. It is clear that no one challenged or appealed the OHSAA decision granting J.J. Johnson's request for an exception to the age restriction. Nonetheless, when the OHSAA decided to reconsider their decision about J.J. Johnson's eligibility, their only investigation of the matter was to gather J.J. Johnson's statistics for his junior year of football (coincidentally from the OHSAA website) and to speak with the athletic director and superintendent of the Salem High School.

The OHSAA never contacted J.J. Johnson, his family, his current head coach, or his former head coach before the OHSAA revoked their decision declaring J.J. Johnson eligible to participate in interscholastic high school athletics during his senior year. Despite the obvious gravity of a decision to revoke the eligibility of a high school student in the middle of his senior season of high school athletics, the OHSAA took only four days to reverse their decision from the time they spoke with Salem City School officials.

The decision to revoke J.J. Johnson's eligibility was not the result of the usual OHSAA appellate procedure and was made at the sole discretion of two Assistant Commissioners, not the usual panel of eight Commissioners that typically reconsiders OHSAA decisions when they are appealed. To the contrary, two Assistant Commissioners, nearly ten months after the OHSAA's original decision declaring J.J. eligible, hastily reconsidered the OHSAA decision and ultimately revoked the prior OHSAA decision. Such hasty action and deviation from the usual procedures for reconsidering or challenging an OHSAA decision demonstrates the arbitrary procedure used to make the decision to revoke J.J. Johnson's eligibility.

Overall, the above analysis and discussion shows that J.J. Johnson has a substantial likelihood of

success on the merits of this case. The OHSAA's hasty decision making and unreasonable interpretation of the exception criteria in Bylaw 4-2-1 proves that their decision to revoke J.J. Johnson's eligibility was not reasoned and based on fixed rules or standards but rather was a product of their own discretion and thus, arbitrary. Further, the Commissioner's hasty actions and failure to investigate the facts of why J.J. Johnson received awards and honors during his junior year caused the Commissioners to base their decisions on mistakes of fact about J.J. Johnson's athletic maturity, the competitive equities involved and whether J.J. displaces other student athletes. Because the OHSAA's decision to revoke J.J.'s eligibility is arbitrary and based upon mistakes of fact, this Court should prevent the OHSAA from interfering with J.J. Johnson's eligibility during his senior year of interscholastic high school athletics.

B. J.J. Johnson Will Suffer Irreparable Injury if this Court Does Not Grant the Preliminary Injunction.

It cannot be reasonably disputed that J.J. Johnson will suffer irreparable injury if the OHSAA is allowed to deprive him of his senior year of interscholastic high school athletics. This Court heard testimony about how J.J. Johnson is a team leader, team captain and role model for other student athletes, both on the football field and off. J.J., one of his teammates, and the head football coach all testified that the Salem High School varsity football team is a close-knit group of young men and that they frequently spend time with one another, and occasionally with their coach, even away from school. As student athlete, it is apparent that J.J. Johnson is both the recipient and source of significant support, encouragement, inspiration, camaraderie and a sense of belonging.

Further, J.J. Johnson and his football coach both attested to J.J.'s hard work and dedication in the off season so that he would maintain his conditioning. J.J. did not pursue other opportunities after the OHSAA's first decision in 2005 declaring him eligible because the OHSAA told him he would be permitted to play football during his senior year.

Finally, there is the inevitable sense of anguish and loss J.J. will realize if this Court allows the OHSAA to abruptly terminate J.J.'s senior year of football without the opportunity for him to reflect and

contemplate his last game. Indeed, if the OHSAA is allowed to terminate J.J. Johnson's last year of football, they will deprive him of one of the fondest and most emotional memories any senior high school football player can have, that last opportunity to take the field with the team and finish what they started. There is no legal remedy for these potential injuries to J.J., a young man to whom football and being a part of the team means so much.

C. Issuance of the Preliminary Injunction Will Not Cause Substantial Harm to Others.

Although the OHSAA theorizes that if this Court grants temporary injunctive relief but ultimately decides in favor of the OHSAA, J.J.'s participation on the football team could help the team win games they may not have otherwise won and thereby skew the complicated computer ranking of high school teams in each division, this is nothing more than speculation about possibilities.

The Salem High School athletic director and head coach of football team both testified that in all probability, the Salem High School varsity football team will may only beat two other teams all season, with or without J.J. Further, both potential victories would be over schools that also have dismal records this season. Consequently, as attested, the probable effect of Salem High School beating those teams on the computer ranking system would be minimal.

Indeed, the OHSAA's position on this possible "ripple effect" that could skew the computer ranking system is a slim and speculative reed upon which to hang a legal argument supporting why J.J. should be deprived of his senior year of football. Fortunately, the legal system recognizes probabilities, not the infinite possibilities that one party can conjure. Here, in all probability, if this Court grants J.J. a preliminary injunction that allows him to participate on the Salem High School varsity football team, it will not cause substantial harm to anyone.

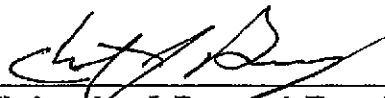
D. Issuing the Preliminary Injunction Will Serve the Public Interest.

Here, it is evident that the public has a strong interest in children receiving a well-rounded and complete high school education. A full opportunity to participate in high school athletics can be an important part of that education. Such opportunities help children learn life's lessons and to grow into

well adjusted, educated members of society who feel a sense of acceptance and belonging in the community. A full opportunity to participate in high school athletics also teaches high school students the lessons learned by reaping the benefits of their hard work and dedication.

Public interest and support for these goals is even more pronounced for students with a disability. J.J. testified that probably because of his learning disability he learns most readily "by doing" or "by repetition." There may be no better place to learn life's lessons and become a productive member of society "by doing" than in high school athletics.

Respectfully Submitted,



Christopher J. Baronzzi, Esq. (0078109)
HARRINGTON, HOPPE & MITCHELL, LTD.
2235 E. Pershing Street, Suite A.
Salem, Ohio 44460
Phone: 330-337-6586
Phone: 330-337-6662
Counsel for Plaintiff, Richard Justin Johnson

CERTIFICATE OF SERVICE

A copy of the foregoing *Plaintiff's Brief in Support of Request for Preliminary Injunction* was served by regular U.S. mail, this 4th day of October, 2006, to Attorney Steven Craig, 437 Market Avenue North, Canton, Ohio 44702-1543..



CHRISTOPHER J. BARONZZI (0078109)
HARRINGTON, HOPPE & MITCHELL, LTD.
Counsel for Plaintiff, Richard Justin Johnson



OHIO HIGH SCHOOL ATHLETIC ASSOCIATION

Daniel B. Ross, Ph.D., Commissioner

September 22, 2006

Mr. Greg Steffey, Athletic Administrator
Salem High School
1200 East Sixth Street
Salem, Ohio 44460

In Re: Muster of Richard Justin Johnson Eligibility.

Dear Mr. Steffey:

The purpose of this letter is to advise you of the decision of the Ohio High School Athletic Association to declare Richard Justin Johnson ineligible for interscholastic athletic competition for the remainder of the 2006-2007 school year pursuant to Bylaw 4-2-1, 19 Year Old Age Limitation. By way of background, allow me to further explain this ruling.

You may recall that back in November of 2005 Salem High School began the process by which Richard could possibly regain eligibility for the 2006-2007 school year. Salem High School recognized at that time that the Age Limitation Bylaw would otherwise cause Richard's high school playing days to come to an end unless a case could be made for the only exception that exists for this bylaw, specifically, the individuals with disability exception.

In accordance with the procedures of the Constitution and Bylaws, Salem made its case for why Richard qualified for this exception. In doing so, Salem represented to the Commissioner's office that all five (5) criteria for meeting this exception were indeed met in Richard's case. Based upon these representations, the Commissioner's office declared Richard eligible. However, during the course of an unrelated appeal to the Board of Control during its September meeting, the Commissioner's office learned that certain facts existed that would refute the representations that had been made regarding Richard's qualifications under this exception. These facts go directly to the heart of the Bylaw and its underlying reasons for its existence, primarily the athletic maturity of Richard, the competitive equities involved with his participation and the issues of displacement. During our meeting on Monday, while representatives of Salem High took exception to the Commissioner's office's view of Richard's athletic maturity and his participation and effect on competitive equity principles, even Salem High School's representatives concurred with the Commissioner's office's view of the displacement criteria.

The Bylaw is very clear that all five criteria must be met in order for one to avail oneself of this exception. In Richard's case, no one can honestly say that all five have indeed been met. Clearly, had the Commissioner's office known, prior to the revelation in October 2006 of Richard's honors and awards he received as a junior and his role as a starter and major contributor to last year's team's successes, he would never have been declared eligible for the 2006-2007 school year on account of his age.

Continued...

4080 Roselea Place • Columbus, OH 43214 • (614) 267-2502 • Fax: (614) 267-1677 • www.ohsaa.org

EXHIBIT

B

Page 2
Salem, Ohio

It is indeed unfortunate that Richard must be informed that his high school playing days are over, especially since he did participate in the first four games of this season. However, his participation in the first four games should not and cannot be justification for his continued participation for the balance of the football season. The member schools of the OHSAA have demanded a level playing field for all competing schools and athletes and have created this Commissioner's office to enforce those rules the member schools deem important in the assuring that a level playing field exists. One such rule is this age limitation. I believe I can state with reasonable certainty that none of Salem High School's football players will be lining up against any 19 year old athletes when they take the field, let alone starters for the opposing teams. Insofar as Richard has had the opportunity for four years of high school eligibility already, it is now time to hand the ball to someone else, a younger athlete who does meet all of the essential eligibility requirements and who will not have an "extra" year to make up for this otherwise lost opportunity.

While I realize this certainty is not the result you or Richard had hoped to hear, please understand the role of the Commissioner's office and the Board of Control in matters such as this. The member schools created the OHSAA to be an independent third party to oversee matters of eligibility in an objective manner and to apply the eligibility standards fairly and evenly to all student athletes throughout Ohio. I can assure you, as the administrator primarily responsible for reviewing requests pursuant to Bylaw 4-2-1, this determination is both fair and consistent with virtually every case this office has been requested to review. Best wishes for continued success in your work at Salem High School.

Sincerely,

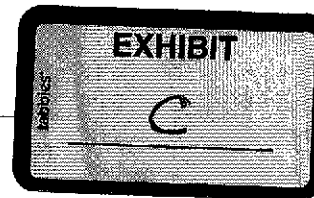


Deborah B. Moore, Ph.D.
Assistant Commissioner

CC: Commissioner Dan Ross

CRTR5925

Detail



<u>Case Number</u>	<u>Status</u>	<u>Judge</u>
2006 CO 00056	Open	

<u>In The Matter Of</u>	<u>Action</u>
JOHNSON, RICHARD JUSTIN VS. OHIO HIGH SCHOOL ATHLETIC ASSOCIATION	NOTICE OF APPEAL (CV)

<u>Party</u>		<u>Attorneys</u>
JOHNSON, RICHARD JUSTIN 1881 EGYPT ROAD SALEM, OH 44460	PLNTF	BARONZZI, CHRISTOPHER ATTORNEY AT LAW 2235 EAST PERSHING SUITE A SALEM, OH 44460
OHIO HIGH SCHOOL ATHLETIC ASSOCIATION 4080 ROSELEA PLACE COLUMBUS, OH 43214	DFNDT	CRAIG, STEVEN L 437 MARKET AVENUE NORTH CANTON, OH 44702

<u>Opened</u>	<u>Disposed</u>	<u>Case Type</u>
10/06/2006	Undisposed	COURT OF APPEALS

Comments:

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
1	10/06/06	DEPOSIT RECEIVED Attorney: BARONZZI, CHRISTOPHER (0078109) Receipt: 78115 Date: 10/06/2006	10.00	0.00
2	10/06/06	NOTICE OF APPEAL (CV) Receipt: 78115 Date: 10/06/2006, CERTIFICATE OF SERVICE, J.E. DATED 10/05/06, FILED BY ATTY. CHRISTOPHER J. BARONZZI. CMC	84.00	0.00
3	10/06/06	CIVIL DOCKETING STATEMENT, FILED BY ATTY. CHRISTOPHER J. BARONZZI. CMC	0.00	0.00
4	10/06/06	PRECIPE FOR TRANSCRIPT OF PROCEEDINGS, FILED BY ATTY. CHRISTOPHER J. BARONZZI. CMC	0.00	0.00
5	10/06/06	APPELLANT'S MOTION FOR IMMEDIATE INJUNCTIVE RELIEF DURING PENDENCY OF APPEAL, MEMORANDUM IN SUPPORT, CERTIFICATE OF SERVICE, AND COPY OF PLAINTIFF'S BRIEF IN SUPPORT OF REQUEST FOR PRELIMINARY INJUNCTION, FILED BY ATTY. CHRISTOPHER J. BARONZZI. CMC	0.00	0.00
6	10/06/06	COPY OF NOTICE OF APPEAL, J.E. DATED 10/05/06, CIVIL DOCKETING STATEMENT, PRAECIPE FOR TRANSCRIPT OF PROCEEDINGS, APPELLANT'S MOTION FOR IMMEDIATE INJUNCTIVE RELIEF DURING PENDENCY OF APPEAL, AND APPEARANCE DOCKET, SENT TO C/A BY REG. MAIL. CMC	1.59	1.59

CRTR5925

Detail

2006 CO 00056 JOHNSON, RICHARD JUSTIN VS. OHIO HIGH SCHOOL ATHLETIC ASSOCIATION

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
7	10/06/06	COPY OF NOTICE OF APPEAL, J.E. DATED 10/05/06, CIVIL DOCKETING STATEMENT, PRAECIPE FOR TRANSCRIPT OF PROCEEDINGS, AND APPELLANT'S MOTION FOR IMMEDIATE INJUNCTIVE RELIEF DURING PENDENCY OF APPEAL, GIVEN TO ATTY. CHRISTOPHER J. BARONZZI. CMC		0.00	0.00
8	10/06/06	COPY OF NOTICE OF APPEAL, J.E. DATED 10/05/06, CIVIL DOCKETING STATEMENT, PRAECIPE FOR TRANSCRIPT OF PROCEEDINGS, AND APPELLANT'S MOTION FOR IMMEDIATE INJUNCTIVE RELIEF DURING PENDENCY OF APPEAL, SENT TO ATTY. STEVEN CRAIG, BY REG. MAIL. CMC		1.59	1.59
9	10/06/06	COPY OF NOTICE OF APPEAL, J.E. DATED 10/05/06, CIVIL DOCKETING STATEMENT, PRAECIPE FOR TRANSCRIPT OF PROCEEDINGS, GIVEN TO MARY BURGETT, COURT REPORTER. CMC		0.00	0.00
10	10/06/06	JUDGMENT ENTRY - ON CONSIDERATION OF THE MOTION AND SUPPORTING MEMORANDUM IT IS ORDERED THAT A TEMPORARY STAY OF THE ORDER DENYING A PRELIMINARY INJUNCTION IS GRANTED PENDING A HEARING ON THE MOTION ON THURSDAY, OCTOBER 12, 2006 AT 11:00 A.M. BEFORE THIS COURT, AT 131 WEST FEDERAL STREET, YOUNGSTOWN, OHIO. APPELLEE TO FILE ANY WRITTEN MEMORANDUM IN OPPOSITION TO THE MOTION NO LATER THAN TUESDAY, OCT. 10, 2006. IT IS FURTHER ORDERED THAT THE TEMPORARY RESTRAINING ORDER ISSUED BY THE TRIAL COURT ON SEPT. 29, 2006 REMAINS IN FULL FORCE AND EFFECT UNTIL FURTHER ORDER FROM THIS COURT. CMC		2.00	2.00
11	10/10/06	COPY OF J.E. DATED 10/06/06 SENT TO ATTY. CHRISTOPHER BARONZZI, BY REG. MAIL. CMC		0.39	0.39
12	10/11/06	COPY OF J.E. DATED 10/06/06 SENT TO ATTY. STEVEN L. CRAIG, BY REG. MAIL. CMC		0.39	0.39
13	10/13/06	MEMORANDUM OF DEFENDANT-APPELLEE OHIO HIGH SCHOOL ATHLETIC ASSOCIATION IN OPPOSITION TO MOTION FOR STAY OF DENIAL OF INJUNCTIVE RELIEF, AND CERTIFICATE OF SERVICE, FILED BY ATTY. STEVEN L. CRAIG. CMC		0.00	0.00

CRTR5925

Detail

2006 CO 00056 JOHNSON, RICHARD JUSTIN VS. OHIO HIGH SCHOOL ATHLETIC ASSOCIATION

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
14	10/13/06	COPIES (3) OF MEMORANDUM OF DEFENDANT-APPELLEE OHIO HIGH SCHOOL ATHLETIC ASSOCIATION IN OPPOSITION TO MOTION FOR STAY OF DENIAL OF INJUNCTIVE RELIEF, WITH LETTER STATING THAT THEY HAD INADVERTENTLY MAILED THE MEMORANDUM TO MAHONING COUNTY CLERK OF COURTS OFFICE ON OCT. 10, SENT TO C/A BY REG. MAIL. CMC		4.05	4.05
15	10/13/06	JUDGMENT ENTRY - THE COURT GRANTS A STAY OF THE ORDER DISSOLVING THE TEMPORARY RESTRAINING ORDER AND DENYING A PRELIMINARY INJUNCTION PENDING THIS APPEAL. APPELLANT IS GIVEN PERMISSION TO CONTINUE TO PARTICIPATE IN INTERSCHOLASTIC ATHLETICS UNTIL FURTHER ORDER FROM THIS COURT OR THE OHIO SUPREME COURT. CMC		6.00	6.00
16	10/13/06	COPY OF J.E. DATED 10/13/06 SENT TO ATTY. CHRISTOPHER BARONZZI, BY REG. MAIL. CMC		0.39	0.39
17	10/13/06	COPY OF J.E. DATED 10/13/06 SENT TO ATTY. STEVEN L. CRAIG, BY REG. MAIL. CMC		0.39	0.39
18	11/13/06	TRANSCRIPT OF PROCEEDINGS OF OCTOBER 2, 2006. CMC		0.00	0.00
19	11/14/06	NOTIFIED COURT OF APPEALS OF TRANSCRIPT OF PROCEEDINGS BY REG. MAIL. CMC		2.39	2.39
20	11/14/06	NOTIFIED ATTY. STEVEN L. CRAIG OF TRANSCRIPT OF PROCEEDINGS BY REG. MAIL. CMC		2.39	2.39
21	11/14/06	NOTIFIED ATTY. CHRISTOPHER BARONZZI OF TRANSCRIPT OF PROCEEDINGS BY REG. MAIL. CMC		2.39	2.39
22	11/15/06	ORIG. PAPERS & J.E. FROM COURT MADE PART OF THE RECORD. CMC		0.00	0.00
23	11/15/06	NOTIFIED COURT OF APPEALS OF THE FILING OF THE RECORD BY REG. MAIL. CMC		2.39	2.39
24	11/15/06	NOTIFIED ATTY. STEVEN L. CRAIG OF THE FILING OF THE RECORD BY REG. MAIL. CMC		2.39	2.39

CRTR5925

Detail

2006 CO 00056 JOHNSON, RICHARD JUSTIN VS. OHIO HIGH SCHOOL ATHLETIC ASSOCIATION

25	11/15/06	NOTIFIED ATTY. CHRISTOPHER BARONZZI OF THE FILING OF THE RECORD BY REG. MAIL. CMC	2.39	2.39
----	----------	--	------	------

Totals By:	Cost	115.13	31.13
	Deposit	10.00	0.00
	Information	0.00	0.00
*** End of Report ***			

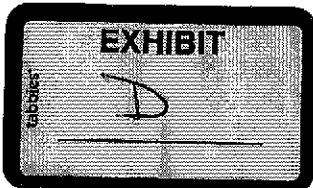
STATE OF OHIO
COLUMBIANA COUNTY, ss

THIS IS TO CERTIFY THAT THE FORGOING IS A TRUE AND EXACT COPY
OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE.

Nov 20, 2006

ANTHONY J. DATTILIO, CLERK OF COURTS

BY: [Signature] DEPUTY CLERK



mak

STATE OF OHIO
COLUMBIANA COUNTY



COURT OF APPEALS OF OHIO
SEVENTH DISTRICT

RICHARD JUSTIN JOHNSON,
PLAINTIFF-APPELLANT,

VS.

CASE NO. 06-CO-56

OHIO HIGH SCHOOL ATHLETIC
ASSOCIATION,

JOURNAL ENTRY

DEFENDANT-APPELLEE.

Appellant has filed a request for stay from a denial of injunctive relief following a trial court order denying his request for a preliminary injunction and dissolving a temporary restraining order.

On consideration of the motion and supporting memorandum it is ordered that a temporary stay of the order denying a preliminary injunction is granted pending a hearing on the motion on Thursday, October 12, 2006 at 11:00 a.m. before this Court, at 131 West Federal Street, Youngstown, Ohio. Appellee to file any written memorandum in opposition to the motion no later than Tuesday, October 10, 2006.

It is further ordered that the temporary restraining order issued by the trial court on September 29, 2006 remains in full force and effect until further order from this Court.

Copy to counsel of record and Judge David Tobin (Common Pleas Case No. 06CV831).

[Signature]
[Signature]
JUDGES FOR THE COURT.

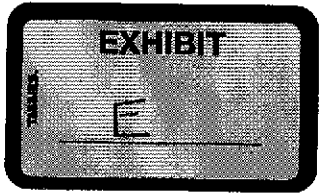
STATE OF OHIO
COLUMBIANA COUNTY, ss)
I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY
OF THE ORIGINAL NOW ON FILE IN THE CLERK OF COURTS OFFICE.

NIN 20 20 *Ab*

ANTHONY J. DATTILIO, CLERK OF COURTS
[Signature] DEPUTY CLERK



2006 CO
00056
00061021661
JE



IN THE SUPREME COURT OF OHIO

OHIO HIGH SCHOOL ATHLETIC ASSOCIATION :

Relator, :

Case No. 06-1974

v. :

THE HONORABLE GENE DONOFRIO, et al., :

Respondents. :

AFFIDAVIT OF HENRY ZABORNIAK, JR.

STATE OF OHIO :
 : SS
COUNTY OF FRANKLIN :

I, Henry Zaborniak, Jr., being first duly cautioned and sworn, depose and state as follows:

- 1. I have personal knowledge of the matters contained in this affidavit and am competent to testify regarding same.
- 2. I am Assistant Commissioner of the Ohio High School Athletic Association.
- 3. Whether an Ohio high school football team makes the football playoffs depends on the number of first and second level computer points the school earns during the regular season.
- 4. Salem High School’s football record this season, including its victory over Campbell Memorial High School, had an impact on the first and second level points accumulated by its competitors, and thus affected not only whether those competitors, and other schools as well, qualified for the playoffs, but also how they were seeded if they did qualify.
- 5. First level points are earned for each game a team wins. Second level points are earned for each game a defeated opponent wins (full value), each game a defeated opponent ties (half value), each game a tied opponent wins (half value) and each game a tied opponent ties (1/4 value).

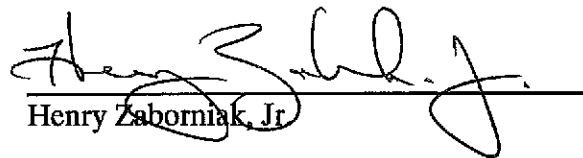
6. Each of Salem High School's opponents who defeated Salem picked up full value second level points as a result of Salem's victory over Campbell Memorial High School, and those points, when added to their respective totals, affected which schools did, in fact, qualify for the playoffs and how they were seeded.

7. Richard Justin Johnson ran track for Salem High School in the 2005-2006 school year, and in fact, represented Salem High School in the 100 yard dash in the Sectional meet.

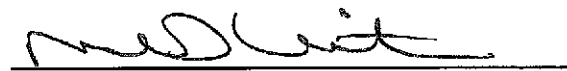
8. If he is allowed to run track for Salem High School in the spring of 2007, his participation can have the very same adverse impact on students who compete against him in track events, including students from his own school and other schools, as Johnson's participation in football had.

9. The attached newspaper article is a true copy of the article in the Salem News reporting Salem High School's victory over Campbell Memorial High School.

10 Further affiant sayeth naught.


Henry Zaborniak, Jr

Sworn to and subscribed in my presence this 21st day of November, 2006.


Notary Public

MELVIN D. WEINSTEIN, Notary Public
NOTARY PUBLIC—STATE OF OHIO
My commission has no expiration date.
Section 197.03 R.C.

Main Identity

From: "Debbie Moore" <dmoore@ohsaa.org>
To: "Steve Craig" <scraig@craig-law.net>
Sent: Monday, October 09, 2006 11:22 AM
Subject: Emailing: articles

thought you might find this interested, Steve.

D

SALEM **saalemnews.net**

home news sports community classified contact sub

Monday, October 09, 2006 — Time: 11:21:12 AM EST

Search our 7-day archive of stories:

Submit Reset

- STORIES**
- Front Page
 - Business
 - Editorials
 - Local Columns
 - Letters to Editor
 - Neighborhood
 - Obituaries
 - National
 - International
 - Ohio
 - Submit

- SPORTS**
- Ohio Sports
 - National Sports
 - Local Sports
 - Submit

- STORIES**
- Births/Birthdays
 - Reunions
 - Weddings
 - Engagements
 - Anniversaries
 - Submit

- STORIES**
- Local
 - National
 - Submit

- STORIES**
- All About Home

Successful homecoming for Salem; Quakers roll, 34-7

By MIKE SANTILLO

Salem News Sports Writer

SALEM — When J.J. Johnson woke up Friday, he expected to be in street clothes watching his teammates from the sidelines.

Instead he rushed for 194 yards and three touchdowns, leading Salem to a 34-7 win over Campbell—the Quakers first of the year.

“It’s so exciting to be in the lineup,” Johnson said. “My attorney called me in the afternoon and said I was cleared to play, so I went in front of the team and told them out loud ‘I’m playing.’”

Johnson said it was around 4 p.m. when he learned of the news.

His case was taken back to court and he was cleared to play just 24 hours after he was told he would miss the rest of the year due to being



Salem’s Zac O’ Brien hands the ball off to running back J.J. Johnson Friday while Chad Cotter (53) and Cory Rickman (34) block during the Quakers’ game against Campbell at Reilly Stadium in Salem. Salem picked up its first win of the year, 34-7.

(Salem News photo by B.J. Lisko)

CHI
CE

Sub
Sa
N
T

6

- STUBS**
- Staff contacts
 - Advertise
 - Subscribe
 - Ordering photos

- STUBS**
- Morning Journal
 - ELO Review
 - Warren Tribune
 - Steubenville



Print Article



Email this story
to a friend



Respond to this
story

over the age limit (19 years old).

"It was definitely a big boost to have him back," Quakers coach Bill Miller said.

The Red Devils went 80 yards in six plays to start the game, taking a 7-0 lead three minutes in.

"That was disappointing, but from that point we really got after it," Miller said. "We needed to respond, and we did that."

Salem (1-6, 1-3) responded on a Johnson 2-yard touchdown run to start the second quarter, capping an 11-play, 85-yard drive.

Zac O'Brien found Sean McKee on a 34-yard pass on a 3rd and 16 to keep the drive going.

These two hooked up again late in the second on a 43 yard touchdown pass giving the Quakers a 21-7 halftime lead.

Johnson scored on a two-yard run earlier in the quarter.

That was set up on a halfback pass from Cory Rickman to O'Brien for 21 yards.

The Quakers rushed for 305 yards in all.

"Our offensive line did a great job of pushing them back," Miller said. "They deserve a lot of credit, and J.J. would be the first one to say that."

He was right.

"It all starts up front," Johnson said. "They made my job easy."

Late in the game, Johnson broke free for a 62-yard touchdown run on his final carry of the night.

Austen Hutton scored on a four-yard run in the third quarter.

The Red Devils (0-7, 0-4) had the ball in the red zone three times after their initial score and came away with no points.

"We played well tonight," Johnson said. "It's coming together. We played good last week, we just ran into a good Canfield team. But you can see the improvement from the first game."

Miller talked about his first victory at Salem.

"It a great feeling no question, but it's all about these kids, that's who I'm excited for," Miller said. "They work hard everyday, and they



never quit. This is well deserved.”

Rickman rushed for 42 yards on seven tries, and caught two passes for 44 yards, while Hutton ended up with 38 yards on eight carries.

McKee hauled in two passes for 76 yards, while Travis Wisler had two grabs for 40 yards.

Salem will be at Poland next week.

sn click to subscribe



Salem News

161 North Lincoln
Salem, Ohio 44460

phone: 330-332-4601 - fax: 330-332-3084

[HOME](#) | [NEWS](#) | [SPORTS](#) | [COMMUNITIES](#) | [CLASSIFIEDS](#) | [CONTACT US](#)

If you have any problems, questions, or comments regarding salemnews.net, please contact the [Webmaster](#). For all other comments please see our [Contact](#) section to send feedback to the Salem News. Users of this site agree to our [Terms of Service](#).

Copyright © 2006 — Salem News