STATE OF SOUTH CAROLINA COUNTY OF RICHLAND South Carolina Association of Public Charter Schools d/b/a Public Charter School Alliance of South Carolina; Brashier Middle College Charter High School, Inc.; Greenville Technical Charter High School; Greer Middle College Charter High School; Fox Creek High School, Inc.; Palmetto Scholars Academy; Legion Collegiate Academy; Oceanside Collegiate Academy; Gray Collegiate Academy; Bishop of Charleston, a Corporation Sole, FBO Bishop England High School; Christ Church Episcopal School; St. Joseph's Catholic School; Southside Christian School, Plaintiffs, v. South Carolina High School League, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No. 2020CP4002721 **ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION**

This matter comes before the Court upon "Plaintiffs' Motion for a Temporary Restraining Order and Temporary Injunction," which was filed on May 18, 2020. A hearing on this motion was conducted via WebEx videoconferencing on June 18, 2020, pursuant to Administrative Order of the Supreme Court of South Carolina 2020-04-22-01. Both Plaintiffs and Defendant South Carolina High School League ("the League" or "Defendant") were represented by counsel, who presented oral arguments on the issues raised. In addition to the oral arguments of counsel, the Court has reviewed the record in its entirety.

For the reasons set forth below, Plaintiffs' motion is GRANTED.

FACTUAL AND PROCEDURAL BACKGROUND

The League is a voluntary association comprised of public high schools, junior high schools, and middle schools; public charter high schools; and private high schools within the State of South Carolina.[1] Its mission is "to provide governance and leadership for interscholastic athletic programs that promote, support, and enrich the educational experience of students," and it is governed by its Constitution, By-Laws, and Rules and Regulations.[2] Plaintiffs are some of the League's member schools. More specifically, with the exception of the South Carolina Association of Public Charter Schools, each plaintiff is either a private school or public charter school.

In approximately March 2020, the League voted to amend portions of Article III of its By-Laws. Those amendments – to sections 10 (the introductory paragraph), 10(D) and 10(M) – are intended to take effect on July 1, 2020, and will impact the upcoming school year.

Plaintiffs, upset about the amendments, filed their Summons and Complaint in this action in Greenville County, South Carolina, on May 18, 2020.[3] The instant motion and a supporting memorandum were filed on the same day seeking to enjoin the League from enforcing the amendments during the pendency of this action. Plaintiffs contend that the amendments are both illegal and contrary to the League's mission and purpose. They argue that the amendments hamper their students' eligibility to participate in interscholastic athletics, disproportionately affect Plaintiffs, impede their students' right to "school choice," and run afoul of certain statutes and the South Carolina General Assembly's 2019-2020 Budget Proviso 1.59. In addition to temporary

[1] *See* Constitution of the South Carolina High School League, Article V, Section 1, http://schsl.org/wp-content/uploads/2019/07/Constitution-19-20.pdf (last visited June 21, 2020)
[2] *Id.* at Articles II, VI
[3] Civil Action No. 2020CP2302596.

injunctive relief, Plaintiffs seek a declaratory judgment as well as damages for breach of contract and violation of the Equal Protection clause of the South Carolina Constitution.

In response to Plaintiffs' Complaint and motion, a "Motion to Dismiss on Behalf of Defendant, South Carolina High School League" was filed on May 22. The League also filed a supporting memorandum on May 29. In the following days, an *Amici Curiae* Brief was filed on Plaintiff's behalf, and both parties filed additional memoranda.

A hearing was conducted in the Greenville County Court of Common Pleas on June 2, 2020, regarding Defendant's Motion to Dismiss. The League argued that this action should be dismissed – and, therefore, Plaintiffs' motion for injunctive relief should be denied – for three reasons: (1) because Plaintiffs lack standing; (2) because venue was improper in Greenville County; and (3) because Plaintiffs failed to state facts sufficient to constitute a cause of action against Defendant.

By written Order dated June 10, 2020, the Honorable Perry H. Gravely disposed of Defendant's Motion to Dismiss. Specifically, Judge Gravely found that Plaintiffs had established standing for this action and that they "have clearly established a basis for injunctive relief under the allegations of the Complaint." He also agreed with the League in part, ruling that venue was improper in Greenville County. However, in lieu of dismissal, Judge Gravely transferred venue to Richland County for hearing on Plaintiff's motion and other litigation of this action.

FINDINGS OF FACT[4] AND CONCLUSIONS OF LAW

I. Defendant's Motion to Dismiss

As set forth above, Defendant's Motion to Dismiss has already been fully resolved by Judge Gravely. The League argues that because Judge Gravely determined that venue was not proper in Greenville County, he lacked jurisdiction to rule on the other aspects of the Motion to Dismiss. This Court takes no position on the merits of that argument and instead finds that it lacks authority to alter Judge Gravely's ruling.[5] *See, e.g., Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (citing *Charleston Cnty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995)) ("This State has a long-standing rule that one judge of the same court cannot overrule another."). Therefore, this Court need not consider any portion of Defendant's Motion to Dismiss.

II. Plaintiffs' Motion for Temporary Restraining Order

Plaintiffs ask this Court to enjoin the League from enforcing the amendments discussed in their Complaint, which are scheduled to become effective on July 1, 2020. They argue that the amendments prohibit almost every student entering a public charter or private school after the seventh grade from participating in athletics for a full year and that this ban will be all the more punitive for those students who play spring sports, who have already lost a year of competition due to the coronavirus pandemic. According to Plaintiffs, unless the League is immediately enjoined from enforcing the amendments, Plaintiffs will continue to suffer immediate and

[4] The Court's findings here are intentionally narrow. All parties have made lengthy arguments regarding the legality or illegality of certain statues, provisos and regulations (to some extent by necessity). However, the Court does not intend to rule on those ultimate issues; rather, these findings are intended only to address the issue of whether injunctive relief is appropriate pending the ultimate resolution of those issues.

[5] The Court initially found, during the hearing, that, to the extent necessary, it would adopt Judge Gravely's rationale and conclusions. Upon further consideration, the Court now finds that it need not comment on or adopt the ruling; rather, those issues are resolved. In either case, the result is the same for purposes of this Order. However, Defendant's objection is noted.

irreparable harm, and South Carolina students will be forced to choose between enrolling at the school they wish to attend and continuing to participate in athletics.

The League disagrees, arguing that Plaintiffs overstate the impact of the amendments; falsely equate the privilege (not the right) of athletic participation with school choice; and seek to have legitimate differences between private schools, charter schools, and traditional public schools overlooked if those differences are disadvantageous to private schools and charter schools. According to the League, Plaintiffs are attempting to invalidate several League rules that have been in place for years and were not changed by the recent amendments – rules by which Plaintiffs agreed to be bound by seeking membership in this voluntary association. The League also argues that the amendments would result in Plaintiffs being treated like similarly-situated traditional schools, essentially removing the special considerations previously given to Plaintiffs and providing the "same rights and privileges" to all member schools. Finally, the League argues that if Plaintiffs' request is granted, the potential, speculative harm to Plaintiffs is outweighed by the potential harm to the League and its other member schools.

A. Injunction – Prohibitory or Mandatory

The first issue the Court must determine is whether the injunction sought is prohibitory or mandatory. Plaintiffs assert that they seek a prohibitory injunction. Defendants, however, believe that a mandatory injunction has been sought and spend considerable time arguing that Plaintiffs cannot meet the strict standards required of mandatory injunctions. The Court finds that Plaintiffs seek a prohibitory injunction in this matter.

"The remedy of an injunction is a drastic one and ought to be applied with caution." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for

injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation." *Allegro, Inc. v. Scully*, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012). For the Court to grant a preliminary injunction, Plaintiffs must establish that (1) they "would suffer irreparable harm if the injunction is not granted," (2) they "will likely succeed on the merits of the litigation," and (3) no adequate remedy at law exists. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

"Preliminary injunctions may be categorized as either prohibitory or mandatory." *Billups v. City of Charleston*, 194 F. Supp. 2d 452, 460 (D.S.C. 2016). "Whereas mandatory injunctions alter the status quo, prohibitory injunctions 'aim to maintain the status quo and prevent irreparable harm while the lawsuit remains pending.'" *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (quoting *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). The U.S. Court of Appeals for the Fourth Circuit has "defined the status quo for this purpose to be 'the last uncontested status between the parties which preceded the controversy.'" Id. (quoting *Pashby*, 709 F.3d at 320).

In this case, the last uncontested status between the parties is the regulation of the League and its members by the By-Laws which existed prior to the most recent amendments. It is this status – the status quo – which Plaintiffs seek to preserve during the pendency of this lawsuit. Therefore, Plaintiffs seek a prohibitory injunction; and the Court must analyze Plaintiffs' request by that (less stringent) standard.

B. Irreparable Harm

Plaintiffs argue that unless an injunction is granted, they will suffer irreparable harm. Specifically, Plaintiffs contend that if the amendments become effective on July 1, their students will be deprived of the opportunity to participate in interscholastic athletics. According to

Plaintiffs, "[d]ollars cannot make parents and students whole from lost educational and athletic opportunities[, n]or can they make schools whole from the lost contributions of a student who never enrolled." Therefore, according to Plaintiffs, their schools will lose lost potential students and the unique, intangible benefits each student brings to the school and to athletic teams. The Court agrees.

Irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction." 11 C. Wright & A. Miller, *Federal Practice and Procedure* §2948, at 431 (1973) (footnote omitted). "Irreparable injury, as used in the law of injunctions, does not necessarily mean that the injury is beyond the possibility of compensation in damages." 27 S.C. Jur. Injunctions §4; *see also Bethel M. E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947). "'Irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate.'" *Multi–Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994), *abrogated on other grounds by Winter v. NRDC, Inc.*, 555 U.S. 7 (2008) (quoting *Danielson v. Local 275 Laborers Int'l Union,* 479 F.2d 1033, 1037 (2d Cir. 1973)).

"Whether 'a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.'" *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005) (quoting *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939)). "The only purpose of an injunction is to preserve the status quo to avoid possible irreparable injury to a party pending litigation. *Id.* at 455, 626 S.E.2d at 37 (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *MailSource*, 356 S.C. at 368, 588 S.E.2d at 638). As noted in Peek, "Other appellate courts have upheld injunctive relief to prevent the loss of a business or business

goodwill." Id. at n.2 (citing *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.")).

Plaintiffs here have shown irreparable harm. It is clear that if the amendments become effective during the pendency of litigation, the makeup of the student bodies – and, therefore, the interscholastic athletic teams – of Plaintiffs will be altered. Although pecuniary loss is one potential harm which Plaintiffs may suffer, Plaintiffs are likely to have other intangible damages that cannot be quantified or monetized, as is shown by the numerous affidavits submitted by Plaintiffs.

The Court does agree with the League's argument that some of the potential harm alleged by Plaintiffs would befall parents and students, that importance of that potential harm is diminished here because neither parents nor students are parties to this action. The League also argues that it is evident from Plaintiffs' affidavits that "athletic eligibility is not going to be important for every transferring student." The Court agrees and would add that the same holds true for any group of students selecting any school, whether a high school or graduate university – neither athletics nor eligibility to participate in those groups will be important for *every* student. However, the League's argument is not the standard by which this Court must evaluate Plaintiffs' position. Rather, it is

sufficient that the harm shown by Plaintiffs (via affidavit and otherwise) would be real, not speculative, and irreparable.

The facts presented in this case show that Plaintiffs will suffer irreparable harm if the status quo is not maintained. Despite the League's arguments to the contrary,[6] Plaintiffs are likely to suffer economic loss, alteration of reputation, and potential loss of business in the absence of injunctive relief. Therefore, the Court finds that this element of Plaintiffs' motion has been satisfied.

C. Likelihood of Success on the Merits

Plaintiffs also contend that they are likely to succeed on the merits of their claims. Both the opinion of the South Carolina Attorney General and the argument of Plaintiffs suggest that the amendments violate South Carolina law. While it is undisputed that illegal amendments (to Rules and Regulations, By-Laws or otherwise) would become a nullity, the League argues that the amendments in question are not, in fact, illegal. The Court, at this stage, cannot make that determination; rather, the Court finds that Plaintiffs have demonstrated the requisite likelihood of success on the merits of their claim.

In evaluating the parties' arguments, the Court must conduct a limited review of the merits of Plaintiffs' allegations. "The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction, but the plaintiff must present a reasonable question as to the existence of such a right." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct.

[6] The League also argues that if the injunction is granted, its other member schools may suffer financial consequences due to the "restitution rule" in the League's By-Laws. Although the League contends that the equities, when balanced, tip in its favor, the Court notes that it need not conduct such an analysis here. *See, e.g., Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d 15, 17 (2010) ("the 'balancing the equities' requirement is neither necessary nor appropriate in a preliminary injunction case, where the three requirements (irreparable harm, success on merits, and inadequate remedy at law) are well established and clearly delineate the burden of proof and of persuasion. Moreover, the balancing requirement is subsumed by the irreparable harm and inadequate remedy at law components of the three-part test.").

App. 2009) (citing *Peek*, 367 S.C. at 456, 626 S.E.2d at 37). '"When a court is requested to issue a temporary injunction it may consider the merits of a case to the extent necessary to determine whether a temporary injunction is appropriate.'" *Id.* (quoting *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992)). '"Once a *prima facie* showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.'" *Id.* (quoting *Helsel*, 307 S.C. at 32, 413 S.E.2d at 826).

It is clear that Plaintiffs have made a *prima facie* showing of entitlement to relief, which is buttressed by the opinion of the South Carolina Attorney General. All parties have made strong, cogent, well-supported legal arguments as to the ultimate issues to be decided in this matter, further illustrating that Plaintiffs' allegations pose reasonable questions which must be judicially determined. There is certainly a possibility that the League will ultimately prevail in this case; however, the mere possibility is insufficient to deny injunctive relief, as the same possibility exists with most defendants in most cases.

In addition, the League's reliance on *Bruce v. South Carolina High School League*, 258 S.C. 546, 189 S.E.2d 817 (1972), as clear-cut evidence that Plaintiffs cannot prevail, is a bit misplaced. While Bruce certainly addresses a number of similar issues, the plaintiffs in that case were neither identical to, nor similarly-situated to, Plaintiffs in this action. Therefore, *Bruce* is not dispositive of this matter; and the Court finds that Plaintiffs have demonstrated the requisite likelihood of success.

D. Inadequate Remedy at Law

Finally, Plaintiffs argue that there is no adequate legal remedy to redress the League's alleged wrongdoing. The Court agrees.

"An adequate remedy at law is one which is as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity." *ZAN, LLC v. Ripley Cove, LLC*, 406 S.C. 404, 751 S.E.2d 664 (Ct. App. 2013) (internal quotations omitted); *see also Chisolm v. Pryor*, 207 S.C. 54, 56, 35 S.E.2d 21, 24 (1945); 12 S.C. Jur. Equity § 24. "Whether an adequate remedy at law exists depends upon the particular facts and circumstances of each case." 12 S.C. Jur. Equity § 24; *see also Barrett v. Miller*, 283 S.C. 262, 321 S.E.2d 198 (Ct. App. 1984).

Just as Plaintiffs have shown irreparable harm, the Court finds that there would be no adequate legal remedy for the alleged injustices to be imposed by the League. The Court agrees with Plaintiffs that in addition to the hefty financial repercussions of the amendments, each student lost by Plaintiffs will mean lost contributions the student might have made to all facets of school life. Thus, this element of Plaintiffs' claim has been satisfied.

CONCLUSION

In summary, Plaintiffs have properly established that they would suffer irreparable harm if the injunction is not granted, that they will likely succeed on the merits of the litigation, and that no adequate remedy at law exists. This Court, having exercised its discretion, finds that injunctive relief is proper.

Further, having granted the injunctive relief requested, the Court requires Plaintiffs to post a bond in the amount of fifteen thousand dollars ($15,000). This is the amount requested by the League and consented to by Plaintiffs.

IT IS, THEREFORE, ORDERED that Plaintiffs' Motion for a Temporary Restraining Order and Temporary Injunction is GRANTED, enjoining Defendant from implementing or otherwise causing the March 2020 amendments to Article III, Sections 10, 10(D) and 10(M) to become effective on July 1, 2020, or at any time prior to the resolution of this action.

IT IS FURTHER ORDERED that Plaintiffs shall post a bond in the amount of fifteen thousand dollars ($15,000) as security in this action.

AND IT IS SO ORDERED.

Richland Common Pleas

Case Caption:	Greenville Technical Charter High School , plaintiff, et al vs South Carolina High School League
Case Number:	2020CP4002721
Type:	Order/Temporary Injunction

So Ordered

Jocelyn Newman