KENTUCKY SUPREME COURT
No. 2026-SC-0384
Electronically Filed

STUDENT DOE 1, *et al.*, *Appellants*

v. On RAP 20(F) Motion from
Kentucky Court of Appeals
No. 2026-CA-1071

COMMONWEALTH OF KENTUCKY, *et al.*, *Appellees*

RESPONSE TO RAP 20(F) MOTION OF COMMONWEALTH OF KENTUCKY, COUNCIL ON POSTSECONDARY EDUCATION, DR. AARON THOMPSON, & MADISON SILVERT

Movants brought this motion under RAP 20(F) from the denial of a protective RAP 20(D) motion brought in the Court of Appeals. That protective RAP 20(D) motion was combined with a protective RAP 20(B) motion, which itself stemmed from the circuit court's denial of temporary injunctive relief as moot when it entered final judgment against Movants. Movants have also filed a combined RAP 20(C) and 21 motion related to that final judgment in No. 2026-CA-1068 (along with several other motions in this Court and the Court of Appeals).

The effect of Movants' motions-practice strategy has been to clog Kentucky's appellate courts with emergency motion on top of emergency motion. But this RAP 20(F) motion and the "protective" motions its stems from below have nothing to do with the final judgment that Movants have asked the

appellate courts to review in Nos. 2026-CA-0946 and 2026-CA-1068 (with a request for transfer in the second appeal at No. 2026-CA-0372). This Court has no reason to conclude emergency relief from the denial of a temporary injunction as moot is needed. And it has even less reason to conclude that Movants can demonstrate extraordinary cause to consider the motion at all. It should deny Movants' request and let the appeals from the circuit court's final judgment play out in the normal course.

BACKGROUND

Senate Bill 185 is the product of a bipartisan effort to save Kentucky State University from "significant operational and financial struggles" that threatened its accreditation and future. *Wigginton v. Kentucky*, No. 3:26-cv-035-CHB, 2026 WL 1864725, at *3 (E.D. Ky. June 29, 2026) (non-binding). It made Kentucky State a "residential polytechnic institution that focuses on highly technical, industry-based applied learning and offers liberal studies and polytechnic programs that are aligned with the workforce needs of the Commonwealth and consistent with the historical mission of an HBCU." KRS 164.7501(1). The law declared "a state of financial exigency" for five years, requiring CPE to oversee Kentucky State's financial decisions. KRS 164.7501(2)–(3). It also directed Kentucky State to limit its academic area of studies, with CPE approval, and to create "teach-out" plans to wind down closed programs. KRS 164.7503. And in addition to heightened admission requirements, KRS 164.7507(1), the law

requires that students who have owed the school more than $1,000 for over 60 days "shall not be admitted or readmitted," KRS 164.7507(2), and governs how the school collects debts, KRS 164.7509.

About one month after SB 185 became law, on May 11, 2026, a group of seven Kentucky State students and five alumni first challenged SB 185 in federal court under federal law and the Kentucky Constitution. *See Wigginton*, 2026 WL 1864725, at *4. That court recently denied a temporary restraining order. *Id.* at *25.[1] Eleven days later, seven pseudonymous Kentucky State students represented by the same attorneys challenged Senate Bill 185 in circuit court. They sought declaratory and injunctive relief barring enforcement and implementation of SB 185.

After the circuit court twice denied temporary relief, Appellants filed a RAP 20(B) and 20(D) motion in the Court of Appeals on July 6, 2026. That court denied RAP 20(D) relief on July 8, 2026, and Appellants did not appeal that ruling. *See* Order Denying Emergency Motion, No. 2026-CA-0834 (Ky. App. July 8, 2026). It later denied the RAP 20(B) motion. Order Denying Interlocutory Relief, No. 2026-CA-0834 (Ky. App. Aug. 18, 2026). Plaintiffs did appeal that ruling, but this Court declined to exercise its discretion under RAP 20(F) because

[1] A preliminary-injunction hearing is scheduled for November 2026.

Appellants failed to demonstrate extraordinary cause. Order Denying Interlocutory Relief, No. 2026-SC-0360 (Ky. Aug. 21, 2026).

In the meantime, the circuit court dismissed Movants' case in parts. It first dismissed Governor Beshear and several executive-branch defendants on June 30, 2026. Movants appealed that ruling in No. 2026-CA-0946 on July 30, 2026. They did not seek to transfer that appeal. Next, on August 24, 2026, the circuit court dismissed the remaining defendants, including the Commonwealth. Movants appealed that same day in No. 2026-CA-1068. Movants simultaneously asked the Court of Appeals to hear those two appeals together, expedite them, and recommend transfer of the first appeal to this Court.

With the case final in circuit court, Movants also sought emergency relief in several ways. The first was an emergency motion in circuit court under RAP 20(C), which was a prerequisite to seeking the same relief in the Court of Appeals. The circuit court denied that request, so Movants have filed a RAP 20(C) and RAP 21 motion in No. 2026-CA-1068—responses were filed on September 4, 2026. The second was the combined "protective motion for relief under RAP 20(B)" and RAP 20(D) motion at issue here, filed on August 25, 2026, in No. 2026-CA-1071. Responses to the RAP 20(B) motion were filed on September 4, 2026, and it remains pending.

Relevant here, the Court of Appeals denied the RAP 20(D) motion. *See* Order Denying Emergency Motion, No. 2026-CA-1071 (Ky. App. Aug. 26,

2026). It held that the dismissal of the entire circuit court action made the temporary-injunction request superfluous, so it declined to consider granting relief outside the RAP 20(C) context. In its view, there was no "properly pending RAP 20(B) or 20(C) motion before" it, so RAP 20(D) relief was foreclosed. This motion followed.

ARGUMENT

When a party loses its temporary-injunction motion in circuit court, RAP 20(D) allows it to seek emergency relief in the Court of Appeals. And when a party loses that RAP 20(D) motion, RAP 20(F) allows it to seek review in this Court. But such motions "will be entertained only for extraordinary cause shown." RAP 20(F)(1). Establishing "extraordinary cause," this Court has held, is an "enormous burden." *Pollitt v. Public Serv. Comm'n*, 552 S.W.3d 70, 72 (Ky. 2018) (citation omitted).

The Court should start and end with that threshold, as it did a little over two weeks ago. *See* No. 2026-SC-0360 (Ky. Aug. 21, 2026). Nothing about the merits or equities of Movants' case has improved their claim for emergency relief. In fact, this Court today has even less cause to consider Movants' request. That's because it is related to a temporary-injunction ruling that was superfluous to a final judgment that is currently on direct appeal. In that final-judgment appeal, Movants have sought relief under RAP 20(C) and RAP 21, and those requests are pending. They did not seek emergency relief under RAP 20(D) in that appeal,

but they have asked this Court to accept transfer and to order that the appeal be fully briefed in three weeks. *See* 2026-SC-0372.

Put bluntly, Movants' strategy should doom their claim of an emergency stemming from a moot temporary-injunction request. The Court has already declined to find extraordinary cause in a properly filed proceeding. It has even less reason to do so in the context of a superfluous "protective" RAP 20(B) proceeding.

Yet even if the Court reaches the merits of the motion, it can grant relief only if the circuit court abused its discretion when it denied Movants' temporary injunction request as moot. *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky. App. 1978). That happens "when its decision 'was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 664 S.W.3d 633, 659 (Ky. 2023) (citation omitted).

The circuit court's temporary-injunction order easily survives this review, for the reason the Court of Appeals identified. Temporary injunctions exist to provide interim relief while an action is pending. So once the circuit court denied all relief in a final judgment, there was no longer a pending action in which to provide interim relief. It thus lacked authority (and reason) to do so. *Chelsey v. Abbott*, 503 S.W.3d 148, 153 (Ky. 2016). Movants attempt to distinguish *Chelsey*, but they have no response to the well-settled notion that a circuit court cannot take new action in a case that is no longer on its docket. They simply act as if this

temporary-injunction denial is their only shot at relief. But as explained above, their path to relief from the final judgment lies through the appeals (and related motions) they have already taken. To be clear, to say that Movants have another available avenue for relief is not to say they should win such relief. The Commonwealth will oppose Movants' other filings in due course.

CONCLUSION

The Court should deny Movants' RAP 20(F) motion.

Respectfully submitted by,

RUSSELL COLEMAN
Attorney General of Kentucky

/s/ *Jacob M. Abrahamson*
MATTHEW F. KUHN (No. 94241)
Solicitor General
JOHN H. HEYBURN (No. 100756)
Principal Deputy Solicitor General
JACOB M. ABRAHAMSON (No. 99238)
Deputy Solicitor General

Office of the Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40601
(502) 696-5300
Matt.Kuhn@ky.gov
Jack.Heyburn@ky.gov
Jacob.Abrahamson@ky.gov

CERTIFICATE OF SERVICE

I certify that a copy of this response was served on September 4, 2026, by U.S. mail upon James M. Morris, Sharon K. Morris, Tyler J. Morris, Sr., Morris & Morris, P.S.C., 217 North Upper Street, Lexington, Kentucky 40507; Courtney R. Samford, Donald C. Morgan, Seth T. Church, Dinsmore & Shohl LLP, 100 West Main Street, Suite 900, Lexington, Kentucky 40507; S. Travis Mayo, Sam Flynn, Laura C. Tipton, Office of the Governor, 501 High Street, Second Floor, Frankfort, Kentucky 40601; Catherine A. Poole, Bethany Atkins Rice, Office of Legal Services for Revenue, P.O. Box 423, Frankfort, Kentucky 40602; Barbara K. Dickens, Shan J. Dutta, Office of Legal Service, Finance and Administration Cabinet, 200 Mero Street, Fifth Floor, Frankfort, Kentucky 40601.

/s/ Jacob M. Abrahamson
Deputy Solicitor General