

CAS Invalidates Burden of Proof on Disabled Athletes as Discriminatory, But Bars Double-Amputee Blake Leeper from Competing on His Blades on Racially Discriminatory Grounds

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The Court of Arbitration for Sport (CAS) has invalidated a rule adopted by World Athletics—the international sports federation governing track & field—which imposed the burden of proof on disabled athletes requiring them to prove that their prostheses do not provide them with an overall advantage against non-disabled athletes. This is a very important victory for all disabled athletes, as the panel found it to be unlawful and discriminatory to require disabled athletes to meet such an onerous burden before they can compete against non-disabled athletes. The CAS panel however also concluded that 400m double-amputee sprinter Blake Leeper should not be permitted to compete on his prostheses against non-disabled athletes because he purportedly runs at an “unnaturally” tall height. Specifically, the panel decided that because Blake’s prostheses were set at a height greater than the current Maximum Allowable Standing Height (MASH) that Paralympic organizations have used for various events, it would be unfair to permit him to run at this height against non-disabled athletes. This part of the decision was racially discriminatory and thus against public policy. Blake will file a legal action to challenge this racially discriminatory decision of the CAS panel to preclude him, as a Black athlete, from competing at the same height, on the same prostheses, that he has been using in world competitions for five years.

Winston & Strawn Co-Executive Chairman and Sports Law Practice Co-Chair Jeffrey Kessler, lead counsel to Blake Leeper, made the following statement after receiving news of the decision:

“The CAS panel’s two rulings are incongruous with each other. On the one hand, the panel strikes down a World Athletics Rule which it finds to be discriminatory against the rights of disabled athletes to compete against the non-disabled. This was a just decision which we salute. On the other hand, the same panel issued a decision authorizing an even more insidious form of racial discrimination—against Black disabled athletes—by finding that their prosthetic limbs are subject to artificial height limitations based solely on the body proportions of Caucasian and Asian athletes. Data from Black athletes were not even considered in these studies, as if these athletes did not exist. It is ironic that Blake Leeper, who has been fighting for the rights of disabled athletes of every race, now finds himself the victim of discrimination against Black disabled athletes. We do not believe the courts will tolerate such discriminatory treatment and we will support Blake as he continues his fight to compete in the Olympics.”

This decision has garnered widespread media attention, including articles in [The New York Times](#), [Washington Post](#), [ESPN](#), [BBC](#), [Runners World](#), [Deadspin](#), and [Law360](#).

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