STATE ACTOR STATUS OF HIGH SCHOOL ATHLETIC ASSOCIATIONS: A POST-BRENTWOOD ANALYSIS OF THE FIFTY STATES

Zachary Rector

ABSTRACT

This paper sets out to determine how each state evaluates high school athletic associations as state actors. The foundational case of Brentwood Academy v. Tennessee Secondary School Athletic Association (2001) addressed this issue before the U.S. Supreme Court, which held that the Association was a state actor, due to pervasive entwinement with public institutions. Using case law, statutory language, and government entities, this paper analyzes and categorizes each state's treatment of its athletic association into three groups: State Actors Before Brentwood Academy, State Actors After Brentwood Academy, and Not State Actors.

As analysis unfolds it becomes clear that following the Brentwood Academy decision, and the court's ruling of pervasive entwinement with public institutions being cause for state actor status, almost all states are moving towards deeming their Associations as state actors with the lone exception being Illinois. The paper concludes by looking at whether Illinois will continue to be the national outlier and considers the potential for future federal involvement in the growing landscape of scholastic athletics footprint on the country.

INTRODUCTION

In most countries, kids go to school and then go home to participate in sports with clubs. However, in America, sports are an essential part of education in schools and help facilitate comradery and importance in the community. The Kansas State Athletic Association conducted a study of 2,016 students who dropped out of school and found that ninety-four percent of those students did not participate in sports.[1] High School athletics form the backbone of American life by intertwining key elements of education, parenting, and community. With the essential nature of interscholastic athletics, it's crucial to examine the regulations of each state's athletic association. This paper will discuss how each state treats its respective athletic associations as state actors or private companies. The paper will start with a brief overview of the fifty states, then will explain the *Brentwood Academy* decision before detailing how each state has answered the state action question, starting with states before *Brentwood Academy*, states after *Brentwood Academy*, and states that have still yet to decide.

OVERVIEW OF 50 STATE ACTORS

Currently, of all fifty states, only Illinois has decided that their athletic association is not a state actor. West Virginia previously held this viewpoint but recently changed, while the Supreme Court of Wisconsin is currently reviewing the status of their athletic association. Many states have yet to implicitly decide on whether their athletic association is a state actor, but based on the *Brentwood Academy* decision, it is likely all would be deemed state actors if the issue went to court. The following states decided their Association was a state actor before *Brentwood Academy:* Michigan, Arizona, Ohio, Nebraska, Minnesota, Kansas, Indiana, Rhode Island, Washington, Louisiana, New Hampshire, Arkansas, North Dakota, Oregon, New York, Mississippi, New Jersey, and Pennsylvania.

Associations in the following states were deemed state actors after *Brentwood Academy:* Tennessee, Colorado, Georgia,

---

[1] Bruce Howard, *The "Why" of High School Athletics and Activities* Programs, NFHS (September 12, 2023), https://www.nfhs.org/articles/the-why-of-high-school-athletics-and-activities-programs/ (last visited Nov. 17, 2024).

Massachusetts, Montana, Oklahoma, Florida, Texas, North Carolina, South Carolina, South Dakota, Maryland, and West Virginia. While Wisconsin is under review, it will likely fall into this category by 2025 as well. Illinois is the only state to not deem its Association as a state actor.

Finally, the following states have yet to implicitly decide: Alabama, Connecticut, Delaware, Missouri, New Mexico, Nevada, Wyoming Alaska, Idaho, Iowa, Kentucky, Maine, Hawaii, California, Utah, Vermont, and Virginia. However, it can be concluded that all will likely decide that their Association is a state actor based on *Brentwood Academy*.

BRENTWOOD ACADEMY DECISION

A brief history of sports associations and their relationship with the government starts in 1988. The University of Nevada, Las Vegas (UNLV) basketball team was led by Head Coach Jerry Tarkanian, one of the winningest active coaches in the sport. UNLV chose to suspend Tarkanian due to a National Collegiate Athletics Association (NCAA) report detailing thirty-eight violations of the UNLV basketball program, including ten by Tarkanian.[2] The NCAA was forcing UNLV's hand to fire Tarkanian, so Tarkanian brought suit in Nevada state court alleging that he was deprived of his Fourteenth Amendment rights, citing state action by the NCAA. [3] The Nevada Supreme Court agreed with Tarkanian before the United States Supreme Court granted certiorari to review the decision.

The United States Supreme Court reversed the decision, citing that "(the NCAA) had no power to subpoena witnesses, to impose contempt sanctions, or to assert sovereign authority over any individual."[4] Thus, the NCAA was not acting as a state actor because it could not directly discipline Tarkanian. The Supreme Court could not find a partnership between the NCAA and the state of Nevada because the University always had the right to withdraw from the NCAA and establish its own standards.[5] The NCAA's

---

[2] Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 181, 109 S. Ct. 454, 456, 102 L. Ed. 2d 469 (1988)

[3] *Id*.

[4] *Id* at 197.

[5] *Id* at 194-195.

policies were adopted by UNLV, rather than the NCAA creating policies under the color of state law in Nevada.[6] The language suggested in the opinion indicates that if the NCAA were only in Nevada, rather than across the nation, it likely would have been seen as a state actor due to Nevada's influence on the NCAA's policies.[7] This decision set the stage for the landmark decision in 2001 that evaluated whether or not a high school state athletic association was a state actor.

Brentwood Academy, a prominent high school athletic program outside of Nashville, Tennessee, was found to have violated the Tennessee Secondary School Athletic Association's (TSSAA) rules when it wrote to incoming students about attending spring football practice.[8] With a four-year probation clause and two-year postseason ban in football and basketball, Brentwood Academy sued the TSSAA, stating that the enforcement of the rule was a violation of their First (1st) and Fourteenth (14th) Amendment rights.[9] While the District Court found in favor of Brentwood Academy, the United States Court of Appeals for the Sixth Circuit reversed the decision, citing *Blum v. Yaretsky*, *Lugar v. Edmondson Oil Co.*, and *Rendell-Baker v. Kohn*.[10][11][12] In *Blum*, it was found that the State's exercise of coercive power may be state action.[13] In *Lugar*, a private actor was found to have conducted state action when it was in joint activity with the State willfully.[14] In *Rendell-Baker* it was found that state action did not occur because a private actor did not act differently than other contractors throughout the state.[15]

---

[6] *Id* at 199.

[7] "Yet the NCAA's several hundred other public and private member institutions each similarly affected those policies. Those institutions, the vast majority of which were located in States other than Nevada, did not act under color of Nevada law. It necessarily follows that the source of the legislation adopted by the NCAA is not Nevada but the collective membership, speaking through an organization that is independent of any particular State." *Id* at 193.

[8] Brentwood Academy. v. Tennessee Secondary Sch. Athletic Ass'n, 531 U.S. 288, 293, 121 S. Ct. 924, 929, 148 L. Ed. 2d 807 (2001)

[9] *Id*.

[10] Blum v. Yaretsky, 457 U.S. 991, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982).

[11] Lugar v. Edmondson Oil Co., 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982).

[12] Rendell—Baker v. Kohn, 457 U.S. 830, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982).

[13] Blum, 457 U.S., at 1004, 102 S.Ct. 2777.

[14] Lugar, *supra*, at 941, 102 S.Ct. 2744.

[15] Rendell-Baker v. Kohn, 457 U.S. 841 (1982).

Upon the Supreme Court's review, it cites *Jackson v. Metropolitan Edison Co.*, which asserts that to establish state action, there must be a "close nexus between the State and the challenged action", such that seemingly private behavior "may be fairly treated as that of the State itself."[16] The Supreme Court examines the idea of entwinement, stating "The nominally private character of the Association is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it."[17]

The TSSAA and the state of Tennessee were entwined because 84% of the Association was made up of public schools.[18] Additionally, each school is represented by a faculty member to vote on elected officials from a pool of Principals, Assistant Principals, and Superintendents.[19] Finally, half of the Association's meetings were held during school hours and membership dues were collected by the Association from each school.[20] With entwinement established, the Court held that the TSSAA was a state actor and Brentwood Academy was entitled to protection if the TSSAA violated the Due Process Clause of the Fourteenth (14th) Amendment..

HOW DO STATES INTERCEPT *BRENTWOOD ACADEMY*?

State Actors Before Brentwood Academy

Gender Claims: Arizona, Ohio, Nebraska, Minnesota, Kansas, Indiana, Rhode Island, And Washington

While the Supreme Court laid the groundwork for this landmark decision, it was not the first time that courts had evaluated high school athletic associations as state actors. In a case of discrimination against female high school students, a group of

---

[16] Brentwood Academy. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 295 (2001) citing Jackson v. Metropolitan Edison Co., 419 U.S. 345, 349, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974).

[17] *Id.* at 298.

[18] *Id*.

[19] *Id* at 299.

[20] *Id*.

parents sued the Michigan High School Athletic Association alleging gender discrimination. When evaluating if the Association was a state actor, the Court cited the Sixth (6th) Circuit's decision in *Brentwood Academy* before the Supreme Court ruled on the case.[21] The 6th Circuit disregarded the previous tests that classified high school athletic associations as state actors, stating that Brentwood Academy was not a state actor.[22] The District Court chose to disagree with the 6th Circuit's decision because "all nine justices (in *Brentwood's* decision) agree that even if an athletic association is a state actor when dealing with a public school, it 'was not acting under color of state law in its relationship with private universities."[23] However, they were citing footnote 13 in *Tarkanian*, in which the Court was discussing joint action, rather than when public members make an entity a state actor. The Michigan Court ruled that the MHSAA was a state actor, upholding the previous 6th Circuit cases, and aligning with the future Supreme Court ruling in *Brentwood Academy*.

In Arizona, a claim was brought against a policy precluding boys from joining girls' high school volleyball teams.[24] The claim to allow boys to compete in girls' sports failed, with the 9th Circuit asserting: "While equality in specific sports is a worthwhile ideal, it should not be purchased at the expense of ultimate equality of opportunity to participate in sports."[25] However, this issue could only be evaluated because the Court found that the Arizona Interscholastic Association (AIA) was so entwined with the State that it operated as a state actor.[26] The legislative council consisted of delegates elected from member schools, and these members

---

[21] Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n, 180 F.3d 758 (6th Cir. 1999), rev'd, 531 U.S. 288, 121 S. Ct. 924, 148 L. Ed. 2d 807 (2001)

[22] Previous cases in the 6th Circuit that ruled high school athletic associations as state actors. "*See* Yellow Springs v. Ohio High School Athletic Association, 647 F.2d 651 (6th Cir.1981); Alerding v. Ohio High School Athletic Association, 779 F.2d 315 (6th Cir.1985)."
Communities for Equity v. Michigan High Sch. Athletic Ass'n, 80 F. Supp. 2d 729, 741 (W.D. Mich. 2000).

[23] *Id*. (citing Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n, 180 F.3d 758 (6th Cir. 1999).

[24] Clark, By & Through Clark v. Arizona Interscholastic Ass'n, 695 F.2d 1126 (9th Cir. 1982)

[25] *Id* at 1132.

[26] *Id* at 1128.

ultimately served as the decision-makers of the AIA.[27] This was the key for the Court to rule that the AIA was a state actor.

In Ohio, the Ohio High School Athletic Association (OHSAA) proscribed coeducational teams in contact sports.[28] Yellow Springs, a small school district, filed suit against the OHSAA asserting that it was unconstitutional and against Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 et seq., to have this provision.[29] The 6th Circuit evaluated the term "entanglement" and found a strong connection between the OHSAA and the State. One example of this connection was, during depositions, the OHSAA commissioner referred to the OHSAA member coaches as "our coaches".[30] Furthermore, the Ohio State Board influenced many of the activities organized by the OHSAA, and the OHSAA relied on public school facilities as host sites for events and tournaments. Thus, the 6th Circuit found that the OSHAA's activities constituted state action.[31]

The Nebraska School Activities Association (NSAA) had action brought against it for providing a public school golf and basketball program but not providing a girls golf and basketball program and not allowing girls to play with boys.[32] The Nebraska District Court determined that the NSAA should be held under the color of state law because the NSAA is sufficiently entwined with the public schools.[33] The Court justified this ruling because revenue was collected through dues of the member schools, the member schools are majority made up of public schools, and the NSAA has some control over the coaches and reporting duties of superintendents and principals.[34]

The Minnesota State High School League (MSHSL) official handbook barred females from participating in men's high school sports.[35] The 8th Circuit affirmed the trial court's ruling that the

---

[27] *Id*.

[28] Yellow Springs Exempted Vill. Sch. Dist. Bd. of Ed. v. Ohio High Sch. Athletic Ass'n, 647 F.2d 651, 652 (6th Cir. 1981)

[29] *Id*.

[30] *Id*. at 653.

[31] *Id*.

[32] Reed v. Nebraska Sch. Activities Ass'n, 341 F. Supp. 258, 259 (D. Neb. 1972).

[33] *Id*. at 260.

[34] *Id*.

[35] Brenden v. Indep. Sch. Dist., 742, 477 F.2d 1292, 1294 (8th Cir. 1973).

MHSHL should be held under the color of state law. The 8th Circuit Court stated: "Where there is a tremendous public interest in educational functions, and where the public school machinery of the state is so involved in the effectuation and enforcement of rules which bind all public high schools in the state, the Court is left with no conclusion other than that defendant Minnesota State High School League and the defendant school districts are acting under color of state law."[36]

A high school girl in Kansas brought suit when a rule in the Kansas State High School Activities Association (KSHSAA) adopted a rule that "Boys and girls shall not be members of the same athletic teams in interscholastic contests."[37] While the Association was not a government body, the District Court held that the Association acts under the color of state law and is subject to judicial scrutiny under the Civil Rights Act.[38] The reason the Kansas District Court cited the Association as being a state actor is because a majority of the members were public schools, the funds for the Association come from membership dues, the Association has control over all state meets, and the Association can conduct investigations and penalize member schools.[39]

In Indiana, a girl in high school brought a suit when she was not allowed to play on the men's golf team.[40] The Indiana High School Athletic Association (IHSAA) prohibited boys and girls from being on the same team and playing against each other. The IHSAA was made up of 438 schools with the vast majority being public schools. All IHSAA funds are generated through events like the state basketball tournament and other programs held throughout the state. The IHSAA also implemented rules for coaches and principals. The Supreme Court of Indiana concluded that because the adoption of the IHSAA rules may have a substantial impact on students in tax-funded institutions, the IHSAA acted as a state actor.[41]

---

[36] *Id*. at 1295.

[37] Gilpin v. Kansas State High Sch. Activities Ass'n, Inc., 377 F. Supp. 1233, 1236 (D. Kan. 1973).

[38] *Id*. at 1237.

[39] *Id*.

[40] Haas v. S. Bend Cmty. Sch. Corp., 259 Ind. 515, 516, 289 N.E.2d 495, 496 (1972), abrogated by Collins v. Day, 644 N.E.2d 72 (Ind. 1994).

[41] *Id*. at 520.

A Rhode Island family brought suit against the Rhode Island Interscholastic League (RIIL) for not allowing their son to play on the girls' field hockey team.[42] The RIIL consisted of mostly public schools and games took place at these public school's facilities.[43] Each principal of a member school signs a contract to abide by the RIIL rules, this allows the RIIL to penalize and bring sanctions on the public schools. Considering these factors, the Supreme Court of Rhode Island ruled that the RIIL has "sufficient contact with the state so that its rules and regulations can be considered state action."[44]

A discrimination claim in Washington was brought because the Washington Interscholastic Activities Association (WIAA) did not let two girls play football with boys.[45] The WIAA was composed of 600 high school and junior high schools that through their elected representatives adopted rules of the WIAA. While the suit was a class action, the Supreme Court of Washington evaluated whether or not Constitutional Rights had been violated because the WIAA was supported by school membership and was funded by public funds and state action occurred.[46] State action was decided by the court in Washington.

Racial Claims: Louisiana

A class action lawsuit was brought in Louisiana by African American students in an all-African-American private school as well as African-Americans in public school to enjoin the maintenance of the racially segregated high school athletics system in the Louisiana High School Athletic Association (LHSAA).[47] Although race motivated the plaintiffs' claims, the Fifth Circuit's analysis focused on whether the LHSAA's actions constituted "state action" under constitutional standards.The 5th Circuit said, "There can be no doubt that conduct of the affairs of the LHSAA is state action in the constitutional sense."[48] Eighty-five percent (85%) of

---

[42] Kleczek v. Rhode Island Interscholastic League, Inc., 612 A.2d 734 (R.I. 1992).

[43] *Id*. at 735-736.

[44] *Id*.

[45] Darrin v. Gould, 85 Wash. 2d 859, 860, 540 P.2d 882, 883 (1975).

[46] *Id*. at 874.

[47] Louisiana High Sch. Athletic Ass'n v. St. Augustine High Sch., 396 F.2d 224, 225 (5th Cir. 1968).

members of the LHSAA were public schools[49]. The members of the LHSAA were principals of the all-white schools. Financially, a large portion of the funds come from events that take place in state-run facilities.[50] All of these factors pointed to just how impactful the state was to athletics and why the Court held the LHSAA to be a state actor.

Additional Eligibility Claims: New Hampshire, Arkansas, North Dakota, Oregon, New York, Mississippi, New Jersey, Pennsylvania

In New Hampshire, a student took a year off of school due to the illness. The student became ineligible to participate in athletics at the beginning of his senior year of high school because it was his fifth year since he began high school school which barred him eligibility by the New Hampshire Interscholastic Athletic Association (NHIAA).[51] The Court held "that the activities of the NHIAA in sponsoring, administering, regulating and supervising interscholastic athletics in New Hampshire constitute State action within the meaning of the due process clause of the United States Constitution and our State constitution."[52]

The Arkansas Supreme Court did not explicitly label the Arkansas Activities Association (AAA) a state actor but held that the AAA's rules must still "satisfy constitutional principles" and "may not impinge on due process or equal protection rights."[53] The court emphasized that students have a right to have their eligibility requests reviewed under rules that are constitutional. This reasoning strongly implies that the AAA's conduct is subject to constitutional scrutiny: a key indicator that the AAA is treated as a state actor for purposes of enforcing eligibility rules in public education.[54]

The North Dakota High School Activities Association (NDHSAA) ruled a student ineligible to participate in sports until

---

[48] *Id*. at 227.
[49] *Id*.
[50] *Id*.
[51] Duffley v. New Hampshire Interscholastic Athletic Ass'n, Inc., 122 N.H. 484, 485, 446 A.2d 462, 463 (1982).
[52] *Id*. at 491.
[53] Arkansas Activities Ass'n v. Meyer, 304 Ark. 718, 723, 805 S.W.2d 58, 61 (1991).
[54] *Id*.

his parents moved into the high school district where he went to school.[55] The NDHSAA tried to assert that the Court had no jurisdiction to evaluate the Association's rules "absent fraud, lack of jurisdiction, or the invasion of property or pecuniary rights or interests."[56] The Court disagreed citing that the NDHSAA performed a valid, needed function in administering interscholastic activities and it should be treated like a quasi-government body. With the funds and support of the government, the Court applied the rules to the NDHSAA even though it was a voluntary operation.

In Oregon, a high school football team filed a protest after losing the state championship, alleging that the opposing team had used an ineligible player. One of the central legal questions was whether the court had the authority to intervene in the outcome of an athletic competition governed by the Oregon School Activities Association (OSAA).[57] The court considered whether the OSAA's decisions were subject to judicial review under constitutional principles and leaned heavily on the reasoning in *Hass v. Oregon State Public Interest Research Group*, which involved the application of constitutional protections to private entities functionally intertwined with the state.[58] Applying that framework, the court concluded that the OSAA constituted a state actor because its member schools were predominantly public institutions and because it performed a regulatory function over interscholastic athletics within the public school system. As such, the court held that its actions could be reviewed for compliance with due process, thereby confirming that the OSAA was subject to constitutional scrutiny.[59]

In New York, there are multiple sections of their athletic association. Section IV is made up of ninety-three (93) public schools with no nonpublic schools ever gaining membership.[60] When state action was brought up the Court held that "everyone agrees that the actions of Section VI constitute State action, and

---

[55] Crandall v. N. Dakota High Sch. Activities Ass 'n, 261 N.W.2d 921, 922 (N.D. 1978)

[56] *Id* at 925.

[57] Josephine County. Sch. Dist. No. 7 v. Oregon Sch. Activities Ass'n, 15 Or. App. 185, 515 P.2d 431 (1973).

[58] *Id*.

[59] *Id*.

[60] Archbishop Walsh High Sch. v. Section VI of New York State Pub. High Sch. Athletic Ass'n, Inc., 88 N.Y.2d 131, 135, 666 N.E.2d 521, 522 (1996).

Section VI must, therefore, comply with applicable equal protection standards and not deny Walsh its rights in that regard."[61] States that have public school only athletic organizations, make it easy for Courts to find state action because there is a natural entwined relationship between the Association and the state.

A mother sued on behalf of her daughter in Mississippi when her daughter was denied Mississippi High School Activities Association (MHSAA) eligibility. The MHSAA denied her eligibility because the daughter was not living in the school district of her school, violating the Mississippi High School Activities Association anti-recruiting rule.[62] The Supreme Court of Mississippi used statutory language to decide that the MHSAA rule constituted state action. "The power to regulate athletic programs is conferred upon the local school boards by the Mississippi Legislature. Miss.Code Ann. § 37–7–301(q) (1972). The school boards, in turn, delegated this authority to the Association. It follows that the Association's actions, flowing as they do from statutory authority, are, as this Court and others have implicitly or explicitly found, state action for the purpose of constitutional analysis."[63] Although the Court followed a unique path, they ultimately came to a determination that aligned with the majority of jurisdictions. The Court found that the MHSAA undertook state action.

New Jersey football powerhouse, Bergen Catholic High School sued the Northern New Jersey Interscholastic League (League) for denying the private school membership in the League. The Court reviewed a similar Fourth Circuit decision where a private school was denied membership into a public school only athletic association.[64] The Fourth Circuit Court found "that a rational basis can exist for an interscholastic league limited to public schools and that such a limitation does not result per se in a denial of equal protection under the Federal Constitution." The Court in *Bergen Catholic* agreed with the Fourth Circuit and considered the League to be a state actor. The exclusion of private schools made this an easy decision for the New Jersey courts like the New York court.

---

[61] *Id*.

[62] Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon, 631 So.2d 768 (Miss.1994).

[63] *Id*. at 774.

[64] Denis J. O'Connell High Sch. v. Virginia High Sch. League, 581 F.2d 81 (4th Cir. 1978).

In Pennsylvania, a school district sued the Pennsylvania Interscholastic Athletic Association (PIAA), attempting to prevent the PIAA from moving one of the school district's women's basketball teams up a classification from 3A to 4A.[65] The PIAA is made up of close to 1,500 public and private junior high and high schools. When evaluating state action the Court cited the case, *School District of Harrisburg* and said, "There can be no substantial doubt that conduct of the affairs of (a statewide athletic association) is state action in the constitutional sense. The evidence is more than adequate to support the conclusion that the Association amounts to an agency and instrumentality of the State."[66]

STATE ACTORS AFTER *BRENTWOOD ACADEMY*

Eligibility Claims: Colorado, Georgia, Massachusetts, Montana, Oklahoma,

In Colorado, a head wrestling coach filed a lawsuit against the Colorado High School Activities Association (CHSAA) after being suspended following an injury that prevented him from continuing his role as head coach, as well as a wrestler's illegal participation despite not being eligible. When evaluating whether CHSAA was held to the state actor level the court said, "CHSAA assumes, for the purposes of summary judgment and this appeal only, that it is subject to suit under § 1983. We likewise assume, without deciding, that CHSAA's actions are state actions for the purposes of the Fourteenth Amendment.[67]" If Colorado ever fully decides, the court will deem the CHSAA a state actor because of the 367-member schools, with a majority being public schools. Additionally, the board of directors is made up of high school superintendents meaning there is a strong intertwinement between the state government of Colorado and the Colorado High School Athletic Association.

Georgia had a pitch count rule in baseball to protect their pitchers. A school district in the state sued because the rule was

---

[65] Dunmore Sch. Dist. v. Pennsylvania Interscholastic Athletic Ass'n, 505 F. Supp. 3d 447, 452 (M.D. Pa. 2020).

[66] *Id.* at 458 (citing School District of Harrisburg v. Pennsylvania Interscholastic Athletic Ass'n, 453 Pa. 495, 309 A.2d 353, 357 (1973)).

[67] Babi v. Colorado High Sch. Activities Ass'n, 77 P.3d 916, 920 (Colo. App. 2003).

decided in violation of the Georgia High School Association's (GHSA) bylaws and constitution. The school district did not assert the claim that the GHSA was a state actor, but in the decision's footnotes, the Court stated "We need not consider this issue, however, because Charlton County has conceded that it has not asserted any state or federal constitutional claims. But see *Brentwood Academy v. Tennessee Secondary School Athletic Assn.*, 531 U.S. 288, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001) (enforcement of rule by state high school association constitutes state action)."[68]

Based upon this language, it may be concluded that Georgia courts will view the GHSA as a state actor. Additionally, the GHSA is similar to the TSSAA in that it is made up of primarily public schools, its Executive Committee is made up of school officials mostly from public schools, the Oversight Committee is made up of school officials, and one spot is taken by a representative selected by the Governor of Georgia. This is likely enough to show a clear 'close nexus' between the state and the GHSA.

In Massachusetts, the Massachusetts Interscholastic Athletic Association (MIAA) deemed a high school senior who repeated his junior year ineligible to compete in football and basketball his senior year due to already having played four years. The student sued the MIAA. When ruling on the issue of state action the Court noted that the MIAA was a state actor in accordance with previous rulings.[69] The Supreme Judicial Court of Massachusetts, Middlesex cited prior courts saying, "While it is a membership organization composed of both private and public members, the MIAA has been deemed a "State actor" for legal purposes.[70]

The Montana High School Association (MHSA) instituted a rule that to be a member of the association schools must be accredited. The MHSA comprises both public and private schools. A group of parents from Valley Christian School, a private unaccredited high school, sued the MHSA. The Court addressed the

---

[68] *Georgia High Sch. Ass'n v. Charlton Cnty. Sch. Dist.*, 349 Ga. App. 309, 318, 826 S.E.2d 172, 180 (2019).

[69] Mancuso, 453 Mass. at 123, 134, 900 N.E.2d 518. See *Id*. at 123, 900 N.E.2d 518, citing Attorney Gen., 378 Mass. at 349 & n.18, 393 N.E.2d 284 ("[the MIAA's rules] must be viewed as 'State action' for legal purposes"

[70] Abner A. v. Massachusetts Interscholastic Athletic Ass'n, 490 Mass. 538, 544, 192 N.E.3d 1066, 1073 (2022).

state actor question by stating, "For purposes of this appeal, MHSA concedes that, although it is a private association, it meets the criteria of a state actor."[71]

Oklahoma evaluated whether their high school athletic association was a state actor when a senior football player sued the OHSA for preventing him from participating in football games after his school potentially violated the OHSA rule prohibiting paying students to attend their individual athletic camps.[72] Citing *Christian Heritage Academy v. Oklahoma Secondary School Activities Association*, 483 F.3d 1025 (10th Cir.2007) the Court held "that the OSSAA's conduct constituted state action because of the pervasive entwinement of public institutions and public officials in its composition and workings."[73]

Religious Claims: Florida and Texas

In Florida, a private high school football team went on a playoff run and asked the Florida High School Athletic Association (FHSAA) to use their stadium's public address system to have a prayer before the game.[74] The FHSAA denied the use, and the school sued the Association. The Court held that the FHSAA is a "state actor with statutory authority to govern some aspects of high school athletics in Florida."[75] Thus, Florida follows the Court's reasoning and decision in *Brentwood Academy*.

When it comes to high school athletics, few sports represent the spirit of competition more than Texas high school football. The University Interscholastic League (UIL) may be the most uniquely created league of all. It was made by the University of Texas at Austin as a way to provide leadership and guidance to high school

---

[71] Valley Christian Sch. v. Mont. High School Ass'n, 320 Mont. 81 (Mont. 2004).

[72] Scott v. Okla. Secondary Sch. Activities Ass'n, 2013 OK 84, 313 P.3d 891, 892 (Okla. 2013).

[73] Id. at 492. ("Although the Oklahoma Secondary School Activities Association (OSSAA) was not a state agency, its decisions were subject to the Okla. Stat. tit. 75, § 322 (2011) standard of review for agency decisions, rather than the deferential standard applied to a voluntary association's decisions, because the OSSAA received member fees from Oklahoma public schools and controlled athletic events to such an extent that the schools' membership was not truly voluntary."). *See also* Christian Heritage Academy v. Oklahoma Secondary Sch. Activities Ass'sn, 483 F.3d 1025 (10th Cir. 2007).

[74] Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n, Inc., 115 F.4th 1266, 1274 (11th Cir. 2024).

[75] Id. at 1274.

sports.[76] The Legislature Council is made up of thirty-two (32) public school administrators with twenty-six (26) of the members being elected by Superintendents of the state. The State Executive Committee is a board appointed by the Commissioner of the Texas Education Agency. Courts hold that the UIL is a state actor, with one stating "We note also that federal courts have viewed the UIL as a state agency immune from antitrust liability and have considered actions of the UIL to be state action for constitutional purposes."[77]

Statutory Language: North Carolina, South Carolina, South Dakota, and Maryland

North Carolina's statutory language notes that its high school athletic association (the North Carolina High School Athletic Association otherwise known as the NCHSAA) is a state actor. "(b) If the Superintendent is unable to enter into a memorandum of understanding, the State Board shall assign the administration of high school interscholastic athletic activities to the Superintendent of Public Instruction and establish fees sufficient to support the administration of the program. (c) An administering organization is a public body for the purposes of Article 33C of Chapter 143 of the General Statutes."[78] There is a clear, close nexus between the state of North Carolina and the North Carolina High School Athletic Association.

Similarly, South Carolina's statutory language makes its high school athletic associations state actors as well. As it is written:

Agency means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive department of state government, including administrative bodies and bodies corporate and political established as an instrumentality of the State. For the purpose of this chapter, "Agency" also includes public schools, public school

---

[76] *About the UIL*, THE UNIVERSITY OF TEXAS AT AUSTIN https://www.uiltexas.org/about#:~:text=The%20University%20Interscholastic%20League%20was,school%20debate%20and%20athletic%20teachers (last visited Mar. 8, 2025).

[77] Univ. Interscholastic League v. Sw. Offs. Ass'n., Inc., 319 S.W.3d 952, 960 (Tex. App. 2010).

[78] N.C. Gen. Stat. § 115C-407.60 (Lexis Advance through Session Laws 2024-56 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10)

districts, public charter schools, public charter school authorizers, and any voluntary association that establishes and enforces bylaws or rules for interscholastic sports competition for public secondary schools in the State.[79]

This strong language regarding agency shows the Association is a state actor, as it explicitly includes various public institutions and entities, including public schools, school districts, and any organization that regulates and enforces rules for interscholastic sports competition for public secondary schools. By designating these entities as "agencies" under state law, the statute effectively classifies the South Carolina High School League, or similar associations, as state actors. This designation subjects them to constitutional scrutiny, as state actors are bound by constitutional protections and principles, including due process and equal protection under the law. Therefore, their actions, particularly when regulating high school athletics, are not just limited by the policies they enact but must also adhere to the standards established by the state and federal constitutions.

The South Dakota statutes designate control of high school athletic associations to the Department of Education in the state.[80] This is a stronger entwinement than seen in *Brentwood Academy*. Tennessee's Board of Directors in *Brentwood* were public high school officials, whereas here, the Board is decided by the state. Thus, the South Dakota High School Athletic Association is a state actor.

Maryland is virtually the same with its statutory language and the government's involvement as in South Dakota.[81] Maryland, like New York and New Jersey, has an athletic association that is made up of just 199 public schools. When this is the case, it makes

---

[79] S.C. Code Ann. § 1-6-10

[80] *See*, "(2) The constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board;" and "(4) The association complies with the provisions of chapter 1-25 and chapter 1-27. However, the association, and its employees, meetings, and records, are afforded the same exemptions and protections as a political subdivision or public body.")

[81] Md. Code Regs. 13A.06.03.01 (Lexis Advance through the 12/2/2024 issue of the Maryland Register).

entwinement simpler for courts and the statutory language to determine that state action occurred.

Overturned Claims: West Virginia

Recently, West Virginia enacted the "Save Women's Sports Act," which disbarred males from being able to participate in female high school sports.[82] Men are defined as biological males at birth.[83] The Plaintiffs in the case sued the West Virginia State Board of Education, and the Board argued that the Commission was not a state actor.[84] The Court cited a previous West Virginia case, *Israel, which* previously treated the Commission as a state actor for constitutional challenge before *Brentwood Academy*.[85] The Court agreed with *Brentwood Academy* citing that as a "nominally private organization, the Commission is pervasively entwined enough with public institutions to be subject to suit." Here, West Virginia believed the Commission was a state actor both before and after the *Brentwood Academy* decision.

This decision in West Virginia was interesting because it is at odds with *Mayo*.[86] While the Court in *Mayo* did not answer whether the Commission was a state actor, it did deem the Commission was not a state agency. In the case, the highly-heralded recruit and future NBA player OJ Mayo was suspended for two games for committing two technical fouls in a game. SSAC bylaws required an automatic two-game suspension. Mayo sued, and when the Court evaluated whether or not the SSAC was a state agency the West Virginia Supreme Court of Appeals used a five-part test to determine that the SSAC was not a state agency.[87] The core of the reasoning focused on the fact that the SSAC was not established

---

[82] B.P.J. by Jackson v. W. Va. State Bd. of Educ., 98 F.4th 542, 550 (4th Cir. 2024), cert. denied sub nom. *WV Secondary Sch. Activities v. B. P. J.*, No. 24-44, 2024 WL 4805904 (U.S. Nov. 18, 2024).

[83] Id.

[84] Id. at 553.

[85] Israel v. W. Va. Secondary Schs. Activities Comm'n., 182 W.Va. 454, 388 S.E.2d 480, 484 n.4 (1989).

[86] Mayo v. W. Va. Secondary Schs. Activities Comm'n., 223 W. Va. 88, 672 S.E.2d 224 (2008).

[87] Id. At 96. ("Five Part Test from *Blower v. Educational Broadcasting Authority*, 182 W.Va. 528, 389 S.E.2d 739 (1990), we held: In determining whether a particular organization is a state agency, we will examine its legislative framework. In particular, we look to see if its powers are substantially created by the legislature and whether its

through the legislative action of the state. Even though that is a large factor in the state agency test in West Virginia and it would almost certainly solidify a high school athletic association as a state actor, per *Brentwood Academy* there only needs to be a pervasive entwinement, not legislative creation.

State Under Review: Wisconsin

Wisconsin is a state that has a similar legal process to West Virginia in regard to its view on state actors. In this case, a senior male student sued the Wisconsin Interscholastic Athletic Association (WIAA) for enforcing a rule that prevented him from participating on the Women's Gymnastics team.[88] The WIAA is composed of 500 member schools and emphasizes interscholastic athletics as a partner with other school activities in the total educational process. With the Plaintiff asserting an Equal Protection Claim, the Court evaluated whether the WIAA was a state actor and used the *Brentwood Academy* framework. When reviewing *Brentwood Academy*, the Court held that there was no evidence that the WIAA was a state actor.[89] The Court ruled that the only hard evidence that showed any entwinement was a signed affidavit by the Plaintiff's Superintendent that said the school district took federal funding. However, the Court held this was not enough and that there must be a "largely overlapping identity."[90] This is a landmark case because it was one of the only cases that used the *Brentwood Academy* framework and yet came to a decision that was different from *Brentwood Academy*.

Eighteen years later Wisconsin is again dealing with whether the WIAA is a state actor.[91] While this case is being taken under

---

governing board's composition is prescribed by the legislature. Other significant factors are whether the organization can operate on a statewide basis, whether it is financially dependent on public funds, and whether it is required to deposit its funds in the state treasury.")

[88] Bukowski v. Wis. Interscholastic Athletic Ass'n., 2007 WI App 1, ¶ 1, 298 Wis. 2d 246, 726 N.W.2d

[89] *Id*. ¶ 11.

[90] *Id*.

[91] "WIAA claims to be 'the first high school athletic association organized in the country," dating its formation back to "[t]he first formal effort by school administrators to become involved in high school athletics' at a State Teachers Association meeting in December 1896."

review by the Wisconsin Supreme Court, recently the Court of Appeals of Wisconsin sided with the WIAA being a state actor. Here, a high school wrestler sued the WIAA for not allowing the wrestler to participate in the regional meet due to a prior ejection for an unsportsmanlike penalty.[92] The Court evaluated whether the WIAA was a state actor, again, using *Brentwood Academy*. After reviewing *Brentwood Academy*, the Court found great similarities. The WIAA was also a single-state association composed of eighty percent public schools, very similar to Tennessee (TSSAA).[93] The Board of Control and officials of the WIAA are almost all public-school officials. Also, as in *Brentwood Academy*, the Court said the only thing preventing a complete monopoly and full entwinement is private schools. With these similarities, the Court said the WIAA is a state actor. However, stay tuned for what the Wisconsin Supreme Court decides on this issue.[94]

Not a State Actor: Illinois

Illinois is the only state that asserts its state athletic association is not a state actor. The Illinois High School Association (IHSA) is made up of 777 member schools with nearly eighty percent of the schools being public schools. The IHSA Board of Directors is composed of ten principals or athletic administrators from member schools.[95] The Board of Directors approves IHSA policies, interprets the rules, and employs an Executive Director and staff to administer the programs of the IHSA.[96] In review of these facts, the IHSA is fairly similar to the TSSAA. However, in a case involving the Freedom of Information Act, the Appellate Court in Illinois said the IHSA was not a state actor.

In the case, the Plaintiff submitted written requests to see "all of the IHSA's contracts for accounting, legal, sponsorship, and

---

Halter v. Wis. Interscholastic Athletic Ass'n, 411 Wis. 2d 191, n.3, review granted (Wis. Ct. App. 2024).

[92] *Id*.

[93] *Id*. at 206.

[94] *Id*. at 207.

[95] IHSA, Board of Directors, https://www.ihsa.org/About-the-IHSA/Board-of-Directors

[96] IHSA, Board of Directors, https://www.ihsa.org/About-the-IHSA/Board-of-Directors

public relations/crisis communications services…"[97] To receive this information, the IHSA had to be considered a subsidiary public body for the Freedom of Information Act to come into play. The Court looked to *Brentwood Academy* to evaluate IHSA's state actor, the Court said the IHSA did not charge membership dues and did not charge schools entry fees for its events.[98] Additionally, the IHSA actually contracted with their member schools the right to use their facilities for events and split the revenue with the schools. The Court distinguished Illinois from Tennessee almost solely on the fact that the funding was contracted out and dues were not paid. While this is part of the entwinement view, there are still other factors that can create a close nexus between an Association and a state. However, the funding being separated was enough for the Court to say the IHSA was not a subsidiary public body and not a state actor.

The Court did not hash out their decision enough and the next time Illinois has a high school athletic association state actor question, this decision will be overturned. The reasoning behind this is the IHSA has many similarities to the TSSAA; both are composed of around eighty percent public schools, their Board of Directors are made of public-school officials, and they both take funding from events used on public school campuses. While the IHSA shares revenue with their member schools from events and does not have entry dues for each member school, this is not enough to compromise the fact that there is a great amount of entwinement as seen in *Brentwood Academy*

States Yet to Implicitly Decide: Alabama, Connecticut, Delaware, Missouri, New Mexico, Nevada, Alaska, idaho, Iowa, Kentucky, Maine, California, Hawaii, Utah, Vermont, and Virginia

Alabama Supreme Court Justice Bryan, in his concurrence in *Ex Parte Alabama High School Athletic Association*, said, "I merely note that *Lee* [an Alabama state case from 1968] offers some support for the idea that the Association is something other than a traditional voluntary association."[99] While there has been no

---

[97] Better Gov't Ass'n v. Ill. High Sch. Ass'n, 56 N.E.3d 497, 515 (Ill. App. Ct. 2016).
[98] *Id.* at 522.

decision on whether the AHSAA is a state actor, it can be deduced that it would be considered a state actor. The AHSAA has 401 member high schools and both the Central Board of Control and the Legislative Council of the AHSAA are made up of elected school officials. With a majority of the schools being public schools, it would be likely that Alabama and the AHSAA would be seen as intertwined, and state action would be confirmed by the AHSAA.

Connecticut has not dealt with whether the Connecticut Interscholastic Athletic Conference (CIAC) is a state actor. However, the Supreme Court of Connecticut referenced *Brentwood Academy* when analyzing whether a labor union preventing mall access rose to the level of state action. The Court said, "[e]ven if we were to conclude, however, that our state action requirement is more expansive than the current federal standard, under *any* of the various alternative approaches we have discussed in this opinion, we conclude that the facts in the present case *still* do not rise to the level of constituting state action."[100] While there may be a higher threshold in Connecticut for state action, the CIAC Board of Control is still comprised of public school officials, showing entwinement. The Board of Control also mostly meets during the school year and the CIAC policy each year is decided by the principals of the member schools. Further, the revenue the CIAC brings in is from the annual dues paid by member schools, tournament gate receipts (from public school venues), and corporate sponsorships and assistance. There is strong evidence that supports state action from the CIAC.

The Superior Court of Delaware dealt with a case where a firefighter claimed to put an undercover tape recorder in the break room at the station. The Fire Company ran an investigation and had the firefighter arrested which in turn made the firefighter sue for defamation. The Court analyzed whether the volunteer fire company was acting as a state actor. The Court cited *Brentwood Academy* and went through all the *Brentwood Academy* 'close nexus' elements and ruled the Fire Company was not a state actor because "there is no claim that the State plays any role in the

---

[99] Ex parte Ala. High Sch. Athletic Ass'n, 229 So. 3d 1100, 1105 (Ala. 2017) (Bryan, J., concurring).

[100] United Food & Com. Workers Union, Loc. 919, AFL-CIO v. Crystal Mall Assoc., L.P., 270 Conn. 261, 285–86, (Conn. 2004)

management or day-to-day activity of the Fire Company."[101] In 2002, the Delaware Association of Secondary Administrators created the Delaware Interscholastic Athletic Association (DIAA) as a way to fill a void in their students' athletics. This shows a direct correlation and a 'close nexus' between the government, the school board, and the DIAA, the athletic association. Here, there is a close nexus between the DIAA and Delaware and the DIAA would be viewed as a state actor.

Missouri has only looked at its high school athletic association through the lens of deciding whether the power a court has in reviewing the quasi-judicial actions of a voluntary association, which was deemed extremely limited.[102] In evaluating whether or not the Missouri State High School Activities Association (MSHSAA) is a state actor, *Brentwood Academy's* pervasive entwinement test will be used. The MSHSAA is made up of 580 schools including public and private schools. The Board of Directors is made up of ten representatives, eight are elected through school boards geographically and two are at-large spots voted on. According to the MSHSAA, almost three-quarters of the revenue the MSHSAA brings in is from tournaments. These tournaments include events that take place on public school grounds. Based on these factors and considerations, it can be concluded that Missouri would be deemed a state actor.

New Mexico recently decided on whether a public secondary school could be classified under the New Mexico Human Rights Act (NMHRA). The case involved a teacher cutting the hair off of a student and this changed the behavior of the student, thus the student sued under the NMHRA. The Court, in determining if the secondary school was a state actor, cited *Brentwood Academy*.[103] With the Court already citing *Brentwood Academy*, it can be well-

---

[101] Dufresne v. Camden-Wyoming Fire Co. Inc., No. CV K19C-03-008 NEP, 2020 WL 2125797, at 7 (Del. Super. Ct. May 5, 2020)

[102] State ex rel. Mo. State High Sch. Activities v. Romines, 37 S.W.3d 421, 422 (Mo. Ct. App. 2001)

[103] "Nor do we think there is anything to be said for the [a]ssociation's contention that there is no need to treat it as a state actor *since any public school applying the* [*a*]*ssociation*'s *rules is itself subject to suit* under *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 304, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001)"
Johnson v. Bd. of Educ. for Albuquerque Pub. Sch., 2023-NMCA-069, ¶ 17, 535 P.3d 687, 693 (N.M. Jan. 23, 2025)

inferred that the entity was a state actor. The New Mexico Activities Association (NMAA) is made up of 163 public and private schools. Further, the NMAA Board of Directors is made up of thirteen officials with eleven of the officials being Superintendents of public-school districts in the state. Additionally, the New Mexico statutes allow the Public Education Department some authority over activities involving public schools.[104] With this, New Mexico has essentially said the NMAA is a state actor.

The Nevada Interscholastic Activities Association (NIAA) is also likely a state actor. The NIAA is made up of 123 member schools and their Board of Control is made up of twelve member-school officials and three parents. The NIAA complies with Nevada state law and the statutory language also deems it a public subdivision.[105] Nevada has deemed the NIAA a state actor by this. The Wyoming High School Activities Association will be deemed a state actor. The state's statutes designate the Wyoming High School Athletic Association as a political subdivision.[106]

Alaska has yet to decide on whether its Association is a state actor. The closest case under Alaska law to this issue is a case involving a woman asserting an expense paid by the Alaska State-Operated School System (ASOS). The Court held the ASOS was a state actor because the main purpose was to further the public education of the state. The Alaska School Activities Association (ASAA) comprises 190 schools, both public and private. The Board of Directors has nine total seats, six are made up of voting members from each region, one is from the Alaska Association of School

---

[104] "[A]pprove or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with any rule promulgated by the department. The department shall require an association or organization attempting to regulate a public school activity to comply with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and be subject to the inspection provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. The department may require performance and financial audits of an association or organization attempting to regulate a public school activity. The department shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;"
N.M. Stat. Ann. § 22-2-2 (West)

[105] Any liability or action against the Nevada Interscholastic Activities Association must be determined in the same manner and with the same limitations and conditions as provided in NRS 41.0305 to 41.039, inclusive. To this extent, the Association shall be deemed a political subdivision of the State. Nev. Rev. Stat. Ann. § 385B.190 (West)

[106] Wyo. Stat. Ann. § 9-3-301

Board, one is from the Alaska Association of School Administration, and one is a student representative. Although the ASAA is not funded by the state, its revenue share is similar to the TSSAA as most of the share comes from the gate of athletic events hosted by public schools. Given these factors, the ASAA is a state actor under *Brentwood Academy*.

While Idaho has no direct case law on this matter, the state has statutory language that suggests the presence of pervasive entwinement. Idaho Code Ann. § 33-6205 provides that the unfair treatment of a student by a school, athletic association, or athletic organization, results in each entity being liable to a private cause of action.[107] An additional instance of entwinement is found within the Idaho High School Activities Association's (IHSAA) Board of Directors. There are fifteen directors on the IHSAA's Board of Directors, one of whom is appointed by the State Department of Education, while the other fourteen are from member high schools. The composition of this board indicates a close nexus between the IHSAA and the state of Idaho. Thus, the IHSAA is likely a state actor.

In Iowa, there has been an evaluation of whether four horse jockeys had the right to assert a claim that their due process was violated by a racing casino. The Court ultimately held that the casino was not a state actor, citing *Brentwood Academy* in its decision: "State Board members are assigned ex officio to serve as members of the board of control and legislative council."[108] The Iowa High School Athletic Association (IHSAA) is composed of 370 member schools, both public and private. The Board of Directors is composed of seven elected members from Iowa schools and one appointed member designated by the Iowa Association of School Boards. Given the entwined nature of the Board and the citation of *Brentwood Academy* in a manner that directly states that state

---

[107] Any student who is subject to retaliation or other adverse action by a school, institution of higher education, or athletic association or organization as a result of reporting a violation of this chapter to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or institutions of higher education in the state, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization. Idaho Code Ann. § 33-6205 (West).

[108] Green v. Racing Ass'n of Cent. Iowa, 713 N.W.2d 234, 241 (Iowa 2006).

board members serving in the board of control roles created an entwinement, it is likely that the IHSAA constitutes a state actor.

Kentucky is likely to be a state actor. Around the time of the *Brentwood Academy* decision, a student sued the Kentucky High School Athletic Association (KHSAA), and the KHSAA asserted a governmental immunity defense.[109] The case presented many elements similar to those of a state actor case. "It (KHSAA) operates under the direction of its own board of control whose membership is primarily elected by its member institutions."[110] Further, the Court recognized that the KHSAA is mostly funded by the State's high school football and basketball tournaments along with dues from member institutions.[111] A final indication that the KHSAA is a state actor lies in the fact that the Kentucky Board of Education has control over the interscholastic athletics involving schools.[112] For these reasons, it is likely that the KHSAA is a state actor.

In Maine, the Maine Principals' Association (MPA) allows each member school one vote to be cast by that school's principal or a designee. The MPA has 153 member schools and the President and President-Elect of the MPA must be active high school principals of a member institution. The MPA collects membership dues paid by participating schools in the Division of Interscholastic Activities, with member schools determining the amount of dues to be paid each year. Despite the state's lack of relevant case law, the MPA is likely to be found as a state actor.

California takes a unique approach to its high school athletic association. The California Interscholastic Federation (CIF) is broken up into ten different sections. The CIF Federated Council serves as the governing body and is composed of superintendents, principals, athletic directors, and leaders from allied organizations. Due to the limited funding and the lack of case law addressing the state actor distinction in California, it is difficult to determine with complete certainty whether the CIF is a state actor. Nonetheless,

---

[109] Yanero v. Davis, 65 S.W.3d 510, 529 (Ky. 2001).

[110] *Id*. at 530.

[111] *Id*.

[112] (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services. Ky. Rev. Stat. Ann. § 156.070 (West).

based on the CIF Federated Council being composed of public school officials and the *Brentwood Academy* decision, one would likely find pervasive entwinement, deeming the CIF a state actor.

The Hawaii High School Athletic Association (HHSAA) is composed of 95 member schools, both public and private. Similar to California's CIF, the HHSAA is broken up into five sections. Each member school pays annual dues by each October. Hawaii has a statute on Gender Equity in athletics that applies to all public schools within Hawaii.[113] Notably, courts have found other states have found that when state laws govern athletics, there is a connection to the state's athletic association. Given this precedent, it can be inferred that the HHSAA is likely a state actor, even without precise knowledge of its finances.

Utah provides several factors supporting the notion that its athletic association is a state actor. Following *Brentwood Academy*, Utah conducted a report examining whether the Utah High School Athletic Association (UHSAA) was a state actor. The report concluded, "Since the UHSAA may be considered a 'state actor,' it's important that policymakers design a fair and consistent system that complies with the state Office of the Utah."[114] The UHSAA Executive Committee is composed of twenty-two members, all of whom come from public school programs. Member schools are required to pay dues to the UHSAA annually by September 15.[115] In light of *Brentwood Academy's* entwinement test, the UHSAA is likely a state actor.

The Vermont Principals Association (VPA) is the governing athletic association in Vermont and has 300 member schools, all of which contribute annual dues. Thirteen out of fifteen members of the Executive Council, which enforces the VPA bylaws, are principals and assistant principals of member schools. These factors support classifying the VPA as a state actor under the *Brentwood Academy* test.

---

[113] (b) This section shall apply to public schools as defined in section 302A-101; provided that it shall apply to grades nine to twelve only. Haw. Rev. Stat. Ann. § 302A-461 (West).

[114] OFF. OF THE LEGIS. AUDITOR GEN. STATE OF UTAH, *A Review of the Utah High School Activities Association's Transfer of Athletic Eligibility Process*, Rep. No. ILR 2003-B (2003).

[115] UTAH HIGH SCH. ACTIVITIES ASS'N HANDBOOK 2024-25, https://uhsaa.org/Publications/Handbook/Handbook.pdf (last visited Mar. 6, 2025).

In Virginia, the Virginia High School League (VHSL) governs high school sports within the state. The VHSL has 308 member schools and is overseen by an executive committee that is elected by the varying school districts' principals and superintendents. Day-to-day affairs are handled by the Executive Director and Assistant Directors. Of the thirty-seven members, eighteen are principals. Only public schools are members of the VHSL, while all non-public schools are part of the Virginia Independent Schools Athletic Association. It is likely that the VHSL will be deemed a state actor given the close nexus between the VHSL and the state of Virginia.

V. CONCLUSION

While *Tarkanian* laid the groundwork for athletic associations to be identified as state actors nationally, *Brentwood Academy* established the test for determining whether a state's high school athletic association is a state actor. Some states had previously decided their associations as state actors, but since the ruling of *Brentwood Academy*, almost all associations are now state actors except Illinois. Almost every association has a controlling board composed of public school officials, and the majority of member schools are public. For these two reasons alone, entwinement exists between these states and their high school athletic associations.

An interesting consideration in the wake of this paper is whether schools from neighboring states of Illinois will attempt to gain membership to Illinois's Association. While the Association would likely reject outside access, schools could try to join based on the Association being private and free from due process claims.

Sports are deeply entwined with American culture that it should not be surprising that states are putting such an emphasis on influencing their high school athletic programs. Athletics play a crucial role in child development and it is important to ensure children are given the best opportunity to engage in athletics, even if that means permitting state regulation in high school athletic associations. Given the increasing regulation of collegiate athletics, it is reasonable to predict that high school sports will face growing oversight as well. The federal government may even become highly engaged with high school athletics in such a way that a national body takes control similar to that of the NCAA. If this were to occur,

uniform policies on issues such as the transfer portal, eligibility requirements, and gender issues in sports would likely emerge. While the gained clarity through uniformity could be beneficial, it is not yet necessary. Until the federal government takes steps to intervene, high school athletic associations are almost all going to be considered state actors.