

CONSTITUTIONAL LAW—THE RIGHT TO PARTICIPATE IN INTERSCHOLASTIC HIGH SCHOOL ATHLETICS IS NOT A CONSTITUTIONALLY PROTECTED RIGHT, THEREFORE, A RULE SUSPENDING THE ELIGIBILITY OF STUDENT-ATHLETES WHO TRANSFER FROM ONE HIGH SCHOOL TO ANOTHER NEED ONLY BE RATIONALLY RELATED TO A LEGITIMATE STATE OBJECTIVE—*Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768 (Miss. 1994).

I. INTRODUCTION

In order to prevent athletic related transfers, school shopping,¹ and odious recruiting practices, the Mississippi High School Activities Association (MHSSA),² has promulgated a

1. GLENN M. WONG, *ESSENTIALS OF AMATEUR SPORTS LAW* 265 (1994). School shopping exists when a student-athlete determines which high school he or college she will transfer to based upon the positive effect the athletic program at that school will have on his or her athletic career. *Id.*

2. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 771, n.1 (Miss. 1994). The Mississippi High School Activities Association is a non-profit regulatory body in which membership is voluntary and open to both public and private high schools. *Id.* See WONG, *supra* note 1, at 185. Generally, high school athletic or activities associations are voluntary organizations where membership is open to all the high schools in the state who agree to abide by the association's bylaws. *Id.* The associations' authority is generally derived from enabling legislation which essentially makes the association a quasi-state agency and allows the associations to act on behalf of the local school boards. *Id.*

Organizations designed to govern interscholastic athletics exist in all fifty states. *Id.* The associations' purpose is to "promote, develop, direct, protect, and regulate amateur interscholastic athletic relationships among member schools and to stimulate fair play, friendly rivalry, and good sportsmanship among contestants, schools and communities throughout the state." *Id.*

State interscholastic athletic associations very often find themselves embroiled in litigation over the constitutionality of their rules or sanctions as imposed on student-athletes or member schools. *Id.* The courts, however, have generally been hesitant to interfere in the regulatory function of the associations because they are state actors. *Id.* (construing *Florida High School Activities Ass'n v. Bradshaw*, 369 So. 2d 398 (Fla. Dist. Ct. App. 1979)). In the majority of cases, courts have held that the association has the "responsibility to enforce its rules" and that student "participation in interscholastic athletics is a privilege rather than a right." *Id.* (citing *Bradshaw*, 369 So. 2d at 400). The courts have found, however, that the rules and regulations promulgated by the associations cannot be arbitrary or irrational and, if the student-athlete is denied the exercise of a privilege in an arbitrary or irrational manner, the regulation will be declared unconstitutional. *Id.* (citing *Florida High School Activities Ass'n v. Thomas*, 409 So. 2d 245 (Fla. Dist. Ct. App. 1982)).

rule designed to halt interscholastic recruiting.³ Controversy springs from the tension between the individual's right to choose the high school he or she wishes to attend, and the athletic association's interest in deterring invidious recruiting practices and school shopping.⁴ In *Mississippi High School Activities Ass'n, Inc. v. Coleman*,⁵ the court considered several

3. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 772 (Miss. 1994). The court explained that the rule requires student-athletes to attend a school in the district where his or her parent(s) or guardian have their bona fide residence. *Id.* The MHSAA, in its bylaws, defines bona fide residence as the place "where the family actually lives." *Mississippi High School Activities Ass'n, Inc., Bylaws*, Art. I, §B-1(k). This means the specific dwelling in which the family cooks, eats, and sleeps on a regular basis and claims as its sole or primary place of residence. *Id.* The family mail must also be received where the family lives. *Id.* This does not preclude the student from attending a school outside his or her district, but will result in a one year suspension of eligibility for participation in interscholastic athletics. *Coleman*, 631 So. 2d at 772.

The anti-recruitment rule was promulgated by the Mississippi High School Activities Association in an effort to deter unfair recruiting practices. *Id.* The Association, through the anti-recruitment rule, further endeavored to promote an even playing field for all the schools. *Id.* By imposing one year of athletic ineligibility during the first year of a student athlete's attendance at a school outside his or her district the Association seeks to accomplish the aforementioned goals. *Id.*

4. *WONG*, *supra* note 1, at 265 (1994). While transfer rules are often controversial, the courts have generally upheld the rules because they do not create a suspect class or violate a fundamental right. *Id.* Transfer rules have been created to discourage: (1) the recruiting of student-athletes and (2) the shopping around by student-athletes for the athletic program that seems to offer them the best opportunity to further their athletic careers. *Id.* The courts have generally found that the rules promulgated by athletic associations are rationally related to the stated objective of deterring recruiting and school shopping. *Id.* See *infra* note 66 and accompanying text.

High school athletic associations have taken three different approaches to the problem of interscholastic recruiting, restricting eligibility in one of three ways. *Id.* Generally, the associations utilize a blanket restriction which denies eligibility for participation in interscholastic athletics for a period of one year to any student who transfers to a school outside of the district of his residence. *Id.* While this approach is often overinclusive, courts have consistently held that rules of this nature are rationally related to the state's purpose of preventing invidious recruiting. *Id.* See *infra* note 66 and accompanying text.

Some high school athletic associations provide exceptions to the ineligibility rule for students who have transferred for reasons wholly unrelated to athletics. *Id.* These students will have immediate athletic eligibility upon enrollment at the new school. *Id.* The potential for abuse and inconsistency inherent in this approach has led some associations to provide immediate athletic eligibility to transfer students who meet certain criteria. *Id.* To qualify for immediate eligibility in jurisdictions that have adopted the third approach, such as Massachusetts, the student-athlete (1) must not have participated in varsity interscholastic athletics during the school year prior to his or her transfer and (2) the transfer must occur prior to the start of practice for the sport in which the student wishes to participate. *Id.*

5. 631 So. 2d 768 (Miss. 1994).

constitutional challenges to the anti-recruitment rule.⁶ Mary Coleman challenged the anti-recruitment rule on behalf of her son, Kiese Laymon, as a violation of the right to travel, freedom of religion, due process, and equal protection.⁷ Coleman also alleged that the rule was overbroad as it applied to her son.⁸

The Supreme Court of Mississippi found that Laymon's constitutional rights were not violated by the Association's rule.⁹ The court reasoned that in the absence of any property or fundamental liberty interest in athletic participation, no procedural due process protection is afforded to the right to participate in athletics.¹⁰ The court further held that, absent the existence of any fundamental right, a substantive due process claim must be dismissed provided that the challenged rule was rationally related to a legitimate state objective.¹¹ The court determined that eliminating odious recruiting practices was a legitimate state purpose to which the anti-recruiting rule was rationally related.¹² The MHSAA could, therefore, legally restrict the recruiting practices of state high schools.¹³

II. *MISSISSIPPI HIGH SCHOOL ACTIVITIES ASS'N, INC. v. COLEMAN*

A. *Facts and Procedural History*

Prior to the start of the 1989-90 school year, Laymon and Coleman moved from Jackson, Mississippi to Maryland.¹⁴ In August 1990, Laymon and Coleman moved back to Mississippi

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 774 (Miss. 1994). The court concluded that the Association, as a state actor, had not deprived Laymon of a property interest, therefore, Laymon was not entitled to procedural due process of law before his eligibility could be suspended. *Id.*

11. *Id.*

12. *Id.* at 775. Because the anti-recruiting rule was rationally related to a legitimate state purpose, the court ruled that Laymon's fundamental rights to travel and to free exercise of religion had not been abridged. *Id.*

13. *Id.*

14. *Id.* at 771. In Maryland, Laymon attended a parochial high school for the 1989-90 school year and participated in varsity basketball. *Id.*

and established residence in Brandon.¹⁵ Upon returning to Mississippi, Laymon registered for the 1990-91 school year at St. Joseph High School in Jackson.¹⁶ Laymon joined the St. Joseph basketball team and began practicing with the team as the season opened.¹⁷ School officials subsequently informed Laymon that he was ineligible for interscholastic athletics for the 1990-91 school year as a result of the operation of the MHSAA's anti-recruiting rule.¹⁸

In response to the suspension of her son's eligibility, Coleman filed suit on his behalf in state chancery court.¹⁹ The trial

15. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d at 771 (Miss. 1994).

16. *Id.* St. Joseph is located in the Jackson Municipal Separate School District, which does not encompass Brandon, the new home of Laymon and Coleman. *Id.* Laymon enrolled in St. Joseph, as opposed to a school in the district which includes Brandon, because it was the high school he attended prior to moving to Maryland. *Id.* at 771-72.

17. *Id.* at 772.

18. *Id.* The MHSAA's constitution and bylaws provide in relevant part:

SECTION B. General Eligibility Rules

1. To be eligible to participate in interschool activities a contestant must:

- a. Be a bona fide student, having enrolled not later than the 15th day of any semester of participation, carry five major subjects and deport himself satisfactorily. . . .
- e. Upon the completion of grade eight, choose the high school he wishes to attend in a city or district where there are two or more high schools or schools of secondary grade. When a student has chosen a high school and enrolled in and attended that school for one day or longer, the school of his choice shall become his home school. In a junior high school situation, the choice of grade nine in a given junior high school means the choice of the senior high school which is designated by the appropriate school board as the senior high school for the graduates of that particular junior high school. Any pupil who enters grade nine in a member public junior high school or grade ten or above in a member public high school and then transfers to a member private or parochial high school shall be ineligible for a period of one year. The same is true where a pupil enters grade nine in a member parochial or private junior high school or grade ten or above in a member parochial or private high school and then transfers to a member public high school. Upon transfer from the first member high school chosen to the second member school, he will be ineligible for competition in both athletic and literary contests or meets until he has been in the second school for one year from the date he enrolls in the second school.

Mississippi High School Athletic Ass'n, Article 1, Bylaws, §B.

19. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d at 772 (Miss. 1994). Coleman alleged that, as a result of Laymon being denied the right to participate in St. Joseph's first game, her son would suffer immediate and irreparable in-

judge issued a temporary restraining order²⁰ against the MHSAA.²¹ The MHSAA claimed that it had no knowledge of any action taken with regard to Laymon's eligibility.²² An evidentiary hearing was held, after which the trial judge issued a preliminary injunction ordering that the anti-recruiting rule not be applied to Laymon.²³

Another hearing was held and the trial court rendered its final opinion and order.²⁴ The court granted declaratory relief and a permanent injunction against enforcement of the rule "as it applied to Laymon and students similarly situated."²⁵ The trial judge found the anti-recruiting rule to be arbitrary and capricious, as well as overbroad, in that it applied to students who transferred to schools outside the district of their residence for reasons unrelated to athletics.²⁶ The MHSAA appealed the trial court's granting of the TRO, the preliminary injunction, the permanent injunction and declaratory relief.²⁷

The Supreme Court of Mississippi first turned to the issue of mootness. The court held that the question of whether the trial court erred in granting the relief sought was clearly moot as to Laymon.²⁸ However, the court further held that this case

jury. *Id.* She also alleged that the MHSAA's eligibility rules had no rational basis when applied to parochial school students. *Id.*

20. *Id.* at 772. A temporary restraining order may be granted, without notice to the adverse party or his attorney if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and reasons supporting his claim that notice should not be required. Miss. R. Civ. P. 65(b).

21. *Id.* The TRO required the MHSAA to allow Laymon to play in St. Joseph's season opener as well as subsequent games. *Id.*

22. *Id.* The TRO had been issued without notice and the MHSAA denied any awareness of the Laymon situation until receipt of the TRO. *Id.* However, the MHSAA, in accordance with its anti-recruiting rule, did claim that Laymon's residence outside of the Jackson Municipal Separate School District disqualified him from participation in varsity basketball for the 1990-91 school year. *Id.* The anti-recruiting rule also barred Laymon from participation in any interscholastic activities for that year. *Id.*

23. *Id.*

24. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d at 778 (Miss. 1994).

25. *Id.*

26. *Id.* at 778.

27. *Id.*

28. *Id.* Laymon had challenged the MHSAA decision that he was ineligible for the 1990-91 school year. *Id.* The trial court's granting of temporary and permanent injunctions against application of the eligibility regulation to Laymon allowed him to partici-

presented an exception to the mootness doctrine because it was "capable of repetition yet evading review".²⁹

With regard to the constitutional issues raised by the Coleman suit, the court determined that the conduct of the MHSAA constituted state action for purposes of constitutional review.³⁰ The court further held that Laymon lacked a recognizable property interest³¹ and, therefore, could not claim a denial of procedural due process.³² As to Coleman's substantive due process claims of violation of the right to travel and the free exercise of religion, the court reasoned that neither of these fundamental rights had been infringed by the MHSAA's anti-recruiting rule.³³ In considering the equal protection and overbreadth claims made by Coleman, the court once again concluded that the absence of any fundamental right precluded

pate in interscholastic athletics for that year. *Id.* The case reached the Supreme Court of Mississippi in 1994, long after Laymon had participated in the disputed year. *Id.*

29. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d at 778 (Miss. 1994). See also *Strong v. Bostick*, 420 So. 2d 1356 (Miss. 1982) (court held questions on appeal were not moot merely because period in which hunting deer with dogs was prohibited had expired). See *infra* notes 35-40 and accompanying text.

30. *Id.* at 774. The court found that Miss. CODE ANN. §37-7-301(q) confers the power to regulate interscholastic athletic programs upon the local school boards who then delegate the power to the MHSAA. *Id.* The statute provides, in relevant part:

The school boards of all school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit: . . .

(q) To provide and regulate athletic programs and other school activities.

Id. (citing Miss. CODE ANN. §37-7-301(q) (1972)).

Furthermore, the Supreme Court of Mississippi has been confronted with the question of state action and the MHSAA before. *Id.* In addressing a due process claim in *Mississippi High School Activities Ass'n, Inc. v. Farris*, the court held that the MHSAA derives its authority from state legislation and is thus a state actor. *Mississippi High School Activities Ass'n, Inc. v. Farris*, 501 So. 2d 393, 396 (Miss. 1987). Also, in *Laurenzo v. Mississippi High School Activities Ass'n, Inc.*, the United States Court of Appeals for the Fifth Circuit held that MHSAA regulations constitute state interference with a student's participation in sports. *Laurenzo v. Mississippi High School Activities Ass'n, Inc.*, 662 F.2d 1117 (5th Cir. 1981).

31. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 774 (Miss. 1994). The court has held previously, in *Mississippi High School Activities Ass'n, Inc. v. Farris*, that a due process claim must involve the denial of a property interest previously recognized and protected by the state. *Mississippi High School Activities Ass'n, Inc. v. Farris*, 501 So. 2d 393, 396 (Miss. 1987). The *Farris* court also held that participation in interscholastic athletics is not a protected property interest or right. *Id.* at 396-97.

32. *Id.*

33. *Id.* The court held that when subjected to a substantive due process challenge, the state action at issue will be upheld when no fundamental right has been infringed. *Id.* The statute or rule at the core of the state action must only bear reasonable relation to the state's legitimate purpose. *Id.* at 774.

challenge, provided that the anti-recruiting rule was rationally related to a legitimate state interest.³⁴

B. Prior Law

1. Justiciability of Moot Questions

The *Coleman* court determined that while the constitutionality of the MHSAA's anti-recruiting rule was moot as to Laymon, the case nonetheless fit the "capable of repetition yet evading review" exception to the mootness doctrine.³⁵ The Supreme Court of Mississippi first adopted this exception to the mootness doctrine in *Strong v. Bostick*.³⁶ The *Strong* court utilized the two part test first enunciated by the United States

34. *Id.* *Coleman* argued that the MHSAA's anti-recruiting rule created two classes of student-athletes: those who attended high school within their district and those who did not. *Id.* *Coleman* further argued that members of the class who attended school outside of the district of their residence were denied equal protection of the laws when their athletic eligibility was suspended. *Id.* The court, however, determined that where no fundamental right was at stake, classifications of persons must only rationally relate to a legitimate state purpose. *Id.* In the absence of any restraint on a fundamental right, the state is not required to use the least restrictive method of carrying out its objective. *Id.* at 776.

35. *Id.* In *Southern Pacific Terminal Co. v. Interstate Commerce Comm'n*, the United States Supreme Court first explained the rationale behind this exception. *Southern Pacific Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498 (1911). In deciding whether a suit to enjoin the enforcement of an order of the Interstate Commerce Commission was moot because the order had expired, the Court explained that because the rights held by a plaintiff before the commencement of an action may expire before a judgment is obtained, there is a necessity for an exception to the mootness doctrine. *Id.* at 515-16. The Court further opined that an exception should attach where adjudication can no longer affect the rights of the parties involved, but deciding a question of law can serve as a guide when similar matters arise in the future. *Id.* at 516.

Issues do not become moot as a result of the non-existence of a present controversy provided they are "capable of repetition, yet evading review". *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION* 1279 (Leonard W. Levy et al. eds., 1986). A controversy has become "too short in duration to be fully litigated", as the test has come to be known, when it arises sporadically yet does not persist long enough to be judicially reviewed. *Id.* The test is further satisfied if the same controversy, while "too short in duration to be fully litigated," arises repeatedly threatening the same plaintiffs or those similarly situated with the same challenged action. *Id.*

36. 420 So. 2d 1356 (Miss. 1982). The *Strong* court reasoned that while an appeal will be dismissed when no purpose is served by its adjudication, there is an overriding exception to the general rule. *Id.* (citing *Sartin v. Barlow*, 16 So. 2d 372 (Miss. 1944)). The doctrine which prevents adjudication of moot questions will not be applied when resolution of an issue serves a bona fide public interest. *Id.* Strict application of the doctrine can, when resolution of an issue seems largely academic, operate as a detriment to the public interest when dismissal of an appeal results in a failure to set up a framework for which to resolve similar questions in the future. *Id.* at 1359.

Supreme Court in *Weinstein v. Bradford*³⁷ for determining when cases fit this exception to the mootness doctrine.³⁸ Subsequently, in *M.A.C. v. Harrison County Family Court*,³⁹ the Supreme Court of Mississippi modified the test from *Strong* and *Weinstein* to account for the unavailability of the class action in Mississippi.⁴⁰ The test, subsequent to the modifications of *M.A.C.*, requires that (1) the duration of the challenged action must have been short, and (2) the time required to complete an appeal is lengthy.⁴¹

2. State Action

Central to any valid constitutional challenge is the requirement that the alleged violation be the result of state action.⁴²

37. 423 U.S. 147, 148 (1975). In *Weinstein*, the United States Supreme Court first enunciated the test for determining when a controversy fit the "capable of repetition, yet evading review" exception to the mootness doctrine. *Id.* at 148. The Court held that invocation of the exception was to be limited to instances where (1) the action complained of is too short in duration to be fully litigated and (2) there is reasonable expectation that the same complaining party will be subject to the action again. *Id.* at 148.

38. *Strong*, 420 So. 2d at 1359. The *Strong* court explained that the capable of repetition, yet evading review exception to the mootness doctrine, although first enunciated in 1911 in *Southern Pacific* was still sound jurisprudence. *Id.* See *supra* notes 35, 37 and accompanying text.

39. 566 So. 2d 472 (Miss. 1990).

40. *Id.* As a result of the unavailability of the class action, the court dropped the second prerequisite and subsequently applies the first as though it were two separate factors. *Id.* The court determined that the second prerequisite would operate to exclude some controversies because the complaining party may not be subject to the same action again, however, adjudication would serve an important public function. *Id.* Absent the class action, the second prerequisite from *Strong* served to further limit cases that were capable of repetition, yet evading review. *Id.*

41. *Id.*

42. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 773 (Miss. 1994). In determining whether an action constitutes state action for purposes of the Fourteenth Amendment, the court must determine whether there is a sufficiently close nexus between the regulated entity's action and the state so that the action of the entity may be treated as that of the state. *Jackson v. Metropolitan Edison*, 419 U.S. 345, 351 (1974).

Before application of the rules of a high school athletic association to a student-athlete can be challenged under the Constitution, the actions taken by the association must first be legally recognized as state action. STEVEN C. WADE & ROBERT D. HAY, *SPORTS LAW FOR EDUCATIONAL INSTITUTIONS* 5 (1988). Generally, the federal courts have extended the range of authorities subject to the Fourteenth Amendment by broadly interpreting the concept of state action. *Id.* Consequently, because they are acting with authority derived from state legislation, high school administrators or high school athletic associations are state actors under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. *Id.*

Even where state action is found to exist, the party challenging the action under

The Mississippi Legislature has delegated the power to regulate interscholastic athletics to the local school boards.⁴³ The local school boards have subsequently delegated this regulatory power to the MHSAA.⁴⁴

Previously, in *Mississippi High School Activities Ass'n, Inc. v. Farris*,⁴⁵ the Supreme Court of Mississippi held that in contracting with the MHSAA for membership, the local school boards delegated the authority to regulate athletics to the MHSAA.⁴⁶ The *Farris* court determined that the contract terms were contained in the bylaws of the Association, and that by providing a framework for regulating the interscholastic athletic programs of its member schools, the MHSAA was a state actor.⁴⁷ Moreover, in *Laurenzo v. Mississippi High School Activities Ass'n, Inc.*,⁴⁸ the United States Court of Appeals for the Fifth Circuit implied that application of the MHSAA regulations constituted state action for purposes of constitutional review.⁴⁹

3. Due Process

Due Process has been defined as a course of legal proceedings which have been established in our system of jurisprudence for the protection and enforcement of private rights.⁵⁰

the Fourteenth Amendment must yet show that the action constitutes a denial or deprivation of a constitutionally protected interest. *Flagg Bros. v. Brooks*, 436 U.S. 149, 155 (1978). In raising a constitutional challenge by claiming a deprivation of rights, the challenger must establish two elements: (1) a denial or deprivation of a right protected by the Constitution or laws of the United States, and (2) that the deprivation took place under color of state authority. *Id.* at 155-56.

43. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 774 (Miss. 1994).

44. *Id.*

45. 501 So. 2d 393 (Miss. 1987).

46. *Id.* at 396.

47. *Id.*

48. 662 F.2d 1117 (5th Cir. 1981).

49. *Id.* at 1119.

50. See WONG, *supra* note 1, at 206. The Fifth and Fourteenth Amendments to the United States Constitution provide for a guarantee that neither the federal government nor the state governments will deny any person life, liberty or property without due process of law. (discussing U.S. CONST. amends. V & XIV). The Fifth and Fourteenth Amendments apply only to governmental action or action taken under color of state authority. *Id.* Purely private entities are not subject to the restraints imposed by the Due Process Clauses. *Id.* While all persons are afforded the protection of the Due Process Clauses, the protection is limited in that a person must actually establish state deprivation of life, liberty or property. *Id.* (citing *Pennoy v. Neff*, 95 U.S. 714 (1877)).

Due Process analysis involves two inquiries.⁵¹ First, procedural due process requires that a framework be put in place to ensure fair application of rules, regulations, or laws.⁵² Second, substantive due process protects the fundamental rights of citizens against governmental action.⁵³

a. Procedural Due Process

In *Daniels v. Williams*,⁵⁴ the United States Supreme Court, while acknowledging that the state may not deprive a citizen of due process of law, held that due process guarantees apply only to intentional actions of government officials which deprive a person of life, liberty, or property.⁵⁵ Essentially, even where a protected liberty or property interest exists, the Constitution offers protection only in the face of deliberate governmental action.⁵⁶ If there exists no previously recognized liberty or property interest, there can be no violation of procedural due process.⁵⁷

In *Logan v. Zimmerman Brush Co.*,⁵⁸ the United States Supreme Court formulated a test to determine whether a pro-

51. See WONG, *supra* note 1, at 207.

52. *Id.*

53. *Id.*

54. 474 U.S. 327 (1986). Daniels brought an action under 42 U.S.C. §1983 for injuries resulting from a fall on a prison stairway. *Id.* Daniels alleged that he slipped on a pillow negligently left on the stairs by a correctional officer and that the officer's negligence deprived him of his liberty interest in freedom from bodily injury without due process of law in violation of the Fourteenth Amendment. *Id.*

55. *Id.* at 331. The *Daniels* Court went on to state that traditionally, due process is intended to secure the individual from the arbitrary exercise of government power. *Id.* Due Process provides for certain restraints on government actors when they decide to deliberately deprive a citizen of a fundamental right. *Id.* These restraints ensure that such decisions will be made with fairness and equality. *Id.* Furthermore, the complete ban on certain governmental actions regardless of the existence of the Due Process Clause "serves to prevent governmental power from being used for purposes of oppression". *Id.*

56. *Id.*

57. *Id.* See *Mississippi High School Activities Ass'n, Inc. v. Farris*, 501 So. 2d 393, 398 (Miss. 1987) (court held that for a liberty or property interest to rise to the level of a constitutionally protected interest, there must be more than a mere need or desire for it). A unilateral expectancy on the part of the individual is also inadequate to implicate procedural due process. *Id.* The court reasoned that a constitutionally protected property interest is one in which the individual has a claim of entitlement either through constitutional or statutory mandate. *Id.* The court concluded, however, that participation in interscholastic athletics is not a property interest protected by the Fourteenth Amendment to the United States Constitution or Art. 3, Sec. 14 of the Mississippi Constitution. *Id.*

58. 455 U.S. 422 (1982).

tected property interest exists in a legal proceeding.⁵⁹ The *Logan* Court developed a two pronged test to be applied when analyzing a procedural due process claim: (1) whether the party had a property interest of which he was deprived, and (2) if he was deprived of a property interest, what process was due.⁶⁰

The Supreme Court of Mississippi has ruled that participation in interscholastic athletics is not a protected property interest, but rather a unilateral expectation⁶¹ on the part of the student-athlete.⁶² Consequently, the guarantees provided by the Due Process Clauses of the Fifth and Fourteenth Amend-

59. *Id.* In *Logan*, the plaintiff filed a complaint against his employer under the Illinois Fair Employment Practices Act, which barred employment discrimination on the basis of physical handicap unrelated to ability. *Id.* at 422. The complaint alleged that Logan's employment was terminated because his short left leg made it impossible for him to perform his duties as shipping clerk. *Id.* Logan made his complaint in a timely manner under the statute. *Id.* However, the Illinois Supreme Court decided that the Employment Commission's failure to adhere to certain statutory requirements defeated Logan's cause of action. *Id.*

60. *Id.* at 428. The *Logan* Court further held that in answering the second part of the due process two-part inquiry, Logan was entitled to whatever adjudicatory procedures were provided for in the Fair Employment Practices Act. *Id.*

In *Cleveland Bd. of Educ. v. Loudermill*, the United States Supreme Court held that due process requires appropriate notice and the opportunity to be heard prior to the governmental deprivation of life, liberty or property. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985). The root requirement of due process is that an individual be given a hearing before he is deprived of any significant or protected property interest. *Id.* Thus, the *Loudermill* Court determined that due process requires that an employee with a constitutionally protected property interest in continued employment be afforded a hearing before his employment is terminated. *Id.* The Court was clear, however, in stating that these due process requirements arise only when there is a deprivation of a constitutionally or statutorily protected right. *Id.* In *Loudermill*, Ohio statutory law had conferred upon the plaintiff a property interest in continued employment. *Id.* The Court held that once the state confers such an interest, it may not constitutionally deprive an individual of the protected interest without proper procedure. *Id.*

Similarly, in *Goldberg v. Kelly*, the Court reasoned that where a vital government entitlement, such as welfare assistance, was at issue, the potential for serious injury to the recipient requires that the individual have an opportunity to prove his termination is inappropriate. *Goldberg v. Kelly*, 397 U.S. 254 (1970). The Court explained that where the recipient is condemned to suffer grievous loss, the extent of due process requirements is determined by whether the recipient's interest in avoiding such loss outweighs the government's interest in administrative expediency. *Id.*

61. *Farris*, 501 So. 2d 393. Black's Law defines "expectancy" applied to property as "contingency as to possession, that which is expected or hoped for . . . and hardly reaches the height of a property right, much less a vested right, because where there is no obligation there is no right." BLACK'S LAW DICTIONARY 399 (6th ed. 1990). Conversely, property or property interest is defined as "that which is peculiar or proper to any person; that which belongs exclusively to one." *Id.* at 845.

62. *Id.* at 396.

ments are not available to a plaintiff claiming a deprivation of procedural due process because he has been denied the opportunity to participate in interscholastic athletics.⁶³

b. Substantive Due Process

In lodging a substantive due process⁶⁴ challenge, the plaintiff must establish that the rule or regulation is invalid under the circumstances.⁶⁵ Athletic association rules denying eligibility for participation in interscholastic athletics to students who have transferred to a school outside the district of their parents' or guardian's bona fide residence have consistently been upheld by the courts as valid regulations.⁶⁶

63. *Id.*

64. Substantive due process requires that state action which deprives a citizen of life, liberty or property have a rational basis. *Jeffries v. Turkey Run Consol. School Dist.*, 492 F.2d 1, 3 (7th Cir. 1974). In other words the reason for the deprivation must not be so inadequate as to cause the judiciary to label it as arbitrary. *Id.* The absence of any showing by plaintiff that a fundamental interest in liberty or property has been infringed is fatal to a substantive due process argument. *Id.*

65. *Reno v. Flores*, 113 S.Ct. 1439 (1993). The *Reno* Court held that the doctrine of substantive due process precludes governmental infringement of fundamental liberty interests unless narrowly tailored to serve a compelling state interest. *Id.* Absent a fundamental right, a statute, rule or regulation will be upheld as long as it bears reasonable relation to a legitimate state end. *Turrentine v. Brookhaven, Mississippi School Dist.*, 794 F. Supp. 620, 624 (S.D. Miss. 1992).

66. Don F. Vaccaro, Annotation, *Validity of Regulation of Athletic Eligibility of Students Voluntarily Transferring From One School to Another*, 15 A.L.R. 4th 885, 886 (1993). The author notes:

Reflecting the view that participation in interscholastic athletics is not a right but a privilege subject to reasonable regulation, the courts which have expressly considered the matter have broadly recognized that rules dealing with the athletic eligibility of transfer students serve a legitimate function in seeking to deter the recruitment of student athletes and the changing of schools by students for athletic reasons. In a number of cases, the courts have been called upon to determine the validity of such regulations, challenged on a variety of constitutional grounds, including equal protection, freedom of religion, the right to travel, and due process of law.

Id.

In *Walsh v. Louisiana High School Athletic Ass'n*, the court upheld a transfer rule that imposed a one year period of ineligibility for athletic participation on students who had transferred to a school outside of their home district. *Walsh v. Louisiana High School Athletic Ass'n*, 616 F.2d 152 (5th Cir. 1980), *reh'g denied*, 621 F.2d 440, *cert. denied*, 449 U.S. 1124 (1980). Noting that the rule did not impinge upon either the parents' or the students' right to freely exercise their religion, the court held that the incidental burden on free exercise was justified by the state's interest in discouraging interscholastic recruiting of high school athletes. *Id.* The court further held that due process was not implicated because participation in a single year of athletics amounted only to a mere expectation, not a constitutionally protected guarantee. *Id.* The court explained that due process is required when the individual is deprived of life, liberty or property rights that

i. Right To Travel

Federal and state courts have long recognized the right to interstate travel as a fundamental right guaranteed by the

carry a legitimate claim of entitlement, but not when the deprivation involves lesser rights or mere expectations. *Id.*

Considering an equal protection challenge, the court in *Kulovitz v. Illinois High School Ass'n*, upheld a transfer rule that provided an exception for students who transferred to a district where their parents or guardians resided. *Kulovitz v. Illinois High School Ass'n*, 462 F. Supp. 875 (N.D. Ill. 1978). An 18 year old transfer student challenged the exception on equal protection grounds because, since he was 18 and a legally emancipated adult, he could not acquire a guardian in the district he transferred to, and was thus deemed ineligible. *Id.* The student transferred to the district of his grandmother's residence and lived with her, however, she could not legally be appointed his guardian. *Id.* The court determined that while students below the age of 18 could avoid the transfer rule by acquiring a guardian in the new district, the harsher treatment of 18 year old students was justified by the stated objectives of the transfer rule. *Id.* Reasoning that an 18 year old student, having reached the age of majority, was more free to transfer from district to district, the court ruled that the association's transfer rule required more vigilant treatment of 18 year old students in order to deter recruiting and district hopping. *Id.*

A classification does not violate equal protection provided there is a rational relation between the classification and the proffered objective of the state. *Barnhorst v. Missouri State High School Activities Ass'n*, 504 F. Supp. 449 (W.D. Mo. 1980). The *Barnhorst* court also held that the rule was not underinclusive because it applied only to interscholastic athletic competitors and not to non-athletic interscholastic competitors. *Id.* The court explained that the history of recruiting abuses in the athletic context, and the absence of such a history in non-athletic interscholastic activities justified the exclusion of the latter. *Id.*

In *Scott v. Kilpatrick*, the court considered whether the speculative possibility of a student-athlete winning an athletic scholarship provided a basis for finding that the student has a protected property interest in high school athletic participation. *Scott v. Kilpatrick*, 237 So. 2d 652 (Ala. 1970). The court held that the student was not deprived of a protected property interest by the application of the transfer rule. *Id.* Reasoning that interscholastic athletic participation is merely a privilege, the court held that such a privilege is subject to reasonable regulation. *Id.*

In stark contrast to the aforementioned cases, the Supreme Court of Indiana, in *Sturup v. Mahan*, held that a transfer rule was overbroad in violation of the Equal Protection Clause. *Sturup v. Mahan*, 305 N.E.2d 877 (Ind. 1974). The court, while conceding that the rule was rationally related to its stated objective of preventing odious recruiting, held that by grouping together students who transferred for reasons unrelated to athletics with students who transferred for athletic reasons created an overinclusive class. *Id.*

Similarly, in *Sullivan v. University Interscholastic League*, the Supreme Court of Texas invalidated a transfer rule as violative of equal protection. *Sullivan v. University Interscholastic League*, 616 S.W.2d 170 (Tex. 1981). The court ruled that while discouraging interscholastic recruiting was a legitimate state purpose, the rule was overbroad and overinclusive. *Id.* The court explained that under equal protection analysis, a classification must encompass all those similarly situated with regard to its purpose. *Id.* The court ruled, however, that the rule at issue broadly affected students who were not similarly situated, and thus created an overinclusive class in violation of equal protection. *Id.*

United States Constitution.⁶⁷ As with any fundamental right, governmental interference with the right to travel must withstand strict scrutiny upon review.⁶⁸ In *Attorney General of New York v. Soto-Lopez*,⁶⁹ the United States Supreme Court reasoned that only when a statute deters or impedes travel as its primary objective, or utilizes a classification which penalizes specific groups for exercising their right to travel, is this fundamental right implicated.⁷⁰ The *Soto-Lopez* Court also held that temporary deprivation of important rights or benefits constituted a penalty.⁷¹ Further, the Court stated that a penalty could also take the form of a permanent deprivation of a less important right.⁷²

ii. Free Exercise of Religion

In *Employment Division v. Smith*,⁷³ the Supreme Court al-

67. See *Ward v. Maryland*, 12 Wall. 418, 430 (1871); *Paul v. Virginia*, 8 Wall. 168, 180 (1869) (right to interstate travel based upon the Privileges and Immunities Clause of Art. IV, § 2).

68. *Dunn v. Blumstein*, 405 U.S. 330, 342 (1972). The United States Supreme Court affirmed a decision of the District Court invalidating a Tennessee statute which required one year of residency in the state before allowing an individual the right to vote. *Id.* The Court held that the statute impermissibly penalized some Tennessee residents because of recent interstate movement. *Id.* Since the statute infringed a fundamental right, interstate travel, the state must justify the residency requirement by showing that it furthers some compelling state interest. *Id.* The Court determined that Tennessee failed to establish a sufficient nexus between its interest in an informed electorate and the residency requirement. *Id.* The Court further held that, without a showing of compelling state interest, Tennessee was required to use the least restrictive method for determining residence. *Id.* The state could not simply presume non-residence from failure to satisfy the residency requirement provided in the statute. *Id.* at 330.

69. 476 U.S. 898 (1986). The United States Supreme Court considered the constitutionality of provisions of the New York Constitution and Civil Service Law which granted a civil service employment preference to honorably discharged Armed Forces veterans. *Id.* The Court held that the interests offered by the state in justifying the employment preference did not withstand strict scrutiny because the enumerated goals could be achieved with equal success by awarding the additional points to all veterans of the Armed Services who were currently New York residents. *Id.*

70. *Id.*

71. *Id.* at 907. The Court identified some important rights, namely welfare assistance, medical care and the right to vote. *Id.*

72. *Id.* at 909. In *Soto-Lopez*, New York State permanently deprived citizens of a less important right: veterans' credits which provide preferential treatment in the procurement of civil service employment. *Id.* The Court held, in an opinion by Justice Brennan, that because New York could accomplish its stated goals without penalizing those who have exercised their fundamental right to travel by awarding the additional credits to all qualified veterans, the state was not free to attempt to achieve its goals through a preference system which incorporated a prior residency requirement. *Id.* at 910.

73. 494 U.S. 872 (1990).

lowed for state interference with the free exercise of religion, a constitutionally protected fundamental right, provided that the regulation did not intend to abridge the rights afforded by the Free Exercise Clause.⁷⁴ Similarly, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,⁷⁵ the Court held that where a regulation is neutral and general in its application, it does not violate free exercise although it may restrict religious expression.⁷⁶ The state need not show compelling justification for neutral, generally applicable laws or regulations.⁷⁷

4. Equal Protection

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids discriminatory application of state law in various contexts.⁷⁸ Once the court determines that state action exists, the state actor is then subject to the restraints imposed by equal protection.⁷⁹ In *Dunn v. Blumstein*,⁸⁰ the Court was confronted with state law that abridged the fundamental right to vote as a result of a classification based on another fundamental right, interstate travel.⁸¹

74. *Id.* at 882. The Court, in upholding an Oregon law disqualifying applicants for unemployment compensation who were discharged for misconduct, held that rules or regulations that incidentally impinge upon the free exercise of one's religion do not implicate the Free Exercise Clause of the First Amendment. *Id.* at 878. Further, the Court agreed that while the free exercise of religion is a constitutionally protected guarantee, the use of peyote in a religious ceremony in violation of state drug laws was not protected activity within the meaning of the First Amendment. *Id.* at 890.

75. 113 S.Ct. 2217 (1993). In *Lukumi Babalu Aye*, the Court addressed the church's constitutional challenge to a series of Hialeah, Florida city ordinances which effectively outlawed the church's practice of ritual animal sacrifice. *Id.* The Court found that the series of city enactments were not neutral, but specifically targeted toward the practices of Santeria, the religion of the Lukumi Babalu Aye. *Id.* The Court held that each of the city's ordinances prohibited only conduct motivated by religious practices, thereby violating the requirement that laws burdening the practice of religion be generally applicable. *Id.*

76. *Id.* at 2225-26.

77. *Employment Div. v. Smith*, 494 U.S. 872, 886 (1990).

78. *Strauder v. West Virginia*, 100 U.S. 303 (1879).

79. GLENN M. WONG, *ESSENTIALS OF AMATEUR SPORTS LAW* 221 (1994).

80. 405 U.S. 330 (1972).

81. *Id.* Governmental infringement of a fundamental right, in *Dunn* the right to vote, or classifications drawn based on the exercise of a fundamental right, for example, the right to interstate travel, require strict scrutiny on review. See *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 258 (1974) (Court invalidated a statute requiring one year's residence in a county before being eligible for non-emergency medical care at a county facility). Strict scrutiny requires that the government make a showing that the

The *Dunn* Court has articulated three inquiries to be made in analyzing an equal protection challenge: (1) the character of the classification in question, (2) the individual interests affected by the classification, and (3) the governmental interests asserted in support of the classification.⁸² Strict scrutiny, the highest level of review, is triggered when state law either creates a suspect classification or impinges upon a fundamental right.⁸³ Gender based classifications are subject to an intermediate level of scrutiny.⁸⁴ Any classification employed by a statute or regulation must, at the very least, rationally relate to a legitimate state purpose.⁸⁵

The classifications employed by the MHSAA's anti-recruiting rule are based upon residency or non-residency in the school district where a student wishes to compete in interscholastic athletics.⁸⁶ While the United States Supreme Court has frequently struck down statutes that condition receipt of a ben-

infringement of fundamental rights or the creation of a suspect class resulting from the challenged statute is necessary to further a compelling state interest. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 459 (1988).

82. *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972).

83. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1988). In *United States v. Carolene Products*, Justice Stone first outlined the basis for what is now strict scrutiny review in his famous footnote:

Prejudice against discrete and insular minorities may be a special condition which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.

United States v. Carolene Products, 304 U.S. 144 n.4 (1938).

Derived explicitly from constitutional provisions are a number of fundamental rights which include such First Amendment guarantees as freedom of religion, speech, and press, as well as the right to assemble and to petition the government for redress. See WONG, *supra* note 1, at 222 (1994). The Supreme Court of the United States has also identified three implied fundamental rights derived from the Constitution, namely the right to vote, travel, and privacy. *Id.*

Education is among those interests found to be non-fundamental. *Id.* While the right to an education is afforded some constitutional protection, it is easier for the state to impinge upon the right to education than upon those fundamental rights mentioned above. *Id.* Because education is a non-fundamental interest, it is nearly impossible to establish athletic participation as a fundamental interest. *Id.*

84. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 459 (1988). Intermediate scrutiny requires that the state show that the classifications employed are necessary to advance a substantial state interest. *Id.*

85. *Id.* at 458. Under rational relation review, the state is not required to use the least restrictive means of achieving its objective because no fundamental right is at stake. *Id.*

86. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 777 (Miss. 1994).

effit upon durational residency,⁸⁷ the Court has distinguished and approved bona fide residence requirements.⁸⁸ Moreover, in *Vlandis v. Kline*⁸⁹ the Court has approved bona fide residence requirements specifically with regard to public education.⁹⁰

C. *Opinion of the Court*

Anti-recruiting rules remain consistently controversial as a result of the general disagreement over how strictly such rules should be drawn and subsequently applied.⁹¹ While anti-recruiting or transfer rules are generally promulgated to deter athletic-related student transfers and improper recruiting practices, their practical application casts a much wider net.⁹²

87. See *Shapiro v. Thompson*, 394 U.S. 618 (1969) (Court invalidated one-year durational residency requirement that applicants for public assistance benefits were required to satisfy).

88. *Id.* See *Martinez v. Bynum*, 461 U.S. 321, 328-29 (1983) (Bona fide residency requires that the individual requesting state services move into the state and establish residency prior to demanding any services offered by the state's government.) See also *Vlandis v. Kline*, 412 U.S. 441 (1973) (preferential tuition for residents based upon bona fide residency held not to be a violation of equal protection).

In *Martinez*, the Court explained that it had frequently considered constitutional challenges to residency requirements and had invalidated those that conditioned receipt of a benefit on minimum periods of residency in the jurisdiction where the benefit is sought. *Martinez*, 461 U.S. at 325. The Court continued, however, to clarify that it has been diligent in distinguishing durational residency requirements from bona fide residence requirements. *Id.* In *Shapiro*, the Court invalidated durational residency requirements which were a prerequisite to the receipt of public assistance benefits. *Shapiro v. Thompson*, 394 U.S. 618 (1969). Justice Brennan, writing for the *Shapiro* Court, stressed that durational residency requirements and bona fide residence requirements were distinct and independent prerequisites. *Id.*

89. 412 U.S. 441 (1973).

90. *Id.* at 453. The *Vlandis* Court held that in the context of public education, a bona fide residence requirement furthered the state's substantial interest in assuring that services provided for its residents were enjoyed only by residents. *Id.* The Court reasoned, however, that the requirement must be appropriately defined and uniformly applied in order to pass constitutional muster. *Id.* Accordingly, the Court held that a bona fide residence requirement for attendance in public schools does not offend the Equal Protection Clause. *Id.* at 453-454. The requirement does not burden interstate travel because any person can travel freely into the state, but cannot avail him or herself of the state services without first establishing residence. *Id.*

91. John C. Weistart, *Rule-Making in Interscholastic Sports: The Bases of Judicial Review*, 11 J. of L. & Educ. 294 (1982).

92. *Id.* at 294-95. Typical anti-recruitment rules provide for a one year suspension of athletic eligibility if the student-athlete's transfer falls within the prohibitions of the applicable rule. *Id.* These rules vary, however, from association to association, in the definition of what is a proper transfer. *Id.* Transfers are generally permitted if there is a concomitant change in the bona fide residence of the parent(s) or guardian. *Id.* Stricter

In deciding *Coleman*, the Supreme Court of Mississippi was unmoved by the foregoing concerns and had little difficulty in finding the MHSAA's anti-recruiting rule constitutional and enforceable.⁹³

1. Justiciability of Moot Questions

Writing for a unanimous court, Presiding Justice Prather commenced his opinion by addressing the mootness issue.⁹⁴ This appeal came before the Supreme Court of Mississippi in 1994 from a decision rendered late in 1990 allowing Laymon to participate in high school athletics during the 1990-91 school year.⁹⁵ After determining that the issues in the case at bar were clearly moot as to Laymon, the court applied the "capable of repetition, yet evading review" exception to the mootness doctrine.⁹⁶ The court explained that the exception outlined in *Strong v. Bostick* is only applicable in very limited situations, namely those where the (1) the duration of the challenged action must have been short and (2) the time required to complete an appeal is lengthy.⁹⁷

The court agreed with the assessment of the United States Court of Appeals for the Fifth Circuit that one year athletic ineligibility rules satisfy the "too short in duration to be fully

regulations, however, do not provide for this exception, even where the student-athlete has transferred from another state as a result of a change of employment of either parent. *Id.* While many associations apply their respective anti-recruitment rules on a case by case basis, in all situations the central purpose of the inquiry is to determine whether or not the student-athlete has been subjected to inappropriate recruiting pressures. *Id.* The case by case approach, however, provides the most equitable solution to the problem of interscholastic recruiting. *Id.* The student who has not been recruited would still have the opportunity to participate in athletics. *Id.* The rules imposing ineligibility in all cases, are more crude regulations which affect both recruited students and those who transferred for reasons wholly unrelated to athletics. *Id.*

93. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d 768, 778 (Miss. 1994). The court concluded that because the state's action had not deprived Laymon of any constitutionally protected property interest, no procedural due process analysis was required. *Id.* The court further held that regarding substantive due process, the anti-recruiting rule was a rational means of achieving a legitimate state end, and absent any burden on the right to travel or regulation of the student-athlete's right to the free exercise of his or her religion, the rule was not required to withstand strict scrutiny. *Id.*

94. *Id.* at 771. See *supra* notes 35-40 and accompanying text.

95. *Id.* at 772. The lower court granted Coleman's petition for preliminary injunction which allowed Laymon to participate in the 1990-91 basketball season. *Id.*

96. *Id.* See *supra* notes 35-40 and accompanying text.

97. Mississippi High School Activities Ass'n v. Coleman, 631 So. 2d 768, 772 (Miss. 1994).

litigated test"⁹⁸ and concluded that proper application of the *M.A.C.* test allowed this court to adjudicate the case.⁹⁹ The court held that the instant case was not moot because of the likelihood that the challenged action would be repeated.¹⁰⁰ The court further stated that holding this case moot would effectively prohibit the MHSAA from ever enforcing the one year ineligibility rule.¹⁰¹ If the student was granted relief in the chancery court each time the rule was applied, the length of time necessary for the Association to appeal would render every case moot and the propriety of the anti-recruiting rule might never be resolved.¹⁰²

2. State Action

After determining that it could properly adjudicate this case, the court next addressed the issue of state action.¹⁰³ The court briefly analyzed the issue and relied heavily upon prior decisions in determining that the MHSAA was indeed a state actor for purposes of constitutional review.¹⁰⁴ The court found further support for its position that the MHSAA was a state actor for purposes of constitutional analysis in the Mississippi State Code.¹⁰⁵ The court concluded that MHSAA activities constituted state action thus permitting constitutional challenge to the anti-recruiting rule.¹⁰⁶

98. *Id.* at 773 (citing *Walsh v. Louisiana High School Athletic Ass'n*, 616 F.2d 152, 157 (5th Cir. 1980), *cert. den.*, 449 U.S. 1124 (1981)). See *supra* note 66 and accompanying text.

99. *Id.* at 773.

100. *Id.*

101. *Id.*

102. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 773 (Miss. 1994). "[J]udicial review invariably takes more than nine months to complete." *Id.* (quoting *Hendrick Hudson Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176 n.9 (1982)).

103. *Id.* See *supra* notes 42-49 and accompanying text.

104. *Id.* The court indicated that its decision in *Farris* had implied that the MHSAA operates and acts under state authority. *Id.* (discussing *Farris*, 501 So. 2d at 396). The court further relied on the decision of the Fifth Circuit in *Laurenzo*, in which the court found that application of the MHSAA's regulations constituted state interference with the student's participation in athletics. *Id.* (discussing *Laurenzo*, 662 F.2d at 1119-20).

105. *Id.* at 774 (citing *MISS. CODE ANN. §37-7-301(q)* (1972)). The court found that the relevant section of the code conferred the power to regulate athletics on the local school boards who in turn delegated this authority to the MHSAA. *Coleman*, 631 So. 2d at 774. The court reasoned that the MHSAA's authority thus was derived from state legislation and rendered decisions made by the MHSAA state action for constitutional purposes. *Id.*

106. *Id.*

3. Procedural Due Process

The court applied the *Logan* test and found that procedural due process was not implicated in this case.¹⁰⁷ The court relied on its previous finding in *Farris* that participation in interscholastic athletics is not a protected right.¹⁰⁸ The court ruled that student-athletes were not entitled to participate in interscholastic athletics, but had merely a unilateral expectation to participate.¹⁰⁹ Absent a finding that athletic participation was a liberty or property interest protected by the Constitution, the court held that it is subsequently impossible to find that the state had deprived the athlete of procedural due process of law.¹¹⁰

4. Substantive Due Process

The court further rejected Coleman's substantive due process challenges alleging violations of both the fundamental right to travel and the right to free exercise of religion.¹¹¹

a. Right to Travel

Coleman argued that the anti-recruiting rule penalized her son for exercising the right to interstate travel in violation of the Due Process Clause.¹¹² The court agreed that the right to travel is impermissibly burdened if a penalty is imposed on one who exercises this right.¹¹³ The court held, however, that temporary athletic ineligibility was not a penalty under the circumstances.¹¹⁴

While the court analogized the deprivation of athletic eligibility to the deprivation of veterans' credits in *Soto-Lopez*,¹¹⁵ it reasoned that because the deprivation in *Soto-Lopez* was per-

107. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 774 (Miss. 1994). The court held that the deprivation of Laymon's eligibility did not satisfy the *Logan* two-part test which inquires: (1) whether the party has a property interest of which he was deprived and (2) if he was deprived of a property interest, what process was due him. *Logan v. Zimmerman Brush Co.*, 455 U.S. 428 (1982).

108. *Coleman*, 631 So. 2d at 774 (citing *Farris*, 501 So. 2d at 396-97).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Coleman*, 631 So. 2d at 775.

114. *Id.*

115. *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986). See *supra* notes 69-72 and accompanying text.

manent, it constituted a penalty cognizable under a due process analysis.¹¹⁶ The court continued by, holding that while the MHSAA's anti-recruiting rule might constitute a penalty if athletic participation were permanently denied, the temporary deprivation of this less important right was not a penalty.¹¹⁷

The court thus held that because the right to travel was not burdened, the MHSAA's anti-recruiting rule need only bear a rational relation to the state's objective of deterring odious recruiting practices.¹¹⁸ Strict scrutiny, the court reasoned, was not the required standard of review because the right to travel was only incidentally burdened as part of the rule's primary objective of regulating participation in interscholastic sports.¹¹⁹ The court found that the anti-recruiting rule was rationally related to the stated objective because it burdened that which it was meant to burden, participation in athletics.¹²⁰

If the classification employed by the MHSAA served to penalize individuals who exercised their fundamental right to interstate travel, then such a classification would be subject to strict scrutiny and would be required to serve a compelling state interest.¹²¹ The MHSAA rule, however, does not attach only after one has exercised his or her right to travel.¹²² Interstate travel is not necessary at all for the rule to be applied.¹²³ Under the regulation, a student-athlete is denied eligibility when he or she has transferred from a school within the district of the bona fide residence of their parent(s) or guardian to a school outside of the aforementioned district.¹²⁴ All such travel could be intrastate.¹²⁵ Absent a penalty such as tempo-

116. *Soto-Lopez*, *supra* note 69, at 898 (1986).

117. *Id.* The court held that the only penalty imposed upon Laymon was temporary athletic ineligibility. *Id.* The court identified a clear distinction between the denial of athletic eligibility and the deprivation of basic medical care, food, shelter or the right to vote. *Id.*

118. *Id.*

119. *Id.*

120. *See supra* notes 69-72 and accompanying text.

121. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768 (Miss. 1994), citing *Soto-Lopez*, 476 U.S. at 909-10.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

rary or permanent deprivation of an important right¹²⁶ or a burden on the fundamental right to travel, strict scrutiny review was not required with regard to the MHSAA rule's residence requirement.¹²⁷

b. Free Exercise of Religion

As with its analysis of the right to travel, the court once again focused on the anti-recruiting rule's contingent effect.¹²⁸ The court prefaced its remarks by stating that mere incidental effects on the free exercise of religion would not alone be sufficient to state a successful claim for a violation of substantive due process.¹²⁹ The court noted that the recent United States Supreme Court decision in *Employment Division v. Smith*¹³⁰ allowed for interference with religious practices in certain limited circumstances despite the fundamental right to free exercise.¹³¹

The court found that the anti-recruiting regulation did not directly interfere with any religious practice.¹³² The court went on to explain that even if the rule interfered with the free exercise of religion, the interference would be incidental and, as such, not violative of the Free Exercise Clause.¹³³

The court reasoned that the MHSAA's anti-recruiting rule did not prevent a student-athlete from attending the school of his or her choice, rather it simply mandated athletic ineligibility subsequent to a student's transfer to a school outside of the district of his or her bona fide residence.¹³⁴ The court found that because a student-athlete was still free to pursue a religion based education at the parochial school of his or her choice, the anti-recruiting rule did not regulate the student's conduct to the point of interference with the free exercise of his or her religion.¹³⁵

126. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768 (Miss. 1994).

127. *Id.* at 775.

128. *Id.*

129. *Id.*

130. 494 U.S. 872 (1990).

131. *Coleman*, 631 So. 2d at 775 (citing *Smith*, 494 U.S. at 882).

132. *Id.*

133. *Id.*

134. *Id.* at 776.

135. *Mississippi High School Activities Ass'n, Inc. v. Coleman*, 631 So. 2d 768, 776 (Miss. 1994).

5. Equal Protection

The court began its discussion of equal protection with a brief overview of the levels of scrutiny attendant upon any equal protection analysis.¹³⁶ As a result of its earlier findings that athletic participation was not a protected right, and that no fundamental rights were implicated by application of the MHSAA's rule, the court concluded that the rational basis test was the appropriate level of equal protection review.¹³⁷ It was necessary, however, for the court to first determine the character of the classification employed by the rule before reaching this conclusion.¹³⁸

The anti-recruiting rule created two classifications: residency and non-residency in the school district where athletic participation was denied.¹³⁹ The court reiterated that if based on the recent exercise of the right to travel, the rule would be appropriately reviewed under strict scrutiny.¹⁴⁰ The court, however, refuted Coleman's argument that her son's recent exercise of his right to travel placed him in a suspect class.¹⁴¹ In support of this conclusion, the court pointed out that a student need not travel to be subject to the one year suspension imposed by the MHSAA regulation.¹⁴²

The court further advanced its position that residency requirements do not create suspect classes by discussing the United States Supreme Court's treatment of residency requirements within the context of public education.¹⁴³ Bolstered by the decisions of the United States Supreme Court, the Mississippi Supreme Court flatly rejected any argument that bona fide residence requirement created classes of students who

136. *Id.*

137. *Id.*

138. *Id.* at 777. See *supra* notes 82-86 and accompanying text.

139. *Id.*

140. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d 768 (Miss. 1994) (citing *Dunn*, 405 U.S. at 335).

141. *Id.*

142. *Id.*

143. *Id.* Bona fide residence requirements are a valid means of achieving certain educational objectives and the Supreme Court has consistently approved bona fide residence requirements relating to public education. *Id.* See *Martinez v. Bynum*, 461 U.S. 321 (1983) (distinguishing durational residency requirements from bona fide residence requirements); *Plyler v. Doe*, 457 U.S. 202 (1982) (de facto residency requirement not violative of equal protection); *Vlandis v. Kline*, 412 U.S. 441 (1973) (Court approves bona fide residence requirement for preferential tuition).

were treated differently in violation the law.¹⁴⁴ As such, the MHSAA rule had to survive only rational basis review.¹⁴⁵

Coleman's overbreadth claim was, like the equal protection argument, dismissed because of the court's findings that no fundamental right had been infringed by the MHSAA's rule.¹⁴⁶ Even though the regulation sweeps widely enough to include students like Laymon who have enrolled in a school outside the district of their residence for reasons other than athletics, the absence of any violation of fundamental rights relieves the MHSAA from the requirement that the regulation be narrowly tailored to achieve the state's legitimate purpose.¹⁴⁷

III. CONCLUSION

The *Coleman* decision falls squarely in line with the majority of opinions that have discussed interscholastic anti-recruiting rules. Reliance on *Martinez* and *Vlandis* for the proposition that bona fide residence requirements do not create suspect classifications seems appropriate in the context of athletic participation. Had the *Coleman* court decided that the MHSAA's anti-recruiting rule was unconstitutional and unenforceable they would have, in effect, placed athletic participation over education. Affording constitutional protection to athletic participation, while education remains a non-fundamental right would seem contrary to public policy.

However, a blanket policy which denies athletic eligibility to all transfer students, regardless of their situation, seems to be an unreasonably strict application of anti-recruiting rules. There are a myriad of reasons unrelated to athletics for which a student-athlete may transfer, not the least of which are aca-

144. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d at 778 (Miss. 1994). The court reasoned that, contrary to Laymon's contention, the regulation required suspension of eligibility without regard to whether the transfer student was a parochial or public school student. *Id.* The regulation created classifications of students based on residency or non-residency of the district where athletic participation was desired. *Id.* The Association's purpose of preventing interscholastic recruiting was legitimate and requiring bona fide residence in the district where the student intends to participate in athletics was an appropriate means of achieving that end. *Id.*

145. Mississippi High School Activities Ass'n, Inc. v. Coleman, 631 So. 2d 768 (Miss. 1994). The court stated that because no suspect classifications were created by the regulation and, as previously discussed, no fundamental rights were implicated by the rule's application, rational basis was the appropriate level of equal protection review. *Id.*

146. *Id.* at 778.

147. *Id.*

demic or family related concerns. Denying these students the privilege of athletic participation seems patently unfair under the circumstances. When a student transfers to a new school because of a change in his or her family circumstances, or because he or she feels that the new school is academically superior, penalizing them does not necessarily advance the objective of the anti-recruiting rule.

Very often a student-athlete will sacrifice his education, both at the high school and collegiate level, in pursuit of the ultimate goal, a professional athletic career. For every athlete who goes on to a professional career there are an astronomical number of blue chip collegiate players who cannot make the cut professionally and have failed to take advantage of the educational opportunities afforded them as a result of their athletic prowess. Left without either an athletic career or an education, their future looks somewhat bleak. It is likely, in many instances, that a student-athlete who transfers and loses a year of athletic eligibility will also lose the opportunity to play at the collegiate level and, therefore, professionally. For many student-athletes, sports offers the only opportunity to obtain a college education. Broad application of high school anti-recruiting rules may close that avenue.

While it seems clear that the *Coleman* court was correct in its assessment of athletic participation as a privilege rather than a constitutionally protected interest, perhaps it would be prudent to reform the MHSAA's anti-recruiting rule. The breadth of the MHSAA regulation has or, inevitably, will have an adverse affect on many student-athletes. It would be more equitable to apply the rule on a case by case basis, excluding from mandated ineligibility those student-athletes who have transferred for reasons other than athletics. Society has created a situation where often athletic skills are more highly valued than academic achievement. For student-athletes who underachieve academically in pursuit of the professional prize, any rule which functions to deprive an athlete of that goal may also be contrary to public policy.

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