

# FEES FOR EXTRACURRICULAR ACTIVITIES ALIENATE STUDENTS WHO WOULD OTHERWISE PARTICIPATE AND SHOULD BE REPLACED WITH ALTERNATE MEANS OF FUNDRAISING

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## I. INTRODUCTION

Education, under the United States Constitution, is not a fundamentally protected right.<sup>1</sup> Under the federal constitution, students denied access to extracurricular activities do not have due process or equal protection claims, absent suspect classification or discrimination based on other fundamentally protected rights.<sup>2</sup> While most state constitutions guarantee a system of free public education, state courts have held that this does not include extracurricular activities.<sup>3</sup> Participating in extracurricular

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1. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973).  
 2. Albach v. Odle, 531 F.2d 983, 984-85 (10th Cir. 1976).  
 3. See Bond v. Michigan, 178 N.W.2d 484 (Mich. 1970); Granger v. Cascade County Sch. Dist. No. 1, 499 P.2d 780 (Mont. 1972); Attorney Gen. v. E. Jackson Pub. Sch., 372 N.W.2d 638

activities is a privilege and not a right.<sup>4</sup> Under this framework, many states have instituted, and state courts have upheld, pay for play<sup>5</sup> programs in public schools.<sup>6</sup>

School districts have implemented pay for play programs due to cuts in public school budgets and increasing costs for high school sports programs.<sup>7</sup> Pay for play programs generally charge students for each extracurricular activity or assess a flat fee for all students participating in at least one extracurricular activity.<sup>8</sup> Pay for play programs are often accompanied by fee waiver programs, whereby students demonstrating financial hardship are excused from paying.<sup>9</sup> Although pay for play programs have eliminated some of the budgetary problems facing schools today, they are creating a system that discourages student participation and stigmatizes students whose families are unable or unwilling to pay.

Ideally, all school systems could provide extracurricular activities without outside funding sources. This is not the reality. However, there are alternatives to pay for play programs. Fundraising, booster clubs, ticket sales for admission to high school sports, and corporate sponsorship are all revenue-raising solutions to budgetary problems. Each local school district could evaluate and determine the best approach or combination of approaches to meet their budgetary needs. Although these alternatives remain second best to increased public school budgets, they can help to obviate the need to charge student participants.

Section II of this comment discusses court decisions holding that neither education nor extracurricular activities are fundamental rights. Section III discusses several frameworks adopted by state courts to determine the constitutionality of school fees. Section IV discusses fee waiver programs often incorporated into pay for play programs. Section V discusses current pay for play programs. Section VI sets forth fundraising alternatives. Section VII concludes that pay for play programs are

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(Mich. Ct. App. 1985); *Hamer v. Bd. of Educ. of Township High Sch. Dist. #113, County of Lake*, 265 N.E.2d 616 (Ill. 1977).

4. *Arkansas Activities Ass'n v. Meyer*, 805 S.W.2d 58, 61 (Ark. 1991).

5. Marc D. Puntus, *Education Fees in Public Schools: A Practitioner's Guide*, 73 B.U. L. REV. 71, 72 (1993). Pay for play programs and other fee-based programs are generally those programs that charge students a fee to participate in extracurricular activities. *Id.*

6. See *Granger*, 499 P.2d 780; *E. Jackson Pub. Sch.*, 372 N.W.2d 638.

7. Justin Brown, *Will Pay-to-Play Ruin School Sports?*, CHRISTIAN SCIENCE MONITOR, Sept. 20, 2002, at 12; Tim Stevens, *Pay to Ride: Buncombe County Last Week Became the First School System in North Carolina to Adopt a Form of Pay-for-Play Policy*, NEWS & OBSERVER (RALEIGH, NC), Aug. 18, 2002, at C9; James Whitters, *Nashoba Athletes Face Fees*, B. GLOBE, Oct. 3, 2002, at 12.

8. Puntus, *supra* note 5 at 72-73.

9. *Hartzell v. Connell*, 679 P.2d 35, 37 (Cal. 1984).

detrimental to high school sports. School systems should find alternate ways to fund extracurricular programs.

## II. EXTRACURRICULAR ACTIVITIES ARE A PRIVILEGE AND NOT A RIGHT

The Supreme Court in *San Antonio Independent School District v. Rodriguez*<sup>10</sup> held that there is generally no federal right to education.<sup>11</sup> A class action suit was brought challenging the constitutionality of the Texas system of financing education.<sup>12</sup> The court found that Texas provides its students "an adequate base education"<sup>13</sup> and denied the plaintiffs' constitutional claims.<sup>14</sup> The Supreme Court left open the possibility that a remedy might be available if a basic education was completely denied.<sup>15</sup> Charging students tuition for education would create a system where poor students would be completely unable to obtain an education and "[t]hat case would present a far more compelling set of circumstances for judicial assistance than the case before us today."<sup>16</sup> The court further held, that because education is not a "fundamental right or liberty," state educational systems and their financing schemes are subject to rational review.<sup>17</sup> Rational judicial review "requires only that the State's system be shown to bear some rational relationship to legitimate state purposes."<sup>18</sup> This level

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10. 411 U.S. 1 (1973).

11. *Id.* at 35. The Supreme Court upheld the Texas system of financing education and largely disagreed with the empirical data compiled by the plaintiff's expert. *Id.* at 6, 25-28. The plaintiff's argued and their expert attempted to show that the Edgewood Independent School District, one of the poorest districts in Texas, spent significantly less per pupil each year compared with the Alamo Heights Independent School District, one of the wealthiest districts in Texas. *Id.* at 11-13. The plaintiff's expert attempted to show that the disparity reflects, at least in part, the difference in the available tax base between the two districts and their corresponding ability to contribute to the Local Funding System, part of Texas's plan for funding educational programs in each district. *Id.* at 13-14. Contribution to the Local Funding System corresponds to the amount each of these districts receives from the fund. *Id.* at 14.

12. *Id.* at 4-6.

13. *Id.* at 25 n.60.

14. *San Antonio Indep. Sch. Dist.*, 411 U.S. at 25. "Even if it were conceded that some identifiable quantum of education is a constitutionally protected prerequisite to the meaningful exercise of their right, we have no indication that the present levels of educational expenditures in Texas provide an education that falls short." *Id.* at 36-37.

15. *Id.* at 25 n.60.

16. *Id.*

17. *Id.* at 37-38, 40. The Supreme Court distinguished this case from cases involving strict judicial scrutiny. *Id.* at 37-38. Cases where the court used strict scrutiny "involved legislation which 'deprived,' 'infringed,' or 'interfered' with the free exercise of some such fundamental personal right or liberty." *Id.* at 38.

18. *San Antonio Indep. Sch. Dist.*, 411 U.S. at 40.

of judicial review reflects the importance placed on local control of educational systems.<sup>19</sup>

Student's participation in extracurricular activities is also not constitutionally protected.<sup>20</sup> Students prevented from engaging in interscholastic sports do not generally have a cause of action supportable by either the due process or equal protection clauses of the Fourteenth Amendment.<sup>21</sup> There is only a federally cognizable right if an athlete is denied "a constitutionally protected right" or if they are classified on a suspect basis.<sup>22</sup> In general, student participation in sports is a privilege and not a right.

Although education is not a fundamental right under the United States Constitution, many state constitutions or statutes mandate a system of free public education.<sup>23</sup> However, the right to a free education has not always been extended to each component part of that education.<sup>24</sup> Some school systems have dealt with budgetary problems by implementing pay for play programs.<sup>25</sup> Even more extreme, some school systems have been forced to discontinue part or all of their interscholastic sports programs.<sup>26</sup> State

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19. *Id.* at 49. "[D]irect control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society." *Id.* (citing *Wright v. Council of the City of Emporia*, 407 U.S. 451, 469 (1972)).

20. See Mathew Mitten, *Amateur Athletes with Handicaps or Physical Abnormalities: Who Makes the Participation Decision*, 71 NEB. L. REV. 987, 1005-06 (1992) (discussing the absence of a right to play sports and the lack of due process protection at the high school and college levels).

21. *Albach v. Odle*, 531 F.2d 983, 984-85 (10th Cir. 1976). The court listed several cases where students had viable constitutional claims based on athletic regulations concerning "clearly defined constitutional principles" such as sexual discrimination, racial discrimination, alienage discrimination, and invasion into marital privacy. *Id.* at 984. See also *Palmer v. Merluzzi*, 868 F.2d 90, 96 (3d Cir. 1989) (The suspension of a student athlete who was drinking and using drugs on school property was upheld because the suspension was not the result of a suspect classification and students do not have a fundamental right to participate in extracurricular activities).

22. *Albach*, 531 F.2d at 984-85.

23. *Bond*, 178 N.W.2d 484 (free education clause in state constitution); *Granger*, 499 P.2d 780 (free education clause in state constitution).

24. See *Bond*, 178 N.W.2d at 487-88 (holding free education clause in state constitution does not prohibit all fees assessed by school system); *Granger*, 499 P.2d at 786 (holding free education clause proscribes fees for only those courses or activities that relate to the particular school's goals); *Herbert v. Ventetutolo*, 638 F.2d 5 (1st Cir. 1981) (holding that under Rhode Island law, students do not have a property right vested in playing sports so there could be no due process requirement); *E. Jackson Pub. Sch.*, 372 N.W.2d 638 (upholding fees for extracurricular activities interpreting the state constitutional mandate for free schools to include only those courses that are required). See generally *Hamer*, 265 N.E.2d 616 (holding that the state constitution mandates free schools but upholding fees for handling and transporting textbooks); *Ryan v. Cal. Interscholastic Fed'n -San Diego Section*, 114 Cal. Rptr. 2d 798 (Ct. App. 2001); *Norton v. Bd. of Educ. of Sch. Dist. No. 16, Hobbs Municipal Sch.*, 553 P.2d 1277 (N.M. 1976) (holding that although the state constitution mandated free public education, fees could be imposed for non-required courses).

25. E.M. Swift, *Why Johnny Can't Play*, SPORTS ILLUSTRATED, Sept. 23, 1991, at 60.

26. *Id.* In 1991, the Lorain, Ohio school district discontinued all extracurricular programs and

boards or local school districts regulate high school athletic programs so the programs are not uniform.<sup>27</sup> Many school districts impose age, residency, or school enrollment requirements that must be met before students are eligible to play on the schools' sports teams.<sup>28</sup> This has also allowed different states and districts to implement pay for play in different ways.<sup>29</sup> State courts have developed several different tests for determining the constitutionality of school-imposed fees.

### III. CASE LAW

#### A. Several Frameworks Upholding the Constitutionality of Pay for Play

Several state courts, upholding pay for play programs, have developed tests to determine the validity of student fees.<sup>30</sup> The Supreme Court of Michigan in *Bond v. Public Schools of Ann Arbor School District*<sup>31</sup> began by reviewing the state constitutional mandate.<sup>32</sup> The Michigan State Constitution under Article 8, section 2, states, "[t]he legislature shall maintain and support a system of free public elementary and secondary schools as defined by law."<sup>33</sup> The court first defined the word "free", as used in the constitution, as meaning without costs.<sup>34</sup> The court then moved to an analysis of what must be provided as necessary to a free education.<sup>35</sup> Quoting the Idaho Supreme Court in *Paulson v. Minidoka County School District No. 331*,<sup>36</sup> the court held that fees could not be charged for

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then managed to continue a few when money was borrowed from the state by the school board. *Id.* In addition, schools in Los Angeles and Toledo, Ohio cancelled all or parts of their junior varsity sports programs. *Id.*

27. *Albach*, 531 F.3d at 985. See also *E. Jackson Pub. Sch.*, 372 N.W.2d 638. A state statute delegated to each school district the right to "make and enforce suitable regulations for the general management of the schools and the preservation of the property of the district." *Id.* at 636.

28. See *Arkansas Activities Ass'n*, 805 S.W.2d at 62 (upholding an age restriction and its grandfather clause, whereby a student turning nineteen years old before a certain date was not eligible to play on interscholastic sports teams); *Albach*, 531 F.2d at 984 (regulation upheld prohibiting high school students from playing on school teams where they transfer to the district and have not lived there for one year); *Bradstreet v. Sobol*, 650 N.Y.S.2d 402 (App. Div. 1996) (upholding regulations barring home-schooled children from participating in school sports).

29. *Albach*, 531 F.3d at 985.

30. See, e.g., *Bond*, 178 N.W.2d at 487-88; *Hamer*, 265 N.E.2d at 619-20; *Granger*, 499 P.2d at 786.

31. 178 N.W.2d 484 (Mich. 1970).

32. *Id.* at 486-87.

33. *Id.* at 486.

34. *Id.* at 487.

35. *Bond*, 178 N.W.2d at 487.

36. 463 P.2d 935, 938-39 (Idaho 1970).

"necessary elements of any school's activity"<sup>37</sup> or, quoting Robert Trezise's testimony as a member of the Michigan Department of Education, for any "integral fundamental part of the elementary and secondary education."<sup>38</sup> Under this analysis, the court in *Bond* held that the fees in question, assessed for textbooks and school supplies, were unconstitutional.<sup>39</sup> Sometimes referring to this analysis as "The Paulson Analysis," other courts have followed this framework for determining the constitutionality of student fees.<sup>40</sup>

Other states have used the "Hamer test."<sup>41</sup> The "Hamer test" was developed by the Illinois Appellate Court in *Hamer v. Board of Education of School District No. 109*.<sup>42</sup> A parent of four children enrolled in Illinois public schools brought the case.<sup>43</sup> The school district required a textbook rental fee for each child.<sup>44</sup> If the fees would create a financial hardship for a family, a confidential arrangement could be made.<sup>45</sup> Textbooks were initially provided to the plaintiff's children but later confiscated when the fees went unpaid.<sup>46</sup> The plaintiff brought suit challenging the constitutionality of the textbook fees.<sup>47</sup>

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37. *Bond*, 178 N.W.2d at 487 (citing *Paulson v. Minidoka County Sch. Dist. No. 331*, 463 P.2d 935, 938-39 (Idaho 1970)).

38. *Id.* at 487-88 (quoting testimony given during the trial of this case by Robert Trezise of the Michigan Department of Education).

39. *Id.* at 488.

40. Patricia Harris, *Student Fees in Public Schools: Defining the Scope of Education*, 72 IOWA L. REV. 1401, 1404 (1987). This article discusses the constitutionality of student fees imposed in school districts. *Id.* at 1401. It examines state and federal constitutional issues, two state frameworks for evaluating the constitutionality of student fees, and the implication of equal protection in imposing student fees. *Id.* The article concludes that student fees should be permitted where course credit is not awarded for the chargeable activities. *Id.*

41. *Id.* at 1405-07.

42. 265 N.E.2d 616 (Ill. 1970). Before addressing the state constitutional issues, regarding textbook rental fees, the Supreme Court of Illinois first held that the plaintiff did not fall within a state statute mandating school districts to purchase textbooks for children whose families could not afford them. *Id.* at 618. The state statute, "Section 10—20.13 provides in part that the school board has the duty 'to purchase, at the expense of the district, a sufficient number of textbooks for children whose parents are unable to buy them.'" *Id.* at 617. The court held that because the plaintiff never alleged that he could not afford the textbooks or the rental fees, he did not have a claim under the statute. *Id.* The court further held that the plaintiff could not challenge the statute because he did not bring the claim as a taxpayer. *Id.* at 618. Therefore, he could not claim that the statute adversely affected him in his position as a taxpayer. *Id.* "Furthermore, the complaint does not allege that the school board has bought textbooks and loaned them to children whose parents could not buy them and consequently affected him as a taxpayer." *Id.*

43. *Id.* at 618.

44. *Id.*

45. *Id.*

46. *Hamer*, 265 N.E.2d at 618.

47. *Id.*

The Illinois State Constitution under section 1, article VIII provides that “[t]he general assembly shall provide a thorough and efficient system of free schools.”<sup>48</sup> The court in *Hamer* reviewed the intentions of early General Assemblies and Constitutional Conventions, in construing the meaning of the constitutional provisions.<sup>49</sup> The court found that the term “free schools” was not meant by the constitutional convention to include free textbooks.<sup>50</sup> Therefore, the court concluded that the textbook rental fees were constitutional.<sup>51</sup> States using this analysis will often uphold fees for items that students generally require for their own use, such as textbooks.<sup>52</sup> There are disparities in the results of states using this analysis to determine the constitutionality of fees for extracurricular activities or non-required courses.<sup>53</sup>

The Supreme Court of Montana developed another framework that permits some student fees.<sup>54</sup> In *Granger v. Cascade County School District No. 1*,<sup>55</sup> the Montana court held that the obligation to provide a free public education does not completely prohibit school districts from charging students fees.<sup>56</sup> The court held the appropriate test was whether the fee was “reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system.”<sup>57</sup> The court did not make specific determinations regarding activities or courses constituting part of schools’ educational goals.<sup>58</sup> The court held that “the school district may thus define its own academic and educational goals and the courses and activities that will

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48. *Id.*

49. *Id.* at 620-21.

50. *Hamer*, 265 N.E.2d at 621.

51. *Id.* at 622.

52. *Harris*, *supra* note 40, at 1409.

53. *Id.*

54. *Granger*, 499 P.2d at 786. This claim was originally brought as a class action suit by parents of children attending schools within Cascade County School District No. 1. *Id.* at 780. The parents sought a declaratory judgment by the court, seeking to have the fees imposed in the school district declared unconstitutional. *Id.* The parents also asked the court for an injunction against the student fees. *Id.* The parents opposed “fees of any nature in respect of any classes offered by schools within said school district and in respect of any facilities or equipment employed in said classes.” *Id.* at 781.

55. 499 P.2d 780 (Mont. 1972).

56. *Id.* at 786.

57. *Id.*

58. *Id.* Although the court refused to enumerate fees that would be considered unconstitutional under the test they set forth, the parents in their complaint alleged that the school district was going to impose fees for “use by pupils of ‘laboratory, musical, home economics, trade training and commercial equipment’ and ‘fees for the purchase and use of athletic equipment, school supplies and work books.’” *Id.* at 781.

carry credit toward graduation.”<sup>59</sup> Although the court declined to create a distinction between “required and non-required courses,” the court appeared to deny fees for credit-based courses yet allow fees for extracurricular activities.<sup>60</sup>

The court in *Granger* then went further striking down the use of a fee waiver program.<sup>61</sup> The fee waiver program<sup>62</sup> at issue exempted families facing financial hardship or receiving welfare from having to pay the fees.<sup>63</sup> The court reasoned that if a program was necessary a fee could not be charged and then later waived, because the initial charge was violative of a students’ constitutional right.<sup>64</sup> Furthermore, the court held that fee waiver programs are inherently degrading.<sup>65</sup> Although the court in *Granger* correctly acknowledged the inherent dangers of fee waiver programs, it failed to realize the problems associated with all fee-based programs.

At least two states have slightly expanded students’ rights regarding sports programs.<sup>66</sup> The Arkansas Supreme Court, in *Arkansas Activities Association v. Meyer*,<sup>67</sup> held that student athletes are entitled to a review of their request for participation in interscholastic sports according to the rules of the association.<sup>68</sup> The Arkansas Activities Association (AAA)<sup>69</sup>

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59. *Granger*, 499 P.2d at 786.

60. *Id.* at 785-86. The court overruled the lower court’s creation of a dichotomy between required courses, for which fees could not be charges, and non-required courses, for which fees could be charged. *Id.* at 785. However, the court found that while “the district court was on the right track in its approach, its choice of language in its findings of fact and conclusions of law is not correct.” *Id.* The court was seemingly overruling the language used by the lower court that would have created a bright line rule for determining what fees were constitutional. However, the court agreed with the lower court’s reasoning and struck down fees for activities related to a school’s educational goals. *Id.* at 786. This would seem to preclude school districts from imposing fees for required courses.

61. *Id.* at 786.

62. Holly Foster, *School Fees in Public Education*, 1993 BYU EDUC. & L.J. 149 (1993). In general, fee waiver programs usually allow for waiving fees for curricular and extracurricular activities. *Id.* at 164. Waiving these fees is generally done based on family income and the guidelines provided through the federal school lunch program. *Id.* However, some school districts determine fee waiver eligibility by reviewing each case and others have policies that would include those families not falling within the guidelines of the federal lunch program. *Id.* at 164-65.

63. *Granger*, 499 P.2d at 786.

64. *Id.*

65. *Id.*

66. See *Arkansas Activities Ass’n*, 805 S.W.2d at 61; *Butler v. Oak Creek-Franklin Sch. Dist.*, 172 F. Supp. 2d 1102, 1110 (E.D. Wis. 2001).

67. *Arkansas Activities Ass’n*, 805 S.W.2d at 61.

68. 805 S.W.2d. at 61.

69. *Id.* at 60-61. The Arkansas Activities Association is a voluntary association that the court would generally not be able to regulate. *Id.* at 60. However, the court found that they could review the matter because the plaintiff made constitutional claims that involve state action. *Id.* at 61. The



denied a student the right to play sports because he had exceeded the permissible age limit.<sup>70</sup> The court upheld the AAA's decision to prohibit the student's participation.<sup>71</sup> Although the court explicitly stated that students do not have a fundamental right to engage in interscholastic sports, it also held that students are entitled to a review of their requests according to the association's rules.<sup>72</sup>

In a separate case, a district court applying Wisconsin law indicated that students being expelled or suspended from a sports team should be afforded due process before removal.<sup>73</sup> The court reasoned, "[p]roperty interests arise from existing rules or understandings that stem from an independent source such as state law."<sup>74</sup> The court reviewed materials governing the rules of the association, the information provided by the school for students and parents, the code of regulations for athletes, and existing state law in order to determine whether a property interest had been created in continued participation.<sup>75</sup> The court found that a property interest was probably created based on its analysis of the materials as well as the defendant school district's participation in the association.<sup>76</sup> The probable creation of a property interest led the court to believe that the student would probably be afforded due process protection before being suspended from interscholastic sports.<sup>77</sup> However, the court refused to hold that there was a definite property interest or that the student was entitled to due process.<sup>78</sup> Instead the court moved directly to the question of whether adequate due process had been provided to the plaintiff.<sup>79</sup> Although refusing to hold that associations' rules governing sports programs vest property interests in participating students, the court

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court found state action because the association was closely tied to the state's system of public schools. *Id.*

70. *Id.* at 60. The rule under the AAA read, "A senior high student whose 19<sup>th</sup> birthday is on or before October 1, may not participate in an interscholastic event. NOTE: Grandfather Clause. This rule may be waived for a senior high school student who is ineligible by the above rule due to event that occurred before adoption (September 1980). He may participate until the day he is 20 years old, if normal progression has occurred since 1980 and upon approval of the AAA Executive Director." *Id.* at 59.

71. *Id.* at 62.

72. *Arkansas Activities Ass'n*, 805 S.W.2d at 61.

73. *Butler*, 172 F. Supp. 2d at 1110.

74. *Id.* (citing *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (internal quotations omitted)).

75. *Id.* at 1110.

76. *Id.*

77. *Butler*, 172 F. Supp. 2d at 1110.

78. *Id.*

79. *Id.* at 1110-11.

discussed the possibility.<sup>80</sup> This seems to indicate an inclination by the court to hold similarly if that issue was decided.

### B. *A Framework for Prohibiting Pay for Play*

California prohibits all pay for play or fee based programs in their public schools.<sup>81</sup> The California Supreme Court in *Hartzell v. Connell*<sup>82</sup> held that fees for educational or extracurricular activities violated the state's constitutional mandate that every district maintain a system of free education.<sup>83</sup> In striking down fees imposed for extracurricular activities the Court held that sports and other activities are an integral part of education.<sup>84</sup>

In striking down all student fees, the California Supreme Court reviewed several frameworks for determining the constitutionality of fee-based programs, including those set forth in *Bond, Paulson and Granger*.<sup>85</sup> The Court held that extracurricular activities are "[no] less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens physically, mentally, and morally, than the study of algebra and Latin."<sup>86</sup> The Court held that the free school guarantee prohibited fees for any component part of education.<sup>87</sup> However, fees could be charged for attending non-educational activities, such as weekend dances.<sup>88</sup> The fee waiver program was also struck down under the mandate that all education be provided without charge to students.<sup>89</sup>

In *Hartzell*, the school district imposed a system of fees and waivers due to lack of funding.<sup>90</sup> The school board instituted the program charging

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80. *Id.* at 1110.

81. *Hartzell*, 679 P.2d 35, 43 (Cal. 1984).

82. 679 P.2d 35 (Cal. 1984). When student fees were imposed in the Santa Barbara High School District, a community organization, called the Coalition Opposing Student Fees, and a taxpayer with children in the school district filed suit as a taxpayer's action. *Id.* at 38. The plaintiffs asked the court for a declaratory judgment against student fees as well as an injunction. *Id.* They claimed that the fees were violative of the California Constitution under both the equal protection clause and the "free school" clause. *Id.*

83. *Id.* at 43.

84. *Id.* at 42.

85. *Id.* at 39.

86. *Hartzell*, 679 P.2d at 42 (quoting *Alexander v. Phillips*, 31 Ariz. 503 (1927)).

87. *Id.* at 43.

88. *Id.*

89. *Id.* at 44.

90. *Hartzell*, 679 P.2d at 37-38. The Santa Barbara High School District, the district in issue in this case, previously funded its extracurricular activities through ticket sales, fundraisers, and contributions from the District that were drawn from local tax revenue as well as state aid. *Id.* at 37. Under this system, extracurricular activities were provided to students for free. *Id.* When the school

students twenty-five dollars per sport and twenty-five dollars for each extracurricular activity.<sup>91</sup> Extracurricular activities were broken down into four categories.<sup>92</sup> Only one fee could be assessed per student for each extracurricular category, even if the same student participated in more than one activity in a specific category.<sup>93</sup> Each extracurricular activity had a corresponding for-credit course.<sup>94</sup> However, no credit was provided for participation in the extracurricular activity, credit was only awarded if the student chose to take the for-credit course.<sup>95</sup> "For example, students enrolled in vocal music courses for credit spend much of their in-class time rehearsing for the noncredit performances."<sup>96</sup> Students were allowed the option to take the course and not participate in the chargeable activity.<sup>97</sup>

There was also a fee waiver program in place.<sup>98</sup> The fee waiver program provided "scholarships" for children who could not afford the fees for extracurricular activities.<sup>99</sup> Applicability for the fee waiver program was similar to applicability for the school's free lunch program.<sup>100</sup> The California Supreme Court struck down the system of fees and waivers.<sup>101</sup> *Hartzell* stands for the proposition that free schools incorporating pay for play programs accompanied by fee waivers are not, in fact, free.

#### IV. FEE WAIVER PROGRAMS

Fee waiver programs were instituted to assist students unable to afford fees imposed on extracurricular activities.<sup>102</sup> However, several states have struck down fee waiver programs because of their stigmatizing effect.<sup>103</sup>

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district's budget was cut by \$1.1 million, the school board decided to institute student fees. *Id.* The other option reviewed and rejected by the school board, was to limit athletic competitions. *Id.*

91. *Id.* at 37.

92. *Id.* The four categories were "(1) dramatic productions (e.g., plays, dance performances, and musicals); (2) vocal music groups (e.g., choir and madrigal groups); (3) instrumental groups (e.g., orchestra, marching band, and related groups such as the drill team and flag twirlers); and (4) cheerleading groups." *Id.*

93. *Id.*

94. *Hartzell*, 679 P.2d at 37.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Hartzell*, 679 P.2d at 38.

99. *Id.*

100. *Id.*

101. *Id.* at 39, 44.

102. Foster, *supra* note 62, at 164.

103. See *Hartzell*, 679 P.2d at 44; *Granger*, 499 P.2d at 786.

The Montana Supreme Court in *Granger v. Cascade County Sch. Dist. No. 1*,<sup>104</sup> upheld student fees for courses and activities not related to specific goals of the school.<sup>105</sup> However, the Court struck down the use of fee waiver programs.<sup>106</sup> The court held that fee waiver programs violated the state constitutional mandate of a free education, although charging for certain activities did not.<sup>107</sup> The court reasoned that fee waiver programs deny a constitutional right and later waiver of that denial, which does not satisfy the original constitutional right.<sup>108</sup> Further, the court held that “any waiver procedure is a degrading experience.”<sup>109</sup>

The California Supreme Court in *Hartzell*, also held that fee waiver programs were degrading to the students they were designed to benefit.<sup>110</sup> The court held that fee waiver programs do not make constitutional, the unconstitutional system of charging student fees for extracurricular activities.<sup>111</sup> The plain language of the California Constitution provides for a free education, not simply a “right *not to be financially prevented* from enjoying educational opportunities.”<sup>112</sup> The court then went further, holding “[t]he stigma that results from recording some students as needy was recognized early in the struggle for free schools.”<sup>113</sup> Recognizing the stigma associated with a fee waiver program, the California Supreme Court held fee waivers unconstitutional.<sup>114</sup>

Recently, at least one school district allowed parents of other students and a booster club to provide assistance with fees that students were unable to pay.<sup>115</sup> This type of program creates even greater distinctions between those students who can and those students who cannot pay. At least waiver programs provided by the school district come from a wider pool of funds. In this Tacoma, Washington school, less affluent students are forced to rely on the fundraising efforts of their peers and local booster

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104. 499 P.2d 780 (Mont. 1972).

105. *Id.* at 786.

106. *Id.*

107. *Id.*

108. *Granger*, 499 P.2d at 786.

109. *Id.*

110. *Hartzell*, 679 P.2d at 44.

111. *Id.*

112. *Id.* at 43.

113. *Id.* at 44.

114. *Hartzell*, 679 P.2d at 44.

115. Kris Sherman, *Neighborhood Notes – Gig Harbor: Sports Participation Fees Drop in Peninsula Schools*, THE NEWS TRIBUNE (TACOMA, WA), Sept. 4, 2002 at B03. This article reported that student fees were lower in several area school districts than they had been in previous years. *Id.* However, the deputy superintendent, in speaking about the school fees, commented, “[i]t was an awful year, but people pulled it together to make (sports) happen.” *Id.*

clubs.<sup>116</sup> This type of system is degrading to all students and their families. Any school district that attempts to meet the constitutional requirement of a free public education, fails to do so if the education is free only when predicated on a waiver program. However, as schools continue to face budgetary cuts, more schools may feel that pay for play accompanied by fee waivers are acceptable alternatives.

## V. CURRENT SITUATION

### A. *The Decision Facing Many Schools Today*

Many schools currently face the decision of whether to implement pay for play programs in light of budgetary cuts. The situation faced by Connecticut schools seems to be relatively typical of schools that have been incorporating pay for play.<sup>117</sup> The state cut funding while mandating increased standardized testing and special education resources.<sup>118</sup> A statutory mandate for the expansion of certain programs, while receiving a cut in funding, meant the school board had to decide where to allocate the remaining limited resources.<sup>119</sup> A school system in the Washington D.C. area, proposed restricting junior varsity competitions when facing a ten percent budget decrease.<sup>120</sup> However, a larger budget cut could have resulted in ending the entire junior varsity program.<sup>121</sup> The first school district in North Carolina to implement a pay for play program justified its decision by pointing to the \$4.5 million budget cut for the 2002 academic year.<sup>122</sup> The Nashoba Regional School District in Massachusetts experienced a budget deficit of \$2.2 million.<sup>123</sup> In implementing pay for play fees, the athletic director stated that the entire sports program would need to be self-supporting.<sup>124</sup> Unfortunately, many schools are faced with

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116. *Id.*

117. Brown, *supra* note 7, at 12.

118. *Id.*

119. *Id.*

120. Michael Rosenberg, *County High School Sports Will Be Cut By 10 Percent*, THE WASHINGTON POST, June 16, 1999, at M23. Reporting specifically on the Prince George High School, the article reported that the ten percent budget decrease would most likely pass at an upcoming Board of Education meeting. *Id.* However, this budget reduction was far less damaging than a proposed thirty percent budget decrease that could have led to a complete elimination of junior varsity sports. *Id.*

121. *Id.*

122. Stevens, *supra* note 7, at C9.

123. Whitters, *supra* note 7, at 12.

124. *Id.*

budget cuts and difficult decisions regarding their sports programs.<sup>125</sup> At least one author feels that this burden may be felt more intensely by inner city schools.<sup>126</sup>

Inner city school systems face the additional problem of "municipal overburden."<sup>127</sup> This overburden is experienced by the educational systems within larger cities and poverty-stricken areas.<sup>128</sup> These schools are forced to compete for tax dollars with "other high-demand public services such as public health, mass transit, and crime prevention."<sup>129</sup> The decision facing all schools with budget deficits or budget cuts is "[o]ften the local board of education will tell a school there is not enough money to fund a particular sports program. The school is then left with a choice: [c]ut the sport or look for other sources of money."<sup>130</sup> Hence, some school systems are choosing to implement pay to play programs when faced with this decision.

### B. Current Pay to Play Programs

More school systems seem to be funding their sports programs through fees assessed to their student athletes. As pay for play programs grow in popularity, the fees being charged by individual school systems also seem to increase. In *Paulson*, decided in 1970, students were charged a twenty-five dollar fee each year they attended high school.<sup>131</sup> The fee was initially broken down into several categories but was then amended.<sup>132</sup> Under the amendment the fee was only broken down into two categories, school activity fees and textbook fees.<sup>133</sup> The court struck down fees for "necessary elements," such as textbooks, as well as the system of charging

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125. Brown, *supra* note 7.

126. John Schomberg, *Equity v. Autonomy: The Problems of Private Donations to Public Schools*, ANN. SURV. AM. L. 143, 145 (1998). Schomberg attempted "to resolve the tension between equal educational opportunity for all and the desire of parents to furnish their children with the best education their money can buy." *Id.* at 146. The author argues for allowing private contributions for public schools without imposing specific limitations on the areas of education that private funding would be allowed to support. *Id.* However, the author would impose a limit on the amount of funding one school could receive. *Id.* This limit would be imposed to direct funds from schools that are receiving large private contributions to school districts that are not receiving this type of funding. *Id.* In framing his argument, the author examines fees imposed in school districts. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Brown, *supra* note 7.

131. *Paulson*, 463 P.2d at 936.

132. *Id.*

133. *Id.*

every student activities fees.<sup>134</sup> Charging each student an activity fee, the court reasoned, was akin to charging for attendance.<sup>135</sup> However, the court held that fees could be charged to students on a per activity basis.<sup>136</sup>

In 2002, a high school in Massachusetts charged over one thousand dollars per student for the right to play football.<sup>137</sup> This is certainly a long way from a twenty-five dollar fee in 1970. The exorbitant fee of over one thousand dollars, exemplifies how pay for play can prohibit less affluent students from participating in school sports. Five schools in Minnesota charge two hundred and ninety dollars for football and three hundred and thirty-two dollars for basketball.<sup>138</sup> Another school in Massachusetts charged three hundred and forty-two dollars for soccer and three hundred and eighty-nine dollars for field hockey.<sup>139</sup> It seems hard to imagine students paying these types of fees knowing they would not get much time on the field. This seems to limit athletic teams to only those students with the resources to pay such a fee and the athletic ability to receive a lot of playing time.

One commentator believes that most pay-to-play programs charge fees that are much lower, generally in the area of fifty to two hundred and fifty dollars.<sup>140</sup> Each school district determines how they will institute pay for play.<sup>141</sup> Therefore, wide disparities between school districts and the charges they impose can arise.<sup>142</sup> In Connecticut, most schools impose a fee of around seventy-five dollars per sport.<sup>143</sup> However, the range among Connecticut's school districts is significant, from twenty-five dollars per sport in some districts to nine hundred and fifty dollars for ice hockey in another district.<sup>144</sup>

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134. *Id.* at 938.

135. *Paulson*, 463 P.2d at 938.

136. *Id.*

137. *Brown*, *supra* note 7.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Brown*, *supra* note 7.

142. *Id.*

143. Judy Benson, *Poll Finds Connecticut's Public Schools are Good, Could Be Better*, THE DAY (NEW LONDON, CT), Oct. 29, 2002. The University of Connecticut's Neag School of Education conducted a poll to determine how the public felt about the state's public schools. *Id.* One of the questions in poll asked whether residents supported pay for play programs. *Id.* The results showed that fifty-eight percent of the respondents did not believe pay for play programs should be incorporated in public school systems. *Id.* The dean of the Neag School, Richard Schwab, "believes this shows most people believe extracurricular activities are an integral part of schooling, not add-ons." *Id.*

144. *Id.*

Faced with rising pay for play fees, some school districts have placed a cap on the amount that one student or one family is required to pay.<sup>145</sup> Therefore, if a student plays several sports, some schools will charge each student a fee for each sport but no more than a pre-determined amount.<sup>146</sup> A school in Oregon charges one hundred and twenty dollars a sport with a cap of two hundred and forty dollars for any one student.<sup>147</sup> The same school limits the total amount a family will be charged per year to four hundred and eighty dollars.<sup>148</sup> However, a charge of two hundred and forty dollars per student clearly forces students and families to make decisions regarding sports participation based on the parents' financial situation.

In 2002, approximately thirty-five states had pay for play programs.<sup>149</sup> As more school districts implement these programs, participation appears to decrease.<sup>150</sup> Although students from lower-income families may be afforded a fee waiver or have their fees decreased, students whose families do not qualify or do not want to ask for a waiver may not be able to pay. As the court stated in *Hartzell*, "a student's participation in that program cannot be made to depend upon his or her family's decision whether to pay a fee or buy a toaster."<sup>151</sup> Pay for play programs are not the best alternative for school's facing budgetary challenges.

### C. Analysis

The California Supreme Court appropriately drew the line between programs and activities that are part of the educational system and those that are purely gratuitous.<sup>152</sup> Charging students for dances and other activities sufficiently removed from the overall educational experience is acceptable. Charging fees that prohibit students from obtaining a well-rounded education is unacceptable. Sports programs, musicals, band participation, and similar programs are an integral part of education.

"Sports... is a context in which kids can feel part of a group, be accepted by their peers, make friends, learn how to cooperate within a context of competition, learn how to deal with conflict and conflict

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145. Katy Muldoon, *Budget Cuts Hobble High School Sports*, PORTLAND OREGONIAN, Sept. 22, 2002, at C05.

146. *Id.*

147. *Id.*

148. *Id.*

149. Stevens, *supra* note 7.

150. Holly Angelo, *Quaboag Students Unhappy, But They'll Pay to Play Sports*, SPRINGFIELD UNION-NEWS, Aug. 17, 2002, at B03.

151. *Hartzell*, 679 P.2d at 44.

152. *Id.* at 43.



resolution.”<sup>153</sup> Students in sports generally have a greater self-image, perform better in school, and get into trouble with less frequency.<sup>154</sup> Some of these benefits may be evidenced by the fact that one study found that out of CEO’s of Fortune 500 Companies, ninety-five percent played high school sports.<sup>155</sup> Students that are no longer participating in sports are missing out on a valuable component of the educational experience.<sup>156</sup>

Decreasing participation in sports has significant impacts on high school aged children.<sup>157</sup> As students become less active, they are at a greater risk of suffering from health problems.<sup>158</sup> “In the past twenty years, hospital costs related to childhood obesity have tripled.”<sup>159</sup> Furthermore, students that do not participate in sports are more likely to use drugs and smoke cigarettes.<sup>160</sup> As pay to play programs are implemented in a greater number of school districts and the fees associated with these programs continue to rise, fewer students will be able to participate in interscholastic sports programs. Decreased participation places these students at a greater risk for health and mental problems.<sup>161</sup>

## VI. ALTERNATIVES TO PAY FOR PLAY

### A. Corporate Sponsorship

Schools in many districts are financially unable to fund all the interscholastic sports teams they previously offered.<sup>162</sup> While some school districts have imposed fees directly on the students with or without a fee waiver program, other school districts have developed creative ways to help fund their sports teams.<sup>163</sup> Some districts have decided to solicit corporate sponsorship, create booster clubs that hold fundraisers, organize school and community fundraisers, or institute other creative programs.<sup>164</sup>

Involving the community and engaging businesses to help fund sports teams can alleviate some of the budgetary problems faced by school

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153. Muldoon, *supra* note 145.

154. *Id.*

155. John Gillooly, *Get a Jump on Career*, THE PROVIDENCE JOURNAL (PROVIDENCE, R.I.), Oct. 21, 2002, at C02.

156. Muldoon, *supra* note 145.

157. *Id.*

158. *Id.*

159. *Id.*

160. Muldoon, *supra* note 145.

161. *Id.*

162. Swift, *supra* note 25.

163. *Id.*

164. *Id.*

systems.<sup>165</sup> If enough money were raised through corporate sponsorships, students would be able to play interscholastic sports regardless of whether their families could afford the fees. No student would be subject to degrading fee waiver programs. Furthermore, one associate athletic director believes that "[t]here begins to be a sense of camaraderie among sponsors and donors."<sup>166</sup>

Corporate sponsorship has been an integral part of many college athletic programs.<sup>167</sup> For example, Colorado University's athletic program has over thirty-five corporate sponsors resulting in three million dollars a year.<sup>168</sup> Sponsorship is generally provided either in cash or in-kind services, such as the provision of athletic equipment.<sup>169</sup> Although the type of sponsorship received by Colorado University is probably not available to most high school athletic programs, it does provide at least some insight into what corporate sponsorship can do.

Corporate sponsorship is a rapidly growing alternative to cutting interscholastic sports.<sup>170</sup> According to a visiting professor at Harvard University, corporate sponsorship of high school athletics is "growing exponentially."<sup>171</sup> The National Federation of State High School Associations (NFHS)<sup>172</sup> has its own sponsorship program including national corporations.<sup>173</sup> Most recently, the NFHS signed a deal with Rawlings Sporting Goods Company, Inc.<sup>174</sup> This agreement provides that Rawlings balls are the official balls of the NFHS.<sup>175</sup> A percentage of the sales of all Rawlings NFHS products will be used to support high school interscholastic sports.<sup>176</sup> Individual schools could also attempt to solicit corporate sponsorship.<sup>177</sup>

Corporations are increasingly sponsoring high school sports because the cost is relatively low, as compared to college or professional sport

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165. *Id.*

166. Bruce Goldberg, *Boola Moola*, COLORADO BUSINESS MAGAZINE, Dec. 1997, at 38.

167. *Id.*

168. *Id.*

169. *Id.*

170. Eric Fisher, *Are High-School Sports Keeping the Right Company? As More Corporations Sponsor More Scholastic Athletics, Critics Fear Impressionable Young Minds are Receiving the Wrong Signals About Winning and Commercialism*, INSIGHT ON THE NEWS, Apr. 15, 2002, at 28.

171. *Id.*

172. *Id.* The NFHS oversees high school sports and compiles the rules of play. *Id.*

173. *Id.*

174. Press Release, National Federation of State High School Associations, *NFHS and Rawlings Sign Four-year Exclusive Partnership Agreement* (Oct. 28, 2002), at [http://nfhs.org/press/Rawlings\\_NFHS02.html](http://nfhs.org/press/Rawlings_NFHS02.html) (last visited Nov. 9, 2002).

175. *Id.*

176. *Id.*

177. Fisher, *supra* note 170.

sponsorships.<sup>178</sup> At least one commentator has estimated that corporations are spending over ten million dollars a year, sponsoring high school athletics.<sup>179</sup> Adidas, a corporation that sponsors over one hundred high school basketball teams, gives free sneakers and other athletic gear to these schools.<sup>180</sup> The spokesman for Adidas believes that “[i]t’s something that has been very beneficial for us and the schools.”<sup>181</sup> Sponsoring high school sports has the potential of reaching the 6.7 million students that are estimated to have participated in high school sports each year.<sup>182</sup>

Schools can also look for corporate sponsorship within the local community. Local businesses can provide a basis for support that could potentially be available yearly. Local businesses could be asked to pay for advertising space in programs sold at the local high school’s home games, something that has been done in at least one Roanoke high school.<sup>183</sup> Local corporations could be solicited to provide their services free of charge, for example a paint store donated supplies and services to paint the football field.<sup>184</sup> Corporate sponsorship programs can take the place of pay to play by reducing the financial burden placed on the school. This type of interaction between local corporations and local school systems could also lead to greater community involvement and cohesion.

### *B. School and Community Fundraising*

Fundraising programs are very different today than they were in the past because, quite simply, “[b]ake sales are no longer enough.”<sup>185</sup> Fundraising programs often need to raise large sums of money that may need to come from a broad community base, such as one fundraising program in Clayton, Ohio.<sup>186</sup> Parents attempted to raise one million dollars to prevent a proposed cut in all extracurricular activities as well as

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178. *Id.*

179. *Id.*

180. *Id.*

181. Fisher, *supra* note 170.

182. Press Release, *supra* note 174.

183. Ray Cox, *He’s Making a Mark for His Old School*, ROANOKE TIMES & WORLD NEWS, Sept. 21, 2001, at NRV3. In Roanoke, the football coach makes sales calls in an attempt to sell advertising space in a program that is sold at football games played on the team’s home field. *Id.*

184. *Id.* The owner of a local paint store, Duane Mills, developed a design he could paint onto the local high school’s football field. *Id.* Working with the football coach, he received permission and painted the design on the field and also painted designs on the coaches’ boxes. *Id.* Mills commented, “[y]ou hear all the time about how much money people contribute to the colleges they have gone to, but so few people contribute back to their high schools, the places where they got their start.” *Id.*

185. Schomberg, *supra* note 126, at 158.

186. Swift, *supra* note 25.

over thirty teachers' contracts.<sup>187</sup> Although the parents did not reach their goal, the school board provided the missing \$300,000.<sup>188</sup>

The city of Appleton, Wisconsin cut all spring sports in the 1991-1992 school year.<sup>189</sup> In order to make-up the \$330,000 necessary to save the spring sports program, community leaders developed a fundraising plan.<sup>190</sup> The plan included obtaining donations from coaches, increasing the cost for admission to athletic events, offering stickers in return for donations, and soliciting donations from booster clubs.<sup>191</sup> To ensure the continuation of the sports program, community members were asked to donate to a sports foundation.<sup>192</sup> The one-time donations would remain with the sports foundation and future sports programs would be funded from the interest.<sup>193</sup> Although the Appleton school system also incorporates a pay-for-play program,<sup>194</sup> the fundraising strategies could be used by other school districts to fund similar sports programs.

One Athletic Director in Colerain High School, Cincinnati, Ohio, is selling "vintage uniforms."<sup>195</sup> The old uniforms are sold at contests for one or two dollars.<sup>196</sup> The school gains publicity when the purchaser wears the vintage uniforms and the initial sale of the gear provides a source of revenue.<sup>197</sup> Another Athletic Director, in Johansen High School, Modesto, California, has developed a fee scale plan for admission to athletic events.<sup>198</sup> The booster club has one fee scale and the students have another.<sup>199</sup> The passes range in price and as the price increases, the purchaser is entitled to an increasing number of passes to high school sports games.<sup>200</sup>

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187. *Id.*

188. *Id.*

189. *Id.*

190. Swift, *supra* note 25.

191. *Id.*

192. Gary Miles, *Out of Money Prep Sports Could Lose the Budget Race*, USA TODAY, July 30, 1991, at 1C.

193. *Id.*

194. *Id.*

195. Dan Moody, *Ideas that Work, Fund Raising: Vintage Uniform Sale*, NATIONAL INTERSCHOLASTIC ATHLETIC ADMINISTRATORS ASSOCIATION (1992), at [www.nfhs.org/niaaa/ideasthatwork.html](http://www.nfhs.org/niaaa/ideasthatwork.html) (last visited Nov. 9, 2002).

196. *Id.*

197. *Id.*

198. Steve Thiessen, *Ideas that Work, Public Relations: Athletic / Activity Pass Fee Scale*, NATIONAL INTERSCHOLASTIC ATHLETIC ADMINISTRATORS ASSOCIATION (1992), at [www.nfhs.org/niaaa/ideasthatwork.html](http://www.nfhs.org/niaaa/ideasthatwork.html) (last visited Nov. 9, 2002).

199. *Id.*

200. *Id.*

Another school district has used volunteer coaches while attempting to raise funds for the coaching salaries.<sup>201</sup> At least one district contemplated running the student sports teams through an outside association.<sup>202</sup> Running the sports team through an outside association would be less expensive.<sup>203</sup> Many costs were eliminated because the association provided transportation and volunteer coaches.<sup>204</sup> The cost of referees were the only remaining expenses, amounting to about fifty or sixty dollars a game.<sup>205</sup> Therefore, to fund the entire season, parents would only need to raise about five or six hundred dollars.<sup>206</sup> To keep the programs running within the school system, parents would have had to raise almost seven thousand dollars.<sup>207</sup> A principal in another school system realized that he had to cut the entire sports budget to save teachers' jobs.<sup>208</sup> He mailed a letter out to the community asking for financial help and received over half the required funding.<sup>209</sup>

These programs show how fundraising can save sports teams. Fundraising to support sports teams may actually help to elevate depressed community spirit.<sup>210</sup> At the same time, the students benefit by keeping interscholastic sports programs that are integral to their education. Athletic directors, parents, teachers, administrators, students, and coaches can use their creativity and knowledge of the community to develop fundraisers for their sports programs. Fundraising programs involve the students, their families, and the community. While there is often resistance to a tax increase, these fundraising programs are voluntary.<sup>211</sup> Furthermore, fundraising could promote community organizations, such as parent-teacher associations.<sup>212</sup> "As parents rally around the schools, a community can be revitalized."<sup>213</sup>

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201. Muldoon, *supra* note 145.

202. Grace E. Merritt, *Parent Offers Basketball Plan*, THE HARTFORD COURANT, Nov. 11, 2002, at B3.

203. *Id.*

204. *Id.*

205. *Id.*

206. Merritt, *supra* note 202.

207. *Id.*

208. Muldoon, *supra* note 145.

209. *Id.*

210. Schomberg, *supra* note 126, at 170.

211. Swift, *supra* note 25.

212. Schomberg, *supra* note 126, at 170.

213. *Id.*

## VII. CONCLUSION

Although many state constitutions guarantee a system of free public education, state courts have upheld pay for play programs. However, public schools are not "free" if they are charging fees for extracurricular activities, incidentals, or school materials. High school sports generally do not offer credit towards graduation. This does not lessen the value obtained by active student athletes. Participating in extracurricular activities fosters leadership qualities, community involvement, and group participation.<sup>214</sup> Pay for play programs decrease participation thereby denying many students the benefits of participating in school-sponsored programs. These elements of education should not be provided at a cost simply because they do not result in credit towards graduation. Pay for play programs should be prohibited because interscholastic sports are an integral part of education. All states should strike down fees imposed on students.

Although most pay for play programs incorporate a fee waiver program, this only exacerbates the humiliation of students and their families. Students and their families must disclose their financial situation to school officials or others in charge of implementing these programs. This stigmatizes the students as needy and separates them from their peers that are able to afford the fees. Students are then forced to either ask for a fee waiver or avoid the humiliating experience by not participating in sports programs. This is an unfair choice to offer high school aged children. Fee waiver programs do not cure the impermissible imposition of fees on student athletes.

Alternatives such as corporate sponsorship, fundraising, booster clubs, and the donation of coach's salaries should be the focus of revenue raising and not pay for play programs. These alternatives have already been implemented in a number of school districts. By finding alternative to pay for play, communities must work together to fund extracurricular sports. This can help with community spirit and support of sports programs while eliminating the burden placed on students. Although, ideally, all school systems would be able to support all the programs they wished to offer, corporate sponsorship and fundraising are the best alternatives to pay for play programs.

*Shannon M. Ryan*

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214. *Hartzell*, 679 P.2d at 43.