1 of 1 DOCUMENT

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ARTICLE: St. Augustine v. LHSAA: Discrimination, Desegregation, and the State Action Doctrine

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LEXISNEXIS SUMMARY:

... Sports play an important role in American society. Often sports can serve as a catalyst for change, mostly for the better. Today, sports have a way of uniting people; crossing all racial, social, and economic boundaries. ... As of 1966, almost twenty years after Jackie Robinson broke baseball's color barrier, African-Americans were still not allowed to compete against White students in almost all high school sports, especially football. ... Looking at the big picture, one could see that segregation in sports was only a minor issue. ... B. LHSAA as a State Actor ... In Lee v. Florida High School Activities Association (FHSAA), the question of whether an athletic association is a state actor was addressed again. ... Under the "entanglement theory" of the state action doctrine, a line of cases decided in the 1970s held that the National Collegiate Athletic Association (NCAA) was a state actor. ... The test for determining whether a group or individual is a state actor has changed from the "entanglement theory" to the "fairly attributable" theory. The Fifth Circuit affirmed the district court's use of the "entanglement theory" to hold that the LHSAA is a state actor under the Fourteenth Amendment. ...

TEXT:
[*108]

I. Introduction

Sports play an important role in American society. Often sports can serve as a catalyst for change, mostly for the better. Today, sports have a way of uniting people; crossing all racial, social, and economic boundaries. People from diverse backgrounds stand united in the audience, as well as on the field, but this was not always the case.

In 1947, Jackie Robinson became the first African-American to play Major League Baseball. [n1] This occurred at a time when segregation was the law of the land, and African-Americans were not given a chance to compete with White athletes. The mindset of many White Americans was that African-Americans could not compete in athletics, academics, or any other phase of life. Robinson shattered this mindset with his dignity and exemplary performance both on and off the field. [n2] His success opened the door for others, from Willie Mays and Hank Aaron to today's stars, such as Mo Vaughn and Ken Griffey, Jr.

Robinson's ultimate success, however, was not about baseball. Although his statistics and awards are a part of his legacy, his most important achievement was the impact he had on American society. At that time, baseball was America's favorite pastime and the most revered and historical sport. [n3] Robinson's successful "experiment" had a profound effect on American society as a whole. He showed that African-Americans could compete and be successful against

Whites when given an equal opportunity and a level playing field. His career, especially his rookie season, was about putting a face on what had been a faceless and disenfranchised group. Robinson carried the weight of an entire race on his shoulders, and he did it magnificently. Thanks to his exploits, American society began to open for African-Americans. [n4] This transition, however, was a long and hard journey, especially in the South.

[*109]

II. Background of the St. Augustine Case

A. Life in the South

The southern part of the United States was, and still is, a unique area of the country. It has been slow to adapt to change and often has resisted it. Baseball may have been the country's national pastime, but in the South, football was, and still is, the sport of choice. Although Robinson had done a great deal to change American society as a whole, many White Americans in the South were not willing to allow African-Americans to compete on a level playing field. As of the mid-1960s, segregation was still the prevalent mindset in the South. [n5]

B. Life in Louisiana

The state of Louisiana was a microcosm of the South. Football, especially high school football, was the people's sport, and people were slow to accept change. As of 1966, almost twenty years after Jackie Robinson broke baseball's color barrier, African-Americans were still not allowed to compete against White students in almost all high school sports, especially football. [n6] Louisiana had a dual segregated athletic high school system. Originally, the Louisiana High School Athletic Association (LHSAA or Association) regulated the high schools with all White student and faculty populations. [n7] It was founded in 1920 by the high school principals of the state. [n8] Until 1962, the LHSAA constitution had a "Whites Only" clause, meaning that no schools that had a majority of African-American students were allowed to join the Association. [n9] These schools were called "Negro Schools," and belonged to an association known as the Louisiana Interscholastic and Literary Organization (LIALO). [n10]

C. Lost Opportunity

The National Federation of State High School Athletic Associations only recognized one association in each state. The LHSAA was Louisiana's representative member of this National **[*110]** Federation. [n11] This meant that the accomplishments of the schools and athletes in the LIALO went largely ignored by those outside of the African-American community. [n12] Press coverage of the LIALO games was minimal at best. [n13] When ranking the top high school teams and top players throughout the state, newspapers did not consider the members of the LIALO. [n14] Therefore, the top teams and All-state players were all White athletes. [n15]

This lack of attention and publicity was offensive not only because it showed a lack of respect for the accomplishments of the members of the LIALO, but also because it denied opportunities to gifted student-athletes. Colleges and universities throughout the country awarded full scholarships to high school students with exceptional athletic prowess. Inevitably, most schools learned of these players through the media. This put the LIALO members at a distinct disadvantage. The universities did not know about the great student-athletes in the LIALO members and, consequently, they were not awarded athletic scholarships like student-athletes of the LHSAA members. [n16] This problem was not about LIALO members "ego-tripping" due to a lack of publicity, but rather, it was about the loss of opportunities to further their education. Looking at the big picture, one could see that segregation in sports was only a minor issue. The real issue was the fact that talented African-Americans were not given the opportunity to use athletics as a vehicle to raise themselves to higher levels through education. Education was the key to improving the status of African-Americans then, as it is now.

D. St. Augustine High School

What the LIALO needed was a Jackie Robinson, someone willing to take the challenge to right this egregious wrong. What the LIALO received was St. Augustine High School. St. Augustine was, and is, steeped with tradition, even though the institution did not come into existence until 1951. St. Augustine was originally designated for the education of young men from African-American Catholic families, under the guidance of the Josephite Priests and Brothers. [n17] **[*111]** As of 1967, a White student had never attended St. Augustine, even though the school welcomed individuals of any nationality or ethnic origin. [n18] Its reputation was outstanding, both scholastically and athletically. Between seventy-five and eighty percent of St. Augustine's graduates went on to institutions of higher education; many to prestigious

schools such as Harvard, Yale, Princeton, and Stanford. [n19] The rate of graduates that went on to college was phenomenal for African-American males during that time period, and St. Augustine's athletic exploits were just as impressive as its scholastic credentials. The LIALO was dominated by teams fielded by St. Augustine. Between 1962 and 1966, St. Augustine won three state championships in football; the year they did not win, they were a state semi-finalist. [n20] During that same period, the basketball team won three state championships as well. [n21] St. Augustine was also known to be a state power in track and very competitive in baseball.

With these impressive credentials, St. Augustine applied to become a member of the LHSAA on August 14, 1964. [n22] From its inception in 1920 until 1964, potential members of the LHSAA had to submit an application for membership along with a $ 100.00 check for first-year dues. [n23] The application would then go to a ten-person executive committee, where a candidate school would either be accepted or denied admission. [n24] St. Augustine's application was to be reviewed at the LHSAA's annual meeting in January 1965. [n25] Because the LHSAA decided to amend its constitution for admitting new members, St. Augustine's application was never reviewed. [n26] Under the new admissions guidelines, a school needed a vote in favor of admissions by two-thirds of the total number of member schools present at the annual meeting. [n27] In addition, before the applicant school's membership could be voted on, it had to be approved by two-thirds of the schools in the district in which it would compete. [n28]

[*112]

E. St. Augustine's Denial

The amendment to the constitution was the LHSAA's subtle way of informing St. Augustine that they were not welcomed by the Association. However, St. Augustine persisted and received a two-thirds approval vote from the schools in the district where it was to compete. [n29] The district consisted of eight teams - five Catholic schools and three public schools. [n30] The vote in favor of St. Augustine's admission was 5 to 3. [n31] With this hurdle cleared, St. Augustine's application went before the full membership of the LHSAA for review at the annual meeting in January of 1966. [n32] Of approximately 400 LHSAA members, only 196 attended the meeting to vote on St. Augustine's membership. [n33] St. Augustine's application for membership was soundly defeated, 185 to 11. [n34] Prior to St. Augustine's rejection, no school except a trade school had ever applied to the LHSAA and been refused. [n35]

There was no logical explanation for St. Augustine's application to be rejected. The school had an excellent track record both scholastically and athletically. The only factor that was not in its favor was the label of being a "Negro School." It seemed that St. Augustine was in a no-win situation. The school had played by the rules, but in the middle of the game, the rules had changed. The last resort for St. Augustine was to file suit in federal court. Because St. Augustine would seek a remedy under the Equal Protection Clause, its case would hinge on the court's determination of whether or not the LHSAA was a state actor. [n36]

III. St. Augustine v. LHSAA

A. Discrimination

St. Augustine brought suit against the LHSAA under the Fourteenth Amendment to the United States Constitution which states, "No State shall make or enforce any law which shall ... **[*113]** deprive any person of life, liberty, or property, without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws." [n37] For St. Augustine's suit to be successful, it had to prove that the LHSAA was an agent of the State of Louisiana, that it was discriminated against by the LHSAA, and that this discrimination was a violation of the Fourteenth Amendment. [n38] The discrimination part of the case was not difficult to prove. St. Augustine had met all of the criteria for becoming a member of the LHSAA. [n39] The only portion that it did not fulfill was the two-thirds vote of the general assembly, which could hardly have been called a fair vote. The school had an excellent record of achievement and would have been a definite asset to the Association. The only reason for St. Augustine's exclusion from the Association was "solely on the basis of the capricious vote of the general membership." [n40] Had St. Augustine not been a "Negro School," it would probably be safe to assume that the 185-11 vote against admission would have been inverted. Eastern District of Louisiana District Court Judge Heebe noted in his decision:

There is every reason to infer from all of the facts and circumstances brought out by the evidence in this case that St. Augustine was denied membership by the discriminatory action of the LHSAA, and the Court so finds. But even had the plaintiffs failed to prove that the denial of St. Augustine's application was the result of actual discrimination, the

deprivation of basic rights of due process has been established here with the force of irrebuttable presumption. The very fact of the denial of St. Augustine's application by the arbitrary and capricious vote of the LHSAA membership constituted a deprivation of plaintiff's constitutional rights. [n41]

The actual discrimination was the easy part of the battle. The most difficult part would be proving that the LHSAA was an agent of the state and therefore a "state actor" under the Fourteenth Amendment.

[*114]

B. LHSAA as a State Actor

A state can only act through individuals or groups for the purposes of "state action."

And certainly the more an individual [or group] seeks the shelter of the state's power ...[or] uses state processes and takes advantage of state facilities, the more he associates with state officials and agencies acting in their official capacities, the more he uses and relies on state power to achieve his ends, then the more surely he forfeits the immunity from federal censure afforded him by the wording of the Constitution. [n42]

The LHSAA was aware that the Fourteenth Amendment does not apply to private individuals and associations; therefore, its main defense was that the Fourteenth Amendment did not apply to it because it was not a state agency or an arm of the state. [n43] The composition of the LHSAA's membership was eighty-five percent Louisiana public schools and fifteen percent privately owned and operated schools. [n44] According to the district court, "an association such as this is basically the sum of its members." [n45] Where eighty-five percent of an association's members are state agencies, public schools in this case, it follows that the acts of the association are acts of the state. [n46] The small percentage of private school members were made amenable to the Fourteenth Amendment requirements through their association with the public school majority. [n47]

There are other factors that the district court considered in its ruling for St. Augustine, including the Association's reliance on state funds, facilities, and other resources. [n48] The LHSAA counter-argued that its support came solely from a percentage of gate receipts of games between its members, that state taxes were not diverted to the Association, and that the Association was free from state control. [n49] However, the gate receipts derived from games including state schools were actually state funds. [n50] Therefore, since the Louisiana public school members of the Association funded the LHSAA, "it was supported financially by the state." [n51] In fact, in 1963, the year before St. Augustine's failed attempt to become a member, the Association **[*115]** realized a total of $ 42,481.19 from the percentage of gate receipts of games involving its members. [n52] This amount was approximately two-thirds of the total income of the Association. [n53] Further, the "majority of all athletic contests between member schools (both public and private) [were] held on state land in state stadia and gymnasia." [n54]

Further evidence in support of the LHSAA as a "state actor" was the fact that "state schools train their teams, provide coaches, equipment, and many other essentials." [n55] Were it not for the state schools' active engagement in interscholastic athletics for their students, there would be nothing for the LHSAA to coordinate, and no reason for its continued existence. [n56] The state can be found to be directly or indirectly involved in supporting every LHSAA event. [n57] "Moreover ... the LHSAA regulates curricula, the number of hours coaches teach and the amount of records kept." [n58] In fact, the LHSAA had the power to keep schools from competing against other schools, and to investigate and to discipline member schools by fine or otherwise. [n59] With this mountain of evidence, it was not difficult for the court to conclude that the Association, including both public and private school members, was under the power of the state, and was so closely connected with the public school system of the state as to amount to an agency and instrumentality of Louisiana. [n60]

C. The Order

The court finding in favor of St. Augustine ordered:

1. St. Augustine High School be admitted immediately to membership in the LHSAA, with all of the rights and privileges of a member of that Association, for the school year commencing September 1967, and the LHSAA be ... enjoined from conducting any activity whatsoever unless and until it complies with said order.

2. The Louisiana High School Athletic Association is ... enjoined from refusing membership to any high school, whether attended by any Negro or only white students, or otherwise, which meets all of the express requirements for membership contained in the Constitution of the Association, solely on the basis of an arbitrary vote of its membership or **[*116]** on the basis of any failure of the applicant to meet any standard or qualification not specifically and expressly established by the Association and set forth in the Constitution, Bylaws, or other acceptable document of the Association. And the Association is further ordered to specify the particular express qualification which the applicant has failed to meet, in the event that this applicant is in fact denied membership in the Association.

3. The LHSAA is ... enjoined from engaging in any practice, procedure or activity the purpose of which is to discriminate against any high school of the state by reason of the race, creed or color of the students or faculty of such school ... [n61]

IV. Effects of St. Augustine's Victory

A. Lee v. Macon County Board of Education

As a result of the St. Augustine case, other challenges to state high school athletic associations began to appear. One such case was Lee v. Macon County Board of Education. [n62] The Lee case was almost an exact duplicate of the St. Augustine case. Alabama had a dual system set up for the regulation of high school athletics. [n63] The Alabama High School Athletic Association (AHSAA) was for predominantly White schools, while the Alabama Interscholastic Athletic Association (AIAA) was for Negro schools. [n64] The plaintiffs in the Lee case used the St.Augustine case, which was on appeal to the United States Court of Appeals for the Fifth Circuit at the time, as persuasive evidence that the AHSAA was a state actor for the purposes of the Fourteenth Amendment. [n65] The same factors of state funding, equipment, and training were present in the case as well as the problem of the lack of recognition for the student athletes in the AIAA. [n66] The Lee Court held that the officials administering the public schools had an "affirmative duty under the Fourteenth Amendment to bring about an integrated, unitary school system in which there are no Negro schools and no White schools - just schools." [n67] The Court ordered a complete merger of the associations, **[*117]** which had to operate as one in the future. [n68] Further, the Court oversaw the merger of the associations until it was complete. [n69]

B. Lee v. Florida High School Activities Association

In Lee v. Florida High School Activities Association (FHSAA), [n70] the question of whether an athletic association is a state actor was addressed again. In this case, the plaintiff was declared ineligible to participate in athletic activities under FHSAA rules. [n71] The plaintiff petitioned the FHSAA to regain his eligibility on the grounds of undue hardship, but the Association refused to waive the ineligibility. [n72] The plaintiff moved from California to Florida with his family, and had to work to help the family financially, thus he was not enrolled in school for a year. [n73] The FHSAA was informed of the plaintiff's story and was unwilling to make an exception to the rule that limited a students' eligibility to four consecutive years from the time the student enters ninth grade. [n74] The plaintiff sued in Florida state court to get an injunction reinstating his eligibility. The district court ruled against the plaintiff and he appealed. [n75] The court of appeals found it was apparent that the FHSAA had exclusive control over all phases of interscholastic athletics in both public and private schools in the State of Florida. [n76] The court cited the St. Augustine case in deciding that the conduct of the FHSAA was undoubtedly state action in the constitutional sense, and held the plaintiff was denied due process of law by the FHSAA and reversed the decision of the lower court. [n77]

C. Indiana High School Athletic Association v. Schafer

In Indiana High School Athletic Association (IHSAA) v. Schafer, a student brought an action for declaratory judgment alleging that the athletic eligibility rules of the IHSAA violated the student's right to equal protection and due process. [n78] He also asked for an injunction enjoining IHSAA from prohibiting his participation in interscholastic **[*118]** sports. [n79] The district court ruled in favor of the student and the IHSAA appealed. [n80] Once again, the St. Augustine case proved influential in the court of appeals' decision that the IHSAA was a state actor. [n81] The court called the association a "monolithic entity" in its relationship to the state. [n82] The court concluded that the IHSAA engaged in state action in making and enforcing its rules, and affirmed the ruling of the district court in favor of the student. [n83]

V. Attacks on the St. Augustine Court Ruling

A. Rendell-Baker and Blum Cases

It appeared that the law regarding the state action doctrine with regard to athletic associations was clearly defined by the St. Augustine case and the other cases that followed. However in 1982, the United States Supreme Court moved away from the "entanglement theory" of state action. [n84] The "entanglement theory" was the name used to describe the relationship between the state and private groups or individuals needed to find state action. [n85] This theory was used to decide the St. Augustine case and those that followed. In Rendell-Baker v. Kohn [n86] and Blum v. Yaretsky, [n87] the Supreme Court moved away from the entanglement theory and used a three-step analysis to determine the existence of state action. [n88] The three requirements, known as the "fairly attributable" theory for state action, are:

1. That "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself';

2. Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the state responsible for those initiatives under the terms of the Fourteenth Amendment.

3. The required nexus may be present if the private entity has exercised powers that are "traditionally the exclusive prerogative of the State." [n89]

[*119]

B. Arlosorff v. NCAA

Under the "entanglement theory" of the state action doctrine, a line of cases decided in the 1970s held that the National Collegiate Athletic Association (NCAA) was a state actor. The 1982 change to the "fairly attributable" theory had an effect on the cases involving athletic associations. Arlosorff v. NCAA [n90] marked a change in trend in this line of cases. In Arlosorff, a student at Duke University was granted an injunction by the district court to enjoin the NCAA from prohibiting his participation in interscholastic athletics under its eligibility rules. [n91] The NCAA appealed the decision. [n92] The NCAA, much like high school athletic associations, is a voluntary unincorporated association. [n93] It is composed of nearly 1,000 four-year colleges and universities, with public institutions making up approximately fifty percent of its membership. [n94] The United States Court of Appeals for the Fourth Circuit found that the NCAA performed the function of overseer of the nation's intercollegiate athletics. [n95] However, "the regulation of intercollegiate athletics ... is not a function "traditionally exclusively reserved to the state."' [n96] The fact that state institutions provided approximately fifty percent of the NCAA's revenue did not sway the court of appeals. [n97] The court held that "it is not enough that an institution is highly regulated and subsidized by a state." [n98] Finally, the court held that the adoption of eligibility rules by the NCAA was private conduct, not state action, and vacated the injunction issued by the district court. [n99]

C. NCAA v. Tarkanian

In NCAA v. Tarkanian, [n100] the United States Supreme Court announced the final word on whether or not the NCAA is a state actor under the Fourteenth Amendment. In that case, the NCAA, after a lengthy investigation, allegedly found improper recruiting practices by Jerry Tarkanian, the basketball coach at the University of Nevada, **[*120]** Las Vegas (UNLV), a state university. [n101] The NCAA imposed a number of sanctions on UNLV and requested that the University show cause why additional penalties should not be imposed if it failed to suspend Tarkanian from its athletic program. [n102] Facing a demotion, Tarkanian brought suit in Nevada state court alleging that he had been denied due process under the Fourteenth Amendment. [n103] Tarkanian was granted injunctive relief and awarded attorney's fees against both UNLV and the NCAA by the district court. [n104] The Nevada Supreme Court affirmed, concluding that the NCAA's conduct constituted state action for constitutional purposes. [n105] Justice Stevens' opinion for the U.S. Supreme Court stated that the NCAA's participation in the events that led to Tarkanian's suspension did not constitute "state action" prohibited by the Fourteenth Amendment. [n106] Further, the NCAA could not be a state actor on the theory that it misused power it possessed by virtue of state law, since UNLV's decision to suspend Tarkanian, while in compliance with the NCAA's rules and recommendations, did not turn the NCAA's conduct into action under color of Nevada's law. [n107] The Court found that the source of the rules adopted by the NCAA was not Nevada, but the collective membership, the vast majority of which was located in other states. [n108] UNLV's decision to adopt the NCAA's rules did not transform

them to state rules and make the NCAA a state actor because UNLV retained the power to withdraw from the NCAA and to establish its own standards. [n109] Also, UNLV delegated no power to the NCAA to take specific action against any university employee, namely, Tarkanian. [n110] Finally, the Court noted that even assuming that the power of the NCAA was so great that UNLV had no practical alternative but to comply with its demands, it does not follow that the NCAA was acting under color of state law. [n111]

Perhaps the most important section of Justice Stevens' opinion, for the purposes of the present issue, was tucked away in a footnote. Footnote 13 states, "the situation would, of course, be different if the **[*121]** membership consisted entirely of institutions located within the same State, many of them public institutions created by the same sovereign." [n112] This footnote was made in reference to the Court's finding that the NCAA could not be a state actor, partly due to the fact that the association was independent of any particular state. [n113] The footnote raises the obvious questions of whether or not the St. Augustine case and those that followed the same lines are still good law, and whether or not state high school athletic associations are state actors. The answers to both questions appear to be yes, if footnote 13 in the Tarkanian case is true.

VI. Is the St. Augustine Case Still Valid Law?

A. Archbishop Walsh High School v. New York State Public High School Athletic Association

In 1996, a Catholic high school brought an action challenging their denial of membership by the New York State Public High School Athletic Association (NYHSAA). [n114] The New York appellate court affirmed the lower court's grant of summary judgment in favor of the NYHSAA. [n115] In the appellate opinion, the St. Augustine case was discussed as persuasive authority supporting the claim that the Association was a state actor. [n116] The court found that the analysis by the Fifth Circuit in the St. Augustine case was decided "unequivocally as a preclusion from membership on racial grounds." [n117] Further, "because the St. Augustine case was unquestionably ... rooted in a race-based equal protection challenge at the strict scrutiny level ...[it] fails [to have] any persuasive value for the proper disposition of the case." [n118] The Walsh court viewed the St. Augustine case as basically a relic of the Civil Rights Movement, whose days of usefulness had passed. In other words, the St. Augustine decision is still good law, but only in limited circumstances that are not really relevant anymore.

B. Habetz v. LHSAA

In 1990, the Fifth Circuit had an opportunity to answer the question of whether or not St. Augustine was still valid law in Habetz **[*122]** v. LHSAA. [n119] In Habetz, a female high school student brought a civil rights action to enjoin the LHSAA from enforcing rules which barred female students from playing on interscholastic high school baseball teams. [n120] The district court denied relief, and the court of appeals vacated and remanded after concluding that the case was rendered moot by a rule change. [n121] The district court, in rendering its decision however, relied on the proposition that activities of athletic associations at the high school and collegiate levels do not constitute state action as set forth by the United States Supreme Court in Tarkanian, Rendell-Baker, and Blum. [n122] "The problem that exists in the legal authority is footnote 13 in Tarkanian." [n123] The court of appeals, however, was able to side-step the difficult issue of whether the St. Augustine case remains controlling in the circuit.

C. Poret v. LHSAA

Fortunately, the court could not leave the question of the validity of the St. Augustine case open forever. In Poret v. LHSAA, [n124] the district court gave a definitive answer on the issue. In Poret, a student brought an action to enjoin the LHSAA from prohibiting the student from participating in interscholastic athletic activities under a transfer rule. [n125] The court denied the student's request and granted the LHSAA's motion for summary judgment. [n126] The United States Court of Appeals for the Eastern District of Louisiana did, however, take time to clear up a matter that the Fifth Circuit declined to decide a few years earlier. The court noted that St. Augustine was decided under the "entanglement theory" of the state action doctrine, and that the test for determining an actor had changed to the "fairly attributable" theory as set forth in the Blum case. [n127] "However, as fully detailed in St. Augustine, the State of Louisiana clearly goes beyond the point of mere approval or acquiescence in its dealings with LHSAA." [n128] "The State of Louisiana works hand in hand with LHSAA through its employees and agencies to supervise and coordinate interscholastic **[*123]** athletics within the state." [n129] Further, with the passage of state laws requiring the adoption of LHSAA guidelines, the bond between the State and the LHSAA is even stronger. [n130] Therefore, the court found that the St. Augustine decision remains controlling precedent in the Fifth Circuit, and that, for 1983 purposes, the LHSAA is a state actor. [n131]

VII. Conclusion

The test for determining whether a group or individual is a state actor has changed from the "entanglement theory" to the "fairly attributable" theory. The Fifth Circuit affirmed the district court's use of the "entanglement theory" to hold that the LHSAA is a state actor under the Fourteenth Amendment. The change in the requirements for state action and subsequent cases have led many to question whether the decision in St. Augustine is still valid. Proponents of the "fairly attributable" theory argue that St. Augustine is no longer controlling precedent, and if it is still valid law, it is limited to civil rights cases based on racial discrimination. However, footnote 13 of the Tarkanian case and Poret both are strong evidence that St. Augustine is still valid law, at least in the Fifth Circuit. Obviously, it would have been much better if the Supreme Court had commented on the validity of the St. Augustine case in the main text of the Tarkanian opinion, instead of relegating the issue to a footnote. Perhaps at some time in the future the Supreme Court will visit the issue again and give a more definitive answer to the question.

The story of St. Augustine High School did not end with the victory in the court. On October 10, 1967, while the case was pending on appeal in the Fifth Circuit, St. Augustine integrated the LHSAA. [n132] On that night, St. Augustine played St. Aloysius (now Brother Martin) in football. [n133] St. Augustine won the game 26-7, but the victory was much more significant than points on a scoreboard. Sports fans in the State of Louisiana learned that African-Americans could compete and excel in athletics on the same level as White athletes. Much like Jackie Robinson had done for the nation twenty years earlier, St. Augustine showed that all African-Americans needed **[*124]** was the opportunity and a level playing field to excel in any area, whether it be in athletics, academics, or the arts.

In the thirty plus years since the case, St. Augustine has done quite well in the LHSAA. In 1975, St. Augustine won its first state championship in football, [n134] and has won two more since then. In basketball, St. Augustine has won three state championships, [n135] including the USA Today National Championship in 1995, becoming the first school in Louisiana history to achieve such an accomplishment. [n136] In academic circles, St. Augustine remains second to none, as over ninety (90) percent of its graduates go on to four-year colleges and universities. [n137] The desegregation of the LHSAA was one of many "firsts" accomplished by St. Augustine and its graduates. St. Augustine graduates were the first African-Americans to graduate from Loyola (1959) and Tulane (1967) Universities and Tulane School of Law (1969). [n138] And, on a more local note, the St. Augustine Marching Band integrated Mardi Gras by marching in the Rex Pde in 1967. [n139] St. Augustine's Alumni include the first African-American New Orleans City Councilman, Louisiana State Senator, Civil Sheriff, and Civil Court Judge. [n140]

Perhaps the best way to sum up the victory against the LHSAA was provided by Fr. Joseph Verrett, S.S.J., former principal at St. Augustine. Fr. Verrett commented: "As time passes, that point in St. Aug's history, the city's history and Louisiana's history increases in significance. The end result of St. Augustine winning that lawsuit was the desegregation of school systems across the state of Louisiana." [n141]

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil Rights LawVoting RightsGeneral OverviewEducation LawAdministration & OperationStudent Financial AidAthletic ScholarshipsEducation LawAthleticsAthletic Associations

FOOTNOTES:

n1. See Lerone Bennett, Jr., Before the Mayflower 371 (6th ed. 1988).

n2. See John Thorn et al., Total Baseball 137 (5th ed. 1997). In 1947, Robinson won the National League Rookie of the Year Award. See id. He led the Brooklyn Dodgers to six pennants in his 10-year career, including the 1955 World Series Championship, and was named the National League MVP in 1949. See id. He was an outspoken supporter of the Civil Rights Movement after his playing career, and won many awards for his contributions to American society. See id.

n3. See id.

n4. See generally Bennett, supra note 1.

n5. See id. at 566.

n6. See St. Augustine High Sch. v. Louisiana High Sch. Athletic Ass'n, 270 F. Supp. 767, 774 (E.D. La. 1967).

n7. See id.

n8. See id.

n9. See id.

n10. See id. at 774-75.

n11. See id. at 775.

n12. See Brief on behalf of St. Augustine to the United States Court of Appeals for the Fifth Circuit 39-40, St. Augustine (NO. CIV.A-116341) [hereinafter St. Augustine Brief] (brief on file with the Sports Lawyers Journal).

n13. See St. Augustine, 270 F. Supp. at 775.

n14. See id.

n15. See id.

n16. See Videotape: Jack Nelson's Lecture (on file with the Sports Lawyers Journal).

n17. See St. Augustine, 270 F. Supp. at 769.

n18. See id.

n19. See id.

n20. See St. Augustine Brief, supra note 12, at 36-37.

n21. See id.

n22. See St. Augustine, 270 F. Supp. at 769.

n23. See id. at 773.

n24. See id. at 770.

n25. See id. at 769.

n26. See id. at 770.

n27. See id.

n28. See id.

n29. See id. at 770 n.2.

n30. See St. Augustine Brief, supra note 12, at 36.

n31. The votes in favor of St. Augustine were split down Catholic and public school lines. Jesuit, Holy Cross, De la Salle, Redemptorist, and St. Aloyius were in favor, and South Terrebonne, Terrebonne, and Thibodeaux were against. See St. Augustine Brief, supra note 12, at n.52.

n32. See St. Augustine, 270 F. Supp. at 770.

n33. See id.

n34. See id.

n35. See id.

n36. U.S. Const. amend. XIV, 1.

n37. Id.

n38. See id.

n39. See St. Augustine, 270 F. Supp. at 774. The federal district court found the LHSAA had four basic requirements for admission: (1)Applicant must be a state approved and accredited high school located in Louisiana; (2)the school must make application in writing to both the LHSAA executive committee and the particular district in which it is to compete, and submit its application fee of $ 100.00; (3)the school must agree to conform to the rules and regulations of the LHSAA; and (4)the application must be approved by two-thirds of the schools in its district and a two-thirds vote of the general membership of those attending the annual meeting. See id. at 773-74.

n40. Id. at 774.

n41. Id. at 776.

n42. Id. at 771.

n43. See id. at 770-71.

n44. See id. at 771.

n45. Id.

n46. See id. at 771-72.

n47. See id. at 772.

n48. See id.

n49. See id.

n50. See id.

n51. Id.

n52. See St. Augustine Brief, supra note 12, at 27.

n53. See id. at 28.

n54. St. Augustine, 270 F. Supp. at 772.

n55. Id. at 773.

n56. See id.

n57. See id.

n58. Id.

n59. See id.

n60. See id.

n61. Id. at 777-78.

n62. 283 F. Supp. 194 (M.D. Ala. 1968).

n63. See id. at 195.

n64. See id. at 197.

n65. See id. at 196 n.2.

n66. See id. at 197.

n67. Id.

n68. See id. at 198.

n69. See id.

n70. 291 So. 2d 636 (Fla. Ct. App. 1974).

n71. See id. at 638.

n72. See id.

n73. See id. at 637.

n74. See id. at 638.

n75. See id.

n76. See id.

n77. See id. at 638-39.

n78. 598 N.E.2d 540 (Ind. Ct. App. 1992).

n79. See id. at 542.

n80. See id.

n81. See id. at 550.

n82. Id.

n83. See id. at 558.

n84. See id. (citing Rendell-Baker v. Kohn, 457 U.S. 830 (1982); Blum v. Yaretsky, 437 U.S. 991 (1982)).

n85. See id.

n86. 457 U.S. at 830.

n87. 437 U.S. at 991.

n88. See Schafer, 598 N.E.2d at 548.

n89. Blum, 437 U.S. at 1004-05 (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974)).

n90. 746 F.2d 1019 (4th Cir. 1984).

n91. See id. at 1020.

n92. See id.

n93. See id.

n94. See id.

n95. See id. at 1021.

n96. Id. (quoting Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974)).

n97. See id.

n98. Id. at 1022.

n99. See id.

n100. 488 U.S. 179 (1988).

n101. See id. at 181.

n102. See id.

n103. See id.

n104. See id.

n105. See id. at 182.

n106. See id. at 196.

n107. See id. at 193.

n108. See id. at 194.

n109. See id.

n110. See id. at 195-96.

n111. See id. at 198.

n112. Id. at 193 n.13.

n113. See id.

n114. See Archbishop Walsh High Sch. v. New York State Public High Sch. Athletic Ass'n, 88 N.Y.2d. 131 (N.Y. App. Term. 1996).

n115. See id. at 135.

n116. See id. at 139.

n117. Id.

n118. Id.

n119. 915 F.2d 164 (5th Cir. 1990).

n120. See id. at 165.

n121. See id.

n122. See id. at 166.

n123. Id.

n124. No. 96-1194, 1996 U.S. Dist. LEXIS 4595, *1, *3 (E.D. La. Apr. 8, 1996).

n125. See id. at *2.

n126. See id. at *8.

n127. See id. at *3-*5.

n128. Id. at *4.

n129. Id. at *4-*5.

n130. See id. at *5.

n131. See id. at *5.

n132. See History Making Team to Be Honored, Knightly News (St. Augustine High School Newsletter), Vol. 15, Fall 1997 (manuscript on file with Loyola University of New Orleans School of Law Professor Ed Edmonds).

n133. See id.

n134. It was the first time a AAAA football team went undefeated in the LHSAA. See St. Augustine High School Web Page (visited Feb. 1998) <http://www.purpleknights.com/AWDS SA.HTM>.

n135. See id.

n136. See id.

n137. See id.

n138. See id.

n139. See id. For those not familiar with the annual Mardi Gras celebration, "Rex" is the "King" of Mardi Gras, and the Pde in his honor is the largest of the celebration. It is traditionally the grandest of all krewes and takes place on Fat Tuesday.

n140. See id.

n141. History Making Team to Be Honored, supra note 132.