Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BRENTWOOD ACADEMY *v.* TENNESSEE SECONDARY SCHOOL ATHLETIC ASSOCIATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 99–901. Argued October 11, 2000– Decided February 20, 2001

Respondent not-for-profit athletic association (Association) regulates interscholastic sport among Tennessee public and private high schools. Most of the State's public high schools are members, representing 84% of the Association's membership. School officials make up the voting membership of the Association's governing council and control board, which typically hold meetings during regular school hours. The Association is largely funded by gate receipts. Association staff, although not state employees, may join the state retirement system. The Association sets membership standards and student eligibility rules and has the power to penalize any member school that violates those rules. The State Board of Education (State Board) has long acknowledged the Association's role in regulating interscholastic competition in public schools, and its members sit as nonvoting members of the Association's governing bodies. When the Association penalized petitioner Brentwood Academy for violating a recruiting rule, Brentwood sued the Association and its executive director under 42 U. S. C. §1983, claiming that the rule's enforcement was state action that violated the First and Fourteenth Amendments. The District Court granted Brentwood summary judgment, enjoining the rule's enforcement, but the Sixth Circuit found no state action and reversed.

Held: The Association's regulatory activity is state action owing to the pervasive entwinement of state school officials in the Association's structure, there being no offsetting reason to see the Association's acts in any other way. Pp. 5–17.

(a) State action may be found only if there is such a "close nexus between the State and the challenged action" that seemingly private

behavior "may be fairly treated as that of the State itself." *Jackson* v. *Metropolitan Edison Co.,* 419 U. S. 345, 351. No one fact is a necessary condition for finding state action, nor is any set of circumstances sufficient, for there may be some countervailing reason against attributing activity to the government. The facts that can bear on an attribution's fairness— *e.g.,* a nominally private entity may be a state actor when it is entwined with governmental policies or when government is entwined in its management or control, *Evans* v. *Newton,* 382 U. S. 296, 299, 301— unequivocally show that a legal entity's character is determined neither by its expressly private characterization in statutory law, nor by the law's failure to acknowledge its inseparability from recognized government officials or agencies. In *National Collegiate Athletic Assn.* v. *Tarkanian,* 488 U. S. 179, this Court anticipated that state action could be found when there is public entwinement in the management or control of an organization whose member public schools are all within a single State. Pp. 6–9.

(b) The necessarily fact-bound inquiry leads to the conclusion of state action here. The Association's nominally private character is overborne by the pervasive entwinement of public institutions and public officials in its composition and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it. To the extent of 84% of its membership, the Association is an organization of public schools represented by their officials acting in their official capacity to provide an integral element of secondary public schooling, interscholastic athletics. There would be no recognizable Association without the public school officials, who overwhelmingly determine and perform all but the Association's purely ministerial acts. Only the 16% minority of private school memberships keeps the entwinement of the Association and public schools from being total and their identities totally indistinguishable. To complement the entwinement from the bottom up, the State has provided entwinement from the top down: State Board members sit ex officio on the Association's governing bodies and Association employees participate in the state retirement system. Entwinement to the degree shown here requires that the Association be charged with a public character and judged by constitutional standards. Pp. 9–13.

(c) Entwinement is also the answer to the Association's several arguments that the instant facts would not support a state action finding under various other criteria, *e.g.,* the public function test, *Rendell-Baker* v. *Kohn,* 457 U. S. 830, distinguished. Pp. 13–15.

(d) Although facts showing public action may be outweighed in the name of a value at odds with finding public accountability in the circumstances, *e.g., Polk County* v. *Dodson,* 454 U. S. 312, 322, no such countervailing value is present here. The Association's fear that re-

versing the judgment will trigger an epidemic of federal litigation is unfounded. Save for the Sixth Circuit, every Court of Appeals to consider a statewide athletic association like this one has found it to be a state actor, and there has been no litigation explosion in those jurisdictions. Nor should the Association have dispensation merely because the public schools themselves are state actors subject to suit under §1983 and Title IX of the Education Amendments of 1972. Pp. 15–16.

180 F. 3d 758, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHHQUIST, C. J., and SCALIA and KENNEDY, JJ., joined.