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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

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**TENNESSEE SECONDARY SCHOOL ATHLETIC
ASSOCIATION v. BRENTWOOD ACADEMY****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 06–427. Argued April 18, 2007—Decided June 21, 2007

Petitioner association (TSSAA) regulates interscholastic sports among its members, Tennessee public and private high schools. TSSAA sanctioned respondent (Brentwood), one of those private schools, because its football coach sent eighth-grade boys a letter that violated TSSAA’s rule prohibiting members from using “undue influence” in recruiting middle school students for their athletic programs. Following internal TSSAA review, Brentwood sued TSSAA and its executive director under 42 U. S. C. §1983, claiming, *inter alia*, that enforcement of the antirecruiting rule was state action violative of the First and Fourteenth Amendments and that TSSAA’s flawed adjudication of its appeal deprived Brentwood of due process. The District Court granted Brentwood relief, but the Sixth Circuit reversed, holding that TSSAA was a private voluntary association that did not act under color of state law. This Court reversed that determination, *Brentwood Academy v. Tennessee Secondary School Athletic Assn.*, 531 U. S. 288, and the District Court again ruled for Brentwood on remand. The Sixth Circuit affirmed, holding that the antirecruiting rule is a content-based regulation of speech that is not narrowly tailored to serve its permissible purposes and that the TSSAA board improperly considered *ex parte* evidence, thereby violating Brentwood’s due process rights.

Held: The judgment is reversed, and the case is remanded.

442 F. 3d 410, reversed and remanded.

JUSTICE STEVENS delivered the opinion of the Court with respect to Parts I, II–B, III, and IV, concluding:

1. Enforcing a rule that prohibits high school coaches from recruit-

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ing middle school athletes does not violate the First Amendment. Brentwood made a voluntary decision to join TSSAA and to abide by its antirecruiting rule. See 531 U. S., at 291. An athletic league's interest in enforcing its rules may warrant curtailing the speech of its voluntary participants. See, e.g., *Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568. TSSAA does not have unbounded authority to condition membership on the relinquishment of constitutional rights, see *Garcetti v. Ceballos*, 547 U. S. ___, ___, and can impose only those conditions that are necessary to managing an efficient and effective state-sponsored high school athletic league. That necessity is obviously present here. No empirical data is needed to credit TSSAA's commonsense conclusion that hard-sell tactics directed at middle school students could lead to exploitation, distort competition between high school teams, and foster an environment in which athletics are prized more highly than academics. TSSAA's rule discourages precisely the sort of conduct that might lead to those harms, any one of which would detract from a high school sports league's ability to operate "efficiently and effectively." *Garcetti*, 547 U. S., at ___. Pp. 7–8.

2. TSSAA did not violate Brentwood's due process rights. The sanction decision was preceded by an investigation, several meetings, correspondence, the TSSAA executive director's adverse written determination, a hearing before the director and an advisory panel, and a *de novo* review by the entire TSSAA board. During the investigation, Brentwood was notified of all the charges against it. At each of the hearings, it was represented by counsel and given the opportunity to adduce evidence, none of which was excluded. The Court rejects Brentwood's argument that its due process rights were nevertheless violated when the full TSSAA board, acting *ex parte*, heard from investigators and other witnesses and considered the investigators' notes and other evidence concerning a separate incident in which a basketball coach named King, who was not a Brentwood employee, pushed a middle school basketball star to attend Brentwood. Even accepting the questionable holding that TSSAA's closed-door deliberations were unconstitutional, any due process violation was harmless beyond a reasonable doubt. It is unlikely the King allegations increased the severity of the penalties leveled against Brentwood. More importantly, Brentwood's prejudice claim rests on the unsupported premise that it would have adopted a different and more effective strategy at the board hearing had it been given an opportunity to cross-examine the investigators and review their notes. Brentwood has identified nothing the investigators shared with the Board that Brentwood did not already know. Pp. 8–12.

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STEVENS, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–B, III, and IV, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, GINSBURG, BREYER, and ALITO, JJ., joined, and an opinion with respect to Part II–A, in which SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which ROBERTS, C. J., and SCALIA, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment.