

Chalk Talks—

Let Them Play: Why Kentucky Should Enact a “Tebow Bill” Allowing Homeschoolers to Participate in Public School Sports

I. INTRODUCTION

Quarterback Tim Tebow’s NFL career may be over, given his recent release from the New England Patriots and employment as a sports analyst on ESPN.¹ However, he may have a more meaningful legacy in the area of education policy than in football. Tebow was a homeschooled student in Florida who was able to play on a public high school football team due to the state’s “Craig Dickinson Act”² passed in 1996.³ In response to Tebow’s meteoric career, a number of states across the country have passed “Tebow bills.” These are either legislation or changes to the rules of an athletic association that allow homeschooled students to participate in public school extracurricular athletic activities.⁴ This note will first analyze the Florida law that allowed Tebow to compete, then briefly review the laws of other states that allow homeschoolers to participate in public school sports in some way. It will then discuss four representative examples of “Tebow bills,” beginning with the Louisiana statute struck down by the Louisiana Supreme Court and Tennessee’s recently passed legislation. This note will then consider Indiana’s athletic association rule change and Kentucky’s proposed but not enacted Tebow bill. It will conclude by arguing that the Kentucky state legislature should reintroduce and pass the Tebow bill, following the model of

1. Richard Deitsch, *Match Made in Heaven? ESPN Hires Tim Tebow for SEC Network*, SI.COM (Dec. 30, 2013, 6:48 PM) <http://sportsillustrated.cnn.com/college-football/news/2013/12/30/tim-tebow-sec-network/>.

2. FLA. STAT. § 1006.15(2013) (providing that homeschooled students be considered eligible to participate in the extracurricular activities of the public school they would normally attend).

3. Andy Staples, *Homeschool Players Fighting for Access to Public School Teams*, SI.COM, 2 (Jan. 14, 2010, 3:06 PM) http://sportsillustrated.cnn.com/2010/writers/the_bonus/01/13/homeschool-recruiting/index.html

4. Bryan Toporek, “Tebow Bills” for Homeschooled Athletes Advance in Three States, EDUCATION WEEK, Apr. 3, 2013, http://blogs.edweek.org/edweek/schooled_in_sports/2013/04/tebow_bills_for_homeschooled_athletes_advance_in_three_states.html?qs=Tebow.

recently passed legislation to raise the school dropout age. Thus, Kentucky homeschooled students would have opportunities to develop their athletic talents and interact with other students, while still being primarily educated by their parents and maintaining academic accountability.

II. THE HISTORY OF THE “TEBOW BILL”

A. The Original “Tebow Bill:” The Craig Dickinson Act of 1996

The first “Tebow Bill” originated due to the efforts of homeschooling activist Brenda Dickinson.⁵ She advocated for the bill for several years without success. Then, she received support not just from Republicans but also from many female state legislators. These legislatures opposed the Florida High School Activities Association at the time due to unrelated concerns about a girls track team believed to have suffered gender discrimination after being disqualified from a competition over uniforms.⁶ With bipartisan support, the Florida legislature passed the Craig Dickinson Act in 1996, named for Brenda Dickinson’s late husband.⁷

The Act⁸ contains several provisions common to the Tebow bills later passed by states and high school athletic associations. First, it specifically forbids organizations that govern public school extracurricular activities, including athletics, to discriminate against students based on their choice of private or home education.⁹ Second, the Act does not allow homeschooled students to choose the school where they will participate in sports. Rather, it allows them to “participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to district or inter-district controlled open enrollment provisions.”¹⁰

The Act not only requires that homeschooled students be allowed to participate, but it also imposes accountability requirements. Students must

5. Staples, *supra* note 3, at 2.

6. *Id.*

7. Staples, *supra* note 3, at 2.

8. FLA. STAT. § 1006.15 (2013).

9. § 1006.15(5)(b).

10. § 1006.15(4)(c).

comply with the applicable homeschooling state regulations.¹¹ These regulations require the parent to notify the school district of the intent to home-school the student and maintain a portfolio including writing samples, readings, and records of educational activities.¹² In order to participate in public school sports, the student must meet “the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities,”¹³ and must “demonstrate educational progress.”¹⁴ The parent and the school principal determine the method of demonstrating educational progress. The Act suggests that such methods may include “review of the student’s work by a certified teacher chosen by the parent,” grades earned through courses taken at a Florida university, or standardized test scores.¹⁵ The Act also suggests “any other method designated in § 1002.41,” such as the student being evaluated by a licensed psychologist or taking a student assessment test administered by the school district.¹⁶ These accountability requirements were likely meant to assuage concerns that homeschooled students would not face the same incentives to keep up their grades as public school athletes, who can be cut from their teams if their grades suffer.

B. Early “Tebow Bills” in Other States

Since the Craig Dickinson Act of 1996, other states have joined Florida in allowing homeschooled students to participate in public school athletics. Twenty-nine states now allow some form of access to homeschooled students via legislation or athletic regulations.¹⁷ These states vary widely in their approaches. In Washington homeschooled students are considered “regular members of a school”¹⁸ by the state’s interscholastic activities association and may therefore compete as long as

11. § 1006.15(4)(c).

12. FLA. STAT. § 1002.41(1)(b).

13. § 1006.15(3)(c)(1).

14. § 1006.15(3)(c)(2).

15. *Id.*

16. *Id.*

17. These states are Alaska, Arizona, Arkansas, Colorado, Florida, Idaho, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, and Wyoming. See generally HSLDA, *State Laws Concerning Participation of Homeschool Students in Public School Activities*, Sept. 2013, available at http://www.hslda.org/docs/nche/issues/e/Equal_Access.pdf.

18. WASH. INTERSCHOLASTIC ACTIVITIES ASS’N, HANDBOOK: 2012-2013, 38, May 30, 2012, available at www.wiaa.com/ConDocs/Con1125/FinalHandbook.pdf.

they meet the normal eligibility requirements of public school students. Alaska's statute is slightly more limited. It allows high-school-aged homeschooled students to participate in almost all interscholastic activities, except for student government at a public school.¹⁹ New Mexico's requirements go further than Alaska; homeschooled students may only participate in "up to three school district athletic activities."²⁰ No other state imposes a numerical limit on the number of programs in which a student may participate.²¹

Many states do require that homeschooled students meet academic standards and, similarly to the Craig Dickinson Act, provide for accountability to ensure the students' educational performance. Arkansas, for example, recently passed a law that allows homeschooled students to participate in athletics if they score at the 30th percentile or higher on the SAT or equivalent test, but also suggests that they "may" be required to attend one class period per day.²² Several states require that homeschooled students be enrolled part time at the public school where they wish to compete. For example, Nebraska's scholastic activities association requires that the student enroll in twenty credit hours of class instruction per semester at a public school.²³

Nebraska's requirement may seem problematic for a homeschooled student, given that the point of homeschooling is that the student would not be enrolled at a public school. However, other states go even further. A Missouri statute technically allows homeschooled students in grades 9-12 to compete,²⁴ but the Missouri State High School Athletic Association (MSHSAA) requires that a student in grades 9-12 have earned credit in 80% of the maximum possible classes he or she could have taken.²⁵ As the Home School Legal Defense Association notes in its legal brief on the subject, this requirement "excludes virtually all homeschooled students" from participation in athletics.²⁶

19. ALASKA STAT. ANN. § 14.30.365(c)(4)(C). (West 2013)

20. N.M. STAT. ANN. § 22-8-23.8. (West 2012).

21. See generally HSLDA, *supra* note 17.

22. ARK. CODE ANN. 6-15-509 (West 2013).

23. NEB. SCHOOL ACTIVITIES ASS'N, BYLAWS FOR ALL ACTIVITIES 4 (2013), available at <https://nsaahome.org/textfile/yb/2allact.pdf>.

24. MO. REV. STAT. 167.031(1) (2013).

25. MO. STATE HIGH SCHOOL ATHLETIC ASS'N, 2013-2014 HANDBOOK, 37 (2013), available at <http://www.mshsaa.org/resources/pdf/1314Handbook.pdf>.

26. HSLDA, *supra* note 17 at 4.

In fact, the MSHSAA does not appear to contemplate the possibility that homeschooled students might play on a public school team while still remaining entirely homeschooled. The MSHSAA Handbook discusses homeschooled students primarily in the context of whether public school teams can play a team organized entirely by a homeschool association.²⁷ The Handbook also explains how to determine the inter-scholastic eligibility of homeschooled students who enroll full time in public schools, but does not give procedures for homeschooled students who do not wish to enroll full time.²⁸ Thus, the effect of MHSAA's restrictions is to allow homeschooled students to play only on teams organized by homeschool associations.

III. "TEBOW BILLS" IN LOUISIANA, TENNESSEE, INDIANA, AND KENTUCKY

A. Louisiana

In 2010, the Louisiana legislature passed a statute that allowed a homeschooled student to play on public school teams, if approved by the principal of the school and eligible academically.²⁹ When the Louisiana High School Athletic Association (LHSAA) challenged the statute in Louisiana's Supreme Court, Governor Bobby Jindal and the Louisiana Department of Education defended the statute in an amicus brief explicitly referencing Tim Tebow.³⁰

It is a bit sobering to realize that if a student athlete like Tebow were residing in Louisiana today, the LHSAA would be opposing legislation that would allow him, as a homeschooled student, to play high school football and perhaps pursue an athletic scholarship to a university like LSU. In other words, if the LHSAA were to prevail here

27. 2013-2014 HANDBOOK, *supra* note 25, at 8, 26. The bylaws do allow public school teams to play teams organized by homeschool associations, but impose several requirements on the homeschool teams to allow them to compete.

28. *Id.* at 58. These students are treated as if they had transferred from a non-MSHSAA school to an MSHSAA school. They would be eligible for inter-scholastic activities upon approval from the MSHSAA school.

29. LA. REV. STAT. ANN. § 17:236.3 (2010) (held unconstitutional in *La. High School Athletics Ass'n v. State*, 107 So. 3d 583 (La. 2013)).

30. Brief for the Office of the Governor and the La. Dep't of Educ. at 5, as Amici Curiae Supporting Defendants-Appellants, *La. High School Athletics Ass'n v. State*, 107 So. 3d 583, (La. 2013).

and have Louisiana's legislation declared unconstitutional, the LHSAA would thwart the development of homeschooled student athletes like Tebow in Louisiana.³¹

Unfortunately for the hypothetical Tim Tebows of Louisiana, the Louisiana Supreme Court struck down the statute. Because the statute changed the eligibility rules of the LHSAA and allowed homeschooled student participation, the Court concluded that the Louisiana legislature had passed an unconstitutional "special law": a law affecting only certain people and not others.³² The Court held, "By making these statutes applicable only to the LHSAA, the Legislature has effectively denied the LHSAA, a Louisiana corporation, the privilege of creating its own internal rules and regulations while preserving the rights of other athletic associations to do so."³³ The Court did not rule explicitly that homeschooled students could not compete on public school teams. It only held that the bill allowing them to do so had inappropriately focused on the eligibility rules of the LHSAA.³⁴ However, the practical effect of its ruling still means that homeschooled students cannot participate in public school sports in Louisiana.

B. Tennessee

So far, Tebow bills in other states have not been struck down, though this may be due to the relative novelty of the Tebow bill concept. Tennessee's statute is one of the most recent, taking effect on July 1, 2013.³⁵ The Tennessee bill amends the relevant provision of the Tennessee Code, § 49-6-3050, that regulates homeschooled students.³⁶ The new language, subsection (e), applies to public schools in local school districts that belong to an organization regulating interscholastic athletic competition. If that organization allows homeschooled students to be eligible to participate in interscholastic athletics, then the local school district "shall permit participation" by those students.³⁷ The bill clarifies that it does not guarantee that the homeschooled students would

31. *Id.*

32. *La. High School Athletics Ass'n v. State*, 107 So. 3d 583, 601 (La. 2013).

33. *Id.*

34. *Id.* at 604.

35. TENN. CODE ANN. § 46-6-3050(e) (West 2013).

36. *Id.*

37. *Id.*

make the teams they try out for. It provides only that the school district cannot prohibit them from trying out due to their school status.³⁸

The Tennessee Secondary School Athletic Association includes eligibility requirements for homeschoolers in its bylaws.³⁹ These requirements include that the homeschooled student take a minimum of four hours a day of instruction administered by the parent, not at the public school.⁴⁰ By contrast, Nebraska⁴¹ and Missouri⁴² require student instruction to be administered at the public school.

The TSSAA also requires that the student take a minimum of five academic subjects or their equivalent, again administered by the parent, and must meet the same academic or conduct requirements as a public school student.⁴³ Unlike the Florida law, the rule in conjunction with the Tennessee statute does not require an annual portfolio. However, homeschooled parents are required to maintain and submit attendance records and a notice of intent to homeschool their child every year.⁴⁴ Homeschooled students also must submit to standardized testing in grades five, seven, and nine.⁴⁵

C. Indiana

The Indiana General Assembly considered a “Tebow bill” in 2011. However, that legislation died in the state senate after opposition from the Senate Education Chairman.⁴⁶ The sponsoring senator reintroduced the bill, but agreed to drop it after the Indiana High School Athletic Association (IHSAA) agreed to address his concerns in its bylaws.⁴⁷

As a result, the IHSAA subsequently changed Rule 12-5 of its bylaws to allow homeschooled students to participate in public school sports.⁴⁸

38. *Id.*

39. TSSAA Home School Rule, TSSAA Bylaws: Article II, Section 25, <http://tssaa.org/compliance-publications/tssaa-home-school-rule/> (last visited April 15, 2013).

40. *Id.*

41. NEB. SCHOOL ACTIVITIES ASS’N, *supra* note 23, at 4.

42. MO. STATE HIGH SCHOOL ATHLETIC ASS’N, *supra* note 25, at 37.

43. TSSAA Home School Rule, *supra* note 39.

44. TENN. CODE. ANN. § 49-6-3050(b)(1) (West 2013).

45. § 49-6-3050 (b)(5)(A).

46. Alex Swanson, *IHSAA to Vote on Letting Homeschooled Students Participate in High School Athletics*, EVANSVILLE COURIER & PRESS (April 28, 2013), available at <http://www.courierpress.com/news/2013/apr/28/no-headline—ihsaavote/>

47. *Id.*

48. Bryan Toporek, *Indiana Athletic Association to Allow Homeschooled Student-Athletes*, EDUCATION WEEK (April 30, 2013), http://blogs.edweek.org/edweek/schooled_in_sports/2013/04/ind_athletic_association_to_allow_homeschooled_student-athletes.html?qs=Tebow.

The new rules require homeschooled students to pass a physical exam, attend practices, pass state examinations approved by the Indiana Department of Education, and submit proof of passing grades.⁴⁹ Most significantly, the new rule includes a requirement that eligible homeschooled students must be enrolled and attending "a minimum of One(1) full credit subject offered within the member school building."⁵⁰

This last requirement makes the Indiana rule more like the restrictive requirements of Nebraska and Missouri than the less onerous Tebow bills of Tennessee and Washington. Those bills maintained students' freedom to be educated by their parents outside of the public school system, while still providing for academic accountability and an opportunity to participate in broader athletic opportunities.

D. Kentucky

Kentucky's version of the "Tebow bill" was introduced in the 2009 regular session as House Bill 179, but was never passed into law.⁵¹ The bill, cited officially as "the Tim Tebow Act," contained an anti-discrimination provision similar to the Florida statute, prohibiting public schools from discriminating against homeschooled students in selecting extracurricular team members.⁵² It also required that homeschooled students comply with the same academic and behavior standards as other students.⁵³ Interestingly, the bill stated that the homeschooled student shall "[a]dhere to the same academic standards as other participants, with those standards confirmed by appropriate documentation provided by the student to the public school providing the extracurricular activity in which the student will participate." The bill did not specify what appropriate documentation might be, or how often the student would need to provide it. The bill did, however, point out that both the student and homeschooling parent have the responsibility to arrange transportation to events, a concern not always addressed in other "Tebow bills."⁵⁴

49. *Id.* See also News Release, Ind. High School Athletic Ass'n, New Sectional Assignments Approved by IHSAA Executive Committee; Board Approves Allowing Home-Schooled Students to Participate in Athletics (Apr. 29, 2013), <http://www.ihsaa.org/Media/MediaReleases/201213/42913/tabid/1457/Default.aspx>.

50. IND. HIGH SCHOOL ATHLETIC ASS'N, ARTICLES OF INCORPORATION & BY-LAWS 41 (2013) available at <http://www.ihsaa.org/Portals/0/ihsaa/documents/about%20ihsaa/2Articles.pdf>.

51. H.B. 179, 2009 Gen. Assemb., Reg. Sess (Ky. 2009).

52. *Id.*

53. *Id.*

54. *Id.*

Meanwhile, in an informational packet, the Kentucky Department of Education noted that KRS § 159.040 applies to home schools and requires parents to maintain attendance records and scholarship reports of the student's progress in subjects equivalent to those taught as public schools.⁵⁵ Specifically, "State law only requires the public school district to allow opportunity for a student to participate in extracurricular activities if the student is enrolled in the public school district. Some districts are willing to allow home schools to participate but this decision is up to the individual school districts."⁵⁶

Thus, while Kentucky does not specifically prohibit homeschooled students from participating in public school athletics, it does not encourage them. The informational packet emphasized that state law only protects students' right to compete if they are enrolled in a public school district.⁵⁷ Kentucky thus occupies a middle ground between states that allow participation only for students who actually enroll in a public school class, and states like Hawaii, which has no law on the matter and leaves the decision entirely up to the individual school districts.⁵⁸

IV. CONCLUSION

If the Kentucky "Tebow Bill" is introduced again, Kentucky legislatures should avoid modeling it after the Indiana rules change. The Indiana rule is the most restrictive of the various options available, as it requires the homeschooled student to actively enroll in a minimum of one public school class in order to participate in athletics.⁵⁹ Parents who choose to homeschool their children do so precisely because they do not wish their children to attend academic classes at a public school. Requiring them to do so in order to participate in sports defeats the purpose of homeschooling and constricts their athletic opportunities.

By contrast, House Bill 179, the previously introduced Kentucky bill, did not require class attendance but only required appropriate documentation, although it did not specify what documentation is appropriate.

55. KY. DEP'T OF EDUCATION, KENTUCKY HOME SCHOOL INFORMATION PACKET, available at <http://education.ky.gov/federal/fed/Documents/Kentucky%20Home%20School%20Information%20Packet%20updated%207-18-13.pdf> (last visited Apr. 17, 2014).

56. *Id.*

57. *Id.*

58. HSLDA, *supra* note 17, at 2.

59. IND. HIGH SCHOOL ATHLETIC ASS'N, *supra* note 50, at 41.

Upon reintroduction, a better approach would clarify what constitutes appropriate documentation by following the example of Tennessee or Florida. These states allow students to participate in public school athletics without taking classes, but still maintain academic accountability through annual submission of attendance records or academic portfolios.

Finally, rather than requiring all public schools to accept home-schooled students in their athletic programs, Kentucky could follow the strategy it used when it allowed districts to increase the student drop-out age in 2013. School districts were allowed to voluntarily raise the drop-out age from 16 to 18. However, if 55% of the state's districts raised the drop-out age, then new state law required that all districts follow suit.⁶⁰ A new Tim Tebow Act could follow the same approach. Doing so would give school districts the choice to allow homeschooled students to compete, but also require all districts to do so if districts who allow home-schooled student participation pass a certain percentage. This would allow for school district input and yet give homeschooled students across the state a path to full participation in athletics. As a result, home-schooled students in Kentucky would have greater athletic opportunities available to them, enabling them to develop their talents and expand their career choices much like Tim Tebow, the inspiration for the "Tebow Bills."

Michael Atkinson

60. Devin Katayama, *Kentucky's New Drop-out Age Will Be 18*, WFPL NEWS, Jul. 9, 2013, <http://wfpl.org/post/kentucky-s-new-dropout-age-will-be-18>.

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