

**THE NCAA IS NOT A STATE ACTOR
UNDER ART. III § 14 AND ITS
ENFORCEMENT ACTIONS DO NOT
SUPPORT A CLAIM FOR MALICIOUS
INTERFERENCE WITH EMPLOYMENT**

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Barney Farrar, an assistant director for football at the University of Mississippi, was implicated in National Collegiate Athletic Association (“NCAA”) rule violations arising from a wide-ranging investigation into the university’s football program.¹ The NCAA’s Committee on Infractions (“COI”) determined Farrar had committed multiple recruiting violations and ethical breaches, ultimately issuing a five-year “show-cause” order that limited his future employment prospects with any NCAA-member institution.² Farrar appealed the decision to the NCAA’s Infractions Appeals Committee, which upheld the findings.³

In 2020, Farrar filed a suit in Lafayette County Circuit Court alleging (1) negligence and denial of a fair tribunal, (2) malicious interference with employment, (3) denial of due process under the Mississippi Constitution, and (4) usurpation of judicial function.⁴ The trial court dismissed all but the due process and interference claims.⁵ After the NCAA’s interlocutory appeal, the Mississippi

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¹ See generally *Nat’l Collegiate Athletic Ass’n v. Farrar*, 402 So. 3d 1251, 1255 (Miss. 2024).

² The NCAA justified the punishment of five years in their summary judgment hearing. *Id.* at 1265.

³ *Id.* at 1256.

⁴ *Id.*

⁵ *Id.* at 1257.

Supreme Court reversed the trial court, holding that the NCAA was not a state actor under Art. III § 14 of the Mississippi Constitution and that its enforcement actions could not, as a matter of law, support a tort claim for malicious interference with employment.⁶

Mississippi's due process clause, Art. III § 14, states that "[n]o person shall be deprived of life, liberty, or property except by due process of law."⁷ Although lacking the "state action" qualifier found in the Fourteenth Amendment, Mississippi courts have historically interpreted the provision in tandem with its federal counterpart.⁸ *Tunica County v. Town of Tunica* reaffirmed that due process protections under both constitutions are "essentially identical," requiring state action to trigger constitutional protections.⁹

In *NCAA v. Tarkanian*, the United States Supreme Court concluded the NCAA was not a state actor under § 1983, despite its disciplinary actions impacting a public university employee.¹⁰ The Court emphasized that the University of Nevada, Las Vegas ("UNLV"), like other NCAA member institutions, voluntarily adhered to NCAA rules and retained the authority to withdraw.¹¹

Mississippi courts require four elements for a claim of malicious interference with employment: willful and intentional acts, acts calculated to cause harm, acts done with malice, and resulting damage.¹² In *MBF Corp. v. Century Business Communications, Inc.*, the Mississippi Supreme Court reaffirmed the necessity of actual malice and lack of justifiable cause.¹³

Justice Griffis, writing for the majority, held that the NCAA's enforcement actions did not constitute state action under the Mississippi Constitution.¹⁴ The Court reaffirmed that Mississippi's due process clause requires state action and found that the NCAA,

⁶ *Id.* at 1265.

⁷ MISS. CONST. art. 3, § 14.

⁸ *Id.*

⁹ *Tunica Cnty. v. Town of Tunica*, 227 So. 3d 1007, 1016 (Miss. 2017).

¹⁰ *Nat'l Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 199 (1988).

¹¹ *Id.* at 194-95.

¹² *MBF Corp. v. Century Bus. Commc'ns, Inc.*, 663 So. 2d 595, 598 (Miss. 1995) (citing *Nichols v. Tri-State Brick & Tile*, 608 So. 2d 324, 328 (Miss. 1992)).

¹³ *Id.*

¹⁴ *Nat'l Collegiate Athletic Ass'n v. Farrar*, 402 So. 3d 1251, 1258 (Miss. 2024).

a private entity comprised of institutions across the country, could not “fairly be said to be a state actor.”¹⁵ It drew heavily from *Tarkanian*, emphasizing the NCAA’s lack of subpoena power, governmental authority, or regulatory entwinement with the State of Mississippi.¹⁶ The Court distinguished precedents like *Brentwood Academy* and *Coleman*, noting those cases involved state-level athletic associations with clear statutory delegation of authority, unlike the NCAA.¹⁷

Turning to the tort claim, the Court concluded that Farrar’s allegation, that the show-cause order itself was inherently malicious, was legally insufficient.¹⁸ The Court emphasized that the NCAA acted under member-adopted rules and procedures.¹⁹ Farrar provided no evidence of malice by the COI or other NCAA actors, and his partial admissions during the investigation undermined claims of bad faith.²⁰ The Court reversed the trial court and rendered judgment in favor of the NCAA on both claims.²¹ Chief Justice Randolph dissented, questioning the majority’s assumptions regarding due process equivalence and suggesting that the NCAA’s internal process may have warranted more scrutiny at the summary judgment stage.²²

Farrar narrows the potential scope of Mississippi’s due process clause by doubling down on the federal-state action requirement, foreclosing constitutional claims against quasi-regulatory entities like the NCAA.²³ This harmonization with federal doctrine may clarify the Court’s stance, but it also reduces the interpretive independence of the Mississippi Constitution.²⁴ The opinion leaves little room for constitutional scrutiny of private

¹⁵ *Diamondhead Country Club & Prop. Owners Ass’n, Inc. v. Montjoy*, 820 So. 2d 676, 682 (Miss. Ct. App. 2000) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999)).

¹⁶ *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 197 (1988).

¹⁷ *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288 (2001); *Miss. High Sch. Activities Ass’n, Inc. v. Coleman ex rel. Laymon*, 631 So. 2d 768 (Miss. 1994).

¹⁸ *Nat’l Collegiate Athletic Ass’n v. Farrar*, 402 So. 3d 1251, 1264 (Miss. 2024).

¹⁹ *Id.*

²⁰ *Id.* at 1265.

²¹ *Id.* at 1255, 1266.

²² *Id.* at 1267 (Randolph, J., dissenting).

²³ *Id.* at 1262 (majority opinion).

²⁴ *Id.*

entities whose disciplinary actions have real-world employment consequences.²⁵

The Court also rejected a broader conception of tortious interference. Even though the NCAA's show-cause penalties can seriously hinder employment, the Court emphasized that such effects, if pursued under an agreed-upon, rule-based structure, do not suffice to show malice.²⁶ This sets a high bar for plaintiffs seeking to challenge industry-enforced sanctions through Mississippi tort law.²⁷

Justice Randolph's dissenting opinion signaled unease with the Court's unwillingness to probe deeper into the fairness of the NCAA's procedures.²⁸ His concerns reflect a broader tension in modern jurisprudence: how much deference courts should give to private associations with public-facing power.²⁹ Notably, the majority rebuffed Farrar's attempts to rely on *Brentwood* and *Coleman*, preserving a clear doctrinal divide between state-level regulatory bodies and national private organizations.³⁰

Importantly, *Farrar* confirms that unless Mississippi's legislature delegates specific authority to an entity like the NCAA, constitutional constraints remain dormant.³¹ That doctrinal clarity will likely immunize similar national associations, bar examiners, accrediting agencies, or medical boards, from due process challenges under state law, absent a clear statutory hook.³²

Future litigation could test the bounds of *Farrar* by focusing on cases where private actors work more closely with state agencies or where internal procedures clearly depart from fair normality.³³ But as it stands, the decision insulates national private associations from both constitutional and tort liability

²⁵ *Id.*

²⁶ *See generally* MBF Corp. v. Century Bus. Commc'ns, Inc., 663 So. 2d 595 (Miss. 1995).

²⁷ *Farrar*, 402 So. 3d at 1264.

²⁸ *Id.* at 1267 (Randolph, J., dissenting).

²⁹ *Id.*

³⁰ *See generally* Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288 (2001); Miss. High Sch. Activities Ass'n, Inc. v. Coleman *ex rel.* Laymon, 631 So. 2d 768 (Miss. 1994).

³¹ *Farrar*, 402 So. 3d at 1264.

³² *Id.*

³³ *Id.* at 1267 (Randolph, J., dissenting).

under Mississippi law, so long as they adhere to their own bylaws and avoid overt malice.³⁴

The Mississippi Supreme Court's decision in *NCAA v. Farrar* decisively limits the application of the state constitution's due process protections to actions by state actors. It also sets a high bar for tortious interference claims stemming from private regulatory actions.³⁵ By closely following federal precedent and emphasizing the NCAA's private, voluntary structure, the Court narrows potential avenues for redress by affected individuals, reinforcing institutional autonomy over individualized fairness concerns.³⁶

³⁴ *Diamondhead Country Club & Prop. Owners Ass'n, Inc. v. Montjoy*, 820 So. 2d 676, 682 (Miss. Ct. App. 2000).

³⁵ *Farrar*, 402 So. 3d at 1264.

³⁶ *Id.*