

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

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**AFFIDAVIT OF JOHN W. DYE**

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STATE OF WISCONSIN      )  
                            ) ss  
COUNTY OF BROWN      )

John W. Dye, being duly sworn on oath, states as follows:

1.       I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently.
2.       I am the Executive Editor of the *Green Bay Press-Gazette*, where I have been employed since Jan. 1, 2005. I have been the Executive Editor for the same period, beginning Jan. 1, 2005. My job duties include the overall direction and operation of news gathering and reporting – both in print and online, direction of our editorial/opinion pages and I serve as a member of the newspaper's Operating Committee of department heads. I also have supervisory responsibility for news gathering for five weekly or twice-weekly newspapers operated by the *Green Bay Press-Gazette*. I have been a journalist for 39 years, serving in a variety of reporting and editing roles. For the past 16 years, I have been a managing editor or executive editor, serving, in order from past to present, The News-Messenger in Fremont, Ohio, as executive

editor; the Green Bay Press-Gazette as managing editor; the Observer-Dispatch in Utica, N.Y., as executive editor, and then returned to Green Bay as executive editor.

3. The *Green Bay Press-Gazette* is a daily publication with an average weekday circulation of 49,953, an average Saturday circulation of 59,468, and an average Sunday circulation of 73,578, according to an audit in March of 2009 by the Audit Bureau of Circulation. In addition, the *Green Bay Press-Gazette* maintains a website, [www.greenbaypressgazette.com](http://www.greenbaypressgazette.com), on which it posts some articles published in the newspaper's print edition, as well as original content published only on the website.

4. Due to the technological differences between the Internet and a print publication, the *Green Bay Press-Gazette* is able to offer its readers more, and more varied, content on our website than in the print edition. On the website, [www.greenbaypressgazette.com](http://www.greenbaypressgazette.com), in addition to articles, editorials and other written content, readers are able to access more photographs than appear in the print edition, as well as audio and video content, a variety of databases and documents and/or meeting agendas we are unable to offer in our print editions. Furthermore, the website frequently posts links to external websites that are relevant to a given article or other posted content.

5. The newspaper's website is highly interactive. On the website, readers can view content from the past seven days free of charge; additionally, readers who register with the site may post comments, create a blog, share photos and videos, participate in live discussions with each other and with our reporters and editors, and share all of that information by forwarding it to other individuals. Readers also can subscribe to have news and sports text alerts sent to their computers and mobile devices. Content that is more than seven days old is available to the public for purchase from the online archives.

6. The *Green Bay Press-Gazette* regularly reports on WIAA-sponsored games both in its print edition and on the website. The *Green Bay Press-Gazette* makes every attempt to report on all high school varsity sports events involving local schools, as it has since our inception as a daily newspaper in 1915, and the newspaper's sports reporters often travel to other cities to cover those events. Because of the significant interest high school sports generate, the *Green Bay Press-Gazette* does not limit or intend to limit in the future its reporting to only the most popular sports. The newspaper also provides significant coverage of non-local high school sports events. For example, the *Green Bay Press-Gazette*'s online archives contain nearly 500 articles and editorials dated between December 2008 and December 2009 regarding WIAA-recognized teams and events.<sup>1</sup> The newspaper's high school sports coverage extends back at least 94 years.

7. Gannett's counsel in this matter asked me to provide a sampling of WIAA tournament coverage by the *Green Bay Press-Gazette*. Attached hereto as Exhibit A are true and accurate copies of *Green Bay Press-Gazette* articles copied from microfiche publicly available at the Brown County Public Library. The earliest-dated article included in Exhibit A is from 1934.

8. The *Green Bay Press-Gazette* employs a full-time high school sports reporter, Scott Venci. Two other full-time sports writers and one part-time sports reporter cover games and write stories or columns about high school sports on occasion. Additionally, three sports copy editors and three part-time clerks also are involved in our high school sports coverage. This work includes attending games and events, taking telephone calls and e-mails about games and events we could not attend, writing accounts of games based on those sources, editing stories, writing headlines and assembling sports pages for our print editions.

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<sup>1</sup> The articles include, for example, coverage of boys football, wrestling, basketball, cross-country, soccer, volleyball; and girls volleyball, swimming, basketball, tennis, golf.

9. All four of our photographers and their editor cover a variety of events, including high school sports. Our online staff, which consists of two content producers and an online editor, devotes some of their work schedules to high school sports. On occasion, news and feature reporters also cover stories related to high school sports. (Example: Communities which rally behind a high school sport team's advancement in tournament games, or the heroic exploits of a student who had overcome adversity to participate in an athletic event.) Additionally, top editors, including myself, regularly participate in news coverage planning, which includes coverage of high school sports events in print and online. High school sports are viewed by our staff as part of the larger fabric of the communities we cover and not as athletic events only. In all, the *Green Bay Press-Gazette* news operation employs fifty-three full-time employees and five part-time employees. All but two or three of those staffers have at least some contact related to high school sports in the course of a calendar year. The *Green Bay Press-Gazette* also contracts with a network of stringers, or correspondents, who help us cover high school sports events throughout our coverage area.

10. The *Green Bay Press-Gazette*'s website has a page dedicated solely to high school sports, called Varsity. The page includes links to articles, links to updated scores and statistics for recent games, a schedule of upcoming games, and links to a page for website users to leave comments on articles or games. By our best estimate, high school sports-related page views, which include photos, video, stories and commentary, accounted for about 1.2 million of the approximate 98 million total page views for our Web site in 2009.

11. Because most high school sports teams are WIAA-recognized teams, virtually all of the high school sports information and articles published by the *Green Bay Press-Gazette*

relate to WIAA-sanctioned events. (One example of a high school sport not recognized by the WIAA but which has been covered by the *Green Bay Press-Gazette* is bowling.)

12. On October 28, 2008, the *Green Bay Press-Gazette*'s sister newspaper, Appleton's *The Post-Crescent*, live-streamed a WIAA football tournament game between Green Bay Preble High School and Appleton North High School. The *Green Bay Press-Gazette* made the video available to its readers on the *Green Bay Press-Gazette*'s website. On October 29, 2008, Tim Eichorst emailed me demanding that the newspaper remove the video of the October 28, 2008 football game from the *Green Bay Press-Gazette*'s website or, in the alternative, pay a rights fee of \$250 (for a single-camera video) or \$1,500 (for a multi-camera video). The *Green Bay Press-Gazette* refused to pay a rights fee and the video was removed from the *Green Bay Press-Gazette*'s website on or before October 30, 2008. A true and correct copy of this email is attached as Exhibit B.

13. The *Green Bay Press-Gazette* has not entered into any agreement with WWWY to surrender the newspaper's rights to copy, distribute or market its work product. Although the newspaper agrees to share some content intra-company via Gannett News Service (also known as ContentOne), and with non-Gannett news operations via the Associated Press news cooperative, it does not surrender rights to its work to any other media entity.

14. It is the *Green Bay Press-Gazette*'s policy and mission to attract and maintain its subscribers and readers by competing with other media outlets on the basis of the quality and breadth of the *Green Bay Press-Gazette*'s reporting and variety of content. The *Green Bay Press-Gazette* does not seek in this action to establish or benefit from an unnatural monopoly on access to reporting and commenting on public events. We seek only a level playing field.

15. The *Green Bay Press-Gazette* has the necessary technology and personnel to live-stream public events and utilizes this technology to enhance its coverage of events and expand the scope of its audience beyond the local audience served by its print publication. Due to the popularity of high school sports, expanded coverage of high school sports by live-streaming over its website, using an Internet streaming platform technology called Livestream, is likely to expand the *Green Bay Press-Gazette*'s audience.

16. Some of the technology now in use by the *Green Bay Press-Gazette* has become available to us only in the last two years, including the ability to stream an event live and to simultaneously engage in online discussions with viewers using Coverit Live software.<sup>2</sup> We see this evolving technology similar to our advancement from telegraphs to telephones and manual typesetting to computerized printing. We continue to report on news events in a variety of ways as we have for decades, but the technology enabling us to do that continues to change.

17. A fee of \$250 per event is an excessive fee for a local newspaper like the *Green Bay Press-Gazette*, which provides regular and extensive coverage of numerous WIAA tournament events throughout the year. The newspaper currently streams some regular season games involving local teams and would like to follow those teams who qualify for tournament events using the same reporting method. If the newspaper had to pay \$250 for each tournament event, however, the newspaper would not be able to report on as many WIAA tournament events using Internet streaming technology as it would otherwise. Due to this litigation, the *Green Bay Press-Gazette* is currently not streaming any tournament events at all.

18. The *Green Bay Press-Gazette* seeks to exploit the full panoply of technical opportunities that are available to the newspaper to enhance the quality of the services it provides its readers. In addition to live streaming, the newspaper has the capability to provide live

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<sup>2</sup> This technology is explained in detail in the Affidavit of Joel Christopher, ¶¶ 4-7, 10-11.

blogging coverage of public events, including athletic events, and to engage in real-time online discussions with users about events as they unfold.

19. The *Green Bay Press-Gazette* has instituted live online conversations about sporting events using Coverit Live. Through this feature, reporters and fans can send comments – via email, text message or phone message – regarding a live event. The comments are screened by staff, and if found to be appropriate, are posted on the website. This feature was used for two 2009 WIAA football tournament games. The result is similar to a blog but, due to screening, does not result in a play-by-play description of the game. To date, and because of this lawsuit, the *Green Bay Press-Gazette* has refrained from blogging and/or using Coverit Live technology from WIAA-sponsored tournament events for fear we would run afoul of the WIAA's policies regarding what it calls live or real-time play-by-play. The *Green Bay Press-Gazette* screens Coverit Live comments before posting for the same reason. Additionally, these online conversations are hosted in our editorial offices, not the venues, and we lose the ability capture the color of the event live as it takes place. Even with these limitations, two live chats during the 2009 football playoffs generated some user interest. (A Saturday, Oct. 31, 2009 Coverit Live conversation generated 3,273 participants, and a Tuesday, Oct. 26, 2009 Coverit Live conversation generated 1,298 participants.) Our online users include customers who are unable to attend events in person and who turn to us for reporting on these events as quickly as possible. These users include people at work or at home who may not be able to watch a television broadcast of a game, watch video streaming of events or listen on radio, but still want to immediate reporting of those events. Blogging (sending text only) and Coverit Live (sending text while also engaging in a conversation with readers) is slowed or delayed when the reporter not only has to weigh the accuracy and truthfulness of his or her reporting, but also whether it

includes too many details and risks being classified as “play-by-play.” For example, if a football team scores a touchdown on a 55-yard pass play and then kicks the extra point to make the score is 7-0, do we run afoul of the WIAA’s restrictions on play-by-play reporting if we say the team scored on a touchdown and extra point? If we name the players who completed the play and kick is that too much information? Being subject to second-guessing on whether he or she crossed the “play-by-play” threshold could have the effect of reporters limiting news coverage.

20. The *Green Bay Press-Gazette* has no interest in seeking exclusive rights to cover any event using any technology. The newspaper has a proud tradition of securing readers by providing better and more timely coverage than any of its competitors. The exploitation of new technologies is part of the newspaper’s mission to constantly improve its services to its readers.

21. Reporters seeking credentials to a WIAA tournament event submit an online application available on a password-protected page of WIAA’s website. There is no fee for credentials. A true and correct printout of the online form is attached as Exhibit C.

FURTHER, AFFIANT SAYETH NAUGHT

John W. Dye  
John W. Dye

Subscribed and sworn to before me  
this 20<sup>th</sup> day of January, 2010.

Rhonda M. Raleigh

Notary Public, State of Wisconsin  
My Commission: 10/16/2013  
4518464\_3

# **EXHIBIT A**

# GREEN BAY PRESS-GAZE

Brown County Library

515 Pine Street

"EVERYBODY READS IT"

GREEN BAY, WIS., THURSDAY EVENING, JUNE 4, 1936

## STATE HIGH SCHOOL GOLF SQUADS CLASH ON ONEIDA COURSE

### BADGERS LOSE TO APPLETON

Green Bay Softball Squad Is Shaded In 11-Inning Duel by Pond Team.

### STOEGBAUER HITS HOMERS

APPLETON, Wis. — Pond All Stars won their first game in the Wisconsin State Softball league here last night at Brandy park when they defeated the Green Bay Badgers, 3 to 2, in as thrilling an 11-inning duel as has been seen here in a long time.

For Green Bay the game was a case of "home run or no count." Stoegbauer, blond right fielder, scored both the Bay runs when he hit homers over the center field fence.

The first came in the eighth and gave his team a one-run lead. The second came in the first of the eleventh and again put his team in front.

Appleton's first run also was a homer, Bill Peotter smacking the ball over the right field fence in the ninth to tie up what looked like a hopeless cause for Appleton. In the last of the eleventh all he got another long drive, which figured in tallying the winning run. With one away Kelly was safe at first on a play that brought squawks from the Bays. Horn then smashed a drive through the pitcher's box and when the Bay short center fielder let it go through him, Kelly scored and Horn pulled up at third. Peotter then stepped to the rubber and drove a long fly to right center which permitted Horn to score the winning run.

#### Fauk Has Edge

The first seven innings of the game were a pitcher's duel between George Fauk of the Ponds and Gordon Gille of the Bays. Fauk had something of an edge, however, for he allowed only one



Green Bay East Will Compete for Madison West's Title.

### W.I.A.A. SPONSORSHIP

Qualifying Round Set for Tomorrow Morning; Begin Play in Afternoon.

Plans are about complete for the Wisconsin state high school golf meet to be held at Oneida Golf and Riding club next week-end, starting tomorrow morning. The tournament is an annual event, and this is the first time in history that it has been held as far north as Green Bay, except the invitational tournament four years ago which was not a W. I. A. A.-sponsored affair.

East high school, under the management of Coach L. E. Means, is the host to the state golfers and their coaches. Arrangements have been made by the Press-Gazette so that the Oneida club course could be used, while trophies to the winning team, the runner-up, and individual medals all are being furnished by the W. I. A. A.

#### Won Title Twice

The defending champion, Madison West, which has won the state crown twice consecutively again will be competing with a strong team composed of Bob Zwerp, Steve Caravello, and Roger McKenna. These boys consistently shoot from 77 to 82. Wauwatosa, Milwaukee suburban champion, will be represented with a fine team composed of Burleigh Jacobs, William Godfrey, and Robert Gallett, son of the Milwaukee professional. These boys shoot from 77 to 80 on the Milwaukee links.

Green Bay East will have a short center fielder let it go through him. Kelly scored and Horn pulled up at third. Peotter then stepped to the rubber and drove a long fly to right center which permitted Horn to score the winning run.

CONTINUED ON PAGE 16, COLUMN 4

### PICARD LEADS NATIONAL OPEN

### SHOOTIN' HIGH

Year	Club	Lea.	G.	I.P.	W.	L.	Pct.	S.O.	R.
1925	Philadelphia	A. L.	45	197	10	12	.455	116	
1926	Philadelphia	A. L.	45	258	13	13	.500	194	
1927	Philadelphia	A. L.	51	282	20	11	.606	116	
1928	Philadelphia	A. L.	39	263	24	5	.750	116	
1929	Philadelphia	A. L.	42	275	26	6	.667	116	
1930	Philadelphia	A. L.	50	291	28	5	.840	116	
1931	Philadelphia	A. L.	41	289	31	4	.800	116	
1932	Philadelphia	A. L.	44	296	30	4	.818	116	
1933	Philadelphia b.	A. L.	45	275	24	5	.667	116	
1934	Poston	A. L.	22	100	10	12	.455	116	

AT 36, LEFTY IS AIMING TO PROVE THAT HE IS AS GOOD AS EVER



### Patterson Beats Crocker In Amateur Fight Windup

Johnny Brunette Pastes Out Decision Over Luckett; Noel and Steffen Defeat O'Brien and Frank Duket.

#### SUMMARY OF FIGHTS

Vern Patterson, Chicago, 113, defeated Omar Crocker, Iron Mountain, Mich., 138<sup>1</sup>/<sub>2</sub>, decision, five rounds.

Johnny Brunette, Green Bay, 168, defeated Dave Luckett, Chicago, 163, decision, five rounds.

Earl Noel, Marinette, 110<sup>1</sup>/<sub>2</sub>, defeated Jimmy O'Brien, Chicago, 113, decision, three rounds.

George Steffen, Lena, 166, defeated Frank Duket, Marinette, 162, decision, three rounds.

Manie Boyd, Neopit, 168, stopped Eddie Redart, Green Bay, 173, technical knockout, third round.

Matt Plavonitch, Chicago, 132, defeated Leo Herschman, Green Bay, 143, decision, three rounds.

Lauren Chesley, Lena, 124, stopped Marvin Christensen, Green Bay,

clusion of a fine card, although it was marred as usual by substitutions.

Harold Gerarden, under suspension by the State Athletic commission, was unable to go through with his scheduled fight with Mike Kenjalo of Iron Mountain, and there seemed little reason

why Promoter Mike Maloney failed to announce this before the night of the card. True, the spectators were treated to a good card, but they didn't get all they paid for and a number of them justly squawked at the changes.

Punches Are Vicious

Fight fans who saw Patterson in action will be clamoring for a return appearance by the Chicago Negro, who outmaneuvered the popular Crocker from start to finish. His punches were short and vicious, his defense impreg-

LAUNCH IN SI

Palace, Amba First Conte

TONIGHT:

Palace vs. Amba  
Bresnahan vs. H  
Texas vs. Olson.

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ching in the o  
7:10.

As three games  
in rapid order, t  
begin promptly a  
time, and all ma  
quested to have





# WIAA STATE VOLLEYBALL

Contact Sports Editor Bob Berghaus at (920) 431-8222 or bberghau@greenbaypressgazette.com

11-8-2002  
Brown County Library

515 Pine Street

Green Bay, WI

54301 Bay Press-Gazette



Middleton's Joan Wilson serves during Thursday night's WIAA Division 1 state quarterfinal match against Wisconsin Lutheran at the Resch Center in Ashwaubenon. Selena Jabara/Press-Gazette

## Pius, Middleton lead the way to semifinals

By TRACY TRUMMER

**ASHWAUBENON** — It may have not been home, but Milwaukee Pius XI seemed more than comfortable in the Resch Center on Thursday night.

In one of the first quarterfinal matches of the WIAA Division 1 state volleyball tournament, the Lady Popes set the bar for the rest of the competition, sweeping Antigo 15-2, 15-6, 15-2.

Making its first appearance in the WIAA tournament, Pius

had just five errors in eliminating the Red Robins, who struggled with 15 errors, from their seventh state appearance.

Pius' Katie Pfeiffer smashed 12 kills and three service aces. Teammate Katy Stonitsch added nine kills and 21 assists.

Krista Kuivinen led Antigo with nine kills and 24 assists.

In the second afternoon match, Middleton hung on for more than 2 hours to defeat Wisconsin Lutheran 7-15, 15-11, 15-13, 11-15, 15-4.

After a dominating run by

Wisconsin Lutheran in the first game, the Vikings' defense fell short, unable to contain senior outside hitter Denitza Koleva, who had 33 kills and 77 assists. She also had eight aces and 16 digs for the Cardinals.

Leanne Felsing had 30 kills and 62 assists for Wisconsin Lutheran in its second state appearance.

In the night session, West Bend West fell to undefeated Westosha Central 15-13, 15-11, 15-10.

Jocelyn Wack had 43 assists

and 20 kills for the Falcons, who relied on their defense to pull out the win.

Lindsay Roth led West with 16 kills and 40 assists. Stephanie Gordon added 10 kills and 29 assists.

Making its first appearance in the tournament, Waukesha Catholic Memorial defeated Marshfield 15-13, 15-3, 15-10 in the nightcap. Becky Angst had 13 kills, 34 assists and 15 digs for the Crusaders.

Ellie Feenstra led Marshfield with nine kills and 30 assists.

## Resch draws 1 from pl

BY TRACY TRUMMER  
sports@greenbaypressgazette.com

**ASHWAUBENON** — For just 2 hours on Thursday night at the Resch Center, Denitza Koleva forgot she was a Middleton High School volleyball player and thought of herself as a professional.

"This brings the feeling of something bigger and something more important," Koleva said. "It made me feel more important. I just felt special."

So did every other volleyball player participating in the WIAA Division 1 state volleyball tournament. After eight years in the much smaller Neenah High School gym, the tournament has moved to the new Resch Center, a happy change for many of the players.

"It's a lot nicer than what we played in last year," Wisconsin Lutheran senior Elizabeth Wiesemann said. "It was kind of dumpy and pretty small. But we walked in the Resch Center and we were like, 'Oh, this is cool. We feel so professional. It's just really nice.'

Though 120 miles away from her school in Milwaukee, Wiesemann couldn't help but feel at home in the Resch Center, comparing it to the Bradley Center.

But Koleva thought it resembled something a little more close to her home near Madison.

"When we walked in, we thought it looked like the Kohl Center, actually," said Koleva whose team beat Wisconsin Lutheran early in the day in a tough five-game match. "I think we like it a lot. It's different from what we're used to, since we play in a lot smaller places."

With the large arena floor, two volleyball games can take place at once, providing fans, many clad in school colors and eye catching costumes, with plenty to cheer about.

"There's a lot of room for all the fans to come in, be close to the game and watch the game. This arena was a great choice," Koleva said.

Despite losing to Waukesha Catholic Memorial in three

### STATE TOURNAMENT SCHEDULE

At Resch Center, Ashwaubenon  
Ticket information: \$5 per session for adults and students; children under 6 accompanied by a parent are \$1.

#### Division 1

##### Today's semifinals

Milwaukee Pius (37-7-3) vs. Middleton (36-1), 7:45 p.m.  
Waukesha Catholic Memorial

(37-6-6) vs. Westosha Central (45-0-1), 7:45 p.m.  
**Saturday's championship:**

At 7:45 p.m. (Time is approximate, follows Division 2 match)

#### Division 2

##### Today's semifinals

Medford (31-6-6) vs. Waupun (34-8-3), 4:30 p.m.  
Kimberly (37-6-4) vs. Madison

Edgewood (25-4-2), 4:30 p.m.  
**Saturday's championship:**

At 4:30 p.m.

#### Division 3

##### Today's semifinals:

Washburn (33-2) vs. Kettle Moraine Lutheran (34-4), 1:15 p.m.  
Pittsville (33-3-3) vs. Deerfield (32-4), 1:15 p.m.  
**Saturday's championship:**

At 1:15 p.m. (Time is approximate, follows Division 4 match)

#### Division 4

##### Today's semifinals:

Eau Claire Regis (34-1-7) vs. Williams Bay (28-2-2), 10 a.m.  
Abbotsford (20-10-12) vs. Potosi (32-1-4), 10 a.m.  
**Saturday's championship:**  
At 10 a.m.

### DIVISION 2: TODAY'S SEMIFINALISTS

#### Medford Raiders

Coach: Dave Vaara.  
Overall record: 31-6-6.  
Conference: Lumberjack.  
Place in conference: 2nd

#### Kimberly Papermakers

Coach: Jeff Van Lannen.  
Overall record: 37-6-4.  
Conference: Fox Valley Association

### DIVISION 3: TODAY'S SEMIFINALISTS

#### Washburn Castle Guards

Coach: Mike Meierotto.  
Overall record: 33-2-1.  
Conference: Indianhead.

#### Pittsville Panthers

Coach: Karen Brownell.  
Overall record: 33-3-3.  
Conference: Marawood, South

### DIVISION 4: TODAY'S SEMIFINALISTS

#### Eau Claire Regis Lady Ramblers

Coach: Jay Mielke.  
Overall record: 34-1-7.

# PRESS GAZETTE

EVERY BOY READS IT

FRIDAY EVENING, MARCH 30, 1934

# BROWN COUNTY CHAMPS

# IS STATE CHAMPION

AMPS

## KRAFT UPSETS BERTRAND FIVE IN TILT HERE

Cheese Team Holds  
Lead in City Tourney;  
Gordon Bentz Win.

Y. M. C. A. BASKETBALL TOURNEY

	W.	L.	Pct.
Gordon Bentz	2	0	1.000
Bertrands	1	1	.500
Bertrands	1	1	.500
Kraft-Phenix	0	2	.000

Scores Last Evening

Gordon Bentz 32, S. S. Boosters 26.  
St. Croix Cheese 39, Bertrands 24.

Saturday Night's Games

Finals in Junior City Championship.

8:15—Bertrand Sport Shop vs. South Side Boosters.  
9:15—Gordon Bentz vs. Kraft-Phenix Cheese.

arnament, is not  
De Pere last year  
won the Class B  
school tournament  
s won the title by  
game, 22 to 19.

## RCUIT IS IG FOR BIG ON DIAMOND

Shawano Elected  
at Cecil Base-  
Session.

Press-Gazette)  
Officers and direc-  
of Lakes league gath-  
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were made and the  
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the 1933 season would  
yed by the league.

of Seymour resigned  
he circuit to become  
Seymour team. Tom  
hows Shawano base-  
ected president. Six  
men are back again  
ing Seymour. Shaw-  
Cecil, Bonduel and  
r and Krakow were  
members to replace  
d Gillett, the latter  
ined the Wisconsin-

were made in rules  
for the coming sea-  
of the directors ap-  
avor of sticking close-  
talent limitations ex-

By virtue of their victory last evening over Bertrand Sport Shop, in the City basketball tournament being played at the Y. M. C. A. the Kraft-Phenix team stands alone in the undefeated column, and is assured of at least a tie for the championship. Kraft defeated Bertrands, 39 to 28. In the other game Gordon Bentz defeated the South Side Boosters, 32 to 26.

One of the best crowds of the season witnessed the two hard fought games, both of which were quite rough, but were under control of the officials at all times. In the two games a total of 63 fouls were called, 37 in the Kraft-Bertrand game.

Except for the second period, when Kraft ran away with the Bertrand Sports, making eight out of nine free throws and two additional baskets, while Bertrands were held to one point, the game was played on an even basis, with Kraft maintaining the 11-point advantage gained in that period. Kraft played heads-up basketball, and delivered on the majority of their shots.

### Tied at 8-All

The game started out with the two teams being tied at the end of the first period at 8-all. In that period Ken Kennedy made seven of the eight points for his team. In the second period Kraft sank eight of the nine free shots, and Daman and Jacobs each made a basket to put the Cheesemen well in the lead. The last two periods were played absolutely even, with Bertrands making one point more than Kraft in the third period, and Kraft reversing the tables on Bertrands in the final period.

Three of Bertrands men left the game by the foul route, while one of Kraft's men went out that way. In addition to this five other men had three fouls called on them. Kraft-

## U. S. DIVING KING IN ACTION



Frank Kurtz caught from above in excellent form as he executes a difficult dive.

By NEA Service

LOS ANGELES—Frank Kurtz has been around. Here are a few of the travels of the 1933 national diving champion:

He worked his way as an able-bodied seaman, a stoker on a tanker from Los Angeles to Hawaii, to be able to compete in the National A. A. U. swimming and diving championships. After placing second in the high diving competition, to give the Hollywood A. C. the U. S. team title, he was a stowaway on the return trip to Los Angeles.

Frank has circled the globe in the last year, giving diving exhibitions in Samoa, Fiji Islands, Africa, Australia, Tasmania, Ceylon, Arabia, Egypt, England, France, Belgium and Italy.

His globe-girdling will be a little more speedy in the future, for he holds a private airplane pilot's license and

## Do You Remember?

### ONE YEAR AGO TODAY

Mar. 30, 1933—Golfers may apply for full privileges in the Oneida Golf and Riding club by payment of annual dues without purchasing stock.

President A. B. Turnbull announced...

### FIVE YEARS AGO TODAY

Mar. 30, 1928—The American Legion will sponsor a junior baseball team again, and a call has been issued to all boys under 17 years of age... Dick Rachals and Art Kerkhoff, who

## RED BIRDS WIN FIRST CLASS B MEET, 22 TO 19

Stage Late Rally to Beat  
New Lisbon; Beloit  
Class A Champs.

MADISON—(Special)—A fighting squad of Red Birds from the De Pere high school took top Wisconsin honors at the Wisconsin field houses here last night, winning the Class B state championship by upsetting New Lisbon, 22 to 19 in a hard fought game to wind up the annual state tournament.

The De Pere boys rallied in the last half to claim the first Class B championship ever awarded, coming from behind to upset New Lisbon after trailing 10 to 6 at the end of the first half.

De Pere arrived in the title round by beating back St. Croix Falls, Mayville and Mayville in succession. The team allowed only 62 points for the four tournament games, an average of 15 1/2 per game, for one of the best defensive records ever turned in by a tournament team.

Beloit is Winner

The Beloit High school basketball team held its third consecutive Class A state championship today, an unprecedented record, since no other high school ever has won even two successive state titles under Wisconsin interscholastic athletic association rules.

Beloit defeated Wisconsin Rapids 32 to 18 in the title game last night before a large crowd.

Madison West Wins

The consolation Class A title went to Madison West after it decisively defeated a game Reedsburg team 38 to 18 late yesterday. Delavan took the Class B consolation title handily with a 22 to 12 triumph over St. Croix Falls.

Medals and trophies were awarded by the interscholastic athletic association at the conclusion of the tournament.

Capt. Norbert Vandelin, guard, raced the De Pere team to the Class B title, scoring 10 points in a great floor game. Robert Mortenson scored 11 points for New Lisbon, steadily threatening to nose De Pere out of the championship.

Gale Early Lead

New Lisbon held a 6 to 3 advantage at the end of the first quarter, which it boosted to 18 to 8 at the half. De Pere tied the count at 14-all early in the second half, then piled up a 22 to 13 lead when only four minutes of play remained. New

to Press-Gazette) is—Officers and directors of Lakes league gathered to complete plans for the changes in the personnel. Changes were made and the enthusiastic meeting left at the '32 season would be enjoyed by the league.

Tom Seymour resigned of the circuit to become the Seymour team. Tom known Shawano baseball president. Six season are back again including Seymour, Shaw, Cecil, Bonduel and Cifer and Krakow were new members to replace and Gillett, the latter rejoined the Wisconsin.

Changes were made in rules for the coming season. All of the directors approve of sticking close to talent limitations emergency or lack of a r to fill a certain position imperative that an out-

will start May 6 with a rule, which will be pre-committed and presented at the next meeting. The of last season have rehired—have assured additional strength to insure better than ever. Last no won the title. Pulaski will have only ying league ball as the line of the Tri-County combined forces with the team. Seymour also its squad and Manager to have a pennant win-

## LE MAY PLAY LATE IN SEASON

SEBURG, Fla. (UPI)—Messages of sympathy into Mound Park hospital Maranville, veteran infielder, who broke his home plate on Wednesday with the Yankees.

He senders, Judge Emlert of the Braves, said it "Rabbit" earned and good will and these exhortations because he gave game. He has been a and a source of inspiration.

He is attending sleeves that Rabbit may a hospital on crutches weeks. He added that old player may be able to uniform again about June.

Marquette's negro son won six consecutive U. S. sprint champion and 200 meters in 1932 and 80 meters in 1933

## OX BATTERY TEND MEETING TUESDAY EVENING

and Bob McClain, the combination of the will be among those to booster meeting next night at the court-

aims he is a pitcher, and Arthur Huxford, the Baseball association long to get the rier from Clintonville to make his bow at the

McClain, who now is in a, will say a few words a fans how he keeps stealing second with

37 in the Kraft-Bertrand game. Except for the second period, when Kraft ran away with the Bertrand Sports, making eight out of nine free throws and two additional baskets, while Bertrands were held to one point, the game was played on an even basis, with Kraft maintaining the 11-point advantage gained in that period. Krafts played heads-up basketball, and delivered on the majority of their shots.

### TIED AT 8-8

The game started out with the two teams being tied at the end of the first period at 8-8. In that period Ken Kennedy made seven of the eight points for his team. In the second period Krafts made eight of the nine free shots, and Daman and Jacobs each made a basket to put the Cheesemakers well in the lead. The last two periods were played absolutely even, with Bertrands making one point more than Kraft in the third period, and Kraft reversing the tables on Bertrands in the final period.

Three of Bertrand's men left the game by the foul route, while one of Kraft's men went out that way. In addition to this five other men had three fouls called on them. Krafts men were able to deliver on 15 of the 22 free shots and Bertrands only turned six of their 20 free throws into points.

### GAIN EARLY LEAD

Gordon Bents started off with the lead in their game with the South Side Boosters, and maintained it

CC INUED ON PAGE 16, COLUMN 8

## AMATEUR FIGHTERS SEEK STATE TITLES IN A. A. U. CONTESTS

Sixty Young Scrappers Will Appear On Milwaukee Card Next Monday.

MILWAUKEE (AP)—Sixty amateur fighters from 21 cities in Wisconsin are entered in the state A. A. U. boxing tournament which opens at the Eagles' club here next Monday. Preliminary rounds are scheduled for Monday and Tuesday, while the championships will be decided on April 11.

Cities already entered include Superior, Rib Lake, Marshfield, Racine, Plymouth, Appleton, Green Bay, North Lake, Sableski, Waukesha, Oshkosh, Madison, Richfield, Juneau, Oconomowoc, Kimberly, Kenosha, Milwaukee, Beaver Dam, Manitowoc and Merrill.

Among the outstanding young pugilists to compete are Bobby Fadner, a member of the University of Wisconsin mitt team, Luke Ebel, Manitowoc; Pete Koloff, Green Bay, and Hans Ahl, Oshkosh, who won district titles at Green Bay several weeks ago; Ralph Hoppe, Johnny Johnston, Barry Gillett and Henry Kurkewicz, Milwaukee district champions, and others.

Merrill is sending a team of six fighters from the Merrill Athletic club, while Kenosha is also entering a team to compete for the team trophy. Gold and silver trophies, medals, gold boxing gloves and other prizes will be awarded to the amateurs during the three days of fighting.

The meet has been sanctioned by the Amateur Athletic Union through Robert Pierre Drecker, Wisconsin commissioner, and by the State Athletic commission.

## CHAMPIONSHIP GAME IS BELIEVED DEATH CAUSE

MADISON, Wis. (AP)—While watching the Beloit and Wisconsin Rapids High school basketball teams battle for the state Class A championship, George Bernier, 67, of Beloit, collapsed at the university field house here last

Frank Kurtz caught from about in excellent form as he executes a difficult dive.

By NEA Service

LOS ANGELES—Frank Kurtz has been around. Here are a few of the travels of the 1933 national diving champion:

He worked his way as an able-bodied seaman, a stoker on a tanker from Los Angeles to Hawaii, to be able to compete in the National A. A. U. swimming and diving championships. After placing second in the high diving competition, to give the Hollywood A. C. the U. S. team title, he was a stowaway on the return trip to Los Angeles.

Frank has circled the globe in the last year, giving diving exhibitions in Samoa, Fiji Islands, Africa, Australia, Tasmania, Ceylon, Arabia, Egypt, England, France, Belgium and Italy.

His globe-girdling will be a little more speedy in the future, for he holds a private airplane pilot's license and is recognized by the Federation Aeronautique Internationale as the holder of the world junior speed flying record.

He was 17 years old when he finished second to Mickey Riley in the 1932 final American Olympic diving tryouts, and he defeated every foreign diver for third place in the Olympic Games high diving.

He won the National A. A. U. outdoor high diving title at the Chicago World Fair last July, again supplying the points that gave the American team title to the Hollywood A. C.

## EXPECT NEW RECORDS AT COLLEGIATE SWIM EVENT

COLUMBUS, O. (UPI)—Prospects of new records being established during the national collegiate swimming championships here were considered bright today as a crack field entered the preliminary events.

Only one of the 10 events was scheduled to be completed today. The 1500-meter freestyle swim, expected to result in a warm battle between Jim Cristy of Michigan and Jack McDermid of University of Washington, was at the top of the program.

Trials in the other events were to be held today and tonight. Finals are to be held Saturday night.

## HENRY PICARD IS NORTH-SOUTH GOLF TOURNEY CHAMPION

Charleston 'Pro' Proves Mettle Down Stretch With Brilliant Score.

PINEHURST, N. C. (AP)—Henry Picard, the 27-year-old black haired professional from Charleston, S. C., today had \$1,000 in his pocket and the North and South open golf championship under his wing as rewards for a consistent 72-hole performance.

Picard, a native of Plymouth, Mass., proved his mettle down the 36-hole stretch yesterday with a brilliant galaxy of tried campaigners close on his heels.

His scores for the 72-hole event were 68-68-74-72—283, one under par. That score was three strokes better than those registered by the three who tied for runner-up, Harry Smith, Harry Cooper and the national amateur champion, George T. Dunlap Jr.

After 54 holes Dunlap was within a stroke of the trail-blazing Picard, but he blew himself to a costly 74 on the final round.

The Louisville Colonels, once mem-

ber of intercollegiate athletic association rules.

Beloit defeated Wisconsin Rapids 32 to 18 in the title game last night before a large crowd.

### MADISON WEST WINS

The consolation Class A title went to Madison West after it decisively defeated a game Redding team 28 to 18 late yesterday. Delavan took the Class B consolation title handily with a 22 to 12 triumph over St. Croix Falls.

Medals and trophies were awarded by the interscholastic athletic association at the conclusion of the tournament.

Capt. Norbert Vandelst, guard, paced the De Pere team to the Class B title, scoring 10 points in a great floor game. Robert Mortenson scored 11 points for New Lisbon, steadily threatening to nose De Pere out of the championship.

### GAIN EARLY LEAD

New Lisbon held a 6 to 2 advantage at the end of the first quarter which it boosted to 16 to 6 at the half. De Pere tied the count at 11-all early in the second half, then piled up a 22 to 13 lead when only four minutes of play remained. New Lisbon's rally was short of the needed points.

De Pere was the dark horse of the tournament, eliminating Mayville, a Class B favorite, to win the championship.

Norbert Vandelst, De Pere guard, was the standout for the victory in all its games. He held his team in the running the first half by scoring all six points and then concentrated on defense while his mates began to hit the hoop with short shots. The De Pere five was forced to cope with a six foot, seven inch center—Warren Lamson—to win the game. Lamson controlled the tipoff at center in every game he played.

Johnny Watts, Beloit's colored forward, a wraith on offense and steadily competent on defense, led his team to its record breaking victory, scoring 14 points on six field goals and two free throws while cooperating consistently in team play.

### TEEN IN GOAL

Weinbauer tossed in a field goal for Wisconsin Rapids to open the scoring. The score was tied twice, at 2-all and 4-all, in the first few minutes of play.

Beloit quickly took the lead and held it by a 16 to 7 margin at the half. Weinbauer and Miller boosted Wisconsin Rapids' score to 13, when Beloit unleashed a burst of scoring that netted 12 points while its opponents made five.

Madison West was forced to play inspired ball to defeat a Redding

CONTINUED ON PAGE 16, COLUMN 2

## Do You Remember?

### ONE YEAR AGO TODAY

Mar. 30, 1933—Golfers may apply for full privileges in the Oneida Golf and Riding club by payment of annual dues without purchasing stock. President A. B. Turnbull announced...

### FIVE YEARS AGO TODAY

Mar. 30, 1928—The American Legion will sponsor a junior baseball team again, and a call has been issued to all boys under 17 years of age...

Dick Rachals and Art Kerkhoff, who got a tryout with the Columbus Senators of the American association, but were handicapped by injuries, are back in Green Bay... they may join the Akron club...

### TEN YEARS AGO TODAY

Mar. 30, 1924—Fond du Lac high school of the Fox River Valley conference won the state basketball championship for the second time in three years, aided by the work of Billy Dew, great Cardinal forward... Fondy beat Superior in the finals, 32 to 21...

### 25 YEARS AGO TODAY

Mar. 30, 1909—Green Bay Business college defeated the West De Pere Athletics basketball team at Cook's opera house. De Pere, 23 to 20... the Green Bay lineup consisted of Lueck, Thompson, Archibald, Bent and Delmarcelle...

## MARQUETTE GRIDMEN GET CHARTS FOR HOME STUDY

MILWAUKEE (UPI)—Marquette spring football candidates will not have to drill or practice during Easter vacation, although they must do their "homework," Coach Frank J. Murray said today. Before departing for home, each man was given a chart with plays, signals and individual assignments to be carefully studied over the holidays. Coach Murray believes that he will have a smoother functioning squad as a result.

# PLYMOUTH

IS THE BEST ENGINEERED CAR

—WITH—

FLOATING POWER

HYDRAULIC BRAKES

SAFETY STEEL BODY

INDIVIDUAL WHEEL-SPRINGING

FREE WHEELING

AUTOMATIC CLUTCH

PLYMOUTH HAS EVERYTHING

# RED BIRDS WIN FIRST CLASS B MEET 22 TO 19

CONCLUDED FROM PAGE 18

team—from which anything was expected after it lost its opening game 26 to 23 to Eau Claire and then came back to soundly thump New London, 27 to 15, in its second contest.

## Quimby, High

Quimby, center, led Reedsburg's scoring with eight points on two baskets and four free throws. Luetkens, Reedsburg forward, leading all other Class A players in scoring with 33 points, was guarded so closely that he was able to make only three field goals. Becker, center, led Madison West with four field goals and two free throws for 10 points. Reedsburg made eight of 11 tries from the free throw line, while West converted nine of 11 attempts.

A fast-stepping Delavan quintet quickly grabbed the lead and held it throughout its game with St. Croix Falls. Delavan held Thomas and Greenlee, St. Croix Falls high scoring forwards to two and one field goals respectively. Reed, center and Hunt, guard, made 13 points between them for Delavan. The winners led 15 to 9 at the half.

## THE BOX SCORES

(Class B Championship)

	F.G.	F.T.	F.F.
De Pere	1	1	2
Smits, f.	2	1	3
Maternoski, f.	2	1	2
Zirbel, f.	4	2	2
Van Delft, g.	0	0	1
De Cleme, g.	0	0	1
<b>Totals</b>	<b>9</b>	<b>4</b>	<b>11</b>
New Lisbon	F.G.	F.T.	F.F.
Mortenson, f.	3	1	3
Balgord, g.	1	0	0
Lawson, c.	0	1	2
Clark, c.	1	0	0
Romnesuer, g.	0	0	1
Himsted, g.	0	0	0
Whittingler, g.	0	0	1
<b>Totals</b>	<b>6</b>	<b>7</b>	<b>7</b>

(Class A Championship)

	F.G.	F.T.	F.F.
Beloit	6	2	3
Watts, f.	3	0	2
Scalia, f.	3	0	2
Oshorn, c.	1	2	1
Cahoon, g.	0	0	0
Stewart, g.	0	0	0
Farina, g.	1	0	1
Dubbert, g.	0	0	1
<b>Totals</b>	<b>14</b>	<b>4</b>	<b>11</b>

(Class A Consolation Final)

	F.G.	F.T.	F.F.
Madison West	1	2	1
Nugley, f.	1	0	1
Reider, f.	1	0	1
Van Briggle, f.	1	0	1
Becker, c.	5	1	6
Smith, g.	0	0	0
McNeil, g.	0	1	1
Davis, g.	3	1	4
Trotter, g.	0	2	1
<b>Totals</b>	<b>13</b>	<b>9</b>	<b>11</b>

(Class B Consolation Final)

	F.G.	F.T.	F.F.
Reedsburg	3	0	0
Van Lennen, f.	0	0	0
O'Neill, f.	0	0	0
Quimby, c.	2	0	2
Palmer, k.	0	0	0
Swartz, g.	0	0	0
<b>Totals</b>	<b>5</b>	<b>8</b>	<b>8</b>

# LESTER STOEUFEN

LOS ANGELES SOCCER HAS COME TO THE FRONT IN TENNIS WITH A SERVICE SPEED TO BE THE FASTEST IN THE GAME

HE IS 6 FEET 4 INCHES TALL AND DELIVERS HIS SERVE FROM A HEIGHT OF 12 FEET

HIS LIGHTNING DRIVE WAS USED TO GOOD EFFECT TO WIN THE RECENT INDOOR SINGLES BY DEFEATING GREGORY MAGNIN, DEFENDING TITLEHOLDER...

LES RANKS THIRD AMONG MEN TENNIS PLAYERS

FOLLOWING FRANKIE SHIELDS, WHOM HE DEFEATED IN THE SEMI-FINALS OF THE INDOOR MEET, AND WILMER ALLISON, WHOM HE BEAT FROM THE COURTS IN THE BERMUDA LAWN TENNIS SINGLES

KRENZ

# MARINO, ZUNKER TO WALLOP PINS FOR HONORS AT A. B. C.

Verifine, Schlitz Teams Swing Into Action at Peoria Tournament.

## College Basketball Scores

(By The Associated Press)  
New York (N.Y.) vs. Brooklyn (N.Y.) 4  
Philadelphia (N.Y.) vs. Boston (Mass.) 3  
Columbus (Ohio) vs. St. Louis (Mo.) 3  
Philadelphia (Pa.) vs. Detroit (Mich.) 3  
Boston (Mass.) vs. New York (N.Y.) 2  
Cleveland (Ohio) vs. New Orleans (La.) 1  
Chicago (Ill.) vs. Pittsburgh (Pa.) 1

## Today's Schedule

Boston (Mass.) vs. Boston (N.Y.)  
Cincinnati (Ohio) vs. Nashville (Tenn.)  
Philadelphia (Pa.) vs. Montreal (Que.)  
Pittsburgh (Pa.) vs. Chicago (Ill.)  
St. Louis (Mo.) vs. New York (N.Y.)  
Detroit (Mich.) vs. Columbus (Ohio)

# GEORGE L. WILLIAMS, COPPER RANGE ROAD AGENT, PASSES AWAY

Well Known Railroad Official  
From Houghton Succumbs  
Here.

George L. Williams, 64, general agent of the Copper Range railroad at Houghton, Mich., died at 12:30 this morning at the home of his daughter, Mrs. Winter Evans, where he and Mr. Williams were visiting on their way home from Florida. He had been in poor health for some time.

Mr. Williams was a prominent man in upper Michigan and in railroad circles. His body will be shipped to Houghton tonight from the Schuene and Schumacher funeral home at 6 o'clock. Besides his wife and daughter he is survived by a brother, Thomas Marquette, and by two sisters, Miss Margaret Williams, Marquette

# Five-Cornered Race Is On in National Loop Opening Day Nears

## St. Louis Squad to Beat in Pennant Scramble.

### Giants Loom as Outstanding Rivals for Bill Terry's Champions.

(EDITOR'S NOTE) The following review of National league pennant prospects, based on first-hand analysis of training camp activities of Associated Press staff men, is the seventeenth of the spring baseball series.

BY ALAN GOULD  
(Associated Press Sports Editor)  
NEW YORK (AP)—The National is flying its own Blue Eagle in spring, testifying to a recovery program already well under way. Since the Giants regained world championship prestige for the old and last fall, new owners have taken hold of the tail-end Cincinnati trio; three pennant challengers have filled their lineups at considerable expense and four new managers have been in charge of the spring drills. The combined outlook is for a sensational championship race, with the aces picked at the club to beat and Pittsburgh Pirates looming most menacingly among four real rivals of Terry's aggressive outfit.

**Hard to Repeat**  
Baseball men do not figure it is in book for the Giants' pitching to repeat its marvelous 1933 performances, especially as the aid of heady Gus Mancuso behind the will be missed for at least another month. However, those who think the Yorkers were in over their heads, having all the breaks last season, may be surprised of their lives. Terry's notion to make every spot count is demonstrated by his abrupt trade of George Davis, centerfielder, to the minors for the hard-hitting George Kinn.

The Pirates, despite erratic pitching, finished second last year. Out of the box the Bucs have more around class than any other club in the league and the addition of Lucas figures to give the huddling continent just the workhorse it is. The Waners, Lindstrom, Lahan, Traynor and Suhr continued to the league's highest-power batting order, not excepting even Chicago Cubs.

Klein's addition to the outfield, at a cost of \$125,000 to pay substantial dividends. He also is expected from a rookie, Dick Ward, and George Black, an expensive outfielder—If the Cubs' pitching veterans, as Bush, Malone and Root, can bring a return to form, pennant aspirations probably will have to be ed.

**Five-Cornered Race**  
The St. Louis Cardinals and Boston Braves both figure to be in the pennant scramble, making it a five-cornered affair for the second straight year, chiefly because each unusually strong pitching pros-

tees will sorely miss their man pepper-box, Rabbit Maran, the victim of a broken-leg-in-a-button game two days ago butager Bill McKechnie has come up another pitching "find," Clark Pickrel, to aid an already well-



Tee to the Cup



NEA

Ross (Sandy) Somerville, Canadian golf ace, may not have finished among the leaders in the Masters' tournament at Augusta, Ga., but he gave his competitors something to shoot at by scoring a hole-in-one on the 145-yard seventh. Somerville, a former U. S. amateur champ, is shown smilingly retrieving the ball after the spectacular drive.

**Records**  
Officers 1... 803 948 824-2575  
St. Johns 753 822 799-2374

High team single game, Officers 948

High team three games, Officers 2575

The Scores

Officers 1... 803 948 824-2575  
St. Johns 753 822 799-2374

Annunciation 821 767 854-2452

Mathy's Tavern 851 852 811-2514

St. Whitebirds 840 810 747-2414

Holy Fire 816 890 804-2510

Columbus Club League

W. L. Pet.

V. Van Pee's Tax 67 23 744

Commercial Prig. 61 29 677

Bell Lumber 66 30 660

Baum's Dept. Str. 59 31 640

Deuster Cleaners 57 33 610

Clean Towel Serv. 36 34 590

Eaglehill Bakery 59 40 555

Frances 38 32 452

G. B. Grocer 26 34 400

Steffek Barbers 26 24 253

Hearden Paints 26 24 258

Records

High individual single game, N. Smits 234, B. Suds 261

High individual three games, J. Deuster 634, B. Suds 606

High team single game, Eaglehill Bakery 971

High team three games, Vic Van Pee's Tavern 2741

The Scores

Frances 804 883 848-2535

Commercial Cleaners—Forfeit

Deuster Cleaners 931 916 985-2664

Steffek Barbers 734 644 750-2698

Clean Towel Serv. 873 931 865-2680

Eaglehill Bkly. 778 900 911-2649

Commercial Prig. 865 902 823-2510

G. B. Grocer 877 765 869-2511

Hearden Paints 864 814 811-2482

V. Van Pee's Tax 937 868 926-2741

Baum's Dept. Str. 843 784 782-2409

Foresters League

W. L. Pet.

Annunciation 53 31 520

St. Josephs 49 35 580

Conductors 36 38 540

St. Peter and Paul 52 35 520

St. Willebirds 43 38 520

Officers 44 40 510

Records

High individual single game, N. Smits 234, B. Suds 261

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St. Josephs 49 35 580

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Officers 44 40 510

Records

stcher, Dick Ward, and George Seibert, an expensive outfielder, result. If the Cubs' pitching veterans, such as Bush, Malone and Root, can combine a return to form, pennant calculations probably will have to be revised.

#### Five-Cornered Race

The St. Louis Cardinals and Boston Braves both figure to be in the pennant scramble, making it a five-cornered affair for the second straight year, chiefly because each is unusually strong pitching prospect.

The Braves will sorely miss their veteran pepper-box, Rabbit Maranville, the victim of a broken leg in an exhibition game two days ago but manager Bill McKechnie has come up with another pitching "find," Clarke Puckrel, to aid an already well-lanced staff.

New pilots have taken the helm of other three National League clubs; all any of them can hope for is it will keep his outfit from last year. Of the trio, Bob O'Farrell's Cincinnati Reds, occupants of the last in 1933, have shown the most improvement, especially in hitting. It is a question how consistently the pitching staff will help.

Casey Stengel, new boss of the Brooklyn Dodgers, also has limited things prospects, with a staff built around Van Mungo, and lacks real driving.

The Phillies handicapped now by absence of Dick Bartell with a leg wound, pin their hopes on my Wilson's ability to get results in a block of erratic pitching arms.

## BOWLING

### NORTH SIDE ALLEYS

Parsons Club League

	W.	L.	Pct.
Mr's. Coffees	36	12	.750
Elks Club	30	18	.625
2nd Dames	18	31	.367
Hard Insurance	12	36	.250

#### Records

High team three games, Curley's Coff. 24-00.

High team single game, Parsons Club

High individual single game, R. Mattox 361.

#### The Scores

2nd Dames 785 725 734-2224  
2nd Ins. 717 717 714-2184

Mr's. Coffees 825 844 821-2490  
Elks Club 772 890 805-2465

North Side Community League

	W.	L.	Pct.
Man Tires	53	13	.803
Lumber	44	22	.667
2nd Hatchery	40	26	.600
embusch Gro.	39	27	.591
Dess Meats	39	27	.591
2nd Cigars	32	34	.483
Con. Mach.	29	37	.438
2nd B. Beer	21	45	.314
2nd Ins.	20	46	.303
2nd Dairy	17	49	.258

Records

High team three games, Dettman 2746.

High team single game, Dettman 963.

High individual single game, Doc Siler 254.

High individual three games, E. Kapp 200.

#### The Scores

Con. Mach. 823 863 937-2637

2nd Ins. 771 927 915-2613

2nd Cigars 764 856 914-2633

2nd Tire 941 946 923-2740

Dess Meats 677 917 945-2738

embusch Gro. 522 868 853-2624

2nd Hatchery 582 962 872-2712

2nd Dairy 702 780 858-2604

2nd B. Beer 558 820 814-2403

2nd Ins. 692 856 853-2624

2nd Cigars 764 856 914-2633

2nd Tire 941 946 923-2740

Dess Meats 677 917 945-2738

embusch Gro. 522 868 853-2624

2nd Hatchery 582 962 872-2712

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2nd Tire 941 946 923-2740

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embusch Gro. 522 868 853-2624

2nd Hatchery 582 962 872-2712

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# Y PRESS-GAZETTE

"EVERYBODY READS IT"

WIS. MONDAY EVENING, MAY 28, 1934.

URE IN SOX FOURTH VICTORY



Zuidmuler gets up steam and rounds third base in high to double by Slatz Gertssinger. Shorty is pictured in the top bottom picture Joe Petka laces out at one of Lawrence's 4 pounds it out for a three base hit.

## WARD WINS STATE HIGH SCHOOL ORTHERN IN COACHES ORGANIZE; STRIAL GAME MEANS IS PRESIDENT

Beats Shefford Association Will Foster Better  
League Tilt, Relationships Among  
re 7 to 1. Directors.

**BASEBALL LEAGUE**  
W. L. Pct.  
2 1 .666  
1 1 .500  
1 1 .500  
0 1 .000

baseball players Sat- big surprise by upset- champions. Northern industrial league game k. by the score of 2 2. These went into the virtue of their win. Cheese, in the first cheese-supremacy se- Astor Park, with the 8 to 1. was able to show

MADISON—Louis E. Means, athletic director at East Green Bay High school was elected president of the Wisconsin High School Coaches' association formed here Saturday. Other officers elected for 1934 were Cappy Ewers, Wausau, vice-president, and Louis A. Erickson, Shorewood, secretary-treasurer.

Among the association's aims are the fostering of better relationships among coaches in the several sections of the state; the placing of the profession on a more solid educational basis; the promotion of higher social and ethical practices on the field, and

Brown County Library

515 Pine Street

Green Bay, Wisc.

## MC LARIN TO DEFEND TITLE AGAINST ROSS

Welterweight Crown at Stake Tonight; Expect 60,000 Fans.

NEW YORK—(P)—Jimmy McLarin will stake his welterweight championship against Barney Ross tonight with the outcome so much in doubt that fully 60,000 fans will elbow their way into Madison Square Garden's Long Island bowl to see what all the shouting's about.

McLarin's personal popularity in New York plus the 10-pound pull he will enjoy in weight were reflected in the betting odds that favored him at 7 to 5 today. There were many competent critics, however, who thought the speedy Ross, champion of the lightweights, would outbox the Irishman and earn the decision in 15 rounds.

### Defy Modern Axiom

In seeking to add the welterweight title to his collection, Ross will defy one of the ring's modern axioms to the effect that you can't spot McLarin weight and hope to beat him. The woods are full of lightweights who thought they could and failed—Sid Terris, Louis (Kid) Kaplan, Joe Glick, Sammy Baker, Ruby Goldstein, Al Singer and others. McLarin's plan of battle against lighter and speedier foes is simplicity itself: "Just get 'em in a corner and give it to them with both hands" is Jimmy's formula.

Ross faces the issue with serene confidence. It was upon his insistence that the match was signed. He's convinced he can beat Jimmy, outbox him, outspeed him and above all keep his chin out of the way when the Colt with the deceptive smile tosses right hands in his direction. Jimmy's left is no plaything but that right has spelled curtains for many fighters.

### Ross is Young

Ross has at least three factors in his favor—he is younger, he is faster and, perhaps most important of all, he has done plenty of fighting the last year or two. McLarin hasn't except for training, the Irishman hasn't put on a glove since he won the title by knocking out Young Corbett in two minutes of the first round at San Francisco last May 29.

Whatever the result, their meeting will mark the temporary end of the depression that has hit the boxing business. Gross receipts probably will reach close to \$250,000. The milk fund is co-promoter of the bout with the garden and will share in the proceeds.

Although the welterweight limit is 147 pounds, McLarin will have to scale 145 or less in order to conform to the conditions of a private agreement he made with Ross and save himself forfeit money of \$10,000.

In the event of rain the fight, scheduled to go on about 9 p. m. Eastern Standard Time, will be shifted to tomorrow night and then to Wednesday.

## JOHNSON SETS TWO RECORDS AS WEST WINS STATE TITLE

### HOW THEY FINISHED

MADISON, WIS.—The final point totals in the state high school meet held Saturday follow:

Class A	
Green Bay West	34
Milwaukee South	29.2
Milwaukee Washington	23.2
Milwaukee West	20.5
Madison West	19.2
Milwaukee East 18.5, Oshkosh 13, Waukesha 13, Shorewood 12.7, Milwaukee Lincoln 10.5, Madison East 9, Waukesha 8.5, Janesville 6, Boys' Tech, Milwaukee 6.5, Milwaukee North 5, Appleton 4.5, Milwaukee Bay View 4, Madison Central 3, La Crosse Central 1.	

Class B	
West Bend	27
New London	22
Shawano	20
Wisconsin Rapids	20
Neenah	17
Whitefish Bay 14.5, Plymouth 12.5, Berlin 12, La Crosse Logan 11, Baraboo 7, Hartford 7, Richland Center 6, Port Washington 7, Augustana 4, Galesville 3, Mauston 4, Platteville 4, Beaver Dam 3, Mineral Point 3, South Milwaukee 2, Medford 1.	

Class C	
Altoona	37
Prairie du Sac	30
Kimberly	17
Amherst	15
Gays Mills	15
Viola 13, Rib Lake 12.5, Cuba City 12, Marcella 10, Onalaska 7.5, Marion 6, Cambridge 5.5, Benton 5, Downing 5, Ontario 5, Dorchester 4, Valders 2, Holmen 1.	

## JACK ROWE BEATEN IN 11-INNING TILT WITH IDEAL SQUAD

Stillers Drop 4 to 2 Decision; Home Run Decides Close Contest.

WISCONSIN-MICHIGAN LEAGUE	W.	L.	Pct.
Oconto	3	0	1.000
Gillett	2	0	1.000
Marinette	2	1	.667
Peshtigo	2	1	.667
Menominee Ideals	2	1	.667
De Pere	1	1	.500
Stillers	1	2	.333
Menominee	0	2	.000
Oconto Falls	0	2	.000
Bertrand Springs	0	2	.000

Yesterday's Results  
Peshtigo 12, Menominee 4.  
Marinette 3, Oconto Falls 0.  
Gillett 8, Bertrand 3.  
Menominee Ideals 4, Stillers 2, 11 in.  
Oconto 3, De Pere 2.

Memorial Day Games  
Menominee at Stillers.  
De Pere at Menominee Ideals.  
Bertrand at Marinette.  
Gillett at Peshtigo.  
Oconto at Oconto Falls.

Jack Rowe of the Stillers, lost another tough game here Sunday, this time to the Menominee Ideals in 11 innings, by a score of 4-2. It was a pitchers' battle all the way with Rowe having a slight edge on Pivonka.

Rowe allowed eight hits, against Pivonka's nine, and walked two while his opponent issued three free passes. The Stillers scored first in the fifth

Green Bay Team Scores Surprise Victory In Annual Track Meet.

## RELAY DECIDES TEST

Brilliant Performance by Dash Men Give Wildcats Wisconsin Championship.

MADISON—With Howard Johnson leading the way with three firsts, including record-breaking performances in the broad jump and high hurdles, West Green Bay, unheralded and bringing a squad of only six men, won the class A title in the 39th running of the state interscholastic track and field meet at Camp Randall Saturday.

A sensational recovery of almost 30 yards in the half mile relay by Johnson, running third, and by Lyle Van Caster, who literally "ate up" the distance between him and the Milwaukee Washington anchor man, clinched the meet for West in the final event of the day, with 34 points. Milwaukee South was second with 29.2 points, Milwaukee Washington third with 23.2, and Milwaukee West and Madison West tied for fourth with 19.2.

West's victory broke the dominance of Milwaukee schools in the classic for the second time since 1913, Kenosha winning the crown in 1927.

Johnson's phenomenal exploits were the highlight of the meet, which was resumed this year after a one year lapse due to financial straits. Unknown as a jumper, the West athlete astounded spectators and participants by leaping 22 feet, 6 inches to break the seven-year-old mark of Donahue of Milwaukee East, which was 22 feet, 1 inch.

Then, in the 100 yard dash, the tall, black-haired, youth breezed through his preliminary heats against the cream of Wisconsin's dash crop, and repeated his performance in the finals to easily outdistance Barkow of Milwaukee Washington and DeLong of Waukesha by more than a yard. His time was 10.2 seconds, only a decimal fraction over the record of 10 flat.

The high hurdle event proved Johnson's real ability, though, for he fought his way through preliminary heats in this and other events and was tired when the hurdle finals were announced. Priming himself for action, however, he gained the start on Erdahl of Madison East, who was favored to win the event, and skinned the barriers in 14.8 seconds, establishing a new meet record for the three foot hurdles, shading the 15.4 mark set in the Waukesha sectional meet by Jack Kellner of Milwaukee West.

# NORTHERN INDUSTRIAL GAME COACHES ORGANIZE; MEANS IS PRESIDENT

These Beats Shefford Association Will Foster Better Relationships Among Directors.

AL. BASEBALL LEAGUE	W.	L.	Pct.
2	1	666	
1	1	500	
1	1	500	
0	1	1.000	

ind baseball players Sat a big surprise by upsetting champion. Northern Industrial league game park, by the score of 2

Cheese went into the by virtue of their win i Cheese, in the first "Cheese-supremacy" set Astor Park, with the 7 to 1.

rd was able to throw that has been their years, and not only iern a defeat, but shut embers for the team, allowing only five

Eddie Kolbrak, pitcher Howard, almost lost his the final inning when error. Raddick made tor, but he was caught Bancel knocked a line bird, which was recovered after Brueckner with Crabb throwing home, in a beautiful n scored its only run Bancel counted on a hit by Brown to cent-

started the ball a roll- Howard in the first he got two bases on an and then scoring for opening run, when singled. In the third d doubled, and then Crabb's double for winning run.

he shut out Shefford even innings, allowing

that in the eight in-

1 out hit the defend-

10 to 9, but Kraft

inch their hits. Five

helped Kraft win

Harry Jacobs, batting

rafts, was the leading

day, getting a single,

another single in his

SCORES

AB	R	H	E
3	1	0	2
4	0	2	0
4	0	1	0
4	0	0	0
4	0	0	0
4	0	0	0
3	0	0	0
3	1	2	0
3	0	0	1
32	2	5	3

AB R H E

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4 6 0 0

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by Innings

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AB R H E

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AB R H E

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4 8 1 0

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AB R H E

4 0 0 0

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## FRUITS • FOODS • FISH

## WEST'S TRACK SQUAD TAKES STATE TITLE

CONCLUDED FROM PAGE 11

had entered the dressing room to congratulate the West boys, was asked to examine Erdman and pass judgment on his ability to compete further. He looked over Erdman, called for tape and proceeded to tape Erdman's chest so that the injured sector would not be affected by his running.

## A Great Performer

Erdman ran, following Don Ducion, who also competed in the broad jump, high jump and discus throw, and though he lost a few yards to his Milwaukee lap-mate, West was able to remain in the relay race, and with the efforts of Johnson and Van Caster, proceeded to win the event and the coveted championship—the first ever won by a Fox river valley school.

Besides, Johnson's efforts, which stamped him as the greatest performer ever seen in the state track meet in the opinion of Coach Tom E. Jones, Wisconsin track mentor, Pete Platten, Green Bay, former Big Ten high jump champion, and Arlie Mucks, one of Wisconsin's all-time greats and former high school weight record holder, three other records went by the boards.

## Cuts Old Record

Mehl of Wauwatosa clipped 2.2 seconds off the half mile mark set by Bell of Milwaukee East in 1927, running the distance in the sensational time of 1:58.9 seconds. Narwaski of Milwaukee South vaulted 12 feet 6 1/4 inches to set a new record in the pole vault, breaking the old record of 11 feet 10 1/2 inches set by Jaskwich of Kenosha in 1929 by more than seven inches.

The final record-smashing performance was by Bastian, Wauwatosa miler, who stepped off the distance in 4 minutes 27.2 seconds, breaking the old record held by Marks of Beloit since 1909 by 5.2 seconds. This was the oldest record on the books.

West Bend won the Class B championship with 27 points, ahead of New London with 22, Shawano and Wisconsin Rapids with 20 each and Neenah with 17.

Altoona rolled up 37 points to win the Class C championship. Prairie du Sac was second with 30. Kimberly third with 17 and Amherst and Gays Mills tied for fourth with 15 each.

## SUMMARIES

## Class A

Broad Jump: 1—Johnson, Green Bay West. 2—Schmidt, Madison West. 3—Smith, Madison Central. 4—Masahr, Milwaukee East. 5—Jotte, Madison West. Distance—22 feet 6 inches. (New record—old record 22 feet one inch, Donahue, Milwaukee Washington, 1927.)

100-yard dash: 1—Johnson, Green Bay West. 2—De Long, Waukesha. 3—Barkow, Milwaukee Washington. 4—Pentler, Milwaukee East. 5—Billy, Milwaukee Tech. Time—10.2 seconds.

440-yard run: (first section) 1—Vogel, Milwaukee South. 2—Morgan, Milwaukee Lincoln. 3—Harris, Milwaukee Washington. 4—Turczynski, Milwaukee South. 5—Zilener, Milwaukee North. Time—51.3 seconds.

120-yard high hurdles: 1—Johnson, Green Bay West. 2—Erdahl, Madison East. 3—Schmidt, Madison West. 4—Davies, Milwaukee West. 5—Hoyt, La Crosse. Time—14.8 (New record).

## Housing Leader



Eldest son of the late Thomas Edison, inventor, Charles Edison, an executive of the National Emergency Council at Washington, is helping to further the government's housing program. He is shown at the Senate Banking and Currency Committee hearing as the housing bill was discussed.

just to make the critics more articulate.

Collectors had trouble with the Century of Progress issue. They wanted imperforate issues (stamps ungummed and without perforations) and they finally won their point. More recently was criticism directed at the Maryland Tercentenary issue, which depicted two ships: the ark and the dove in red. Postal clerks complained red was the color for a 2-cent stamp and the Maryland 3-cent issue confused them.

Then still fresh in the public mind is the controversy over the Mother's day stamp. It wasn't artistic and liberties were taken with the miniature reproduction of Whistler's "Mother," critics charged. The post office department merely answered this by saying the issues broke a sales record.

The Byrd stamp probably received the highest praise for its beauty and symmetry. Blue in color, it showed a globe with the Antarctic in relief.

Usable fuel to the extent of 320,000 tons is thrown into London's dustbins every year. As fuel, this is estimated to be worth \$800,000, but it costs \$1,450,000 to destroy it.

## THREE REGISTRATION OFFICES FOR TRUCKS ESTABLISHED HERE

## Students Attending Outing Will Be Given Credit for Day at School.

Three registration offices, at which operators of "for hire" trucks may register under the code of fair competition for the trucking industry, have been set up here to aid those who have difficulty in filing the necessary papers, it was announced today. They are located at the Northern Transportation company, the Leicht Transfer and Storage company, and the Association of Commerce.

While truckers throughout the state will register by mail as far as possible, according to Walter W. Belson, Milwaukee, code authority secretary, the local offices, like those in 68 other communities in the state, have been

set up to assist those who find it difficult to fill out the required forms.

Approximately 12,000 trucks in Wisconsin will be registered under the code, Belson estimated.

"The state code authority has a list of every for-hire carrier in Wisconsin," he said. "Complete forms have gone forward to them. The list will

be checked carefully with the registry list and those who fail to register violate the code and subject themselves to severe penalties. Following registration, members of the industry will receive plates for their vehicles, without which they cannot operate on the highways."

At the time of registering, truckers will also file with the code authority their minimum rates for hauling, the information to be later used in setting price minimums in Wisconsin.

Members of the state code authority are Harvey J. Tidmarsh, chairman, Milwaukee; Henry Schloemer, West Bend; C. J. Williams, Milwaukee, and Henry Gloede, Jr., Racine.

## 40 HOURS DEVOTION

## PLANNED IN HOWARD

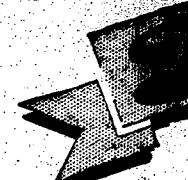
HOWARD, Wis.—Next Friday morning at the 8 o'clock mass at St. John

the Baptist Catholic church "hour" devotion will open Sunday evening with devotions o'clock.

An outside speaker will at the closing exercises, the services the diplomas of St. Leo's school will be given following will graduate.

Chester Gritt, Wesley L. bert Vanden Avond, Gers Grace Fonder, Angeline Cordelia Cornell, Nathalie Orland Poels and Elmer D.

## CASH WAY



Monda

MARSH

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CO

Chocolate C  
Cocoanut TDecora  
SpaDill F  
Niclet,

1

## TOM'S

## Specials For Tuesday

Radishes, home grown, 3 bunches	10c
Green Onions, home grown, bunch	2c
Wax Beans, fresh, 2 lbs.	15c
New Potatoes, No. 1, peck	32c
Bananas, 6 lbs.	25c
Oranges, 2 dozen	27c
Cantaloupes, 4 for	23c
Plums, sweet, big basket	49c
Strawberries, fresh, 2 boxes	25c
Sugar, Granulated, 10 lbs.	45c
SwansDown Cake Flour, 2 3/4 lb. pkg.	23c
Milk, tall cans, 14 1/2 oz., 6 cans	33c

## Decoration Day Specials

WE'RE OPEN ALL DAY

Weiners, small, 2 lbs.	25c
Boiled Ham, sliced, lb.	29c
Bologna, lb.	9c
Paper Plates, 2 dozen	15c
Wax Paper, 120 foot pkg.	15c

## DIAMOND PLAN MARKET

Meat Specials for Decoration Day — Markets Open Tuesday Night Until 9 O'Clock—CLOSED ALL DAY WEDNESDAY, DECORATION DAY.

SLICED BIG BOLONGA - - - - - lb. 11c

SIRLOIN STEAK - - - - - lb. 11c

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OLIV



in the opinion of Coach Tom E. Jones, Wisconsin track mentor. Pete Platzen, Green Bay, former Big Ten high jump champion, and Arlie Mucks, one of Wisconsin's all-time greats and former high school weight record holder, three other records went by the boards.

#### Cuts Old Record

Mehl of Wauwatosa clapped 2.2 seconds off the half mile mark set by Bell of Milwaukee East in 1927, running the distance in the sensational time of 1:58.8 seconds. Narewski of Milwaukee South vaulted 12 feet 6 1/4 inches to set a new record in the pole vault, breaking the old record of 11 feet 10 1/4 inches set by Jaskwich of Kenosha in 1929 by more than seven inches.

The final record-smashing performance was by Bastian, Wauwatosa miller, who stepped off the distance in 4 minutes 27.2 seconds; breaking the old record held by Marks of Beloit since 1909 by 5.2 seconds. This was the oldest record on the books.

West Bend won the Class B championship with 27 points, ahead of New London with 22, Shawano and Wisconsin Rapids with 20 each and Neenah with 17.

Altoona rolled up 37 points to win the Class C championship. Prairie du Sac was second with 30, Kimberly third with 17 and Amherst and Gays Mills tied for fourth with 15 each.

#### SUMMARIES

##### Class A

Broad jump: 1—Johnson, Green Bay West. 2—Schmidt, Madison West. 3—Smith, Madison Central. 4—Masuhr, Milwaukee East. 5—Loete, Madison West. Distance—22 feet 6 inches. (New record—old record 22 feet one inch, Donahue, Milwaukee Washington, 1927.)

100-yard dash: 1—Johnson, Green Bay West. 2—De Long, Waukesha. 3—Barkow, Milwaukee Washington. 4—Pentler, Milwaukee East. 5—Billy, Milwaukee Tech. Time—10.2 seconds.

440-yard run: (first section) 1—Volzen, Milwaukee South. 2—Morgan, Milwaukee Lincoln. 3—Harris, Milwaukee Washington. 4—Turczynski, Milwaukee South. 5—Zilener, Milwaukee North. Time—51.3 seconds.

120-yard high hurdles: 1—Johnson, Green Bay West. 2—Erdahl, Madison East. 3—Schmidt, Madison West. 4—Davies, Milwaukee West. 5—Hoyt, Shorewood. Time—14.8. (New record—established for 36-inch hurdles—old record over 42-inch hurdles 16 seconds by Ziese, Milwaukee Washington, 1926 and Kellner (Milwaukee West, 1932.)

High jump: 1—Schmidt, Madison West. 2—Leape, Appleton and Hager, Milwaukee West, tied. 3—Laison, Green Bay West and Hoyt, Shorewood, tied. Height—5 feet 6 inches.

Shot put: 1—Barbian, Milwaukee Washington. 2—Barksdale, Milwaukee West. 3—Dembski, Milwaukee East. 4—Schroeder, Oshkosh. 5—Dye, Milwaukee Lincoln. Distance—48 feet 3 1/2 inches.

Half mile: (first section) 1—Tehl, Wauwatosa. 2—Wiener, Oshkosh. 3—Valz, Wauwatosa. 4—Marola, Milwaukee Boys' Tech. 5—Lens, Janesville. Time—1:58.8. (New state record—former Mark-Bell, Milwaukee East, 1927. Time—2:02.1.)

Half mile: (second section) 1—Hunt, Madison West. 2—Ritsch, Milwaukee South. 3—Kuhn, Milwaukee Washington. 4—Marx, Milwaukee North. 5—Kahens, Milwaukee Lincoln.

Discus: 1—Lohmiller, Janesville. 2—Dembski, Milwaukee East. 3—Dye, Milwaukee Lincoln. 4—Hanson, Oshkosh. 5—Gundenschwager, La Crosse Central. Distance—122 feet 1 1/4 inches.

Pole vault: 1—Narewski, Milwaukee South. 2—A. Padway, Shorewood. 3—M. Padway, Shorewood, Kline, Milwaukee Washington, Vierck, Milwaukee Lincoln, Vierger, Madison West and Halama, Milwaukee South, tied. Height—12 feet 6 1/4 inches. (New state record—former record held by Jaskwich, Kenosha, 1929, 11 feet 16 1/4 inches.)

Mile run: 1—Bastian, Wauwatosa. 2—Pruski, Milwaukee Bay View. 3—Macchietti, Shorewood. 4—Good, Milwaukee North. 5—Hassett, Milwaukee West. Time—4:27.2. (New state record—former record 4:32.4 set by Marks, Beloit, in 1909.)

220-yard dash: 1—De Long, Waukesha and Van Caster, West Green Bay, tie. 2—Volzen, Milwaukee South, Gates, Milwaukee West, tie. 3—Darkow, Milwaukee Washington. Time—22.6 seconds.

220-yard low hurdles: 1—Erdahl, Madison East. 2—Davies, Milwaukee West. 3—Mieritz, Milwaukee Boys' Tech. 4—Rosemmerkl, Milwaukee South. 5—Loete, Appleton. Time—25.2 seconds.

Half mile relay: 1—Green Bay West (Dudson, Erdmann, Johnson, Van Caster). 2—Milwaukee Washington and Milwaukee South, tie. Time—1:34.

program. He is shown at the Senate Banking and Currency Committee hearing as the housing bill was discussed.

just to make the critics more articulate.

Collectors had trouble with the Century of Progress issue. They wanted imperforate issues (stamps ungummed and without perforations) and they finally won their point. More recently was criticism directed at the Maryland Tercentenary issue, which depicted two ships, the ark and the dove-in-red. Postal clerks complained red was the color for a 2-cent stamp and the Maryland 3-cent issue confused them.

Then still fresh in the public mind is the controversy over the Mother's day stamp. It wasn't artistic and liberties were taken with the miniature reproduction of Whistler's "Mother," critics charged. The post-office department merely answered this by saying the issues broke a sales record.

The Byrd stamp probably received the highest praise for its beauty and symmetry. Blue in color, it showed a globe with the Antarctic in relief.

Usable fuel to the extent of 320,000 tons is thrown into London's dustbins every year. As fuel, this is estimated to be worth \$800,000, but it costs \$1,450,000 to destroy it.

## Specials For Tuesday

Radishes, home grown, 3 bunches	10c
Green Onions, home grown, bunch	2c
Wax Beans, fresh, 2 lbs.	15c
New Potatoes, No. 1, peck	32c
Bananas, 6 lbs.	25c
Oranges, 2 dozen	27c
Cantaloupes, 4 for	23c
Plums, sweet, big basket	49c
Strawberries, fresh, 2 boxes	25c
Sugar, Granulated, 10 lbs.	45c
SwansDown Cake Flour, 2 3/4 lb. pkg.	23c
Milk, tall cans, 14 1/2 oz., 6 cans	33c

## Decoration Day Specials

WE'RE OPEN ALL DAY

Weiners, small, 2 lbs.	25c
Boiled Ham, sliced, lb.	29c
Bologna, lb.	9c
Paper Plates, 2 dozen	15c
Wax Paper, 120 foot pkg.	15c

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SHOP AND  
SAVE  
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CASH WAY

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Memo

GERANIU

Bananas Extra 5  
Fancy

PLUMS Sweet 2  
Red

Sweet, Juicy  
ORANGES 2

Ripe, Sweet  
Cantaloupes 3

Home Grown  
RADISHES 3

Green Onions 4

New Potatoes 9

Pure Cane

## DIAMOND PLAN MARKET

Meat Specials for Decoration Day — Markets Open Tuesday Night Until 9 O'Clock—CLOSED ALL DAY WEDNESDAY, DECORATION DAY.

SLICED BIG BOLONGA	- - -	lb. 11c
SIRLOIN STEAK	- - - -	lb. 11c
PORK CHOPS END	- - - -	lb. 11c
RIB BEEF STEW	- - - -	lb. 5c
SLICED SMOKED HAM	- - -	lb. 19c
SMOKED BACON SQUARES	- -	lb. 9c
FRESH HAMBURGER	- - -	lb. 7c
VEAL SHOULDER STEAK or CHOPS	11c	
WHOLE BEEF RUMPS	- - -	lb. 6c
PURE LARD	- - - -	4 lbs. 33c
FANCY BROILERS	- - - -	lb. 26c

### Diamond Plan Markets:

Reimer's Washington St.

Reimer's Main St. | Schefe Market  
Blue Ribbon Market | New York Market

Farah West Side  
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NEXT TO WEST SIDE POST OFFICE 309 N. BROADWAY

Don't Quote Me

## Cutting through offseason nonsense

As the Green Bay Packers' offseason rolls into the NFL scouting combine, free agency and the draft, the rhetoric is nonstop and mostly nonsense.

Perhaps this will help. ■ What I'm hearing is Packers General Manager Ted Thompson suggesting they might draft a quarterback such as USC's Matt Leinart, Texas' Vince Young or Vanderbilt's Jay Cutler.

What I'm thinking is Thompson's initial attempt at draft subterfuge was so transparent it might work. When

Thompson says he wants Brett Favre to return and he believes Aaron

Rodgers has a promising future, it serves as a reminder that Favre may not be back and Rodgers may not be the answer. For trade purposes,

Thompson wants teams to worry that he might use the fifth pick to draft a QB. If North Carolina State defensive end Mario Williams is off the board, I suspect Thompson would rather trade the No. 5 pick, move down several spots and acquire additional picks. That can't happen if nobody comes calling for a QB.

■ What I'm hearing is the agent for receiver Javon Walker reportedly calling his client's \$650,000 salary for 2006 a "disservice."

What I'm thinking is "Here we go again." It doesn't matter if the agent is right, and I happen to agree that \$650,000 is a pittance. What matters is Walker — like the last time he griped about being underpaid — has zero leverage. The Packers aren't going to ante up until Walker's surgically repaired knee checks out. Anything his agent says until then is so much hot air.

■ What I'm hearing is running back Ahman Green is making great strides in his comeback from a torn thigh tendon. What I'm thinking is Green's going to be the Packers' starting running back in the regular-season opener. Whether he returns to Pro Bowl form is a long shot, but I wouldn't write off the hard-working Green.

■ What I'm hearing is confidence in offensive coordinator Jeff Jagodzinski's comments regarding the new zone-blocking scheme. Said Jagodzinski: "Everybody (cut blocks), it's just that Denver, Atlanta and (now) Green Bay do it more and do it better."

What I'm thinking is if Jagodzinski is right, and the scheme is as good as he makes it sound, the Packers' running game might regain its legs. Meantime, I like Jagodzinski's trust in what he's going to be teaching.

■ What I'm hearing is Favre's odds of coming back get better the longer he takes to make a deci-

# SPORTS

Contact Sports Editor Mike Vandermause at (920) 431-8222 or mvandermause@pressgazette.com. ■ Green Bay Press-Gazette

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Sunday, February 26, 2006 ★

section

C

# A franchise-turning decision

No. 5 pick could provide big lift or set Packers back for years

BY PETE DOUGHERTY

pdougherty@greenbaypressgazette.com

## Who's No. 5?

■ Who will be on the board when the Packers pick? Pete Dougherty breaks down the top 10 prospects:

► C-11

■ N.C. State's Williams could be answer at DE: ► C-11

INDIANAPOLIS — All first-round NFL draft picks are important, but when a team has a prime, top-five selection, it gets about as good a chance to land a franchise-turning player as it will see.

So when General Manager Ted Thompson makes his pick at No. 5 for the Green Bay Packers on April 29, his decision could be a major step toward the Packers returning to elite status. Or, if he misses on the pick and lands a salary-cap wrecking bust, he could be setting up the Packers for drafting that high a

time or two more.

"If you can hit on a franchise player at a key position," said Floyd Reese, the Tennessee Titans' general manager, "you're talking about someone who will be with the franchise for eight, 10, 12 years and win a ton of games for you."

Recent NFL history, as well as the Packers' history, however, shows that though the odds for landing a great player go up when selecting in the top five, it's far from a guarantee a team will land one.

The Packers have picked five times in the top five since the common draft began in 1970 and failed to a stunning

degree with those selections. All five players ranged from disappointments to colossal busts: defensive tackle Mike McCoy in 1970; defensive tackle Bruce Clark, who refused to play for the Packers in 1980; halfback Brent Fullwood in 1987; tackle Tony Mandarich in 1989; and cornerback Terrell Buckley in 1992.

A look at recent NFL drafts paints a more accurate reflection of the odds for landing an outstanding player.

The 20 top-five picks in the drafts from 1999 through 2002 have produced 10 Pro Bowl players. On a more subjective level, they produced seven elite players (tackle Chris

Samuels, halfback Jamal Lewis, quarterback Michael Vick, halfback LaDainian Tomlinson, defensive end Julius Peppers, quarterback Donovan McNabb and halfback Edgerrin James); five players who range from decent to good (linebacker LaVar Arrington, defensive end Justin Smith, quarterback David Carr, cornerback Quentin Jammer and halfback Ricky Williams); and eight busts (defensive end Courtney Brown, receiver Peter Warrick, tackle Leonard Davis, defensive tackle Gerard Warren, quarterback Joey Harrington, tackle Mike Williams, quarterback Tim Couch and quarterback Akili Smith).

► See Packers, C-11

Hockey  
St. Norbert 7  
UW-Stout 2  
► Next: NCHA  
Peters Cup  
championship  
game, UW-Superior at SNC,  
7 p.m. Saturday  
► Summary, C-5

# Knights close in on title

BY JASON LAUREN  
jlauren@greenbaypressgazette.com

ASHWAUBENON — The St. Norbert College hockey team appears to be unstoppable.

The No. 1-ranked Green Knights topped the University of Wisconsin-Stout 7-2 in the Northern Collegiate Hockey Association Peters Cup playoffs semifinals at the Cornerstone Community Center on Saturday.

SNC has won 15 of its last 16 games, with its only loss coming against Lake Forest on Feb. 11, when it had nothing to play for with the NCHA regular-season title wrapped up. St. Norbert (23-3-2) has won in dominating fashion recently, winning seven of its last eight games by at least four goals.

"Everything seems to be falling in line," SNC coach Tim Coglin said. "We are getting some solid play. We are continuing to get good offensive opportunities off good defensive play."

The Green Knights will face UW-Superior — a 2-1 winner over Lake Forest on Saturday — in the Peters Cup championship game at 7 p.m. Saturday at the Cornerstone. SNC will be shooting for its fourth straight Peters Cup title and will be playing in the league championship game for the fifth straight year.

"To me, it's the way it should be," Coglin said of his team facing Superior in the finals. "We said all along, even when (Superior was) struggling at the beginning of the year when everybody was kind of up and down, we half assumed that's how it would shake out. There's not one guy in my locker room that doesn't want that matchup."

Top-seeded SNC stayed unbeaten against seventh-seeded Stout (15-13) in the last 24 meetings (23-0-1). SNC outshot the Blue Devils 33-19, and took control of the game by taking a 3-0 lead after the first period.

"They are very talented, tough and well-coached," Stout coach Terry Watkins said. "There's a reason they are No. 1. We beat No. 2 in the West (UW-River Falls) last week, and it wasn't anything like (Saturday). These guys are very, very good. I'll be surprised if they don't win the national title, really surprised."

Connor Hughes had two goals and one assist, Spencer Carberry scored two goals and Andy Cote scored one goal and picked

# L-C brings home golds

Reckelberg caps career with state crown while Cibula is halfway to four-title goal

BY PATRICK JOHNSON  
pjohanson@greenbaypressgazette.com

Reckelberg quickly began training for this season's state tournament.

Standing in a Kohl Center hallway, Reckelberg knew every minute he spent on the wrestling mat was worth it.

"I'm so tired," joked Reckelberg. "But I feel great, like a million bucks. It's cool for the community, because we always go to kids' wrestling practices and they immediately know who you are. They always look up to the state champions, and now I am one. What an awesome feeling."

If anyone appreciated how much Reckelberg worked to become a state champion, it was Berceau.

"Dennis works his butt off," Berceau said. "There's no one that deserves the title more than him."

Reckelberg scored a takedown with 5 seconds remaining in the second period to take a 3-0 lead going into the final 2 minutes. Hilby received one point on an escape and another on a stalling penalty, but it would not be enough.

While Reckelberg was forced to wait until his final year to win a state title, Cibula captured his second championship in his two years at L-C.

Just a sophomore, Cibula has set a torrid pace. Cibula stated at the beginning of the season that one of his goals was to earn state title all four years. He's halfway there.

► See Spartans, C-12



## WIAA state wrestling

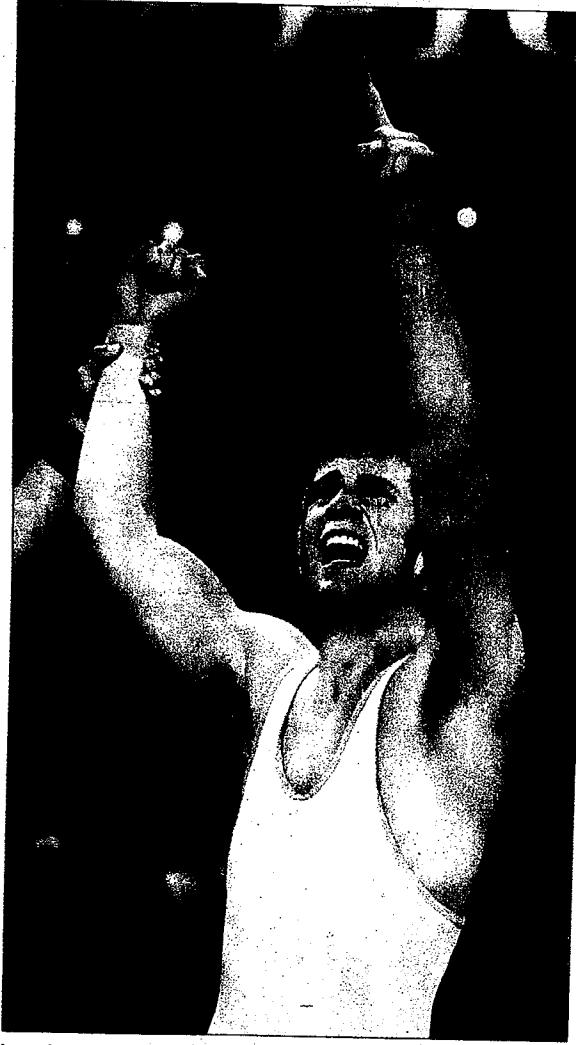
► Bay Port's Woods, Pulaski's August and Kewaunee's Trindal fall in title matches, C-12  
► Results, C-12

elberg fought off Joe Hilby of Cuba City 3-2 in the 160-pound final.

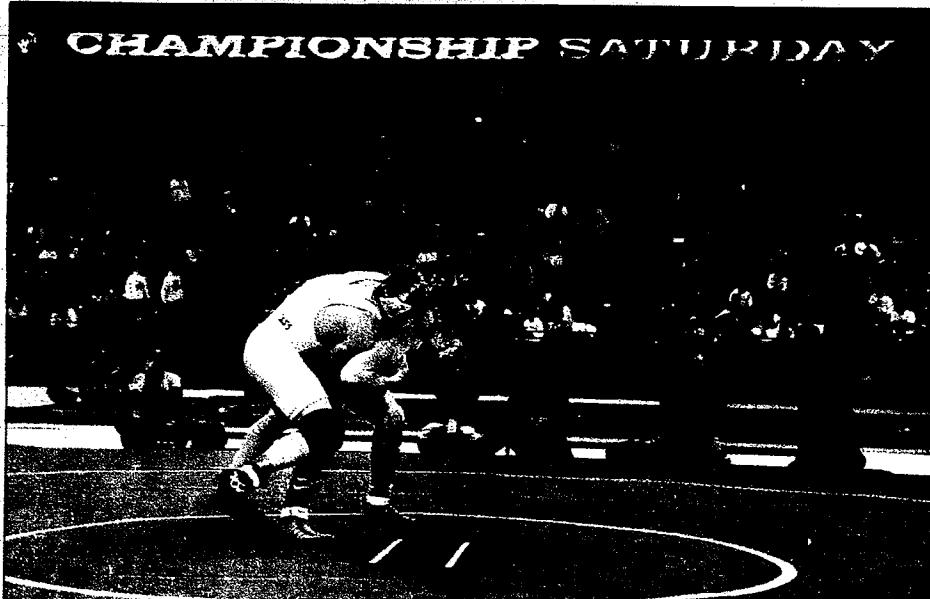
Reckelberg, a senior, took the long road to the state title. As a freshman, Reckelberg was used sparingly on the varsity roster, but his desire was unquenchable.

"He came in his freshman year determined to make the lineup," L-C coach Bob Berceau said. "He didn't just do it during the wrestling season, but got it done in the summertime with working out, going to camps, and practicing."

Reckelberg made the state tournament as a junior but made a premature exit. Never wanting to feel that sting again,



Luxemburg-Casco's Dennis Reckelberg celebrates after winning the 160-pound weight class in Division 2 at the WIAA state wrestling tournament on Saturday in Madison. Corey Wilson/Press-Gazette



Luxemburg-Casco's Zac Cibula, left, works against Scott Fahey of Belmont/Monticello/New Glarus during the WIAA Division 2 state championship match at 140 pounds at the Kohl Center in Madison on Saturday night. Cibula won 8-5. Corey Wilson/Press-Gazette

## Spartans/Close friends enjoy titles

► From C-1

Only three L-C wrestlers have won three state titles, and of them is Berceau.

Only seven wrestlers in state history have won four state championships.

Cibula can be counted among the 158 wrestlers in state histo-

ry who have won two state titles.

"I'm hopefully doing all that I can to add to the program's legacy," a beaming Cibula said. "I'm just doing all that I can, because my coach and teammates have given me so much."

Cibula's match was more one-sided than the score would indi-

cate, as Cibula turned an attempted escape by Fahey into an armbar takedown. Cibula built a 5-0 lead in the third period and held Fahey at bay the rest of the way.

Reckelberg and Cibula not only are state champions but close friends. Cibula, Reckelberg and Berceau insist the

friendships L-C wrestlers build is a big reason for the Spartans' success.

"Our team is really close together," Cibula said. "After the tournament tonight, we're going to go out and hang out for a bit. Before, during and after the season, we are always buds."

## Trindal's dream run comes to abrupt end

BY PATRICK JOHNSON  
pjohson@greenbaypressgazette.com

MADISON — All dreams come to an end, but Kewaunee's Joe Trindal didn't want to wake up the way he did.

Trindal, who wasn't ranked before the WIAA Division 2 sectional wrestling tournament, drove through his opponents to reach the state championship match at 189 pounds.

"His run was amazing," Kewaunee coach Steve Jerabek said. "When he came into this tournament, nobody knew him, but when you make it to the state championship match, everybody is watching you and everyone knows who you are."

Trindal's run didn't last, though. Westby's David Casper beat him 11-8 decision for the state title.

Casper led throughout the match, but with about a minute left, Trindal closed to within one point at 9-8 on a reversal. Shortly thereafter, Casper caught Trindal with a reverse to finish him off.

Despite the loss, Kewaunee has had only one champion in school history. Trindal's second-place finish will affirm Kewaunee as a wrestling power in the area.

"It hurts now, but I'm sure that looking back on it, it will be a pretty cool thing that I did," Trindal said.



It's not clear which wrestler — Westby's David Casper, left, or Kewaunee's Joe Trindal — has the upper hand during their WIAA Division 2 championship match at 189 pounds on Saturday night at the Kohl Center in Madison. Casper won the match. Corey Wilson/Press-Gazette

## Root, Skenandore rebound for 3rd

BY PATRICK JOHNSON  
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MADISON — Green Bay Preble/East's Malachi Root redeemed himself in the WIAA state wrestling tournament the best way he knew how — by cruising past Beaver Dam's Casey Sobrilsky in a 6-1 decision for third place on Saturday night at the Kohl Center.

Although Root was looking to win an 112 pounds in Division 1, an illness hindered his chances to take home the title.

"I didn't have any strength left," Root struggled to say after

### Notebook

his loss, Skenandore lay prone on the mat, imagining what might have been.

■ Considering the circumstances, Ashwaubenon's Jody VanLanen did just about the best he could. After an opening-round victory over Ben Engel

land of Neenah at 160, VanLanen lost to Verona's unbeaten Ben Sarbacker.

Although VanLanen could have forfeited the rest of his matches considering his many injuries, including a hip flexor

thwarted this year by Northwestern's Zac Martinson in the semifinals at 135. The loss apparently only infuriated Kazik, who blasted East Troy's Chad Zess in an 11-3 major decision to take third place.

■ Going into the final 2-minute period of the 112-pound semifinals on Friday night, Oconto Falls' Brad Vankauwenberg chose to start down. All he had to do to tie the match was to escape from Dodgeville's Bobby Wunnicke. Instead, Wunnicke kept Vankauwenberg down and escaped with the 1-0 win.

fifth at 152, pinning Cuba City's Phil Blasco in 4 minutes, 2 seconds; and Lloyd finished sixth at 215, dropping Whitewater's Tim Lauer before being felled in the fifth-place match.

### Division 3

Wrightstown salvaged some of its pride. Tharin Schussler finished fourth at 189. Brett Klopp at 130 and Eric Verhagen at 140 earned fifth-place finishes. Shawn Neosh lost a 3-2 heartbreaker to Cashton's Derek Laufenberg in the fifth-place match to take sixth at 275.

■ Grandon's Chad Cracraft

## August edged in the rematch

BY SCOTT VENCI  
svenci@greenbaypressgazette.com

MADISON — When it comes to his high school wrestling career, Pulaski junior Jonny August might look back on Saturday's 119-pound state championship match with pride and sorrow.

August was just .8 seconds away from capturing his first Division 1 state title, only to have Wisconsin Rapids junior Jared Jaminski escape in a 2-1, double-overtime thriller at the Kohl Center.

August (43-3) was trying to become the first area wrestler to win a Division 1 state title at 119 pounds since Bay Port's Tim McAllister did so in 1986.

While August beat Jaminski on a decision a week ago, it was a different story this time around.

"He is a wrestler who likes to stay real far away," Jaminski said. "So I made sure that I was an arm distance away from him. I grabbed the wrist at all times that I could. I wrestled my match, or tried to at least."

Although August was too upset to speak after the match, Pulaski coach Terry Manning couldn't have been prouder of his wrestler.

"It was a heck of a match," Manning said. "Both kids brought close to their best match out there. Jonny wrestled a good match, but I don't think he wrestled a great match. I think he would tell you that. I think we felt we needed a little better movement in the overtime. But, hey, Jaminski is a good wrestler."

Jaminski (42-4) had been wrestling at 130 pounds for most of the year, but the junior didn't think he would have a chance to win a state title at that weight. So he dropped down to 119 pounds and was rewarded for it.

"I was pretty confident that I was going down for the second overtime, because that is one of my strongest points when I am on the mat," Jaminski said. "I just knew that I had to wrestle one match at a time, or being a state champion was not going to



Pulaski's Jonny August walks away after losing to Wisconsin Rapids' Jared Jaminski in the WIAA Division 1 state championship match at 119 pounds at the Kohl Center in Madison on Saturday night. Corey Wilson/Press-Gazette

be a possibility for me.

"I knew I had a chance, but the rankings said I wasn't going to be in the finals. But it ended up happening."

Although his season ended one win short, August proved to be one of the best wrestlers in the state. Despite being new to the Red Raiders' program after transferring from Seymour, August quickly fit in with his new team and paid big dividends throughout the season.

"We are extremely proud of him," Manning said. "We are happy he is part of our program. It's just a credit to his work ethic and approach to the sport."

"He had a great state tournament, Jonny August is a competitor, and he will be back."



Bay Port's Ryan Woods, right, is driven out of the circle by Franklin's Eric Bugenhagen during their WIAA Division 1 state championship match at 171 pounds. Corey Wilson/Press-Gazette

## Pirates' Woods: Losing is 'tough'

BY SCOTT VENCI

"Somebody had to lose."

Luxemburg-Casco's Zac Cibula, left, works against Scott Fahey of Belmont/Monticello/New Glarus during the WIAA Division 2 state championship match at 140 pounds at the Kohl Center in Madison on Saturday night. Cibula won 8-5. Corey Wilson/Press-Gazette

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"I didn't have any strength left," Root struggled to say after Friday night's 7-4 loss to Hartland Arrowhead's Andrew Zwierlein.

■ Justin Parsons of River Falls found out first-hand not to trifle with a scoured Eddy Joe Skenandore. The Green Bay West/Southwest star finished third at 215 with a 3-1 overtime victory over Parsons.

Skenandore (47-1) was beaten in Friday night's Division 1 semifinals, falling to Burlington's Justin Schmalfeldt. After

### Notebook

his loss, Skenandore lay prone on the mat, imagining what might have been.

■ Considering the circumstances, Ashwaubenon's Jody VanLaanen did just about the best he could. After an opening-round victory over Ben Engelhard of Neenah at 160, VanLaanen lost to Verona's unbeaten Ben Sarbacker.

Although VanLaanen could have forfeited the rest of his matches considering his many injuries, including a hip flexor and knee, he decided to continue in search of a medal.

VanLaanen won his last three matches to take fifth. He goes home with a medal.

### Division 2

West De Pere's Tony Kazik imagined his state tournament would have a dream ending. It was more like a nightmare.

Kazik, who had come one win away from the state title in each of the past two years, was

thwarted this year by Northwestern's Zac Martinson in the semifinals at 135. The loss apparently only infuriated Kazik, who blasted East Troy's Chad Zess in an 11-3 major decision to take third place.

■ Going into the final 2-minute period of the 112-pound semifinals on Friday night, Oconto Falls' Brad Vankauwenberg chose to start down. All he had to do to tie the match was to escape from Dodgeville's Bobby Wunnicke. Instead, Wunnicke kept Vankauwenberg down and escaped with the 1-0 win.

Vankauwenberg placed third with a victory over Luke Wiegman of Cuba City, and will have two more years to exact his revenge upon Wunnicke. Both are sophomores.

■ Luxemburg-Casco's Ryan Zellner, Jesse Roberts, and Nick Lloyd have no reason to complain. After each were bounced from title contention on Friday, Roberts placed third at 171 with a victory over Campbellsport's Louie Braatz; Zellner finished

fifth at 152, pinning Cuba City's Phil Blasco in 4 minutes, 2 seconds; and Lloyd finished sixth at 215, dropping Whitewater's Tim Lauer before being felled in the fifth-place match.

### Division 3

Wrightstown salvaged some of its pride. Tharin Schussler finished fourth at 189. Brett Klopp at 130 and Eric Verhagen at 140 earned fifth-place finishes. Shawn Neosh lost a 3-2 heartbreaker to Cashton's Derek Laufenberg in the fifth-place match to take sixth at 275.

■ Crandon's Chad Cracraft lost 8-7 to Cadott's Steve Geissler in the 215-pound semifinals, then took out his frustrations on Weston's Max Brandt, handing him a 15-2 major decision. Cracraft finished third.

■ Josh VanderMeulen of Bonduel rebounded from his upset loss to Darlington's Josh Malott by winning two consecutive matches at 125. He finished fifth with a 7-3 victory over Unity's Devin Hoyt and a 9-6 win over Phillips' Fred Freeman.

on a decision a week ago; it was a different story this time around.

"He is a wrestler who likes to stay real far away," Jaminski said. "So I made sure that I was an arm distance away from him. I grabbed the wrist at all times that I could. I wrestled my match, or tried to at least."

Although August was too upset to speak after the match, Pulaski coach Terry Manning couldn't have been prouder of his wrestler.

"It was a heck of a match," Manning said. "Both kids brought close to their best match out there. Jonny wrestled a good match, but I don't think he wrestled a great match. I think he would tell you that. I think we felt we needed a little better movement in the overtime. But, hey, Jaminski is a good wrestler."

Jaminski (42-4) had been wrestling at 130 pounds for most of the year, but the junior didn't think he would have a chance to win a state title at that weight. So he dropped down to 119 pounds and was rewarded.

"I was pretty confident that I was going down for the second overtime, because that is one of my strongest points when I am on the mat," Jaminski said. "I just knew that I had to wrestle one match at a time, or being a state champion was not going to



Pulaski's Jonny August walks away after losing to Wisconsin Rapids' Jared Jaminski in the WIAA Division 1 state championship match at 119 pounds on Saturday night. Corey Wilson/Press-Gazette

be a possibility for me.

"I knew I had a chance, but the rankings said I wasn't going to be in the finals. But it ended up happening."

Although his season ended one win short, August proved to be one of the best wrestlers in the state. Despite being new to the Red Raiders' program after transferring from Seymour, August fit in with his new team and paid big dividends throughout the season.

"We are extremely proud of him," Manning said. "We are happy he is part of our program. It's just a credit to his work ethic and approach to the sport."

"He had a great state tournament. Jonny August is a competitor; and he will be back."



Bay Port's Ryan Woods, right, is driven out of the circle by Franklin's Eric Bogenhagen during their WIAA Division 1 state championship match at 171 pounds. Corey Wilson/Press-Gazette

## Pirates' Woods: Losing is 'tough'

BY SCOTT VENCI  
svinci@greenbaypressgazette.com

MADISON — Bay Port wrestler Ryan Woods leaned on a wall in the tunnel of the Kohl Center on Saturday night with a medal around his neck. He took it off, looked at it, and tears began streaming down his face.

But it wasn't the medal he had come here for.

The ultracompetitive Woods came up just short in his WIAA Division 1 state championship match at 171 pounds, losing a 6-4 decision to Franklin's Eric Bogenhagen in the closing seconds of the third period.

While most people would have been satisfied to finish as one of the best wrestlers in the state, Woods wanted to be the best. He was taking no solace in finishing as a runner-up.

"This is what I worked all year for," Woods said, fighting back tears. "It's tough."

Woods finished his senior season with a 29-2 record, with both losses coming in the past week. He lost 3-1 to Wisconsin Rapids' Mike Casey in the sectionals last Saturday, then lost to Bogenhagen.

"Someone had to lose, I guess," Bay Port coach Brad Shefchik said. "I just think we needed to get a few more shots. The guy did a pretty job of hand fighting. We just needed a little more offense to keep the guy on his heels."

The loss couldn't overshadow the hard work and determination Woods displayed in coming back from a shoulder injury earlier this season.

"He worked hard to get back, he had to keep his conditioning," Shefchik said. "When you are out for four weeks, it is hard to get back into the condition you were."

"It is still a great season by any standards. Second place is nothing to be ashamed by. But when your goals are first, it is going to hurt for a while."

Bogenhagen finished 37-1, his only loss to Woods on Dec. 10 at the Battle on the Bay. This time, however, he did just enough to come away victorious.

"Nobody said I was going to win it," Bogenhagen said. "Everybody said there was no way I was going to be in the finals. I proved everyone wrong, and it feels great."

### SATURDAY'S AREA RESULTS

#### Division 1

112 Third-place match: Matcho Root, Green Bay Preble/East, def. Cedar Grove-Belgium, 6-1.

113 Consolation semifinals: Jared Jaminski, Wisconsin Rapids, def. Jonny August, Pulaski, 2-1 (OT).

114 Consolation semifinals: Jon VanLaanen, Ashwaubenon, def. Mike Kera, Bradford, 14-8. Final-place match: VanLaanen, Ashwaubenon, def. Luke Rynish, Horicon, 3-0.

171 Championship match: Eric Bugenhagen, Franklin, def. Ryan Woods, Bay Port, 6-4.

172 Consolation match: Eddy Joe Skenandore, Green Bay West/Southwest, def. Justin Parsons, River Falls, 3-1 (OT).

#### Division 2

103 Consolation semifinals: Casey Paschow, Seymour, pinned Kurt Vandenberg, West De Pere, 57. Final-place match: Paschow, 3-0.

110 Consolation semifinals: Kurt Vandenberg, West De Pere, pinned Paschow, Seymour, 4-30.

112 Third-place match: Brad Vankauwenberg, Oconto Falls, def. Luke Rynish, Horicon, 10-3.

113 Consolation semifinals: Seth Moe, Seymour, def. Ross Dary, Wausau, 7-0. Final-place match: Blaine Gable, Cumberland, def. Moe, Seymour, 10-3.

135 Third-place match: Tony Kazik, West De Pere, def. Chad Joss, East Troy, 7-4.

140 Championship match: Zac Fahey, Belmont/Monticello/New Glarus, 8-5.

142 Consolation semifinals: Jake Morris, Oconto Falls, def. Andy

#### Division 3

110 Consolation semifinals: Cody Frennett, Neenah, pinned Matt Kozlowski, Cedar Grove-Belgium, 3-3.

145 Consolation semifinals: Joe Farrell, Gellert/Suring, def. Jon Frier, Leland, 11-7. Final-place match: Gellert/Suring, 4-3.

152 Consolation semifinals: Louie Braatz, Campbellsport, 8-7.

152 Third-place match: Andrew Cola, East Troy, def. Brandon Olson, Gellert/Suring, 8-7.

169 Championship: David Casper, Luxemburg-Casco, pinned Louie Braatz, Campbellsport, 2-11.

171 Consolation semifinals: Louie Braatz, Campbellsport, 8-7.

175 Consolation semifinals: Ryan Zellner, Luxemburg-Casco, pinned Louie Braatz, Campbellsport, 10-11.

189 Consolation semifinals: Jon Lloyd, Luxemburg-Casco, pinned Louie Braatz, Campbellsport, 4-2.

195 Consolation semifinals: James Horner, Luxemburg-Casco, pinned Louie Braatz, Campbellsport, 7-1.

215 Consolation semifinals: Lucas Rank, Bonduel, def. Cody Frennett, Cedar Grove-Belgium, 9-5.

215 Consolation semifinals: Jon Lloyd, Luxemburg-Casco, pinned Louie Braatz, Campbellsport, 4-2.

215 Consolation semifinals: Matt Sauer, Cedar Grove-Belgium, 9-5.

Hometown coverage of America's team.  
www.greenbaypressgazette.com

SATURDAY, NOVEMBER 18, 2000

## FAST BREAK

### BASKETBALL



The Associated Press  
The Cleveland Cavaliers' Andre Miller, left, tries to get around Milwaukee Bucks guard Sam Cassell in the first half on Friday.

■ Story, C-5.

### JUNIOR HOCKEY

#### Omaha Lancers rout Gamblers 7-1

OMAHA, Neb. — Bryce Lampman scored a hat trick in the third period as the Omaha Lancers capped a 7-1 rout of the Green Bay Gamblers in a United States Hockey League game on Friday at Ak-Sar-Ben Coliseum.

Omaha controlled the game from the start, leading 4-0 after the first period. The Lancers (8-4-3) held the Gamblers scoreless until midway through the second period, when Joe Zurenko scored unassisted. After that, it was all Lancers and all Lampman, who got two of his three goals against backup goalie Marc Bowen.

Green Bay (9-4-2) plays at Sioux Falls tonight.

### VOLLEYBALL

#### UWGB lands two on newcomer team

The University of Wisconsin-Green Bay volleyball team placed two freshmen, Janelle Tomlinson and Crystal Nucech, on the Midwestern Collegiate Conference all-newcomer team announced Friday.

Tomlinson, a middle blocker from Stratford, led the Phoenix in kills, kills per game and blocks. Nucech, a setter/outside hitter from Hibbing, Minn., ranks first in the MCC in service aces per game.

UWGB (7-20, 2-10 MCC) opens the MCC tournament against Butler at 1 p.m. today.

UW-Milwaukee swept the top three honors in the MCC. Laura Dallenbach was named player of the year, Lindsey Spoden was newcomer of the year and Kathy Litzau was coach of the year.

### THE BUCK



# SPORTS

WIAA Division 2 championship: Ashwaubenon 19, Sussex Hamilton 12

## State champions, again

Jaguars add second title in five years

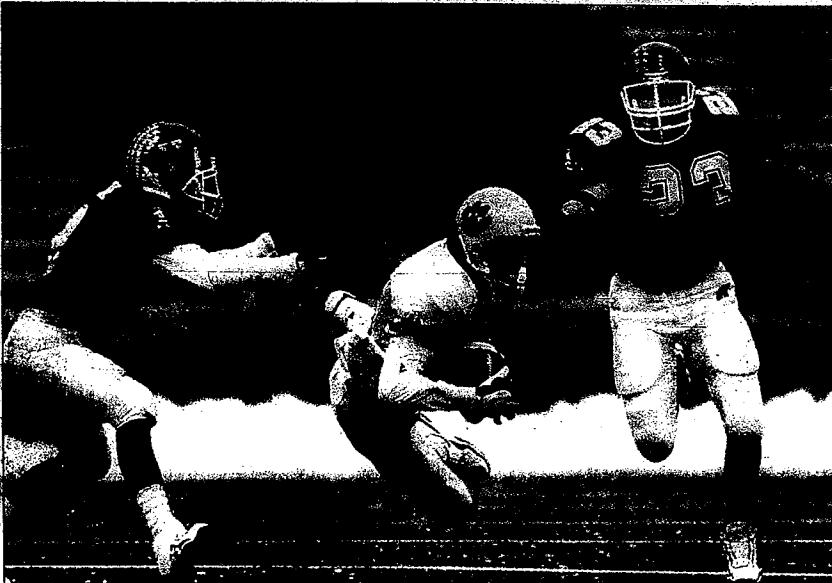
By MIKE SPOFFORD  
PRESS-GAZETTE

MADISON — A fourth-and-1 conversion a little earlier would have made things a lot easier on the Ashwaubenon Jaguars.

When Sussex Hamilton stuffed Ashwaubenon at the goal line early in the fourth quarter, it appeared the Jaguars may have let their chance to win the WIAA Division 2 state football championship slip away.

But another crack at fourth-and-1 later in the quarter was converted, and the tide of the hard-fought title game turned on the very next play. Quarterback Jamie VanDenElzen hit wideout Nate Hall on a 42-yard bomb for the go-ahead touchdown as the Jaguars rallied for a 19-12 victory over Hamilton on a chilly Friday at Camp Randall Stadium in Madison.

"I told our kids not to give up," said Ashwaubenon coach Ken Golomski, whose team won its second state title in five seasons. "We played from behind throughout the year. You tell kids all the time to fight, battle, scratch, do anything you can to stay in the game and something is going



The Associated Press  
Ashwaubenon's Justin Rousseau catches a pass in between Sussex Hamilton's Luke Plesie, left, and Jesse Jakubowski in the second quarter of the Division 2 championship game at Camp Randall in Madison on Friday.

to happen."

It happened for an offense that had struggled much of the game. Two turnovers and a failed fourth-and-short ended promising first-half drives. Then trailing 12-7 in the second half, the Jaguars had recovered a fumbled

punt and driven to the Chargers' 1-yard line.

VanDenElzen went nowhere up the middle on third down, and tailback Chad Sloden was dragged down for a 1-yard loss on fourth-and-goal, leaving the Jaguars searching for an

swers with 10:08 left.

"They really gummed us up down there on the goal line," Golomski said. "They had all their big bodies inside. That's a pretty good defense we played against and they defended us pretty well."

On its next possession, Ashwaubenon faced fourth-and-1 at the Hamilton 45 with under 5 minutes left, and this time VanDenElzen's sneak worked for 3 yards. With the Ashwaubenon play,

Please see Jaguars, C-2

## Golomski brings out Jaguars' hard-nosed side

MADISON —

The big play. Anyone who knows anything about Ashwaubenon football realizes that much of the success the Jaguars have had during the past decade centers around the quick strike.

So it wasn't a total surprise that a 42-yard touchdown pass from Jamie VanDenElzen to Nate Hall with under 3 minutes remaining gave Ashwaubenon the lead for good in its 19-12 victory over Sussex Hamilton in the Division 2 state championship game Friday at Camp Randall Stadium.

It was typical Ashwaubenon football, many may think. On first-and-10 after a quarterback sneak on fourth-and-1 enabled the

Jaguars to keep the drive alive, VanDenElzen threw a perfect strike to a wide open Hall, who caught the ball on the 7 along the left sideline and walked into the end zone untouched.

But truth be told, it was how physical the Jaguars played that enabled them to win. The big play at the end

was the only one of 30 or more yards

Ashwaubenon had all day against a hard-nosed defense that had just one touchdown in the previous 45 minutes.

Defensively, Ashwaubenon held the Chargers' wishbone attack to a paltry 40 yards and didn't allow a touchdown. On a cold, blustery morning, the Jaguars showed a toughness that wasn't always attached to the program.

"There were years when we were known as soft and as wusses, and all that good stuff," said coach Ken Golomski, who evened his championship game record at 2-2. "I think within the last decade, when we started getting to the playoffs, we did get an edge to us, a chip on our shoulder and started playing with more hard guts

and enthusiasm. We did get tougher mentally and physically."

Golomski, who completed his 18th season with Friday's victory, didn't reach the playoffs during his first six years, which frustrated him.

"I almost hung it up in '88," he said. "I started to second-guess myself, but I think we simplified some things and went on to work on a better weight program. It was a combination of a lot of little things, but psychologically we became mentally tougher and more physical."

Ed Krcmar, Ashwaubenon's offensive coordinator and its head coach before Golomski, remembered the season.

"It was just frustration," Krcmar said. "I was the head man ahead of him so I know what he was going through. But you ride through those tough times. Since 1989, we've had pretty good success and it just takes a lot of people pulling together and continue to make progress, it just gets better."

Krcmar gives Golomski all the credit for developing a tougher attitude.

"He brought that approach to the program, with how he runs practice and deals with kids," said Krcmar. "It takes time to develop and it's not something that's going to happen by just thinking about it. To the kids' credit, they bought into it and have taken his hard drive and attitude and put it to good use."

While Golomski worked at developing tougher kids, he allowed Krcmar total control of the offense, which has destroyed opponents in a heat-beat. Just like the Jaguars did Friday.

"I think he's the best at what he does," Golomski said of Krcmar's offensive genius. "I can trust him and give him the offense and concentrate on defense and special teams."

Physical toughness and players who can score in a hurry. It's no wonder, the Jaguars have one of the best programs in the state.

Bob Bergman is sports editor of the Press-Gazette.



Mike Brunette/Press-Gazette  
Ashwaubenon coach Ken Golomski speaks to the crowd at the team's pep rally at Ashwaubenon High School on Friday.

Clifton  
Rookie has played well

Wahle  
Couldn't keep starting job

## Clifton looks good on line

By PETE DOUGHERTY  
PRESS-GAZETTE

The Green Bay Packers probably found the left tackle of their future, though it's not the man they thought it would be.

After third-year pro Mike Wahle proved ready to start at that crucial position early this year, rookie Chad Clifton unexpectedly has emerged as a potential fixture.

Clifton was ■ Favre is a surprise ready to second-round start against draft pick Colts, C-2 last April for a team that appeared to have greater needs. But he's performed well enough in four starts that the Packers think they've found their man for the offensive line's most difficult position. In turn, they'll soon have to decide at what position the 23-year-old Wahle's future lies.

"Clifton's performance," says we drafted a pretty damn good rookie," said Larry Beightol, the Packers' offensive line coach. "If he continues to grow — now I want to be cautious with what I say, but I think he has the makings of a Pro Bowl football player. Whether that happens or not is up to him."

Wahle will be a restricted free agent this offseason, and there's every reason to think the Packers will make a one-year tender offer that will ensure his return. If the Packers offer him a 10 percent raise from his \$478,000 base salary, they can either match any contract offer he signs with another team or get compensation in a draft choice from the round he was selected.

Wahle was a second-round pick, so there's little chance another club would part with that high of a selection to sign him. But at a little more than \$500,000 next season, he'd be a relatively cheap backup or potential starter for a Packers team.

Please see Packers, C-2

## Cornerstone home is definitely sweet for SNC hockey

ASHWAUBENON —

round the Cornerstone

time of nostalgia generally associated with an Edsel.

■ SNC still isn't happy despite an easy win. C-4

more offense in one November night than the NFL's Bal-

Chancy Colquhoun on deck. Cochlin plans to rotate all

# GREEN BAY PRESS-GAZETTE

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## State champs!



### ■ KICKER RYAN

**LONGWELL**, the Packers' all-time scoring leader, defects to the rival Minnesota Vikings.

► C-1



### ■ TAXI SERVICE

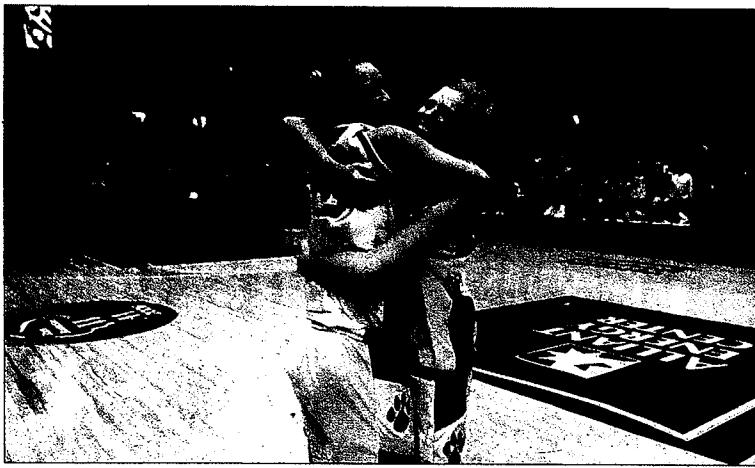
**SURVIVING:** Despite rising gas prices and more regulation, area taxi services are still turning a buck as they turn the wheel.

► E-1



### ■ YOU GO, GIRL:

Today the Girl Scouts turn 94, but nearly a century after its founding, the organization is still relevant while providing guidance and fun. ► B-1



Ashwaubenon's Kaitlyn Bettiga, left, jumps into the arms of Danae Danen after making a steal and a layup to beat the Waterford girls Saturday during the WIAA Division 1 state championship game at the Alliant Energy Center in Madison. Corey Wilson/Press-Gazette

## Bettiga steals title for Jaguars

BY SCOTT VENCI  
[svenci@greenbaypressgazette.com](mailto:svenci@greenbaypressgazette.com)

**MADISON** — The Ashwaubenon girls basketball team staked claim as the best girls team in the state on Saturday night in unbelievable fashion.

With just seconds remaining and the score tied at 35 in the championship game of the WIAA Division 1 state tournament, Ashwaubenon guard Kaitlyn Bettiga stole a pass from Waterford's Rae Lin D'Ale and scored on a game-winning layup in a 37-35 thriller.

As a last-second shot by Waterford missed, the Jaguars bench

### Boys win 1st state trip

► Ashwaubenon beats Appleton

East 39-25, C-1

and their fans went into a wild celebration.

"It was a very exciting game," Ashwaubenon coach Kerry Janquart said. "It was an up and down game. It could have gone either way."

Ashwaubenon was led by Erin Riutta's 10 points, while Erin Baganz added eight.

It is the first state championship for the Jaguars (22-5).

"Nobody thought we could do this," Janquart said.

### ASHWAUBENON...37

WATERFORD.....35

### Greet the champs

There will be a brief welcome home reception at 4:30 p.m. today in the Ashwaubenon High School Fieldhouse.

## Packers fans' loyalty on display at fest

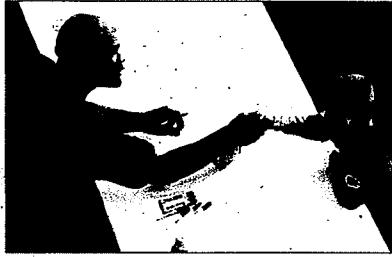
BY NATHAN PHELPS  
[nphelps@greenbaypressgazette.com](mailto:nphelps@greenbaypressgazette.com)

**Packers Jersey: Check.**  
**Packers Helmet: Check.**  
**Chessehead (or other foam cheese-related item): Check.**  
**Green and gold beads: Check.**

There's no shortage of loyal Green Bay Packers fans in Wisconsin and around the country.

This weekend you could find a few — as in quite a few — at the second annual Fan Fest at the Lambeau Field Atrium.

For Mike Winius of Darien, part of the fun was watching the degree to which people went to display their loyalty to the Packers. And a lot of them



Packers tight end Bubba Franks shakes hands with 7-year-old Kellen Kravik, Bangor, during Saturday's Fan Fest at the Lambeau Field Atrium. H. Marc Larson/Press-Gazette

"It's amazing just to see all these people here who are so interested in the Packers. And a lot of them

are from out of state," he said. "Growing up in the Fox Valley you maybe take it for granted, a little bit."

Shanti Pinto of Greendale came with her family and spent Friday partaking in a staple of any visit to Lambeau Field's parking lot — tailgating in a pair of recreational vehicles.

"We had John Jones stop out at our tailgate party for a little bit and had pictures (taken) with him," she said while waiting in line for an autograph from legendary defensive lineman Gilbert Brown.

Pinto said the event gives fans a more personal connection to the team.

"It's really exciting (players and team officials) come out and they are very open," she said. "You can tell they really care about the fans." Fan Fest ends today.

## State rejects Renard Isle proposal

DNR wants more details on Brown County's plan

BY PAUL BRINKMANN  
[pbrinkmann@greenbaypressgazette.com](mailto:pbrinkmann@greenbaypressgazette.com)

county's plan for the island.

Neighborhood groups are claiming victory in a battle to ensure pollution from Renard Isle is cleaned up properly.

A proposal to continue using the manmade island as storage for contaminated soil has been sent back to Brown County for more work — a lot more work.

"I thought we were going to lose out to politics, but the state realized we weren't exaggerating our concern about the environment," said Bill Acker, a member of the Nicolet Drive Neighborhood Association, which opposed the

► See Renard, A-13

Renard is a 55-acre island at the mouth of the Fox River. The U.S. Army Corps of Engineers wants to turn over ownership of the island to Brown County. The biggest problem with the island is PCB contaminated biphenyls that are a probable cancer-causing chemical.

Before the county can take over the island, it must get approval from the state to cover it and not allow pollution into the bay. The county's plan for the island was called a

## Jury finds Jensen guilty of misconduct

Lawmaker faces up to 16 years behind bars

BY TODD RICHMOND  
[trichmond@greenbaypressgazette.com](mailto:trichmond@greenbaypressgazette.com)

his public position to benefit the Republican Assembly Campaign Committee.

An extremely ambitious lawmaker who rose to the Assembly's top position in five years and harbored hopes of one day becoming governor, the Waukesha Republican now faces up to 16 years behind bars and \$35,000 in fines. He also must give up his political office.

Jensen showed no emotion as the verdicts were read. He gave a brief statement to reporters, thanking his friends and constituents.

"The only plans I have at the moment are to go home and hug my wife and kids," Jensen said. He declined to comment further.



Jensen's conviction concludes a secret investigation into Capitol corruption prosecutors launched in 2001. The probe was sparked by stories in the Wisconsin State Journal detailing allegations of state workers campaigning on state time.



## Packers' image just as important as reality

It is fair to say the image-conscious Packers care about their fans as much as does any pro sports team, which means the Packers care what fans think.

At Fan Fest on Saturday in the Lambeau Field Atrium, it sounded like a lot of fans think Javon Walker is a jerk.

Walker told ESPN.com he no longer wishes to play for the Packers. Fans tend to take such comments personally, and if given a chance, I suspect many would like to tell Walker, "Don't let the locker room door hit you in the fanny on the way out."

When a player spurns the Packers, fans renounce their allegiance to him. That's just the way it is.

### Unflattering perception

What makes Walker's situation different, and potentially disturbing, is the possibility his argument has some merit. But even if Walker's contentions are a bunch of hogwash, the perception they propagate is most unflattering.

Walker's biting criticism makes today's Packers sound like the miserable teams that predated former GM Ron Wolf's arrival in November 1991. Back in the Gory Years, Green Bay was looked upon as the NFL's equivalent to Siberia, a cold and forbidding place that was run by a bunch of local yokels with a shoestring budget.

It didn't matter whether it was true. What mattered was the perception. When Wolf was hired, one of his priorities was giving the team a makeover. He had to erase the notion that Green Bay was a two-bit operation not to be taken seriously.

"It was very important that we were able to do that," Wolf said. "Once we did that, it made it pretty easy (to succeed)."

Wolf re-established the Packers' winning tradition by hiring Mike Holmgren, trading for Brett Favre and signing Reggie White. He served notice to the league that the Packers weren't fooling around.

It led to back-to-back Super Bowl berths.

### Tarnished 'G'

But in the past year or so, the Packers' "G" has been tarnished by a 4-12 record, a depleted roster and comments such as Walker's. For every fan who thinks Walker is wrong, there is another fan who fears he isn't far off base, and that the team is in decline.

"It's a matter of getting it back," Wolf said of the winning tradition. "I'm sure they can get it back."

Wolf, who signed autographs at Fan Fest on Saturday, sounded optimistic that Packers GM

# SPORTS

Contact Sports Editor Mike Vandermause at (920) 431-8222 or mvandermause@greenbaypressgazette.com ■ Green Bay Press-Gazette ■

section  
Outdoors C-7  
Rec-sports C-8  
C

Sunday, March 12, 2006 ★★

## Dome, sweet dome: Longwell joins Vikings

BY PETE DOUGHERTY  
pdougherty@greenbaypressgazette.com

The Green Bay Packers are looking for a kicker for the first time in almost a decade.

Ryan Longwell, the undrafted long shot who beat out third-round pick Brett Conway in 1997 and became the Packers' all-time leading scorer with 1,054 points, signed with the Minnesota Vikings on Saturday, the first full day of free agency.

The Vikings were seeking a kicker to replace Paul Edinger.

Terms of Longwell's deal were unavailable, though it likely averages at least the \$1.5 million per season he made on his previous contract.

Longwell, 31, who played collegiately at California, proved to be one of the more accurate kickers in the NFL, despite playing in the poor climate of Green Bay throughout his nine seasons.

He made 81.6 percent of his career field-goal tries, but he struggled at times last season, hitting only 20 of 27, because of problems with holder B.J. Sander.



### More inside, online

- Seattle safety Manuel, St. Louis DT Pickett making free-agent visits, C-6
- Kampman happy to remain a Packer, C-6
- For more Packers news, visit [www.greenbaypressgazette.com](http://www.greenbaypressgazette.com)

who was taking over for a long line of veterans who had held successfully for Longwell.

That 74.1 percentage was the second-lowest of his career, and

some in the Packers' organization thought Longwell excessively blamed the snap or hold for his misses.

Longwell gave hints last season that his time with the Packers was running out. He regularly suggested the team didn't appreciate the difficulty of kicking in Green Bay, where swirling winds and cold weather can be major factors. He often spoke of kickers' advantages in warm climates and domes, so the Vikings, who play in the Metrodome, had to be attractive.

The Packers have no other kickers on their roster.

There have been reports the Packers are interested in signing New England free agent Adam Vinatieri, who might be the NFL's best kicker, but it's unclear how strong that interest is.

Vinatieri might garner a contract that averages \$2 million or more, which might be more than General Manager Ted Thompson is willing to pay. Andrew Brandt, the Packers' vice president of player finance, is Vinatieri's former agent.

### WIAA Division 1 boys sectional final

Ashwaubenon 39  
Appleton E. 25

► Next: WIAA quarterfinal, Ashwaubenon (24-0) vs. Milwaukee King (20-3), 1:35 p.m. Thursday, Kohl Center, Madison

## Jaguars ride 'D' to first state trip

BY ROB DEMOVSKY  
rdemovsky@greenbaypressgazette.com

ASHWAUBENON — On the eve of Saturday's WIAA Division 1 sectional final, someone asked Jeff VandeLoo when the last time the Ashwaubenon boys basketball team played in the state tournament.

VandeLoo's answer: "Back in the 1800s."

Truth was, the Jaguars had never been there. That all changed with one masterful defensive performance against Appleton East at Brown County Veterans Memorial Arena.

VandeLoo's team smothered the Patriots and earned a berth in the state quarterfinals with a dominating 39-25 victory that set off a wild celebration on the court and in the Jaguars' locker room.

"We've always been known as a football school, but that didn't really bother us," senior guard Jon Anderson said. "We just wanted to win and do this. We came together as a team and got it done."

Ashwaubenon (24-0) will play Milwaukee King (20-3), which features University of Wisconsin-Green Bay recruit Troy Cotton, at 1:35 p.m. Thursday in a state quarterfinal game at the Kohl Center in Madison.

► See Jaguars, C-2



### WIAA GIRLS STATE BASKETBALL TOURNAMENT

Division 1 championship: Ashwaubenon 37, Waterford 35

## 'It's just awesome'

Bettiga's steal, layup give Ashwaubenon the state title

BY SCOTT VENCI  
svenci@greenbaypressgazette.com

MADISON — Ashwaubenon girls basketball player Kaitlyn Bettiga saved her biggest steal of the year for the biggest moment in her team's history.

Tied at 35 with just seconds remaining in the WIAA Division 1 state championship game on Saturday night, Bettiga stole a pass from Waterford standout Rae Lin D'Alie and ran down the court for a layup, giving the Jaguars a 37-35 win at the Alliant Energy Center and capping a magical — and, at times, unbelievable — season.

"I thought if I got in front of her more I could pick it, so I went for it," said Bettiga, clutching the game ball at a news conference after the game. "It's just awesome."

The Jaguars have preached the team concept all season, and it helped Ashwaubenon (22-8) claim its first state title.

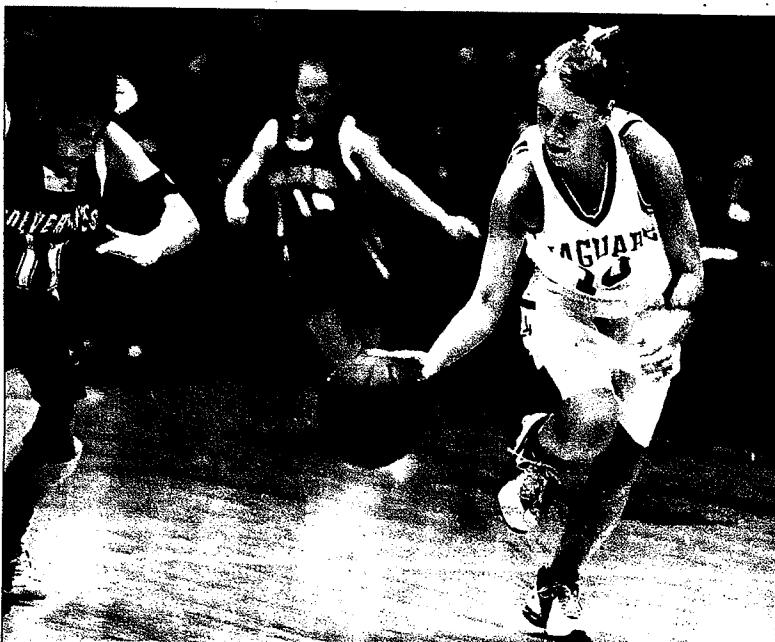
Senior forward Erin Riutta did the dirty work inside, scoring a team-high 10 points.

Guard Erin Baganz hit two clutch 3-pointers.

Senior center Danae Danen struggled with her shot but grabbed nine rebounds.

Bettiga again played top-notch defense.

The rest of the players, whether it was five points



Ashwaubenon's Kaitlyn Bettiga dashes upcourt with the ball for the winning layup after her game-deciding steal in the final seconds of Saturday's WIAA Division 1 championship game victory over Waterford at the Alliant Energy Center in Madison. Corey Wilson/Press-Gazette

from guard Kelly DeCaster or four points by guard Shanan Geurts, contributed to this win.

"It is a tremendous feeling," Janquart said. "It's the girls. It's all 11 of them. They are tremendous kids, they work hard. This is for them."

The Jaguars struggled on offense as they worked out some jitters in the first quarter, shooting a dismal 2-for-13 from the field. But they warmed up soon after.

Ashwaubenon didn't

### Bettiga bursts onto scene, box score, state roundup, C-2

miss a shot in the second quarter, hitting all seven of its attempts as it attacked the basket with regularity. Down 18-16 with 2:55 left in the half, Baganz hit a 3-pointer from the corner before Danen blocked a shot on the other end and came back to score on a jumper to swing the momentum and help give the Jaguars a 22-19 lead at the half.

Ashwaubenon's defense, meanwhile, was busy limiting a Waterford offense that entered averaging 58.6 points per game. Through the first 16 minutes, the Wolverines shot just 38.9 percent. D'Alie, who led Waterford in scoring with 15.0 points per game during the season, had little impact. She was held scoreless in the first half and missed both of her shot attempts. She finished with just seven points.

Trailing by three with 1:53 remaining, Baganz hit another 3, tying the game and setting up Bettiga's heroics.

In a game that had 11 lead changes, it was the Jaguars standing at the end.

"I remember watching the girls when I was younger, and I just thought that could be me," Bettiga said. "It's an amazing feeling."

DeCaster was the only Jaguar selected to the 10-player all-tournament team.

# Bottomline

# Now

Get into the game

# Watch

You know you like to



Going for the gold

WIAA GIRLS STATE TOURNAMENT

# Bettiga bursts onto the scene

Sophomore reserve stars for the Jaguars

BY SCOTT VENCI

svinci@greenbaypressgazette.com

MADISON — If the rest of the state didn't know about Ashwaubenon sophomore Kaitlyn Bettiga, it does now.

And that was before she played the role of hero in Saturday's state championship game victory over Waterford.

Bettiga arrived at the WIAA Division 1 state tournament on Thursday as an unknown backup on the



Bettiga

Jaguars. She left it on Saturday as one of the bright spots of the tournament.

For the 5-foot-6 guard, whose steal and layup in the closing seconds of the title game gave the Jaguars a 37-35 victory, it was a dream come true.

"To be down here as a sophomore and to be able to experience it, the atmosphere is great," Bettiga said. "I guess I was just there at the right time. It was really the whole team. Everyone helped me out."

With her confidence soaring, this could just be the start. With starting guard Shanan Geurts graduating, Bettiga will have an excellent chance to earn a starting job next year.

"We had (University of Wisconsin-Green Bay guard) Kati Hart a few years ago, and she plays a lot like her," Janquart said. "She is quick and in your face. She is steady with the ball, and she is becoming a great communicator out there."

"We are very proud of her."

## ASHWAUBENON-WATERFORD BOX SCORE

Waterford (2-3)		Ashwaubenon (1-2)		Score	
Wins: 7-11	Losses: 18	D'Ale 3-9 1-2 7	Chart 1-8 0-0 2	5	17
Fouls: 0-1 2-1	Wade 1-4 0-0 3	Pugh 0-1 0-0 0	Wade 1-3	5	15
Assists: 1-2 2-2 4	Total: 13-38 8-14 35	3-Point goals: —	Waterford 1-11 (Wade 1-3, Chart 1-2, D'Ale 0-2, Pugh 0-1), Ashwaubenon 3-8 (Bogusz 2-5, DeCaster 1-2, Duren 0-1). Fouled out: — None. Rebounds: 14-12 (Wade 7, Duren 5, D'Ale 4, Pugh 3, Bogusz 2, Duren 1). Assists: Waterford 3 (D'Ale 7), Ashwaubenon 8 (Duren 7). Total fouls: — Waterford 12, Ashwaubenon 11.	10	35



Monroe players hoist the WIAA Division 2 championship trophy after defeating Whitefish Bay 59-33 in Saturday's title game in Madison. Andy Manis/The Associated Press

# Cubans hold on to



Going for the gold

WIAA BOYS SECTIONAL TOURNAMENTS

# Seymour in seventh heaven

Thunder lands seventh straight trip to state tournament by beating Ripon

BY PATRICK JOHNSON  
pjohson@greenbaypressgazette.com

ASHWAUBENON — In the past decade, no area boys basketball team has accomplished more than the Seymour Thunder, who have advanced to the WIAA Division 2 state championship game seven times and won two coveted gold balls.

They're not finished yet.

Seymour clinched its seventh consecutive trip to the state tournament with a 63-59 victory over Ripon in a sectional final on Saturday afternoon at the Brown County Arena. Matt Hackl led a balanced Seymour attack with 16 points.

Explaining his program's winning formula, Seymour coach Jon Murphy said: "In all the previous six years, we've had the same type of kids. We have a bunch of kids who are close, who have grown up playing basketball with each other, and the success of past teams has fostered our success to the point where our kids step into these big venues and they

WIAA Division 2 sectional final  
Seymour 63  
Ripon 59

► Next: WIAA state semifinal, Seymour (21-3) vs. Delafield St. John's NW Military Academy (24-1), 3:15 p.m. Friday, Kohl Center, Madison

find a way to win."

The Thunder has lost in the state championship game the last three seasons. Now, the senior class of Dan Genke, Mike King, Adam Zahn and Todd Skinkis gets a chance to go out on top.

"It's been heartbreaking," Genke said. "We just have to concentrate and come away with the gold this year."

Seymour (21-3) got all it could handle from Ripon (20-4).

The Tigers opened the game with back-to-back 3-pointers by Scott Gillespie and Eric Neuman, and went 4-for-6 from 3-point range to lead 14-13 after the first quarter.

"We knew it was going to be like that," said Genke, who scored 14 points. "Two similar teams playing in a big game like this, it's what we expected."

Seymour pulled ahead for the first time with 1 minute, 38 seconds remaining in the first half on a layup by Genke, and led 25-23 at intermission.

Once the Thunder took the lead, it held on with a ferocity the Tigers couldn't match.

Seymour extended its lead to 39-35 after three quarters, and began the final stanza with a decisive 8-2 run.

Seymour led 49-39 with 3:15 remaining, and made 12 of 16 free throws the rest of the way to keep the Tigers at bay.

When Ripon began to hound Hackl and Genke, juniors Brandon Kuchta and Kahlene Cornelius stepped up. Kuchta finished with 12 points and Cornelius added eight along with two steals.

"I just came in and did what I had to do," said Cornelius, who knocked down two first-half 3-pointers off the bench. "It felt

good to have those shots go down, because I played kind of rough in the game a couple of days ago."

Kuchta, meanwhile, hit a 3-pointer to extend Seymour's lead to six in the third quarter.

"A great team like (Seymour) finds a way to get a lead and keep it," said Ripon coach Dean Vander Plas, a former University of Wisconsin-Green Bay standout.

"We had a couple shots that didn't go for us, and they went down on the other end and made some big plays. Different guys stepped up for them. We really put the pressure on Hackl and Genke, but they did a good job of getting their teammates the ball."

Gillespie led Ripon with 24 points.

Seymour 13 12 14 24 — 83  
Ripon 14 9 12 24 — 59

Seymour: Kuchta 12, Hackl 16, King 6, Genke 14, Leisang 7, Cornelius 8, 3-pt. Kuchta 2, Cornelius 2, Leisang. FT: 18-23, F: 17. Fouled out: Cornelius.

Ripon: Gillespie 24, Neuman 11, Lambert 8, Hron 8, O'Brien 5, Bell 3, 3-pt. Gillespie 4, Neuman 2, O'Brien 1, Bell 1. FT: 13-16, F: 18.

# For Suring, third time not a charm

'Bridesmaid' Eagles fall short of state

Special to the Press-Gazette

APPLETON — The Suring boys basketball team came agonizingly close to the state tournament once again.

For the third time in six seasons, the Eagles' postseason run ended one win short of a trip to Madison as they dropped a 65-56 decision to Oshkosh Lourdes in a WIAA Division 4 sectional final on Saturday at Appleton North.

"It's hard being a bridesmaid so many times," Suring coach Todd Carlson said. "One of these times, hopefully, we'll get a break."

Oshkosh Lourdes didn't give Suring any breaks in the decisive fourth quarter, playing a nearly flawless period to break open a tight game.

Leading 40-39 after three quarters, Lourdes (13-12) began the fourth with a perfectly executed alley-oop pass from Ross Tomczyk to Isaiah Tucker for a layup.

Moments later, Tomczyk buried a 3-pointer from the left wing that started a 13-3 run, giving the Knights a 55-44 lead with less than 3 minutes to go.

Suring (19-6) was never able to close the gap.

"I thought our kids' experience in games like this paid off," said Lourdes coach Dennis Ruedinger, whose team lost to Ryan Tillema-led Randolph in last year's state title game. "We didn't get tentative."

"I was really happy with the way our guys hunted their shots and played to win. It's easy to get in a frame of mind where you try not to lose. I thought our guys fought that off very well."

Lourdes finished the fourth

WIAA Division 4 sectional final  
Osh. Lourdes 65  
Suring 56

Patek, a 6-foot-3 senior center, did most of his damage in the first half. He converted a trio of three-point plays inside in the second quarter and finished the half with 17 of Lourdes' 28 points.

Suring clamped down on Patek in the third quarter, allowing him only one field-goal attempt, so the Knights turned to their perimeter players. Junior guard Michael Kinderman hit two long 3-pointers and senior Paul Netzer hit another 3 in the third period to keep Lourdes in front.

"I thought if we could get the ball out of the inside and force them to take those outside shots, it would be better for us," Carlson said. "But they hit the shots."

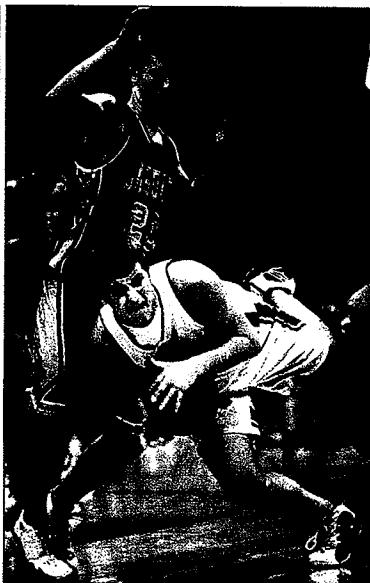
"They really played a heck of a game, outside and inside, and that's what it takes to go to the next step. They earned it."

Josh Regal led Suring with 18 points but struggled to find his shooting touch. The sophomore guard made just four of his first 18 shots before scoring nine of his points late in the fourth quarter.

Senior Jordan Swan added 12 points and sophomore Kris Wilber had 10 for the Eagles.

"There's a lot of seniors who have put in a lot of time, and I just feel bad for them," Carlson said. "I thought maybe this was our chance, but hopefully we can get here again."

Suring



Appleton East's Bobby Longland loses his balance as Ashwaubenon's Jeremy Paprocki defends during Saturday's WIAA Division 1 sectional final at the Brown County Arena. The Jaguars won to advance to their first state tournament.

Patrick Ferron/Gannett Wisconsin Newspapers

# Jaguars/Patriots shut out in third

► From C-1

Devon Claybrooks led Appleton East with eight points, but no other Patriots player managed more than six.

Northern Iowa-bound forward Adam Koch led Ashwaubenon with 16 points, but the Jaguars got a big lift from sophomore Jeremy Paprocki. The 6-foot-1 forward came off the bench to score seven points, including a three-point play on the final possession of the first half and a baseline jumper in the third quarter that put the game out of reach.

Though Ashwaubenon led 16-10 at halftime, it was apparent the Jaguars' defense was cranked up.

Division 1 state tournament on Thursday as an unknown back-up on the Jaguars. She left it on Saturday as one of the bright spots of the tournament.

For the 5-foot-6 guard, whose steal and layup in the closing seconds of the title game gave the Jaguars a 37-35 victory, it was a dream come true.

"To be down here as a sophomore and to be able to experience it, the atmosphere is great," Bettiga, who was an eighth-grader watching from the stands when Ashwaubenon made it to state for the first time in 2004, said before Saturday's championship. "It will really help me step up and know what I have to do for next year."

Bettiga didn't start any of the Jaguars' three games at state, but she sure finished them. Although her numbers weren't eye popping — she scored five points on Saturday — her impact was unquestioned.

"We were looking for that ball-handler all year; we were looking for that point (guard)."



Bettiga

mentum into a sectional semifinal against Bay Port and a sectional final against De Pere.

She took an even bigger turn while at state, helping propel the Jaguars into their first championship game with a sparkling defensive performance in a semifinal win over Cedarburg on Friday.

Bettiga had five steals in the game and helped shut down standout guard Molly Malone, who scored three points in the final three quarters after tallying eight in the first.

"I knew I had to step it up, and it was my turn," Bettiga said. "I guess I was just there at the right time. It was really the whole team. Everyone helped me out."

With her confidence soaring, this could just be the start. With starting guard Shanan Geurts graduating, Bettiga will have an excellent chance to earn a starting job next year.

"We had (University of Wisconsin-Green Bay guard) Kati Hart a few years ago, and she plays a lot like her," Janquart said. "She is quick and in your face. She is steady with the ball, and she is becoming a great communicator out there."

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Seymour 12-14 24-27

Ripon 14-9 22-24 59

Seymour: Kuchta 12, Hackl 6, King 6, Genke 14, Cornelius 8, Kahlene 2, Kuchta 2, Cornelius 2. Lipscomb, FT: 18-23. P: 17. Routed out.

Cornelius: Ripon: Gillespie 24, Neuman 11, Lambert 8, Hron 8, O'Brien 5, Bell 3-3pt: Gillespie 4, Neuman 2, O'Brien 1, Bell 1. FT: 13-16. P: 18.

## ASHWAUBENON-WATERFORD BOX SCORE

Waterford 11-12 18. O'Neil 3-9 1-2, Hart 1-8 0-0 2. Findling 0-1 1-2, Wade 1-4 1-3, Pugh 0-1 0-0 0. Mabert 2-2 2-4. Totals: 13-36 8-13. Ashwaubenon 12-13 22. Hart 3-10 1-2, Findling 7-11 2-3, Pugh 3-8 2-5 5. Castle 1-2, Dahlen 0-1. Fouled out — none. Rebounds: Waterford 23 Findling 7. Ashwaubenon 29 (Dahlen 9). Assists: Waterford 8 to Wade, Ashwaubenon 8 (Dahlen 3). Total fouls — Waterford 12, Ashwaubenon 11.



Monroe players hoist the WIAA Division 2 championship trophy after defeating Whitefish Bay 59-33 in Saturday's title game in Madison. Andy Manis/The Associated Press

## Cubans hold on to defend state title

BY CHRIS JENKINS  
The Associated Press

MADISON — Cuba City survived a frantic last-minute comeback attempt by Ozaukee, holding on for a 56-52 victory to win the Division 3 championship in the WIAA girls state basketball tournament on Saturday.

The Cubans (25-2) defended last year's championship — their sixth, a state girls record.

It almost didn't happen.

The Cubans held a 10-point lead with 3 minutes remaining, but Ozaukee scored eight points in 44 seconds to cut the Cuba City lead to 49-47.

Cuba City outshot Ozaukee (25-2) from the free-throw line to preserve the victory, as Moor hit five of six free throws in the final 47.4 seconds.

### Division 4

#### Flambeau 44, Wausau Newman

Flambeau (25-1) held top-ranked Wausau Newman (25-2) to three points in third quarter and avenged an earlier loss to the Fighting Cardinals.

It was the lowest-scoring championship game ever in Division 4, and Newman's 31 points was the lowest losing score in a Division 4 title game.

#### WIAA GIRLS roundup

in the first quarter, allowing Monroe to roll from the start.

Radke, a senior who will play for Canisius College next year, scored 25 points and grabbed 13 rebounds to lead the Cheesemakers (23-3) to the most lopsided win of the state tournament.

Whitefish Bay (22-4) was 11-for-42 from the field, including 2-for-17 from 3-point range.

### Division 4

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Senior Jordan Swan added 12 points and sophomore Kris Wilber had 10 for the Eagles.

"There's a lot of seniors who have put in a lot of time, and I just feel bad for them," Carlson said. "I thought maybe this was our chance, but hopefully we can get here again."

Lourdes finished the fourth quarter 9-of-12 from the field and 6-of-8 from the line, 75 percent in both ledgers. Rob Patek led the Knights with 23 points, while Tucker added 16, 12 of which came in the final quarter.

Suring 11-12 16-17 — 56

Oshkosh Lourdes 10-18 12-25 — 65

Suring: Regal 18, Coffey 6, Swan 12, Wilber 10, Schuermann 7, Hauke 2, 3-pt: Regal 2, Swan 2, Coffey 1. FT: 7-9. P: 17.

Oshkosh Lourdes: Kinderman 9, Netzer 9, Patek 23, Tucker 16, Tomczyk 5, Holmager 1, Lescie 2, 2-pt: Kinderman 3, Netzer 1, Tomczyk 1. FT: 10-13. P: 15.

Division 3

#### Thursday's quarterfinals

■ Ashwaubenon (24-0) vs. Delafield St. John's-NW Military (24-1), 3:15 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 3

#### Thursday's semifinals

Glenwood City vs. Westby, 9:05 a.m.

Manitowoc Roncalli vs. Racine St. Catherine's, 10:30 a.m.

#### Saturday's championship

At 6:35 p.m.

#### Division 4

#### Friday's semifinals

Abbotsford vs. Eleva-Strum, 9:05 a.m.

Oshkosh Lourdes vs. Burlington Catholic Central, 10:30 a.m.

#### Saturday's championship

At 12:05 p.m.

#### Division 2

#### Friday's semifinals

Altoona vs. Monona Grove, 1:35 p.m.

#### Saturday's championship

At 12:05 p.m.

#### Division 1

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 2

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 3

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 4

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 5

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 6

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 7

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 8

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 9

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 10

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 11

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 12

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 13

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 14

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 15

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 16

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 17

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 18

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 19

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 20

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 21

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 22

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 23

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 24

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 25

#### Friday's semifinals

Appleton East vs. Green Bay Preble, 1:35 p.m.

#### Saturday's championship

At 1:35 p.m.

#### Division 26</

# **EXHIBIT B**

**Dye, John**

---

**From:** Tim Eichorst [timeichorst@mac.com]  
**Sent:** Wednesday, October 29, 2008 12:43 PM  
**To:** Dye, John  
**Cc:** Todd Clark; Tim Knoeck  
**Subject:** WIAA Tournament Series Events

John, it has been brought to my attention that your organization produced a WIAA tournament series football game last evening between Appleton North and Green Bay Preble.

I am unclear at this time if you secured the appropriate production right to do this. However, in checking with Tim Knoeck, WWWY General Manager, he indicated that he was not contacted by anyone in your group. I also contacted the WIAA whom did indicate a call from you and subsequent referral to us.

You may, or may not, be aware that When We Were Young Productions holds the exclusive rights to these events and any full game production must be cleared through us and appropriate rights fees are charged. The fees for a live or delayed single camera internet stream is \$250/game. For a multicamera event it is \$1500/game.

If you wish to keep this video on your site I will need you to remit the rights fee. If not, then please remove this from your site. In addition, if your organization wishes to produce any additional full games from the WIAA tournaments series, please contact Tim Knoeck at 608-712-5900 or his email above.

Regards,

Tim Eichorst  
President  
When We Were Young Productions  
608-849-3200 ext 223  
[timeichorst@mac.com](mailto:timeichorst@mac.com)

11/5/2008



GA000003

# **EXHIBIT C**

[Home](#) [WIAA Info](#) [Sports](#) [Results](#) [Media Center](#) [School Center](#) [Officials Center](#)You Are Here: [wiaawi.org](#) »[Media Center](#) »[Restricted Area](#) »[Media Credential Request Form](#)

## Media Credential Request Form

Credential requests must be made no later than noon two days prior to the start of the State event. Credentials will be available at the State Tournament site only. Submit this form for each tournament. A listing of approved media credentials will be posted in the Media section of the WIAA website. The WIAA maintains the right to request company letterhead with credential requests.

**State Tournament Event:**

**Team(s) Covering at Event:**

*(For basketball tournaments, specifying team coverage will determine type of credential allocation and seating assignment. Please use care in completing.)*

**Media Outlet Name:**

**Address:**

**City:**

**Zip Code:**

**Sports Editor/Director:**

**Phone:**

**Fax:**

**Email:**

### Credential Requests

**Reporter Name(s):**

**Photographer Name(s):**

### Communications Use

*Note: Dollar figures in parentheses represent cost of phone line and is independent of rights fee.*

(\$25) File Story/Live Reports

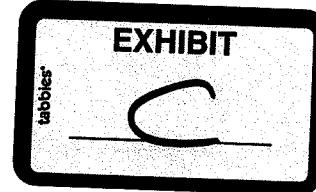
**Telephone Lines:**  (\$75) Play-by-Play

(\$25) Cell Phone Live Reports

**Using a cell phone for play-by-play broadcast?**  YES  NO

(\$30) Wireless Connection

**If Available:**  (\$30) LAN Connection



### Parking Requests

Parking passes are ordered through UW Transportation Services only for State Tournament events at the Kohl

Center or Camp Randall in Madison. Please download the Parking Permit Ordering Form located on the restricted area of the WIAA Media Center Web site and submit form to UW Transportation Services by the deadlines indicated. **Reserved parking passes are issued at the UW Welcome Center at 21 N. Park St.**

[Send Request](#)



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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

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**DECLARATION OF ROBERT B. EBERT**

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I, Robert B. Ebert, declare and state as follows:

1. I am a sports reporter for the *Oshkosh Northwestern* where I have been employed since July 2007.
2. I make the following statements based on my personal knowledge, and if called upon to do so, could and would testify competently.
3. On November 1, 2008, I and David Wasinger, Online Editor for the *Oshkosh Northwestern* arrived at Titan Stadium in Oshkosh and sought out Craig Lieder, the Athletic Director for Oshkosh North to ask permission to live stream the football game between Oshkosh North High School and Kimberly High School.
4. Mr. Lieder responded that they could not live stream because WIAA did not permit it, but allowed us to enter to take regular video and photo stills. Mr. Lieder also added he didn't have a problem with the live stream, but wanted to be cautious because of the WIAA rules. I covered the game from the sidelines and did not see any else covering the game who was conducting live streaming or any other type of video transmission of the game.

5. Also on November 1, 2008, I and David Wasinger asked for permission to live stream the Oshkosh West High School v. Hartland Arrowhead High School football game from Brad Jodarski, Athletic Director of Oshkosh West.

6. Mr. Jodarski told us that we could not because of WIAA's policies. We covered the game from the sidelines and did not see any one else who was covering the game conducting live streaming or any other type of video transmission of the game.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 21th day of January, 2010.



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Robert B. Ebert

4588223\_1

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

---

**AFFIDAVIT OF DANNY L. FLANNERY**

---

STATE OF WISCONSIN        )  
                              )  
                              ) ss  
COUNTY OF OUTAGAMIE    )

Danny L. Flannery, being duly sworn on oath, states as follows:

1.       I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently.
  
2.       I am the Executive Editor of *The Post-Crescent* and [www.postcrescent.com](http://www.postcrescent.com) and have been employed in that position since June 15, 2007. As Executive Editor, my responsibilities are to oversee the newsgathering efforts of *The Post-Crescent*, ensure compliance with our corporation's ethical and legal standards and policies, oversee performance and personnel issues regarding our staff, interact with our customers, provide input and insight on editorial and community matters to *The Post-Crescent's* publisher, oversee the discussion and production of *The Post-Crescent's* daily editorials, and write occasional columns that either discuss personal opinions or the workings of our news operation, in print and online.

3. I have been working for *The Post-Crescent* since 1985. My prior positions include sports editor, news editor, assistant managing editor-news, deputy managing editor, editorial page editor. In addition, from 2002-2007 I was *The Post-Crescent*'s Managing Editor. My professional journalism experience also includes 5 years as a sports reporter and columnist at the *Green Bay News-Chronicle*.

4. Based in large part on my long experience with *The Post-Crescent*, one of my strengths as Executive Editor is that I have considerable institutional knowledge about our news-gathering history, and I have been a key part in moving from the pre-pagination<sup>1</sup> days to the live-streaming days.

5. *The Post-Crescent* is a daily newspaper owned by Gannett Company, Inc. ("Gannett") with a weekday circulation of 48,084 and a Sunday circulation of approximately 62,142, according to a March 2009 audit by the Audit Bureau of Circulation. In addition, *The Post-Crescent* also maintains a website, [www.postcrescent.com](http://www.postcrescent.com), through which it publishes articles, photographs, audio and video. We also publish three community weekly newspapers: *Post-Crescent East* serves Kimberly, Kaukauna, Little Chute, Combined Locks, Darboy and Freedom; *Post-Crescent West* serves Greenville, Hortonville and New London; *The News-Record* serves Neenah, Menasha, the Town of Neenah and the Town of Menasha. All of those weekly papers spend considerable time and resources in covering the schools in their coverage areas, including various levels of interscholastic athletics. *The Post-Crescent* also publishes *The Bargain Bulletin*, a weekly shopper.

6. While streaming of news events has become a matter of routine for *The Post-Crescent* and other so-called traditional newspapers over the past year, I have been aware of the

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<sup>1</sup> Until the late 1980s, the newspaper's pages were pasted up, story by story, photo by photo, by the composition department. With pagination software that became available to the newspaper in the late 1980s, our editors, copy editors and page designers now build pages via computer.

possibility for several years. Other news organizations, mostly those in television, have done streaming over the Internet with regularity since the early 2000s. Gannett, which owns and operates more than 20 television stations across the country, provided video training for newspaper journalists in 2006 and again in 2007. *The Post-Crescent* had staff in attendance at both training events. Those training sessions focused on production of recorded video/audio reports, not necessarily streaming video/audio reports. Still, with video/audio capability, it was evident that streaming was a possibility for a variety of news events moving forward. It would allow our print-based news organizations to compete effectively on breaking news stories with the so-called electronic journalists in radio, TV and online.

7. While we believe that *The Post-Crescent* has been the dominant source of news and information in our marketplace for decades, we lacked the ability to bring journalism to our customers as stories unfold, in real time. Streaming technology adds a layer of immediacy and nuance that we cannot duplicate in print. Online customers can see and hear events and interviews as they unfold, unedited. Our first streaming video/audio of a news event was the six-week-long homicide trial of Steven Avery in February and March of 2007; the trial's live-streaming was produced by *The Post-Crescent* and made available to the other nine Gannett Wisconsin daily newspapers. To the best of my knowledge, Gannett Wisconsin was the first group in the company to attempt the streaming of an event as complex as the Avery trial. The technology we used at that time was considerably more difficult and more costly than the technology we use in today's streaming efforts, thanks to the Livestream platform.

8. In summer 2008, after Gannett made a minority investment in Mogulus — an Internet streaming platform technology — the company made Mogulus (since renamed

Livestream) available to *The Post-Crescent* and Gannett's other properties.<sup>2</sup> I frequently consult with *The Post-Crescent*'s senior editors and other editors throughout Gannett Wisconsin to determine how best to utilize Internet streaming to build *The Post-Crescent*'s audience and to compete with other media outlets. In one noteworthy example, *The Post-Crescent* and the *Green Bay Press-Gazette* produced a streaming webcast of a debate between Wisconsin Supreme Court candidates Shirley Abrahamson and Randy Koschnick, held at the Wisconsin Newspaper Association's annual convention in Oneida in February 2009. We made that feed available to all Gannett Wisconsin newspapers, and all members of the WNA throughout the state. The *Wisconsin State Journal* and the *Milwaukee Journal Sentinel* — the state's largest newspapers — were among the papers that used the live streaming coverage.

9. *The Post-Crescent* first utilized Internet streaming in February and March of 2007 to transmit the homicide trial of Steven Avery. As noted above, the technology used in that case was different than the technology we use today. Between the Avery trial and our use of Mogulus/Livestream in September 2008, we attempted no streaming on our Web site. Since the addition of Mogulus/Livestream to our coverage capabilities, we have streamed high school football and basketball games, political debates, community events, interviews with newsmakers as divergent as Gov. Jim Doyle, Sen. Russ Feingold, candidates for elected office and local health care officials who asked us to spread information on the H1N1 flu to our marketplace. Since September 2009, we have used Mogulus/Livestream to produce two weekly programs: "Varsity Roundtable" (which discusses high school sports) and "Football For Lunch" (which mainly discusses Green Bay Packers football). We plan to expand our use of streaming technology in the coming months and years as technology improves and expands, and as we improve our ability to produce quality journalism on that platform. As for high school football,

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<sup>2</sup> This technology is explained in detail in the Affidavit of Joel Christopher, ¶¶9, 14-15, 17, 22, 24.

*The Post-Crescent* carried one regular-season game each week in the 2009 season on [www.postcrescent.com](http://www.postcrescent.com). We plan to carry two regular-season high school basketball games per week during the 2009-10 season, covering boys and girls play. We have covered the opening of a key bridge over the Fox River, and annual meetings of the YMCA of the Fox Cities, the United Way Fox Cities and Thrivent Financial for Lutherans, as well. Clearly, this technology has considerable room for development and growth, and we intend to use it to cover newsworthy community events as much as our resources allow.

10. I am familiar with the WIAA's policies regarding Internet streaming and blogging as stated in the 2008-09 and 2009-10 editions of the WIAA Media Policies Reference Guide ("Media Guide") and the WIAA's policy that the exclusive rights holder, or the exclusive rights holder and the WIAA together, has the sole discretion to grant permissions, and enforce policies and payment of fees. 2008-09 Media Guide at 16.

11. As explained above, I am responsible for ensuring that *The Post-Crescent's* journalists comply with all regulations and credentialing requirements imposed by the myriad entities *The Post-Crescent* reports on. Accordingly, I have read the sections of the WIAA's 2009-10 Media Guide that relate to live blogging. On page 14 of the Media Guide, WIAA states that live blogging without the payment of a rights fee is not permitted if WIAA determines that the blogging constitutes "Live play-by-play." I have reviewed the definition of "Live play-by-play" in the Media Guide and am unable to determine what standard WIAA would apply to determine whether a blog includes "all or a significant number of plays/events occurring sequentially during a game/event." 2009-10 Media Guide at 11.

12. Because the definition is vague, I cannot give a sports reporter appropriate guidance as to what actions might violate WIAA's blogging policy or trigger application of a

rights fee. Moreover, because the WIAA retains the right to determine *after the fact* whether a rights fee is applicable, the policy does not allow *The Post-Crescent* to budget for the necessary expenditures to cover a game in advance.

13. If *The Post-Crescent* lost credentials to WIAA tournament games, *The Post-Crescent*'s reporting of high school sports would suffer significant damage and, based on my 29 years experience in journalism, it is my opinion that *The Post-Crescent* would likely lose a significant percentage of its print and online readership.

14. *The Post-Crescent* competes for readers with many other sources of information. Thus, to attract and maintain a loyal print and online readership, the newspaper must continuously seek to improve the breadth, depth, timeliness and quality of its reporting. Using the latest reporting technologies is an integral part of that competitive process.

15. Internet streaming provides a unique reporting opportunity that cannot be replicated by any other technology available to *The Post-Crescent*. First, it allows *The Post-Crescent* to reach an audience that is geographically and demographically broader than the newspaper's print readership. Second, it allows *The Post-Crescent* to report on a game in a way that is entirely different from reporting via print articles. Third, it allows *The Post-Crescent* to provide "real-time" coverage of news, as its electronic competitors have done for decades.

16. Internet streaming, as done by *The Post-Crescent*, involves editorial decisions: the camera operator and announcers make constant decisions about the camera's movements, the points of the game to emphasize, and the amount of background detail to provide. Further, the coverage provided to these interscholastic teams throughout the regular season by *The Post-Crescent* — far and away more than any of its print or electronic competitors in our media market — gives our announcers more depth and authority than our competitors. Our announcers

are our reporters, and they cover these teams from the beginning of the season to the end. The games that are streamed are given the same care that has been a hallmark of our print high school coverage over time. We are fair, we are authoritative and we are thorough in providing our online customers an insightful experience.

17. The announcers are free to describe the game as they see it, much as they are given latitude to describe the game in their role as print reporters. Clearly, there are differences between streaming and print coverage of a game. A “live” transmission doesn’t afford any announcer the ability to fully understand all decisions made during a competition, given that coaches and players are not accessible for interviews during the game; a print journalist has the advantage of post-game interviews. And it’s possible that announcers’ descriptions of the game action are influenced more by the sound and movement of the game’s audience than would be a print journalist, who generally has time to decipher the events he/she has witnessed, and can put things in a more expansive frame of reference. We do not make all decisions about what our announcers will say before the game because, obviously, we don’t know how the game will unfold. But we do research on the competing teams, and are well versed in how they have been playing in the games or weeks leading up to our Livestream event. Further, much of the text used in our “ticker” (the stream of text that scrolls from right to left at the bottom of the Livestream screen during events) is generated in advance of a game; the text may include information about other games on that day, team or player statistics, or promotion of our print and/or online coverage of high school sports. Finally, many of our Livestream productions are accompanied by live online conversations through which fans can communicate with each other and our on-site reporters as the game unfolds. This technology, Coverit Live, is addressed in more detail in the Affidavit of Joel Christopher, ¶¶ 4-7, 10-11.

18. Livestream commentators meet before the event with the producer to discuss any particular points of emphasis for the commentary, such as describing a notable rivalry and its history, outstanding individual performers or upcoming events of note, for examples. Also, the producer reinforces performance benchmarks, such as making sure we are providing score and time updates at regular intervals during the Livestream, and emphasizing the need to repeat questions posed in the accompanying Coverit Live conversation when they are addressed during the Livestream. Additionally, the commentators and the producer talk once the crew is on site to discuss any specific challenges presented at a given venue, such as noise or camera angle, and the producer gives regular and frequent instructions during the production through the private messaging feature of Coverit Live (which allows the producer to send messages to the commentators through the Coverit Live conversation that are not visible to outside participants). After the Livestream, when the commentators return to the office, there is a post-production conversation to talk about tactics for improvement on future Livestreams. The commentators' content is monitored by the producer, who will instruct them to emphasize certain points or avoid others. Given that this is a live production, and therefore not scripted, this is a fluid process dictated by the flow of the game and the interaction provided by outside Coverit Live participants.

19. Any other media entity transmitting its own Internet stream, blog, radio or television broadcast of any of the four football games transmitted by *The Post-Crescent*<sup>3</sup> would have created an entirely different work product than *The Post-Crescent*'s: the choices made by the camera operator (if any) to zoom or pan emphasize different moments of play; the events singled out for emphasis by each announcer vary based on that person's interest and knowledge of the game, teams, and individual players; and the color commentator's background and

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<sup>3</sup> The games are identified in the Affidavit of Joel Christopher, ¶ 16.

knowledge of interesting tidbits of information changes the nature and tone of the commentary.

In particular, our production would tend to focus on the participating teams from our coverage area because we know them better from our reporting throughout the season.

20. We also utilize commentators who are not reporters for *The Post-Crescent*. For example, *The Post-Crescent* was able to secure Brent Engen, a coach from Appleton West High School to provide color commentary for the transmission of a game involving one of that coach's team's regular-season conference opponents: Appleton North High School. A competing media entity with a less knowledgeable color commentator would likely not have been able to produce a transmission of equal interest to high school sports fans. We secured Mr. Engen's participation in the October 28, 2008 Livestream of the Green Bay Preble at Appleton North football playoff game by first speaking with Dave Pynenberg, the athletic director at Appleton North High School. Sports reporter Brett Christopherson (the announcer for that contest) called Pynenberg to ask if he could find us a person with knowledge of the North football program to appear on the Livestream. Originally, Pynenberg solicited a parent of one of the players, but that individual decided he wasn't comfortable participating in the Livestream. Pynenberg then asked Mr. Engen to participate, and he agreed. At the time, Brent Engen was an assistant football coach at Appleton West, and his father, Paul Engen, was the head coach at Appleton North. Brent Engen provided considerable insight into game strategy and the flow of the game, and his contributions were expert, in our view, because he coached at a program in the same conference as Appleton North and had deep knowledge of the program, as well as of prep football in general.

21. We intend to compete with other media to secure the best analysts if we are able to Livestream WIAA-sponsored playoff games on equal terms. Those contests, in particular, are well suited for those sorts of guests because more people are available at that point (because

some teams have been eliminated from the playoffs and their coaches are available). Guest commentators with expertise add another level of depth to the Livestream production and to our total coverage of that game and that tournament.

22. A live Internet stream contains many of the same elements as a traditional newspaper article: team history; player history, strengths, and weaknesses; and summaries of significant game events. The difference, however, is that in a live transmission, the viewer receives the background information simultaneously with viewing the game action.

23. The Internet streams of the four football tournament games produced by *The Post-Crescent* generated a significant level of interest from visitors to *The Post-Crescent's* website. For the October 28, 2008 games, Green Bay Preble at Appleton North drew 414 page views, while the New London at Waupaca game had 444 page views. The November 1, 2008 Appleton North at Bay Port game had 541 page views and the November 8, 2008 Appleton North at Stevens Point game had 1,038 page views.

24. It's very difficult — if not impossible — to be accurate when comparing the online viewership of these games to the print readership of the stories about these games. However, we can compare viewership of the Livestream event to other online forms of coverage, bearing in mind the differences in those forms. The online photo gallery of the October 28, 2008 Waupaca-New London game drew 1,731 page views just on October 29, 2008, while the written story about the game had 715 page views. A column about that game, written by *The Post-Crescent* sports staff member Ricardo Arguello, drew 458 page views on October 29. The written story about the Appleton North-Green Bay Preble game had 479 page views on October 29. On November 1, 2008, one story about that day's game between Appleton North and Bay Port got 28 page views, and another version of that story got four page views. On the next day, a

photo gallery from the North-Bay Port game got 1,244 page views; one story got 237 page views and another version got 215 page views. For the November 8, 2008 game between Appleton North and Stevens Point, a written story got 337 page views on November 9, and another version got four page views.

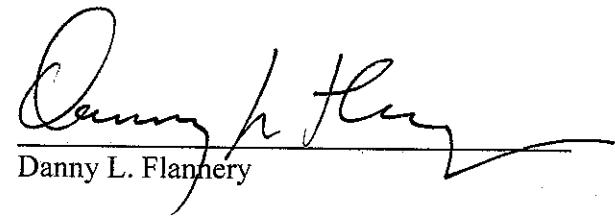
25. These day-of/day-after numbers are a snapshot of readership; those stories and photo galleries were also accessed in the succeeding days. Similarly, additional viewers watch the Livestream of a game after the fact. Currently, we typically see a tenfold increase in the number of viewers to the Livestream on the day after the event as viewers watch it in replay. In the case of the productions in 2008, the post-event bump was about double. The difference between then and now is our increasingly sophisticated promotional efforts and online users' growing familiarity with the Livestream capabilities we offer.

26. In our print craft, we typically hear most often from people who are unhappy with our coverage. For our Livestream/Coverit Live efforts, that is totally reversed. We've heard few complaints and almost all of those complaints are about the quality of the Livestream, which is certainly not television quality. We have, however, heard how appreciative people are about our efforts and how it gives them an opportunity to connect with their families and alma maters in a way that is not available to them anywhere else. We attract viewers from across the country, and even overseas in a couple of instances. Also, many schools have actively sought out our coverage and taken steps to assist and promote it. Xavier High School in Appleton, for instance, has made sure we have the space and Internet connections we need to produce Livestreams there for regular season football and basketball, and promotes the Livestreams through announcements to students and alumni. Neenah and Fox Valley Lutheran high schools have provided technical support, including configuring our laptop to tap into their wireless connections.

27. On October 31, 2008, I received a voicemail from Tim Knoeck of When We Were Young Productions (“WWWY”). He stated the reason he was calling was that he had noticed *The Post-Crescent* had streamed a WIAA football playoff game and that this was illegal. He stated that he owned the copyrights to those games and that he distributed them. He stated that no one had been given permission to do the stream and that it had been against his and WIAA’s wishes.

28. Based on my experience, as a high school student, athlete, spectator and journalist, high school sports are extracurricular activities that are often as much a part of the secondary school learning experience as classroom instruction. The emphasis on high school sports is not wholly on winning. It’s about character building, community building and developing teamwork and sportsmanship for participants and spectators alike. High school athletics serve as a key focal point for many communities, many of which often define themselves around the academic and athletic achievements of their schools. High school athletics are inextricably linked to the social and educational environment of a school — many others, including band members and cheerleaders — fall under the penumbra of athletics. *The Post-Crescent* recognizes that coverage of these events is coverage of a community’s history. It is coverage of the development of a community’s youth, and how the community reacts to their accomplishments or failures, wins or losses. Coverage of high school athletics is a key part of what any responsible community news organization does, and has done for decades. The technology and the platforms change, as they do in most every business, but the need for the coverage — and the interest in it — remains a constant.

FURTHER, AFFIANT SAYETH NAUGHT

  
\_\_\_\_\_  
Danny L. Flannery

Subscribed and sworn to before me  
this 21 day of Jan, 2010.

Sandy Dinsen

Notary Public, State of Wisconsin  
My Commission: 4-8-12  
4518484\_2

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

**Plaintiffs,**

Case No. 09-CV-155

V.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

## Defendants.

**AFFIDAVIT OF JAMES R. MATTHEWS**

STATE OF WISCONSIN )  
 ) ss  
COUNTY OF BROWN )

James R. Matthews, being duly sworn on oath, states as follows:

1. I have personal knowledge of the facts stated herein, and if called upon to do so, could and would testify competently.

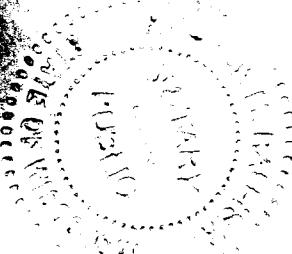
2. I am Photo Editor for the *Green Bay Press-Gazette* where I have been employed since July of 2005.

3. On November 1, 2008, I approached the gate of West DePere High School with video gear. I intended to live stream the football game between Port Washington High School and West DePere High School.

4. I was stopped at the gate by Rick Smith, the West DePere Athletic Director.

5. I identified myself by name and affiliation. When I told him that I wanted to live stream the game, he told me that I could not, due to WIAA's streaming policies.

6. I was allowed to cover the game from the pressbox and take regular video and live stills. No one else covering the game was conducting live streaming or any other type of video transmission of the game.



A handwritten signature in black ink that appears to read "James R. Matthews".

James R. Matthews

Subscribed and sworn to before me  
this 22nd day of January, 2010.

A handwritten signature in black ink that appears to read "Rhonda M. Raleigh".

Notary Public, State of Wisconsin  
My Commission: 10/16/2013

4564958\_1

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

V.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

## Defendants.

**AFFIDAVIT OF DAVID SCHMIDT**

STATE OF WISCONSIN )  
 ) ss  
COUNTY OF BROWN )

David Schmidt, being duly sworn on oath, states as follows:

1. I have personal knowledge of the facts stated herein, and if called upon to do so, could and would testify competently.

2. I have worked for Wisconsin public school districts for 35 years. Currently, I am the Superintendent of the Ashwaubenon School District and have been employed in that position since August 2008. As Superintendent my responsibilities are to oversee the general operation of the district, work hand in hand with the Board of Education on setting direction and policy, and focus the teaching and learning aspects of our district to increase student achievement and opportunities. I work directly with administrators, board of education and community in my work.

3. Prior to being employed at Ashwaubenon, I was the Superintendent of the Waukesha School District from 1998 to 2008. And, prior to Waukesha, I was employed by the

Appleton School District from 1975 to 1998 as an intermediate teacher, high school coach, Principal and Assistant Superintendent.

4. In addition to the direct experience I have gained through my employment as an administrator at three public school districts, I am also familiar with the general functioning of other school districts through my work with the Wisconsin Association of District Administrators, American Association of School Administrators, Southeastern Wisconsin Schools Alliance and many other school related organizations. These organizations and the resulting collaborations have brought me in contact with hundreds of other school districts over the past 15 years.

5. Interscholastic athletics are an integral part of Wisconsin high school students' education. Moreover, interscholastic athletics play a part in the lives of not only the student-athletes themselves, but additionally, in the lives of their non-participating classmates. Most, if not all, of the high school sporting events draw fans and friends of participants as spectators, from packed bleachers to the diehard few, depending on the sport. For many students, school life is framed by the culture of their school and communities. Their participation in pep rallies, as spectators and general support of both male and female sports teams make them a part of what is important in the school beyond academics. An example of the enthusiasm and interest generated by non-participants include the fact that at least twice (1999 and 2004) the Waukesha School District sponsored multiple fan buses that went to the state tournament in which the boys and girls (respectively) played in state tournament games. These buses left during the day and non-participants were not asked to make up the time from class. These experiences build school pride and culture.

6. In recognition of the fact that interscholastic games are school events, the Ashwaubenon School District excuses student athletes and their coaches from classes so they may participate in interscholastic games. Typically, in Ashwaubenon and beyond, neither the student athletes nor their coaches are required to make up the missed classroom hours. (Although, of course, the student athletes remain obligated to complete any missed assignments.)

7. It is a significant accomplishment for one of our teams to qualify for post-season tournament events. When an Ashwaubenon team make the state tournament, for example, the district may decide to excuse student-fans from classes so that they may attend the tournament event and support their classmates (see previous bus example). Ashwaubenon encourages this display of support knowing that it is an important lesson for the student-fans to take pride in their classmates' accomplishments. Again, because these are school events, these student-fans who are excused from classroom attendance are not required to make up the missed classroom hours at a later date. Similarly, part of the school day (typically the last hour) is used for pep rallies to get students revved up for games of importance and to show their spirit. These rally's also build school pride and positive school culture. Student bands play, student and staff skits are performed and other antics take place to focus on supporting student athletes in the coming contest.

8. Ashwaubenon's attendance policy is consistent with other school districts' policies regarding excused absences to attend interscholastic events. And in fact, during my tenure there, Waukesha and Appleton both excused student athletes, coaches, and in appropriate circumstances student fans, from classroom attendance to attend interscholastic athletic events.

9. Not only do school districts excuse students from class, in appropriate circumstances, the school district may even expend funds to transport student-fans to travel to

state tournament games to support their classmates. Although students most often pay for the bus transportation, supervisory personnel are paid by the school district to ensure appropriate behavior and safety of the students involved. In Waukesha's state basketball tournament engagements in 1999 and 2004 the schools involved sent over 8 bus loads of students and fans to Madison during the day to watch the student athletes perform.

10. Support for interscholastic athletics is equally strong in the community generally, and attendance at these events includes more members of the community than just the student-athletes' families and friends. Ashwaubenon, Waukesha and Appleton, for example, has made available Senior Citizen and Staff passes to community members and all staff. These passes can be used to gain admittance at any high school extracurricular event, including regular season interscholastic athletic events.<sup>1</sup> Currently in Ashwaubenon, there are approximately 200 Senior Citizen and 400 Staff passes in circulation. I would estimate that, on average, any particular extracurricular event may be attended by 10-20% of the pass-holders.

11. Certain sports generate particularly strong community support and attendance. In Ashwaubenon, boys football is particularly popular and in Waukesha, boys and girls basketball. The community's support for high school football is so strong, in fact, that in 2006/07, when Ashwaubenon solicited donations during "Jaguar Pride" to renovate the high school's football complex, the community raised over \$800,000 towards that effort in about 6 month's time. This campaign was led by community supporters and resulted in a great renovation, with naming rights used to garner increased community use and pride. Unlike many of the school's other athletic facilities, which may be used for other activities in addition to interscholastic athletics, the football field at Ashwaubenon is devoted almost exclusively to use by Ashwaubenon's

---

<sup>1</sup> WIAA policies do not permit a school to honor these community passes at post-season games hosted at the school's athletic facilities.

football program. Other distinct facilities have been built for soccer and other groups. Some districts have raised community donations (over \$500,000) to put in synthetic football field turf. D.C Everest, Kimberly and the Arrowhead School District are the latest to install this versatile surface. This allows for more general use of the facility without extreme damages to the surfaces through overuse or use during bad weather.

12. I found the community support for interscholastic athletics was equally strong in the other districts I administered. For example, when the Waukesha School District was considering cutting the approximately \$1.3 million athletics budget during a series of years when program and service reduction were necessary, the community outcry was so great that the proposal was abandoned. Community members cited the need for sports, theater, student clubs and other co-curricular offerings as a way for athletes and others to increase their skills, potentially seek scholarships, meet student needs and interests, and generally build the culture of the school.

13. Because news media coverage helps support the community's interest in, and support for, interscholastic events, regular-season interscholastic events held at Ashwaubenon are open to media members, subject to only such limitations as necessary because of space-restrictions or use of equipment or networks. We consistently have print and video media at our games and have not restricted access to their work. We have not allowed the use of our internet networks, etc. at this time.

14. Ashwaubenon spends significant amounts of money each year for interscholastic athletics. Last year the high school athletic budget included over \$200,000 for the implementation of our sports program. The 2008-2009 Ashwaubenon budget included the following expenditures:

- a. coach salaries, approximately \$120,000 – This would include all WIAA sanctioned sports in the program.
- b. athletic facilities: high school sports facilities are multiple use spaces. Our gymnasiums, swimming pool and playing fields get used by community groups and our Village Park and Recreation Department on a regular basis. There are maintenance costs to all of these spaces, but it is difficult to break out direct costs.
- c. team equipment, about \$12,000
- d. travel to/from events, approximately \$35,000
- e. entry fees, \$7,500
- f. officials, approximately \$21,000
- g. WIAA general dues, approximately \$1,100 (2008)

15. Most school districts have student-activity fees that support athletics and other student activities. Ashwaubenon has a relatively low fee for all activities. The district charges a yearly flat fee of \$35.00 for all activities with a family maximum of \$75.00. The district does not impose a student-activity fee specific to student-athletes who participate on WIAA-recognized teams. In contrast, other districts such as Waukesha charge fees specific to sports. While I worked in Waukesha, the student fee per sport was \$75 per sport with a family yearly maximum of \$225.00. There exists a wide range of practices in Wisconsin school districts related to extent and amount of fee collection in school districts.

16. School related booster groups are important to our district high school athletic programs. Most districts, including Ashwaubenon, Waukesha and Appleton have booster groups that supplement funding for sports. For example, the Jaguar Boosters organize fund raising

events, collect donations and distribute these funds back into the sports programs to supplement district budgeted funds. These funds can be significant, depending on the district or school. This support demonstrates the community interest and pride generated by high school sports.

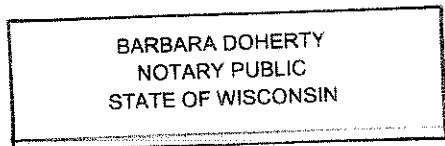
FURTHER, AFFIANT SAYETH NAUGHT

  
\_\_\_\_\_  
David Schmidt

Subscribed and sworn to before me  
this 22 day of Jan, 2009. 2010

  
\_\_\_\_\_  
Barbara Doherty

Notary Public, State of Wisconsin  
My Commission: 7131200



4529539\_3

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

---

**DECLARATION OF GREG SPROUT**

---

I, Greg Sprout, declare and state as follows:

1. I have personal knowledge of the facts stated herein, and if called upon to do so, could and would testify competently.
2. I am the Sports Editor for the *Wisconsin State Journal* and have been employed in that position since 1996. My job duties include directing the sports staff and editing the sports section.
3. The newspaper's staff members cover newsworthy community events using a variety of technologies, including text reports summarizing, analyzing or describing live events. These text reports may take various forms, including Internet blogging.
4. In November 2008, assistant sports editor Rob Hernandez, who reports directly to me, transmitted two live text reports of high school tournament football games sponsored by the Wisconsin Interscholastic Athletic Association ("WIAA").

5. The WIAA subsequently invoiced the *Wisconsin State Journal* a \$100 "Play-by-Play Blogging fee" for each of those 2 text reports. A true and correct copy of the request is attached to this affidavit as Exhibit B. The newspaper did not pay that invoice.

6. Since being invoiced, after the fact, for transmitting Internet text reports, our staff has been instructed to do its best to avoid violating WIAA's policies on live play-by-play reports. The *Wisconsin State Journal* is no longer transmitting live Internet text reports which the newspaper believes the WIAA might determine violate its live blogging policies.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 2/14 day of January, 2010

  
\_\_\_\_\_  
Greg Sprout

4592175 t

# **EXHIBIT B**

Wisconsin Interscholastic Athletic Association  
 P.O. Box 267  
 Stevens Point, WI 54481-0267  
 Telephone (715) 344-8580 -- FAX (715) 344-4241

November 25, 2008

ROB HERNANDEZ  
 WIS STATE JOURNAL  
 1901 FISH HATCHERY RD  
 MADISON WI 53711

We will not  
 pay the  
 \$200 blogging  
 fee. Please  
 make the check  
 for \$242.00

		Cost Each	Cost Total
	2008 State Football Phone Line Fee .....		
X	2008 State Football Wireless Fee .....	90.00	
X	2008 State Football Live Play-by-Play Blogging Fee .....	100/gm	200.00
X	2008 State Football <u>Parking Fee</u> .....		92.00
	2008 State Girls Volleyball Broadcast Fee .....		
X	2008 State Girls Volleyball Wireless Fee .....		30.00
	2008 State Girls Volleyball Phone Line Fee .....		
	2008 State Boys Volleyball Phone Line Fee .....		
	2008 State Boys Volleyball Wireless Fee .....		
	2008 State Boys Volleyball Broadcast Fee .....		
	2008 State Boys Soccer Wireless Access Fee .....		
	2008 State Boys Soccer Broadcast Fee .....		
X	2008 State Girls Swimming Wireless Access .....		30.00

Total Amount Due ..... \$442.00

136.26118.0.629020.000: \$92.00 PARKING {  
 136.26118.0.642011.000: \$150.00 Wireless } : \$242.00  
 Sub

Return copy with your payment in enclosed envelope.  
 Please make your check payable to the Wisconsin Interscholastic Athletic Association.

PAYMENT IS DUE WITHIN 30 DAYS OF INVOICE



WNA000184

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

---

**AFFIDAVIT OF MATTHEW P. VELDRAN**

---

STATE OF WISCONSIN      )  
                                  ) ss.  
COUNTY OF DANE            )

Matthew P. Veldran, being duly sworn on oath, states as follows:

1.      I am a paralegal at Godfrey & Kahn, S.C.
2.      I have reviewed Todd Clark's Affidavit, dated September 28, 2009 (Santa Maria Decl. ¶ 7).
3.      On January 6, 2010, I accessed the website <http://www.wiaa.tv>.
4.      The website has the following copyright notice at the bottom of the first page:

“© 2007-2009 WIAA | WWWY Productions | PlayON! Sports. All Rights Reserved.”

5.      Along the left-side of the home page, there is a menu which lists 23 WIAA-recognized sports. A screen capture of the home page is attached as Exhibit A.
6.      By clicking on one of the sports on the menu, a list of WIAA games for that sport become available for viewing over the Internet.

7. Many of these games are also available for purchase on DVD. To purchase a DVD, an individual clicks on the menu item labeled “Buy DVD” at the top of the home page. Clicking on this link takes the user to a new site whose address is:

<http://yhst-34445520326856.stores.yahoo.net/wiinatas.html>.

The “About us” page on this site identifies the site as belonging to When We Were Young Productions.

8. The When We Were Young Productions website (“WWY website”) contains a link to Wisconsin Interscholastic Athletic Association (“WIAA”). Clicking on the WIAA link allows the user to select the level of games they are interested in buying: “WIAA Regular Season Events,” “WIAA Regional and Sectional Tournaments,” and “WIAA State Tournaments.”

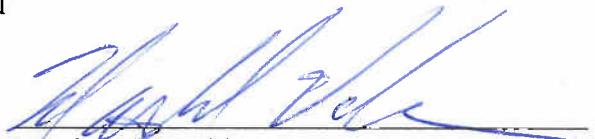
9. There are no DVDs for purchase, or other information available, by clicking on the link to WIAA Regular Season Events.

10. Many of the WIAA Regional and Sectional Tournament DVDs available for purchase from the WWY website identify the DVD’s producer. For example, the 2006 WIAA Girls Basketball State Tournament Playoffs Division 2 game between Rice Lake and Spooner is identified as having been produced by Rice Lake Cable Access.

11. Other producers of Girls Basketball Regional and Sectional Tournaments games in 2006, 2007, 2008 and 2009 identified on the WWWY webpage include the following 22 entities:

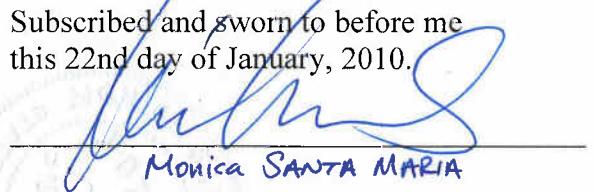
Fond du Lac/Charter	Waunakee Cable Access	KQEG TV
Rice Lake Cable Access	Hagen Sports Network	Pro Communications
Comcast	Ripon Channel 19	Time Warner Sports
TV 43	TV-8 WSCS	Valders Channel 4
Valders Area School District	KQEG TV 23	RCCA
Rice Lake Public Access	ifan	prepsonthenet
Waunakee High School	Video Prints	Baraboo Broadcasting
River Cities Community Access		

FURTHER, AFFIANT SAYETH NAUGHT



Matthew P. Veldran

Subscribed and sworn to before me  
this 22nd day of January, 2010.



Monica SANTA MARIA

Notary Public, State of Wisconsin  
My Commission expires: permanent  
4531204\_2

# **EXHIBIT A**



Home

WIAA

Buy DVD

Tournament Results

**Fall Sports Coverage Begins This August!**

# Don't Miss the Action!

Stay tuned to WIAA.tv for **LIVE** and **ON-DEMAND** action of your favorite teams.



1 of 28

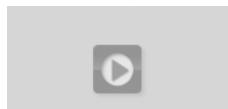
»

#### Categories

Recent  
Coming Soon  
Live Now

#### Activity

All  
Baseball  
Boys Basketball  
Boys Cross Country  
Boys Golf  
Boys Hockey  
Boys Soccer  
Boys Swimming and Diving  
Boys Tennis  
Boys Track and Field  
Boys Volleyball  
Football  
Girls Basketball  
Girls Cross Country  
Girls Golf  
Girls Hockey  
Girls Soccer  
Girls Swimming and Diving  
Girls Tennis  
Girls Track and Field  
Girls Volleyball  
Gymnastics  
Softball  
WIAA Sport Meetings  
Wrestling



[Monona Grove Swim Meet](#)

Tue Jan 5th 2010, 6:00pm EST  
Boys Swimming and Diving



[WIAA Concussion, Supplements, and Heart](#)

Tue Jan 5th 2010, 1:00pm EST  
WIAA Sport Meetings



[Oregon Vs. Watertown](#)

Mon Jan 4th 2010, 8:15pm EST  
Boys Basketball



[Oregon Hockey Classic  
Lakeland Vs. Oregon](#)

Wed Dec 30th 2009, 8:00pm EST  
Boys Hockey



[Oregon Hockey Classic  
Waunakee Vs. DC Everest](#)

Wed Dec 30th 2009, 3:45pm EST  
Boys Hockey



[Oregon Hockey Classic Beloit  
Memorial Vs. Greenbay...](#)

Wed Dec 30th 2009, 11:15am EST  
Boys Hockey



[Madison Memorial High School  
vs. Detroit Southeast...](#)

Tue Dec 29th 2009, 8:45pm EST  
Boys Basketball



[Oregon Hockey Classic Beloit  
Vs. Lakeland](#)

Tue Dec 29th 2009, 3:45pm EST  
Boys Hockey



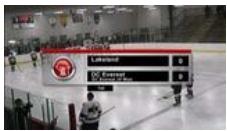
[Madison Memorial High School  
vs. Detroit Country D...](#)

Mon Dec 28th 2009, 8:45pm EST  
Boys Basketball



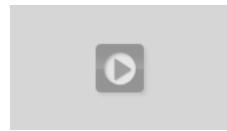
[Oregon Holiday Classic  
Greenbay United Vs. Oregon](#)

Mon Dec 28th 2009, 8:15pm EST  
Boys Hockey



[Oregon Holiday Classic  
Everest Vs. Lakeland](#)

Mon Dec 28th 2009, 3:15pm EST  
Boys Hockey



[Oregon Holiday Classic](#)

Mon Dec 28th 2009, 12:30pm EST  
Boys Hockey

1 of 28

»

Home   WIAA   Buy DVD   Tournament Results

© 2007-2009 WIAA | WWWY Productions | PlayON! Sports. All Rights Reserved.  
WIAA.tv is operated by PlayON! Sports.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

---

**AFFIDAVIT OF SHERMAN WILLIAMS**

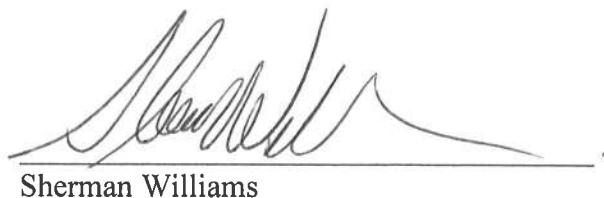
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STATE OF WISCONSIN        )  
                                  ) ss  
COUNTY OF MILWAUKEE    )

Sherman Williams, being duly sworn on oath, states as follows:

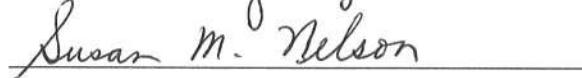
1.        I have personal knowledge of the facts stated herein, and if called upon to do so, could and would testify competently.
2.        I am an Assistant Managing Editor- Visual Journalism for the *Milwaukee Journal Sentinel* and have been employed in that position since 2000. My responsibilities include managing the photography, graphics and design departments and overseeing visual content for the newspaper and online.
3.        Attached as Exhibit A is a true and correct copy of an email string dated October 28, 2008 among myself, Tim Eichorst of When We Were Young Productions and John Dye of the *Green Bay Press Gazette*.

FURTHER, AFFIANT SAYETH NAUGHT



Sherman Williams

Subscribed and sworn to before me  
this 20 day of January, 2010.



Susan M. Nelson

Notary Public, State of Wisconsin  
My Commission: expires March 31, 2013  
4574961\_1  
4574961\_3



# **EXHIBIT A**

**Dye, John**

---

**From:** Sherman Williams [SHWILLIAMS@journalsentinel.com]  
**Sent:** Tuesday, October 28, 2008 3:14 PM  
**To:** Dye, John; Nale, Dwight S; George Stanley  
**Subject:** Re: Streaming

This is the first time any fee has been mentioned in any of our conversations. He's been offering his service at no cost to newspapers up until now so I'm trying to find out what's behind the change.

On 10/28/08 2:52 PM, "Dye, John" <jdye@greenbay.gannett.com> wrote:

Sherman: Thanks. I still think the fee is too high and we should challenge. I'm opposed to any fee. John

---

**From:** Sherman Williams [mailto:SHWILLIAMS@journalsentinel.com]  
**Sent:** Tuesday, October 28, 2008 2:50 PM  
**To:** Dye, John; Nale, Dwight S; George Stanley  
**Subject:** FW: Streaming

John:

This is what I just received from Tim Eichorst.

----- Forwarded Message

**From:** Tim Eichorst <timeichorst@mac.com>  
**Date:** Tue, 28 Oct 2008 14:17:01 -0500  
**To:** MJS JSI <SHWILLIAMS@journalsentinel.com>  
**Cc:** Dwight Nale <dnage@postcrescent.com>, Todd Clark <tclark@wiaawi.org>, <tk@wwwyproductions.com>  
**Subject:** Re: Streaming

Sherman, let me clarify some things.

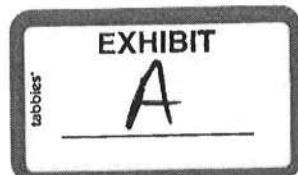
If an entity wants to produce and stream (on it's own) a WIAA tournament series event, whether live or delayed on it's web portal, the fees are as follows:

\$250 - for a single-camera (with talent) production  
\$1500 - for a multi-camera (with talent) production

The entity must also send us a master copy of the game and is prohibited from selling copies of the game to anyone.

WWWWY will produce a master DVD from the tape (that is sent) and market the product on prepfilms.com of which the entity will receive a 20% royalty on gross sales.

10/28/2008



GA000015

I believe what you are referring below are state tournament events. In those cases, we (WWWWY) produce and stream the events. I did propose to you last year the ability for JS online to grab those streams to your site. The proposal was not responded to. In August, what I was referring to was giving entities the ability to record our production, at the site, for the purposes of editing highlights to the agreed time limit of 2 min/event. The fee for this or even significant interest has not evolved as of this point. This concept was driven by comparing the cost of you having to send videographers out to all tournaments versus just paying a fee to capture our footage.

Tim

On Oct 28, 2008, at 11:23 AM, Sherman Williams wrote:

Hey Tim:

I just talked with some of the newspapers up north about live streaming video from tournament games. Looking over my notes from the August WIAA meeting you mentioned that you were setting up feeds to live steam video that we could all pick up and use on our websites. In the past you've offered access to your video without charge unless we wanted an exclusive access for certain teams. There seems to be some confusion with the Green Bay newspaper which was told they needed to pay a fee of \$1500 to live stream a game. Do you know anything about this?

Tim Eichorst  
When We Were Young Productions  
[timeichorst@mac.com](mailto:timeichorst@mac.com)

----- End of Forwarded Message

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION, AMERICAN-HIFI, INC.,

Plaintiffs,

Case No. 09-CV-155

v.

GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

---

**AFFIDAVIT OF MICHAEL T. WOODS**

---

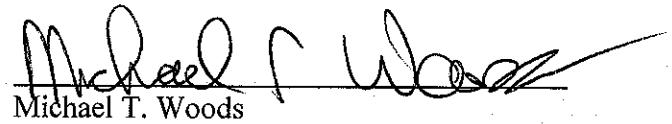
STATE OF WISCONSIN        )  
                              )  
                              ) ss  
COUNTY OF OUTAGAMIE    )

Michael T. Woods, being duly sworn on oath, states as follows:

1.       I have personal knowledge of the facts stated herein and, if called upon to do so, could and would testify competently.
2.       I am a sports reporter and columnist for *The Post-Crescent*, where I have been employed since 1989.
3.       Approximately one week before the November 8, 2008 football game between Kaukauna High School and Kimberly High School, I called Ryan McGinnis, then interim athletics director at Kimberly High School, to ask for permission to live stream the game.
4.       Mr. McGinnis denied permission, referring to the WIAA policies in regard to who could live-stream games, and who could not. Since *The Post-Crescent* did not have approval from the WIAA or from When We Were Young, he politely declined us permission to live-

stream the playoff game. McGinnis referred to WIAA instructions on the issue of live-streaming.

5. I received media credentials to attend the game and covered the game from the pressbox. No one else covering the game was conducting live streaming or any other type of video transmission of the game. I subsequently wrote an article immediately after the game from the football pressbox, which they kept open for me and fellow *The Post-Crescent* writer Dick Knapinski.



Michael T. Woods

Subscribed and sworn to before me  
this 11 day of Jan, 2010.



Dan Cusens  
Notary Public, State of Wisconsin  
My Commission: 4-8-12

4561207\_3

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

---

**WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION and AMERICAN-HIFI, INC.**

**Plaintiffs,**

**Case No. 09-cv-0155**

**v.**

**GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,**

**Defendants.**

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**MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs Wisconsin Interscholastic Athletic Association (“WIAA”) and American-HiFi, Inc., (“WWFY”) hereby move the Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment.

The grounds for this motion, as stated fully in the brief filed with this motion, are that there is no genuine dispute of material fact and WIAA and WWWY are entitled to judgment as a matter of law. This motion is based upon and supported by all the pleadings and papers filed in this case and the brief and supporting documents accompanying this Motion for Summary Judgment.

For the foregoing reasons, the parties respectfully request that this Court grant this motion.

Dated this 22nd day of January, 2010.

Respectfully submitted,

**PERKINS COIE, LLP**

By: s/ John S. Skilton

John S. Skilton  
jskilton@perkinscoie.com  
Jeff J. Bowen  
jbowen@perkinscoie.com  
Autumn N. Nero  
anero@perkinscoie.com  
1 East Main Street, Suite 201  
Madison, WI 53703  
Telephone: (608) 663-7460  
Facsimile: (608) 663-7499

**ANDERSON, O'BRIEN, BERTZ,  
SKERENE & GOLLA**

Gerald O'Brien  
gmo@andlaw.com  
1257 Main Street  
P.O. Box 228  
Stevens Point, WI 54481-0228  
Telephone: (715)344-0890  
Facsimile: (715)344-1012

*Attorneys for the Plaintiffs Wisconsin  
Interscholastic Athletic Association and  
American-Hifi, Inc.*

**MAWICKE& GOISMAN S.C.**

Jennifer S. Walther  
jwalther@dmgr.com  
1509 North Prospect Avenue  
Milwaukee, WI 53202

Tel: (414) 224-0600  
Fax: (414) 224-9359

*Attorney for the Plaintiff Wisconsin  
Interscholastic Athletic Association*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

---

WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION and AMERICAN-HIFI, INC.

Plaintiffs,

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WISCONSIN NEWSPAPER ASSOCIATION, INC.,

Defendants.

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

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## **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

The Wisconsin Interscholastic Athletic Organization (“WIAA”) and its licensee, American-HiFi, Inc. (known as When We Were Young Productions, or “WWFY”), hereby move for summary judgment on the First Amendment, Fourteenth Amendment, and Copyright counterclaims brought by Defendants Gannett Co., Inc., and Wisconsin Newspaper Association, Inc. (collectively, “Gannett” or “Defendants”). The WIAA, which organizes and sponsors statewide high school athletics tournaments in Wisconsin, has entered into a contract with WIFY granting exclusive rights to stream live high school tournament games over the internet. As a voluntary association, the WIAA depends upon revenue generated from its tournament events, including the exclusive license with WIFY, in order to fund its operations and organize these tournaments. The WIAA also relies upon exclusive licensing contracts to ensure the transmission of those sporting tournaments with less public interest, which are nonetheless very important to the participants, to their families, and to fans of those sports. Finally, the exclusive licensing contracts help the WIAA protect videos and images of tournament events from association with products that would harm the image of the WIAA or the participating athletes.

Defendants claim that the First and Fourteenth Amendments of the U.S. Constitution, as well as the Copyright Act, prohibit this arrangement and guarantee that Defendants may also transmit live high school tournament games over the internet without first obtaining a license from WIAA or WIFY. Defendants argue that limitations on internet streaming amount to unconstitutional restrictions on their freedom to speak and to report newsworthy events, and that the WIAA’s exclusive business arrangement violates their right to equal treatment under the law. This is not correct as a matter of law.

First, as the organizer of the tournaments, the WIAA acts in a proprietary capacity and may enter into contracts as could a private business. The WIAA's purposes in entering into the WWWY contract reflect proprietary rather than governmental concerns, and the contract contains reasonable commercial provisions. Because Defendants remain free to report on tournament events using other means, they have only a very limited First Amendment interest in the additional ability to carry a complete game live, and that interest cannot outweigh the WIAA's legitimate proprietary interests in promoting and sustaining its tournaments. Unsurprisingly, courts in similar circumstances have upheld exclusive transmission contracts covering athletic events.

Furthermore, a high school sporting event does not constitute a public forum for First Amendment purposes. Courts have consistently held that sporting events constitute non-public fora, leaving their organizers free to establish reasonable, viewpoint-neutral limitations on expressive activity. Here, WIAA has imposed no restrictions on any particular viewpoint, nor has the WIAA limited communication through any other means. Defendants remain completely free to report on the events in question; they simply may not carry the game as a whole live on the internet. Moreover, regardless of the nature of the forum, these limited restrictions on internet streaming constitute reasonable restrictions on the time, place, and manner of the Defendants' potential speech, as they do not affect the content of that speech and are narrowly tailored to serve the significant governmental interest in operating and adequately funding statewide high school athletic competitions.

Similarly, nothing in the Fourteenth Amendment prohibits the WIAA from choosing one business partner over another. Because the WIAA has not unconstitutionally restricted Defendants' First Amendment rights, the WIAA need only show that its exclusive contract is

rationally related to a legitimate purpose in order to pass muster under the Fourteenth Amendment. The WIAA’s interests in generating revenue, managing its tournaments, and providing public access to a wider range of tournaments all constitute legitimate purposes, and any one of them would satisfy the Fourteenth Amendment with respect to the WIAA’s decision to contract with WWWY rather than Defendants. The Equal Protection Clause does not give Defendants the right to benefit from commercial bargains struck with competitors.

Finally, the Copyright Act only applies to matters “fixed in a tangible medium of expression”— in this case, to live sporting events actually transmitted or broadcast. The athletic events themselves are not “fixed” and thus lie outside the realm of copyright. Similarly, the prior question of who has proper authority to gain access to an event in order to create a potentially copyrightable broadcast lies outside the subject matter of copyright. As a result, the WIAA’s policies at issue here are not subject to preemption by the Copyright Act.

## **II. BACKGROUND**

The WIAA is an unincorporated, nonprofit organization of member schools located in the State of Wisconsin. FOF 1. The WIAA seeks to organize, develop, direct, and control an interscholastic athletic program that promotes competitive, educational and financial opportunities for member schools. FOF 19. These opportunities include participation in post-season WIAA-sponsored, controlled, and funded sports tournaments, which are separate from regular season games. FOF 20. These tournaments are an essential part of the WIAA’s mission and are the WIAA’s major source of operating revenue. FOF 52-53.

### **A. WIAA’s Exclusive Contracts**

The WIAA has had several exclusive contracts with broadcast partners throughout the years, including one with Fox Sport Network Wisconsin (“Fox”) since 2001 for the transmission of the seven state football finals, and one with Quincy Newspapers, Inc. (“QNI”) since 1968 for

the exclusive broadcast of the boys and girls basketball tournaments and hockey finals. FOF 79-83.

Beginning in about 2003, the WIAA began to lose revenue from its QNI contract. QNI revenue went from \$140,000 in 2002 to \$40,000 in 2004. FOF 84-87. Due to this loss of revenue from QNI, the WIAA began to look for other sources of revenue. FOF 89.

At about the same time as WIAA lost the QNI revenue, coaches committees including representatives of other sports began telling WIAA staff that they had a strong interest in the live transmission of additional sports and that they wanted the same exposure for their sports and athletes that basketball, hockey and football were receiving. FOF 90-91. The WIAA staff also wanted to get as many sports publicly distributed as possible. FOF 92. The WIAA inquired whether its existing contractual partners might be interested in broadcasting these additional events, but they declined to pursue the opportunity. FOF 96.

During this time, Chickering met Tim Eichorst, the majority shareholder of WWWY. FOF 97. WWWY was founded in 2002 to produce and distribute high school athletic events. FOF 98-102. Through the fall and winter of 2003, they discussed the idea of WWWY producing and distributing WIAA tournaments. FOF 103-106.

In May of 2004, WWWY and the WIAA entered into a Letter of Intent to pursue a formal contract granting certain exclusive WIAA programming rights to WWWY for a fee. FOF 107-111. In early 2005, Eichorst made a formal proposal to the WIAA for WWWY to deliver broadcast quality video production of WIAA events, and to distribute these products through all physical, electronic, and broadcast media. FOF 115, 117. Based on this proposal, in May of 2005, WWWY and the WIAA entered into a ten year Production Rights And Distribution Agreement (“the Agreement”). FOF 126-127.

The Agreement gives WWWY the exclusive right to produce, sell, and distribute through multiple platforms, including internet streaming, the broadcast of all WIAA tournament series and championship events for all WIAA sports, except those under existing contract. FOF 128. As part of the Agreement, WWWY actively seeks out and affiliates with all qualified production resources who are willing to produce events that WWWY does not produce. FOF 142-143, 147-157. WWWY currently pays the WIAA an annual fee of \$60,000 for the rights granted in the Agreement. FOF 129.

WWWY also provides video production services to the WIAA at no cost to the WIAA, such as producing WIAA sports meetings and annual meetings, award ceremonies, providing live feed to game boards, and creating public service announcements. FOF 167-182.

As part of the Agreement, WWWY and WIAA created the web portal known as “wiaa.tv” as a platform to distribute WIAA events through internet streaming. FOF 183-185, 191-192. The web portal plays a key role in the strategy for the branding and marketing of the WIAA. FOF 188. For example, the WIAA name is associated with the video distribution platform, so that the WIAA becomes the destination point for its own events. FOF 189. The wiaa.tv web portal contains all live and archived videos of WIAA events for all WIAA recognized sports that WWWY produces and all live and archived videos for WIAA meetings that WWWY produces, such as sports meetings, rules meetings, press conferences, and the annual meeting. FOF 193. WWWY operates and manages the wiaa.tv web portal for WIAA as part of its contractual responsibilities and at no cost to the WIAA. FOF 195. In 2008-2009, wiaa.tv presented live streams of 82 tournament events and archived streams of 182 tournament events, including events from each of the WIAA’s 25 sports. FOF 205.

In 2008 the WIAA also entered into a five-year contract granting Visual Image Photography, Inc. (“VIP”) the exclusive right to sell products using images from tournament events. FOF 224. Previously, the WIAA had also granted VIP the exclusive right to the commercial sale of photographs taken during tournament events, but the WIAA suspended that policy in 2007. FOF 218-220, 221-222. Both the VIP contract and the WIAA media policies now permit all credentialed media to sell tournament event photographs but not products incorporating those photographs. FOF 225-227. As with the WWWY Agreement, which provides archived video streaming in a single location at [wiaa.tv](http://wiaa.tv), the photography policy permits the WIAA to reduce the danger that WIAA tournament images become associated with products inconsistent with WIAA’s image, such as alcohol or tobacco. FOF 204, 220.

## **B. WIAA Media Policies**

The WIAA recognizes the importance of media coverage of its events and provides relevant policies and guidelines through two publications. FOF 32-34. First, the WIAA issues the Senior High School Handbook, which contains both spectator policies and “Video Transmission Policies” applying to broadcast, cable, and internet streams during the WIAA State Tournament Series. FOF 33. Second, the WIAA has issued a Media Policies Reference Guide “to assist media with requesting/issuing of working media credentials . . . the use of equipment by news gathering media and the comprehension of WIAA property rights for State Tournament Series competitions.” FOF 34. These include policies that apply to the media during the entire WIAA-State Tournament Series, i.e., regional, sectional, and state final tournaments. FOF 36.

The WIAA policies define the term “broadcast” as “airing/streaming the entire duration of tournament games” and prohibit any live or delayed television or internet streaming of WIAA State Tournament Series events without permission from the WIAA. FOF 44-45. No fees, however, are required for tape-delayed broadcasts or streams for schools who wish to air games

on their own educational channel, on a local cable system, or the school's website. FOF 46. Moreover, media covering the WIAA tournament events for "newscast purposes" may, without paying a fee, use up to two minutes of film, video or audio tape for regularly scheduled news, sports programs, or websites, and may use tournament action as a backdrop for live actions reports, provided no play-by-play is used. FOF 47.

Thus, under the WIAA's policies, those who wish to broadcast or internet stream more than two minutes of tournament events are required to obtain permission from the rights holder. FOF 48. WWWY is the rights holder for all pre-state Tournament Series events for all sports (i.e., regional and sectional events) and all final state tournament events excluding football, basketball, and hockey finals. FOF 128. Fox Sports Wisconsin ("Fox") has the exclusive rights to State Football Championship games, and WAOW-TV/Quincy Newspapers, Inc. ("Quincy") has the exclusive rights to the Boys and Girls Basketball State Tournaments and Hockey State Finals. FOF 79, 82.

In addition to the policies noted above, the WIAA provides for media access to communication lines (e.g., telephone, high-speed internet, and wireless connections) for use in reporting at State Tournament venues (for a fee of \$25-30), photography of WIAA events, radio or other audio broadcast of WIAA events, and post-game interviews of players and coaches. FOF 49-51. Indeed, subject to some limitations, newspapers are offered up to five media credentials for daily papers (two for weekly newspapers). FOF 51.

The WIAA's Media Policies Reference Guide also addresses simultaneous play-by-play depictions of tournament events, including live "blogging" of the game. FOF 228. Any media organization that wishes to transmit live play-by-play descriptions of tournament action must obtain WIAA consent and pay the approximate rights fee. FOF 229. The Media Guide specifies

that the media do not have to pay a fee for “live report updates” involving information about results or the event without play-by-play description of the contest. FOF 230. The WIAA defines play-by-play as live and detailed regular entries of depictions of the sports events as they are happening, so that it approximates a video or audio transmission allowing the recipient to experience the game as it occurs. FOF 232. Following two instances of unauthorized blogging, the WIAA attempted to work with media companies to develop a revised policy toward live play-by-play blogging, including a more refined definition of play-by-play, but the media companies did not follow through on their offer to draft an updated policy. FOF 233-241.

### **C. The Current Dispute**

Despite the WIAA’s policies regarding internet streaming, in October and November of 2008, *The Post-Crescent* videotaped and subsequently streamed four WIAA-sponsored football tournament games. FOF 209. The newspaper did not obtain permission to stream any of these events and also refused to pay the rights fee for streaming. FOF 210. In November of 2008, Gannett newspapers likewise attempted to stream four WIAA events, again having failed to obtain permission and pay a rights fee. FOF 214.

Gannett now asserts that the WIAA’s policy prohibiting internet streaming of its events absent permission from the appropriate rights holder, i.e., WWWY, violates Gannett’s rights under the First and Fourteenth Amendments to “report” on WIAA events, and that the WIAA’s restrictions on videotaping and transmission of its games are preempted by the Copyright Act, 17 U.S.C. § 101 *et seq.* These arguments are without merit. For the reasons stated herein, the WIAA’s exclusive rights agreement and related policies do not run afoul of either Gannett’s constitutional rights or the copyright laws.

### **III. ARGUMENT**

#### **A. The First Amendment Does Not Prohibit The WIAA From Controlling Internet Transmission of its Sporting Events**

Gannett's first counterclaim alleges that WIAA's policy prohibiting the transmission of its events absent a license violates the newspapers' First Amendment rights. At issue is the WIAA's contract with the production company WWWY, which grants WWWY the exclusive right to "produce, sell, and distribute all WIAA tournament series events." FOF 128. In accordance with this contract, WIAA media policies require media outlets to get permission prior to transmitting WIAA events, whether through live or archived video streaming or live play-by-play depictions of event action, which are equivalent to a live broadcast. FOF 45, 229. According to Gannett, this arrangement violates the newspapers' First Amendment right to "report" on high school sports. The basis for Gannett's assertion appears to be that where the WIAA has allowed reporters access to events, it must allow all news organizations to transmit its games, a position that would prohibit the WIAA (or, for that matter, any state university or organization) from entering into exclusive contracts relating to sporting and entertainment events.

The act of granting public and media access to observe WIAA-sponsored events, however, does not surrender the WIAA's right to control the transmission of its events and generate revenues. Indeed, the WIAA, no less than a private actor, may enter into exclusive license agreements where, as here, it functions in its proprietary capacity.

Moreover, the First Amendment allows WIAA to place reasonable restrictions on the conduct of the media during a tournament event, both because each sporting event is a non-public forum and because state sectors may impose reasonable time, place, and manner restrictions regardless of the nature of the forum. The challenged WIAA policy falls squarely

within the four corners of constitutional restrictions and the accepted industry norms related to the “reporting” (as opposed to transmission) of sporting events.

**1. WIAA is Acting in its Proprietary Capacity in Controlling Internet Transmission of its Events**

Because the WIAA is acting in a proprietary capacity in granting exclusive internet streaming rights to WWWY, it enjoys essentially the same freedom to enter into and maintain exclusive contracts as would any private actor conducting the same business. Provided that the conduct at issue is not arbitrary or capricious, it will withstand a challenge on First Amendment grounds. In this case, the WIAA’s granting of exclusive rights to stream athletic events easily meets this test. Accordingly, WIAA has the authority to require that Gannett comply with the terms of the licensing agreement if it wishes to stream WIAA’s athletic events.

When a state actor engages in a commercial venture, it has discretion to make “reasonable choices” about that venture without triggering the full First Amendment protections that might otherwise be available in a public forum. *Lehman v. City of Shaker Heights*, 418 U.S. 298, 303 (1974). In this situation, a court will generally uphold any contractual provisions or practices that are not “arbitrary, capricious, or invidious.” *Id.* In general, a state actor exercising proprietary powers “shares the same freedoms as, and is subject to no greater limitations than, a private firm conducting the selfsame business.” *D’Amario v. Providence Civic Ctr. Auth.*, 639 F. Supp. 1538, 1544 (D.R.I. 1986) (upholding a ban on cameras at certain public concerts), *aff’d*, 815 F.2d 692 (1st Cir. 1987). Here, because the WIAA is operating in a proprietary capacity, it should be able to exercise the same discretion as a private association operating an athletic event and selecting its own broadcast options.

There can be little doubt that the WIAA is acting in its propriety capacity. Federal courts have consistently recognized that the awarding of private contracts by a state actor is a

proprietary, not governmental, function. Thus, in *American Yearbook Co. v. Askew*, 339 F. Supp. 719, 722 (M.D. Fla. 1972), *aff'd*, 409 U.S. 904 (1972), the court held that the state was operating in its proprietary capacity when it designated which printing companies could be awarded contracts for printing the state's high school yearbooks. Similarly, in *Foto USA, Inc. v. Board of Regents of the University System of Florida*, 141 F.3d 1032 (11th Cir. 1998), the court held that the state university could, in its proprietary capacity, allow exclusive commercial access to one graduation photographer.<sup>1</sup>

Courts have also specifically held that a state actor may, within its proprietary capacity, enter into an exclusive broadcast contract for events it operates or organizes. For example, in *Post Newsweek Stations-Connecticut, Inc. v. Travelers Insurance Co.*, 510 F. Supp. 81, 85 (D. Conn. 1981), the court found that the City of Hartford acted in its proprietary capacity, not its governmental capacity, when it awarded ABC the exclusive right to provide the television broadcast of the World Figure Skating Championships. Similarly, in *KTSP-Taft Television & Radio Co. v. Arizona State Lottery Commission*, 646 F. Supp. 300, 309 (D. Ariz. 1986), the state of Arizona acted in its proprietary capacity when it contracted with two television stations to provide the exclusive broadcast of the weekly lottery drawing.

Moreover, WIAA's purposes in licensing the right to stream its athletic competitions reflect proprietary, rather than governmental, concerns. First, through its exclusive contracts, WIAA generates the revenue needed to organize and operate its competitions. FOF 244. WIAA's broadcast partners pay for the exclusive broadcasting rights to state tournaments, and that revenue funds the WIAA's state tournaments, including those tournaments in sports without significant public attendance. FOF 244, 246. The WIAA does not transfer any of this revenue to

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<sup>1</sup> Thus, the more limited photographic exclusivity contained in WIAA's current media policies—that only its contractual partner may sell products containing tournament photographs—falls within the permissible activity for WIAA as a proprietary actor.

the general state funds or to any specific state agencies. FOF 245. Courts have pointed to this self-contained revenue generation as evidence of proprietary, rather than governmental, conduct for the purposes of First Amendment analysis. Thus, in *Gannett Satellite Information Network v. Metropolitan Transportation Authority*, 745 F.2d 767, 774 (2d Cir. 1984), the Second Circuit held that the state of New York's operation of railroad stations involved a proprietary, not governmental function, and therefore the state was "not acting in a traditional governmental capacity" when it imposed licensing fees for the placement of newsracks in public railroad stations. Central to the court's holding was the fact that the transit agency responsible for operation of the railroads was, like the WIAA, "self- sustaining," and that its revenues were used for its own operations, not contributed to the state's general coffers. *Id.* at 775.

Second, WIAA uses its ability to grant exclusive broadcasting rights to guarantee additional internet streaming of state tournaments that lack visibility and that might not, on their own, be of sufficient commercial interest to potential broadcasters. For example, WIAA's contract with WWWY provides that WWWY must produce and distribute events from all 25 state tournaments by live or delayed streaming. FOF 140, 247-249. Courts have recognized that guaranteeing expanded broadcast of events that an entity has organized forms a legitimate commercial interest. Thus, in *KTSP-Taft Television*, the court recognized the government's commercial interest in guaranteeing weekly lottery broadcasts, even when the stakes were too low to generate independent interest from broadcasters. 646 F. Supp. at 310. WIAA's comparable interests reinforce the conclusion that it acted in its proprietary capacity when entering into its broadcast contracts.

When a state actor is functioning in a proprietary capacity, as the WIAA is here, "contractual restrictions are constitutional if they are not arbitrary or capricious." *Post*

*Newsweek*, 510 F. Supp. at 86; *see also KPST-TAFT Television*, 646 F. Supp. at 309 (“Where commercial activity is the state action at issue, conscious limitations on access are permissible where the limitations are consistent with the activity and are not arbitrary in their implementation.”); *American Yearbook*, 33 F. Supp. at 721 (“Where the state exercises its proprietary or business power, however, it is subject to no more limitation than a private individual or corporation would be in transacting the same business.”); *D’Amario*, 639 F. Supp. at 1544 (in general, state actor exercising propriety powers “shares the same freedoms as, and is subject to no greater limitations than, a private firm conducting the selfsame business”).

In determining whether the proprietary state actions at issue are arbitrary and capricious, courts weigh “the nature of the forum and the conflicting interests involved.” *Post Newsweek*, 510 F. Supp. at 86. As the court explained in *Post Newsweek*, athletic events are “on the periphery of protected speech (for the purposes of a balancing of conflicting interests) as opposed, for example, to political speech, which is at the core of first amendment protection.” *Id.* Thus the expressive activity in question here, live streaming of an athletic competition, does not trigger the same degree of First Amendment protections as classic First Amendment activity like political expression. Furthermore, the WIAA in no way limits the ability of Defendants to report on state tournament events. Reporters may describe the tournament events in print, via television or radio broadcasts, through internet stories, or other means. FOF 259-262, 264. In support of any report, they may use photographs or two minutes of live footage. FOF 47, 50. They simply may not carry broadcasts of the games over the internet via live streaming or its equivalent. FOF 45. Thus, the specific First Amendment rights at issue are limited to this particular means of conveying information. As the court stated in *D’Amario* with respect to limitations on photography,

The press remains quintessentially “free”: to observe, to comment, to portray. The flow of ideas and information, the stream of meaningful communication, is not materially dammed. All that is denied is the use of photographic gear inside the arena. And, the incremental value of setting that denial aside, viewed as a matter of facilitating the public’s right to know, is puny.

639 F. Supp. at 1544. So too, here, the press remains free to observe, to comment, and to portray the events in question through a wide range of media.

At the same time, courts have recognized that when a state actor is functioning in its proprietary capacity, the commercial component of the conduct weighs heavily in the analysis of whether that conduct is reasonable (i.e., not arbitrary and capricious). Thus, as the Eleventh Circuit explained in *Atlanta Journal Constitution v. Atlanta Department of Aviation*, 322 F.3d 1298, 1309 (11th Cir. 2003), when a state entity “acts as a proprietor, reasonable regulations may include profit conscious fees for access for expressive conduct, in a manner similar to fees that would [be] charged if the forum was owned by a private party (i.e., a fee for a[n] auditorium for a dance recital, or a fee for displaying advertisements in a newspaper).” Likewise, in *KTSP-Taft Television*, the court determined that the state’s right to preclude other stations from carrying the broadcast of the state lottery drawing was justified by the state’s interest in raising revenue and ensuring adequate publicity for the lottery. 646 F. Supp. at 309-10 (“When a state agency is engaged in a permitted commercial activity, raising of revenue becomes a significant governmental interest entitled to deference.”); *see also Gannett* 745 F. 2d at 775 (“licensing fees are permissible manner restrictions which serve the significant governmental interest of raising revenue”).

A number of state courts have applied these principles to the broadcasts of high school football games and reached the same conclusion. For example, an Oklahoma school district sought to impose a fee on broadcasters who wished to carry high school games live, and a local

radio network objected on First and Fourteenth Amendment grounds. *Okla. Sports Props. v. Indep. Sch. Dist. #11 of Tulsa County*, 957 P.2d 137, 139 (Okla. Ct. App. 1998). Citing *KTSP* and *Post Newsweek*, the court concluded that the school district acted in its proprietary capacity and upheld the fee. *Id.* A different court reached the same result in an earlier Texas case. *Sw. Broad. Co. v. Oil Ctr. Broad. Co.*, 210 S.W.2d 230 (Tex. Ct. App. 1947). There, the school district signed an exclusive contract with one radio station, and another radio station sued. The court observed that “[w]ere these football games conducted by private individuals or corporations, there could be no question of the legality of the contract” and concluded that the school district should have “the same freedom of action” as a private party putting on the games. *Id.* at 233. The court specifically found that a temporary injunction against the plaintiff’s live play-by-play broadcast passed First Amendment muster. *Id.* at 234; *see also Colo. High Sch. Activities Ass’n v. Uncompahgre Broad. Co.*, 300 P.2d 968, 970 (Colo. 1956) (upholding a broadcast fee after finding “no reason why a school district, even though supported by public tax funds, should not charge reasonable fees to broadcast any or all of its athletic events”).

Thus, the WIAA’s goals of funding its athletic competitions and expanding coverage of less visible sports by contracting for exclusive internet streaming rights serve legitimate governmental interests and outweigh the Defendants’ marginal First Amendment interest in live streaming the athletic events produced and funded by the WIAA.

## **2. The WIAA’s Internet Transmission Policies Are Permissible Under the Court’s Public Forum Rubric**

Regardless of whether the WIAA is acting in its proprietary capacity in controlling the internet transmission of its sponsored events, the WIAA policies survive Gannett’s First Amendment challenge because they are permissible restrictions under the First Amendment in light of the nature of the conduct and the forum at issue. Courts have routinely held that sporting

events such as WIAA tournament games are non-expressive, conduct-based activities and that sporting facilities are nonpublic fora. The WIAA is therefore permitted to institute reasonable and viewpoint-neutral restrictions such as the policies at issue here. But even were the Court to determine the WIAA had created a public forum, as Gannett has asserted, the WIAA’s policies would survive the appropriate constitutional test because they are reasonable time, place, and manner restrictions.

**a. Courts have recognized three types of public fora, warranting differing levels of scrutiny**

The “First Amendment does not guarantee access to property simply because it is owned or controlled by the government.”” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983) (quoting *U.S. Postal Serv. v. Council of Greenburgh Civil Ass’ns*, 453 U.S. 114, 129 (1981)). “[T]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.”” *Id.* (quoting *U.S. Postal Serv.*, 453 U.S. at 129-30).

Under the prevailing forum-based constitutional framework, the degree to which an organization such as the WIAA can exercise this control through the regulation of protected speech varies depending on the nature of the “forum” in which it places the regulation. *See id.* at 44-45. The Supreme Court has recognized at least three basic categories of fora, each bearing varying degrees of scrutiny. *Id.* at 44-46. First are “traditional” or quintessential public fora, meaning those places traditionally “held in trust” for the use of the public for expressive activities, for example streets, sidewalks, and parks. *Perry Educ. Ass’n*, 460 U.S. at 45-46. Second, the Court has recognized the “designated” public forum, which consists of property that the state has opened to the public for a wide variety of expressive activity. *Id.*; *see also Hone v. Cortland City Sch. Dist.*, 985 F. Supp. 262, 270-271 (N.D.N.Y. 1997). Finally, the Court has

recognized “nonpublic” fora, which is public property that “is not by tradition or designation a forum for public communication.” *Perry Educ. Ass’n*, 460 U.S. at 46.

In both traditional and designated fora, the government may place content-neutral time, place, and manner restrictions, i.e., restrictions that are narrowly tailored to serve a significant government interest and leave open sufficient alternative channels for communication of the information at issue. *See Hotel Employees & Rest. Employees Union, Local 100 v. City of N.Y. Dep’t of Parks & Recreation*, 311 F.3d 534, 545 (2d Cir. 2002) (citing *Perry Educ. Ass’n*, 460 U.S. at 45); *Child Evangelism Fellowship of Md., Inc. v. Montgomery County Pub. Schs.*, 457 F.3d 376 (4th Cir. 2006). In a nonpublic forum, however, the “government may restrict speech . . . subject only to the requirements of reasonableness and viewpoint neutrality.” *Hotel Employees*, 311 F.3d at 546.

In addition to the three basic categories of fora noted above, courts have distinguished a fourth, hybrid category—the “limited” public forum. *See Child Evangelism*, 457 F.3d at 382 (citing *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001)); *see also Perry Educ. Ass’n*, 460 U.S. at 46 n.7. Unlike a traditional or designated fora, in a “limited” forum, “the government creates a channel for a specific or limited type of expression where one did not previously exist.” *Child Evangelism*, 457 F.3d at 382. In such fora, the state may “reserv[e] [its] forum] for certain groups or for the discussion of certain topics,” provided that its actions are viewpoint neutral and “reasonable in light of the purpose served by the forum.” *Good News Club*, 533 U.S. at 106-07 (quoting *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *Cornelius v. NAACP Legal Def. & Educ. Fund.*, 473 U.S. 788, 806 (1985)) (internal quotations omitted). In a limited forum, the state may exclude speech that does not fall within limitations placed on the forum in the first instance, meaning, for example, it may exclude

political rallies from a forum designated for artistic performances. *Hotel Employees*, 311 F.3d at 545-46; *Hone*, 985 F. Supp. at 271. Expression that falls within the category for which the forum was opened, however, is treated in the same manner as speech in a traditional or designated forum, and the state actor may impose only content-neutral and reasonable time, place, manner restrictions. *Hotel Employees*, 311 F.3d at 545.

“The primary factor in determining whether property is owned or controlled by the government is a public forum is how the locale is used,” *Id.* at 547 (internal quotation omitted), in particular whether the government “has allowed indiscriminate use of the forum for the open expression of ideas on a variety of subjects.” 1 Rodney A. Smolla, *Smolla & Nimmer on Freedom of Speech* § 8.10 (2009 ed.). Equally important, however, is the intent of the state actor in creating the “forum”; for the government to create a “public forum,” it must intend to open the forum for a variety of expressive activities. *Id.* § 8:14-15; *see also Hotel Employees*, 311 F.3d at 540 (noting that the city did not intend to use Lincoln Center’s Plaza as a public forum). “Public forum status is not appropriate for a locale where the full exercise of First Amendment rights would be inconsistent with the special interests of a government in overseeing the use of its property.” *Int’l Soc’y for Krishna Consciousness, Inc. v. N.J. Sports & Exposition Auth.*, 691 F.2d 155, 160-61 (3d Cir. 1982).

**b. WIAA tournament games are not public fora.**

The burden rests with Gannett to demonstrate the WIAA-sponsored sporting events are public fora. *See Hotel Employees*, 311 F.3d at 548 (noting that First Amendment plaintiff had not “established” that the challenged forum was a public park). Here, applying the above-noted forum analysis, Gannett cannot meet this burden.

The WIAA-sponsored events in question are state tournament games in all WIAA-recognized sports. Sporting activities are “conduct-oriented activity” and “not entitled to the

same First Amendment protection which other more ‘communicative’ forms of entertainment have been afforded, such as jazz concerts and nude dancing.” *Top Rank, Inc. v. Fla. State Boxing Comm’n*, 837 So. 2d 496, 501 (Fla. Ct. App. 2003) (citing *Sunset Amusement Co. v. Bd. of Police Comm’rs*, 7 Cal. 3d 64, 74, 496 P.2d 840, 845-46 (1972) (no First Amendment right to roller skate); *see also Murdock v. City of Jacksonville*, 361 F. Supp. 1083, 1096 (M.D. Fla. 1973) (“The promotion of wrestling matches in this case is not a symbolic act, nor is the wrestling match itself a symbolic act, protected by the First Amendment. Wrestling is just not ‘free speech,’ ‘akin to free speech,’ nor a “symbolic act.””); *Justice v. NCAA*, 577 F. Supp. 356, 374 (D. Ariz. 1983) (“[i]n its most basic form, athletic competition does not constitute pure speech; rather, participation in athletic competition constitutes physical activity”). Sporting events “do not convey any message, symbolic or otherwise,” but instead are mere entertainment. *Top Rank, Inc.*, 837 So. 2d at 502, 501. While entertainment (and the reporting of such entertainment) is afforded some First Amendment protection, the “exposition of an athletic exercise” is at best only “on the periphery of protected speech.” *Post Newsweek*, 510 F. Supp. at 86 (figure skating is “entertainment” and not entitled to First Amendment protection akin to political speech).

Accordingly, given its non-communicative nature, when applying the forum analysis in the context of sporting events, numerous courts have concluded that a sporting arena or stadium is simply not a public forum. *See, e.g., N.J. Sports*, 691 F.2d at 161 (New Jersey’s Meadowlands sporting complex was a non-forum); *Hubbard Broad., Inc. v. Metro. Sports Facilities Comm’n*, 797 F.2d 552, 555 (8th Cir. 1986) (“The Metrodome is not a place of public assembly intended for the communication of ideas or for the exchange of different points of view. Rather, it is a commercial venture by the city constructed to meet the need for a major sports facility in the Twin Cities area and, at the same time, to provide economic benefits to the area.”); *HippoPress*,

*LLC v. SMG*, 150 N.H. 304, 313-314, 837 A.2d 347, 356-57 (2003) (public sporting and entertainment facility not a public forum); *Hone*, 985 F. Supp. at 271 (public high school sporting program did not create a public forum); *Calash v. City of Bridgeport*, 788 F.2d 80 (2d Cir. 1986) (municipal stadium a nonforum). As exemplified by the Third Circuit in analyzing First Amendment claims related to the Meadowlands complex, facilities used for sporting events do not “fit any of the accepted descriptions of a public forum. The race track and the stadium are not traditional sites like streets and parks which are stamped with a kind of First-Amendment easement. Nor does the complex resemble theatres and auditoriums which are created for the primary purpose of public communication . . . and . . . as a place for the exchange of views . . . .” *N.J. Sports*, 691 F.2d at 161 (internal citation and quotation omitted).

Like the Meadowlands complex in *N.J. Sports*, the facilities and venues that WIAA leases for its tournaments are designed and used for sporting events. They are not traditional sites like streets and parks and are not created for any purpose other than sports expositions.

The WIAA hosts and administers 25 State Championship Tournaments, which includes both boys and girls sports, and individual and team competition. FOF 64. The WIAA leases the facilities or venues for the WIAA-hosted State Tournaments through long-term contracts of three to five years (except the WIAA does not have leases with the venues for cross country or gymnastics). FOF 65. When the WIAA uses the venues, it uses them solely for its athletic competitions. FOF 66. The WIAA has use of the facilities or venues for the duration of the athletic competition as specified in the leases, and does not otherwise have any control over or obligation regarding the management and operation of these facilities or venues when not used by the WIAA for its athletic events. FOF 67.

The State Tournaments are held in sixteen different athletic facilities throughout the State of Wisconsin. FOF 68. The WIAA tries to find the best facility available to showcase the athletic event, provided the facility is available and affordable, and that it offers good value for the WIAA's money. FOF 69. The WIAA holds tournaments at both public and private venues.

As for private venues, baseball tournaments are held at Fox Cities Stadium in Appleton, which is a privately owned minor league baseball park; the boys' volleyball tournament is held at Wisconsin Lutheran College in Milwaukee, a privately owned college; and the cross country tournament is held at the Ridges Golf Course in Wisconsin Rapids, a privately owned golf course. FOF 71.

As for public venues, most of the venues were specifically designed for the particular type of athletic competition held there: the boys and girls golf tournaments are held at University Ridge golf course in Madison, a venue solely designed for golf; the football tournaments are held at Camp Randall stadium in Madison, a facility used for football games; boys and girls soccer tournaments are held at Uihlein Soccer Park in Milwaukee, which was designed specifically for soccer games; swimming and diving tournaments are held at the UW Natatorium in Madison, a facility with pools and a diving well; girls and boys tennis tournaments are held at the Nielsen Tennis Stadium in Madison, a facility containing indoor and outdoor tennis courts and squash courts; and softball tournaments are held at the Goodman Diamond in Madison, which is a facility designed and used for softball games. FOF 70. Other WIAA tournaments are also held at the Lincoln Field House in Wisconsin Rapids (which is not leased), the UW Field House in Madison, the Memorial Stadium in LaCrosse, the Resch Center in Green Bay, the Kohl Center in Madison, and the Alliant Energy Center in Madison, all of which are venues used for different athletic events. FOF 72.

These sports arenas are not public fora because they are not places of public assembly intended for the communication of ideas or for the exchange of different points of view. Rather, the venues are designed and used for sports events. The WIAA uses the leased venues consistently with their intended use and only for the limited duration of the specific WIAA athletic tournament being held at that location. FOF 66-67.

The public may enter WIAA events upon payment of an admission. FOF 73-76. Mere public access to an event, however, does not create a public forum. *See N.J. Sports*, 691 F.2d at 159 (“[A] place owned or operated by the government does not become a public forum simply because members of the public are freely permitted to visit it.”). Rather, the government must make the decision to create a public forum by intentionally opening a nontraditional forum for public discourse. Even when the government grants public access to an event, such access does not necessarily include the right to videotape such events. *See, e.g., Rice v. Kempker*, 374 F.3d 675 (8th Cir. 2004) (“[C]ourts have universally found that restrictions on videotaping and cameras do not implicate the First Amendment guarantee of public access.”); *Whiteland Woods, L.P. v. Township of W. Whiteland*, 193 F.3d 177, 183 (3d Cir. 1999) (finding no “essential nexus between the right of access and a right to videotape”). Nor does the press have a constitutional right of “special access” to sporting events. *See Post Newsweek*, 510 F. Supp. at 84 (collecting cases). As members of the public, reporters are always free to attend WIAA events on the same terms as the public regardless of their affiliate or credential status. Gannett admits that it is “not aware of any instance in which WIAA has denied Defendants or other members of the news media entry to a WIAA-Sponsored Event.” FOF 77-78.

By allowing the public and the media entry to the game, the WIAA has not, nor did it intend to, open sporting events for a wide variety of expressive conduct. In fact, allowing a wide

array of expression would be incompatible with the purpose of the event —the game. As such, each WIAA event occurs in a nonforum, and the WIAA may impose any viewpoint neutral and reasonable limitation. *Hotel Employees*, 311 F.3d at 546. The WIAA’s internet transmission policy undoubtedly survives such a challenge.

First, Gannett cannot reasonably contend that the WIAA’s limitation on whole-sale transmission of its events is anything but viewpoint neutral; WIAA has made no effort to suppress a particular viewpoint. Rather, the media is free to express whatever view it likes of WIAA events. The prohibition at issue relates to the internet transmission of WIAA events absent a license.

Second, and as explained more fully below, the restriction is reasonable. It is narrow in scope and relates solely to the carrying of the event itself rather than to public or media access. Indeed, the media is free to use all the traditional channels of communication to report on the game. FOF 47, 50, 257-260, 262-265, 267. Moreover, WIAA’s policies are wholly consistent with WIAA’s reasonable interests in operating a financially viable sporting program, generating much needed revenue, promoting the broadcast of less visible sports, and reducing the inappropriate commercial use of images of WIAA events and athletes. FOF 243-255, 276-289.

**c. Even assuming WIAA events are public fora, the WIAA may limit expressive activity to the “reporting” of tournament events**

Even assuming, *arguendo*, that the WIAA has created a type of limited public forum, the WIAA’s policies remain constitutional because the WIAA can limit speech within that forum to particular types of expression. Gannett does not argue, as it could not, that WIAA events are a traditional public forum such as a park. Rather Gannett claims that WIAA events are “designated or limited public forums for the purpose of reporting” on WIAA events. FOF 290. WIAA rejects this characterization. However, even assuming some kind of public forum has

been created, it could not be a “designated” public forum, as it has not been intentionally opened to the public for a wide range of expressive activity. *Perry Educ. Ass’n*, 460 U.S. at 45-46. At most, WIAA has created a limited public forum—a “channel for a specific or limited type of expression where one did not previously exist.” *Child Evangelism*, 457 F.3d at 382. The limited form of expression the WIAA has allowed in this forum, by Gannett’s own admission, is reporting, and the WIAA may reserve the forum solely for this purpose.

Thus, to find for Gannett, the Court would need to hold that the act of transmitting the actual sporting event over the internet, whether through live streaming or simultaneous play-by-play depiction that forms the equivalent to a live broadcast—constitutes “reporting.” It is not. As explained by WIAA’s expert, Wisconsin Broadcasting Hall of Fame member and UW professor emeritus James L. Hoyt, Ph.D., there is a widely recognized distinction between *covering* a game, which virtually any news organization can do, and *carrying* a complete broadcast or stream of a game, which is limited to the appropriate rights holder. FOF 257. What the WIAA has restricted, and what Gannett challenges, is who can *carry* a broadcast of the game, not who can *cover*, i.e., report on, a game.

The WIAA has provided space and technology to make reporting on WIAA games more convenient for credentialed media. FOF 49, 258. The WIAA has also issued policies related to media conduct and credentialing. FOF 35, 258. In fact, under WIAA policies, newspapers have virtually complete access to the athletic events in order to perform their expected journalistic functions, i.e., to fully describe, explain, and analyze newsworthy events. FOF 259.<sup>2</sup> Gannett

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<sup>2</sup> Reporters at WIAA can report on the games, photograph the events, and have interview access to coaches and athletes. FOF 50, 261-262. They may report the details and outcomes of the games, including sidebars, statistics, and other relevant information. FOF 26. Furthermore, reporters may use up to two minutes of highlights or other action for reporting purposes, and may exceed two minutes with the WIAA’s approval. FOF 47-48, 267. They may report from

admits that the WIAA has not denied “Defendants or other members of the media entry to designated media facilities of WIAA-Sponsored Events, or media credentials.” FOF 78. The Constitution does not require the WIAA to allow more, and WIAA is thus free to restrict the transmission of a WIAA event as it would in a nonforum.

Similarly, the minor restrictions on photography do not interfere with reporting. WIAA’s media policies permit all credentialed media personnel to enter and photograph each tournament event as well as to use photographs in any reporting. FOF 224-226, 262. WIAA’s exclusive contract with VIP, which limits the post-event sale of other commercial items containing tournament photographs, has no impact on reporting. FOF 224-226.

**d. The WIAA’s internet transmission policies are constitutionally permissible and constitute reasonable “time, place, and manner” restrictions**

Finally, regardless of the type of forum created (traditional, designated, limited, nonforum), and the type of expression permitted in that forum, the WIAA may “impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” *Ward v. Rock against Racism*, 491 U.S. 781, 791 (1989) (internal quotation omitted). As explained below, the WIAA’s policy on internet transmission easily passes this test.

**(i) The internet transmission policy is content-neutral**

A policy is content-neutral if it is “justified without reference to the content of the regulated speech.” *Clark v. Cnty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984). “The

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tournament venues using live game action as a backdrop for the report so long as there is no play-by-play commentary. FOF 47, 267. These policies apply to all commercial television stations and websites using video for newscast or webcast purposes. FOF 275.

principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Ward*, 491 U.S. at 791. “A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Id.*

The WIAA’s policy is without reference to the content of protected speech. Put simply, reporters are restricted from transmitting the tournament game action without a license. FOF 43-45, 48, 229, 231-232, 266, 268-269. Everyone is held to the same standard regardless of the message the speaker seeks to convey. Indeed, as the policy relates solely to the transmission of a sporting event, which is itself non-expressive and unprotected conduct, it is not a restriction on protected speech at all, let alone one based on the disagreement with a message conveyed. *See supra* pp. 18-19 (collecting cases analyzing the unprotected character of sporting activities).

Moreover, the policy has purposes unrelated to the content of the speech. As explained more fully below, exclusive rights agreements assist the WIAA to promote individual student athletes and programs, to provide public access to sports and events with a smaller public following, and to control the association of school sports with inappropriate goods and services (e.g., gambling, alcohol, tobacco, and adult entertainment). FOF 243-254. More fundamentally, however, entering into exclusive rights agreements increases revenue for the WIAA, thereby allowing it to organize and operate the post-season tournaments in which member schools’ athletes compete. FOF 244, 277, 283-284.

**(ii) The internet transmission policy is narrowly tailored to serve a significant government interest**

A narrowly tailored time, place, or manner restriction on speech is one that does not “burden substantially more speech than is necessary” to achieve a substantial government interest. *Ward*, 491 U.S. at 799. Here, the challenged policy relates solely to transmission of the

games themselves—to the manner of communication. The media is free to engage in a host of activities that constitute reporting on games. FOF 47, 50, 225-226, 257-270.

This narrow restriction is wholly consistent with legitimate interests of the WIAA, including the interest in raising revenue to support the organization. FOF 244, 246-255, 276-277; *see also Post Newsweek*, 510 F. Supp. at 86 (noting the government's interest in protecting the commercial value of a sporting event by limiting the broadcast coverage). According to Dr. Hoyt, WWWY's interest in exclusivity, and the WIAA's interest in limiting internet transmissions of its games, is comparable to a newspaper's or wire service's need to protect its product from unapproved use on other websites or publications, or, more directly on point, much like Major League Baseball's interest in prohibiting unauthorized use of the broadcast of its game without the advance written consent of Major League Baseball, which has itself entered into rights agreements related to that content. FOF 276. It is standard practice in sports organizations, both professional and educational, to grant exclusive rights to particular media organizations to increase the value of the rights, and thus revenue to the organization. FOF 277. Indeed the protection of broadcast rights and awarding them on an exclusive basis is clearly a major financial underpinning of college sports. FOF 278.

For example, in 1988 when the University of Wisconsin switched from a non-exclusive radio agreement, the University estimated its radio broadcast revenue would triple. FOF 279. In fact, the University's radio broadcast revenue has increased from just under \$100,000 annually in 1988 under a non-exclusive rights policy to \$75,000,000 over a twelve-year period under its exclusive agreement with Learfield Communications. FOF 280. In October of 2009, this agreement was amended to include internet streaming of UW games. FOF 281. This

increase in revenue is consistent with the experiences of other educational institutions—indeed, Learfield alone has rights agreements with over fifty universities and conferences. FOF 282.

The exclusive licenses used in college sports are comparable to those of the WIAA in that they provide much needed funding. FOF 283. The WIAA generates 86% of its annual revenues from its tournament events, a portion of which is derived from exclusive rights agreements such as its agreement with WWWY. FOF 53, 243-244. The value of these rights rests primarily in exclusivity, as stations and networks are willing to make investments in their coverage in order to enhance the value of their exclusive rights payments. FOF 284 . Without exclusive contracts, this revenue stream would all but disappear. FOF 285.<sup>3</sup>

Moreover, this funding is critical for otherwise under-funded sports that could not produce revenue on their own. This revenue generates participation opportunities for student athletes that otherwise would likely not exist. FOF 287. The vast majority of the WIAA tournament revenue is derived from basketball and football. FOF 58. In fact, in 2008 the WIAA generated positive net revenues in only basketball, football, wrestling, volleyball, hockey, and soccer. FOF 59. All remaining sports, which include baseball, track, swimming, tennis, gymnastics, cross country, softball, and golf, *operate at a loss* and must be subsidized by the revenue from the WIAA tournament events that gather more public interest. FOF 60. The WIAA thus depends on its rights agreements to fund otherwise under-funded sports tournaments for less visible sports.

Moreover, the WWWY exclusive license agreement guarantees expanded exposure for less visible sports. FOF 287. Under the WWWY contract, events not previously carried are

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<sup>3</sup> The Arizona Interscholastic Association, Inc. (“AIA”) has filed a motion for leave to file an amicus brief in support of the WIAA’s position. AIA’s brief and associated declaration stress the importance of exclusive broadcast rights in obtaining revenue and other significant benefits from contracts with its broadcast partners. Dkt. Nos. 27, 27-1 & 28.

made available over the internet to anyone with a computer and internet access on wiaa.tv, a web portal that allows access to WIAA events. FOF 193, 205-206. Whereas in 2004-05 no WIAA events were offered on the internet, in 2008-09 the WIAA web portal transmitted 82 live WIAA events on wiaa.tv and offered 175 events on archived stream and DVD, of which 134 were produced under the WWWY contract with the WIAA. FOF 205-206. The contract has thus enhanced public access to WIAA events and helps fulfill one of the WIAA's stated objectives, to promote "opportunities for member schools participation." FOF 18-19, 246-252.

Were the contract on a non-exclusive basis, it is unlikely these sports would be made available to the non-attending public. FOF 290. Indeed, without the economic protection provided by exclusivity, it is unlikely a rights holder would invest in and commit to the equipment and facilities necessary to produce this number of tournament events, in particular for those sports which do not normally command significant public attention. FOF 291. Other than WWWY, the media (including Defendants) have not expressed an interest in carrying a full range of the WIAA Tournament events. FOF 96, 116, 288-289. Instead, media organizations have focused on popular sports such as football, which is already available to the public via an exclusive agreement with Fox Sports. FOF 79, 116, 286-289.

WWWY must make substantial economic investment in order to produce the full range of WIAA sporting events covered by the Agreement with the WIAA. FOF 120-125, 129, 242. WWWY itself has invested millions of dollars in the required infrastructure to produce and stream WIAA events. WWWY does not receive direct revenue from internet streaming on wiaa.tv (for which there is no advertising revenue), but through distribution and advertising for television content. FOF 125, 207-208, 256. Absent the exclusive rights agreement, WWWY would not profit from the production of WIAA events, and the majority of WIAA events would

be unavailable. FOF 243-256, 284-288; *see also* *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 576 , 574-75 (1977), (“Much of the economic value lies in the right of exclusive control over the publicity given to his performance.”) (internal quotation and citation omitted).

Finally, as a part of the exclusive rights agreement, WWWY provides a variety of services to the WIAA. FOF 122, 167-182, 186-195, 207-208, 249. These services include, without limitation, audio-visual support for tournament events, such as scoreboard graphics, hosting and management of wiaa.tv, live streaming on wiaa.tv, and services related to WIAA meetings. FOF 167-182, 192-195. WWWY estimates that the cost of fulfilling its contractual commitments to the WIAA amounts to \$508,806 annually. FOF 242. WWWY does not charge WIAA for these services but provides them at no cost in exchange for the right to produce and distribute WIAA tournament events. FOF 121, 128, 207-208, 249. WWWY also pays distribution contract revenues to the WIAA, which generate \$60,000 in revenue for the WIAA annually. FOF 129. In addition, WWWY and WIAA have entered into a separate sponsorship agreement which generated an additional \$80,000 in revenue for WIAA in 2008. FOF 130. Accordingly, the actual value of the WWWY agreement to the WIAA far exceeds the revenue received from WWWY’s rights distribution payments.

**(iii) Ample alternative means of communication remain available for reporting on tournament events**

WIAA’s policies leave more than sufficient alternative means of communicating information to the public regarding these tournament events. As courts have previously noted, a policy limiting the medium of “reporting” by restricting certain means of covering a sporting event does not impermissibly restrict the media from reporting on that event: “The general public has ready access to the event, the event will be reported by newspaper and radio media without any time or manner restriction, and the [media organizations] may attend and report on

the championships . . . ." *Post Newsweek*, 510 F. Supp. at 86; *see also D'Amario*, 639 F. Supp. at 1543-45 (upholding a restriction on taking photographs). "The flow of ideas and information, the stream of meaningful communication, is not materially dammed." *D'Amario*, 639 F. Supp. at 1544.

Policies such as that of the WIAA, do not hinder media outlets from reporting on games, and reporters for print, broadcast, and internet media are free to report on games without significant restrictions on their coverage. FOF 262. Indeed, despite Gannett's assertions to the contrary, their "access" to the event is in no way limited; Gannett has no evidence that any reporter has been denied entry, access to the designated media area, or credentials for any WIAA event. FOF 77-78. Any media organization is free to attend and report on the games and provide the public with any information regarding that event it deems important.

Under the WIAA's policies, newspapers are able to report on the details and outcomes of the games, whether in their regular print editions or on their websites. FOF 261. Newspapers can rely on photographs of the events and have interview access to coaches and athletes. FOF 262. In addition to these traditional methods of reporting on events, newspapers may carry live audio streams of tournament games by paying an additional rights fee of \$40-50 to WIAA. FOF 266. Newspapers can also use up to two minutes of highlights or other action for reporting purposes (and may exceed two minutes with the WIAA's approval), and may report live from tournament venues using live game action as a backdrop for the report so long as there is no play-by-play commentary. FOF 267.

Under the WIAA's policies, newspapers are not even foreclosed from internet streaming of games. FOF 268. They may transmit games by simply paying the required fee to WWWY. FOF 269. As a result of these policies, newspapers have virtually complete access to the athletic

events in order to perform their expected journalistic functions, i.e., to fully describe, explain, and analyze newsworthy events. FOF 259. The access they are provided “permits the thorough coverage which the newspaper audience expects.” FOF 270.

In fact, the WIAA’s restrictions are typical of those placed on the reporting of sporting events. FOF 271. Reporters are generally permitted to film game action, record relevant statistics and other game information via audio recording, and old-fashioned “pen to paper” in publishing and producing stories. FOF 266. Reporters typically interview coaches and athletes following games to complete game stories and sidebars. FOF 265. It is common practice for reporters covering athletic events, however, to be restricted to specific locations and to have limitations placed on the equipment they can use, for example, on the ability to originate a radio broadcast. FOF 265. Indeed, such policies are necessary given the limited availability of space and the need to control the conduct of the game. FOF 56.

It is not, however, typical for a reporter to transmit the entirety of a sporting event over the internet in the name of “reporting.” FOF 273. Indeed, broadcasters and reporters generally know and respect any exclusive rights agreements that are in place for that event. FOF 274.

Thus, in the end, WIAA’s policies seek to generate revenue from transmission rights but simultaneously to accommodate the media by providing all of the traditional tools of reporting. This is precisely the balance envisioned in First Amendment jurisprudence, whereby restrictions to protected speech are permitted when they are content-neutral, narrowly tailored to serve a substantial government interest, and leave open alternative channels of communication. Numerous courts have held that restrictions on the videotaping of public events fall squarely within the four corners of reasonable and content-neutral time, place, and manner restrictions on speech. *See Rice*, 374 F.3d at 680-81; *United States v. Kerley*, 753 F.2d 617, 620-21 (7th Cir.

1985) (noting that because videotaping restrictions “regulate only the time, place, and manner of news-gathering activities, we must uphold them if they are neutral and reasonable”); *Whiteland Woods, L.P. v. Township of W. Whiteland*, 193 F.3d 177 (3d Cir. 1999) (holding that there is no First Amendment right to videotape town meetings). Accordingly, because the WIAA’s policies do not violate Gannett’s free speech rights, summary judgment should be granted to WIAA on Gannett’s First Amendment counterclaim.

### **B. The Fourteenth Amendment Does Not Prohibit Exclusive Rights Contracts**

In its second count, Gannett asserts that the WIAA “deprive[s] Newspapers of their Fourteenth Amendment right to equal protection.” Dkt. No. 2 ¶ 60. This argument merely reiterates Gannett’s flawed First Amendment claims and fares no better when clothed in Fourteenth Amendment garb. As explained above, Gannett does not have a First Amendment right to transmit WIAA-sponsored events. The grant of this exclusive right to WWWY, therefore, cannot burden a fundamental right of Gannett.

#### **1. WIAA’s Grant of an Exclusive License to WWWY Rationally Furthers a Legitimate State Purpose**

Faced with a Fourteenth Amendment equal protection challenge, courts apply different levels of scrutiny depending on the target of the discriminatory policy. When the alleged unequal treatment involves a suspect class or burdens a fundamental right, courts apply strict scrutiny, forcing the public actor to show that the policies are narrowly tailored to achieve a significant governmental interest using less drastic means. *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973). When however, no fundamental right is burdened and no suspect class is involved, strict scrutiny does not apply, and the accused government entity need only show only that the policy at issue rationally furthers a legitimate state purpose. *Minn. State Bd. for Cnty. College v. Knight*, 465 U.S. 271, 291 (1984).

When the Fourteenth Amendment claim stems from an alleged First Amendment violation, but there has been no violation under the First Amendment analysis of the same policy, courts assume no fundamental right is burdened under Fourteenth Amendment analysis. For example in *Perry Educ. Ass'n*, 460 U.S. at 54, the Supreme Court rejected a First Amendment Claim brought by a rival union seeking access to teachers' mailboxes. Turning to the related Fourteenth Amendment claim, the Court explained that, because the plaintiff union "did not have a First Amendment or other right of access to the interschool mail system," the grant of access to the defendant union "does not burden a fundamental right" and "need not be tested by the strict scrutiny applied when government action impinges upon a fundamental right protected by the Constitution." *See also Minn. State Bd.*, 465 U.S. at 291 (rejecting a First Amendment challenge and concluding, "[t]here being no other reason to invoke heightened scrutiny, the challenged state action 'need only rationally further a legitimate state purpose' to be valid under the Equal Protection Clause.") (citing *Perry Educ. Ass'n*). Furthermore, classifications subject to rational basis review are entitled to a "strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993).

Because no fundamental right is burdened, WIAA need only show that the challenged policies rationally further a legitimate purpose. In fact, the WIAA's exclusive rights agreement directly furthers several legitimate purposes. As detailed above, WIAA's agreement provides much needed funding for the WIAA, as well as a host of other benefits that would otherwise generate significant expenses. FOF 244-246, 249. Cf. *Bervid v. Alvarez*, 647 F. Supp. 2d 1006, 1013 (N.D. Ill. 2009) (holding that state governments have a legitimate interest under the Fourteenth Amendment in conserving fiscal resources). The revenue generated also funds otherwise under-funded and under-exposed tournament events, such as cross country and

gymnastics. FOF 246. In addition, the exclusive rights agreement creates opportunities for participation for Wisconsin student athletes that otherwise would not exist, and provides expanded exposure for less visible sports. FOF 247-248, 254. Similarly, the limitation on commercial sale of products containing photographs furthers the legitimate purpose of preventing the misuse of student athlete images. FOF 220. Accordingly, the exclusive rights arrangements, including the ban on live video streaming and the equivalent play-by-play blogging depiction of live events, survives any Fourteenth Amendment challenge.

## **2. The WIAA Enjoys Broad Discretion to Contract with Whom it Chooses**

Courts have consistently recognized the freedom of public entities to contract with whomever they choose, so long as the granting of a contract does not reflect a corrupt or invidious design. Like private individuals and businesses, a state actor “enjoys a broad freedom to deal with whom it chooses on such terms as it chooses. . . .” *Coyne-Delany Co. v. Capital Dev. Bd.*, 616 F.2d 341, 342 (7th Cir. 1980). Numerous courts have recognized the right of government entities to enter into exclusive contracts with private parties. *See, e.g., S. Disposal, Inc. v. Tex. Waste Mgmt.*, 161 F.3d 1259, 1266 (10th Cir. 1998) (grant of exclusive contract for city garbage hauling contract did not violate plaintiff’s equal protection rights); *Hubbard Broad., Inc.*, 797 F.2d at 556-57 (holding that a private business’s equal protection rights were not violated when a state actor entered into an exclusive advertising contract with a competing private business related to advertising at sporting events).

Permissible exclusive contracts may provide exclusive commercial access to specific business partners. For example, in *Foto USA*, a photography company raised an equal protection challenge to the university system policy of awarding exclusive contracts to take graduation photographs. The court recognized that “[t]he real issue in this case, therefore, is whether the

Fourteenth Amendment's guarantee of equal protection of the law requires the universities to permit every commercial photographer who wishes to take photographs of the graduates for a commercial purpose to do so." 141 F.3d. at 1036. The court rejected the challenge because "the state in its proprietary capacity may contract to allow exclusive commercial access to one graduation photographer without offending the equal protection clause." *Id.* at 1037. The court concluded:

Every contract is a burden on commercial speech in the sense that . . . the non-contracting party is excluded from the commercial benefit of the contract. This, in and of itself, however, creates no equal protection problem because there is no constitutional provision which requires that non-contracting parties enjoy the benefits of others' bargains.

*Id.* Similarly, in this case, Defendants are not entitled to the benefit of the commercial bargains that the WIAA reached with its business partners, including the exclusive rights arrangement with WWWY and the expanded commercial photography opportunities offered VIP.

Moreover, the fact that WWWY negotiated with the WIAA for the rights to an exclusive contract, while the Defendants did not, does not undermine the legitimacy of the contract. In *Hubbard*, the plaintiff complained that it was "denied an opportunity to make its bid for the advertising contract" for the Metrodome scoreboard before its rival's bid was accepted. The Court rejected an equal protection challenge, noting that the defendants simply adhered to their policy of granting exclusive advertising contracts on a first-come/first-served basis. *Hubbard*, 797 F.2d at 557. Similarly, in this case, WWWY expressed interest in an exclusive contract, while the Defendants did not. As the Eleventh Circuit noted, a party "is not denied equal protection of the law merely because it chose not to bid on the contracts, and so does not reap the benefit of that bargain." *Foto USA*, 141 F.3d at 1036.

WIAA entered into commercial contracts with its business partners because those contracts provided valuable benefits to both parties. The Fourteenth Amendment does not entitle Defendants to share in the commercial benefits negotiated by other parties.

**C. Copyright Law Does Not Preempt the WIAA’s Ability to Prohibit Gannett From Transmitting its Sporting Events**

Gannett’s Third Counterclaim alleges that the Copyright Act preempts the WIAA’s right to prohibit the unauthorized streaming of its events or to place conditions on the authority it grants to stream games which are authorized. This is not the case. As numerous courts have concluded, sporting events do not fall within the subject matter of copyright unless they are “fixed in a tangible medium of expression” through actual broadcast. The WIAA’s restrictions on the recording of WIAA events occur prior to any fixation in a tangible medium of expression, and the right to impose such restrictions is not equivalent to any right under copyright law. Therefore, the WIAA’s right to place restrictions on videotaping and transmission is not preempted by the Copyright Act. Gannett’s second copyright assertion—that it owns valid copyrights in games recorded without the consent of WIAA—is equally infirm, as a valid copyright depends upon possession of authority to create the copyrighted work in the first place. Accordingly, the Court should grant summary judgment in favor of WIAA on Gannett’s copyright claims.

**1. Copyright Law Does Not Preempt the WIAA’s Right to Prohibit the Recording and Transmission of Its Events**

Gannett asserts that “[a]thletic events are within the subject matter of the Copyright Act, but they are in the public domain and cannot be copyrighted.” Dkt. No. 2 ¶ 65. According to Gannett, the Copyright Act prohibits WIAA from obtaining a copyright in its own games but also preempts the WIAA from restricting Gannett’s ability to create copyrighted material from WIAA-organized and sponsored events. This is incorrect as a matter of law. Federal copyright

extends only to “works of authorship” that are “fixed in any tangible medium of expression.”

*See* 17 U.S.C. § 102. While federal copyright laws are “the exclusive rights” available for works within “the general scope of copyright” protection—preempting any state or common law right that is “equivalent” to copyright—the Copyright Act’s preemption provisions do *not* impact works that fall outside the type of works protected under the federal law. Rather, as the Act explicitly states:

Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to—(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; . . . (3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 . . .

..

17 U.S.C. § 301(b).

Preemption thus requires at least two conditions. First, the content of the “work” must fall within the subject matter of copyright, including fixation in a tangible form. Second, the nature of the rights asserted must be equivalent to the rights granted in the Copyright Act. *Toney v. L’Oreal USA*, 406 F.3d 905, 909 (7th Cir. 2005).

Applying these requirements to the instant case, neither condition is satisfied. Athletic events are not within the subject matter of copyright. Sporting competitions are neither “works of authorship” nor “fixed in a tangible medium of expression.” The Copyright Act enumerates various categories of copyrightable works, such as motion pictures and other audiovisual works that are works of authorship. *See* 17 U.S.C. 102(a). “Noticeably absent from this illustrative list of works of authorship, however, is a category for sports events or other analogous organized events.” *NBA v. Sports Team Analysis & Tracking Sys.*, 931 F. Supp. 1124, 1143 (S.D.N.Y. 1996) (hereinafter “Sports Team Analysis”), *rev’d in part on other grounds sub nom, NBA v. Motorola, Inc.*, 105 F.3d 841, 846-47 (2d Cir. 1997) (hereinafter “Motorola”). Moreover, until a

game is recorded, it has not been fixed in a tangible medium of expression. *See Motorola*, 105 F.3d at 849 (noting that an athletic event that is not taped or broadcast is not “fixed in a tangible medium of expression.”).

As such, and as recognized by numerous courts and treatises, unless and until sporting events are recorded (i.e., fixed), sporting events do not fall within the ambit of copyright preemption under 17 U.S.C. § 301. *See, e.g., Hoopla Sports & Entertainment, Inc. v. Nike, Inc.*, 947 F. Supp. 347, 354-55 (N.D. Ill. 1996) (“[I]t is doubtful whether a sports event is a copyrightable work. To the extent that courts have considered the question, most courts have concluded that a sports game itself (as opposed to a broadcast of the game) is not copyrightable.”); *Wilson v. Brennan*, No. CV 07-457 WPL/LAM, 2009 WL 3462311, at \*5 (D.N.M. Aug. 18, 2009) (“Most courts that have considered the question have held that sporting events are not copyrightable.”); *Sports Team Analysis*, 931 F. Supp. at 1142-45) (“[T]he underlying basketball games do not fall within the subject matter of federal copyright protection because they do not constitute ‘original works of authorship.’”), *Motorola*, 105 F.3d at 846-47 (noting a “general understanding” that athletic events are not within the subject matter of copyright); *Nat'l Ass'n of Broadcasters v. Copyright Royalty Tribunal*, 675 F.2d 367 (D.C. Cir. 1982); *see also* 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.09[F] (2009 ed.) (“copyright should no longer serve as the vehicle for vindicating rights in athletic events apart from interests in the motion pictures recording them”); 2 Louis Altman & Malla Pollack, *Callmann on Unfair Competition Trademarks & Monopolies* § 15:8 (4th ed. 2009) (“[T]he only thing that clearly is not preempted by [§ 301] is state protection of works not yet ‘fixed in a tangible medium of expression,’ such as performances and broadcasts not recorded with the

permission of the owner.”) (citation omitted).<sup>4</sup> Because the games themselves are not fixed in a tangible medium of expression, they lie outside the realm of copyright. Therefore, WIAA’s rights to organize and control these events cannot be preempted by the Copyright Act.

In addition, the WIAA’s claims are not preempted by 17 U.S.C. § 301 for a second reason: the right WIAA seeks to enforce is not equivalent to any right in the Copyright Act, a necessary precondition to preemption. *See* 17 U.S.C. § 301. WIAA seeks to exclude the media from unauthorized videotaping and transmitting of WIAA events. In effect, WIAA seeks to enforce the right to control who and how its games are “fixed in a tangible medium of expression” in the first instance. The right to control access and to grant permission to broadcast is not equivalent to one of the enumerated rights in the Copyright Act, which are limited to five basic rights as reproduction of copyrighted works, preparation of derivative works, distribution of copies, and, for dramatic, choreographed or similar works, public performance or display. *See*

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<sup>4</sup> Defendants may point to *Baltimore Orioles, Inc. v. Major League Baseball Players Ass’n*, 805 F.2d 663 (7th Cir. 1986), to support their assertion that athletic events are within the scope of copyright. In *Baltimore Orioles*, the Seventh Circuit addressed whether baseball players’ rights to publicity were violated by broadcasts of baseball games (i.e., games fixed in a tangible medium of expression and thus subject to copyright). In dicta within a footnote, the Seventh Circuit reasoned that the performances of baseball players contained the “modicum of creativity” necessary for copyrightability. *Id.* at 669 n.7. The Court went on, however, to justify the copyrightability of a sporting event based on “the director and other individuals responsible for recording the performance,” such as the cameraman. *Id.* Thus, when read in its entirety, it is clear that the Court was addressing the “telecast” of the game, not the game itself. *See Motorola*, 105 F.3d at 846-47 (noting that the *Baltimore Orioles* opinion is applicable only to the telecast of the game). To the extent *Baltimore Orioles* has been interpreted to extend beyond the telecast to sporting events themselves, it has been routinely criticized and rejected by treatises and courts, included courts in the Seventh Circuit. *See, e.g.*, 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.09[f] (2009 ed.) (“It is suggested that the court ruled erroneously.”) (identifying problems with the Court’s analysis, noting that “other courts have adopted this criticism,” and collecting cases); *see also Hoopla Sports & Entertainment*, 947 F. Supp. at 354 (discussing *Baltimore Orioles* and holding unequivocally that unfixed sporting events are not within the subject matter of copyright); *Brown v. Ames*, 201 F.3d 654, 659 (5th Cir. 2000) (collecting cases and commentary contrary to *Baltimore Orioles*); *C.B.C. Distrib. & Mktg., Inc. v. Major League Baseball Advanced Media, L.P.*, 443 F. Supp. 2d 1077, 1102 n.31 (E.D. Mo. 2006) (collecting criticism), *aff’d*, 505 F.3d 818 (8th Cir. 2007).

17 U.S.C. § 106 (listing the rights conferred by copyright); *Toney*, 406 F.3d at 909. Only *after* fixation occurs—the very act the WIAA seeks to restrict—could any right be equivalent to those in the Copyright Act, and thus preempted under 35 U.S.C. § 301. *See Motorola*, 105 F.3d at 849.

As the sponsor of its events, the WIAA has the right to control the creation and transmission of recordings of its events to obtain a return on its investment. *See generally* *Zacchini*, 433 U.S. at 576 (noting that the copyright laws exist in part to permit a return on a performer’s investment and encourage production of entertainment and creative material.). Gannett’s reasoning, by contrast, would preclude any sports organization from prohibiting the videotaping and transmission of its sporting events because any such restrictions would be “preempted” by the Copyright Act. To illustrate, under Gannett’s preemption rule any newspaper would be free to tape and transmit Brewers games over the internet despite the exclusive rights agreements of Major League Baseball. Whatever authority the Brewers had to prohibit such unauthorized broadcast would supposedly be preempted. Unsurprisingly, no court has ever reached so broad a reading of copyright preemption.

## **2. Gannett Is Not Entitled to Ownership of Games Recorded Without Authority**

Gannett also asserts that under the copyright laws it is the copyright owner of the recordings of the games it streamed without WIAA or WWWY consent. Dkt. No. 2 ¶¶ 68-70. Gannett argues that it made the recordings and has not sold or transferred any rights to WIAA or WWWY. *Id.* at 71. This position misreads copyright law.

WIAA agrees that the ownership of a copyright generally vests with the “author.” *See* 17 U.S.C. § 201. However, for a valid copyright to vest, it must be “fixed” “under the authority of the author.” 17 U.S.C. § 101. The Seventh Circuit explained this principle in *Baltimore Orioles, Inc.*, 805 F.2d at 675 and applied preemption analysis to the facts of *Zacchini*, 433 U.S. 562

(1977), in which a television station broadcast Zacchini's live performance without permission.

The Seventh Circuit noted that

Merely that the television station might videotape its telecast would not grant the station a copyright in the broadcast of Zacchini's performance or preempt Zacchini's right of publicity. To be "fixed" in tangible form, a work must be recorded "by or under the authority of the author," here Zacchini. See 17 U.S.C. § 101 (definition of "fixed"). Because Zacchini did not consent to the telecast, the broadcast could not be "fixed" for the purpose of copyrightability and Zacchini's right of publicity would not be subject to preemption.

805 F.2d at 675 n.22. *See also Ahn v. Midway Mfg. Co.*, 965 F. Supp. 1134, 1138 (N.D. Ill. 1997) ("To be fixed in a tangible form, the work must be recorded by or under the authority of the author. 17 U.S.C. § 101 (1994). Because plaintiffs consented to the videotaping, the definition of 'fixed' is satisfied.") Here, too, because the WIAA did not consent to the streaming of its event, Gannett lacked the authority to fix the game in a tangible medium of expression. Thus, Gannett cannot hold a valid copyright in its transmission.<sup>5</sup>

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that summary judgment be granted in its favor on all of Gannett's claims.

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<sup>5</sup> Moreover, nothing in the copyright law prohibits the transfer of a copyright or prohibits WIAA from conditioning the taping of its events on transfer of the copyright to WIAA or WWWY.

Dated this 22<sup>nd</sup> day of January, 2009.

Respectfully submitted,

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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WISCONSIN INTERSCHOLASTIC ATHLETIC  
ASSOCIATION and AMERICAN-HIFI, INC.

**Plaintiffs,**

**Case No. 09-cv-0155**

**v.**

**GANNETT CO., INC. and  
WISCONSIN NEWSPAPER ASSOCIATION, INC.,**

**Defendants.**

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**PROPOSED FINDINGS OF FACT**

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Plaintiffs Wisconsin Interscholastic Athletic Association and American-HiFi, Inc., d/b/a When We Were Young Productions, propose the following proposed findings of fact in support of Plaintiffs' Motion for Summary Judgment:

**Parties, Jurisdiction and Venue**

1. Plaintiff Wisconsin Interscholastic Athletic Association (the "WIAA") is a voluntary, unincorporated and nonprofit organization with its principal place of business in Stevens Point, Wisconsin. First Am. Compl., Case No. 09-0155, filed April 13, 2009, Dkt. No. 7 ("First Am. Compl. ") ¶ 4; Declaration of Autumn N. Nero in Support of Plaintiffs' Motion for Summary Judgment "Nero Decl." Ex. 2 at 3 (filed herewith); Affidavit of Douglas E. Chickering "Chickering Aff." ¶ 3 (filed herewith); Affidavit of Todd C. Clark "Clark Aff." ¶ 3 (filed herewith).

2. Plaintiff American Hi-Fi, Inc. is a Wisconsin corporation with its principal place of business in Waunakee, Wisconsin, and does business as When We Were Young Productions ("WWFY"). First Am. Compl., Dkt. No. 7 ¶ 5.

3. Defendant Wisconsin Newspaper Association, Inc. ("WNA") is a non-stock organization organized in the State of Wisconsin, with its principal place of business in Madison, Wisconsin. First Am. Compl., Dkt. No. 7 ¶ 6.

4. WNA is an association of daily, weekly, and bi-weekly newspapers in Wisconsin whose members frequently report on Wisconsin high school athletics, including WIAA-sponsored tournaments. First Am. Compl., Dkt. No. 7 ¶ 6.

5. Gannett Co., Inc. (“Gannett”) is a Delaware corporation with its principal place of business at 7950 Jones Branch Drive, McLean, Virginia. First Am. Compl., Dkt. No. 7 ¶ 7.

6. Gannett publishes newspapers across the United States, including 10 daily newspapers in Wisconsin and approximately 19 non-daily newspapers. First Am. Compl., Dkt. No. 7 ¶ 7.

7. Many of the Wisconsin newspapers published by Gannett frequently report on Wisconsin high school athletics, including WIAA-sponsored tournaments. First Am. Compl., Dkt. No. 7 ¶ 7.

8. This Court has subject matter jurisdiction based on 28 U.S.C. § 1331 because substantial, disputed questions of federal law underlie Defendants’ claim to possess the right to transmit WIAA-sponsored tournament games over the Internet and/or to post Internet streams of such tournament games on their websites without obtaining a license or otherwise complying with the WIAA’s media policies. First Am. Compl., Dkt. No. 7 ¶ 8.

9. Defendants have filed counterclaims in this Court seeking relief under the United States Constitution and various federal statutes, including 42 U.S.C. § 1983. First Am. Compl., Dkt. No. 7 ¶ 8.

10. The WIAA disputes that any federal constitutional or federal statutory provision grants Defendants such a right or bars the WIAA from establishing reasonable policies governing the transmission of the tournament events it organizes and sponsors. First Am. Compl., Dkt. No. 7 ¶ 8.

11. Jurisdiction over WIAA’s claim for declaratory relief is proper pursuant to 28 U.S.C. §§ 2201-2202 because an actual controversy exists between the parties regarding Defendants’ alleged right under federal constitutional and federal statutory law to transmit WIAA-sponsored games over the Internet. First Am. Compl., Dkt. No. 7 ¶ 9.

12. Defendants’ threatened claims and asserted counterclaims allegedly arise under federal law, giving this Court the authority to declare the rights and legal relations of the parties. First Am. Compl., Dkt. No. 7 ¶ 9.

13. Defendants conduct substantial business in this district and have consented to personal jurisdiction in this Court. First Am. Compl., Dkt. No. 7 ¶ 10; Defs.’ Answer to Pls.’ First Amended Compl. (“Answer”), Dkt. No. 13 ¶ 10.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the conduct and events giving rise to the claims occurred in this judicial district. First Am. Compl., Dkt. No. 7 ¶ 11.

### **The Wisconsin Interscholastic Athletic Association**

15. The WIAA began in 1895, and its first set of rules was adopted in 1896. Nero Decl. Ex. 2 at 3.

16. The WIAA is a member-based organization comprised of 506 participating public and private high schools and 117 Junior High/Middle Level school members. Chickering Aff. ¶ 3.

17. The WIAA is membership directed, as the members develop the rules that govern the association, and, at an Annual Meeting each April, the membership approves any changes to the Constitution, Bylaws, and Rules of Eligibility. Chickering Aff. ¶ 3.

18. The purpose of the WIAA is threefold:

- (a) To organize, develop, direct, and control interscholastic athletic programs which will promote the ideals of its membership and opportunities for member schools' participation.
- (b) To emphasize interscholastic athletics as a partner with other school activities in the total educational process, and formulate and maintain policies which will cultivate high ideals of good citizenship and sportsmanship.
- (c) To promote uniformity of standards in interscholastic athletic competition, and prevent exploitation by special interest groups of the school program and the individual's ability.

Nero Decl. Ex. 2 at 14.

19. The WIAA seeks to develop, direct and control an interscholastic athletic program to promote the ideals of its membership and opportunities for participation by its members. Chickering Aff. ¶ 4; Clark Aff. ¶ 3.

20. Opportunities include member participation in post-season WIAA-sponsored, controlled, and funded sports tournaments. Chickering Aff. ¶ 4; Clark Aff. ¶ 3.

21. The WIAA recognized sports are the following: For boys, baseball, basketball, cross county, football, golf, hockey, soccer, swimming & diving, tennis, track & field, volleyball, and wrestling; and for girls, basketball, cross country, golf, gymnastics, hockey, soccer, softball, swimming & diving, tennis, track & field, and volleyball. Nero Decl. Ex. 20 at 25.

22. The WIAA publishes a Senior High School Handbook (the "Handbook"), which contains the WIAA's Constitution, the Bylaws, the Rules of Eligibility, the sports calendar, and various policies. Nero Decl. Ex. 2.

23. Under the Constitution, the Board of Control ("Board") is the governing body of the WIAA. Nero Decl. Ex. 20 at 15, 19-20.

24. The Board employs the Executive Director. Nero Decl. Ex. 20 at 19.

25. Doug Chickering was Executive Director for the WIAA from January 1, 1986 to July 31, 2009, which includes the period during which the events giving rise to this litigation took place. Chickering Aff. ¶ 2.

26. As Executive Director, Chickering was responsible for the overall operations of the WIAA. Chickering Aff. ¶ 2.

27. Chickering reported to the Board of Control of the WIAA, and was authorized by the Board of Control to make decisions as necessary for the proper operation of WIAA business. Chickering Aff. ¶ 2.

28. Among Chickering's responsibilities as Executive Director was responsibility for the budget, revenue and expenditures of the WIAA, and he was authorized to enter into contracts for the benefit of the WIAA and its members. Chickering Aff. ¶ 2.

29. Todd Clark is the Director of Communications for the WIAA, where he has been employed since 2000. Clark Aff. ¶ 2.

30. Clark's responsibilities include production and supervision of the Bulletin, membership publications and State Tournament souvenir programs; coordination of media relations; Web site maintenance; State Tournament-related coverage; all public relations and sportsmanship efforts and initiatives; and assisting in marketing and sponsorship relationships. Clark Aff. ¶ 2.

31. The WIAA is a member of the National Federation of State High School Associations. Nero Decl. Ex. 2 at 3.

### **The WIAA's Media Policies**

32. The WIAA acknowledges the responsibilities of legitimate news gathering media representatives in covering and reporting from WIAA Tournaments. Nero Decl. Ex. 4 at 1.

33. The WIAA provides rules for media conduct in its Senior High School Handbook, which contains both spectator policies and "Video Transmission Policies" applying to broadcast, cable, and internet streams during the WIAA State Tournament Series. Nero Decl. Ex. 3 at 51 (2009-10 guide); *see also* Nero Decl. Ex. 2 at 50-51 (2008-09 handbook, containing "Radio and Television Broadcast Policies").

34. The WIAA also publishes annually a Media Policies Reference Guide, which is produced to inform statewide media of WIAA policies in effect for all levels of State Tournament Series competition. Nero Decl. Ex. 4 at 1.

35. The Media Policies Reference Guide aims to assist members of the media in providing comprehensive coverage to their communities, with requesting/issuing of working media credentials, in the use of equipment, and in the comprehension of WIAA property rights for State Tournament Series competitions. Nero Decl. Ex. 4 at 1.

36. The Media Policies Reference Guide includes policies that apply to the media during the WIAA-State Tournament Series, i.e., regional, sectional, and state final tournaments. Nero Decl. Ex. 4 at 10.

37. Clark developed the first WIAA Media Policies Reference Guide in the fall of 2003 to address ownership and distribution issues documenting the WIAA's practices in a definitive written guide that the WIAA could distribute to the media. Clark Aff. ¶ 11.

38. This Media Policies Reference Guide was discussed with the 2003 Media Advisory Committee—a standing committee made up of media representatives—which reviewed and approved the policies and language. Clark Aff. ¶ 11.

39. The WIAA agreed at the 2003 Media Advisory Committee meeting that it would produce and disseminate the guide to all media on the WIAA mail list. Clark Aff. ¶ 11.

40. The Media Policies Reference Guide addresses the following issues: media credentials; parking permits; communication lines; photography; post-game interviews; radio, television and cable policies; Internet policies; advertising; and broadcast rights permission/fees. Nero Decl. Ex. 4 at 1-16.

41. Generally, the WIAA prohibits any non-editorial, commercial, or unauthorized use of any transmission, internet stream, or other depiction of tournament material without written consent of the WIAA. Nero Decl. Ex. 4 at p. 1.

42. Generally, the WIAA accepts applications from and issues credentials to television stations covering tournaments for newscast purposes; radio stations; daily and weekly newspapers, including photographers; legitimate sport-specific publications; and news-gathering web site organizations that meet certain criteria. Nero Decl. Ex. 4 at pp. 3-4, 15.

43. Under the WIAA Internet policies “WIAA owns the rights to transmit, upload, stream or display content live during WIAA events and reserves the right to grant exclusive and nonexclusive rights or not to grant those rights on an event-by-event basis.” Nero Decl. Ex. 4 at 14.

44. The WIAA policies define the term “broadcast” as “airing/streaming the entire duration of tournament games.” Nero Decl. Ex. 4 at 11.

45. The policies prohibit any live or delayed television or internet streaming of WIAA State Tournament Series events of more than two minutes without permission from the WIAA. Nero Decl. Exs. 3 at 51 and 2 at 51.

46. No fees are required for tape-delayed broadcasts or streams for schools wishing to air games on their school's educational channel, on local cable systems, or the school's website. Nero Decl. Ex. 4 at 12.

47. Media covering WIAA tournament events for “newscast purposes” may, without paying a fee, (1) use tournament action as a backdrop for live actions reports (provided no play-

by-play is used); and/or (2) use up to two minutes of film, videotape, etc. on a regularly scheduled news or sports program. Nero Decl. Exs. 2 at 51; 3 at 51; 4 at 12; and 5 at 12-13.

48. Under the WIAA's policies, those who wish to broadcast or internet stream more than two minutes of tournament events are required to obtain permission from the rights holder. Nero Decl. Ex. 4 at 16.

49. The WIAA has provided for media access to communication lines (e.g., telephone, high-speed internet, and wireless connections) for use in reporting at State Tournament venues. Nero Decl. Ex. 5 at 6.

50. The WIAA also permits the taking of photographs for reporting purposes, post-game interviews of players and coaches, radio and other audio broadcasts of WIAA events, and other avenues of reporting and media coverage. Clark Aff. ¶ 24-25; Nero Decl. Ex. 4 at 6-15; Ex. 5 at 8-14.

51. Subject to some limitations, newspapers are offered up to five media credentials for daily papers (two for weekly newspapers), which, among other benefits, allow reporters access to various communications lines for a fee of \$25-30. Nero Decl. Ex. 5 at 6.

### **The WIAA Budget**

52. An overwhelming majority of the WIAA's budget is derived from revenues generated by the State Tournament Series, which WIAA organizes, sponsors, and administers, and which is separate from and in addition to regular season games. Chickering Aff. ¶ 5; Clark Aff. ¶ 3.

53. Chickering was responsible for the WIAA's 2007-2008 budget, and in that year the tournaments brought in \$6,202,963, which was 86% of the WIAA's total operating revenue of \$7,177,115. Chickering Aff. ¶ 5, Ex. A.

54. The remaining 2007-2008 WIAA revenue came from membership dues, which amounted to .5% of revenue; sports fees, which amounted to 5.5% of revenue; officials dues, which amounted to 5% of revenue; and miscellaneous revenue such as subscriptions and rule book orders, which amounted to 3% of revenue. Chickering Aff. ¶ 5, Ex. A.

55. All of WIAA's revenue is used to support its programs and the administration thereof, including paying for the expenses of operating the tournaments in all WIAA recognized sports. Chickering Aff. ¶ 6.

56. Some of the WIAA recognized sports generate a profit, and others generate a loss for the WIAA. Chickering Aff. ¶ 7, Ex. A.

57. The profits from one WIAA recognized sport are used to offset deficits in other WIAA recognized sports. Chickering Aff. ¶ 7, Ex. A.

58. The vast majority of the WIAA tournament revenue is derived from basketball and football. Declaration of James L. Hoyt, Ph.D. in Support of Plaintiffs' Motion for Summary Judgment "Hoyt Decl." ¶ 44 (filed herewith); Nero Decl. Ex. 14; Chickering Aff. Ex. A.

59. In 2008, the WIAA generated positive net revenues in only basketball, football, wrestling, volleyball, hockey, and soccer. Nero Decl. Ex. 14; Hoyt Decl. ¶ 44; Chickering Aff. Ex. A.

60. In 2008, the WIAA subsidized the following sports (meaning expenses for a sport exceeded revenues for that sport, so WIAA revenues from other sports covered the deficit): Baseball, Cross County, Golf, Gymnastics, Softball, Swimming and Diving, Tennis, and Track & Field. Chickering Aff. ¶ 8, Ex. A; Nero Decl. Ex. 14; Hoyt Decl. ¶ 44.

61. The WIAA member schools desire their students to be able to play sports and have the same exposure for the sports even where a commercial market would not otherwise support such exposure. Chickering Aff. ¶ 8.

62. The WIAA provides those opportunities for its members' students through the revenue that comes from the commercially viable sports. Chickering Aff. ¶ 8.

63. For the 2007-2008 year, the WIAA provided a subsidy of \$692,884 to subsidized sports, which is 11% of total revenue earned from tournaments. Chickering Aff. Ex. A.

### **WIAA Tournaments**

64. The WIAA hosts and administers 25 State Championship Tournaments, which includes both boys and girls sports, and individual and team competition. Chickering Aff. ¶ 28.

65. The WIAA leases the facilities or venues for the WIAA-hosted State Tournaments through long-term contracts of three to five years (except for cross country or gymnastics for which the WIAA does not have leases with the venues). Chickering Aff. ¶ 28.

66. When the WIAA uses the venues, it uses them solely for its athletic competitions. Chickering Aff. ¶ 28.

67. The WIAA has use of the facilities or venues for the duration of the athletic competition as specified in the leases, and does not otherwise have any control over or obligation with respect to the management or operation of the facilities or venues when not used by the WIAA for its athletic events. Chickering Aff. ¶ 28.

68. The State Tournaments are held in sixteen different athletic facilities throughout the State of Wisconsin. Chickering Aff. ¶ 29.

69. The WIAA tries to find the best facility available to showcase the athletic event, provided the facility is available and affordable, and offers good value for the WIAA's money. Chickering Aff. ¶ 29.

70. Each of the public venues used by the WIAA was designed for the specific type of athletic tournament being held there: the boys and girls golf tournaments are held at University Ridge golf course in Madison, a venue solely designed for golf; the football tournaments are held at Camp Randall stadium in Madison, a facility used for football games; boys and girls soccer tournaments are held at Uihlein Soccer Park in Milwaukee, which was designed specifically for soccer games; swimming and diving tournaments are held at the UW Natatorium in Madison, a facility with pools and a diving well; girls and boys tennis tournaments are held at the Nielsen Tennis Stadium in Madison, a facility containing indoor and outdoor tennis courts and squash courts; and softball tournaments are held at the Goodman Diamond in Madison, which is a facility designed and used for softball games. Chickering Aff. ¶ 29.

71. The WIAA also hosts tournaments at several private facilities: baseball tournaments are held at Fox Cities Stadium in Appleton, which is a privately owned minor league baseball park; the boys volleyball tournament is held at Wisconsin Lutheran College in Milwaukee, a privately owned college; and the cross country tournament is held at the Ridges Golf Course in Wisconsin Rapids, a privately owned golf course (which is not leased). Chickering Aff. ¶ 29.

72. Other WIAA tournaments are also held at the Lincoln Field House in Wisconsin Rapids (which is not leased), the UW Field House in Madison, the Memorial Stadium in LaCrosse, the Resch Center in Green Bay, the Kohl Center in Madison, and the Alliant Energy Center in Madison, all of which are venues used for different athletic events. Chickering Aff. ¶ 29.

73. The WIAA establishes a fee for admission to its tournaments. Chickering Aff. ¶ 30.

74. The public is permitted entry to the tournament upon payment of the admission fee. Chickering Aff. ¶ 30.

75. The WIAA provides for free admission for certain categories of people, such as cheerleaders, school staff members, game officials and credentialed media, but no other person beyond those identified may be provided complimentary admissions. Chickering Aff. ¶ 30.

76. The WIAA sets its admission fee so that the event is an affordable outing for families. Chickering Aff. ¶ 30.

77. The WIAA has not denied a legitimate media organization entry to a tournament, entry to designated media facilities of WIAA-sponsored events, or media credentials. Chickering Aff. ¶ 31; Nero Decl. Ex. 18 at Interrog. No 6 and Resp. No. 6.

78. Gannett admits that it is “not aware of any instance in which WIAA has denied Defendants or other members of the news media entry to a WIAA-Sponsored Event.” Nero Decl. Ex. 18 at Interrog. No 6 and Resp. No. 6.

## **WIAA Contracts**

79. The WIAA has had an exclusive contract with Fox Sport Network Wisconsin (“Fox”) to transmit the seven state football finals since 2001. Chickering Aff. ¶ 9.

80. The WIAA receives \$20,000 annually from Fox for that exclusive contract. Chickering Aff. ¶ 9, Ex. B; Clark Aff. ¶ 8.

81. The WIAA has had an exclusive video transmission contract for boys basketball games with Quincy Newspapers, Inc. (“QNI”) since 1968. Chickering Aff. ¶ 10.

82. In the 1980s, the QNI contract expanded to include rights to exclusively broadcast the WIAA’s Boys and Girls Basketball Tournaments and Hockey Finals. Chickering Aff. ¶ 10.

83. QNI owns and operates five different television stations, (collectively called “The WIAA State Network”), that broadcast the WIAA tournaments and finals pursuant to the contract. Chickering Aff. ¶ 10.

84. Beginning in about 2003, QNI told Chickering that it could no longer afford to offer a competitive product for the contract price of \$140,000. Chickering Aff. ¶ 11; Clark Aff. ¶ 4.

85. The WIAA and QNI negotiated a reduction in the annual fee: In 2002, QNI paid the WIAA \$140,000 under the contract; in 2003, QNI paid \$125,000; in 2004, QNI paid \$75,000. Chickering Aff. ¶ 11.

86. In 2004, with two years left on the contract, QNI said it could not guarantee that it would enter into a successor agreement unless the WIAA was willing to alter its price. Chickering Aff. ¶ 12.

87. In or around 2004, the WIAA and QNI negotiated a reduction in price down to \$40,000 per year, and secured an extended contract with QNI, operating as The WIAA State Network, until 2010. Chickering Aff. ¶ 12, Ex. C.

88. QNI paid an annual fee of \$40,000 to the WIAA until 2008, at which time upon mutual agreement of the parties, the QNI payment to the WIAA increased to \$75,000 annually. Chickering Aff. ¶ 12.

89. In 2004, due to the loss of revenue from QNI, the WIAA began to look for other sources of revenue. Chickering Aff. ¶ 13; Clark Aff. ¶ 4.

90. At about the same time as WIAA lost the QNI revenue, WIAA staff was hearing from the coaches committees, especially for volleyball and wrestling, that they were questioning why their sports were not being broadcast on TV, and that they had a strong interest in getting their sports on TV. Chickering Aff. ¶ 15; Clark Aff. ¶ 6.

91. The coaches wanted the same exposure for their sports and athletes that basketball, hockey and football were receiving. Chickering Aff. ¶ 15.

92. The WIAA staff was anxious to get as many sports publicly distributed as possible. Chickering Aff. ¶ 15.

93. At that time, around 2004, no television station carried games other than the Football Finals (which was carried by Fox), and the Hockey Finals and Boys and Girls Basketball Tournaments (which were carried by QNI), except that, in some instances, local community access channels would broadcast tape-delayed local games. Chickering Aff. ¶ 14; Clark Aff. ¶ 5.

94. As of 2005, the WIAA was not aware of any internet streaming of WIAA events by any party, and the only rights fees the WIAA received at that time were from the transmission of videos of its tournament events for Football State Finals, Boys and Girls Basketball State Tournament, and Hockey State Finals. Clark Aff. ¶ 5.

95. In fact, in 2005, the vast majority of WIAA sports were not carried by any media organization either on television or the internet. Chickering Aff. ¶ 14; Clark Aff. ¶ 6.

96. The WIAA inquired whether its existing contractual partners might be interested in broadcasting these additional events, but the existing contractual partners expressed concern over whether they could implement a feasible financial model from which they could profit by the expansion, so declined to pursue the opportunity. Chickering Aff. ¶ 16; Clark Aff. ¶ 6.

### **The WIAA's Relationship with When We Were Young Productions**

97. In Fall 2003, Chickering met Tim Eichorst, the majority shareholder of WWWY. Chickering Aff. ¶ 17; Affidavit of Tim Eichorst “Eichorst Aff.” ¶ 2 (filed herewith).

98. WWWY was incorporated in 2002. Eichorst Aff. ¶ 3.

99. WWWY is a video production company located in Waunakee, Wisconsin. Eichorst Aff. ¶ 4.

100. In about 2000, Eichorst, who has a background in technology, started filming high school football games as a hobby, and he became proficient at it. Eichorst Aff. ¶ 5.

101. Eichorst researched high school sports and realized that he could connect the growing technology to the industry and cater to the growing interest in high school sports. Eichorst Aff. ¶ 6.

102. Eichorst initially made highlight videos for a high school sports team, and subsequently began to think about a larger platform for producing and distributing high school athletic events. Eichorst Aff. ¶ 8.

103. Eichorst knew that distribution of WIAA tournaments was very limited, so Eichorst arranged an introduction to Chickering. Eichorst Aff. ¶ 9.

104. Eichorst first met Chickering at a state football tournament in the fall of 2003, at which time they briefly discussed producing and distributing WIAA tournaments. Eichorst Aff. ¶ 10; Chickering Aff. ¶ 17.

105. Eichorst and Chickering agreed to meet again in December of that year to discuss these issues in more detail. Eichorst Aff. ¶ 10; Chickering Aff. ¶ 17.

106. In December of 2003, Eichorst met with Chickering and Clark, and they talked about WWWY's vision to produce and mass distribute high school sporting events. Eichorst Aff. ¶ 11; Chickering Aff. ¶ 18.

107. In May of 2004, Eichorst for WWWY and Chickering for the WIAA signed a Letter of Intent to pursue a formal contract granting WIAA programming rights to WWWY. Eichorst Aff. ¶ 12, Ex. A; Chickering Aff. ¶ 19.

108. The Letter of Intent described the mutual interest between the WIAA and WWWY to work together under a long-term contract to produce and distribute WIAA sports events, with the understanding that many details of the relationship would need to be worked out and discussed. Eichorst Aff. ¶ 12, Ex. A.

109. The general understanding described in the Letter of Intent was that WWWY would have the exclusive right to produce and distribute all WIAA playoff and tournament events, except those under a pre-existing contract, for live or tape delayed programming. Eichorst Aff. ¶ 12, Ex. A; Chickering Aff. ¶ 19.

110. WWWY would pay the WIAA a fee, to be determined, for those rights. Eichorst Aff. ¶ 12, Ex. A; Chickering Aff. ¶ 19.

111. Distribution formats would include broadband, cable, network and physical media. Eichorst Aff. ¶ 12, Ex. A.

112. The Letter of Intent was signed at the same time the WIAA was engaged in discussions with QNI about renegotiating their contract for a reduced fee, so the prospect of a contractual arrangement with another partner to provide revenue to the WIAA, while at the same time satisfying the WIAA's goals and interest in expanding distribution of athletic events, was of great interest to the WIAA. Chickering Aff. ¶ 19.

113. After the Letter of Intent was signed, Eichorst worked on researching and proposing a business plan for the partnership between WWWY and the WIAA for production and distribution of WIAA sports events. Eichorst Aff. ¶ 13.

114. Eichorst researched technology, evaluated requirements for capital, equipment, facilities, and personnel, and prepared an estimate of costs and revenues. Eichorst Aff. ¶ 13.

115. In about early 2005, Eichorst made a formal proposal to the WIAA for the production and distribution of WIAA athletic events. Eichorst Aff. ¶ 14, Ex. B; Chickering Aff. ¶ 20; Clark Aff. ¶ 7.

116. At no time prior to the proposal from WWWY did any media or production company express any interest in transmitting WIAA events via internet, and there were no inquiries or requests to the WIAA by media organizations to transmit underexposed and less visible sports. Clark Aff. ¶ 7.

117. The proposal was for WWWY to deliver broadcast quality video production of WIAA events, to distribute these products through all physical, electronic, and broadcast media, and to establish the WIAA as a progressive thought leader. Eichorst Aff. ¶ 15; Chickering Aff. ¶ 20.

118. Eichorst planned to organize a management structure in the field to tape the events, and the proposal identified the specific field equipment WWWY would use such as Camcorders, computers, and associated accessories, and WWWY's cost for this field equipment. Eichorst Aff. ¶ 15; Chickering Aff. ¶ 20.

119. The events to be covered under the proposed agreement with WWWY would be live streamed from the venue. Chickering Aff. ¶ 20.

120. To produce the films, Eichorst planned to construct or acquire a state of the art production facility, acquire hardware and software, and provide all technical staffing, for which he budgeted three million dollars. Eichorst Aff. ¶ 15.

121. In fact, Eichorst invested millions of dollars in building WWWY to be a high quality production company, including: broadcast quality technical equipment; several state of the art mobile television trucks for broadcasting; 10 employees who work full time as producers, directors and editors on producing WIAA events; 20 to 30 part-time, seasonal employees who work as camera operators and graphics operators for filming in the field; and two to three part-time employees to operate the feed to the video board, all at no cost to the WIAA. Eichorst Aff. ¶¶ 33-34.

122. Under the proposal, Eichorst would also work on marketing efforts in conjunction with the WIAA, and would develop and launch a web site for the distribution of WIAA events. Eichorst Aff. ¶ 15.

123. Eichorst explained that WWWY would assume the financial responsibility for the venture, and that the WIAA and its members would have no financial commitment to the venture, but would have the opportunity to earn royalties based on distribution revenues. Eichorst Aff. ¶ 16; Chickering Aff. ¶ 21.

124. WWWY expected to break even on (and not profit from) "hard media" items, such as the game films, highlight videos, documentaries and still photography, which would be priced in a manner to be affordable to the consumer. Eichorst Aff. ¶ 16; Chickering Aff. ¶ 21.

125. WWWY expected to make profits on "broadcast media," including such things as real-time game feed, broadcast TV highlight feeds, and studio production of weekly TV shows. Eichorst Aff. ¶ 16; Chickering Aff. ¶ 21.

### **The WIAA's contract with WWWY**

126. Based on WWWY's proposal, WWWY and the WIAA entered into a Production Rights And Distribution Agreement ("the Agreement"). Eichorst Aff. ¶ 17, Ex. C; Chickering Aff. ¶ 22.

127. The Agreement was fully executed in May of 2005, and lasts for a term of ten (10) years. Eichorst Aff. ¶ 17, Ex. C; Chickering Aff. ¶ 22.

128. The Agreement gives WWWY the exclusive right to produce, sell, and distribute all WIAA tournament series and championship events for all WIAA sports, except those under existing contract, which are Football and Hockey State Finals, and the entire State Boys and Girls Basketball Tournaments. Eichorst Aff. ¶ 18, Ex. C; Chickering Aff. ¶ 23; Clark Aff. ¶ 8.

129. WWWY paid \$60,000 to the WIAA in 2008 for these rights. Chickering Aff. ¶ 23; Clark Aff. ¶ 8; Eichorst Aff. ¶ 28.

130. In addition, in 2008, WIAA received \$80,000 from a sponsorship partner, a portion of which came from advertising in programming produced by WWWY. Clark Aff. ¶ 10.

131. In addition, WWWY was granted the rights to market the partnership with the WIAA; to use the WIAA trademark, logo and name for marketing purposes; and to establish an online website for marketing and distribution. Eichorst Aff. ¶ 19, Ex. C.

132. The Agreement provides for production goals, produced either by WWWY directly or through an affiliate, of 100% of state tournaments, 50% of sectional events, and 25% of regional events. Eichorst Aff. ¶ 23, Ex. C.

133. Before the Agreement with WWWY, there was no widespread distribution of sectional and regional WIAA events. Eichorst Aff. ¶ 23; Clark Aff. ¶ 6.

134. The Agreement provides for a multi-platform distribution strategy under which WWWY agrees to distribute directly, or contract with a distribution agent for WWWY produced events, through live production, live or delayed streaming, video on demand, tape delayed production, and physical media. Eichorst Aff. ¶ 24, Ex. C.

135. Examples of distribution platforms include internet based video on demand (web streaming), DSL/Broadband based video on demand, cable based video on demand, satellite based video on demand, cable (live or delayed), satellite (live or delayed), network (live or delayed), and other physical media. Eichorst Aff. ¶ 24, Ex. C.

136. At the time WWWY was negotiating the Letter of Intent and Agreement with the WIAA, Fox Sports Wisconsin ("Fox") saw WWWY's product for individual game highlights and, because of its high production quality, was interested in contracting with WWWY for distribution of WIAA events. Eichorst Aff. ¶ 31.

137. Eichorst started discussing with Fox an agreement where Fox would be a distribution agent for WWWY produced WIAA events. Eichorst Aff. ¶ 31.

138. Fox required WWWY to provide it with exclusive content for distribution as part of any agreement. Eichorst Aff. ¶ 31.

139. Once the WIAA signed the Agreement with WWWY, the WWWY/Fox contract was finalized for Fox's distribution of WWWY produced WIAA events. Eichorst Aff. ¶ 32.

140. As part of WWWY's Agreement with Fox, events from all WIAA tournaments are distributed for delayed TV through Fox. Eichorst Aff. ¶ 32.

141. WWWY's contract with Fox expires in 2011. Eichorst Aff. ¶ 32.

### **Affiliate Production Partners**

142. The Agreement between WIAA and WWWY grants WWWY the right to authorize affiliate production partners for the production of WIAA events. In exchange, WWWY agrees to actively seek out and affiliate with all qualified production resources. Eichorst Aff. ¶ 25, Ex. C.

143. Clark worked with Eichorst to develop the affiliate program through which television stations, web sites, other media outlets or production companies could become affiliates with WWWY for purposes of producing and distributing WIAA events. Clark Aff. ¶ 13.

144. The WIAA did not have a method or resources for monitoring its media policies. Clark Aff. ¶ 13; Eichorst Aff. ¶ 26.

145. Further, the WIAA was concerned about the quality of production of its events, and the images that were associated with its events. Clark Aff. ¶ 13; Eichorst Aff. ¶ 26.

146. Through the WIAA's relationship with WWWY, WWWY monitors production and distribution for the WIAA, ensuring compliance with WIAA's media policies and quality control. Clark Aff. ¶ 13; Eichorst Aff. ¶ 26.

147. As part of the affiliate program, Eichorst organized a meeting with the executive director of the Wisconsin Association of PEG (Public, Educational and Government) Access Channels ("WAPC"), to advise the WAPC of the WIAA's affiliate production program. Eichorst Aff. ¶ 26.

148. The affiliate program would allow the PEG channels to film WIAA events and carry them on their channels, on a fee basis that was less than what the WIAA had been charging. Eichorst Aff. ¶ 26.

149. Before the affiliate program, the WIAA had charged \$20 per event for local PEG channels to film and broadcast a WIAA event; under WWWY's affiliate program, WWWY charges PEG channels \$50 per year. Eichorst Aff. ¶ 26.

150. In return for the affiliate fee, WWWY takes care of all of the organizational requirements for PEG access, such as making all necessary arrangements with the local school to get the television station set up for production. Eichorst Aff. ¶ 26.

151. Once the PEG station films the event, they provide a master copy of the film to WWWY, which sells the DVDs online at WWWY's administrative expense. Eichorst Aff. ¶ 26.

152. The PEG station gets royalties from the DVD sales. Eichorst Aff. ¶ 26.

153. No PEG station has complained about or refused to provide the master copy of the film to WWWY. Eichorst Aff. ¶ 26.

154. In the fall of 2008 alone, WWWY had 59 affiliates through its affiliate program. Eichorst Aff. ¶ 27.

155. WWWY has not turned down any request for an affiliate relationship. Eichorst Aff. ¶ 27; Clark Aff. ¶ 17.

156. For a fee ultimately determined by the WIAA, WWWY allows anyone else to produce and distribute a "declined event"—a WIAA post-season event to which WWWY holds the rights but has declined production. Eichorst Aff. ¶ 36.

157. WWWY has never rejected a request to produce a declined event. Eichorst Aff. ¶ 36.

158. Clark and Eichorst worked together to determine the fee for affiliate production of a declined event. Eichorst Aff. ¶ 37; Clark Aff. ¶ 14.

159. Eichorst works with seven other state high school athletic associations for producing and distributing their high school athletic events, so he was familiar with how different states address the fee structure. Eichorst Aff. ¶ 37.

160. Clark is familiar with the policies and practices of other states' high school athletic associations with respect to the production and distribution of games, including what they charge for video production or internet streaming. Clark Aff. ¶ 14.

161. The WIAA decided on a fee structure that requires a person or entity to pay \$250 to live internet stream a game produced with one camera, and \$1,250 to live internet stream a game produced with multiple cameras. Eichorst Aff. ¶ 38; Clark Aff. ¶ 15.

162. This fee structure was determined based on a number of factors, including the fact that the fee was consistent with or lower than the fees charged by other state athletic associations. Eichorst Aff. ¶ 39; Clark Aff. ¶ 16.

163. In determining the fee, Clark and Eichorst also looked at the value of the production and the resources devoted to the production. Eichorst Aff. ¶ 39; Clark Aff. ¶ 16.

164. In determining the fee, Clark and Eichorst also considered the medium, whether internet or TV, and how wide the distribution would be, whether local or world-wide. Eichorst Aff. ¶ 39; Clark Aff. ¶ 16.

165. Clark and Eichorst determined that the multi-camera production lends itself to a wide internet distribution platform that people are able to see world-wide, whereas a single camera local PEG station production is shown only through the television medium for distribution to the local community, and is transmitted on a tape-delayed basis and not live. Eichorst Aff. ¶ 39; Clark Aff. ¶ 16.

166. WWWY has never charged anything other than what the WIAA has determined to be the appropriate fee for affiliate production. Clark Aff. ¶ 17.

### **WWWY's Video Production Services for the WIAA**

167. As part of the Agreement with the WIAA, WWWY agreed to provide video production resources to the WIAA at no cost to the WIAA. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

168. WWWY films, edits, and makes available on [wiaa.tv](http://wiaa.tv), the WIAA's sports meetings, such as the WIAA's seasonal rule interpretation meetings, so that members and the public can access such meetings without attending in person. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

169. WWWY films, and makes available on [wiaa.tv](http://wiaa.tv) live, the WIAA's Annual Meeting, so that members and the public can access such meetings without attending in person. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

170. These services also save members time and expense, and allow increased public access to WIAA information, thereby promoting the visibility of the WIAA, and supporting the marketing and branding of the WIAA. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

171. WWWY produces an annual video that compiles highlights of all state WIAA tournaments throughout the year. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

172. WWWY films, edits, and makes available on [wiaa.tv](http://wiaa.tv), the annual scholar athlete award ceremony held in the spring in Wausau, Wisconsin. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

173. WWWY gives the award winners a DVD copy of the event. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

174. WWWY films, edits, and makes available on [wiaa.tv](http://wiaa.tv), the annual WASC Spirit of Excellence Award ceremony. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

175. WWWY films interviews of the presenters at the WASC Spirit of Excellence Award ceremony, which it includes in the final production of the award ceremony tape. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

176. WWWY helps promote the award ceremony at tournaments by showing the tape on the video board at various venues. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

177. At venues where the WIAA hosts championship tournaments, WWWY provides live game feed to the video board. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

178. Normally, the venue itself charges a large fee to provide live game feed to the video board. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

179. Instead of hiring someone from the venue to provide feed to the video board, WWWY has two to three extra staff members present at the event solely to work on the video board feed, all at no cost to the WIAA. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

180. WWWY produces highlight segments from other WIAA sponsored sectionals or tournaments, and does recaps with video from other WIAA state championship tournaments, that WWWY presents and feeds to the video board at WIAA championship tournaments. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

181. WWWY films starting line-ups, introduction videos, and/or team videos that it shows on the video board at all tournaments that have video board capability. Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

182. WWWY creates public service announcements that the WIAA and member schools can display on video boards at events and that are displayed on [wiaa.tv](http://wiaa.tv). Clark Aff. ¶ 9; Eichorst Aff. ¶ 29.

### **The wiaa.tv Web Portal**

183. Since the WIAA first began discussing the role of WWWY in producing and distributing WIAA events, Clark realized that internet streaming was an important technological development that would need to be addressed with respect to distribution of WIAA events. Clark Aff. ¶ 18.

184. In fact, in the WIAA's first Media Policies Reference Guide in 2003, Clark addressed internet streaming as a distribution platform. Clark Aff. ¶ 18.

185. Since then, Eichorst and Clark have had regular discussions about internet video streaming as a distribution platform. Clark Aff. ¶ 18; Eichorst Aff. ¶ 20.

186. As part of his plan to produce and distribute WIAA events, Eichorst had proposed that internet streaming would be one of the distribution platforms. Clark Aff. ¶ 19.

187. Eichorst also had proposed that as part of WWWY's distribution efforts, he would create an online property containing the name WIAA for use in marketing and distributing WIAA tournament series and championship content. Clark Aff. ¶ 19.

188. Eichorst proposed the web portal as a key part of the strategy for the branding and marketing of the WIAA, that the destination point for WIAA events needed to be branded as part of the WIAA. Eichorst Aff. ¶ 20.

189. Clark agreed that it was important that the WIAA name be associated with the video distribution platform, and that the WIAA should be the destination point for its own events, but to do this, the WIAA needed a vehicle through which they could launch and stream the video of WIAA events. Clark Aff. ¶ 19.

190. Eichorst and Clark considered using the WIAA's own website, but did not believe the server would have sufficient bandwidth capacity to handle the streaming. Clark Aff. ¶ 19.

191. Based on these considerations, Eichorst and Clark created the web portal known as "wiaa.tv," which is located at <http://wiaa.tv/>. Clark Aff. ¶ 20; Eichorst Aff. ¶ 20.

192. In the Spring of 2007, WWWY started live streaming WIAA athletic events on wiaa.tv. Eichorst Aff. ¶ 20.

193. The wiaa.tv web portal contains all live and archived videos of WIAA events for all WIAA recognized sports that WWWY produces, and all live and archived videos for WIAA meetings that WWWY produces, such as sports meetings (meetings for specific sports such as basketball or wrestling), rules meetings, press conferences, and the annual meeting. Clark Aff. ¶ 20.

194. The portal contains the WIAA logo and a link to the WIAA website, clearly identifying its connection to and cementing its relationship with the WIAA. Clark Aff. ¶ 20.

195. WWWY operates and manages the wiaa.tv web portal for WIAA as part of its contractual responsibilities and at no cost to the WIAA. Clark Aff. ¶ 20.

196. The WIAA has control over the content that is placed on wiaa.tv, including what is displayed, when, and how, to ensure it supports and is consistent with the mission and purpose of the WIAA. Clark Aff. ¶ 21; Eichorst Aff. ¶ 20.

197. The wiaa.tv portal is a video-only site. Eichorst Aff. ¶ 21.

198. There is limited advertising on wiaa.tv. Clark Aff. ¶ 21; Eichorst Aff. ¶ 21.

199. The WIAA has control over the advertising on the website. Clark Aff. ¶ 21.

200. If any video content or advertising was not consistent with the WIAA members' ideals and the mission of the organization, the WIAA would have the ability to restrict its display. Clark Aff. ¶ 21.

201. The WIAA has begun a pilot program to use the wiaa.tv portal to the benefit of WIAA members by using the portal as a vehicle for member schools to live stream their own video of their own athletic events during the regular season at no charge to them. Clark Aff. ¶ 22; Eichorst Aff. ¶ 22.

202. As part of the pilot program, to encourage schools to participate and use the portal, WWWY is paying pilot schools a minimum of \$500 this year to implement the program. Clark Aff. ¶ 22.

203. The WIAA anticipates the wiaa.tv portal to have great potential for its members. Clark Aff. ¶ 22.

204. The portal provides member schools with a safe haven to place its video content, and member schools do not have to worry about negative advertising or images associated with their video content. Clark Aff. ¶ 22.

205. Although no WIAA events were offered on the internet in 2004-05, in 2008-09, the wiaa.tv web portal transmitted 82 live WIAA events and 182 on archived stream and DVD including events from each of the WIAA 25 sports. Clark Aff. ¶ 8; Nero Decl. Ex. 20 at 25.

206. Of the events offered on wiaa.tv, approximately 134 were under the WWWY contract with WIAA, while approximately 48 were Football State Finals, Boys and Girls Basketball State Tournament, and Hockey State Finals. Clark Aff. ¶ 8.

207. WWWY does not make any money from the streaming of WIAA events on wiaa.tv. Eichorst Aff. ¶ 21.

208. The expenses that WWWY incurs to operate wiaa.tv are offset by WWWY's distribution contracts. Eichorst Aff. ¶ 21.

#### **The Newspapers' Violation of the WIAA's Policies and the WWWY's Exclusive Rights Contract with WWWY**

209. *The Post-Crescent*, a newspaper published in Appleton, Wisconsin by Gannett Company, Inc., transmitted the following WIAA-sponsored tournament games through live internet streaming:

- October 28, 2008, Green Bay Preble High School v. Appleton North High School, at Appleton North High School;
- October 28, 2008, New London High School v. Waupaca High School, at Waupaca High School;
- November 1, 2008, Appleton North High School v. Bay Port High School, at Bay Port High School; and
- November 8, 2008, Appleton North High School v. Stevens Point Area High School, at Stevens Point Area High School

Defendants' Counterclaim, Dkt. No. 2 ¶ 39.

210. The *Post-Crescent* internet streams of WIAA-sponsored games were made without the consent of WWWY. Eichorst Aff. ¶ 44.

211. In November of 2008, Eichorst contacted *The Post-Crescent* and requested that they remove the unauthorized games from its website, pay the associated rights fee, and provide WWWY with the DVD of the game. Eichorst Aff. ¶ 44.

212. *The Post-Crescent* refused and has not paid the rights fee or provided a DVD to WWWY. Eichorst Aff. ¶ 44.

213. Clark did not authorize, on behalf of the WIAA or WWWY, any media organization to live stream any WIAA-sponsored tournament without paying the required rights fee for such streaming, including the four WIAA-sponsored football tournaments that *The Post-Crescent* transmitted by live internet streaming in October and November of 2008. Clark Aff. ¶ 31.

214. In November of 2008, Gannett newspapers attempted to stream four WIAA events, and failed to obtain permission and pay a rights fee. Eichorst Aff. ¶ 45.

### **The WIAA's Photography Policy**

215. From 2001-2003, the WIAA contracted to grant the nonexclusive right to Visual Image Photography, Inc. ("VIP") to sell photos and images of all state tournament finals. Chickering Aff. ¶ 32.

216. In 2004, the WIAA contracted to grant the exclusive right to VIP to sell photos and images of all state tournament finals only. Chickering Aff. ¶ 32.

217. The 2004 contract with VIP was for a 1-year term and expired in 2005. Chickering Aff. ¶ 32.

218. In 2005, the WIAA contracted to grant the exclusive right to VIP to sell photos and images of all state tournaments including quarterfinals and semifinals. Chickering Aff. ¶ 32.

219. The 2005 contract with VIP was for a 3-year term and expired in 2008. Chickering Aff. ¶ 32.

220. Restrictions on the sale of tournament images helped the WIAA limit those images to association with products and advertising consistent with the WIAA's mission. Chickering Aff. ¶ 32.

221. In 2007, a controversy arose over the WIAA's right to limit the Wisconsin Newspaper Association's member newspapers from selling photographs taken at tournament games through their website. Chickering Aff. ¶ 33.

222. The WIAA suspended enforcement of its photography policy for credentialed media in the summer of 2007 and Chickering notified the media in about July of 2007 that the WIAA would not enforce its photography policy. Chickering Aff. ¶ 33; Clark Aff. ¶ 23.

223. The WIAA did not enforce its photography policy at any time after it was suspended. Chickering Aff. ¶ 33.

224. In 2008, the WIAA entered into a contract with VIP for a term of five years, under which the only item of “exclusivity” that the WIAA guarantees to VIP is with regard to “the sale of any products using images from Covered Events.” Clark Aff. ¶ 24, Ex. 4.

225. Effective with the 2009-2010 Media Policies, the WIAA changed its photography policy to be consistent with the July 2007 enforcement suspension and the 2008 VIP contract. Clark Aff. ¶ 25; Chickering Aff. ¶ 34.

226. The 2009-2010 policy allows the sale or resale of still photography by WIAA-credentialed media. Clark Aff. ¶ 25; Nero Decl. Ex. 5 at 6.

227. The 2009-2010 policy prohibits the sale of “any products using images from WIAA Tournament Series events” without written permission from the WIAA. Clark Aff. ¶ 25; Nero Decl. Ex. 5 at 6.

### **The WIAA’s Policy Regarding Play-by-Play**

228. The WIAA’s Media Policies Reference Guide addresses simultaneous play-by-play depictions of tournament events, including via live “blogging” the game. Clark Aff. ¶ 26; Nero Decl. Ex. 5.

229. Any media organization that wishes to transmit live play-by-play descriptions of tournament action must obtain WIAA consent and pay the approximate rights fee. Clark Aff. ¶ 26; Nero Dec. Ex. 5 at 12.

230. The Media Guide specifies that the media do not have to pay a fee for “live report updates” involving information about results or the event without play-by-play description of the contest. Clark Aff. ¶ 26; Nero Decl. Ex. 5 at 14.

231. The WIAA does prohibit “play-by-play” without payment of the fees, whether such play-by-play appears on a blog, website, or otherwise. Clark Aff. ¶ 26; Nero Decl. Ex. 5 at 14.

232. The WIAA defines play-by-play as live and detailed, spoken or written, regular entries of descriptions, or depictions of the sports events as they are happening, or the actual action as it occurs, including the continuous sequential detailed description of play, of events, or other material such as graphics or video regarding any WIAA tournament game, so that it approximates a video or audio transmission that allows the recipient to experience the game as it occurs. Clark Aff. ¶ 26; Nero Decl. Ex. 5 at 11.

233. Following the 2008 Football State Finals, Clark discovered after the fact that two media organizations, Madison.com (Wisconsin State Journal and Capital Times together) and the Milwaukee Journal-Sentinel, had engaged in live play-by-play blogging. Clark Aff. ¶ 27.

234. Clark sent both organizations an invoice to pay the appropriate play-by-play fee. Clark Aff. ¶ 27.

235. Neither media organization paid the fee. Clark Aff. ¶ 27.

236. The incident with Madison.com and the Milwaukee Journal-Sentinel prompted discussions with the media about the blogging policies. Clark Aff. ¶ 28.

237. In early December of 2008, Clark informed several sports editors that the WIAA was willing to work with the media to develop an agreement as to what would be permitted on a real-time blog from tournament series events. Clark Aff. ¶ 28.

238. The issue of what the WIAA would permit as far as blogging had been discussed at the two prior Media Days (an annual meeting that the WIAA hosted with members of the media to discuss media policies). Clark Aff. ¶ 28.

239. Clark agreed to drop the invoices for the play-by-play with the expectation that the media would reach consensus on the issue and present a policy to Clark. Clark Aff. ¶ 28.

240. In mid and late December of 2008, Clark also discussed with Peter Fox, the President of the Wisconsin Newspaper Association, the blogging issue, and that the WIAA was willing to discuss a reasonable definition of the threshold for a live depiction of action in blogs. Clark Aff. ¶ 29.

241. Clark received no further communication from any editor or media organization on the issue of blogging or play-by-play, and they presented no proposal or draft policy to Clark to define the parameters of permissible blogging. Clark Aff. ¶ 30.

### **The Value of the WIAA's Exclusive Contracts**

242. Eichorst determined that annually, it costs WWWY \$508,806 to fulfill WWWY's contractual commitments to the WIAA, which include the following categories: WIAA state tournament event production costs in the field; WIAA state tournament event post-field production costs; WIAA channel production; WIAA state tournament venue production; wiaa.tv hosting and management; wiaa.tv live streaming; WIAA sports meeting production; and production of other WIAA meetings. Eichorst Aff. ¶ 40.

243. The Agreement with WWWY substantially benefits the WIAA and its members in multiple ways. Chickering Aff. ¶¶ 24-27.

244. One benefit to the WIAA and its members is that the WIAA's broadcast partners pay for the exclusive transmission rights to state tournaments, and that allows the WIAA to obtain revenue that it uses to organize and operate its programs and tournaments. Chickering Aff. ¶ 24.

245. Another benefit is that the WIAA keeps all of the revenue from its contract partners for its own internal operations, and does not transfer any of that revenue to the State of Wisconsin, to any state agency, or to general state funds. Chickering Aff. ¶ 24.

246. The revenue from its contract partners allows the WIAA to expand athletic program opportunities for its members for all WIAA-recognized sports, including providing revenue for those sports that the WIAA typically subsidizes or for those sports without significant public attendance. Chickering Aff. ¶ 24.

247. The Agreement with WWWY also allows the WIAA to expand transmission of athletic events that might not otherwise be transmitted due to the level of public interest or commercial appeal. Chickering Aff. ¶ 25.

248. Through the WWWY contract, the WIAA has achieved additional distribution and streaming of tournaments that were not transmitted before, including all state tournaments, and regional and sectional competitions. Chickering Aff. ¶ 25.

249. WWWY provides valuable services to the WIAA that the WIAA does not have to pay for, which allows the WIAA to provide cost savings to its member schools, and to return money to the schools that host events so that they are not losing money on hosting an event. Chickering Aff. ¶ 26.

250. WWWY's services have increased the WIAA's exposure to the public and the public's participation in the WIAA by making available WIAA meetings and events on [wiaa.tv](http://wiaa.tv) at no cost to the WIAA. Chickering Aff. ¶ 26.

251. Another benefit of the Agreement with WWWY is that the WIAA can fulfill its purpose to promote the broad educational aims of the WIAA's member schools and to cultivate the high ideals of good citizenship and sportsmanship by controlling the association of high school sports with inappropriate goods and services (such as gambling, alcohol, tobacco, and adult entertainment). Chickering Aff. ¶ 27.

252. Without the revenue from its exclusive contract partners, the WIAA would not be able to afford to subsidize all of its recognized sports, thereby depriving its members and their student athletes of athletic opportunities. Chickering Aff. ¶ 35.

253. Without the revenue from its exclusive contract partners, the WIAA would have to increase the cost of admission for tournaments, undermining its goal of making the events an affordable, family-friendly outing. Chickering Aff. ¶ 35.

254. Without the revenue from its exclusive contract partners, the WIAA membership would also lose control over the message that was associated with their voluntary athletic association and its ability to promote the members' ideals as stated in the organization's constitution. Chickering Aff. ¶ 35.

255. Without the revenue from its exclusive contract partners, the WIAA would not be able to provide the cost-effective services to its members that it receives for free from WWWY. Chickering Aff. ¶ 35.

256. WWWY could not operate at a profit without the exclusive contract with the WIAA, because it only receives revenue from distribution and advertising, not from internet streaming, and its distribution partners and advertisers require exclusive content. Eichorst Aff. ¶ 41.

### **The Reasonableness of the WIAA's Media Policies**

257. There is a widely recognized distinction between *covering* a game, which virtually any news organization can do, and *carrying* a complete broadcast or stream of a game, which is limited to the appropriate rights holder. Hoyt Decl. ¶ 56.

258. The WIAA has provided space and technology to make reporting on WIAA games more convenient for credentialed media. Hoyt Decl. ¶ 21.

259. Under WIAA policies, newspapers have virtually complete access to the WIAA athletic events in order to perform their expected journalistic functions, i.e., to fully describe, explain, and analyze newsworthy events. Hoyt Decl. ¶ 60.

260. Policies such as that of the WIAA do not hinder media outlets from reporting on games, as reporters for print, broadcast, and internet media are free to report on games without significant restrictions on their coverage. Hoyt Decl. ¶ 54.

261. Under the WIAA's policies, newspapers are able to report on the details and outcomes of the games, including sidebars, statistics, and other relevant information, and printing in their regular editions and on their websites. Hoyt Decl. ¶¶ 21, 58.

262. Newspapers may use photographs of the events and have interview access to coaches and athletes. Hoyt Decl. ¶¶ 21, 58; Nero Decl. Ex. 5 at 8-10.

263. It is typical for reporters to interview coaches and athletes following games to complete game stories and sidebars. Hoyt Decl. ¶ 55.

264. Reporters are generally permitted to film game action, record relevant statistics and other game information via audio recording, and use good, old-fashioned pen to paper in publishing and producing stories. Hoyt Decl. ¶ 55.

265. It is common practice for reporters covering athletic events to be restricted to specific locations and to have limitations placed on the equipment they can use, for example, on the ability to originate a radio broadcast. Hoyt Decl. ¶ 56.

266. In addition to these traditional methods of reporting on events, newspapers may carry live audio streams of tournament games by paying an additional rights fee of \$40-50 to WIAA. Hoyt Decl. ¶¶ 19, 58; Nero Decl. Ex. 5 at 19.

267. Newspapers can use up to two minutes of highlights or other action for reporting purposes (and may exceed two minutes with the WIAA's approval), and can report live from tournament venues using live game action as a backdrop for the report so long as there is no play-by-play commentary. Hoyt Decl. ¶¶ 17, 19, 59; Nero Decl. Exs. 3 at 51, 2 at 51, 4 at 12, 5 at 11-12.

268. Under the WIAA's policies, newspapers are not even foreclosed from internet streaming of games. Hoyt Decl. ¶¶ 20, 57; Nero Decl. Ex. 4 at 16.

269. Newspapers and other credentialed media are able to transmit games if they simply pay the required fee to WWWY. Hoyt Decl. ¶¶ 20, 57.

270. The access the newspapers are provided permits the thorough coverage which the newspaper audience expects. Hoyt Decl. ¶ 58.

271. In fact, the WIAA's restrictions are typical of those placed on the reporting of sporting events. Hoyt Decl. ¶ 55; Decl. of Charles C. Schmidt in Supp. of Mot. of Ariz. Interscholastic Ass'n, Inc. for Leave to File Amicus Br. & Supp. Decl., Dkt. No. 28, hereinafter "Schmidt Decl." ¶¶ 7-10.

272. Such policies are necessary based both on the availability of space and the need to control the conduct of the game. Hoyt Decl. ¶ 56; Schmidt Decl. ¶¶ 26-28.

273. It is not typical for a reporter to transmit the entirety of a sporting event over the internet in the name of reporting. Hoyt Decl. ¶ 56.

274. In virtually all cases, broadcasters and reporters know and respect any exclusive rights agreements that are in place for that event. Hoyt Decl. ¶ 56.

275. WIAA's media policies apply to all commercial television stations and websites using video for newscast or webcast purposes. Hoyt Decl. ¶ 59.

276. WWWY's interest in exclusivity, and the WIAA's interest in limiting internet transmissions of its games, is comparable to a newspaper's or wire service's need to protect its product from unapproved use on other websites or publications, or, more directly on point, much like Major League Baseball's interest in prohibiting unauthorized use of the broadcast of its game without the advance written consent of Major League Baseball, which has itself entered into rights agreements related to that content. Hoyt Decl. ¶ 48.

277. It is standard practice in sports organizations, both professional and educational, to grant exclusive rights to particular media organizations to increase the value of the rights, and thus increase revenue to the organization. Hoyt Decl. ¶¶ 22-34, 47-48; Schmidt Decl. ¶ 14-16 & 18.

278. Protecting broadcast rights and awarding them on an exclusive basis is clearly a major financial underpinning of college sports. Hoyt Decl. ¶ 23, Schmidt Decl. ¶¶ 18-20.

279. In 1988, when the University of Wisconsin switched from a non-exclusive radio agreement, the University estimated its radio broadcast revenue would triple. Hoyt Decl. ¶ 26; Nero Decl. Ex. 6.

280. In fact, the University's radio broadcast revenue has increased from just under \$100,000 annually in 1988 under a non-exclusive rights policy to \$75,000,000 over a twelve-year period under its exclusive agreement with Learfield Communications. Hoyt Decl. ¶ 26; Nero Decl. Exs. 8 and 12.

281. In October of 2009, this agreement was amended to include internet streaming of University of Wisconsin games. Hoyt Decl. ¶¶ 29-32; Nero Decl. Ex. 17.

282. This increase in revenue is consistent with the experiences of other educational institutions—indeed, Learfield alone has rights agreements with over fifty universities and conferences. Hoyt Decl. ¶ 34; Nero Decl. Ex. 13.

283. The exclusive licenses used in college sports are comparable to those of the WIAA related to internet transmission in that they provide much needed funding. Hoyt Decl. ¶¶ 36-42; Clark Aff. ¶¶ 3-10.

284. The value of these rights rests primarily in exclusivity; stations and networks are willing to make investments in their coverage in order to enhance the value of their exclusive rights payments. Hoyt Decl. ¶ 40; Schmidt Decl. ¶ 18.

285. Without exclusive contracts, this revenue stream would all but disappear. Hoyt Decl. ¶ 40.

286. The contract between the WIAA and WWWY has enhanced public access to WIAA events and helps fulfill one of the WIAA's stated objectives, to promote opportunities for member schools' participation. Hoyt Decl. ¶ 46; Nero Decl. Ex. 2 at 14.

287. The WWWY exclusive license agreement provides expanded exposure for less visible sports. Hoyt Decl. ¶¶ 45-48; Clark Decl. ¶¶ 5-8.

288. Were the contract on a non-exclusive basis, it is unlikely these sports would be made available to the non-attending public. Hoyt Decl. ¶ 47.

289. Without the economic protection provided by exclusivity, it is unlikely a rights holder would invest in and commit to the equipment and facilities necessary to produce this number of tournament events, in particular for those sports that do not normally command significant public attention. Hoyt Decl. ¶¶ 47-48.

290. Gannett claims that WIAA events are “designated or limited public forums for the purpose of reporting” on WIAA events. Nero Decl. Ex. 18, Resp to Interrog. No. 9 at 10.

Dated this 22<sup>nd</sup> day of January, 2009.

Respectfully submitted,

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