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HIGH SCHOOL COACHES CALL A FOUL: IMPORTANT CONSIDERATIONS FOR HIGH SCHOOL COACHES CONSIDERING A DEFAMATION CLAIM

I. INTRODUCTION: THE GOOD, THE BAD AND THE UGLY OF HIGH SCHOOL ATHLETICS

High school athletics are a prominent aspect of many communities.¹ For young athletes, athletics allow them to improve athletic abilities and learn the importance of teamwork, sportsmanship, and healthy competitiveness.² For community members, high school athletics are a source of pride when it comes to the athletic abilities of students and the ability of coaches to lead a winning team.³ High school basketball coaches are faced with a wide range of challenges on and off the court, but for many coaches, the most difficult coaching challenge is handling comments and complaints from the parents of team members.⁴ Coaches seeking a legal rem-

1. See generally *Understanding the Benefits of High School Sports*, CARIS SPORTS FOUND., <https://carissportsfoundation.org/understanding-the-benefits-of-high-school-sports/> [<https://perma.cc/C9GV-QXE8>] (last visited Mar. 10, 2022) (noting high school sports benefit communities by bringing them together to support common cause in addition to providing developmental benefits to children).

2. See, e.g., *O'Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007) (observing high school athletics, which largely depends on adequacy of coaches, have profound impact on athletes' futures); Bob Gardner, *High School Activities Bring Communities Together*, NAT. FED'N STATE HIGH SCH. ASS'N (Aug. 28, 2017), <https://www.nfhs.org/articles/high-school-activities-bring-communities-together/> [<https://perma.cc/BB6A-3TZE>] (stating high school athletes have higher grade averages, better attendance, strong work ethics due to demands of being on sports teams).

3. See, e.g., *McGuire v. Bowlin*, 932 N.W.2d 819, 825 (Minn. 2019) (stating public has interest in wins, losses of local high school sports teams); *O'Connor*, 165 P.3d at 1219 (declaring parents of high school athletes "experience directly the joys, sorrows, and injustices of athletic competition"). In addition to providing a source of pride, high school athletics also give community members a sense of unity by bringing people together to support a common cause. See Gardner, *supra* note 2 (indicating high school athletics provide communities with opportunity to celebrate commonality of supporting hard work of young athletes).

4. See *Br. for Minn. State High Sch. Coaches Ass'n as Amici Curiae Supporting Appellant at 2, McGuire v. Bowlin*, 932 N.W.2d 819 (Minn. 2019) (No. A18-0167) [hereinafter *Br. for MSHSCA*] (describing slander against high school coaches as "rampant problem facing high school coaches"); see also Jordan Harrell, *High School Coach Resigns Due to Parent Politics. . . And It's Time to Say Something Out Loud*, FRIDAY NIGHT WIVES (Jan. 17, 2019), <https://fridaynightwives.com/high-school-coach-resigns-due-to-parent-politics-and-its-time-to-say-something-out-loud/> [<https://perma.cc/LU4A-JPYU>] (discussing high school coach's resignation due to parent political pressures: "we've all watched our coaches deal with it. The emails, the complaints . . . the demands and threats from parents who think they know better than the coach whose job is literally on the line with every win and every loss

edy to combat any reputational harm they have suffered from false comments and attacks made by parents, turn to the tort of defamation for relief.⁵

However, the law of defamation is restricted by the Constitutional protection of free speech and debate; thus, not all defamation plaintiffs will be treated the same.⁶ Certain plaintiffs must satisfy an extremely high burden, showing the defamatory remarks were made intentionally or with reckless disregard for the truth.⁷ Although defamation is restricted by the Constitution, individuals are still entitled to legal redress for reputational harm suffered.⁸ High school coaches are often subject to campaigns of serious allegations that may destroy their coaching careers and seriously tarnish their reputation outside of the context of coaching, but nothing in Supreme Court precedent supports restricting a high school coach's ability to seek redress through defamation law.⁹ In 2019, the Minnesota Supreme Court made it clear that no legal or policy principle supported imposing a heightened burden on high school coaches harmed by defamatory remarks, and its decision should guide future courts that are tasked with the same inquiry.¹⁰

This Comment argues that the Minnesota decision, *McGuire v. Bowlin*,¹¹ illustrates why applying the heightened burden to high school coaches goes against legal precedent and public policy inter-

So parents, I write this to implore you: we're losing good ones. Good coaches and good teachers are leaving the profession because it's so hard to do it with integrity.”).

5. See *Br. for MSHSCA*, *supra* note 4, at 10 (arguing high school coaches face various attacks by parents; thus, coaches should have ability to pursue damages through defamation law).

6. See *O'Connor*, 165 P.3d at 1217 (noting defamation does not treat plaintiffs equally).

7. See *id.* (“Those who by choice or mishap acquire the status of a public official or public figure surrender a sizeable measure of their right to recover damages from those who defame them. Statements directed against public officials or public figures require proof that the speaker acted with actual malice . . .”); see also Jeffrey Omar Usman, Article, *Defamation and the Government Employee: Redefining Who Constitutes a Public Official*, 47 *LOY. U. CHI. L. J.* 247, 258–59 (2015) (noting burden of proof in defamation depends on categorization of plaintiff as private or public individual).

8. See *Rosenblatt v. Baer*, 383 U.S. 75, 85–86 (1966) (acknowledging heightened burden for Constitutional purposes does not ignore societal interest in seeking legal remedy for reputational harm suffered).

9. See *McGuire v. Bowlin*, 932 N.W.2d 819, 823–24 (Minn. 2019) (applying Supreme Court jurisprudence to conclude heightened burden not applicable to high school coach).

10. See *id.* at 827 (concluding high school coach is not public official worthy of heightened burden). For further discussion of why this decision should guide other courts, see *infra* notes 277–292 and accompanying text.

11. 932 N.W.2d 819 (Minn. 2019).

ests surrounding high school sports.¹² Part II explores the origins of defamation, the Supreme Court's creation and expansion of a heightened burden for certain defamation plaintiffs, and the *McGuire* decision.¹³ Part III provides a comprehensive look at courts outside of Minnesota that have questioned the applicability of the heightened burden when the defamation plaintiff is a high school coach.¹⁴ In discussing courts outside of Minnesota, Part III also analyzes why the heightened burden should *not* be applied to high school coaches and explains how the Minnesota Supreme Court's reasoning is the preferable method of reasoning when the defamation plaintiff is a high school coach.¹⁵ Part IV provides a brief summary of how Supreme Court precedent, the *McGuire* decision, and the interests of coaches and parents impact defamation claims.¹⁶

II. THE SUPREME COURT, DEFAMATION, AND HIGH SCHOOL COACHES: PUBLIC OFFICIAL, PUBLIC FIGURE, OR PRIVATE INDIVIDUAL? THE DETERMINATION MATTERS

Defamation law is rooted in the longstanding view that an individual has the right to protect their reputation and livelihood within their respective community.¹⁷ However, a plaintiff's avenue to relief in a defamation action has changed greatly in the United

12. For further discussion of why applying a heightened burden to coach defamation claims would have negative impacts on high school sports and would function in contrast with United States Supreme Court defamation jurisprudence, see *infra* notes 252–299 and accompanying text.

13. For further discussion of the Supreme Court's decisions and the creation of the heightened burden, see *infra* notes 28–66 and accompanying text. For further discussion of the facts, procedural history, and reasoning behind the Minnesota Supreme Court's *McGuire* decision, see *infra* notes 72–139 and accompanying text.

14. For further discussion of state courts that have decided whether the heightened burden is applicable to high school coaches filing defamation claims, see *infra* notes 151–227 and accompanying text.

15. For further discussion of why *McGuire* correctly refused to apply the heightened burden to a high school coach, see *infra* notes 277–292 and accompanying text.

16. For discussion of Supreme Court precedent, the *McGuire* decision, and how the interests of coaches and parents impact defamation claims, see *infra* notes 300–304 and accompanying text.

17. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (stating interest in right to protect one's name “reflects no more than our basic concept of the essential dignity and worth of every human being — a concept at the root of any decent system of ordered liberty” (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring))); see also Jonathan Deem, Note, *Freedom of the Press Box: Classifying High School Athletes Under the Gertz Public Figure Doctrine*, 108 W. VA. L. REV. 799, 801–02 (2006) (explaining origins of defamation law, arguing right to protect reputation has been fundamental to society for many years but modern defamation law differs from tradition understanding of defamation law).

States, as compared to its traditional English common law origins.¹⁸ Modern changes to defamation law have a massive impact on which plaintiffs will prevail on a defamation claim, and it is no secret that United States defamation law does not treat all plaintiffs equally.¹⁹ Defamation is governed by state legislation; thus, defamation varies slightly among different states, but regardless of state legislation, defamation law is generally limited by First Amendment protections.²⁰ In general, to satisfy the elements of defamation a plaintiff must prove: (1) the defendant made a false and defamatory statement regarding the plaintiff; (2) the statement was unprivileged to a third party; (3) the statement harms or has the tendency to harm the plaintiff's reputation; and (4) the defendant was at fault.²¹

18. See Deem, *supra* note 17, at 802 (stating modern defamation law originated from English law but modern United States defamation law is unique); see also Vincent R. Johnson, *Comparative Defamation Law: England and the United States*, 24 U. MIA. INT'L & COMP. L. REV. 1, 4–6, 18–22 (2016) (analyzing shared legal principles of England with United States, stating “during the past half century, the paths of England and the United States have significantly diverged in the field of defamation”); see also Gerald Smith, Comment, *Of Malice and Men: The Law of Defamation*, 27 VAL. U. L. REV. 39, 40 (1992) (discussing defamation law in United States, stating balance between First Amendment rights versus reputational rights has resulted in “plaintiff status approach [requiring] a determination of differing degrees of defendant culpability, depending on whether the plaintiff is a public official, public figure, or private individual”).

19. See O'Connor v. Burningham, 165 P.3d 1214, 1217 (Utah 2007) (applying United States Supreme Court precedent to defamation action, stating “a central maxim of these cases is that in the realm of defamation law all persons are not treated equally”); see also Johnson, *supra* note 18, at 18, 32–33 (arguing United States defamation law is pro-defendant because burden placed on defamation plaintiffs in America is heavier than plaintiffs' burden in England because of “demanding way in which the American ‘actual malice’ standard has been interpreted by the United States Supreme Court”); Heather Maly, Note, *Publish at Your Own Risk or Don't Publish at All: Forum Shopping Trends in Libel Litigation Leave the First Amendment Un-Guaranteed*, 14 J.L. & POL'Y 883, 894–96 (2006) (stating American defamation law requires public official, public figure plaintiffs to prove actual malice, which is “difficult barrier for plaintiffs to overcome in bringing defamation actions” but actual malice barrier is “not as readily applicable” to plaintiffs who are private individuals).

20. See 50 AM. JUR. 2D LIBEL AND SLANDER § 15 (2021) (“[C]auses of action for defamation have their basis in state common law, they are subject to the principles of freedom of speech arising under the federal and state constitutions.”); see also Gertz, 418 U.S. at 349 (attempting to balance state defamation laws with requirements of First Amendment); Darryll M. Halcomb Lewis, Symposium, *Defamation of Sports Officials*, 38 WASHBURN L.J. 781, 785–88 (1999) (stating defamation was defined by individual state law until 1964 when Supreme Court announced Constitutional restrictions to defamation laws); Stephen G. Strauss, *Defamation and the Collegiate Athlete: The Case of Failed Reporting and an NFL Drug Test*, 3 SPORTS LAW. J. 51, 57 (1996) (“States can set the standard private individuals must meet to recover compensatory damages, so long as they require fault.”).

21. See RESTATEMENT (SECOND) OF TORTS: DEFAMATION § 558 (Am. L. Inst. 1977) (providing elements necessary to create liability for defamation); see also McGuire v. Bowlin, 932 N.W.2d 819, 823 (Minn. 2019) (stating elements of defama-

The standard for determining whether a defendant was at fault ranges from negligence to actual malice, depending on whether the plaintiff is considered a private individual, public official, or a public figure.²² The distinction between private and public status was first announced by the United States Supreme Court in *N.Y. Times Co. v. Sullivan*²³ and was later extended by the Court in *Gertz v. Robert Welch, Inc.*²⁴ The Court's holding in *New York Times* requires defamation plaintiffs who are determined to be public officials to prove the defendant acted with "actual malice," commonly known as the "New York Times" rule.²⁵ For some defamation plaintiffs, such as the plaintiff in *McGuire*, the New York Times rule and its extension is the determining factor in whether a defamation claim will prevail to provide relief from the reputational damage the plaintiffs have suffered.²⁶ Consequently, determining the public or private status of a defamation plaintiff matters immensely.²⁷

tion applied in Minnesota courts); *Verity v. USA Today*, 436 P.3d 653, 662 (Idaho 2019) ("To prevail on a defamation claim in Idaho, a plaintiff must prove that the defendant: (1) communicated information concerning the plaintiff to others; (2) the information was defamatory; and (3) the plaintiff was damaged because of the communication.").

22. See *McGuire*, 932 N.W.2d at 823 (stating defamation plaintiffs must prove defendant was at least negligently at fault but plaintiff's status as public official or public figure requires proof of actual malice as opposed to negligence); see also *Deem*, *supra* note 17, at 803–04 ("A line of Supreme Court Cases . . . requires states to hold certain defamation plaintiffs to a higher standard of proof."); *Lewis*, *supra* note 20, at 788–89 (stating Supreme Court precedent requires courts first determine public or private status of defamation plaintiff, then if plaintiff is found to hold public status, plaintiff bears higher burden of proving statements were made with actual malice).

23. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254 (1964).

24. 418 U.S. 323 (1974).

25. See *N.Y. Times Co.*, 376 U.S. at 279–80 (concluding Constitution mandates federal rule requiring public officials to prove actual malice to recover damages in defamation action); see also *Lewis*, *supra* note 20, at 790–91 (stating actual malice burden faced by public officials has become known as *New York Times* rule).

26. See *McGuire*, 932 N.W.2d at 821–22 (concluding high school coach was not public official or public figure, so was not required to satisfy actual malice requirement); see also Brian Markovitz, Note, *Public School Teachers as Plaintiffs in Defamation Suits: Do They Deserve Actual Malice?*, 88 GEO L.J. 1953, 1954 (2000) (discussing implications of *New York Times* rule as applied to public school teachers then stating public official determination "significantly affects the plaintiff's chance of winning a case").

27. See *O'Connor v. Burningham*, 165 P.3d 1214, 1217 (Utah 2007) (stating plaintiffs with public official or public figure status forfeit much of their right to successfully prevail on defamation claim because of actual malice burden); see also *Smith*, *supra* note 18, at 67–68 (arguing Supreme Court's case-by-case, plaintiff status determination approach to defamation law fails to "adequately protect the interests of [both] the plaintiff [and] the defendant in defamation cases" potentially resulting in forum shopping for jurisdictions that have applied plaintiff status determination favorably).

A. Why Defamation Plaintiffs Are Not Treated Equal: Public Officials and the *New York Times* Rule

The Supreme Court's holding in *New York Times* marked the Court's first attempt at balancing the competing interests between state defamation aiming to protect individual's reputations and First Amendment rights protecting the freedom of speech.²⁸ The facts of that case highlight the Constitutional reasoning behind imposing different burdens of proof on public officials as opposed to private individuals in the context of defamation.²⁹ The plaintiff in *New York Times* was an elected official in Montgomery, Alabama and most of his responsibility as an elected official was to supervise the Montgomery Police Department.³⁰ In 1960, the New York Times published an advertisement that brought attention to various acts of racial harassment and intimidation that were occurring in Montgomery in response to peaceful protests being held in support of the Civil Rights Movement.³¹

Specifically, the advertisement alleged various wrongdoings on behalf of the Montgomery Police Department, although the plaintiff was never directly named in the advertisement.³² After a jury trial in Montgomery, the plaintiff was awarded \$500,000 in damages

28. See *N.Y. Times Co.*, 376 U.S. at 256 (“We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a state’s power to award damages in a libel action brought by a public official against critics of his official conduct.”).

29. See *id.* at 270 (stating Court was considering merits of case in light of “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials”); see also *O’Connor*, 165 P.3d at 1217 (stating Supreme Court justified *New York Times* rule “by recalling our nation’s unfortunate experience with attempts to muzzle speech critical of office holders”).

30. See *N.Y. Times Co.*, 376 U.S. at 256 (stating respondent was one of three elected commissioners in Montgomery, Alabama, explaining most of his duties centered around supervising Police Department, Fire Department, Department of Cemetery).

31. See Jeffrey Omar Usman, *Finding The Lost Involuntary Public Figure*, 2014 UTAH L. REV. 951, 954 (2014) (noting advertisement focused on racially motivated police misconduct).

32. See *N.Y. Times Co.*, 376 U.S. at 257 (stating third and sixth paragraphs of advertisement were basis for plaintiff’s libel action against New York Times). The third paragraph of the advertisement stated student protestors at Alabama State University were teargassed by police and subsequently locked out of the dining hall on campus while the sixth paragraph accused Southern citizens of attempting to harm and intimidate Dr. King. See *id.* at 257–58 (providing description of student protests as described in third and sixth paragraphs of advertisement). It is unlikely the advertisement ruined the plaintiff’s reputation because it did not name him directly, suggesting the plaintiff filed the claim as an attempt to silence national criticism of racial violence in Southern states. See Lili Levi, *A Closer Look at New York Times v. Sullivan*, UM NEWS (Feb. 22, 2019), <https://news.miami.edu/stories/>

and the Alabama Supreme Court affirmed the verdict, reasoning the advertisement was libelous per se, and the damages were not excessive because the New York Times' failure to retract false contents in the advertisement was proof of implied malice.³³ The case presented a set of circumstances that illustrated a clear threat to First Amendment rights in areas of prominent public concern, according to the United States Supreme Court.³⁴

With the "profound national commitment" to free debate in matters of public issue in mind, the Court reversed the Alabama holdings, instead concluding a defamation plaintiff who holds public office may not be awarded damages in defamation actions without proving the defamatory statement was made with actual malice.³⁵ The Court defined the actual malice standard as a federal rule requiring public officials to prove the defendant made a false communication knowing the communication was false or with reckless disregard as to whether the communication was true.³⁶ The actual malice requirement set forth by the *New York Times* rule imposes an extremely high burden on some, but not all defamation plaintiffs, and the Court carefully explained why the First Amendment calls for public officials to face that heightened burden.³⁷

2019/02/a-closer-look-at-new-york-times-v-sullivan.html [https://perma.cc/V28W-GJP9] (arguing plaintiff was making political point by filing defamation claim).

33. See *N.Y. Times Co.*, 376 U.S. at 263–64 (describing Alabama Supreme Court's reasoning in affirming trial court's decision); see also Usman, *supra* note 31, at 959–61 (noting Alabama Supreme Court upheld \$500,000 jury verdict under strict liability, libelous per se approaches that United States Supreme Court found unconstitutional).

34. See *N.Y. Times Co.*, 376 U.S. at 264–65 (stating Supreme Court granted certiorari because of "importance of the constitutional issues involved," ultimately concluding law applied by Alabama was "constitutionally deficient" because it failed to protect First Amendment and Fourteenth Amendment rights in libel actions brought by public officials).

35. See *id.* at 264, 279–80 (stating Court's reasoning was based on nation's interest in protecting free debate and noting Court reversed Alabama Supreme Court because it applied "constitutionally deficient" law); see also Nat Stern, Article, *The Enduring Enigma of Public Official Status in Libel Law*, 54 LOY. L.A. L. REV. 1205, 1210–11 (2021) (noting actual malice burden was adopted to protect freedom of debate unhindered by government intrusion).

36. See *N.Y. Times Co.*, 376 U.S. at 280 (defining actual malice as "knowledge that [the defamatory statement] was false or with reckless disregard of whether it was false or not"); see also Usman, *supra* note 31, at 961 (stating actual malice burden was required because truth as defense did not adequately protect First Amendment rights).

37. See Usman, *supra* note 31, at 976 (arguing subsequent expansion of actual malice burden has resulted in more private individuals bearing heightened burden, contrary to United States Supreme Court's explanation for why actual malice burden is appropriate for public officials).

To understand modern defamation actions and the effects the *New York Times* rule has on a high school coach's chance at prevailing in a defamation claim, it is crucial to look at *why* the Supreme Court concluded defamation law necessitated some level of "constitutionalization."³⁸ At the outset, the Supreme Court emphasized the importance of ensuring defamation actions do not have the capability of violating the First Amendment right to free speech, thus the Court reasoned an expression of public concern relating to an aspect of a "major public issue of our time" requires the protection afforded by the First Amendment.³⁹ Public issues naturally invite public discourse; therefore, the Constitutional limits of defamation law require considering the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open"⁴⁰

Thus, the *New York Times* decision marked a specific context in which state protection against reputational harm is outweighed by First Amendment rights in the context of defamation law.⁴¹ Namely, an alleged reputational harm suffered by a public official is outweighed by a defendant's First Amendment rights when the defendant published statements criticizing conduct performed by the public official in furtherance of the public official's duties.⁴² Nota-

38. See *N.Y. Times Co.*, 376 U.S. at 283 (stating Constitution "delimits a State's power" to afford relief to public official plaintiffs who assert libel claims in response to published criticisms of public official's conduct); see also Deem, *supra* note 17, at 800 (discussing high school athletes as defamation plaintiffs while noting Supreme Court's actual malice requirement is "a significant hurdle for plaintiffs to overcome"); Yonathan A. Arbel & Murat Mungan, Article, *The Case Against Expanding Defamation Law*, 71 ALA. L. REV. 453, 465, 467 (2019) (stating *New York Times* holding cemented idea that "protection of reputation should sometimes cede to First Amendment considerations" which led to "constitutionalization" of defamation law that later expanded beyond public official status).

39. See *N.Y. Times Co.*, 376 U.S. at 270-71, 280 (concluding advertisement at issue was protest of major public issue at time and deserved full constitutional protection by means of requiring proof of actual malice).

40. See *id.* at 270 (stating Court's analysis was conducted in light of national commitment to free public debate). The *New York Times* Court reasoned that a truth defense did not adequately protect First Amendment rights because occasional false statements are natural products of free debate and right to free speech does not depend on whether the speech is popular or truthful. See *id.* at 270-72 (concluding nation's commitment to free debate does not promote interpretation of First Amendment providing protection of free speech to be dependent on falsity or popularity of speech).

41. See *id.* at 282-83 (holding defamation actions filed by public officials are required under First Amendment to prove at least actual malice).

42. See *id.* at 283 (noting Court's holding applies in context of criticism of official conduct); see also *O'Connor v. Burningham*, 165 P.3d 1214, 1217 (Utah 2007) (stating public officials sacrifice right to receive damages suffered from reputational harm because First Amendment requires public officials to prove actual malice).

bly absent from the *New York Times* decision was any explanation of who exactly was included in the public official category, but it would not take long for the Supreme Court to revisit the *New York Times* rule.⁴³

Two years later, the Court again refused to create a bright-line rule for the public figure determination and instead reasoned the determination is adequately guided by the Court's reasoning in *New York Times*.⁴⁴ In *Rosenblatt v. Baer*,⁴⁵ the public official designation was described to include "at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."⁴⁶ As it was in *New York Times*, the Court was careful to explain that the actual malice requirement must be viewed in light of the important value of protecting individual reputation.⁴⁷ The reach of the public official determination was not explicitly answered by the Court in *Rosenblatt*, but footnote thirteen of that decision does provide some important limitations to the determination—"the employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy."⁴⁸ The public official distinction appeared to be somewhat settled under *New York Times* and *Rosenblatt*, but subsequent Supreme Court decisions would further complicate the applicability of the *New York Times* rule.⁴⁹

43. See *N.Y. Times Co.*, 376 U.S. at 279–80, 283 n.23 ("We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule . . .").

44. See *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1967) (analyzing *New York Times* reasoning, stating "[t]here is, first, a strong interest in debate on public issues, and, second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues").

45. *Rosenblatt v. Baer*, 383 U.S. 75 (1967).

46. *Id.* at 85 (providing conclusive description of type of individual intended to be included within public official designation).

47. See *id.* at 86 (stating public official determination should not ignore "important social values which underlie the law of defamation" because society has strong interest in protecting reputations).

48. See *id.* at 86 n.13 ("It is suggested that this test might apply to a night watchman accused of stealing state secrets. But a conclusion that the *New York Times* malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputation. The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutin[y] and discussion occasioned by the particular charges in controversy.").

49. For further discussion of the Supreme Court's expansion of the public official distinction, see *infra* notes 50–69 and accompanying text.

B. Even *Those* Defamation Plaintiffs Are Not Treated Equally?
Public Officials, Public Figures, and the Expansion of
the *New York Times* Rule

In some ways, it may appear the definition of public official is self-explanatory.⁵⁰ However, three years after *New York Times* was decided, a Supreme Court plurality opinion expanded the reach of the *New York Times* rule to go beyond public officials, resulting in increased confusion among lower courts.⁵¹ In *Curtis Publ'g Co. v. Butts*,⁵² the Court reasoned that some individuals who do not hold government positions may be so well-known within public controversies that the public's interest in debating such figures and controversies is the same as the public's interest in debating public official conduct.⁵³

The plaintiff in *Butts* was an athletic director at the University of Georgia, although he was employed by a private corporation, rather than the State of Georgia.⁵⁴ The Court reasoned that while the plaintiff was not a public official, he was a well-known figure connected to an area of public interest and because free speech “must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of the period,” his status as a public figure within an area of public interest warranted imposition of the *New York Times* rule.⁵⁵

50. See *N.Y. Times Co.*, 383 U.S. at 279–83 (citing case law addressing conduct of public officials such as attorney general or congressman); see also Smith, *supra* note 18, at 55 (arguing classification of public officials pose “little difficulty” in defamation actions).

51. See *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 134 (1967) (plurality opinion) (stating lower courts were divided on whether *New York Times* rule applies strictly to public officials or “whether it has a longer reach”); see also *id.* at 155 (holding “public figure” who is not public official must show proof of actual malice to prevail on defamation claim).

52. 388 U.S. 130 (1967) (plurality opinion).

53. See *id.* at 154 (declaring public interest in publications regarding individuals who do not hold public office may be equally as strong as public interest in discussion of public officials). The Supreme Court decided *Butts* along with a companion case. See *id.* at 135 (stating *Butts*, plus its companion case, posed distinct sets of facts but both provided opportunity to clarify relationship between First Amendment, defamation law under *New York Times*, so Court decided both cases in one opinion).

54. See *id.* at 135–36 (describing plaintiff as well-known football coach, previously employed as University of Georgia's head football coach, who was negotiating professional coaching position at time alleged defamatory statements were published).

55. See *id.* at 146–47 (reasoning plaintiff in *Butts* held important duty of managing athletics of state university, so since free speech protects all areas of public speech, plaintiff was public figure who had to prove actual malice to give proper weight to interest of free discussion in areas of public interest).

Further, Justice Warren reasoned that just as public officials and public figures both held positions of power in the resolution of public debate, both categories of individuals also had access to media outlets as a way to address attacks on reputation.⁵⁶

The Court did not specifically define public figure, but it did suggest that the plaintiffs may have attained public figure status by position alone or by purposefully emerging themselves into the “vortex” of an important public controversy.⁵⁷ Subsequent to *Butts*, the Court again concluded in a plurality opinion that the *New York Times* rule extended even further and held it reached *any* allegedly defamatory statements that was related to general or public controversy, regardless of a plaintiff’s public or private status.⁵⁸ Such a sweepingly broad “public interest” application was rejected three years later in *Gertz v. Robert Welch, Inc.*⁵⁹ when the Court announced a public figure distinction more consistent with the reasoning applied in *New York Times* and *Butts*.⁶⁰

Today, the *Gertz* decision serves as the primary authority for modern defamation actions involving public figures because it aimed to clarify the definition of public figure.⁶¹ The *Gertz* Court

56. *See id.* at 163–64 (Warren, J., concurring) (“This blending of positions and power has also occurred in the case of individuals so that many who do not hold public office at the moment are nevertheless intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large . . . And surely as a class these ‘public figures’ have as ready access as ‘public officials’ to mass media of communication, both to influence policy and to counter criticism of their views and activities.” (citations omitted)).

57. *See id.* at 155 (plurality opinion) (“Butts may have attained [public figure] status by position alone and Walker by his purposeful activity amounting to a thrusting of his personality into the ‘vortex’ of an important public controversy” (citations omitted)).

58. *See Rosenbloom v. Metromedia*, 403 U.S. 29, 43 (1971) (rejecting private versus public distinction, instead concluding “if a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not ‘voluntarily’ choose to become involved”).

59. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

60. *See id.* at 343–44 (stating balancing individual’s right to protect reputation with public’s right to free speech requires more manageable approach than broad public interest approach); *see also id.* at 345–46 (“For these reasons we conclude that the States should retain substantial latitude in their efforts to enforce a legal remedy for defamatory falsehood injurious to the reputation of a private individual. The extension of the *New York Times* test proposed by the *Rosenbloom* plurality would abridge this legitimate state interest to a degree that we find unacceptable.”).

61. *See* William M. Krogh, *The Anonymous Public Figure: Influence Without Notoriety And The Defamation Plaintiff*, 15 GEO. MASON L. REV. 839, 845–46 (2008) (stating *Gertz* is “principal authority on the public figure doctrine” which rejected broad matters of public interest rule); *see also* Lewis, *supra* note 20, at 792 (“Recognizing

concluded the plaintiff, an attorney for a family in a civil lawsuit action, was not rendered a public figure by representing a client that had been at the forefront of a controversial murder trial, thus, the *New York Times* rule was not appropriate for analyzing a defamation claim against a newspaper.⁶² In refusing to classify the plaintiff as a public figure, the Court attempted to better define “public figure” and create better safeguards to private individuals’ interest in protecting reputation by creating three “types” of public figures.⁶³ The three categories of public figures identified by the *Gertz* Court include: (1) all-purpose public figures; (2) limited-purpose public figures; and (3) involuntary public figures.⁶⁴

As applied to the plaintiff in *Gertz*, the Court concluded the plaintiff was not an all-purpose public figure because although he had been an active community member and legal scholar, he had achieved no general fame in the community.⁶⁵ Similarly, the plaintiff did not become a limited-purpose public figure by representing his client because he did not “thrust himself” into the public issue of the murder trial and he did not attempt to grab the public’s attention to influence the resolution of the public issue.⁶⁶ For high school coaches, this means that defamation law may not treat all high school coaches the same, because many high school coaches who reasonably assume they would be deemed private individuals

that the *New York Times* rule applied to ‘public figures,’ the [*Gertz*] Court attempted to further define the status.” (footnote omitted)).

62. *See Gertz*, 418 U.S. at 352 (concluding Plaintiff was not public figure because Plaintiff did not “thrust himself into the vortex” of that public issue nor attempt to influence its outcome by representing client).

63. *See id.* at 344–45 (describing ways individual may become public figure); *see also id.* at 345 (“[A private individual] has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.”).

64. *See id.* at 351 (describing all-purpose public figure as individual who achieves “such pervasive fame or notoriety” that individual is public figure for all purposes, all contexts); *see also id.* (describing limited-purpose public figures as individual who “voluntarily injects [themselves] or is drawn into a particular public controversy, so they become public figure for limited range of issues”); *id.* at 345 (describing involuntary public figures as being “exceedingly rare” because it is defined as individual who gains notoriety, fame through no purposeful action).

65. *See id.* at 351–52 (“We would not lightly assume that a citizen’s participation in community and professional affairs rendered him a public figure for all purposes. Absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society, an individual should not be deemed a public personality for all aspects of his life.”).

66. *See id.* at 352 (“[The plaintiff] plainly did not thrust himself into the vortex of this public issue, nor did he engage the public’s attention in an attempt to influence its outcome.”).

by courts are actually faced with the potential that both the public official *and* public figure distinctions will be roadblocks to the success of a defamation claim.⁶⁷ For high school coaches, athletes, and many other individuals, the public figure distinction is not predictable because courts disagree on how to apply the *Gertz* public figure standard.⁶⁸ More commonly for high school coaches, the public official distinction will be the most likely roadblock to a successful defamation claim because most coaches are employed by a public school in dual positions of coach and teacher.⁶⁹

C. Minnesota Calling a Foul in *McGuire v. Bowlin*

Two years after the *Gertz* decision, one judge observed that defining public figure was “much like trying to nail a jelly fish to the wall” and that observation remains true, leaving defamation plaintiffs facing very similar circumstances with very different burdens to bear.⁷⁰ Determining whether a high school coach must prove actual malice to prevail on a defamation claim is “much like trying to nail a jelly fish to the wall” because there is often a question of whether the coach is a public official *and* whether the coach is a public figure.⁷¹ In 2019, the Minnesota Supreme Court in *McGuire v. Bowlin* held that high school coaches are private individuals for

67. See Strauss, *supra* note 20, at 53–54 (stating most athletes are public figures due to either fame or efforts to grab public’s attention, but determination varies on case-by-case basis); see also O’Connor v. Burningham, 165 P.3d 1214, 1220–21 (Utah 2007) (refusing to classify high school coach as public official based on coach’s employment with public high school).

68. See Krogh, *supra* note 61, at 849 (arguing public figure designation “has been notoriously difficult to assess.”).

69. See *e.g.*, Milkovich v. News-Herald, 473 N.E.2d 1191, 1195 (Ohio 1984) (refusing to classify high school coach as public official based on dual teaching/coaching positions); see also Johnston v. Corinthian Television Corp., 583 P.2d 1101, 1103 (Tex. 1978) (classifying high school coach as public official based on teacher-coach position).

70. See Rosanova v. Playboy Enter., Inc., 411 F. Supp. 440, 443 (S.D. Ga. 1976), *aff’d*, 580 F.2d 859 (5th Cir. 1978) (commenting on difficulty posed by public or private individual after Supreme Court expanded reach of public status in *Gertz*); see also Erik Walker, Comment, *Defamation Law: Public Figures – Who Are They?*, 45 BAYLOR L. REV. 955, 964–77 (1993) (analyzing defamation jurisprudence, arguing public figure criteria under *Gertz* has led to widespread disagreements among courts for thirty years).

71. See *McGuire v. Bowlin*, 932 N.W.2d 819, 828 (Minn. 2019) (applying separate public official versus public figure analyses, concluding high school basketball coach was neither public official or public figure); see also O’Connor v. Burningham, 165 P.3d 1214, 1220–21 (Utah 2007) (determining high school coach was not public official but declining to determine whether coach was public figure).

the purpose of defamation.⁷² The facts of *McGuire* and the Minnesota Supreme Court's analysis illustrate why applying the actual malice burden to high school coaches is an inappropriate application of the *New York Times* rule.⁷³

1. *McGuire and its Facts: The Road Leading to Defamation*

Nathan McGuire had been coaching basketball for nearly ten years until his coaching career was cut short when his school district decided his coaching contract would not be renewed for the upcoming season.⁷⁴ Mr. McGuire was hired to coach the Woodbury High School varsity girls' basketball team in 2012 and led the team to a winning season.⁷⁵ During his first season as head coach, Mr. McGuire and other coaching staff removed a player from the team's upcoming tournament roster because the player was allegedly acting unsportsmanlike during a game.⁷⁶ According to the defamation complaint, the player's removal from the roster was not intended to be permanent; however, when the player was informed of the removal, she became "visibly upset" and quit the team.⁷⁷

Subsequently, the player's mother sent emails arguing her daughter's removal was wrongful and that she would be filing a formal complaint.⁷⁸ Ten months after the player quit, she and another member of the basketball team were cited by police for disorderly conduct after vandalizing Mr. McGuire's home.⁷⁹ The parents of those two players were later named as defendants in Mr.

72. See *McGuire*, 932 N.W.2d at 828–29 (finding high school basketball coach was not public official or public figure).

73. See *id.* (analyzing Supreme Court public official, public figure precedent to conclude under ordinary circumstances, high school coaches are private individuals in defamation actions).

74. See Pl.'s Complaint at 12–15, 60, *McGuire v. Bowlin*, 932 N.W.2d 819 (2019) (No. 82CV156030) [hereinafter *Complaint*] (stating Plaintiff began coaching in 2004, coached at four different schools prior to being removed from coaching position in 2014).

75. See *id.* at 15–16 (noting basketball team had ten wins and eighteen loss record in 2011–2012, but when Plaintiff became head coach, team earned its nineteen win and ten loss record, placing the team third in its team conference).

76. See *id.* at 17–20 (alleging Plaintiff made decision to remove player from upcoming tournament after Plaintiff received email from referee stating player acted disrespectfully in previous game).

77. See *id.* at 19, 22 (stating disciplined player quit team after removal from tournament roster and did not finish present season or try out for next season).

78. See *id.* at 20 (noting two week period after player's removal, player's mother sent accusatory emails threatening to file formal complaint, arguing Plaintiff lied about player's behavior and player's removal was "false pretense").

79. See *id.* at 21 (stating Plaintiff's home was vandalized three nights in row, vandals identified as two athletes coached by Plaintiff, including disciplined player).

McGuire's defamation complaint.⁸⁰ The next basketball season, a new player joined the team and was familiar with Mr. McGuire because he coached her two years prior at a different school.⁸¹ According to his complaint, prior to that season commencing, the player's parents arranged a meeting where they asked about their daughter's status on the varsity team, but they were dissatisfied when Mr. McGuire stated he did not know how much playing time their daughter would receive.⁸² Those parents were later named as defendants in Mr. McGuire's defamation action.⁸³ The complaint tells a story known well in the area of high school sports, the story of parents becoming upset at high school coaches after their children are refused adequate playing time.⁸⁴

Throughout the course of Mr. McGuire's defamation action it became abundantly clear that there was more to the story than disgruntled parents.⁸⁵ According to the parents of three other players on the team, Mr. McGuire inappropriately touched players, flirted with players, and used vulgar language at practices.⁸⁶ For example, one defendant was concerned about Mr. McGuire's conduct be-

80. *See id.* at 4–5, 17–21 (naming parents of two players cited for vandalism as defendants in Plaintiff's defamation complaint).

81. *See id.* at 23–24 (stating new player was coached by Plaintiff at different school, transferred to Woodbury High School as freshman expressing interest in joining Plaintiff's upcoming 2013–2014 team).

82. *See id.* at 25–26 (alleging player's parents requested Plaintiff inform them of player's playing time on varsity roster prior to start of competitive season before coaching staff finalized roster). After the plaintiff refused to inform the parents about playing time, the parents turned to an influential parent in Woodbury High School's basketball program, the Minnesota State High School League, Woodbury High School's administration, and the school district to complain about the plaintiff's coaching, encouraging Coach McGuire's removal from the coaching position. *See id.* at 25–26 (describing multiple avenues parents pursued in attempt to file complaint regarding Plaintiff's coaching).

83. *See id.* at 2–3, 32 (noting parents who complained about playing time as well as parents of two players cited for vandalizing Plaintiff's home were named defendants in complaint).

84. *See* Rick Wolff, *Parents v. Coaches: Confronting The Issue Of Playing Time*, ASK COACH WOLFF (Jun. 26, 2021), <https://www.askcoachwolff.com/blog/parents-v-coaches-confronting-the-issue-of-playing-time-1> [<https://perma.cc/JX27-EAAM>] (stating parents', children's complaints regarding playing time is "key issue" in youth sports). Disagreements concerning playing time can lead to smear campaigns against coaches, but the disagreements can sometimes turn physical and present potential dangers to coaches and their families. *See id.* (recounting incident of parent suffering gunshot wound after coach shot parent in self-defense because parent had angrily confronted coach about child's playing time on multiple occasions, began confronting coach at his home).

85. *See* McGuire v. Bowlin, 932 N.W.2d 819, 822 (Minn. 2019) (summarizing parents' allegations).

86. *See id.* (describing some allegations but leaving out other allegations of coaching conduct addressed at lower court level).

cause their daughter stated Mr. McGuire would grab players by their shoulders or jerseys, single players out, and throw basketballs in a fit of rage.⁸⁷ Similarly, other parents were concerned with excessively long daily practices and punishments imposed by Mr. McGuire.⁸⁸

In December 2013, the defendants and some of the players gathered to discuss the concerns they shared regarding Mr. McGuire's coaching.⁸⁹ One defendant noted that Mr. McGuire had been fired from his previous coaching position after parents complained to the school administration.⁹⁰ Less than a month later, the same defendant, together with one other defendant, filed a formal complaint to the Minnesota Department of Education alleging Mr. McGuire was mistreating players on the team.⁹¹ Soon after filing the mistreatment complaint, three of the defendants met with the Woodbury school administration to discuss the coaching conduct at issue.⁹² A law firm was hired by the school administration to investigate the allegations and placed Mr. McGuire on paid administrative leave while the investigation was conducted.⁹³ The investigation ultimately rejected the claims of physical touching; however, it did conclude Mr. McGuire failed to consider the emotional well-being of players.⁹⁴ One year after the school district's internal in-

87. *See* McGuire v. Bowlin, No. 82-CV-15-6030, 2018 WL 6273533, at *1 (Minn. Ct. App. Dec. 3, 2018) (summarizing acts of misconduct Mr. McGuire allegedly committed as coach).

88. *See id.* (stating parent of player who was removed from roster for poor behavior was concerned about length of practice as well as child's removal from basketball roster in 2012–2013 basketball season).

89. *See id.* at *2 (noting December 29, 2013 meeting involved discussion of Plaintiff's alleged physical, verbal abuse as Woodbury High School coach in addition to one defendant's allegations of Plaintiff's conduct in previous coaching positions).

90. *See id.* (stating during meeting, one defendant encouraged parents to complain to school administration because Plaintiff was asked to resign from previous coaching position at different school after those parents complained).

91. *See id.* (noting soon after December meeting among Defendants, certain Defendants filed formal mistreatment complaint to Minnesota alleging abuse of four players coached by Plaintiff).

92. *See id.* (providing timeline leading to Plaintiff's removal, beginning with formal mistreatment complaint filed, ending with defendants meeting with school administration which lead to Plaintiff being placed on paid leave).

93. *See id.* (describing actions taken by school administration after meeting with defendants, including hiring law firm to investigate parent allegations of verbal, physical abuse against players).

94. *See id.* ("The investigation yielded a report that largely rejected claims of physical improprieties such as pushing or massaging players, but found several of the complaints were substantiated, including that McGuire failed to consider the emotional well-being of his players, yelled and swore in front of players, and ran a demanding and uncompromising practice schedule.").

investigation, the Minnesota Department of Education concluded its investigation and found no evidence of maltreatment, but the school district ultimately decided not to renew Mr. McGuire's coaching contract for a third season.⁹⁵

According to the complaint Mr. McGuire filed, he was a top-choice candidate for a head coach position at another high school; however, he did not receive the position, allegedly due to the defendants' ongoing complaints.⁹⁶ After being removed from his coaching position at Woodbury High School, Mr. McGuire continued to be a topic of concern for at least one of the named defendants.⁹⁷ Five months after his removal as head coach, a defendant sent an email to another parent stating "last she heard," Mr. McGuire was in jail.⁹⁸ Again, nine months after his removal, the defendant sent another email containing a news article about stolen funds with a note alleging that Mr. McGuire was involved in the stolen funds case.⁹⁹ Mr. McGuire's defamation complaint sets the stage for a seemingly simple defamation case because he claimed the defendants' statements and maltreatment-of-minors complaint harmed his reputation in the community, the comments and allegations were false, and the defendants were at some level of fault.¹⁰⁰

95. *See id.* (stating on March 14, 2014, School District did not renew Plaintiff's coaching contract, while Minnesota Department of Education's investigation ended in March 2015, concluding players were not maltreated).

96. *See Complaint, supra* note 74, at 71 ("With respect to one interview that McGuire received, he was told that he was the preferred candidate and that if he did not receive the job, it would be due to his non-renewal by Woodbury High School and the then-pending complaints. McGuire was not offered that job."); *see also id.* (discussing Mr. McGuire's search for coaching positions after his termination including that he applied to five positions, but only received interviews for two).

97. *See McGuire v. Bowlin*, 932 N.W.2d 819, 822 (Minn. 2019) (stating one defendant, whose daughter had transferred high schools prior to Mr. McGuire's removal, continued to make statements about Mr. McGuire after his removal).

98. *See id.* (describing email sent by defendant to another parent alleging Mr. McGuire was in jail in August 2014, writing, "Last I heard yesterday he was recently put in jail . . . I will find out the truth and call the [Department of Education] today and find out").

99. *See id.* ("In December [Defendant] sent that same parent's spouse a photo of a newspaper article titled 'Woodbury man sentenced to jail in stolen funds case,' accompanied by a text that said 'I know we don't talk anymore but this was part of the Woodbury stuff with [McGuire] that was going on. This guy too got busted.' It is undisputed that the subject of the article was not McGuire.").

100. *See Complaint, supra* note 74, at 77–85 (establishing elements of defamation as applied to Defendants' maltreatment complaint, to other various statements). The Complaint reflects the lack of certainty defamation plaintiffs are faced with due to the public figure and public official distinctions; for example, the Complaint is careful to allege the statements were made with actual malice *or* negligence, presumably because Mr. McGuire was aware of the undesirable possibility of being faced with the actual malice standard due to his coaching position.

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However, two years of ongoing litigation shows that Mr. McGuire's defamation claim was not so simple, and according to the Minnesota Supreme Court, the merits of the claim had not yet been properly determined.¹⁰¹

2. *Why the Minnesota Supreme Court Called a Foul: McGuire and its Reasoning*

The two years of litigation revolved around determining whether Mr. McGuire was a public official, and if so, whether he proved the defendants' false statements and reports were made with actual malice.¹⁰² The district court granted summary judgment to each defendant after concluding Mr. McGuire was a public official and finding the record provided no evidence suggesting the statements were made with actual malice.¹⁰³ The court did note inconsistency among state courts, before explaining that public school teachers in Minnesota are considered public officials because they act with the authority of the government and policy considerations warrant extra constitutional protections to statements made about a teacher's conduct.¹⁰⁴

Guided by the considerations applied to teachers, the district court reasoned Mr. McGuire, as a varsity basketball coach, was a public official because he controlled the entire high school basket-

See id. at 80–81 (“Those statements were knowingly false, or in the alternative were made in reckless disregard of the truth, tended to injure McGuire’s reputation, lowered him in the estimation of the community In addition, and in the alternative, those statements were made with actual malice . . . Defendants were negligent in the publication of these statements”).

101. *See McGuire*, 932 N.W.2d at 822 (remanding Mr. McGuire’s defamation claim to district court, then ordering lower court to remove actual malice burden to make judgment based on merits of Mr. McGuire’s claim under his private individual status).

102. *See id.* at 822–23 (court of appeals affirmed trial court decision to grant defendants’ motion for summary judgment because Mr. McGuire was public official and Plaintiff failed to prove actual malice); *see also* Complaint, *supra* note 74, at 80–81 (indicating Mr. McGuire may have anticipated roadblock of actual malice because he alleged Defendants acted with actual malice, or alternatively, negligence).

103. *See McGuire v. Bowlin*, No. 82-CV-15-6030, 2018 WL 6273533, at *2 (Minn. Ct. App. Dec. 3, 2018) (summarizing then affirming trial court holding).

104. *See id.* (citing *Elstrom v. Indep. Sch. Dist. No. 270*, 533 N.W.2d 51, 56 (Minn. Ct. App. 1995)) (noting teachers are considered public officials in Minnesota because public policy favors educators, teachers act with governmental authority, abuse of power by teachers may impact many people, and society has great interest in positions requiring special trust and special authority). The district court’s test for determining public official status was derived from *Rosenblatt* and looks to whether the position allows the individual to assert the authority of the government. *See id.* at 11–12 (citing *Rosenblatt*, plus Minnesota precedent, to explain how public official status is determined).

ball program and his position as coach affected many lives in the community.¹⁰⁵ Mr. McGuire appealed and the court of appeals, relying on United States Supreme Court precedent, looked to whether a high school coach is an employee “able to assert the authority of the government while performing his duties.”¹⁰⁶ Just as the lower court did, the court of appeals reasoned a high school coach’s ability to assert government authority was analogous to a teachers’ ability; therefore, because teachers were public officials the court concluded the same classification applied to high school coaches.¹⁰⁷ The court first reasoned that coaches, like teachers, play a “formative role” in the lives of students and communities as a whole; thus, the public has an interest in the suitability of high school coaches.¹⁰⁸ Moreover, the court did not conclude whether *all* high school coaches would be considered public officials, but because Mr. McGuire supervised other basketball coaches, spent extensive amounts of time with players, and had extensive control over team policies, the court concluded his specific coaching position at Woodbury rendered him a public official.¹⁰⁹

105. *See id.* at 12 (“Not only was McGuire the Varsity team coach, he was also in charge of the entire girls’ basketball program at Woodbury High School. His position afforded him significant control over the shape and management of all four girls’ basketball teams at Woodbury High School, including considerable authority in hiring the coaches for the other teams. Further, any abuse by McGuire of his position would affect many lives, including the players on all four squads, their families, and other members of the community with an interest in the high school’s teams, and this position involves the investiture of societal trust.”) (footnote omitted).

106. *See McGuire*, 2018 WL 6273533, at *3 (stating Minnesota follows *Rosenblatt* criteria but focuses its public official determination primarily on plaintiff’s ability to assert authority of government) (citing *Britton v. Koep*, 470 N.W.2d 518, 521, 523 (Minn. 1991)).

107. *See id.* at *3–4 (stating high school sports coaches and high school teachers are analogous for purpose of defamation law, but declining to conclude whether all coaches are considered public officials).

108. *See id.* at *3 (“High school sports play a formative role in the lives of student athletes and a significant role in their families and in the community that watches from the bleachers and pays the school levies. The coaches who direct young athletes enjoy positions of trust and authority, the abuse of which may affect many lives. Accordingly, as with teachers, the public has an interest in coaches’ qualifications and conduct.”).

109. *See id.* at *4 (“Although we need not decide here whether all public high school coaches are public officials, the undisputed facts persuade us that McGuire was a public official . . . [Mr. McGuire] had extensive contact with his student athletes during hours-long daily practices and had a substantial impact on their lives, as demonstrated by the very complaints at issue in this litigation. As head of the high school basketball program, he had a significant supervisory and administrative role. Five coaches worked under him in the program, three of whom he hired. And he established the structure and priorities of the program with respect to team rosters, practice schedules, and policies regarding missed practices and player discipline.”).

The court of appeals was not insensitive to the difficulties and criticism coaches are subjected to, but its concern was misplaced and did not afford proper weight to the huge negative impact defamatory statements can have on coaches like Mr. McGuire.¹¹⁰ The court of appeals concluded the entire defamation action failed as a matter of law because the evidence did not show any of the defendants' statements or conduct were made with actual malice.¹¹¹ The appellate court remarked "that [Defendant] would contemplate, or even hope, that McGuire would be jailed for maltreatment may suggest her subjective ill will toward McGuire but does not establish actual malice to support a defamation claim."¹¹² From that remark it is clear the court of appeals acknowledged just how harmful certain statements that lead to defamation actions can be, but even if those claims were proven false and reputationally harmful, local high school basketball coaches like Mr. McGuire must show the defendant made the claim knowingly or recklessly.¹¹³

The Minnesota Supreme Court did not agree with limiting relief in defamation actions brought by high school coaches to cases where actual malice is proven, and the court's reasoning illustrates why the *New York Times* rule, as explained by the United States Supreme Court, does not apply to high school coaches.¹¹⁴

The Minnesota Supreme Court began its reasoning in *McGuire* by focusing on the public official determination as established in *New York Times, Rosenblatt*, and the most recent Minnesota decision that highlighted the public official determination.¹¹⁵ At the outset,

110. *See id.* at *4 ("We appreciate the challenges that coaches face in addressing parents' criticisms . . . [c]oaches like McGuire . . . regularly field both collective and individual complaints on topics ranging from the program's competitive success, to coaching methods and style, to a particular child's playing time."); *see also id.* (concluding challenges faced by coaches do not outweigh public's interest in criticizing public officials).

111. *See id.* *4–6 (holding Mr. McGuire failed to prove any defendant made statements with actual malice); *see also* *McGuire v. Bowlin*, 932 N.W.2d 819, 829–30, 830 n.6 (Minn. 2019) (stating district court concluded only one defendant was granted summary judgment based on Mr. McGuire's public official status, while other defendants were granted summary judgment based on immunity).

112. *See McGuire*, 2018 WL 6273533, at *5 (discussing defendant's filing of allegedly false maltreatment claim with Minnesota Department of Education).

113. *See id.* at *5 (concluding defendant's potential ill will did not suggest false claim was filed knowingly or in reckless disregard of truth, but acknowledging comments made by defendant went as far as to allege Mr. McGuire was jailed).

114. *See McGuire*, 932 N.W.2d at 827 n. 5 (agreeing with Utah Supreme Court that high school coaches are not type of individuals classified as public officials or giving rise to heightened actual malice burden) (citing *O'Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007)).

115. *See id.* at 823–24 (beginning its reasoning with explanation of public figure distinction before looking to Minnesota defamation jurisprudence to highlight

the *McGuire* court noted that any criterion which allows the public official status to extend to the lowest level of public employees would be antithetical to United States Supreme Court jurisprudence.¹¹⁶ Therefore, the court stated, “our inquiry does not end with whether McGuire was performing governmental duties directly related to the public interest; instead, we weigh society’s interest in open, public debate about the performance of the duties of a high school basketball coach against society’s interest in protecting reputation.”¹¹⁷

At the first step of the public official inquiry, the Minnesota Supreme Court concluded Mr. McGuire’s duties included what many would see as stereotypical duties of a high school basketball coach, such as scheduling games, deciding playing time, and making strategic game decisions.¹¹⁸ Further, it was correct in concluding the public *does* have an interest in the duties of a high school coach, but the public’s interest in results of high school athletics does not outweigh a coach’s interest in protecting their reputation.¹¹⁹ In other words, the court balanced Mr. McGuire’s interest in reputation against the public’s interest in how he executes his coaching duties to conclude Mr. McGuire’s interest in reputation outweighed the public’s interest.¹²⁰ In light of balancing those

criteria used in Minnesota when determining public official or private individual status); *see also* Britton v. Koep, 470 N.W.2d 518, 522 (Minn. 1991) (identifying three criteria to apply when evaluating defamation plaintiffs’ private individual or public official status).

116. *See McGuire*, 932 N.W.2d. at 824 (noting Minnesota case law and United States Supreme Court precedent, which concludes public official determination is not intended to reach lower levels of government employees) (citing Hutchinson v. Proxmire, 443 U.S. 111, 119 n.8 (1979)).

117. *See id.* (reasoning public official inquiry must go further than governmental duties related to public interest because if inquiry ended there, public official determination could reach to all levels of public employees).

118. *See id.* at 822 (describing duties given to Mr. McGuire as oversight of assistant coaches, strategic decision making, schedule making, general oversight of basketball program); *see also id.* at 824 (observing no party contested premise coaching duties include deciding playing time, disciplining players, organizing practices, encouraging players to improve skill). The Minnesota Supreme Court also noted the parties disputed whether Mr. McGuire had the power to hire new coaches, but whether he had the power to hire coaches was not dispositive to the court’s determination. *See id.* at 825 (noting Mr. McGuire argued he did not hire coaches while Defendants argued he did hire coaches).

119. *See id.* at 825 (“On balance, the interest society has in the execution of these duties does not overcome the interest in protecting reputation Undoubtedly, the public has some ‘interest’ in the duties McGuire carried out, in the sense that members of the public pay attention to school sports, including the results of a team’s games. But in our view this interest is not enough.”).

120. *See id.* (observing intention behind public figure designation was to balance community’s interest in circulation of information with private individuals harmed by defamatory statements).

competing interests, the *McGuire* court held that for government duties to support a public official determination, those duties must relate to the “core functions of government, such as safety and public order” and coaching duties simply do not relate to a core function of government.¹²¹ As the court pointed out, in cases where courts have applied the public official status, the plaintiffs held positions such as commissioner or police officer, roles that clearly impact the public at large and are core functions of government.¹²²

At the second step of its public official inquiry, the court concluded issues pertaining to high school sport teams are not issues the public has a “strong interest in debating,” but it did acknowledge that high school athletics are an important aspect of communities.¹²³ Importantly, the *McGuire* court rejected the argument that the public issue at hand was Mr. McGuire’s conduct as a coach, rather than the success of the team as a whole.¹²⁴ The court reasoned that argument was inappropriate because United States Supreme Court jurisprudence makes it clear that the public official determination looks to a public official’s *role* within society, not the public official’s specific conduct within that public position.¹²⁵ Mr. McGuire’s position was head coach of a public high school basket-

121. *See id.* (balancing interest in reputation with interest in free speech, concluding coaching duties in public schools are “ancillary to core functions of government; put simply, basketball is not fundamental to democracy”).

122. *See id.* (noting plaintiff in *New York Times* was elected official responsible for supervising police department). The *McGuire* court also noted two previous defamation cases where the Minnesota Supreme Court concluded members of a grand jury and probation officers are public officials. *See id.* (observing grand jury members were public officials because grand juries have ability to implicate others for crimes (citing *Standke v. B.E. Darby & Sons, Inc.*, 193 N.W.2d 139, 143–144 (Minn. 1971))); *see also id.* (noting in most recent case in which public official designation was at issue, Minnesota Supreme Court concluded probation officer who had power to arrest juveniles was public official (citing *Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991))).

123. *See id.* at 825–26 (stating second step of its public official inquiry looks to whether Mr. McGuire held position significantly able to influence resolution of public issues as informed by *Rosenblatt*); *see also id.* at 826 (“In determining what constitutes a ‘public issue,’ we are guided by the Supreme Court’s statement in *Rosenblatt* regarding the basis for the public official designation—that society has ‘a strong interest in debate on *public issues*, and . . . a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues.’” (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966))).

124. *See id.* (rejecting Defendant’s argument public issue relates to coaches’ conduct because it “erroneously shifts” public official inquiry away from Mr. McGuire’s *role*); *see also O’Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007) (concluding public officials are individuals whose role allows them to impact public policy which is unlike coaches whose role impacts high school sports).

125. *See McGuire*, 932 N.W.2d at 826 (quoting *Rosenblatt*, concluding public official inquiry must look to plaintiff’s specific position, not to specific conduct within position); *see also Stern*, *supra* note 35, at 1217 (observing many courts make

ball team, a position that did not give him the ability to substantially influence the resolution of public debates.¹²⁶

At its final step of the public official inquiry, the court determined Mr. McGuire did not have, or appear to have, “substantial responsibility” for government affairs or “control” over government affairs.¹²⁷ The court pointed out the major reason for why high school coaches often find themselves battling the public official distinction in defamation suits, because Mr. McGuire coached a public school basketball team and public schools are part of the government, he was technically engaged in a government affair when coaching the team.¹²⁸ However, the technicality is not enough to support public official status because the extent of a high school coach’s engagement in government affairs is determining game strategy for the government’s publicly funded high school basketball team.¹²⁹

Thus, the Minnesota Supreme Court found that Mr. McGuire, as a high school coach, did not meet any three applicable criteria in the public official inquiry.¹³⁰ As a last note on Mr. McGuire’s status as a public official (or lack thereof), the court pointed out that the majority of other jurisdictions have also held that high school

public official determination simply by inspecting defamation plaintiff’s job title and duties).

126. See *McGuire*, 932 N.W.2d at 826 (concluding position held by Mr. McGuire did not give him ability to “influence significantly the resolution of public issues”); see also Kosta Todorovic, *What Is It Like to Be a High School Coach? Part 1: Struggles*, BENCHBOSS (Mar. 30, 2021), <https://benchboss.ai/what-is-it-like-to-be-a-high-school-coach-part-1-struggles/> [https://perma.cc/7UAT-MMMF] (observing high school coaches have substantial influence in local youth sport programs but do not influence broader political or social affairs in community).

127. See *McGuire*, 932 N.W.2d at 826 (applying final public official criteria before holding Mr. McGuire did not have, or appear to have, substantial responsibility or control related to government affairs); see also Usman, *supra* note 31, at 979–80 (observing courts applying public official designation expansively consider public school actors public officials at this step of inquiry based on importance of school system as opposed to control over broader government policies).

128. See *McGuire*, 932 N.W.2d at 826 (stating Mr. McGuire “technically engaged in government affairs” as coach of public school basketball team); see also Markovitz, *supra* note 26, at 1970 (arguing public school teachers are low level government actors but exert little to no control over government policy).

129. See *McGuire*, 932 N.W.2d at 826 (comparing high school coaches to public officials in other cases where plaintiffs had ability to investigate public crimes or indict others before concluding high school coaches’ extent of control, of responsibility, in government affairs is determining strategy for athletic teams); see also Markovitz, *supra* note 26, at 1971 (suggesting public teachers’ extent of government control is not enough to render teachers public officials because even basic classroom strategies may be challenged to higher level government officials such as school superintendant).

130. See *McGuire*, 932 N.W.2d at 827 (“Analysis of the *Britton* criteria show that McGuire is not a public official.”).

coaches are not public officials.¹³¹ In particular, the court quoted the Utah Supreme Court decision in *O'Connor v. Burningham*¹³² as being the most persuasive reasoning for why high school coaches are not public officials.¹³³

Although the lower courts did not address whether Mr. McGuire was a public figure, the Minnesota Supreme Court concluded that Mr. McGuire was not a limited-purpose public figure.¹³⁴ Relying on *Gertz* and Minnesota precedent, the court looked to whether: “1) a public controversy existed; 2) whether the plaintiff played a meaningful role in the controversy; and 3) whether the allegedly defamatory statement related to the controversy.”¹³⁵ Imperative to the public figure determination is the requirement that the public issue must be in the arena of public debate *before* the time the defamatory statements were made.¹³⁶ The court concluded there was no public controversy surrounding Mr. McGuire until after the alleged defamation occurred; therefore, that controversy could not support concluding Mr. McGuire was a limited-purpose public figure.¹³⁷

Moreover, as it did in its public official inquiry, the Minnesota Supreme court rejected the argument that high school sports in general served as a public controversy supporting the conclusion that Mr. McGuire was a limited-purpose public figure.¹³⁸ The court

131. *See id.* (citing other jurisdictions that have decided whether high school coach is public official for purpose of defamation actions).

132. 165 P.3d 1214 (Utah 2007).

133. *See McGuire*, 932 N.W.2d at 827–28 (quoting *O'Connor*, stating reasoning is “particularly persuasive”).

134. *See id.* at 828 (determining whether Mr. McGuire was limited-purpose public figure in interest of judicial economy because it was cited as argument by respondents but lower courts did not address public figure argument).

135. *See id.* (stating factors court must find for plaintiff to be limited-purpose public figure); *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352 (1974) (concluding plaintiff was not public figure because he played minimal role in public controversy, did not thrust himself into public issues, did not attempt to influence outcome of public issues).

136. *See McGuire*, 932 N.W.2d at 829 (citing *Gertz*, declaring public figure inquiry focuses on public controversy at issue before defamatory conduct occurred, not controversies discovered after alleged defamatory conduct occurred); *see also Gertz*, 418 U.S. at 352 (“[I]t is preferable to reduce the public figure question . . . by looking to the nature and extend of an individual’s participation in the particular controversy *giving rise* to the defamation.” (emphasis added)).

137. *See McGuire*, 932 N.W.2d at 829 (stating no public controversy existed until after alleged defamation occurred, thus, controversy did not make Mr. McGuire limited-purpose public figure).

138. *See id.* (rejecting respondent’s argument high school sports were public controversy because high school sports are general activity not capable of resolution).

reasoned that even under narrower grounds, such as the controversy of whether Mr. McGuire was “effectively coaching the team to win as many games as possible,” the public figure determination would not be supported because there was no evidence that any controversy around effective coaching existed and even if it did, the alleged defamatory statements did not relate to Mr. McGuire’s ability to secure team victories.¹³⁹

III. HIGH SCHOOL COACHES, CRITICISM, AND THE NEW YORK TIMES RULE: ACTUAL MALICE AT PLAY IN HIGH SCHOOL ATHLETICS

This Comment argues that the public versus private analysis applied in *McGuire* best serves the competing values of the public’s interest in debating and criticizing wrongdoings in high school sports and a high school coach’s interest in protecting reputation and receiving legal redress.¹⁴⁰ Part A of this Section provides summaries of various state precedent addressing the actual malice standard’s applicability to high school coaches.¹⁴¹ Part B of this Section shows that classifying high school coaches as public individuals is both legally unsound and against public policy.¹⁴² First, applying the *New York Times* rule to high school coaches is against Supreme Court precedent and contrary to the purpose of the *New York Times* rule.¹⁴³ Next, in classifying the plaintiff in *McGuire* as a private individual, the Minnesota Supreme Court applied the correct legal analysis and gave proper weight to common policy issues experienced in sports at the high school level.¹⁴⁴ Finally, the common experience of high school coaches, athletes, and athlete parents presents strong public policy considerations in opposition to classi-

139. *See id.* (reasoning public figure determination would not be appropriate under narrower argument about Mr. McGuire’s effectiveness as coach because defamatory statements related to his conduct towards players, rather than his conduct in coaching team to victories).

140. For further discussion of the *McGuire* decision, see *supra* notes 102–139 and accompanying text. For discussion of why the *McGuire* analysis properly protects the community and high school coaches, see *infra* notes 277–299 and accompanying text.

141. For further discussion of case law outside of Minnesota, see *infra* notes 151–227 and accompanying text.

142. For discussion of how applying the heightened public official or public figure burden to high school coaches misapplies defamation precedent and has negative impacts on high school coaches, see *infra* notes 252–299 and accompanying text.

143. For discussion of Supreme Court precedent and its inapplicability to high school coaches, see *infra* notes 258–276 and accompanying text.

144. For further discussion of why *McGuire* is legally correct and promotes public policy, see *infra* notes 277–292 and accompanying text.

fying the coaches as public individuals for the purpose of defamation claims.¹⁴⁵

A. Outside of Minnesota: Foul or No Foul? Defamation, High School Coaches, and the *New York Times* Rule at Play

The *McGuire* holding makes it clear that in Minnesota, high school coaches situated in similar circumstances as Mr. McGuire will not be considered public officials and it would be unusual for such coaches to fall within the parameters of a public figure.¹⁴⁶ However, some states disagree and interpret Supreme Court defamation jurisprudence as supporting, sometimes even requiring, that coaches prove actual malice before being afforded relief in a defamation action.¹⁴⁷ Nonetheless, the majority of courts who have addressed the *New York Times* rule applicability to youth sport coaches have held that the coaches are not public officials, regardless of whether the coach is employed by a public school system.¹⁴⁸ This Comment analyzes the reasoning utilized in cases where courts have either applied, or refused to apply, the actual malice standard to high school sports coaches.¹⁴⁹ The Comment also briefly looks to the actual malice standard in defamation cases filed by professional sport figures to illustrate why high school coaches, unlike

145. For further discussion of the high school sports experience and how it supports classifying coaches as private individuals, see *infra* notes 293–299 and accompanying text.

146. See *McGuire*, 932 N.W.2d 819, 826–27, 829 (Minn. 2019) (concluding coaching position compensated by government paycheck is insufficient to render high school coach public official); see also *id.* at 829 (concluding high school sports are not controversies rendering high school coaches limited-purpose public figures).

147. See *Johnston v. Corinthian Television Co.*, 583 P.2d 1101, 1103 (Okla. 1978) (relying on *Rosenblatt* to conclude coaches in public school system are public officials because there is “no higher community involvement touching more families and carrying more public interest than the public school system”).

148. See *McGuire*, 932 N.W.2d at 827 (noting weight of authority in other jurisdictions support concluding high school coaches are not public officials); see also Peter S. Cane, Comment, *Defamation of Teachers: Behind the Times?*, 56 FORD. L. REV. 1191, 1197–98 (1988) (explaining courts disagree on whether teachers are public officials because they are paid with public funds but do not exercise extent of government control at issue in *New York Times, Rosenblatt*); *Richmond Newspapers, Inc. v. Lipscomb*, 362 S.E.2d 32, 37 (Va. 1987) (concluding public school teachers are not public officials because public does not have independent interest in teacher conduct amounting to more than its interest in all government employees).

149. For further discussion of high school coaches as defamation plaintiffs, see *infra* notes 151–227 and accompanying text.

professional sport figures, are not adequately situated for or deserving of the actual malice burden.¹⁵⁰

1. *The New York Times Rule Does Not Apply: High School Coaches are Private Individuals*

It is no secret or surprise that the public or private status of high school coaches is debated among courts of differing jurisdiction, but United States Supreme Court jurisprudence provides enough insight to confidently conclude high school coaches are not intended to be included within the public official distinction and only under rare, unique circumstances would they be considered a public figure.¹⁵¹ In *O'Connor v. Burningham*, the Utah Supreme Court decided defamatory statements made towards a high school basketball coach are not provided with the heightened protection attributed to the actual malice burden because high school coaches are private individuals, not public officials.¹⁵² The *O'Connor* decision marks one of the state courts that has correctly utilized the United State Supreme Court's concerns and reasoning behind the actual malice burden when applying it to the position of a public high school coach.¹⁵³ In that case, the plaintiff was a women's basketball coach in a small town whose coaching ability was seemingly unquestioned and satisfactory.¹⁵⁴ Unfortunately for the plaintiff-coach, satisfaction with his coaching ability came to a screeching halt when an elite basketball player joined the school team in 2003.¹⁵⁵ As the Utah Supreme Court stated, the elite basketball player "did not herald the beginning of a basketball dynasty

150. For further discussion of professional sport figures and collegiate coaches as defamation plaintiffs, see *infra* notes 231–251 and accompanying text.

151. See *O'Connor v. Burningham*, 165 P.3d 1214, 1218–19 (Utah 2007) (providing overview of Supreme Court jurisprudence reasoning Court was concerned with positions of power, of influence in government actions, but high school coaches do not hold such positions so coaches are not within Court's public official or public figure distinctions).

152. See *id.* at 1216 (concluding high school basketball coach is not public official).

153. See *id.* at 1217–19 (engaging with Supreme Court precedent by applying concerns, reasoning to position of high school coach).

154. See *id.* at 1216–17 (stating Plaintiff was employed as varsity coach in 2003 until dismissed prior to 2004–2005 school year after parents' complaints were made in November of 2003, continued until his dismissal).

155. See *id.* (noting complaints about Plaintiff's coaching commenced after elite basketball player joined team); see also *Pioneers Make It Back-to-Back*, DESERTNEWS (Feb. 7, 2004), <https://www.deseret.com/2004/2/7/19811031/pioneers-make-it-back-to-back> [<https://perma.cc/NS5X-4MEX>] (discussing success of elite player who led team coached by Plaintiff to win championship game).

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at the school,” but her talent compared to other players’ talent did not “foster a desirable team chemistry.”¹⁵⁶

After the elite player joined the team, parents and friends of team players began a “persistent and multifaceted campaign of complaints” including accusations that the coach wrongly recruited a player from another school, improperly favored the elite player, and misallocated the use of money for team expenses.¹⁵⁷ The high school administration took no action in response to the complaints so the parents and friends took the complaints to the school board, which similarly took no action against the coach in response to the complaints.¹⁵⁸ Nonetheless, the school administration ultimately decided to terminate the coach’s position because the coach would not promise to not refuse playing time to certain players in response to the complaints filed by the parents and friends.¹⁵⁹ The coach filed a defamation claim which was struck down by the lower courts because it determined the coach was a public official and failed to prove the complaints were made with actual malice.¹⁶⁰

The *O’Connor* court began its analysis with a look into the actual malice requirement and its Supreme Court origins; namely, the Court’s fear that First Amendment rights would be inadequate if the public feared civil liability for criticizing and publishing opinions relating to individuals whose positions influence the outcome of government decisions.¹⁶¹ Next, the *O’Connor* court looked to *Rosenblatt* and *Butts* because those cases were intended to further define the outer limits of the public official distinction.¹⁶² The court

156. See *O’Connor*, 165 P.3d at 1216 (describing team atmosphere during 2003 basketball season while noting team tension “spelled trouble” for coach).

157. See *id.* at 1216–17 (stating various complaints began in 2003, and continued until coach’s dismissal).

158. See *id.* at 1217 (describing course of action taken by parents and friends along with responses received from school administration).

159. See *id.* (noting school board cited coach’s refusal not to retaliate against players by refusing game time as reason for coach’s termination).

160. See *id.* (describing lower court’s reason for granting and affirming summary judgment for parents on basis of coach’s status as public official, because Defendant was unable to meet standard of actual malice in order to prove defamation).

161. See *id.* (analyzing *New York Times*, making note of Court’s concern with defamation reaching too far as to be reminiscent of Sedition Act). For further discussion of *New York Times* and its progeny, see *supra* notes 28–66 and accompanying text. For further discussion of the Supreme Court’s concern with First Amendment rights and defamation suits filed by public officials, see *infra* notes 258–276 and accompanying text.

162. See *O’Connor*, 165 P.3d at 1218 (observing *Rosenblatt*, *Butts* attempted to provide guidance to courts facing public official determination, but “comprehensive definition of public official continues to escape courts”).

focused on *Rosenblatt's* explanation of the New York Times rule in which the Supreme Court concluded the public official distinction applies when the public has an interest in the conduct exercised by a plaintiff in a government position that extends further than the public's general interest in conduct of *all* government positions.¹⁶³ Moreover, the court took special note of *Butts'* refusal to apply the public official distinction to the defamed University of Georgia athletic director in that case.¹⁶⁴ Although the plaintiff in *Butts* was not technically a government employee, the Supreme Court rejected the argument that the interest in public education and athletics justified concluding the plaintiff was a public official because as an athletic director, his position did not allow him to advance government policy and it was vastly unlike the position and considerations in *New York Times*.¹⁶⁵

The court reasoned that the public official distinction is reserved for matters of public policy and government employees whose position assigns responsibilities that are likely to influence public policy in civil areas, rather than cultural areas.¹⁶⁶ Unquestionably, the government responsibility assigned to a high school sport coach does not have the ability to influence civil concerns such as life and liberty; namely, as the *O'Connor* court pointedly reasoned, “[t]he policies and actions of [a high school coach] does not affect . . . the civic affairs of a community — the affairs most citizens would understand to be the real work of government.”¹⁶⁷

The *O'Connor* court took time to note that high school sports are important within communities and in recent years the nation-

163. *See id.* (“The Court first attempted to fill the gap in [*Rosenblatt*] by providing functional guidance that a public official exists for the purposes of *New York Times* ‘[w]here a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees.’” (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966))).

164. *See id.* (reasoning Supreme Court’s refusal to designate defamed plaintiff in *Butts* as public official provides persuasive justification for concluding high school basketball coach is not public official).

165. *See id.* at 1219 (stating Supreme Court did not view athletic director of public university as position capable of vindicating government policy, nor was it position analogous to *New York Times*).

166. *See id.* (interpreting Supreme Court jurisprudence as limiting public official distinction to individuals whose responsibilities influence public policy in areas of civil concerns).

167. *See id.* (concluding governmental responsibility assigned to individual is what guides public official inquiry, stating because coach’s conduct does not materially influence matters concerning life, liberty, or property, coaches are not public officials).

wide interest in high school athletics has greatly increased, but an importance in popular culture does not elevate high school coaches to the public official level because a coaching position provides no ability to implement policies that broadly influence public policy within the educational sphere of our society.¹⁶⁸ All in all, the Utah Supreme Court concluded the plaintiff was a private individual not within the purview of the *New York Times* rule because this role did not correlate with the Supreme Court's concerns and reasons that provide the basis for applying heightened constitutional protections to defamatory statements directed at individuals who advance government policies or resolve public issues directly influencing the life, liberty, or property of American citizens.¹⁶⁹

Similarly, the Idaho Supreme Court also correctly applied Supreme Court jurisprudence to the public official inquiry of a high school coach, though the set of facts presented are much more complex than *McGuire* and *O'Connor*.¹⁷⁰ In *Verity v. USA Today*,¹⁷¹ the plaintiff was employed as a teacher and the varsity women's softball and basketball coach.¹⁷² In 2005, the plaintiff began an inappropriate relationship with a player he coached at the school.¹⁷³ The school administration contacted police to conduct an investigation into the relationship, and when the investigation was complete the plaintiff and school administration agreed the plaintiff would

168. *See id.* at 1220 (acknowledging coaches can significantly influence students, parents); *see also id.* (noting nationwide coverage of high school athletics has greatly increased but increased popularity does not elevate coaches to public official standard). The *O'Connor* court acknowledged that many public officials *do* exist within public education as those public officials supervise the conduct of the public education system and are responsible for policy implementation that directly influence the public education system—however, coaches have no such influence. *See id.* (“To be sure, many public officials populate the public education arena. But these employees occupy supervisory and policy-making positions more comprehensive than the role of a coach . . . when these educational officials assumed their duties, they likely surrendered no small portion of their ability to protect their reputations. Coaches . . . struck no such bargain.”).

169. *See id.* at 1219 (stating influence of coaches is not consistent with type of influence or policy determinations implemented by government employees and public figures described in *New York Times, Butts*).

170. *See Verity v. USA Today*, 436 P.3d 653, 659, 663 (Idaho 2019) (observing defamation plaintiff had teaching license revoked after engaging in inappropriate relationships with high school athletes he coached, concluding plaintiff was private individual under *New York Times*).

171. *Verity v. USA Today*, 436 P.3d 653 (Idaho 2019).

172. *See id.* at 658–59 (stating Plaintiff was employed in Oregon as middle school teacher, coaching two varsity women's sport teams).

173. *See id.* at 659 (observing inappropriate relationship around spring 2005 between coach and eighteen-year-old team player, including thousands of late-night calls, sexually suggestive text messages).

resign.¹⁷⁴ The plaintiff's Oregon teaching license was revoked and his reapplication was denied.¹⁷⁵

The plaintiff alleged that numerous defendants, some of which included USA Today, an Oregon news station, and an Idaho news station, defamed him after reporting on the concerning details surrounding the plaintiff's conduct in Oregon and the subsequent teaching licensure in Idaho.¹⁷⁶ After those reports were released, concerned citizens began reaching out to the Idaho school district that employed the plaintiff following his resignation in Oregon, leading to his resignation from that school district as well in 2016.¹⁷⁷ The plaintiff filed his defamation complaint one month after his resignation and the complaint also alleged that he was removed from multiple coaching positions, including his son's youth baseball team, after the reports were released.¹⁷⁸ The district court concluded the plaintiff was not a public official, and the defendants filed a motion to appeal with the Idaho Supreme Court seeking review of whether the plaintiff, as a public school teacher and coach, was a public official.¹⁷⁹

Naturally, the Idaho Supreme Court's analysis began with a look at *New York Times* and its implications.¹⁸⁰ Using fairly similar reasoning to the *O'Connor* court, the *Verity* court concluded a public official voluntarily holds a position that is active in the "rough-and-

174. *See id.* (observing resignation settlement agreement between Plaintiff, school administration occurred approximately two months after police investigation began).

175. *See id.* (noting Oregon commission revoked Plaintiff's teaching license and denied reinstatement one year later because psychologist concluded upon evaluation plaintiff "should not be left alone with any female student over the age of [twelve] . . .").

176. *See id.* at 659–60 (noting Oregon news station reported on how schools track teacher discipline, including Plaintiff's conduct, subsequent move, as illustration of failure to discipline or protect children); *see also id.* at 660 (noting Idaho news station reported age of student whom Plaintiff had inappropriate relationship with, reported on Idaho superintendent's knowledge of Plaintiff's past teaching conduct).

177. *See id.* at 661 (acknowledging email communications ensued after media reports, while noting plaintiff resigned from teaching position in February 2016).

178. *See id.* ("On February 22, 2016, Verity resigned his position . . . with Vallivue School District. Verity also alleges that he was no longer allowed to coach his son's youth baseball league and was rejected from other coaching positions after the articles were published."); *see also id.* (noting Plaintiff, joined by his wife, sued Defendants on March 28, 2016, including one claim alleging Defendants defamed Plaintiff).

179. *See id.* at 661–62 (describing procedural history, question of law presented to Idaho Supreme Court on appeal).

180. *See id.* at 663 (noting status as public figure or public official under *New York Times*, *Gertz*, *Rosenblatt* is important determination because it determines level of proof necessary for successful defamation claim).

tumble” arena of public debate, thereby rendering those public officials less entitled to the level of reputational legal protection available to private individuals.¹⁸¹ Adding a bit more clarity to that “rough-and-tumble” description, the court explained the actual malice burden applies to public officials who hold positions that afford the individual “substantial responsibility for or control over the conduct of governmental affairs” and public official status is based on the principles set forth in *New York Times* along with the conflict between the public’s interest in debating public issues involving public figures and society’s interest in protecting reputation.¹⁸²

In its analysis, the Idaho Supreme Court focused largely on the plaintiff’s position of public school teacher, but the considerations were analogous to his as youth sports coach.¹⁸³ According to the court, while a public teacher is employed by the government and the public has a broad interest in certain conduct the teacher engages in, that is not enough to render the teacher a public official because teachers do not hold a substantial level of government authority comparable to the substantial authority rendered to actual public officials.¹⁸⁴

Crucial for high school coaches nationwide is the *Verity* court’s emphasis on the plaintiff’s lack of influence and persuasive power.¹⁸⁵ It noted that a high school coach has the same limited

181. *See id.* (describing view of public officials in arena of defamation law).

182. *See id.* (explaining actual malice burden is applicable when individuals hold certain substantial government positions); *see also id.* (stating public official status must be determined in consideration of *New York Times* holding plus Supreme Court’s later explanations of justifications behind applying heightened burden to public officials).

183. *See id.* (concluding public teachers will rarely be considered public officials while stating Plaintiff’s coaching position, teaching position, were not positions of such societal influence as to warrant public official status).

184. *See id.* (acknowledging Plaintiff was government employee but concluding Plaintiff did not attempt to control public policy, was not given capacity to exercise authority given to public officials, thus concluding plaintiff was private individual); *see also id.* (rejecting defendants’ argument asserting public importance of teaching positions coupled with concerning allegations set forth by media reports were sufficient to render Plaintiff public official).

185. *See id.* (stating Plaintiff did not enjoy position of “persuasive power and influence” by means of teaching position or coaching position). For state courts considering the status of high school coaches, it is helpful to take note of the *Verity* court’s emphasis on the ability of public officials and public figures to defend reputation through media outlets, while private individuals do not hold such influence, because it is a key point that has been emphasized by the Supreme Court on numerous occasions. *See Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966) (concluding actual malice burden applied to public officials does not minimize importance of defamation liability because “[s]ociety has a pervasive and strong interest in preventing and redressing attacks upon reputation”); *see also Gertz v. Robert*

access to self-help options as private individuals when it comes to self-help avenues for finding relief from defamatory statements resulting in reputational harm.¹⁸⁶ Conversely, public officials and public figures hold “persuasive power and influence” and “enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy,” which is notably distinct from the access to self-help avenues a typical high school coach has.¹⁸⁷ Applying the guiding language of Supreme Court precedent, the *Verity* court presented a clear and concise reasoning for why the plaintiff was not a public official *or* public figure, despite the egregious conduct at issue.¹⁸⁸

Nonetheless, it should be noted that it would be a stretch to conclude every high school coach under any circumstances is a private individual for the purpose of defamation.¹⁸⁹ The Supreme Court of Ohio in *Milkovich v. News-Herald*¹⁹⁰ concluded an award-winning high school basketball coach was not a public figure *or* a public official.¹⁹¹ *Milkovich* was subsequently overturned; however, the inquiry announced in overturning *Milkovich* suggested high

Welch, Inc., 418 U.S. 323, 344 (1974) (“The first remedy of any victim of defamation is self-help—using available opportunities to contradict the lie . . . and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater.”).

186. See *Verity*, 436 P.3d at 663–64 (stating as high school coach, Plaintiff lacked means or influence to defend against allegations published in national news outlet such as USA Today, illustrating why Plaintiff better classified as private individual).

187. See *id.* (noting public figures, unlike high school coaches, have “persuasive power and influence” including greater access to platforms to defend reputation (quoting *Gertz*, 418 U.S. at 342, 344–45)).

188. See *id.* at 664 (concluding high school coach was not public official because coach did not hold “influential role in ordering society” nor did coach act in same capacity as public official (quoting *Gertz*, 418 U.S. at 345)); see also *id.* at 663–64 (concluding high school coach was not public figure because he did not achieve fame or notoriety that would render him all-purpose public figure, or thrust himself into public controversy attempting to influence resolution).

189. See *Scott v. News-Herald*, 496 N.E.2d 699, 703 (Ohio 1986) (stating high school wrestling coach was public official because coach led substantial responsibilities as school superintendent). For further discussion of *Scott* and the court’s analysis, see *infra* notes 202–209 and accompanying text.

190. *Milkovich v. News-Herald*, 473 N.E.2d 1191 (Ohio 1984), *overruled by* *Scott v. News-Herald*, 496 N.E.2d 699 (Ohio 1986).

191. See *id.* at 1194–95 (holding plaintiff was not public official or figure because of coaching or teaching positions held).

school coaches would still be considered private individuals.¹⁹² Thus, a brief look into the facts of *Milkovich* are warranted. The plaintiff was a high school wrestling coach and teacher, but his coaching and teaching career took a massive hit after a fight between fans and wrestlers broke out.¹⁹³ The defendant, a sports writer, wrote an article alleging the plaintiff and school superintendent lied under oath at a judicial proceeding.¹⁹⁴ The plaintiff filed a defamation action and the trial court determined he was a public figure and failed to prove the defendants acted with actual malice.¹⁹⁵

The Supreme Court of Ohio disagreed, beginning its explanation with an overview of the actual malice burden.¹⁹⁶ The court's refusal to classify the plaintiff as a public figure or official was largely based on *Gertz*; reasoning the plaintiff would be a public official or figure "if *Rosenbloom* and *Butts* were the last statements made by the high court concerning the definition of a public figure or official."¹⁹⁷ Applying its reasoning to the facts of the case, the court concluded the plaintiff was not a public figure because although he was an award-winning wrestling coach, those achievements and his coaching position did not give him "persuasive power and influence."¹⁹⁸ Similarly, his coaching position did not "put him at the forefront of public controversies," and while plaintiff was involved in a public controversy after the fight at the wrestling meet oc-

192. See *McGuire v. Bowlin*, 932 N.W.2d 819, 827 n.4 (Minn. 2019) (stating newly announced test overruling *Milkovich* suggests high school coaches would not be considered public officials or figures).

193. See *Milkovich*, 473 N.E.2d at 1191–92 (explaining plaintiff's coaching position, teaching position, unfolding of events leading to defamation action).

194. See *id.* (describing allegations contained in Defendant's article, including statements such as "The teachers responsible were mainly head Maple wrestling coach, Mike Milkovich [plaintiff], and former superintendent of schools, H. Donald Scott Anyone who attended the meet, whether he be from Maple Heights, Mentor, or impartial observer, knows in his heart that Milkovich and Scott lied at the hearing after each having given his solemn oath to tell the truth." As noted, the article accused the plaintiff and former superintendent, H. Donald Scott, of lying under oath—these accusations are also the basis of *Scott* which overruled the court's holding in *Milkovich*. See *Scott*, 496 N.E.2d at 701 (noting coach and superintendent defamation actions were tried separately but rendered similar outcomes).

195. See *Milkovich*, 473 N.E.2d at 1193 (stating procedural history of defamation claim at issue).

196. See *id.* at 1193–94 (providing summary of Supreme Court defamation jurisprudence).

197. See *id.* at 1194 (reasoning *Gertz* suggests Plaintiff was not within group of individuals Supreme Court intended to classify as public officials or figures).

198. See *id.* at 1195 (noting Plaintiff's accomplishments in coaching before stating such achievements do not elevate Plaintiff to public figure status).

curred, he did not “thrust himself to the forefront of that controversy in order to influence its decision.”¹⁹⁹

Specifically, the court highlighted *Rosenblatt*'s conclusion that the “public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.”²⁰⁰ Thus, the *Milkovich* court concluded the plaintiff-coach was a private individual; however, the superintendent also at the center of the alleged defamatory news article did not receive such a classification, for reasons similar to those explored in courts that *did* find a public official status to apply to similarly situated defamation plaintiffs to McGuire.²⁰¹

2. *The New York Times Rule Does Apply: High School Coaches Are Not Private Individuals*

High school coaches pursuing a defamation claim should be mindful of where the claim is filed because the same reasons behind *not* classifying coaches as public officials are often used decide that coaches *are* public officials.²⁰² Overruling *Milkovich*, the Supreme Court of Ohio announced *Scott v. News-Herald*,²⁰³ which

199. *See id.* (providing justifications for rejecting argument Plaintiff was public figure in light of *Gertz*).

200. *See id.* at 1195 (rejecting argument Plaintiff was public official based on *Rosenblatt*) (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966)).

201. *See id.* (concluding plaintiff coach was not public official or figure under Supreme Court jurisdiction). *But see* *Scott v. News-Herald*, 496 N.E.2d 699, 701 (Ohio 1986) (concluding plaintiff superintendent was public official because superintendent had substantial responsibilities for entire school system). It is important to note that the Supreme Court denied Certiorari to hear *Milkovich*, but in dissent Justice Brennan starkly criticized the Ohio Supreme Court's refusal to classify the *Milkovich* plaintiff as a public figure. *See* *Lorain J. Co. v. Milkovich*, 474 U.S. 953, 964 (1985) (Brennan, J., dissenting) (“A large fight between the students of two rival schools quite legitimately raises serious concerns for the entire community, particularly when, as here, it results in injury to students. The present controversy centered primarily around the conduct of one man—Milkovich—in encouraging the fight; that conduct allegedly resulted in an OHSAA hearing, his censure by that association, and the disqualification of his team from eligibility in the state wrestling tournament. To say that Milkovich nevertheless was not a public figure for purposes of discussion about the controversy is simply nonsense.” (internal footnotes omitted)); *see also id.* at 964 n.10 (distinguishing plaintiff in *Milkovich* on grounds that Plaintiff, as opposed to Defendant reporter, created public controversy at issue thereby justifying classifying plaintiff as public figure).

202. *See* *O'Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007) (concluding high school coaches do not perform material work of government actors under New York Times rule). *But see* *Johnston v. Corinthian Television Co.*, 583 P.2d 1101, 1103 (Okla. 1978) (stating work of high school coach is “obvious government function”).

203. 496 N.E.2d 699 (Ohio 1986).

serves as an illustration of how the intertwined nature of teaching and coaching positions can provide the basis for concluding high school coaches are public officials.²⁰⁴ *Scott* arose out of the same incident giving rise to *Milkovich*, but the key difference is the plaintiff in *Milkovich* was a wrestling coach and teacher while the plaintiff in *Scott* was the school superintendent.²⁰⁵

Scott does not definitively decide that all high school coaches will be considered public officials; however, the court's analysis shows the usual basis on which courts hold that a high school coach, that by acting as a teaching figure or holding an actual teaching position, are public officials for the purpose of defamation claims arising out of coaching conduct.²⁰⁶ At the outset, it is hard to disagree with the *Scott* court's conclusion that a superintendent is a public official because he had substantial responsibilities as the head of an entire school district, and the public has a substantial interest in the conduct of an individual yielding so much power over public schools.²⁰⁷ However, the court's comparison between the coach in *Milkovich* and the superintendent in *Scott* is less convincing, because of the differences in roles of a teacher versus those of a superintendent.²⁰⁸ Nonetheless, the more courts compare a

204. See *Milkovich*, 474 U.S. at 960 (Brennan, J., dissenting) (arguing high school wrestling coach is public official based on teaching position). Justice Brennan and Justice Marshall dissented to the Supreme Court's denial of certiorari; however, the dissent conducted its inquiry based on the wrestling coach's teaching position, despite the incident at issue arising out of the coach's actions at a wrestling match. See *id.* (noting incident at high school wrestling match led to publication of allegedly defamatory publication, but publication challenged coach's qualifications to teach "in light of" conduct at wrestling match).

205. See *Scott*, 496 N.E.2d at 700 (noting plaintiffs' positions in *Scott*, in *Milkovich*).

206. See *McGuire v. Bowlin*, 932 N.W.2d 819, 827 n.4 (Minn. 2019) (arguing test announced in *Scott* suggests Ohio Supreme Court would not classify high school coach as public official); see also *Scott*, 496 N.E.2d at 703–04 (noting Justice Brennan's dissent, concluding teacher acting as coach, as superintendent are public officials because both perform "a task that goes to the heart of representative government" (quoting *Lorain Journal Co. v. Milkovich*, 474 U.S. 953, 958 (1985) (Brennan, J., dissenting))). The *Scott* decision goes beyond the public official determination, concluding the superintendent-plaintiff in *Scott* and the teacher and head coach in *Milkovich* were public figures as well. See *Scott*, 496 N.E.2d at 704 (agreeing with Justice Brennan's dissent, concluding fight at high school wrestling match "raises serious concerns for the entire community, particularly when, as here, it results in injury to students," so teacher acting as coach was public figure based on controversy at issue while superintendent was public figure based on his responsibility for coach's conduct).

207. See *Scott*, 496 N.E.2d at 702–03 (concluding *Rosenblatt* supports finding superintendent to be public official).

208. See *id.* at 703–04 (stating both plaintiffs were "authority figures" with "substantial impact on . . . community" while recognizing both roles satisfy public figure, public official inquiries).

coach's role to the role of a teacher, the more likely it is the court will reason the coach is a public official because as a teacher, the coach performs a task of great concern to the government and citizens.²⁰⁹

Unlike *Scott*, the Oklahoma Supreme Court in *Johnston v. Corinthian Television Corp.*²¹⁰ did not explicitly blur the line between the titles of coach and teacher; rather, it justified classifying a coach as a public official by comparing the similarities between the roles of teacher and coach.²¹¹ The plaintiff in *Johnston*, like many other coaches, was a teacher who also coached the middle school wrestling team.²¹² The plaintiff filed the defamation claim against a television broadcaster after the corporation broadcasted a news story alleging the plaintiff abused and humiliated a sixth grade student who wanted to rejoin the team coached by the plaintiff.²¹³

First, the *Johnston* court reasoned a person is properly considered a public official if, like in *New York Times*, the person is an elected official, and the alleged defamatory material relates to the person's official conduct.²¹⁴ Alternatively, the court reasoned a person is properly considered a public official under *Rosenblatt*.²¹⁵ Applying *Rosenblatt* guidelines, the court held the plaintiff's coaching position was of "apparent importance" in the school's athletics for "the public to have an independent interest" in the plaintiff's conduct as coach.²¹⁶ According to the *Johnston* court, the fact that numerous parents had withdrawn their children from the plaintiff's physical education class illustrated why the public's interest went

209. See *Lorain J. Co. v. Milkovich*, 474 U.S. 953, 958 (1985) (Brennan, J., dissenting) (indicating teachers perform tasks at core of government concerns); see also Markovitz, *supra* note 26, at 1966 (arguing classifying teacher as public official because teachers have duties that may impact citizens lives or property is antithetical to Supreme Court legal precedent).

210. *Johnston v. Corinthian Television Corp.*, 583 P.2d 1101 (Okla. 1978).

211. See *id.* at 1104 (reasoning coach works in public school system, so conduct of teachers, coaches, both concern public as much as other obvious public official roles); see also *Scott*, 496 N.E.2d at 703–04 (referring to plaintiff only in terms of role as teacher, concluding teachers are public officials).

212. See *Johnston*, 583 P.2d at 1102 (noting plaintiff coached grade school wrestling team while teaching physical education).

213. See *id.* (describing allegations contained in broadcast).

214. See *id.* at 1102–03 (noting one way in which individual is deemed public official under *New York Times Co.*).

215. See *id.* (noting second way in which individual is deemed public official under *Rosenblatt*).

216. See *id.* at 1103 (concluding coaching position satisfied *Rosenblatt* guidelines); see also *Rosenblatt v. Baer*, 383 U.S. 75, 85–86 (1966) (implying to be properly deemed public official, plaintiffs must at least have control or responsibility over government policy through position public holds heightened interest in).

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beyond a general interest in all government positions.²¹⁷ However, that reasoning is inconsistent with *Rosenblatt* because the court was analyzing the “apparent importance” of a public school coach, not the position of teacher; therefore, the *Johnston* court justified its “apparent importance” finding by relying on the wrong position because the alleged defamatory remarks related to the plaintiff as a coach, not as a teacher.²¹⁸

Furthermore, the *Johnston* analysis is flawed in another way; it reads the *Rosenblatt* guidelines as providing two distinct ways an individual may be deemed a public official.²¹⁹ The court concluded the plaintiff’s position satisfied *Rosenblatt*’s second guideline, but it did not conclude the position satisfied the first guideline which instructs courts that an individual may be deemed a public official if the position is one that has “substantial responsibility” for government affairs.²²⁰ At best, the *Johnston* court briefly noted the plaintiff’s substantial responsibility for government affairs by relying on an Illinois Appellate Court decision that concluded teachers and coaches were public officials because they held “highly responsible [public] positions” and public school systems, including athletics, are “consistent subjects of intense public interest.”²²¹

Finally, another concern with the *Johnston* decision is its statement that “the conduct of a coach-teacher and [the plaintiff’s coaching and teaching] policies were as much as a concern to the community as any other public official.”²²² First, it needlessly ex-

217. See *Johnston*, 583 P.2d at 1103 (describing public’s interest in coaching position).

218. See *O’Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007) (“The ‘apparent importance’ of a position in government sufficient to propel a government employee into a public official status has nothing to do with the breadth or depth of the passion . . . that the government official might ignite in a segment of the public. Nor is celebrity, for good or ill, of the government employee particularly relevant. Rather, it is the nature of the governmental responsibility that guides our public official inquiry.”). But see *McGuire v. Bowlin*, 932 N.W.2d 819, 826 (Minn. 2019) (stating *Rosenblatt* requires public official inquiry to focus on plaintiff’s role as coach, not plaintiff’s conduct).

219. See *Johnston*, 583 P.2d at 1103 (noting *Rosenblatt* provided two distinct guidelines to aid in defining public official before concluding Plaintiff satisfied second guideline).

220. See *id.* (noting *Rosenblatt* guidelines, then applying “the second standard” to plaintiff’s position as coach).

221. See *id.* (“Plaintiffs are public employees As coaches and teachers in a local high school they maintain highly responsible positions in the community Public school systems, their athletic programs, and those who run them are consistent subjects of intense public interest and substantial publicity.” (quoting *Basarich v. Rodeghero*, 321 N.E.2d 739, 742 (Ill. App. Ct. 1974))).

222. See *id.* (gauging public’s apparent interest in Plaintiff’s position as coach, as teacher).

pands the inquiry to consider the position and conduct of the plaintiff as a teacher.²²³ Second, stating the plaintiff's conduct was as much of a concern as "any other public official" suggests the public's interest did *not* satisfy *Rosenblatt's* guideline requiring the interest to be more than a general public interest in the qualifications of all government employees.²²⁴ Relying on the importance of the public school system as a whole to conclude the plaintiff's coaching position is of "apparent importance" to the public appears inconsistent with the Supreme Court's refusal to extend the public official classification to include low-ranking government employees.²²⁵ Additionally, that reasoning is almost identical to a line of reasoning the Minnesota Supreme Court rejected because it was inconsistent with *Rosenblatt*.²²⁶ Thus, the *Johnston* court did not hold back from stating the position at issue was one of a coach, but it failed to explain how the public official inquiry would be satisfied if, as *McGuire* and *Rosenblatt* instruct, the inquiry was limited to considering only

223. *See id.* (refusing to limit public official inquiry to position of coach). The *Johnston* court was seemingly aware of the problem with blurring the line between the distinct positions the plaintiff held in the school system; thus, it justified the blur by concluding the public school system itself and the plaintiff's coaching position within that system satisfied the public official inquiry. *See id.* ("[W]e can think of no higher community involvement touching more families and carrying more public interest than the public school system. This includes the athletic program.").

224. *See Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966) (stating individual is public official when position generates "apparent importance" beyond public's general interest in conduct of all government employees).

225. *See id.* at 87 n.13 ("It is suggested that this [apparent importance] test might apply to a night watchman accused of stealing state secrets The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the . . . particular charges in controversy."). Consider a hypothetical volunteer high school basketball coach—the Supreme Court was clear that a night watchman accused of stealing state secrets would not be a public official; thus, a volunteer high school basketball coach accused of stealing confidential public school records would not be a public official. *See id.* (stating position, independent of any particular controversy or defamatory remark, must be of apparent importance to public for actual malice to apply). However, applying the *Johnston* reasoning, the volunteer coach could be deemed a public official because the volunteer coach functions within the school system and is responsible for disciplining and instructing students. *See Johnston*, 583 P.2d at 1103 (reasoning coaching position was of apparent importance because school system is government function, public has independent interest in coach disciplining student, public has exceedingly higher interest in school system than any other "community involvement").

226. *Compare McGuire v. Bowlin*, 932 N.W.2d 819, 826 (Minn. 2019) (declaring coaching position must be of apparent importance to support public official determination because *Rosenblatt* stated public official designation "does not depend on the particulars of a person's conduct"), *with Johnston*, 583 P.2d at 1103 (failing to explain how coaching position was of apparent importance to public independent of coach's general disciplinary conduct in school system as teacher, as coach).

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the plaintiff's position as coach and the public's interest in his coaching position absent any particulars of the dispute giving rise to the filing of the defamation suit.²²⁷

Specifically, because Supreme Court precedent requires courts to balance the public's interest free debate against society's interest in protecting reputation, the *McGuire* court logically concluded that to appropriately strike that balance, the public official distinction should only apply to positions with duties relating to the core function of the government.²²⁸ Nonetheless, even if courts conclude coaches do not occupy positions relating to the core function of government, it is important for high school coaches to consider the unlikely, but possible conclusion, that they are public figures within the purview of the *New York Times* rule and bear the burden of proving actual malice.²²⁹ A brief look at defamation claims filed by college coaches and professional athletes show why it is hard to imagine a high school coach, in a similar position as the coach in *McGuire*, being considered a public figure.²³⁰

227. See *Johnston*, 583 P.2d at 1103 (applying public official inquiry to coaching position but relying on coaching position, teaching position, student withdrawals from classroom instruction, general school system presence to conclude plaintiff was public official). For further discussion of how *Johnston* is inconsistent with Supreme Court precedent and why *McGuire* applied the appropriate public official inquiry for high school coach plaintiff, see *infra* notes 277–292 and accompanying text.

228. See *Johnston*, 583 P.2d at 1103 (“To strike this balance, we conclude that . . . to support the conclusion that someone is a public official, his or her duties must relate to the core functions of government, such as safety and public order. Although *McGuire* was employed by the school district, his coaching duties are ancillary to core functions of government; put simply, basketball is not fundamental to democracy.”). This conclusion is especially logical in light of the government positions at issue in *New York Times* and *Rosenblatt*. See, e.g., *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 264 (1964) (concluding Commissioner was public official position requiring Commissioner to prove actual malice to succeed in defamation claim); see also *Rosenblatt*, 383 U.S. at 87 (concluding Plaintiff employed by county responsible for maintenance of public ski resort was public official because Plaintiff stated at trial his role was important, plus public viewed Plaintiff as head of resort); *id.* at 87–88 (noting evidence could have supported finding Plaintiff was outside public official distinction; thus, concluding Plaintiff should have opportunity to make such argument on retrial).

229. See *Lewis*, *supra* note 20, at 790–92 (noting sport officials are not public officials under *New York Times* rule, but may still bear burden of *New York Times* Rule if classified as public figure).

230. For further discussion of defamation claims filed by university coaches and professional athletes, see *infra* notes 231–251 and accompanying text.

3. *The New York Times Rule Might Apply: Does Defamation Law View High School Coaches, Collegiate Coaches and Professional Athletes Similarly?*

Although the public or private status of a high school coach in a defamation action is not frequently presented to courts, nearly thirty years before *Verity* and *McGuire*, the District of Columbia went beyond the bounds of local high school athletics and concluded a public university professor and women's basketball coach was not a public official or public figure.²³¹ In that case, *Moss v. Stockard*,²³² the women's basketball coach at the University of Washington D.C. was fired by the University Athletic Director after it was alleged the coach had misappropriated team funds.²³³ The coach sued for defamation and on appeal, one of the many issues turned on whether she was a public official or public figure thereby faced with showing the misappropriation statements were made with actual malice.²³⁴ Applying a three-part test, the court concluded the coach was not a public figure.²³⁵ The court also noted that it seemed doubtful that a public controversy surrounding the coach's termination even existed, thereby implying the first element of the inquiry was also not satisfied.²³⁶ Moreover, the court rejected the argument that the coach was a limited-purpose public figure based on her position within the women's basketball community because there was no

231. See *Moss v. Stockard*, 580 A.2d 1011, 1033 (D.C. 1990) (holding public university coach who was also professor was private figure in defamation action).

232. *Moss v. Stockard*, 580 A.2d 1011 (D.C. 1990).

233. See *id.* at 1014–16 (describing details of misappropriation allegation while noting athletic director informed numerous individuals reason for firing coach was misappropriation of funds).

234. See *id.* at 1029 (noting public or private status of university coach was at issue on appeal).

235. See *id.* at 1030–31 (adopting three-part test looking to whether public controversy existed, whether defamation plaintiff attempted to influence outcome of such public controversy, whether defamatory statements at issue related to such public controversy).

236. See *id.* at 1031–32 (noting news of coach's termination spread through university community including local news outlets, but such controversy was unlike large scale public controversies at issue in other defamation actions involving public figure plaintiffs which "stretch[ed] matters considerably" to conclude public controversy existed considering facts presented). The *Stockard* reasoning strongly suggests the court did not believe the first element of the public figure inquiry was met, but it declined to make its conclusion on that basis because the second element was clearly not met. See *id.* at 1032 ("We thus have considerable doubt whether Stockard's firing meets the standard of 'public controversy' necessary to satisfy the first [public figure inquiry] criterion. We need not resolve that issue finally, however, because it is apparent that the second requirement of [the public figure inquiry] is not fulfilled.")

connection between the dispute over team funds and her role within the basketball community.²³⁷

The *Stockard* court contrasted Stockard's position with other popular sport figures who have gained so much notoriety that they are considered general public figures regardless of any connection between the dispute and relative role in community.²³⁸ Finally, the court correctly illustrated one of the most imperative aspects of defamation actions involving coaches and the actual malice burden in stating "[m]erely by achieving some success as a basketball coach, [Stockard] did not expose herself to a greater risk of being falsely accused of financial defalcation in her duties than any other person."²³⁹ Considering a coaching position at a public university was insufficient to establish a heightened burden under both the public official inquiry and the public figure inquiry, it seems those inquiries applied to a high school coach should result in the same conclusion.²⁴⁰

The *Stockard* court's comparison between the coaching position in that case and a professional athlete's position is illustrative because there is almost no debate among courts that entertainers and professional athletes are public figures because those profes-

237. *See id.* at 1032–33 (stating coach was not limited-purpose public figure on basis of role in women's basketball community).

238. *See id.* at 1033 (stating Stockard's position was "markedly different" from sports figures considered general public figures). Informatively, the *Stockard* court highlighted the difference in prominence among sport figures in footnote thirty-eight; first looking at the plaintiff athletic director in *Butts*. *See id.* at 1033 n.38 ("University of Georgia athletic director Wally Butts 'commanded a substantial amount of independent public interest at the time of publication,' and attained public figure status 'by position alone'" (quoting *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 154–55 (1967) (plurality opinion))). Next, the court contrasted Stockard's position as university coach to a professional football player deemed to be a general-purpose public figure. *See id.* (noting participation in professional football league draws player into national limelight sufficient to render player general public figure).

239. *See id.* at 1033 (concluding unlike other limited-purpose public figures, Stockard did not use coaching position to influence debate surrounding her termination, so her success in coaching position was insufficient to conclude she was not private citizen for defamation purposes).

240. *See id.* (concluding termination of university basketball coach did not trigger heightened constitutional protection). Specifically, the *Stockard* court explained the University's desire to discuss the coach's termination was limited to only a small audience, a similar point made by the Minnesota Supreme Court in *McGuire*. *See id.* ("In summary, the perceived need by [the university] to communicate to a limited audience within the university—the players and coaches—the reason for Stockard's discharge implicates no public interest of constitutional dimension. It therefore does not warrant subordinating society's interest in affording relief for reputational injury that results from defamatory falsehood."). For further discussion of *McGuire*, see *supra* notes 74–139 and accompanying text.

sions naturally draw vast amounts of media and public attention.²⁴¹ Former professional football player, Don Chuy, filed a defamation claim alleging the Philadelphia Eagles were liable to him for defamation after the team physician told a reporter that Chuy was retiring from the team prematurely due to a medical condition.²⁴² The reasoning in *Chuy v. Philadelphia Eagles Football Club*²⁴³ is helpful in understanding why high school coaches should be considered private individuals in two ways: it shows the limited nature of the public figure classification and it shows how defamation plaintiffs, regardless of private or public status, must satisfy additional elements of defamation that serve the purpose of protecting potential defendants from unjustified liability.²⁴⁴

Courts disagree in applying the public figure doctrine; nonetheless, the public figure distinction is unlikely to reach high school coaches.²⁴⁵ In *Chuy*, the court reasoned that the article at issue addressed various aspects of the plaintiff's athletic career and, generally, professional athletes' careers generate widespread interest; therefore, athletes enjoy public prominence as it relates to their professional careers.²⁴⁶ The interest in Chuy's career existed before the article was published so his prominence in the public sphere did not arise out of the publication and the article directly related to his career; thus, Chuy was deemed a limited purpose public figure.²⁴⁷ The widespread interest associated with professional

241. See WALTER T. CHAMPION, JR., *FUNDAMENTALS OF SPORTS LAW* § 9.3 (2020) (stating courts conclude entertainers or professional athletes are public figures due to line of work).

242. See *Chuy v. Phila. Eagles Football Club*, 595 F.2d 1265, 1269–70 (3d Cir. 1979) (describing medical condition and basis of defamation claim).

243. 595 F.2d 1265 (3d Cir. 1979).

244. See John G. Long, *High Standards for High School Athletes: Defamation Law and Tomorrow's Stars*, 16 *SPORTS L.J.* 255, 270–71 (2009) (noting *Chuy* plaintiff's claim failed because he failed to show defamatory remarks hurt reputation); see also Walker, *supra* note 70, at 972 (stating "passive involvement" insufficient to deem plaintiff public figure).

245. See Long, *supra* note 244 at 272–76 (stating elite high school athletes unlikely to be deemed public figures unless athletes "voluntarily injected" themselves into controversy at issue *if* controversy was ongoing before defamatory remarks were made); see also Walker, *supra* note 70, at 969 (noting court disagreement applying public figure doctrine).

246. See *Chuy*, 595 F.2d at 1280 (reasoning professional athletes, "at least as to their playing careers," are in publicly prominent positions because athletes' careers attract sport fan attention). The *Chuy* court concluded the article concerned the source of Chuy's public prominence, his football career, because it discussed his retirement, team contract, and medical condition that impaired his ability to play football. See *id.* at 1280 n.21 (stating matters surrounding professional athlete careers, including contractual matters, attract attention of widespread audience).

247. See *id.* at 1280 (concluding article concerned plaintiff as public figure "in respect to his ability to play football"); see also Long, *supra* note 244, at 270–71

sports careers is vastly greater than the interest in the careers of high school coaches; high school coaches attract the attention of local fans, but that is far from being widespread.²⁴⁸

The *Chuy* decision has been criticized for its peculiar application of the public figure doctrine, but ultimately the public figure determination had no bearing on the court's holding because the plaintiff's claim failed on other grounds entirely unrelated to public or private status.²⁴⁹ Without applying the *New York Times* rule, the court reasoned Chuy failed to show the statements regarding his physical condition harmed his reputation; therefore, his defamation claim could not succeed.²⁵⁰ Actual malice is not the only safeguard to protecting defamation defendants.²⁵¹

B. Legal Fouls in the Courtroom and Fouls on the Court:
Applying The *New York Times* Rule to High School
Coaches is a Foul

For most high school coaches who find themselves as plaintiffs in defamation actions, the actual malice burden has the potential to restrict their chances of success through both the public official and public figure determination.²⁵² In one sense, the actual malice burden is serving its purpose by making the chances of a successful claim less likely, but in another sense it is in direct conflict with its purpose because coaches are not the within the class of influential plaintiffs the *New York Times* rule is intended to restrict.²⁵³ Moreo-

(noting *Chuy* court language deemed plaintiff limited purpose public figure as opposed to general purpose public figure).

248. See Long, *supra* note 244, at 275 (arguing interest in high school athletics is growing but high school athletes will be public figures if they achieve special *prominence* by virtue of athletic career).

249. See *Chuy*, 595 F.2d at 1281 (stating actual malice burden is irrelevant because Plaintiff failed to prove defamation regardless of heightened burden).

250. See *id.* at 1281–82 (“We perceive absolutely nothing in the statements . . . which can be construed as defamatory . . . For example, a malignancy suffered by the wife of the President of the United States . . . or by a movie star is front page public news. No one today treats such a communication as damaging to the esteem or reputation of the unfortunate victim in the community.”).

251. See *id.* at 1281 (noting whether communication is capable of defamatory meaning is question of law); see also *McGuire v. Bowlin*, 932 N.W.2d 819, 829 (Minn. 2019) (noting three defendants were granted summary judgment by district court because statements were subject to qualified privilege).

252. For discussion of high school coaches who have faced the public official and public figure heightened burden in defamation actions, see *supra* notes 151–227 and accompanying text.

253. See *O'Connor v. Burningham*, 165 P.3d 1214, 1220 (Utah 2007) (stating high school coaches do not hold positions of civic influence, so they do not forfeit ability to protect reputation by holding public coaching position having little civic influence); see also Long, *supra* note 244, at 276 (arguing public individual status is

ver, high school athletics suffer when coaches are subject to campaigns of false, harsh criticisms in response to reasonable coaching decisions.²⁵⁴

Defamation law is able to provide a remedy to coaches who have suffered reputational harm and it encourages parents and others to refrain from crossing the line between fair criticism and false, reputationally harmful statements.²⁵⁵ The remedial and deterrent effect of defamation law encourages parents and coaches to engage in criticism in a civil manner, it also allows athletes to be coached in a manner the coach, not a parent or fan, feels is best for the player's skill.²⁵⁶ However, if coaches are deemed public individuals, the remedial and deterrent benefits of defamation law will be almost impossible to achieve; thus, it is crucial for courts to deeply consider the legal principles behind the actual malice burden and the experience and interests high school coaches have when deciding a defamation claim.²⁵⁷

“detrimental” to defamation claim since deeming prominent high school athlete’s to be public figures would be “nothing less than shocking”).

254. See Amy Donaldson, *Ex-Lehi Coach Sues Parents*, DESERET NEWS (Sept. 16, 2004, 9:02 AM), <https://www.deseret.com/2004/9/16/19850840/ex-lehi-coach-sues-parents> [<https://perma.cc/6TBZ-EZ4Y>] (quoting *O'Connor* plaintiff-coach, stating “I felt I had to stand up not just for myself but for other coaches who have had to deal with similar situations. The right thing needs to be done. Coaches everywhere want to be able to do the things they need to [sic] teach and to coach. That’s really all we want to do. We love athletics. We love kids.” (internal quotation marks omitted)); see also Jeff DiVeronica, *Angry Parents Cost This Honeoye Coach His Job and Reputation so He Sued Them and Won \$50K*, DEMOCRAT & CHRON. (May 23, 2018), <https://www.democratandchronicle.com/story/sports/high-school/2018/05/18/high-school-basketball-coach-mark-storm-defamation-lawsuit-parents-honeoye-athletes-helicopter/543634002/> [<https://perma.cc/RX3B-EH9C>] (quoting former player in support of coach stating “[t]here were many times my mother wanted to call him and ask him why he was so hard on me. But she trusted him as a coach, and in the end I am thankful for every pro sprint, for every drop of sweat, for every time I was held accountable because it is solely the reason I am successful today”).

255. See Bob Cook, *Criticize Youth Coaches If You Must—But Stick to the Facts, Parents, or You’ll Get Sued*, FORBES (Sept. 16, 2019), <https://www.forbes.com/sites/bobcook/2019/09/16/criticize-youth-coaches-if-you-must-but-stick-to-the-facts-parents-or-youll-get-sued/?sh=2418efc92a44> [<https://perma.cc/Z6LP-UBKM>] (discussing defamation actions filed by high school coaches, drawing attention to difference between raising justified concerns versus “launching a smear campaign”).

256. See Lee E. Green, Legal Br., *Coaches Suing Parents of Athletes*, SCH. SUPERINTENDENTS ASS’N (Nov. 2014), <https://aasa.org/content.aspx?id=35418> [<https://perma.cc/Y8R3-4586>] (suggesting school administrators create policies encouraging coaches to share information about parent conduct for schools to prevent possible defamation litigation).

257. See Long, *supra* note 244, at 276–77 (noting legal considerations in public status determination while noting substantial burden public status places on defamed plaintiff leaves plaintiff open to increased reputational harm).

1. *Supreme Court Precedent Does Not Support Deeming High School Coaches Public Individuals*

A fundamental point in defamation law is that Supreme Court jurisprudence does not support determining an individual to be a public official merely because the individual is employed by the government—there must be a stronger connection between the individual’s government position and the public’s interest in debating the administration of government affairs and individuals who substantially influence the resolution of public debate.²⁵⁸ Similarly, Supreme Court jurisprudence makes clear that involuntary public figures are rare; all-purpose public figures are “celebrities,” enjoying general fame and prominence in the public eye, while limited-purpose public figures are well-known in a public controversy and are public figures only regarding issues involved in that controversy.²⁵⁹ Whether an individual be a public official or a public figure, it is clear the Court viewed these classes as deserving of a heightened burden because they are able to influence public debate and resolutions of public controversies either because of their fame or official duties and, for the same reasons, those individuals are better able to redress reputational harm without judicial intervention.²⁶⁰

In fact, even though *New York Times* did not establish how far the public official determination stretched, a simple look into the precedent cited in support of the *New York Times* rule shows that the public official determination was not intended to stretch to public

258. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 283 n.23 (1964) (declining to determine which ranks of government officials public official distinction would reach but concluding state commissioner responsible for supervising police department is reached by public official determination); see also *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (reasoning public official determination is motivated by strong interest in public debate, strong interest in debate about individuals who hold positions that influence resolution of public debates; stating it is clear public official status applies to government employees that have, or appear to have, “substantial responsibility for or control over the conduct of governmental affairs”); *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 152–53 (1967) (plurality opinion) (reasoning public official determination aims to balance “the interests of the community in free circulation of information and those of individuals in seeking recompense for harm done by the circulation of defamatory falsehood”).

259. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (stating all-purpose public figures hold power or influence, noting involuntary public figures are rare, but limited-purpose public figures “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved”).

260. See *id.* at 344–45 (reasoning public officials or public figures by way of government job or public fame “must accept” unusually close public scrutiny, but noting they have greater access to media to remedy reputational harm suffered by such scrutiny).

employees like high school coaches; instead, the Court cited precedent where individuals were public employees in positions of substantial influence in areas most commonly debated among the citizenry.²⁶¹ Similarly, while *Rosenblatt* also declined to create a bright line definition of public official, it is clear high school coaches do not fit the *Rosenblatt* criteria for public official classification because the criteria requires the position to be one the public has strong interest in debating because the position affects public issues and the individual is able to use that position to significantly influence the resolution of public issues.²⁶² As the National High School Basketball Coaches Association points out, high school coaches significantly influence and control how a sports team practices, but coaches do not control or influence players from other schools, students within the school district he coached, the administration that hired them to coach, or even the parents of the players they coach.²⁶³ Simply put, it is hard to imagine how the control and influence coaches possess could be thought to influence the resolution of almost any public issue the public has a strong interest in debating.²⁶⁴ Even more persuasive is a look at footnote thirteen in *Rosenblatt* where the Court stated:

But a conclusion that the New York Times malice standards apply could not be reached merely because a statement defamatory of some person in government employ catches the public's interest; that conclusion would virtually disregard society's interest in protecting reputation. The employee's position must be one which would invite

261. See *N.Y. Times Co.*, 376 U.S. at 279–80 (stating *New York Times* rule originates from Kansas Supreme Court case requiring Attorney General election candidate to prove defendant acted with actual malice to prevail on defamation claim); see also *Garrison v. Louisiana*, 379 U.S. 64, 76 (1964) (applying *New York Times* rule eight months after its creation in panel of eight judges, stating “[the Supreme Court] find[s] no difficulty” applying public official distinction).

262. See *Rosenblatt*, 383 U.S. at 85 (concluding no bright-line definition is necessary for public official determination because it is informed by strong interest in debate on public issues, including over individuals whose positions allow that individual to significantly influence outcome of those public issues); see also *McGuire v. Bowlin*, 932 N.W.2d 819, 825 (Minn. 2019) (relying on *Rosenblatt* criteria to reason general public interest in high school sports is too broad to satisfy criteria).

263. See Br. for Nat'l High Sch. Basketball Ass'n as Amici Curiae Supporting Appellant at 4, *McGuire v. Bowlin*, 932 N.W.2d 819 (Minn. 2019) (No. A18-0167) (highlighting influence, control coaches have in comparison to influence coaches do not have).

264. See *id.* at 4–5 (stating public officials, such as road crews or postal workers, have ability to impact public in ways far more expansive than high school coach's ability, but those officials are not considered public officials because amount of control over government affairs those positions yield is not substantial).

public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy.²⁶⁵

Coaching positions in public school systems are simply not positions that invite public scrutiny and discussion of the individual occupying the position; however, defamatory statements like the statements at issue in *McGuire*, are statements that may “catch the public’s interest” and any conclusion that because of those statements the coach is a public official would “virtually disregard” the valid interest in protecting one’s reputation.²⁶⁶ In fact, the limited influence, if any, coaches hold over the resolution of public debate is the reason why coaches like Mr. McGuire may have their coaching careers terminated based on complaints later determined to be unfounded.²⁶⁷ The Minnesota State High School Coaches Association correctly summarized why Supreme Court jurisprudence does not support finding that a high school is a public official when it wrote pointedly, “high school coaches do not operate in the same realm of public actors . . . considered in *New York Times* . . . (elected city commissioner), and . . . *Rosenblatt* . . . (county parks supervisor) — two of the foundational decisions addressing the ‘actual malice’ requirement for defamation claims filed by public officials.”²⁶⁸

Additionally, the Court’s public official and public figure analysis in *Gertz* is helpful in seeing why high school coaches under most circumstances should not be considered public figures.²⁶⁹ First, the *Gertz* Court quickly rejected the argument that the plaintiff was a

265. See *Rosenblatt*, 383 U.S. at 86 n.13 (explaining high school coaches do not invite public scrutiny or discussion).

266. See *id.* (stating public official distinction cannot be based on public’s interest if interest arises only out of defamatory remarks); see also Br. for Nat’l High Sch. Basketball Ass’n as Amici Curiae Supporting Appellant, *supra* note 263, at 4–5 (stating government employees’ modest control over niche aspects of government affairs should not elevate individual to public official status because doing so would leave coaches like Mr. McGuire “powerless,” left with “no effective remedy”).

267. See *id.* at 5 (“It was precisely McGuire’s limited ability to affect policy or wield government authority that permitted complaints, which were found unsubstantiated, to end McGuire’s coaching career.”); see also *McGuire v. Bowlin*, No. 82-CV-15-6030, 2018 WL 6273533, at *2 (Minn. Ct. App. December 3, 2018) (stating Minnesota Board of Education found Mr. McGuire did not maltreat players, plus school administration independent investigation concluded he did not inappropriately touch players, but he did fail to consider “emotional well-being of his players . . .”).

268. See Br. for MSHSCA, *supra* note 4, at 1 (arguing high school coaches should not be faced with actual malice burden because duties, role of high school coaches are outside realm of roles Supreme Court has described as worthy of public official distinction).

269. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351–52 (1974) (concluding lawyer representing family was not public official or public figure).

public official based on his appointment to the city's housing committee.²⁷⁰ High school coaches are employed by the government and may receive pay for time spent coaching, but it seems referring to a high school coaching position as a "remunerative governmental position" would be a far stretch.²⁷¹ Further, the Court rejected the argument that the plaintiff's positions in local civic and legal groups along with his participation as a lawyer in civil litigation which attracted widespread media attention was sufficient to render him a limited purpose public figure.²⁷² High school coaches may be "well known in some circles" but it is far from general fame and coaches do not assert themselves "into the vortex" of a public issue when the public issue was created by the defamatory statement.²⁷³

Finally, the Supreme Court rejected an overly broad public or general interest test to guide application of the *New York Times* rule.²⁷⁴ Notably, the Court rejected such a broad test because it failed to adequately serve individuals' interest in protecting reputation and failed to serve the media's interest in spreading information concerning public controversies.²⁷⁵ At best, statements concerning high school coaches might be an area of general interest, but that is not enough and as the Court reasoned, if it *was*

270. *See id.* at 351 (rejecting defendant's public official argument reasoning plaintiff had "never held any remunerative governmental position").

271. *See id.* (noting plaintiff never held any government position for pay).

272. *See id.* at 351–52 (discussing Plaintiff's roles, concluding Plaintiff was private individual).

273. *See id.* ("Although [plaintiff] was consequently well known in some circles, he had achieved no general fame or notoriety in the community It is preferable to reduce the public figure question to . . . the nature and extent of an individual's participation in the particular controversy giving rise to the defamation. In this context it is plain that petitioner was not a public figure He plainly did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome.").

274. *See id.* at 346 (refusing to base actual malice application on whether publication concerned general or public interest); *see also* Andrew K. Craig, Comment, *The Rise in Press Criticism of the Athlete and the Future of Libel Litigation Involving Athletes and the Press*, 4 SETON HALL J. SPORT L. 527, 532–33 (1994) (discussing *Gertz* refusal to apply actual malice burden to private individuals when defamatory statements relate to "public concern").

275. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 346 (1974) ("The 'public or general interest' test for determining the applicability of the New York Times standard . . . inadequately serves both of the competing values at stake. On the one hand, a private individual whose reputation is injured by defamatory falsehood that does concern an issue of public or general interest has no recourse unless he can meet the rigorous requirements of New York Times On the other hand, a publisher . . . of a defamatory error which a court deems unrelated to an issue of public or general interest may be held liable . . . even if it took every reasonable precaution to ensure the accuracy of its assertions.").

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enough to justify imposing the actual malice burden, the interest in protecting reputation would be drastically underserved.²⁷⁶

2. *McGuire v. Bowlin: The Preferred Private Versus Public Analysis in the Context of Coaching High School Sports*

The plaintiff in *McGuire* was a typical high school coach who experienced unfortunate, but typical, criticisms regarding his coaching decisions.²⁷⁷ Serious allegations targeted at Mr. McGuire cost him his coaching position and stained his reputation in the community; fortunately, the Minnesota Supreme Court's decision in *McGuire* fulfills the policy objective of the *New York Times* rule rather than erroneously depriving high school coaches from remedying reputational harm suffered from such false, serious allegations.²⁷⁸ Looking at the motivating forces behind The *New York Times* rule allowed the court to apply an analysis that affords high school coaches who have had their careers and reputation tarnished by false, serious allegations to have the same fair chance at receiving legal redress available to private individuals.²⁷⁹

In its public official analysis, the court's three criteria adequately ensure high school coaches will not wrongly be grouped into the public official distinction by focusing the criteria on the nature of the position itself.²⁸⁰ The *McGuire* court's conclusion that the plaintiff's position must relate to the core function of the government for the public official distinction to apply protects against the possibility that almost any public employee will be deemed a public official and is clearly in line with Supreme Court jurisprudence as well as the interests of high school coaches.²⁸¹ Coaching

276. *See id.* at 346–48 (acknowledging strong legitimate interest in protecting reputation was underserved under general interest test).

277. *See Br. for MSHSCA, supra* note 4, at 2 (noting “vitriolic attacks” against coaches for playing time decisions).

278. *See id.* at 7 (stating classifying coaches as private individuals fulfills policy objective of *New York Times* Rule); *see also* *McGuire v. Bowlin*, 932 N.W.2d 819, 824 (Minn. 2019) (balancing coach's interest in protecting reputation with public's interest in official conduct).

279. *See McGuire*, 932 N.W.2d at 824 (describing motivating factors behind actual malice burden); *see also* *O'Connor v. Burningham*, 165 P.3d 1214, 1219 (Utah 2007) (concluding high school coaches do not occupy position Supreme Court considered in establishing public official distinction).

280. *See Rosenblatt v. Baer*, 383 U.S. 75, 86 n.13 (1966) (stating public versus private status of plaintiff focuses on nature of plaintiff's position); *see also McGuire*, 932 N.W.2d at 824 (stating three criteria used in public official inquiry in Minnesota).

281. *See McGuire*, 932 N.W.2d at 824–25 (“[T]o support the conclusion that someone is a public official, his or her duties must relate to the core functions of government, such as safety and public order.”); *see also* *Hutchinson v. Proxmire*,

duties include making strategic game decisions and whatever interest the public has in the execution of those duties cannot support classifying coaches as public officials because game decisions are not related to the core function of the government.²⁸²

Similarly, a coaching position does not give the coach “substantial responsibility for or control over the conduct of government affairs.”²⁸³ The plaintiff in *New York Times* was an elected commissioner responsible for oversight of the city police department, a position clearly providing the plaintiff with substantial responsibility and control over government affairs.²⁸⁴ Finally, coaches are able to influence the resolution of issues involving the team’s success, but team success is not a public issue the public has a strong interest in debating.²⁸⁵ The *McGuire* court’s analysis requires an appropriate connection between a defamation plaintiff and the public position they occupy to support a public official determination, effectively protecting high school coaches from being wrongly stripped of their ability to seek a legal remedy for defamation.²⁸⁶

In its public figure analysis, the court concluded there was no public controversy to support classifying the plaintiff as a public official.²⁸⁷ This conclusion raises an important point, that criticsizers cannot spread false allegations that attract widespread attention and then argue a public controversy existed because there was wide-

443 U.S. 111, 119 n.8 (1979) (concluding public official distinction cannot include all public employees).

282. See *McGuire*, 932 N.W.2d at 824–25 (describing duties of coach before concluding public’s interest in coaching duties do not outweigh coach’s interest in protecting reputation).

283. See *id.* at 826 (concluding coach employed by public school is “technically” involved in government affairs but not sufficiently to render coach public official).

284. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 256 (1964) (noting plaintiff’s city commissioner position responsibilities).

285. See *Rosenblatt*, 383 U.S. at 85 (stating motivating forces of actual malice burden are “a strong interest in debate on public issues, and, second, a strong interest in debate about those persons who are in a position significantly to influence the resolution of those issues”); see also *McGuire*, 932 N.W.2d at 825–26 (concluding sports have strong emotional impacts on players, including their families, but it does not support public official distinction).

286. See *McGuire*, 932 N.W.2d at 827–28 (stating plaintiff’s position must touch on matters concerning life, liberty, and property to support public official status); see also *Br. for MSHSCA*, *supra* note 4, at 8–9 (acknowledging coaches play formative role in student lives but urging court to require stronger connection showing plaintiffs’ government affairs).

287. See *McGuire*, 932 N.W.2d at 829 (stating no public controversy existed in support of public figure distinction).

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spread public interest in the allegations.²⁸⁸ No public controversy exists in high school sports, but allegations that a local coach was inappropriately touching players is certainly a controversy that would attract public interest, but absent the defamatory remarks, there is no controversy.²⁸⁹

Further, high school sports may be thought of as a “controversy” because some aspects are capable of resolution, but a sport in its entirety is not something capable of being “resolved.”²⁹⁰ The Supreme Court in *Rosenblatt* stated the “profound national commitment” to keeping debate on public issues “robust” does not ignore society’s “pervasive and strong interest” in protecting reputation.²⁹¹ The Minnesota Supreme Court’s analysis remains true to that statement because classifying high school coaches as public officials or figures ignores society’s interest in protecting reputation and wrongly suggests high school sports is a source of debate that the Supreme Court felt there was a national commitment in keeping robust.²⁹²

3. *McGuire is Not Unique: Criticism of Coaches Becomes Defamatory Far Too Often*

It would be strange to hear of a coach that had never been criticized by a player or parent, but far too often the criticisms go way too far and make coaching much more difficult than it should be.²⁹³ In fact, parent complaints have become such a problem for coaches that in 2013 Minnesota enacted a law prohibiting parent complaints from being the sole reason for not renewing a coaching contract.²⁹⁴ High school sports come along with a lot of highs and lows and complaints may be well-deserved, but coaches do not deserve to have their reputation stained and integrity questioned be-

288. *See id.* (“[A] party cannot stir up controversy by making defamatory statements and then point to the resulting controversy as a basis for assigning the defamed party public figure status.”).

289. *See id.* (reasoning no public controversy existed while concluding defamatory materials at issue cannot be basis of public controversy in support of public figure distinction).

290. *See id.* (stating high school sports are not controversy because activity is not capable of being resolved).

291. *See Rosenblatt v. Baer*, 383 U.S. 75, 85–86 (1966) (describing need to balance interest in debate with interest in reputation).

292. *See McGuire*, 932 N.W.2d at 825 (noting importance of balancing interest in debate with reputation).

293. *See Br. for MSHSCA*, *supra* note 4, at 2 (noting widespread problem of coaches being slandered in response to coaching decisions).

294. *See* MINN. STAT. ANN. § 122A.33 (West 2013) (stating parent complaints may not be sole reason to refuse renewal of coaching contract).

cause of false allegations that are made by disgruntled parents who want a coach fired because their complaints regarding coaching decisions were not addressed.²⁹⁵

Allegations that a coach has abused players are serious and are cause for concern, but defamation law adequately accounts for ensuring plaintiffs who had their reputations harmed by *true* statements will not be afforded a legal remedy.²⁹⁶ To ensure the integrity and usefulness of high school sports, parents and athletes should be able to expose genuine wrongful coaching conduct without facing liability, but sports integrity and usefulness also rests on the ability of a coach to make coaching decisions for the best of the team rather than for the best of a complaining parent.²⁹⁷ These considerations are adequately accounted for without imposing the heightened burden of actual malice because a defamation plaintiff still must prove by a preponderance of the evidence not only that the statements were false, but that the statements also harmed their reputation.²⁹⁸ Similarly, some statements that are the basis of a defamation claim may enjoy a qualified privilege, leaving the defendant free from liability.²⁹⁹

IV. CONCLUSION: HIGH SCHOOL COACHES MUST BE DEEMED PRIVATE INDIVIDUALS IN DEFAMATION ACTIONS

Defamation law dates far back in history because society has traditionally recognized the valid interest in protecting reputation, but liability on the basis of criticisms gone too far must not restrict the Constitutional protection of free debate.³⁰⁰ The heightened burden announced in *New York Times* protects both interests because it is a burden placed only on individuals who have a substan-

295. See *O'Connor v. Burningham*, 165 P.3d 1214, 1217 (Utah 2007) (stating parents accused coach of misusing public funds after previous complaints made to school administration did not result in coach's termination); see also *McGuire*, 932 N.W.2d at 826 (acknowledging emotional aspects of high school sports).

296. See RESTATEMENT (SECOND) OF TORTS: DEFAMATION § 558 (Am. L. Inst. 1977) (noting statements must be false to succeed in defamation claim).

297. See *Br. for Nat'l High Sch. Basketball Ass'n as Amici Curiae Supporting Appellant*, *supra* note 263, at 5–6 (noting importance of taking misconduct allegations seriously but arguing false allegations may destroy careers which is deserving of legal redress through defamation law).

298. See *id.* at 6–7 (noting elements of defamation while drawing attention to requirement that coach must prove parent statements were false).

299. See *McGuire v. Bowlin*, 932 N.W.2d 819, 829 (Minn. 2019) (detailing parent defendants were granted summary judgment on basis of qualified privilege).

300. See *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 151 (1967) (plurality opinion) (noting ancient roots of defamation law including Constitutional restrictions placed on it).

tial role in government affairs and have the ability to influence the outcome of public issues.³⁰¹ The principles addressed by the Supreme Court show that applying the heightened burden to high school coaches would be incorrect.³⁰² Cases that have addressed the private or public status in the context of high school coach plaintiffs show that courts who classify high school coaches as public officials misinterpret Supreme Court considerations and give too little weight to the interests of coaches subjected to defamatory remarks.³⁰³ The analysis employed by the *McGuire* court is a correct and fair application of the public versus private analysis, and it will protect the beneficial nature of high school athletics by allowing coaches to coach and discouraging parents from engaging in false campaigns to influence how student athletes are coached.³⁰⁴

*Mallory Shumaker**

301. See *Rosenblatt v. Baer*, 383 U.S. 75, 85–86 (1966) (describing purpose of heightened burden).

302. For further discussion of the Supreme Court’s defamation jurisprudence and the actual malice burden, see *supra* notes 28–66 and accompanying text.

303. See, e.g., *Johnston v. Corinthian Television Corp.*, 583 P.2d 1101, 1103 (Okla. 1978) (applying public official designation to high school coach). For further discussion of issues surrounding classifying high school coaches as public officials, see *supra* notes 258–276 and accompanying text.

304. For further discussion of why the *McGuire* analysis is the preferred analysis, see *supra* notes 277–292 and accompanying text. For further discussion of the *McGuire* court’s full analysis, see *supra* notes 103–133 and accompanying text.

** J.D. Candidate, May 2023, Villanova University Charles Widger School of Law; B.A., History, *summa cum laude*, King’s College, 2021. I dedicate this Comment to the most hardworking and loving people I’ve ever known, my parents, Scott and Kim Shumaker. Mom, your unconditional love and support is the reason this Comment and my entire education is possible. I cannot thank you enough. Dad, your spirit lives in everything I do and I know you are my biggest fan in Heaven. I’d also like to thank my best friends, Lauren Hufnagel and Zoe Ellis, for always reminding me to laugh.