

JUN 19 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PATRICK A.T. JONES, individually,

Plaintiff - Appellant,

v.

WASHINGTON INTERSCHOLASTIC  
ACTIVITIES ASSOCIATION, also  
known as WIAA,

Defendant - Appellee.

No. 08-35185

D.C. No. 2:07-cv-00711-RSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert S. Lasnik, District Judge, Presiding

Submitted June 3, 2009\*\*  
Seattle, Washington

Before: CANBY, THOMPSON and CALLAHAN, Circuit Judges.

Patrick A.T. Jones (“Jones”) appeals the district court’s grant of summary judgment in favor of the Washington Interscholastic Activities Association

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“WIAA”). We review the district court’s grant of summary judgment de novo, *Video Software Dealers Ass’n v. Schwarzenegger*, 556 F.3d 950, 956 (9th Cir. 2009), and we affirm.

Jones has not shown that a contractual right to coach football at a public high school is a “fundamental right” protected by the equal protection clause of the Fourteenth Amendment. *See Dittman v. California*, 191 F.3d 1020, 1031 n.5 (9th Cir. 1999) (“The [Supreme] Court has never held that the ‘right’ to pursue a profession is a *fundamental* right, such that any state-sponsored barriers to entry would be subject to strict scrutiny”). Jones also has not shown that football coaches are deserving of suspect classification as a protected class under the Fourteenth Amendment. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). Accordingly, because Jones has not asserted discrimination on the basis of a suspect class or denial of a fundamental right, the rational basis test applies to his equal protection claim. *See id.; McGowan v. Maryland*, 366 U.S. 420, 426 (1961) (where the classification involved is not suspect and does not infringe upon fundamental rights, a statutory determination will not be set aside if any set of facts reasonably may be conceived to justify it).

The WIAA’s Out-of-Season Rule passes rational basis review because it is rationally related to the WIAA’s legitimate state interest of creating safe and

equitable competition for student athletes. Any resulting incongruity between the treatment of public and private school coaches under the WIAA Out-of-Season Rule resulting from geographic school boundaries also passes rational basis review, as parallel regulatory schemes need not be perfectly identical, as long as they are rationally related to legitimate state interests. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976).

The denial of Jones' request for a waiver is within the WIAA's discretionary decision-making authority and does not constitute arbitrary or capricious agency action because Jones was treated no differently from any other public school coach governed by the WIAA's Out-of-Season Rule. *See Chapman v. Pub. Util. Dist. No. 1 of Douglas Co., Wash.*, 367 F.2d 163, 168 (9th Cir. 1966) (recognizing that when an action is "exercised honestly, fairly, and upon due consideration[, it] is not arbitrary and capricious, even though there may be room for a difference of opinion upon the course to follow").

**AFFIRMED.**