UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SOUTH CENTRAL CONFERENCE OF SEVENTH-DAY ADVENTISTS doing business as OAKWOOD ADVENTIST ACADEMY,

Plaintiff,

v.

ALABAMA HIGH SCHOOL ATHLETIC ASSOCIATION,

Defendant.

Civil No. 2:22-cv-274-RAH-SMD

PLAINTIFF'S MOTION FOR PRELIMINARY INJUCTION

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INTRODUCTION

Common sense ought to have made this case entirely unnecessary. Across the country, schools and athletic associations work together to figure out how to accommodate religious beliefs and practices, including for the small number of religious minorities who observe Sabbath on Saturdays. That kind of cooperation between church and state reflects most Americans' recognition that a little flexibility helps in a country as religiously diverse as our own.

But this case *is* necessary because the Alabama High School Athletic Association refuses to take simple, commonsense measures that would allow the student athletes at Oakwood Adventist Academy to compete while still honoring their Seventh-day Adventist beliefs about how to comply with the Biblical commandment to "Remember the Sabbath day, to keep it holy." In February the Oakwood Academy Mustangs were forced to forfeit their playoff game because it had been scheduled on Saturday afternoon—their Sabbath. After realizing the conflict, Oakwood Academy had worked out a schedule swap with the other three affected schools—all private religious schools—that would have allowed them to play after sundown on Saturday. But AHSAA intervened, rejecting the schedule swap, forcing the Mustangs to forfeit their game, and ending their season.

AHSAA has thus violated the First Amendment in at least three ways. First, AHSAA is willing to make modifications to its postseason schedule

for certain reasons, and cannot justify refusing to make such a modification for Oakwood Academy. Second, AHSAA categorically accommodates Sunday Sabbath observance but refuses to accommodate Saturday Sabbath observers. Third, AHSAA's proffered justification—that it had previously imposed on Oakwood Academy a condition that it could not forfeit games for religious reasons—is a blatantly unconstitutional condition that itself violates the First Amendment.

There was no need for this conflict to exist in the first place. But since AHSAA was unwilling to accommodate Seventh-day Adventist practice, and has expressed its categorical unwillingness to do so going forward, this Court's intervention is necessary. AHSAA's exclusion of Oakwood Academy should be enjoined.

BACKGROUND

A. Oakwood Academy and its beliefs

Oakwood Academy is a Seventh-day Adventist school located in Huntsville, Alabama. Ex.1 (Dent Decl.) ¶ 3. It is the "oldest and largest Black Seventh-day Adventist school in the United States." *Id.* ¶ 4. Its mission is "to provide a spiritual, academic, social and service-oriented environment to Develop, Nurture and Affirm (DNA) students for a lifetime of service to God and humanity." *Id.* ¶ 5.

A central tenet of the Seventh-day Adventist faith is observance of the Sabbath from sundown Friday to sundown Saturday. *Id.* ¶ 7; *see What*

Adventists Believe About the Sabbath, Seventh-day Adventist Church, https://perma.cc/C6KF-M5LE. During the Sabbath, Seventh-day Adventists devote their time to God, spending the day in rest, prayer, and collective worship. Ex.1 ¶ 7. They refrain from work and other activities inconsistent with Sabbath rest—including competitive sports. Ex.2 (Morton Decl.) ¶ 4; Ex.1 ¶ 6.

Oakwood Academy is controlled by the South Central Conference of Seventh-day Adventists, and its students are immersed in their Seventh-day Adventist faith daily—"Monday through Sabbath". Ex.1 ¶¶ 3, 6. All students take Bible class every year, each day begins with staff worship before school begins, and each class period begins with prayer. Ex.1 ¶ 6; Ex.2 ¶ 3. Students also attend weekly chapel services, where key aspects of the Seventh-day Adventist faith—including Sabbath observance—are emphasized. Ex.1 ¶ 6.

Keeping the Sabbath is a core part of Oakwood Academy's identity and religious exercise. In accordance with its Seventh-day Adventist beliefs, Oakwood Academy strictly observes the Sabbath from sundown on Friday evening to sundown on Saturday evening. Ex.1 ¶¶ 7-11. No school activities that fail to honor the Sabbath, including graduation events or end-of-year banquets, occur during this time. *Id.* ¶¶ 10-11.

B. AHSAA

AHSAA is an interscholastic athletic association that includes over 400 public, private, and parochial high schools in Alabama. Ex.3 (Davis

Decl.), attachment A ("Ex.3-A") at 98. All Alabama public schools that play interscholastic sports are required to be members. *Id.* at 101.[1]

One of AHSAA's primary functions is to organize and schedule state championship tournaments among its member schools. Under AHSAA's bylaws, "[a] school that sponsors a team … must participate in the championship program." *Id.* at 58. Withdrawal from the postseason "is a violation and a monetary fine will be assessed." *Id.*

AHSAA'S Handbook, however, recognizes it can sometimes change the postseason schedule once set. According to the Handbook, "when championship play is interrupted or threatened by public health/safety concerns, acts of God or other uncontrollable and unforeseen circumstances," "the AHSAA administrative staff, in collaboration with the Central Board and playoff event personnel, will attempt to delay or reschedule the playoff contests without adversely affecting the next round of the playoff schedule." *Id.* at 59. The Handbook further provides that when "circumstances … are not covered by this policy," "[n]ecessary decisions … will be left to the discretion of the AHSAA administrative staff and the Central Board of Control." *Id.*

Meanwhile, AHSAA prohibits scheduling sports contests on Sundays, in the postseason or otherwise. Its bylaws direct: "No interscholastic

[1] AHSAA is a state actor for purposes of the Fourteenth Amendment and 42 U.S.C. § 1983. *Lee v. Macon Cnty. Bd. of Educ.*, 283 F. Supp. 194, 198 (M.D. Ala. 1968); *accord Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295-302 (2001).

contest may be scheduled on Sunday without prior approval of the Central Board of Control." *Id.* at 45. Former AHSAA Executive Director Dan Washburn stated that no sports contests should occur on Sunday because it is a "day of worship." *See* Ex.3-B.

C. AHSAA's refusal to accommodate

Oakwood Academy became a full member of AHSAA in 2017. Ex.2 ¶ 5. It sought AHSAA membership after the local league for private schools folded—leaving AHSAA as the only viable alternative for Oakwood Academy students to participate in competitive athletics. *Id.* ¶¶ 5-6. Oakwood Academy is the only Seventh-day Adventist member school. *See 2019-20 Directory*, AHSAA, https://perma.cc/Q9XG-M8J4.

Oakwood Academy's basketball team—the Mustangs—qualified for the AHSAA-organized postseason for the first time in 2022. Ex.2 ¶ 7. After a winning regular season, they finished second in their "area" tournament on February 10, thus qualifying for the "sub-regional" round. *Id.* And on February 15, 2022, they won their sub-regional game, thus advancing to the regional championships. *Id.* ¶ 8.

The next morning, however, Oakwood Academy became aware of a conflict: Its regional semi-finals game had been scheduled for 4:30 PM on Saturday, February 19—an hour shy of the ending of the Sabbath observance. *Id.* ¶ 9. However, a fix appeared readily available: by swapping timeslots with the teams scheduled to play in the *other* semi-finals game a mere three hours later (and on the same court), the Mustangs could

both exercise their religion and continue competing for a state championship. *Id.* ¶ 13.

On February 16 and 17, Oakwood Academy's athletic director and principal called and sent multiple emails to AHSAA officials, laying out the accommodation and requesting a change to the schedule. Ex.2 ¶¶ 10-14; Ex.2-A; Ex.1 ¶¶ 14-15; Ex.1-A. On all occasions, AHSAA refused. On February 16, AHSAA wrote that "[o]nce the brackets have been set we cannot arbitrarily make a change to the times of the contests," and stated that notwithstanding Oakwood Academy's "belief system," "[w]e hope your team will plan on being at the contest at the scheduled time." Ex.2-A. Likewise, on February 17, AHSAA again insisted that it would not accommodate Oakwood Academy's religious exercise because "once a change request is granted, a ripple effect follows." *Id.*

On February 16, Oakwood Academy staff also proactively reached out to their scheduled opponent, Faith Christian School, as well as to the two teams scheduled to play at 7:30 PM, Cornerstone Schools of Alabama and Decatur Heritage Christian Academy. Ex.1 ¶ 14; Ex.2 ¶¶ 13-14; Ex.2-B. All three schools readily agreed to Oakwood Academy's request. Ex.2 ¶ 13; Ex.2-B. Yet AHSAA rejected it.

AHSAA did not even attempt to identify any tangible harm any party would incur from accepting Oakwood Academy's *de minimis* accommodation. To the contrary, it chided Oakwood Academy staff for attempting to reach a mutually amicable solution with the other schools, stating "we

find it troublesome that a member school would contact other member schools about changing game times at a championship event without the consent of the AHSAA." Ex.2 ¶ 14; Ex.2-A.

As a result, Oakwood Academy's basketball team was put to a stark choice: it could adhere to its religious beliefs, or it could engage in competitive play; it could not do both. True to their beliefs, the Mustangs did not play. The Mustangs were therefore forced to forfeit; their season was ended; and their opponent advanced to the next round without having (or getting) to play a game. *See* Ex.1 ¶ 17; Ex.1-C; Ex.2 ¶ 20; Ex.3-C.

Reflecting Oakwood Academy's promise to form students of integrity, the Mustangs still traveled to the semi-finals to watch the 7:30 PM game, cheering on their fellow athletes—after the Sabbath—despite their own forced exit. Ex.2 ¶¶ 20-21. Had AHSAA used its discretion to accept Oakwood Academy's accommodation, the Mustangs could have played all the way through the state championship without encountering another Sabbath conflict. Ex.2 ¶ 12.

D. AHSAA's attempted post-hoc justification

On February 22, Governor Kay Ivey wrote AHSAA Executive Director Alvin Briggs a letter expressing "profound concern" that AHSAA "denied Oakwood a very modest accommodation of its religious beliefs" and asking how "we as a State [can] ensure that something like this never occurs again?" Ex.3-D. AHSAA responded on February 24, disclaiming any intention of accommodating Oakwood Academy (or any other religious

school) in the future. Ex.3-E. The letter stated: "*Granting an exemption or making an exception for any reason, every time one is requested, would be chaotic.*" *Id.* (emphasis in original).

As a backstop, AHSAA also argued that its actions were permissible because, when it accepted full membership in 2017, Oakwood Academy allegedly agreed "to participate in all championship play without petition or forfeit." *Id.* AHSAA stated that it "had questions about Oakwood" joining the organization "since their school is a Seventh Day Adventist [*sic*] organization that recognizes the Sabbath from sundown on Friday to sundown on Saturday." *Id.* Thus, AHSAA said, "[t]he AHSAA expressly asked if Oakwood Academy would participate in championship play," "including on Fridays and Saturdays," "before Oakwood became a member," and "Oakwood agreed in writing," allegedly in an August 2017 letter from Oakwood Academy's then-principal. *Id.*; *see also* Ex.1-B.

AHSAA asserted that, in denying Oakwood Academy's request for a three-hour accommodation, "AHSAA was simply standing with the agreement made between Oakwood and the AHSAA." Ex.3-E. The August 2017 letter states only "that Oakwood Adventist Academy is aware that we are expected to participate in all scheduled playoff games without petition or forfeit," Ex.1-B, not that Oakwood Academy was committing to cast aside its (and its students) core religious exercise to obtain membership.

E. This lawsuit

On May 3, Oakwood Academy filed this lawsuit, explaining that AHSAA's actions violated the First Amendment and seeking (*inter alia*) injunctive relief forbidding AHSAA from refusing accommodations going forward. Dkt. 1. Meanwhile, AHSAA has stated it intends to continue scheduling "championships in [Oakwood Academy's] sports," including basketball, "on Fridays and Saturdays," and that it understands itself to have no obligation even to attempt to accommodate Oakwood Academy's religious exercise. Ex.3-E. This unambiguous refusal jeopardizes Oakwood Academy's membership and causes Oakwood Academy irreparable harm every day it is subject to these policies. Moreover, another basketball season soon approaches—meaning the Mustangs could be forced to withdraw from yet another postseason (or postseasons) before this case can be fully litigated on the merits.

For these reasons, and because of the manifest illegality of AHSAA's actions, Oakwood Academy seeks preliminary relief through this motion.[2] Oakwood Academy is not seeking a temporary restraining order at this time because there should be sufficient time for the Court to rule on the preliminary injunction, and for any appeal to be resolved, before the next basketball postseason, which will begin in February 2023.

[2] This motion seeks preliminary relief on Counts I-IV of the Complaint, without prejudice to the remaining counts.

LEGAL STANDARD

A preliminary injunction is proper if Oakwood Academy demonstrates (1) substantial likelihood of success on the merits; (2) irreparable injury; (3) the threatened injury outweighs damage to the defendant; and (4) the injunction would not be adverse to the public interest. *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1271 (11th Cir. 2020). The final two elements merge when the government is the opposing party. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020).

A preliminary injunction's purpose is to prevent irreparable harm that could result "in the meantime" "if a court does not act until a trial on the merits." *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1128 (11th Cir. 2005). Thus, a plaintiff need only demonstrate it is "*likely* or probable" to prevail on the merits to obtain a preliminary injunction, *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005) (emphasis in original), and the Court may "rely on affidavits and hearsay materials," *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995).

ARGUMENT

I. Oakwood Academy has a strong likelihood of success on the merits.

The Court must begin with "the most important preliminary-injunction criterion"—likelihood of success on the merits. *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1127-28 (11th Cir. 2022). Oakwood Academy

readily meets this test, as AHSAA's actions violate the First Amendment in multiple respects.

First, AHSAA's policy violates the Free Exercise Clause, as it is not neutral and generally applicable, nor does it employ the least-restrictive means of achieving AHSAA's far-from-compelling interest in administrative efficiency.

Second, AHSAA's policy violates both Religion Clauses by facially favoring Sunday Sabbath-observers over those religious minorities that observe a Saturday Sabbath.

Third, when Oakwood Academy sought relief from this policy from AHSAA itself, AHSAA responded with an independent constitutional violation—saying it had imposed an unconstitutional condition by asking Oakwood Academy to relinquish its First Amendment rights to become a member in the first place. For any and all of these reasons, preliminary relief is warranted.

A. AHSAA's refusal to make commonsense religious accommodations violates the Free Exercise Clause.

The First Amendment's Free Exercise Clause bars state action "prohibiting the free exercise" of religion. Under it, if a state actor "burden[s]" the plaintiff's religious exercise "through policies that do not meet the requirement of being neutral and generally applicable," its "actions are subject to 'the most rigorous of scrutiny.'" *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876-77, 1881 (2021) (quoting *Church of the Lukumi*

Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546 (1993)). This standard "protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions,'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017), and it applies even if the plaintiff lacks "any entitlement to" the benefit in the first place, *id.* Here, AHSAA's denial of Oakwood Academy's commonsense religious accommodation burdens Oakwood Academy's religious exercise, is not neutral and generally applicable, and cannot survive strict scrutiny.

1. AHSAA's actions burden Oakwood Academy's sincere religious exercise.

As an initial matter, it cannot seriously be disputed that Sabbath observance constitutes a "sincerely held religious belief[]." *Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n*, 942 F.3d 1215, 1246 (11th Cir. 2019); *accord Fulton*, 141 S. Ct. at 1876. Oakwood Academy has a sincere religious belief that it cannot participate in competitive basketball games on the Sabbath. *See* Ex.2-A (email from Oakwood Academy's athletic director to AHSAA explaining this belief). This belief "rises above the level of a preference." *Cambridge Christian*, 942 F.3d at 1247 Sabbath observance is for Seventh-day Adventists a biblical commandment and central tenet of their faith, Ex.1 ¶¶ 7-11. And the school's sincerity is attested not only by the declarations of its leadership, *see* Ex.1 ¶¶ 7-11; Ex.2 ¶ 4, but also by the fact that the 2022 Mustangs were

already forced to relinquish their hard-earned postseason spot to adhere to this belief.

Nor can it seriously be disputed that AHSAA's policy "burden[s]" this sincerely held religious belief. *Cambridge Christian*, 942 F.3d at 1249. As relevant here, a burden exists "[w]here the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or … denies such a benefit because of conduct mandated by religious belief." *Thomas v. Review Bd.*, 450 U.S. 707, 717-18 (1981). Here, AHSAA has denied an important benefit—the ability to fully participate in competitive sports—because of conduct mandated by Oakwood Academy's religious belief—Sabbath observance.

Indeed, AHSAA's Handbook affirms the stark choice to which Oakwood Academy has been placed, stating that athletics are "an integral part of the total secondary school educational program." Ex.3-A at 16-17. And "the chance to be champions" is, in turn, a "matter … fundamental to the experience of sports." *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 295 (2d Cir. 2004). AHSAA's actions here, then—"putting [Oakwood Academy] to the choice of" competing for a championship or foregoing its religious exercise—"plain[ly]" constitute[s] a burden. *Fulton*, 141 S. Ct. at 1876; *see also, e.g., Dahl v. Bd. of Trs.*, 15 F.4th 728, 732 (6th Cir. 2021) (cognizable burden where plaintiffs were forced to "stop fully participating in intercollegiate sports" in order to adhere to their religious exercise).

In fact, the burden here is unmistakable given the Eleventh Circuit's controlling decision in *Cambridge Christian*. There, the court found a cognizable burden where the athletic association refused to let the plaintiff school conduct a prayer over the loudspeaker before a postseason game (though permitting pregame prayer on the field). 942 F.3d at 1225, 1249. Here, however, AHSAA refuses to let Oakwood Academy compete in the postseason altogether unless it abandons its core religious observance. Given *Cambridge Christian*, this is an *a fortiori* case.

2. AHSAA's actions are not neutral and generally applicable.

The question, then, is whether AHSAA's actions are neutral and generally applicable. They are not, for at least two reasons: first, AHSAA has discretion to make individualized exemptions from its scheduling policy, yet declines to accommodate Oakwood Academy's Sabbath observance; second, AHSAA's policy expressly provides for the moving of postseason competitions for nonreligious reasons, but not religious ones.

Discretion to make individualized exemptions. First, as the Supreme Court has recently made clear, a policy that provides a "mechanism for individualized exemptions" is not generally applicable. *Fulton*, 141 S. Ct. at 1877. Rather, when the state actor has authority to extend discretionary exemptions, it must grant exemptions for "cases of 'religious hardship,'" or else have a "compelling reason." *Id.*

Fulton is squarely on point. There, citing its contract with a Catholic foster agency, a city refused to permit the agency to place children unless it agreed to certify same-sex couples. 141 S. Ct. at 1874, 1878. The contractual provision, however, allowed an "exception" to be "granted by the Commissioner or the Commissioner's designee, in his/her sole discretion." *Id.* at 1878 (quoting contract). The Court held this "inclusion of a formal system of entirely discretionary exceptions" rendered the provision "not generally applicable," triggering strict scrutiny. *Id.* at 1878-79.

This was so, *Fulton* explained, even though "the Commissioner ha[d] never granted" an exception. *Id.* at 1879. The point is that "a formal mechanism for granting" exceptions "'invite[s]' the government to decide which reasons for not complying with the policy are worthy of solicitude." *Id.*

Fulton makes this an easy case. As in *Fulton*, AHSAA has a "formal mechanism for granting exceptions" to its scheduling policy. *Id.* AHSAA's Handbook provides for certain grounds on which "the AHSAA administrative staff … will attempt to delay or reschedule" a playoff contest, and then includes the following discretionary catch-all:

> Necessary decisions concerning any circumstances that are not covered by this policy *will be left to the discretion* of the AHSAA administrative staff and the Central Board of Control.

Ex.3-A at 59 (emphasis added). Because AHSAA had the discretion to accommodate Oakwood Academy, "the strictest scrutiny" is triggered—

even though AHSAA opted not to exercise that discretion here. *Fulton*, 141 S. Ct. at 1881; *see* Dkt. 2 (Answer) ¶ 105 (admitting "discretion").

Fulton is far from the only case that commands this result. *Fulton* relied on *Sherbert v. Verner*, where a Seventh-day Adventist was denied unemployment benefits because she refused to work on the Sabbath. 374 U.S. 398, 399-400 (1963). Because the law permitted exceptions if a claimant had "good cause" for declining work, the denial triggered strict scrutiny. *Id.* at 401; *see Fulton*, 141 S. Ct. at 1877.

And *Fulton* has already been applied to athletics. In *Dahl*, a university policy provided that "[m]edical or religious exemptions and accommodations will be considered on an individual basis," but the university refused to offer exemptions to the student-athlete plaintiffs. 15 F.4th at 730 (quoting policy). The Sixth Circuit held that since "the University retains discretion to extend exemptions," "the policy is not generally applicable"—triggering strict scrutiny under "the Supreme Court's instruction" in *Fulton*. *Id.* at 733-34.

So too here. Under the plain terms of AHSAA's policy, exceptions for reasons other than those listed "will be left to the discretion" of AHSAA staff. Ex.3-A at 59. That "retain[ed] discretion" renders AHSAA's refusal to accommodate Oakwood Academy not neutral and generally applicable—so AHSAA "must prove that its decision not to grant [a] religious exemption[] to [Oakwood Academy] survives strict scrutiny." *Dahl*, 15 F.4th at 733-34.

Categorical exemptions. Next, even setting aside AHSAA's discretion to make case-by-case exceptions, the policy's categorical exceptions allowing postseason rescheduling render it not neutral and generally applicable. "[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). That is, "where a law fails to similarly regulate secular and religious conduct implicating the same government interests," the denial of a religious accommodation is subject to strict scrutiny. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1232 (11th Cir. 2004) (discussing free-exercise precedent).

Here, AHSAA's Handbook on its face fails to similarly regulate secular and religious reasons for moving a postseason game. Under the policy, AHSAA will attempt to reschedule games "when championship play is interrupted or threatened by public health/safety concerns, acts of God or other uncontrollable and unforeseen circumstances." Ex.3-A at 59.[3] As this case demonstrates, however, when a team cannot play for religious reasons, AHSAA not only fails to make any such "attempt," it outright refuses to do so. Ex.2A. This remains so even if it has the simplest imaginable solution already at hand. Ex.2 ¶ 13; Ex.2-B.

[3] AHSAA has applied this provision to reschedule postseason play on many occasions. *See, e.g.*, Ex.3-F to 3-S.

In short, AHSAA has made "a value judgment that secular" reasons for moving postseason games "are important enough to overcome its general interest in [efficiency] but that religious [reasons] are not." *Fraternal Ord. of Police v. City of Newark*, 170 F.3d 359, 360, 365-66 (3d Cir. 1999) (Alito, J.). This "underinclusiveness mean[s]" its actions are "not generally applicable." *Fulton*, 141 S. Ct. at 1877.

3. AHSAA's actions fail strict scrutiny.

AHSAA's actions therefore must survive strict scrutiny—"the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997); *see also, e.g.*, *Otto*, 981 F.3d at 868 ("rare" for law to survive). Thus, AHSAA must show its actions "advances 'interests of the highest order' and [are] narrowly tailored to achieve those interests.'" *Fulton*, 141 S. Ct. at 1881.

Here, AHSAA fails at the first step, since it has not identified any compelling interest justifying its refusal to accommodate Oakwood Academy. Explaining its denial of Oakwood Academy's request for a three-hour swap, AHSAA offered just one justification: "Granting [it] … would be chaotic." Ex.3-E (emphasis omitted); *see also* Ex.1-A. Yet this per se does not rise to the level of a compelling interest. The Supreme Court has repeatedly rejected a government's bare interest in "administrative convenience" as too "weak" to satisfy heightened scrutiny. *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021); *see also, e.g., McCullen v. Coakley*, 573 U.S. 464, 495 (2014) ("[T]he prime objective of the First

Amendment is not efficiency."); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 646-47 (1974) ("administrative convenience alone is insufficient to make valid what otherwise is a violation of due process of law."); *Frontiero v. Richardson*, 411 U.S. 677, 690-91 (1973). Indeed, far from finding it compelling, the Court has derided a statement indistinguishable from AHSAA's as "the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 435-36 (2006); *compare* Ex.1-A (AHSAA official: "[O]nce a change request is granted, a ripple effect follows. We can't do for one school what we will not do for all.").

The reason that administrative efficiency cannot suffice is that a state actor cannot simply have "a compelling interest in enforcing its … policies generally," but must have "such an interest in denying an exception to" the plaintiff in particular. *Fulton*, 141 S. Ct. at 1881; *cf. Ramirez v. Collier*, 142 S. Ct. 1264, 1281 (2022) ("[C]ourts take [religious-exemption] cases one at a time, considering only 'the particular claimant'" before them). So AHSAA's "slippery-slope concerns" simply cannot suffice. *O Centro*, 546 U.S. at 435-36. Indeed they "could be invoked in response to any" exemption request. *Id.* Yet the spirit of the First Amendment isn't one-size-fits-all bureaucratic streamlining, but "practical accommodation," *Salazar v. Buono*, 559 U.S. 700, 723 (2010) (Alito, J., concurring)—like the commonsense accommodation Oakwood Academy sought here,

which all affected parties were happy to undertake until AHSAA intervened.

In any event, AHSAA's theory of preventing "chao[s]" blinks reality. Ex.3-E. In 2022, only one accommodation was needed to accommodate Oakwood Academy for the entirety of the postseason. Moreover, Oakwood Academy is the *only* Seventh-day Adventist school in AHSAA, *supra* p.5, and AHSAA already accommodates *Sunday* Sabbath observers across the board. So it would hardly be "chaotic" to grant the further accommodation sought here. *Cf. Fulton*, 141 S. Ct. at 1882 ("Such speculation is insufficient to satisfy strict scrutiny") (citing *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799-800 (2011)).

Even if AHSAA could get past compelling interest, it would still have to show narrow tailoring, *Id.* at 1881—that is, that "no alternative" to its categorical bar on Sabbath accommodations would suffice to accomplish its interests, *Sherbert*, 374 U.S. at 407. This is "a demanding standard"; under it, "ambiguous proof will not suffice." *Brown*, 564 U.S. at 799-800.

Yet here, the facts of this very case demonstrate a less restrictive means than AHSAA's categorical bar—AHSAA could move games for religion only if (as here) the school could arrange a same-day time swap and (as here) no other affected school objects. "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so," *Fulton*, 141 S. Ct. at 1881—so this fact alone is dispositive.

That a less-restrictive means exists is also demonstrated by the fact that "many other" jurisdictions accommodate Sabbath observance in the scheduling of postseason athletics. *Holt v. Hobbs*, 574 U.S. 352, 368-69 (2015). The NCAA, for example, accommodates Sabbatarian schools as a matter of course, under a policy providing "[i]f a participating institution has a written policy against competition on a particular day for religious reasons" and gives sufficient notice, "[t]he championship schedule shall be adjusted to accommodate that institution." Ex.3-T.[4] Oregon's high-school athletics association has a policy to the same effect. Ex.3-U. Likewise, the bylaws of the State of Washington's association "allow for schedules to be adjusted so teams from religious schools that observe a Saturday Sabbath can participate in state tournament semifinals." Ex.3-V. And Illinois accommodates Sabbath-observing schools pursuant to longstanding policy, swapping (for example) basketball game times where necessary "to accommodate the Jewish Sabbath." Ex.3-W.

That so many other athletic associations can accommodate Saturday Sabbath observance—including the NCAA, which organizes far more high-stakes events than the AHSAA 1A basketball tournament; and state associations with far more religiously diverse memberships than

[4] *See, e.g.,* Myron Medcalf, *NCAA Tournament Would Swap Schedule if BYU Cougars Reach Sweet 16*, ESPN.com (Mar. 16, 2021), https://perma.cc/EU4S-5B9C; Rick Rojas, *After Fasting and Before the Sabbath, Yeshiva Debuts in N.C.A.A. Tournament*, NYTimes.com (Mar. 1, 2018), https://perma.cc/D2UU-MR2Z (NCAA "moved the game up several hours to accommodate Yeshiva.").

Alabama's—"suggests [AHSAA] could satisfy its … concerns through a means less restrictive than" its categorical bar. *Holt*, 574 U.S. at 368-69. Its actions therefore fail strict scrutiny.

B. AHSAA's categorical refusal to accommodate Saturday Sabbatarians, while accommodating Sunday Sabbatarians, violates the Religion Clauses.

AHSAA's actions also violate "[t]he clearest command" of the Religion Clauses—that "one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). In *Larson*, the Supreme Court struck down a state statute that imposed registration and reporting requirements on only those religious organizations that solicited more than 50 percent of funds from nonmembers. *Id.* at 230. The Court explained that the law "clearly grants denominational preferences of the sort consistently and firmly deprecated in [the Court's] precedents." *Id.* at 246. The same is true with AHSAA's policy, which likewise "facially furthers a denominational preference" for Sunday Sabbath observers over those who observe the Sabbath on Saturday. *Ray v. Comm'r*, 915 F.3d 689, 697 (11th Cir.), *rev'd on other grounds sub nom. Dunn v. Ray* 139 S. Ct. 661 (2019).

Specifically, AHSAA's Handbook explicitly forbids competitive play on Sunday—the day observed by the majority of Christians as the Sabbath. Ex.3-A at 45. Yet AHSAA categorically refuses to accommodate Saturday Sabbath-observers like Seventh-day Adventists. Thus, Alabama schools adhering to Christian faiths that observe the Sabbath on Sunday are

never forced to choose between competing for a championship and their deeply held religious beliefs. The very few Saturday Sabbath observers like Oakwood Academy, however, are faced with that requirement.[5]

Such a clear-cut example of a state actor "aid[ing], foster[ing], or promot[ing] one religion or religious theory against another" cannot be tolerated, *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968), because it compromises the "critical bulwark of religious freedom" embodied in the Free Exercise Clause, *Ray*, 915 F.3d at 696 (granting stay of execution after finding prisoner was likely to succeed on claim that Alabama's death-chamber policy preferred certain denominations over others); *Awad v. Ziriax*, 670 F.3d 1111, 1128-29 (10th Cir. 2012) (holding unconstitutional a law that facially singled out sharia law for disfavored treatment). Thus, a policy like AHSAA's, which facially prefers one religion over another, can survive only if it is "closely fitted to the furtherance of any compelling governmental interest asserted." *Larson*, 456 U.S. at 255. AHSAA's policy flunks both prongs of this exacting test.

As a threshold matter, both of AHSAA's justifications for its policy fall far short of the compelling-interest criterion. First, as explained above, the Supreme Court has repeatedly found that avoiding administrative costs is not a compelling interest. See *Ams. for Prosperity*, 141 S. Ct. at 2389. AHSAA's second justification, that Sunday is a "day of worship," is

[5] In fact, Plaintiff is unaware of any other school in Alabama that needs a Saturday Sabbath accommodation.

not only not compelling, it is *per se* illegitimate, as it runs headlong into *Larson*'s rule against "denominational preferences." 456 U.S. at 245-47; *see also Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 710-11 (1976) ("The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871))); *United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position.").

But even if this Court overlooks the fatal flaws in AHSAA's purported interests, AHSAA's policy still cannot survive, since it is far from narrowly tailored. As described *supra* Part I.A.3, examples abound of athletic associations accommodating religious observance—for both Sunday *and* Saturday Sabbath observers. AHSAA cannot merely throw up its hands, relying on an *ipse dixit* that such accommodations are impossible, while staunchly refusing to even try. *See Holt*, 574 U.S. at 368-69; *McCullen*, 573 U.S. at 494 (speech restriction failed even *intermediate* scrutiny where "the Commonwealth has not shown that it seriously undertook to address the problem with less intrusive tools readily available to it" or "that it considered different methods that other jurisdictions have found effective").

C. AHSAA's attempt to condition membership on the surrender of First Amendment rights is independently unlawful.

Attempting to justify its actions, AHSAA has asserted Oakwood Academy was accepted as a member only on the understanding that it "agreed in writing to participate in all playoff games without petition and forfeit"—*i.e.*, that it would cast aside its religious observance and play on the Sabbath. Ex.3-E. In refusing to accommodate Oakwood Academy, then, AHSAA says it is "simply standing with the agreement made." *Id.*

Oakwood Academy in fact made no such agreement, but even if it had, this would be no defense. To the contrary, extracting such a surrender of First Amendment rights violates the "well-settled doctrine" against unconstitutional conditions, *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)—and thus is an independent violation itself warranting preliminary relief.

The unconstitutional-conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). Under this doctrine, even if the plaintiff seeks only a "discretionary benefit," or "privilege," state actors may not "condition[] receipt of [that] benefit or privilege on the relinquishment of a constitutional right." *Bourgeois v. Peters*, 387 F.3d 1303, 1324-25 (11th Cir. 2004); *see also Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) ("[T]he Government 'may not deny a benefit to a

person on a basis that infringes his constitutionally protected [rights] even if he has no entitlement to that benefit.'").

Here, in the 2017 letter identified by AHSAA, Oakwood Academy did *not* agree to play on the Sabbath to become an AHSAA member. The letter simply states Oakwood Academy was "aware that we are *expected* to participate in all scheduled playoff games without petition or forfeit," Ex.1-B (emphasis added). On its face, acknowledging AHSAA's *expectation* is not the same as *agreeing to participate* in all scheduled games, much less agreeing not to request that the scheduled time be *changed*.

But even if AHSAA *had* extracted the agreement it imagines, that still wouldn't save it from liability here; it would merely trigger the unconstitutional-conditions doctrine. Indeed, AHSAA's letter to the Governor reads like a recitation of the doctrine's elements.

According to AHSAA, AHSAA leadership "had questions about Oakwood participating since [it] is a Seventh Day Adventist [*sic*] organization that recognizes the Sabbath"; AHSAA "[t]herefore" had "Oakwood agree[] to … participate in all playoff games without petition or forfeit." Ex.3-E. Yet AHSAA cannot "condition[]" membership "on the applicant's forced waiver of" its—and its students'—First Amendment right to observe the Sabbath. *Lebron v. Sec'y, Fla. Dep't of Children & Families*, 710 F.3d 1202, 1217 (11th Cir. 2013). This is exactly the sort of "unconstitutional condition[]" the Eleventh Circuit "has roundly condemned." *Bourgeois*, 387 F.3d at 1324-25 (government may not "subtly pressure[]

citizens, whether purposely or inadvertently, into surrendering their rights").

In short, AHSAA's 2017 "agreement" defense does not justify its constitutional violation in denying Oakwood Academy's accommodation; it just adds another violation to boot. *See Lebron*, 710 F.3d at 1214, 1217 ("'exaction of consent' failed to render the otherwise unconstitutional drug testing valid for Fourth Amendment purposes," because it "runs afoul of" the unconstitutional-conditions doctrine).

II. The other preliminary injunction factors are satisfied.

In many First Amendment cases, meeting the likelihood-of-success requirement means "also meet[ing] the remaining requirements as a necessary … consequence." *Otto*, 981 F.3d at 870; *see also, e.g.*, *Speech First*, 32 F.4th at 1127-28 ("briefly" turning to "remaining criteria"). This case is no exception; the remaining factors likewise support an injunction.

Irreparable injury. "A showing of irreparable injury is 'the sine qua non of injunctive relief.'" *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). Oakwood Academy has readily satisfied this element. As both the Supreme Court and the Eleventh Circuit have recognized, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam); *see also FF Cosms. FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) ("The district court correctly noted that an ongoing violation of the

First Amendment constitutes an irreparable injury."). Simply put, "irreparable harm is not difficult to establish when the impairment of First Amendment rights is at issue." *Butler v. Ala. Jud. Inquiry Comm'n*, 111 F. Supp. 2d 1224, 1239 (M.D. Ala. 2000) (granting temporary restraining order using same standard).

As demonstrated, AHSAA's policy has already burdened Oakwood Academy's First Amendment rights, forcing the Mustangs to forfeit a chance at the 2022 championship merely because Oakwood Academy would not compromise its religious beliefs. Moreover, every day the policy remains in place, the Mustangs remain subject to its unconstitutional effects, which threaten to once again force them to a Hobson's choice should AHSAA, in its sole discretion, decide to schedule one of Oakwood Academy's postseason games during the Sabbath. This "ongoing violation of the First Amendment" more than suffices to demonstrate "an irreparable injury." *FF Cosms. FL, Inc.*, 866 F.3d at 1298.

Balance of harms and public interest. The balance of harms and public interest also clearly favor Oakwood Academy. Whereas Oakwood Academy will continue to suffer constitutional injury absent a preliminary injunction, AHSAA "has no legitimate interest in enforcing an unconstitutional [policy]," nor is the public interest served by violating the Constitution. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006); *Odebrecht Const., Inc. v. Sec'y, Fla. Dep't of Transp.,* 715 F.3d 1268, 1290 (11th Cir. 2013). Indeed, as this court has stated, "it is

always in the public interest to protect First Amendment liberties." *Parker v. Jud. Inquiry Comm'n*, 295 F. Supp. 3d 1292, 1309 (M.D. Ala. 2018). For this reason, courts in the Eleventh Circuit routinely find that the final two preliminary injunction factors favor the movant where, as here, First Amendment freedoms are being threatened by an unconstitutional policy. *See, e.g.*, *Austin v. Univ. of Fla.*, ___ F. Supp. 3d ___, 2022 WL 195612, at *26-27 (N.D. Fla. Jan. 21, 2022); *Parker*, 295 F. Supp. 3d at 1309; *Williamson v. City of Foley*, 146 F. Supp. 3d 1247, 1253 (S.D. Ala. 2015); *Curves, LLC v. Spalding County*, 569 F. Supp. 2d 1305, 1314-15 (N.D. Ga. 2007).

A bond is not required. Nor should the Court require Oakwood Academy to post a bond in order to grant a preliminary injunction. *See BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (issue is within the court's discretion). There is no prospect that AHSAA would suffer damages even if it were later determined that it was "wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Thus, the relevant "amount" required to preserve AHSAA's interests is zero. *Id.*

CONCLUSION

The Court should grant a preliminary injunction barring AHSAA during the pendency of this litigation from holding any postseason basketball game for which Oakwood Academy qualifies between sundown Friday and sundown Saturday, *i.e.*, on Oakwood Academy's Sabbath.

Dated: June 15, 2022

Respectfully submitted,

/s/ Justin A. Miller

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CERTIFICATE OF SERVICE

In accordance with Fed. R. Civ. P. 5, I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using CM/ECF, and sent notification of the same via email to the following:

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