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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

AUSTIN STRODE by his parents JEFF STRODE and ALISON STRODE; JOE KIM by his father YOO SHIN KIM; JENAE NELSON by her mother MICHELE LUNDGREN-NELSON; SHASTEN SPRAGUE by her parents MARK SPRAGUE and TARA SPRAGUE, RYAN COOL by his father STEVE COOL, and CALEB FJARLI by his father BRUCE FJARLI,

Plaintiffs,

v.

OREGON SCHOOL ACTIVITIES ASSOCIATION, an Oregon nonprofit organization; and THOMAS WELTER, Executive Director,

Defendants.

Plaintiffs allege:

1.

This is an action for declaratory and injunctive relief for violation of plaintiffs' rights under ORS 659.850, OAR 581-021-0045, Article I, sections 2, 3 and 20 of the Oregon Constitution, and the First and Fourteenth Amendments to the United States Constitution. This court has jurisdiction of this action under ORS 28.010 and 28.020, ORS 659.860, and 42 USC § 1983.

2.

Plaintiffs are persons "whose rights, status or other legal relations are affected by the statute and constitutional provisions alleged in paragraph 1 of this complaint, and they are

No. 0802-01812

AMENDED COMPLAINT
(Declaratory and Injunctive Relief)

(Not subject to mandatory arbitration)

1 therefore entitled to “have determined [a] question of construction” of that statute and
2 constitutional provisions, and to “obtain a declaration of rights, status or other legal relations
3 thereunder,” pursuant to ORS 28.020.

4 3.

5 Plaintiff Austin Strode is a sophomore, plaintiff Shasten Sprague is a junior, and
6 plaintiffs Joe Kim and Jenae Nelson are seniors at Portland Adventist Academy (“PAA”).
7 Plaintiffs Jeff and Alison Strode are the parents of Austin Strode. Plaintiff Yoo Shin Kim is
8 the father of Joe Kim. Plaintiff Michele Lundgren-Nelson is the mother of Jenae Nelson.
9 Plaintiffs Mark and Tara Sprague are the parents of Shasten Sprague. Plaintiff Ryan Cool is
10 a senior and plaintiff Caleb Fjarli is a junior at Rogue Valley Adventist School (“RVAS”).
11 Plaintiff Steve Cool is the father of Ryan Cool, and plaintiff Bruce Fjarli is the father of
12 Caleb Fjarli.

13 4.

14 Defendant Oregon School Activities Association (“OSAA”) is an Oregon non-profit
15 corporation. It is authorized by the Oregon Board of Education to administer interscholastic
16 athletic activities in Oregon pursuant to ORS 339.430. Defendant Thomas Welter is the
17 Executive Director of OSAA. OSAA provides programs and services under the jurisdiction
18 of the Oregon Board of Education, and OSAA administers interscholastic high school
19 athletic competitions under authority conferred on it by the Oregon Board of Education.
20 OSAA is funded by its member schools and school districts, many of which receive funds
21 from the Legislative Assembly. At all material times, OSAA acted as an agent of the State of
22 Oregon and under color of state law.

23 5.

24 PAA is a co-educational high school in Portland, Oregon. RVAS is a kindergarten-
25 through-twelfth grade co-educational school in Medford, Oregon. Both schools are affiliated
26

1 with and supported by Seventh-day Adventist churches. In the faith of the Seventh-day
2 Adventist Church, the Sabbath begins at sunset on Friday and ends at sunset on Saturday.

3
4 6.

5 Plaintiffs are observant Seventh-day Adventists and embrace the principles and
6 teachings of the Seventh-day Adventist religion, as do a majority of the students at PAA and
7 RVAS. Plaintiffs' Seventh-day Adventist religion teaches them to keep the Sabbath holy by
8 focusing throughout the day on God, family, worship and charitable activities. Plaintiffs
9 Austin Strode and Joe Kim are members of the PAA boys' basketball team. Plaintiffs
10 Shasten Sprague and Jenae Nelson are members of the PAA girls' basketball team. Plaintiffs
11 Ryan Cool and Caleb Fjarli are members of the RVAS boys' basketball team. Because of
12 their religious faith and as a part of their religious practice, the student plaintiffs do not
13 engage in interscholastic sports on their Sabbath.

14 7.

15 Operating under authority conferred on it by the Oregon Board of Education, OSAA
16 is responsible for the organization and administration of interscholastic athletic competition
17 among Oregon high schools. OSAA has established divisions and leagues for interscholastic
18 high school sports competition in basketball and other sports. OSAA sponsors and
19 administers playoffs and a state championship tournament for the girls' and boys' basketball
20 teams in each division. Member schools are assigned to divisions according to the size of
21 their student bodies, and they are assigned to leagues within those divisions according to
22 their geographical location. The PAA girls' and boys' basketball teams participate in the
23 Lewis & Clark League in the 3A Division. The RVAS boys' basketball team participates in
24 the Mountain Valley League in the 1A Division. League playoffs for both leagues began on
25 February 11, 2008 and concluded on February 16, 2008. The top three boys' teams and the
26 top four girls' teams from the Lewis & Clark League will advance to the first round of the 3A

1 state tournament. The top three teams from the Mountain Valley League will advance to the
2 first round of the 1A state tournament.

3 8.

4 First round games for the boys' 1A basketball playoffs are scheduled to be played on
5 February 20, 2008. In the 3A Division, girls' first-round games are scheduled to be played
6 on February 22, 2008, and boys' first-round games are scheduled to be played on
7 February 23, 2008. The winners of the playoff games will advance to the state championship
8 tournaments. The boys' 1A tournament will take place in Baker City from February 28,
9 2008 through March 1, 2008. The girls' 3A tournament will take place in Salem from
10 February 27, 2008 through March 1, 2008, and the boys' 3A tournament will take place in
11 Salem from February 28 through March 1, 2008.

12 9.

13 According to the schedules established by OSAA, if the PAA girls' team advances to
14 the state tournament, it will play on Wednesday, February 27, 2008. If the boys' teams from
15 PAA and RVAS advance to their respective state tournaments, they will play on Thursday,
16 February 28, 2008. If any of these three teams loses its first two games, it will be eliminated
17 from its tournament and no accommodation will be necessary. If the teams win their first
18 games but lose their second games, they will be scheduled to play a game for third place on
19 Saturday afternoon—the girls at 1:30 p.m. and the boys (in both the 3A and the 1A
20 tournament) at 3:15 p.m. If the teams lose their first game but win their second game, they
21 will advance to the consolation game scheduled for Saturday morning—the girls at 9 a.m.
22 and the boys (in both the 3A and the 1A tournament) at 10:45 a.m. Each team would be
23 scheduled to play in only one of those two games. Those games are scheduled during the
24 time that plaintiffs observe their Sabbath.

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10.

If the RVAS team wins its first two games in the 1A tournament, that team will play in the championship game at 8:30 p.m. on Saturday, March 1, 2008. If the PAA teams win their first two games in the 3A tournaments, they will play in the championship games for those tournaments on Saturday, March 1, 2008: the girls at 6:30 p.m. and the boys at 8:30 p.m. That is essentially what happened in the 2A tournament in 1996, when the PAA boys' team advanced to win the state championship game in that tournament. In 1996, in response to a request for an accommodation from PAA, OSAA agreed to accommodate the semi-final game schedule to allow the PAA team to play before sundown on Friday. However, the only accommodation that OSAA would allow for the third-place game or consolation game was to require the PAA team to forfeit that game. In subsequent years it has refused to make that accommodation. Instead, OSAA has required PAA to certify that if it began tournament play, it would play in every scheduled game and not forfeit any game. With one exception, since 1996 the OSAA has refused to permit the PAA team to participate in the state basketball tournament because PAA could not certify that the players on its team would play in violation of their religious beliefs and practices in games that might be scheduled during their Sabbath.

11.

Plaintiffs have made formal requests to OSAA to accommodate their religious beliefs and practices by adjusting the schedule of the playoffs and tournaments, if and as necessary, so that the PAA teams and the RVAS team can participate in all playoff and tournament games for which they qualify in the 2008 tournaments, without being required to play those games during their Sabbath. OSAA has refused plaintiffs' requests for an accommodation.

12.

A simple accommodation for the semi-final game in both the 1A tournament and the 3A tournament is to switch the times for the top bracket and the bottom bracket. That would

1 allow the teams to play the semi-final game before sundown on Friday. OSAA has made this
2 accommodation in the past in the 2A tournament (when PAA played in the Northwest
3 League, in the 2A Division), and OSAA has indicated its willingness to make this
4 accommodation in the future. A simple accommodation for the third-place game or the
5 consolation final game is to move the affected game to just after sundown on Saturday (at
6 approximately 6:15 p.m.) and to play that game at an alternate venue. Both PAA and RVAS
7 are willing to pay the cost of alternative facilities, and have so informed OSAA. Advance
8 notice of this potential time and venue change could be included in the tournament program
9 and other materials distributed to participating schools days prior to the three-day
10 tournament.

11 13.

12 A judgment declaring plaintiffs' rights, status and other legal relations under the
13 statute and constitutional provisions alleged in paragraph 1 of this complaint will have a
14 practical effect on defendants in the administration of future playoffs and tournaments in
15 high school interscholastic basketball competition.

16 **FIRST CLAIM FOR RELIEF**

17 (Violation of ORS 659.850 and OAR 581-021-0045)

18 14.

19 Plaintiffs reallege and incorporate herein the allegations in paragraphs 1 through 13,
20 above.

21 15.

22 Plaintiffs are entitled to pursue this claim of discrimination against OSAA pursuant to
23 ORS 659.860(1) and (4).

24 16.

25 OSAA is a district subject to the prohibitions on discrimination contained in
26 ORS 659.850 and OAR 581-021-0045(2). Under that statute and rule, OSAA discriminates

1 if it imposes a rule, policy, or condition or follows a practice that unreasonably differentiates
2 treatment, intended or unintended, or is fair in form but discriminatory in operation, which is
3 based on the participants' religion, such as the scheduling of playoff and tournament games
4 as alleged in this complaint.

5 17.

6 OSAA's scheduling of playoff and tournament games unreasonably burdens
7 plaintiffs' religious beliefs and is not justified by any business or administrative necessity.
8 OSAA cannot refuse to accommodate plaintiffs' religious beliefs unless OSAA can prove
9 that it has endeavored in good faith to find a reasonable accommodation and that any
10 accommodation would impose an undue hardship and a significant expense or difficulty.
11 OSAA's refusal to accommodate plaintiffs' religious beliefs and practices in the scheduling
12 of playoff and tournament games is an act of discrimination that violates ORS 659.850 and
13 OAR 581-021-0045(2).

14 18.

15 The court should enter a judgment declaring that OSAA's refusal to accommodate
16 plaintiffs' religious practices by making reasonable adjustments in the playoff and
17 tournament schedules that would enable the student plaintiffs to participate in the semi-final,
18 third-place, or the consolation final games, if they otherwise qualify for one of those games,
19 without violating their religious beliefs, discriminates against plaintiffs on the basis of their
20 religion and violates ORS 659.850 and OAR 581-021-0045(2).

21 19.

22 The court should enter a judgment containing a mandatory injunction requiring
23 OSAA to make adjustments to the 2008 Division 1A and 3A playoff and tournament
24 schedules sufficient to enable PAA and RVAS teams to play a semi-final game before
25 sundown on Friday and to play the consolation or third-place games after sundown on
26 Saturday, if those teams qualify for those games.

1 20.

2 Plaintiffs are entitled to an award of their reasonable attorney fees as the prevailing
3 plaintiffs pursuant to ORS 659.860(7). Plaintiffs are also entitled to recover their reasonable
4 and necessary attorney fees and expert witness fees incurred in connection with this
5 discrimination claim pursuant to ORS 20.107.

6 **SECOND CLAIM FOR RELIEF**
7 (Violation of Article I, sections 2 and 3 of the Oregon Constitution)

8 21.
9 Plaintiffs reallege and incorporate herein their allegations in paragraphs 1 through 13,
10 above.

11 22.
12 OSAA's administration of interscholastic high school athletic competition constitutes
13 government action subject to the state and federal constitutions.

14 23.
15 OSAA's scheduling of playoff and tournament games and its refusal to adjust game
16 times impose a burden on plaintiffs' religion. Less restrictive means are available for OSAA
17 to achieve its purpose, which OSAA has refused to acknowledge and adopt.

18 **Count I – Unreasonable Restriction on Parental Rights**

19 24.
20 Plaintiffs Jeff and Alison Strode, Yoo Shin Kim, Michele Lundgren-Nelson, Mark
21 and Tara Sprague, Steve Cool, and Bruce Fjarli, the parents of the student plaintiffs, have an
22 important parental right and fundamental interest in guiding the religious upbringing of their
23 children. They desire to have their children participate in interscholastic sports as
24 administered by OSAA because their children, like all other student participants, derive
25 benefits from competitive activity that is an important part of the educational process.

26

1 25.

2 The schedules adopted by OSAA for the playoffs and tournaments are not the least
3 restrictive means of administering those playoffs and tournaments. OSAA’s refusal to
4 administer the 1A and 3A basketball tournaments in a less restrictive manner unreasonably
5 interferes with plaintiffs Jeff and Alison Strode, Yoo Shim Kim, Michele Lundgren-Nelson,
6 Mark and Tara Sprague, Steve Cool, and Bruce Fjarli’s important parental rights.

7 **Count II – Denial of Benefits Available to Others Based on Religion**

8 26.

9 OSAA’s 1A and 3A basketball state tournaments are available to all qualifying high
10 schools that participate in those divisions.

11 27.

12 OSAA has denied the opportunity for the student plaintiffs to participate in the 1A
13 and 3A basketball tournaments by scheduling games for which their teams might qualify at
14 times that conflict with their Sabbath observance. OSAA’s practice violates Article I,
15 sections 2 and 3 of the Oregon Constitution.

16 **Count III – Discrimination Among Religions and Between**
17 **Religious and Secular Activities**

18 28.

19 OSAA has a long-standing practice of not scheduling athletic events on Sundays.
20 That practice is based on the historical recognition that the majority of Christian
21 denominations observe a Sunday Sabbath.

22 29.

23 OSAA has rarely deviated from its “no Sunday activity” practice in spite of requests
24 to schedule OSAA-sponsored events on Sundays. OSAA’s refusal to accommodate the
25 student plaintiffs’ request to reschedule any Saturday game in the 1A and 3A tournaments at
26 a time other than their Saturday Sabbath discriminates among religions.

1 30.

2 OSAA has granted requests to modify playoff and tournament game schedules and
3 venues for secular reasons, and has rescheduled games in order to accommodate such secular
4 reasons as travel considerations, facility availability and television broadcast schedules.

5 31.

6 OSAA's refusal to grant the student plaintiffs' request for accommodation of their
7 religious beliefs and practices, and its willingness to grant requests for accommodation based
8 on secular concerns, discriminates against the student plaintiffs on the basis of their religion
9 in violation of Article I, sections 2 and 3 of the Oregon Constitution.

10 32.

11 On Count I, Count II and Count III of this Claim, the court should enter a judgment
12 declaring that OSAA's refusal to accommodate plaintiffs' religious beliefs and practices by
13 making reasonable adjustments to the playoff and tournament schedules that would enable
14 plaintiffs to participate in the semi-final, third-place, or consolation games if they qualify to
15 do so, without violating their religious beliefs, violates Article I, sections 2 and 3 of the
16 Oregon Constitution.

17 33.

18 The court should enter a judgment enjoining OSAA from refusing to make
19 adjustments to the playoff and tournament schedules sufficient to enable the PAA and RVAS
20 teams to play their games before sundown on Friday or immediately following sundown on
21 Saturday and to participate fully with all other qualifying teams in the state championship
22 tournaments.

23 34.

24 Plaintiffs are entitled to recover their reasonable and necessary attorney fees and
25 expert witness fees incurred in connection with this discrimination claim pursuant to
26 ORS 20.107.

1 **THIRD CLAIM FOR RELIEF**

2 (Violation of Article I, section 20 of the Oregon Constitution)

3 35.

4 Plaintiffs reallege and incorporate herein the allegations in paragraphs 1 through 13
5 and 22 through 33, above.

6 36.

7 OSAA has an obligation to offer its programs and services to the student plaintiffs on
8 the same terms as it offers those programs and services to all citizens.

9 37.

10 OSAA has always honored the Sunday Sabbath practice of the majority of Christian
11 denominations by never scheduling OSAA-sponsored team events on a Sunday. By
12 restricting scheduled activities on Sundays but scheduling them on Saturday without any
13 reasonable accommodation for those who observe a Saturday Sabbath, OSAA has violated
14 Article I, section 20 of the Oregon Constitution.

15 **FOURTH CLAIM FOR RELIEF**

16 (Violation of the First and Fourteenth Amendments to the U.S. Constitution)

17 38.

18 Plaintiffs reallege and incorporate herein their allegations in paragraphs 1 through 13,
19 22 through 33, 36, and 37, above.

20 39.

21 Plaintiffs Jeff and Alison Strode, Yoo Shin Kim, Michele Lundgren-Nelson, Mark
22 and Tara Sprague, Steve Cool, and Bruce Fjarli have a fundamental right protected by the
23 religious liberty clause of the First Amendment and the due process clause of the Fourteenth
24 Amendment to direct the upbringing, education, and religious training of their children.

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40.

OSAA's practice of arranging its playoff and tournament schedules so that the student plaintiffs are required to play during their Sabbath and OSAA's refusal to accommodate plaintiffs' request to adjust those schedules violates the parent plaintiffs' rights as alleged in paragraph 39, and the student plaintiffs' right of free exercise of religion. The free exercise clause of the First Amendment and the due process clause of the Fourteenth Amendment require OSAA to make adjustments to its playoff and tournament schedules that will accommodate plaintiffs' religious beliefs and practices, unless OSAA has a compelling reason for not doing so. OSAA has no compelling interest that would justify its denial of plaintiffs' request for an adjustment in the schedules for the Division 1A and 3A playoffs and tournaments to make it possible for the student plaintiffs to participate fully in those playoffs and tournaments without violating their religious beliefs and practices.

41.

Plaintiffs are entitled to recover their reasonable attorney fees under 42 USC § 1988.
WHEREFORE, plaintiffs pray for judgment as follows:

1. Declaring that defendants are violating ORS 659.850 and OAR 581-021-0045(2), Article I, sections 2, 3 and 20 of the Oregon Constitution, and the First Amendment of the United States Constitution in failing and refusing to make reasonable adjustments to the 1A and 3A state basketball tournament game times sufficient to enable the Portland Adventist Academy and Rogue Valley Adventist School teams to play their games before sundown on Friday or after sundown on Saturday, which will accommodate the plaintiffs' religious convictions against participating in competitive sport activities on their Sabbath;
2. Preliminarily and permanently enjoining defendants from refusing to make reasonable adjustments to the playoff and tournament schedules for the 1A and 3A divisions that would enable plaintiffs to play in semi-final games before sundown on Friday and to play in third-place or consolation games after sundown on Saturday;

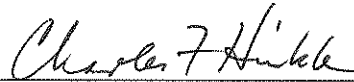
1 3. Awarding plaintiffs their reasonable attorney fees as the prevailing plaintiffs
2 pursuant to ORS 659.860(7), ORS 20.107, and 42 USC § 1988;

3 4. Awarding plaintiffs their reasonable and necessary expert witness fees
4 pursuant to ORS 20.107;

5 5. Awarding plaintiffs their costs and disbursements incurred in bringing these
6 claims; and

7 6. For such other relief as this Court deems to be just and equitable.

8 DATED: February 19, 2008.



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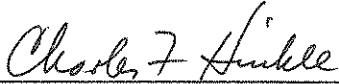
CERTIFICATE OF SERVICE

I certify that on February 19, 2008, I served the foregoing AMENDED COMPLAINT by mailing a true copy by first-class mail through the U.S. Postal Service to the following attorney of record for the defendants at his last-known address, as follows:

Mr. Jonathan M. Radmacher
McEwen Gisvold LLP
1600 Standard Plaza
1100 SW Sixth Avenue
Portland, OR 97204

On that same date, I also sent a copy of the AMENDED COMPLAINT to Mr. Radmacher by email at the following email address: jonathanr@mcewengisvold.com

DATED: February 19, 2008.



Charles F. Hinkle, OSB No. 71083
Of Attorneys for Plaintiffs