SIDLEY AUSTIN LLP
David L. Anderson (SBN 149604)
dlanderson@sidley.com
555 California Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 772-1200
Facsimile: (415) 772-7400

THE PORRAZZO LAW FIRM
Michael H. Porrazzo (SBN 121260)
mhporrazzo@porrazzolaw.com
30212 Tomas, Suite 365
Rancho Santa Margarita, CA 92688
Telephone: (949) 348-7778
Facsimile: (949) 209-3514

SIDLEY AUSTIN LLP
Gordon D. Todd*
gtodd@sidley.com
Mackenzi J.S. Ehrett*
mehrett@sidley.com
Alaric R. Smith*
alaric.smith@sidley.com
Aaron P. Haviland*
ahaviland@sidley.com
Matthew H. Simpson*
msimpson@sidley.com
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Admitted *Pro Hac Vice*

Attorneys for Plaintiffs CAPITAL CHRISTIAN CENTER and CAPITAL CHRISTIAN SCHOOL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

Capital Christian Center and Capital Christian School,

Plaintiffs,

vs.

California Interscholastic Federation; California Interscholastic Federation, Sac-Joaquin Section Executive Committee; Michael S. Garrison, Commissioner of California Interscholastic Federation, Sac-Joaquin Section; and Kevin Swartwood, President of California Interscholastic Federation, Sac-Joaquin Section Executive Committee,

Defendants.

Case No. 2:22-cv-00721-JAM-KJN

Assigned to: Judge John A. Mendez

Date: July 12, 2022
Time: 1:30 p.m.
Place: United States District Court, Eastern District of California, 501 I Street, Sacramento, California 95814

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTRODUCTION

In 2020 and 2021, after state and local COVID-19 health orders shut down high school athletics throughout the State of California, students, parents, and coaches turned to club sports to provide the physical, mental, and emotional benefits teens gain from competitive athletics. Across the State, student athletes participated in club sports across a wide range of athletics, including football. In the Sacramento area, student-athletes and coaches from dozens of public and private schools joined a club football league and played a series of football games in February and March 2021. Defendants, who oversee interscholastic athletic competitions in the Sacramento area, determined that these games violated the State's COVID-19 health orders and Defendants' own bylaws. Defendants were well aware of the scope of participation by public and private school students and coaches. However, when it came to dishing out sanctions, Defendants singled out and punished only four Christian schools. Defendants colluded to exclude Plaintiff Capital Christian High School ("CCHS") from interscholastic competition and ultimately suspended CCHS from participating in the high school football post season for the 2022-2023 school year.

The purposeful and discriminatory targeting of religious institutions violates federal constitutional and statutory protections. Invidious discrimination can be shown circumstantially, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993), and the circumstances here provide powerful evidence of an intent to discriminate. Plaintiffs ignored similar conduct by hundreds of students and coaches from dozens of other secular schools. Plaintiffs then resorted to pretexts such as the leasing of stadiums and equipment to conceal their discrimination. But no rule prohibits the leasing of an athletic field; the State's and Defendants' COVID-19 orders concerned the playing of sports, not the use of equipment; and in any event Defendants failed to similarly investigate and consider other schools' support for other club teams. At bottom, Defendants punished Christian schools because they wanted to.

It does not ultimately matter whether Defendants were within their rights to issue sanctions based on students' participation in the club football league. If they were, they were obliged to do so evenhandedly. They failed to do so. By sanctioning only CCHS and three other Christian schools while ignoring participation by students from many other secular schools, Defendants violated CCHS's First and Fourteenth Amendment rights. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (per curiam); *see also Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021).

CCHS is daily suffering financial and reputational injury, having been singled out for accusation and punishment contrary to its religious core and message. The deprivation of First Amendment rights cannot be compensated. And, once the 2022-2023 post-season has come and gone, the lost football opportunity will not be compensable to CCHS or its student-athletes by any amount of money damages. This motion presents quintessential irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." (internal quotation marks omitted)).

Accordingly, Plaintiff seeks a preliminary injunction staying Defendant's sanctions, including its exclusion from the 2022-2023 football postseason, while CCHS's substantial and serious federal constitutional claims are resolved.

I. FACTUAL BACKGROUND

A. Plaintiffs – Capital Christian Center and Capital Christian School

Plaintiff Capital Christian Center ("the Church") is a California non-profit corporation located in Sacramento. Tim Wong Declaration ("Wong. Decl.") ¶ 3. As part of its religious ministry, the Church operates Capital Christian School ("the School" or "CCS"), which offers Pre-K through 12th grade education. *Id.* ¶ 4. CCS is a religious school, and is committed to strengthening its students' relationship with Jesus Christ, which it does through a Bible-based curriculum, chapel services, Spiritual Life Program, and other Christian-oriented programs and activities. *Id.* ¶ 5 These include

interscholastic programs, including interscholastic athletics, offered to students at CCHS. *Id.* ¶ 6. CCHS's athletic programs are grounded in the School's Christian values and advance its religious ministry. *Id.* ¶ 7.

B. The Defendants

The California Interscholastic Federation ("CIF"), a California non-profit corporation, is tasked by the California Legislature with implementing the State's policies and goals for organized interscholastic sports. Cal. Educ. Code § 33353. As the organization responsible for administering interscholastic athletics in all California secondary schools, enforcement of CIF's rules constitutes "state action." *Steffes v. Cal. Interscholastic Fed'n*, 176 Cal. App. 3d 739, 746 (Cal. Ct. App. 1986); *Jones v. Cal. Interscholastic Fed'n*, 197 Cal. App. 3d 751, 757 (Cal. Ct. App. 1988). CIF is sub-divided into ten semi-autonomous geographical Sections, each of which oversees interscholastic athletics for member-schools within the Section's geographic reach. Aaron Garcia Declaration ("Garcia Decl.") ¶ 5. CIF's Sac-Joaquin Section ("CIF-SJS") encompasses Sacramento, meaning that CCHS, by virtue of its Sacramento location, is a member of the CIF-SJS. Wong Decl. ¶ 8; Garcia Decl. ¶ 5. Defendant Michael S. Garrison is the CIF-SJS Commissioner, and is authorized to interpret CIF-SJS rules and regulations, investigate possible violations of CIF-SJS rules and policies, impose sanctions on CIF-SJS member schools, and, along with the CIF-SJS Executive Committee, penalize member schools for violations of CIF or CIF-SJS rules and regulations, or for just cause. Garcia Decl. Ex. 1 at 17.

CIF promulgates umbrella bylaws which apply to all interscholastic athletic competitions. Garcia Decl. ¶ 6; Garcia Decl. Ex. 1 at 75–82. CIF-SJS promulgates additional rules as well as sports-specific bylaws, including bylaws pertaining to interscholastic football. *See* Garcia Decl. ¶ 6; Garcia Decl. Ex. 2 at 141–48. These football bylaws include detailed regulations about mandatory student conditioning, permissible and prohibited activities occurring during practice days, game scheduling,

division organization and playoffs, and season dates. Garcia Decl. Ex. 2 at 141–48.

C. After COVID-19 Shuts Down Interscholastic Sports, Concerned Parents Form a Club Football League.

Starting in March 2020, in response to the emerging COVID-19 pandemic, a series of State and County public health orders effectively suspended high school sports in California. Garcia Decl. ¶ 7. CIF and CIF-SJS issued directives instructing member schools to comply with public health directives. *Id.*; *see also* Garcia Decl. Ex. 4 at 1, 9; Wong Decl. Ex. 12 at 1, 9. As a result, organized interscholastic sports, including high school football, ground to a halt. Garcia Decl. ¶ 7.

As spring bled into summer and the lockdowns continued, parents across the State, including in Sacramento, began to notice the many negative effects that the shutdown was having on their children. As has now been studied and widely reported in scientific literature, the removal of students from social, educational, and extracurricular activities and interactions led to deteriorating academic performance, along with increased incidents of depression, drug use, alcohol abuse, domestic abuse, and suicidal tendencies. *See, e.g.*, Exs. A–C (scientific literature describing the harmful ramifications of the COVID-19 lockdowns on school-aged children). Parents, administrators, teachers, and coaches in some Sacramento schools noted these same trends. Garcia Decl. ¶ 8.

Concerned parents and coaches in the Sacramento area began discussing these problems and possible solutions, including organizing club sport activities. *Id.* ¶¶ 8–9. With high school sports suspended indefinitely, *ad hoc* club sports leagues had already started to form in other locations around California.[1] *Id.* ¶ 9. Many of these leagues, however, lacked any regulation, responsible oversight, insurance, certified safety equipment, or any other safeguards normally expected of a club athletic

[1] In Southern California, club football leagues began appearing in the Winter of 2020. *See* Andrew L. John, Jose Quintero, and Jason Reed, *Southern California High School Football Players Join New League Despite COVID Restrictions*, Desert Sun (Feb. 7, 2021), https://www.desertsun.com/in-depth/sports/high-school/football/2021/02/07/southern-california-high-school-football-players-dilemma-playing-club-football-california-during-cor/4319158001/. Despite widespread participation in Southern California club leagues, the CIF Section with jurisdiction took no enforcement action there.

program. *Id.* ¶ 9. The Sacramento-based parents and coaches recognized the benefits that club sports leagues offered student-athletes, but wanted a club league with better oversight and regulation to ensure the safety of their student-athletes. *Id.* ¶ 10. With these considerations in mind, they began to explore forming a new Sacramento-area league with robust protections for student-athletes. *Id.*

The Sacramento-area club football league organizers prioritized compliance with CIF and CIF-SJS rules. *Id.* ¶ 11. They carefully reviewed CIF and CIF-SJS bylaws, and also communicated with the CIF-SJS Office about their intentions. *Id.* The parents ultimately formed a 501(c)(3) organization—the California Association of Private Sports ("CAPS" or "the League"). *Id.* ¶ 12; *see also* Wong Decl. ¶ 9. CAPS was developed on a "community" team model, common in club sports, where teams represent a particular geographic area rather than a particular school. Garcia Decl. ¶¶ 12, 16. CAPS developed a detailed sign-up process for participation in the club league, including requiring fees, insurance, and COVID waivers. *Id.* ¶ 13.

Like most club leagues, CAPS did not own its own facilities. *Id.* ¶ 14. Accordingly, CAPS approached several organizations, including the Church, about leasing its field. *Id.*; Wong Decl. ¶ 11. Consistent with the Church's long history of leasing its facilities—including the football stadium, gym, baseball field, other facilities, and sports equipment—to outside entities, including club teams affiliated with other club football leagues such as AAU, Pop Warner, and DB Select, the Church agreed to a lease with the CAPS League. Garcia Decl. ¶ 4; Wong Decl. ¶ 10. On January 25, 2021, the CAPS League and Cap City signed lease agreements for equipment and facilities with the Church and CCS. Wong Decl. ¶ 11. These leases authorized CAPS to use the CCHS football stadium-related facilities, as well as CCS football equipment. *Id.*; Wong Decl. Exs. 1, 2. CAPS, and other teams in the League, executed similar leases with at least three other schools: Ripon Christian High School, Stone Ridge Christian High School, and Vacaville Christian High School. Garcia Decl. ¶ 14. These leases were entirely consistent with the CIF bylaws, which nowhere prohibit a CIF member school

from leasing its equipment or facilities to a club team. Indeed, prior to these events, CCHS routinely leased its facilities to other club teams without a single protest from Defendants. *See* Garcia Decl. ¶¶ 4, 6; Wong Decl. at ¶ 10.

D. Student-Athletes and Football Coaches From Diverse Scholastic Backgrounds Joined the CAPS League.

As word about the League spread, club teams began to form and express interest in joining. *Id.* ¶ 15–17. CAPS formed with eleven charter members whose teams satisfied the League's sign-up process. *Id.* ¶¶ 15–16 Teams admitted to the League enrolled rosters composed of student-athletes from public, private, and parochial schools in two divisions—U-19 and U-16. *Id.* ¶ 18.

One club that joined the League was the Cap City Cougars, which fielded both U-16 and U-19 teams. *Id.* ¶ 19. The U-16 team consisted of 35 athletes, 22 of whom were students at CCHS. *Id.* The U-19 team consisted of 34 athletes, 14 of whom were students at CCHS. *Id.* With almost half of its athletes from schools other than CCHS, Cap City was one of the most diverse clubs in the CAPS league. *Id.* Cap City's 17-man coaching staff included only two CCHS football coaches, both of whom had children playing for the club.[2] *Id.* Thus, nearly half of the players on the Cap City team, and the overwhelming majority of the coaching staff had no affiliation with CCHS. Cap City ran a playbook that CCHS had never used prior to the creation of the CAPS League. *Id.* ¶ 26. The Team was not insured by CCHS, did not wear CCHS jerseys, did not use CCHS's equipment and stadium for free, and generally lacked most of the attributes of a school team. *Id.* Another club that joined the League was "the Misfits." *Id.* ¶ 20. Student-athletes who played for the Misfits attended four Sacramento-area public schools: Grant Union High School (approximately 45%), Elk Grove High School (approximately 45%), Pleasant Grove High School (less than 10%), and Stockton High School (less than 10%). *Id.* Similarly, several of the Misfits coaches were current or former Grant coaches.

[2] Following the events giving rise to this action, some of these coaches began coaching at CCHS.

Id. The "Wild Dawgs," a late addition to the CAPS league, were similarly made up of mostly public school students from Hughson High School, and were coached by Hughson's head football coach. *Id.* ¶ 21.

E. All CAPS Teams Play Club Football Games.

The CAPS League began contesting games on February 12, 2021. *Id.* ¶ 22. Over the course of five weekends, every single CAPS League team played at least one game, for a total of 28 club games. *Id.* By the weekend of March 5, 2021, it appeared that CIF would soon lift its ban on interscholastic football and permit a shortened spring high school football season. *Id.* ¶ 23 Accordingly, only six more CAPS league games were played after that weekend. *Id.* On February 26, 2021, Cap City played its final League game, against the Misfits. *Id.* at 24.

F. Defendants Target CCHS for Investigation Regarding Participation in the CAPS League.

On February 8, 2021, shortly before the start of the CAPS season, Garrison began to crack down on CCHS. Garrison emailed CCS Head of School Tim Wong and CCHS Principal Erick Streelman, demanding copies of the facility lease contract between Capital City and CCS, as well as any supporting documentation. Wong Decl. ¶ 12. Wong referred Garrison to CCS's chief operating officer, who handled leasing agreements with outside organizations, for further information. *Id.* Three days later, and the day before Cap City was scheduled to play its first CAPS game, Garrison wrote to Streelman asserting that CCHS's "football team is scheduled to compete in competitive football contest(s)." Wong Decl. Ex. 4 at 1; *see also* Wong Decl. ¶ 13. Garrison emphasized that, in his view, "participating in interscholastic athletic events" would contravene public health orders, and threatened CCHS with potential sanctions, including fines, suspension, or dismissal from membership pursuant to CIF rules if CCHS participated in such interscholastic athletic events. Wong. Decl. Ex. 4 at 1. Streelman responded that the CAPS games were not "school event[s]" and that the CAPS teams, including the Cap City team, "contains students from many public and private schools." Wong Decl.

Ex. 7; *see also* Wong Decl. ¶¶ 14–16.

Garrison responded the following day, rejecting Streelman's explanation and again threating to sanction CCHS. Wong Decl. Ex. 5; *see also* Wong Decl. ¶ 14. That afternoon, Wong called Garrison seeking clarification of the CIF and CIF-SJS bylaws, and to understand how Garrison believed they had been or were being violated. Wong Decl. ¶ 17; *see also* Wong Decl. Ex. 8. Garrison did not answer, so Wong left a voicemail, following up with an email. Wong Decl. ¶ 17 Instead of returning Wong's calls, Garrison spent the evening of February 12, 2021 lurking in the parking lot of an elementary school neighboring CCS, covertly observing the CAPS league opening day games. *See* Decl. of Michael S. Garrison in Support of Opp. to Pl. Capital Christian Center's *ex parte* Application for Temp. Restraining Order, *Capital Christian Center v. California Interscholastic Federation Sac-Joaquin Section*, *et al.*, No. 34-2021-80003707-CU-WM-GDS (Sup. Ct. of Cal., Sacramento Cty.) at ¶ 17 (attached hereto as Exhibit D).

On February 22, 2021, Garrison again wrote to CCS, informing Streelman that CIF-SJS was aware of the CAPS League football games that had been played on CCHS's campus, and demanding that CCS identify the CCHS students and coaches involved with the Cap City team, as well as information about the facilities and equipment that CCS had leased to Cap City. Wong Decl. Ex. 6. Garrison asserted, for the first time, that CCHS's purported involvement in the CAPS League was a potential violation of CIF Bylaw 22 and CIF-SJS Bylaw 105. *Id.* To the best of CCHS's knowledge, Garrison did not make similarly threatening and invasive demands of public schools (or, indeed, non-Christian schools) whose students and coaches participated in the club league. Wong Decl. ¶ 27.

G. Defendants Sanction CCHS and Three Other Christian Schools.

On June 2, 2021, Defendant Garrison notified CCHS that the CIF-SJS Executive Committee would meet to consider whether CCHS's participation in the CAPS League violated CIF bylaws and, if so, whether it should be subject to sanctions. Wong Decl. Ex. 9; *see also* Wong Decl. ¶ 19. On

June 16, 2021, the day before the CIF-SJS Executive Committee meeting, Garrison sent CCHS a packet of information that he intended to present to the CIF-SJS Executive Committee, which included his factual findings and conclusions. Wong Decl. ¶ 19; Wong Decl. Ex. 10. Garrison's proposed presentation concluded that the CCHS "football team as the Cap City Club Football team, competed in football games in contravention of CIF Bylaws 22 and 105." Wong Decl. ¶ 20; Wong Decl. Ex. 10 at 4. Moreover, Garrison concluded that CCHS "competed in football competitions during the months of February 2021 in violation of the [California Department of Public Health] guidance" and "competed in two seasons of the sport of football" during the Winter and Spring of 2021, in violation of CIF-SJS rules and regulations. Wong Decl. Ex. 10 at 4.

Garrison and the Executive Committee met on June 17, 2021 to consider sanctions against CCHS and eight other schools that participated in the CAPS League. Wong Decl. ¶¶ 21–22; Wong Decl. Ex. 11 at 1. The Executive Committee's discussion of potential violations by CCHS and the other schools took place in a closed session, from which CCHS was barred. Wong Decl. ¶¶ 23–24. The Committee did not disclose the results of its closed-session meeting that day. *Id.* ¶ 24.

Finally, on July 29, 2021, CIF-SJS issued a formal decision—authored by Defendant Garrison—concluding that the Cap City teams' participation in the CAPS League had caused CCHS to violate CIF's rules, regulations, and bylaws. Wong Decl. ¶ 25. Garrison based his decision on his findings that: (i) more than 50% of Cap City's players were student-athletes at CCHS; (ii) 60-75% of the Cap City coaching staff were CCHS coaches; (iii) Cap City players entered a game through an inflatable cougar head, which was traditionally used by CCHS, followed by a tunnel of cheerleaders; and (iv) Cap City rented its equipment and facilities from CCHS. Wong Decl. Ex. 12 at 4; *see also* Garcia Decl. ¶¶ 25–26. Garrison was misinformed on almost every point. Only 2 of the 17 Cap City Coaches (12%) were affiliated with CCHS at the time. CAPS had taken pains to cover over CCHS logos on the Cougar head. Caps City players, including the half that did not attend CCHS, wore Cap

City—not CCHS—jerseys. And none of the cheerleaders at the game wore CCHS uniforms. Garcia Decl. ¶ 26. And it remained the case that Defendant's bylaws nowhere prohibited facilities or equipment leases. None of these pretexts supported sanctioning CCHS, nor did Defendants appear to apply similar standards to every other school implicated in the club league.

Garrison asserted that it was "within [his] authority and discretion" alone "to determine the appropriate penalties" for CCHS's purported violations. *Id.* at 1. Garrison then sanctioned CCHS by imposing: (a) a two-season ban from postseason play for the 2021-22 and 2022-23 seasons for CCHS's football program; (b) a three-year probationary period for the football program through the end of 2023-24 school year; and (c) a one-year probationary period for the entire CCHS athletic program, through the end of the 2021-22 school year. *Id.* at 9. He additionally cautioned CCHS that any further violation during its probationary period might result in the full suspension of CCHS' membership in CIF-SJS. *Id.*

Concurrently, CIF-SJS issued a press release announcing the CCHS sanctions, along with similar penalties for three other Christian high schools—Ripon Christian, Stone Ridge Christian, and Vacaville Christian—whose players had also participated in the CAPS League. Wong Decl. Ex. 13. That press release announced that CIF-SJS had determined that the four "CIF-SJS member schools participated in the sport of football when interscholastic football competition was prohibited by CIF and CIF-SJS bylaws and State orders, regulations, and guidance." *Id.* While Defendants sanctioned these four Christian schools, none of the secular schools whose students and coaches had participated in the CAPS League—of whom Defendants were well aware—including students and coaches associated with "the Misfits" or Hughson High School received sanctions. *See* Garcia Decl. ¶¶ 20–21; Wong Decl. Ex. 11.

LEGAL STANDARD

A preliminary injunction should issue when a Plaintiff shows (1) it is likely to succeed on the

merits, (2) it likely will suffer irreparable harm in the absence of injunctive relief, (3) the balance of equities is in its favor, and (4) injunctive relief is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit employs a "sliding scale," *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011), whereunder a stronger showing on one element may offset a weaker showing of another. *Id.* A preliminary injunction may issue if the Plaintiff raises at least "serious questions going to the merits" and demonstrates that "the balance of hardships tips sharply" in its favor, as long as Plaintiff also satisfy the other *Winter* factors. *Id.* at 1135.

ARGUMENT

Plaintiffs present a strong claim for preliminary injunctive relief, preserving the *status quo ante* pending resolution of their legal claims. First, Plaintiffs are likely to succeed on the merits of their claims. It is uncontested that of all the high schools in California whose students and coaches participated in club sports during the COVID-19 pandemic, Defendants drew a circle around and sanctioned only four, all Christian schools. Defendants offered up pretextual bases for their discrimination, including the leasing of facilities and equipment, but cannot point to any law, rule, or bylaw that prohibits such leases, nor are Plaintiffs aware of Defendants ever previously objecting to similar conduct by any member school. Defendants cannot offer any non-discriminatory rationale, grounded in law, to warrant singling out four Christian schools for special sanctions, ignoring similar conduct by dozens of non-Christian institutions. Second, Plaintiffs are suffering suffer irreparable harm. The loss of First Amendment rights is as a matter of law irreparable. And, once a sports season is gone, it is gone, for the School and student-athletes alike. The balance of equities favors plaintiffs. If Defendants are within their rights to sanction CCHS, they lose nothing by delay and may do so in the future. And the public interest strongly favors addressing potential instances of religious bias. Preliminary injunctive relief is appropriate.

II. CCHS IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS.

Defendants singled out and punished Christian schools and students for alleged violations of CIF and CIF-SJS bylaws and regulations, while ignoring congruous conduct by non-Christian schools and students. Such selective treatment illegally preferences secular activity over religious, and cannot withstand constitutional scrutiny. *See S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 719 (2021) (The First Amendment prohibits the State from "singl[ing] out religion for worse treatment than . . . secular activities.") (statement of Gorsuch, J.).

A. The First and Fourteenth Amendments Prohibit the State From Preferencing Secular Activity Over Religious Activity.

The First Amendment bars the state from engaging in "even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Lukumi Babalu*, 508 U.S. at 534). Indeed, a government official "must ensure that the sole reasons for imposing the burdens of law and regulation are secular"—that is to say, not based on impermissible targeting of religion. *Lukumi Babalu*, 508 U.S. at 547. When a state actor partakes in overt expressions of hostility toward religion, it violates the Free Exercise guarantee. *Masterpiece Cakeshop*, 138 S. Ct. at 1729–31; *Lukumi Babalu*, 508 U.S. at 547; *Cal. Parents for the Equalization of Educ. Materials v. Tolarkson*, 973 F.3d 1010, 1019–20 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2583 (2021).

The threshold question in a Free Exercise claim is whether the state action at issue is neutral and generally applicable. *Tandon*, 141 S. Ct. at 1296; *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curium). State action that preferences secular activity over comparable religious activity fails these tests. *Tandon*, 141 S. Ct. at 1296; *see also Fulton*, 141 S. Ct. at 1877 (a law "lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way."). When assessing comparability for

Free Exercise purposes, courts must evaluate whether the activities "are comparable" with respect to "the risks [the] activities pose," as measured "against the asserted government interest[.]" *Tandon*, 141 S. Ct. at 1296; *accord Calvary Chapel San Jose v. Cody*, No. 20-cv-03794-BLF, 2022 WL 827116, at *10 (N.D. Cal. Mar. 18, 2022) (declining to dismiss Free Exercise claim for disparate enforcement of mask mandate which applied to religious activities but not in the public square).

Because state action that "treat[s] *any* comparable secular activity more favorably than religious exercise" is neither neutral nor generally applicable, it triggers strict scrutiny. *Tandon*, 141 S. Ct. at 1296 (emphasis in original); *see also Fulton*, 141 S. Ct. at 1877. Action targeting "religious conduct for distinctive treatment" rarely withstands such withering review. *Lukumi Babalu*, 508 U.S at 534; *see also Tandon*, 141 S. Ct. at 1296–97; *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) ("laws that target the religious for 'special disabilities' based on their 'religious status'" are subject to strict scrutiny). To survive, the state action must be narrowly tailored to serve a compelling state interest. *Roman Catholic Diocese of Brooklyn*, 141 S. Ct. at 67. This is "the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

The Free Exercise clause also "'protects religious observers against unequal treatment' and against 'laws that impose special disabilities on the basis of religious status.'" *Espinoza v. Mont. Dep't of Rev.*, 140 S. Ct. 2246, 2254 (2020) (quoting *Trinity Lutheran*, 137 S. Ct. at 2021). The Equal Protection guarantee "is . . . a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Disparate treatment "based upon an unjustifiable standard such as . . . religion" is impermissible. *Oyler v. Boles*, 368 U.S. 448, 456 (1962) A violation of this equal protection guarantee occurs when the State acts "with an intent or purpose to discriminate . . . based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194–95 (9th Cir. 1998). The "central inquiry" in a disparate treatment claim is whether the government action at issue "was motivated by a discriminatory purpose." *Ballou v. McElvain*, 29

F.4th 413, 422 (9th Cir. 2022) (citing *Ave. 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016); *see also Gutierrez v. Mun. Ct. of the Se. Jud. Dist.*, 838 F.2d 1031, 1047 (9th Cir. 1988) ("[P]urposeful discrimination is an essential element of an equal protection clause violation[.]"), *vacated as moot*, 490 U.S. 1016 (1989). That may in turn be established through either direct or circumstantial evidence. *Lukumi Babalu*, 508 U.S. at 540 at 504 (discriminatory purpose may be established though direct or circumstantial evidence showing that "a discriminatory reason more likely tha[n] not motivated the defendant[.]"). The "historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body" are all relevant to an Equal Protection inquiry. *Lukumi Babalu*, 508 U.S. at 540 (plurality).

The facts and circumstances here indicate that Defendants impermissibly considered schools' religious affiliations when considering whether to penalize student and coach participation in the CAPS League. Selective enforcement based on protected classifications violates the Fourteenth Amendment's equal protection guarantee when the selective enforcement has a discriminatory effect, *i.e.*, "similarly situated individuals . . . were not prosecuted." *Lukumi Babalu*, 508 U.S. at 540–42; *Lacey v. Maricopa County*, 693 F.3d 896, 920 (9th Cir. 2012); *see also Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995) (to support a showing of discriminatory effect in a selective enforcement claim, "[i]t is necessary to identify a similarly situated class against which the plaintiff's class can be compared." (cleaned up)).

B. Defendants' Discriminatory Sanctions Violated the First and Fourteenth Amendment.

Regardless of whether Defendants' sanctions singling out CCHS's activities for special sanction are measured against the First or Fourteenth Amendment, their actions are "odious to our Constitution." *Trinity Lutheran*, 137 S. Ct. at 2025. The "very core" of CCHS's mission is "educating

young people in their faith, inculcating its teachings, and training them to live their faith[.]" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020) (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 192 (2012)). The religious purpose that prompted the Church to form and operate the School infuses all of the School's activities, including its athletic programs. Indeed, CCHS athletics are built on the School's Christian values, and are an "extension of the youth ministries provided on our campus." Garcia Decl. ¶ 3; Wong Decl. ¶¶ 5–7. The Constitution shields religious schools from special sanction on account of their religious beliefs. *Tandon*, 141 S. Ct. at 1296; *Diocese of Brooklyn*, 141 S. Ct. at 66–67; *cf. Morrissey-Berru*, 140 S. Ct. at 2064; *Hosanna-Tabor*, 565 U.S. at 192. Indeed, a state may not take permissible action for Constitutionally impermissible reasons. *Cf. Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915 (2020) (declining to strike down lawful agency determination because it was not arrived at in a lawful manner); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 (1992) ("The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed."). Accordingly, once Defendants decided to penalize involvement in the CAPS League, the First and Fourteenth Amendments bared them from singling out Christian schools while ignoring similar conduct by students and coaches from secular schools.

1. Defendants' sanction scheme was neither neutral nor generally applicable.

Sanctioning CCHS and other Christian schools for participating in the CAPS League was neither neutral nor generally applicable, because Defendants allowed *similar* involvement by secular schools to go uninvestigated and unpunished. *See Tandon*, 141 S. Ct. at 1296; *Fulton*, 141 S. Ct. at 1877; *see also Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012) ("A double standard is not a neutral standard."). The evidence uniformly points to Defendants' intent to treat Christian schools whose students and coaches participated in the CAPS League less favorably than their similarly situated secular counterparts. Despite CCHS's repeated explanations to Defendant Garrison that the Cap City

team was not a CCHS team, *see* Wong Decl. Exs. 3, 7, 8, Garrison first proposed, then imposed, sanctions on CCHS on the grounds that the CAPS League team "Cap City" was, for all intents and purposes, the CCHS football team. Wong Decl. Exs. 9–12.

Garrison's underlying premise was faulty, and he refused all attempts to correct his misunderstanding. Garcia Decl. ¶¶ 16, 19; Wong Decl. ¶¶ 14–16. But even accepting Garrison's faulty understanding of the relationship between CCHS and the Cap City team, he failed to similarly investigate and sanction other teams even more strongly associated with particular secular schools. There is no question that Defendants were aware of such schools. Indeed, the CIF-SJS Executive Committee purported—possibly pretextually—to consider the conduct of eight schools, including the public schools Grant High School and Hughson High School.[3] Wong Decl. Ex. 11, at 1. But, when sanctions were finally announced, the public schools were nowhere to be found. Wong Decl. Ex. 13. Students and coaches from secular and religious schools participated in the CAPS League; Defendants were aware of both; and Defendants ultimately penalized only Christian schools. *Compare* Wong Decl. Ex. 11 *with* Wong Decl. Ex. 13.

The grounds Defendants have offered to justify their discrimination ring pretextual; they were neither accurately applied to Plaintiffs, nor apparently applied to other schools at all. "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Lukumi Babalu*, 508 U.S. at 534. Indeed, when the government's pretextual justifications for its discriminatory actions "ring hollow," that is "circumstantial evidence of a discriminatory intent." *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F. Supp. 2d 1203, 1225 (C.D. Cal. 2002) (granting injunctive relief); *see also Marshall v. Corbitt*, No. 3:13-CV-02961, 2019 WL 4741761

[3] Had Garrison investigated, he would have learned that the "Misfits" comprised students and coaches from four public schools: Grant, Elk Grove, Pleasant Grove, and Stockton High. Garcia Decl. ¶ 20. Plaintiffs are unaware of any evidence indicating that Defendants ever raised a single question about the latter three.

(M.D. Pa. Aug. 8, 2019) (rejecting government's pretextual justifications for prison's religious headgear policy because they "ring[] hollow"). The "facts" Defendant Garrison cites in support of support of his sanctions ring hollow for the simple reason that they were incorrect, *see supra* at 9–10, and nothing in the CIF bylaws—and especially the bylaws cited by Defendants when imposing their sanctions—prohibits a CIF member school from leasing its equipment or facilities to a club team. Indeed, prior to these events, schools routinely leased facilities to club teams without objection from Defendants. Second, Defendants do not appear to have applied these criteria to other schools or non-sanctioned teams. Other schools' players and coaches similarly comprised a plurality, it not a majority, on other club teams. *Supra* at 7. In fact, once the CAPS League concluded, the Misfits team sold its equipment to Grant High School. Garcia Decl. ¶ 20. Defendant Garrison does not appear to have investigated how other club teams secured their equipment or what other support other teams not perceived to be Christian-school affiliated received. In short, Defendants' supposed justifications for imposing sanctions, and the manner in which Defendants applied them, suggest that they are anything but "a mere pretext for religious discrimination." *Peter v. Wedl*, 155 F.3d 992, 997 (8th Cir. 1998).

2. Defendants' sanctions fail strict scrutiny.

No government interest could possibly support such disparate outcomes, much less the interests *actually* asserted by Defendants. Throughout their one-sided investigation of CCHS's participation in the CAPS League, Defendants repeatedly asserted (1) their interest in enforcing applicable public health orders related to the COVID-19 pandemic and (2) compliance with its own rules and regulations. Wong Decl. Exs. 4, 6, 12. Neither amounts to the "rare" case allowing Defendants to withstand strict scrutiny. *Lukumi Babalu*, 508 U.S. at 546; *see Fulton*, 141 S. Ct. at 1881. (If "the government can achieve its interests in a manner that does not burden religion, it must do so.")

If Defendants genuinely sanctioned CCHS to advance compliance with COVID-19 orders,

they surely would have similarly investigated and sanctioned *all* schools whose students and coaches participated on CAPS teams. CCHS does not dispute that some of its student-athletes and coaches participated on the Cap City team. *See* Garcia Decl. ¶ 19. But CCHS-affiliated Cap City student-athletes played alongside and against student-athletes who attended other Sacramento-area schools, including public schools. *Id.* Indeed, Cap City's last League game was against a team, the Misfits, comprised entirely of student-athletes and coaches from a small handful of public schools. *Id.* If Defendants truly believed that sanctioning schools whose students and coaches participated in the CAPS League was necessary to enforce the State's COVID-19 directives, their hammer should have fallen on *all* participating schools, not only religious ones.

Likewise, if CCHS violated CIF and CIF-SJS bylaws when its student-athletes and coaches participated in the CAPS League—a premise CCHS disputes—then so did every other school whose players and coaches participated in the League. It is immaterial to the merits of CCHS' claim whether Defendants had the right to punish participation in the CAPS League. If participation in the CAPS League was permissible, then no sanctions should have been levied against CCHS, or any other school. But, if participation was not permitted, then the schools of every student-athlete and coach who participated in the CAPS League should have also been subject to sanction. The fact is that Defendants treated *similar* activity by Christian and secular school students and coaches differently based on whether the participants attended or coached at a Christian high school. Defendants' discriminatory penalty scheme is in no way narrowly tailored to further either of their asserted State interests, and thus cannot satisfy strict scrutiny. *See Fulton*, 141 S. Ct. at 1868; *Tandon*, 141 S. Ct. at 1296–97; *Diocese of Brooklyn*, 141 S. Ct. at 67; *cf. Trinity Lutheran*, 137 S. Ct. at 2022 ("The express discrimination against religious exercise here is . . . the refusal to allow the Church—solely because it is a church—to compete with secular organizations[.]").

3. Defendants' selective enforcement of its sanctions resulted in unlawfully disparate treatment between Christian and secular schools.

The discriminatory purpose and effect of Defendants' sanctions are made evident by comparing two CAPS League Teams: the Misfits and Cap City. The Misfits comprised students who attended four secular public schools: Grant Union High School (approximately 45% of the team), Elk Grove High School (approximately 45% of the team), Pleasant Grove High School (less than 10% of the team), and Stockton High School (less than 10% of the team). Garcia Decl. ¶ 20. The Misfits' coaching team also included several Grant Union coaches. *Id.* The Cap City players, in contrast, were 41% (U-16 team) and 63% (U-19 team) from CCHS, with the balance attending a variety of other local public and private schools. Garcia Decl. ¶ 19. At the time, only two Cap City coaches also coached for CCHS.[4] But because Defendants focused on investigating and sanctioning Christian schools, they did not sanction any secular schools, their students, or their coaches for participating in the CAPS League. Defendants' sanctions therefore reflect disparate treatment on the impermissible basis of a school's religious affiliation. "When a State so obviously targets religion for differential treatment [the State action] violate[s] the First Amendment[.]" *S. Bay*, 141 S. Ct. at 717–18 (Statement of Gorsuch, J.); *see also Lukumi Babalu*, 508 U.S. at 540–42 (plurality); *City of Cleburne*, 473 U.S. at 439; *Oyler*, 368 U.S. at 456.

The result of Defendants' sanctions are as bizarre as they are unlawful. CCHS student-athletes who played for Cap City are subject to Defendants' sanctions, while their non-CCHS Cap City teammates are not. Students hailing from the sanctioned Christian schools are being punished for participating in the CAPS League, while most of the students and coaches they played against in league games are not. Non-Christian schools whose students or coaches participated in the league, who

[4] Some of the Cap City coaches did join CCHS's coaching staff after the CAPS League dissolved. Those coaches, however, were not "CCHS coaches" at the time of the events giving rise to this litigation.

supplied uniforms, organizational support, or who were involved in any other way, are left unscathed. However, many sanctioned Christian school student athletes who did not participate in the club league—indeed, who do not even play football—are subject to Defendants' overbroad and indiscriminate penalties.

In short, whether the merits of CCHS's claims are resolved on First or Fourteenth Amendment grounds, CCHS is likely to prevail on the merits of its claims.

III. CAPITAL CHRISTIAN SCHOOL SUFFERED IRREPARABLE HARM AS A RESULT OF DEFENDANTS' UNLAWFUL SANCTIONS.

A violation of First Amendment rights, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Catholic Diocese of Brooklyn*, 141 S. Ct. at 67 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *see also Melendres*, 695 F.3d at 1002 ("It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." (internal quotation marks omitted)); *Right to Life of Cent. Cal. v. Bonta*, No. 1:21-cv-01512-DAD-SAB, 2021 WL 5040426, at *13 (E.D. Cal. Oct. 30, 2021) (same). Because CCHS is likely to succeed on the merits of its First Amendment claim, it has also demonstrated that as long as Defendants' unlawful sanctions are in place, it has suffered and continues to suffer an irreparable injury. *See Riley's Am. Heritage Farms v. Elsasser*, 29 F.4th 484, 506–07 (9th Cir. 2022) ("[E]vidence of an ongoing constitutional violation . . . satisfies the second element of the injunctive relief test.").

The School's loss of competitive opportunity as a result of the postseason ban constitutes further irreparable harm.[5] Indeed, situations where students cannot "get [their] season back" are

[5] In *Barrios v. California Interscholastic Federation*, the Ninth Circuit made clear than when, where as here, CIF engages in unlawful action, courts must vindicate the rights of the aggrieved party. 277 F.3d 1128, 1137 (9th Cir. 2002). Nothing in *Ryan v. California Interscholastic Federation*, is to the contrary. At most, *Ryan* stands for the proposition that participation in interscholastic sports "is not a fundamental right under the California and United States Constitutions." 94 Cal. App. 4th 1048, 1059 n.10 (Cal. Ct. App. 2001) (citing cases). But neither *Ryan* nor the cases it relied on had anything to say about the irreparable harm wrought upon students whose high school athletic careers are snatched from them as a result of unlawful state action. Indeed, *Ryan* and its predecessors all addressed *lawful*

"exactly what preliminary injunctions are intended to relieve." *D.M. v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019) (high school students in danger of losing opportunity to compete were entitled to injunctive relief); *see also T.W. v. S. Columbia Area Sch. Dist.*, No. 4:20-CV-01688, 2020 WL 5751219, at *8 (M.D. Pa. Sept. 25, 2020) (loss of an opportunity to compete constitutes irreparable harm). Courts within the Ninth Circuit have repeatedly found the same. *See, e.g.*, *Hecox v. Little*, 479 F. Supp. 3d 930, 987 (D. Idaho 2020) (finding that a student's permanent loss of a "year of . . . eligibility" constitutes irreparable harm), *appeal docketed*, No. 20-35813 (9th Cir. Sept. 17, 2020); *Inskip v. Astoria Sch. Dist. 1J*, No. CIV. 99-515-KI, 1999 WL 373792, at *2 (D. Or. Apr. 26, 1999) (same). The harm accrues to athletic teams just as much as to individuals. *See, e.g.*, *Lazor v. Univ. of Conn.*, No. 3:21-cv-583 (SRU), 2021 WL 2138832, at *6 (D. Conn. May. 26, 2021) (noting the harm to the teams' continuity and recruiting opportunities constituted irreparable harm); *Ohlensehlen v. Univ. of Iowa*, 509 F. Supp. 3d 1085, 1102 (S.D. Iowa 2020), *appeal dismissed*, No. 21-1203, 2021 WL 3174982 (8th Cir. Feb. 26, 2021); *Biediger v. Quinnipiac Univ.*, 616 F. Supp. 2d 277, 279 (D. Conn. 2009). So too here, where the loss of standing within the community due to the CCS playoff ban has significantly harmed the ability of CCS coaches to recruit and build their program. Wong Decl. ¶ 28.

IV. THE PUBLIC INTEREST AND BALANCE OF EQUITIES WEIGH IN FAVOR OF GRANTING A PRELIMINARY INJUNCTION.

The remaining factors also weigh in favor of granting preliminary injunctive relief. The public interest strongly favors investigating potential violations of First Amendment rights and, where necessary, redressing injuries such as Plaintiffs advance. *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002) ("Courts considering requests for preliminary injunctions have consistently

---

CIF action such as requiring drug testing and enforcing CIF's eight-semester and eligibility transfer rules. *See id.* (eight-semester and transfer eligibility rules); *Jones*, 197 Cal. App. 3d 751 (eight-semester rule); *Hill v. NCAA*, 865 P.2d 633 (Cal. 1994) (drug testing); *Steffes*, 176 Cal. App. 3d 739 (transfer eligibility). These cases are a far cry from the *unlawful* conduct at issue here.

recognized the significant public interest in upholding First Amendment principles."), *abrogated on other grounds by Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *see also Melendres*, 695 F.3d at 1002 ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (internal quotation marks omitted)). The balance of equities likewise favors a preliminary injunction because it would be inequitable to permit a state actor to violate the Constitution when no adequate remedy exists. *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

The balance of harms favors an injunction for a more practical reason: once the sanctions have taken effect and post-season play has been lost, no amount of money damages can restore that experience. For most student-athletes on most high schools teams, interscholastic competition ends in high school, and the culmination of many seasons' hard work lies in post-season competition. Once deprived of this opportunity by Defendants' unconstitutional sanctions, the student-athletes can never get that opportunity back. On the other hand, Defendants will suffer no harm even if an injunction were wrongly issued. The sole effect of any such injunction would be to lift CCHS' ban from postseason play and its probationary status. If this Court later concluded an injunction was not warranted, Defendants would be free to reimpose their original sanctions.[6] Thus, the final two factors support the issuance of an injunction.

PRAYER FOR RELIEF

Plaintiffs therefore request that this Court issue a preliminary injunction removing all sanctions imposed on Defendants by the Plaintiffs, including sanctions barring Plaintiffs from participating in post-season play for the 2022-2023 football season.

Respectfully Submitted,

[6] Because Defendants will suffer no harm as the result of any injunctive relief, the Court need not require Plaintiffs to post a bond as security. *See* Fed. R. Civ. P. 65(c).

Date: May 05, 2022

Respectfully submitted,

By: */s/ David L. Anderson*

David L. Anderson (SBN 149604)
dlanderson@sidley.com
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 772-1200
Facsimile: (415) 772-7400

Gordon D. Todd*
gtodd@sidley.com
Mackenzi J.S. Ehrett*
mehrett@sidley.com
Alaric R. Smith*
alaric.smith@sidley.com
Aaron P. Haviland*
ahaviland@sidley.com
Matthew H. Simpson*
msimpson@sidley.com
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Admitted *pro hac vice*

Michael H. Porrazzo (SBN 121260)
mhporrazzo@porrazzolaw.com
THE PORRAZZO LAW FIRM
30212 Tomas, Suite 365
Rancho Santa Margarita, CA 92688
Telephone: (949) 348-7778
Facsimile: (949) 209-3514

Attorneys for Plaintiffs CAPITAL CHRISTIAN CENTER and CAPITAL CHRISTIAN SCHOOL