

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

MARY TOOTLE, DAVID TOOTLE,
YANELIS SANDS, CRAIG SANDS,
JOYCE MCCALL, and JASON
MCCALL,

Plaintiffs,

v.

CHRIS GREEN, President of the
Georgia Student Finance Commission,
in his official capacity,
Defendant.

Case No. 26CV7733

The Honorable Judge LaTisha Dear
Jackson

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND INTERLOCUTORY INJUNCTION**

I. Introduction

Plaintiffs are six Georgia parents who are excluded from valuable state education benefits because they are unwilling to forfeit their religious exercise to access them.

In 2024, Georgia enacted the Promise Scholarship, a program ostensibly intended to grant Georgia parents more options in seeking quality education programs that meet their children's needs. Through this program, parents can access up to \$6,500 per child per year in public education funds. They may direct that money to the school of their choice, including religious schools, or to homeschool curricula and tutoring. Ver. Compl. ¶¶ 5, 122, 129.

Georgia's Legislature placed various, common-sense eligibility requirements on the scholarship money. For instance, parents must be Georgia residents, a child cannot simultaneously attend public school and receive Promise Scholarship money, a child must be school aged, and parents must use the money to pay for their child's education.

But Georgia’s Legislature added two additional unnecessary requirements that fail common-sense as much as they fail the United States Constitution and other Georgia law: a requirement that a child be “currently enrolled and ha[ve] been continuously enrolled in a Georgia public school” through at least “two consecutive enrollment counts”—roughly one full school year, O.C.G.A. § 20-2B-22(a)(2) (the “attendance requirement”), and a requirement that a child reside in the attendance zone of a public school the State has designated among its lowest-performing 25 percent, O.C.G.A. § 20-2B-22(a)(3) (the “assignment requirement”).

Plaintiffs challenge these requirements, which Defendant enforces, because these requirements force Plaintiffs to forfeit their religious exercise in order to access valuable public education benefits. Plaintiffs have a religious obligation to provide a religious education to their children. Plaintiffs also have a religious obligation to provide for their families and avoid enormous debts and financial risk. But to satisfy Defendant’s onerous requirements and access the Promise Scholarship, they must violate those religious obligations by depriving their children of a Catholic education for a full school year, and uprooting their families to move to a failing school zone for one school year. Ver. Compl. ¶¶ 6–8, 43–48, 62–69, 90–91.

Defendant’s enforcement of the two challenged requirements violates the First Amendment, because “[p]ublic education is a public benefit, and the government cannot condition its availability on parents’ willingness to accept a burden on their religious exercise.” *Mahmoud v. Taylor*, 606 U.S. 522, 561 (2025) (cleaned up).

Defendant similarly violates the Georgia Religious Freedom Restoration Act. That Act forbids Defendant from substantially burdening religious exercise “even if the burden results from a rule of general applicability.” O.C.G.A. § 50-15A-1(a). But through the attendance and assign-

ment requirements, Defendant substantially burdens Plaintiffs’ religious exercise because he “conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where [] denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on [Plaintiffs] to modify [their] behavior and to violate [their] beliefs.” *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 717–18 (1981).

Defendant cannot excuse this coercion. He already exempts parents from both requirements for purely secular reasons. Rising kindergarteners are exempt from the attendance requirement by statute, and children of active-duty military families are exempt by Defendant’s own regulation. And children who have participated in the program before are effectively exempt from the assignment requirement for as long as they participate. O.C.G.A. § 20-2B-22(a)(2), (d); GESA Regs. § 4.1.3; Ver. Compl. ¶¶ 124–27. Because he “treat[s] any comparable secular activity more favorably than religious exercise,” strict scrutiny follows. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Because he substantially burdens Plaintiffs’ free exercise, strict scrutiny also follows under Georgia’s Religious Freedom Restoration Act. O.C.G.A. § 50-15A-1. And Defendant cannot meet the burden of strict scrutiny, given these secular exemptions.

Plaintiffs’ requested relief—an injunction prohibiting Defendant from enforcing the attendance and assignment requirements against them—adds no burden to the State, either, because the State is already accepting applications with exemptions to the eligibility requirements challenged here.

Plaintiffs therefore respectfully request that the Court enter a temporary restraining order, issue a rule nisi, and hear their request for an interlocutory injunction as soon as practicable—before the current application window closes on August 31, 2026, if possible, and in any event

before the final 2026-2027 application window closes on November 30, 2026. O.C.G.A. § 9-11-65(b); USCR 6.7.

REQUEST FOR EMERGENCY TREATMENT

Plaintiffs request expedited treatment of this motion under Uniform Superior Court Rule 6.7. Defendant is and will continue depriving Plaintiffs of their free exercise rights under the First Amendment and Georgia’s Religious Freedom Restoration Act unless this Court intervenes. That deprivation is irreparable, and compounds daily. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). Plaintiffs are fast approaching the August 31 application deadline. While another application window for the Spring 2027 semester opens from November 1-30, 2026, Plaintiffs require more than a few weeks to arrange education plans for the spring semester. And if that final window closes with the challenged requirements still enforced against them, Plaintiffs’ children will lose the entire 2026-2027 program year.

Plaintiffs therefore respectfully request that the Court give this motion expedited treatment and issue a rule nisi today setting a hearing on the request for temporary restraining order as soon as possible.

BACKGROUND

I. The Promise Scholarship Program

In 2024, the General Assembly enacted the Georgia Promise Scholarship Act, O.C.G.A. §§ 20-2B-20 *et seq.* Ver. Compl. ¶ 118. When signing it, Governor Kemp explained: “We know it’s not the government’s role to dictate to families what the best choice is for their child. It is our job to support them in making that decision.” *Id.* ¶ 119. The program deposits up to \$6,500 per school year into an account that parents may spend on private school tuition and fees, curriculum, certified tutoring, licensed therapies, and transportation. O.C.G.A. § 20-2B-24; Ver. Compl. ¶¶

122, 129. The Georgia Education Savings Authority (“GESA”), assigned to the Georgia Student Finance Commission (“GSFC”), administers the program, determines eligibility, and disburses funds. O.C.G.A. §§ 20-2B-8, 20-2B-26; Ver. Compl. ¶¶ 16, 120–21. Defendant Green is the President of the GSFC. *Id.* ¶ 16.

The program is funded at up to one percent of Quality Basic Education appropriations. O.C.G.A. § 20-2B-24(a)(1). For 2025–2026 that was \$141 million, but only 7,600 of 8,600 approved children used their scholarships, and only about \$50 million was spent. Ver. Compl. ¶¶ 130–34. Roughly 71 percent of participating children used the funds at private schools, including Catholic schools — meaning Georgia already spends tens of millions of dollars funding education at religious schools through this very program. *Id.* ¶¶ 133–34. For 2026–2027, the General Assembly appropriated \$100 million. *Id.* ¶ 135.

II. The Challenged Requirements and Their Secular Exemptions

Two eligibility requirements are at issue. The attendance requirement conditions eligibility on a child being “currently enrolled and ha[ving] been continuously enrolled” in a Georgia public school through at least “two consecutive enrollment counts”— one full school year. O.C.G.A. § 20-2B-22(a)(2); Ver. Compl. ¶ 124. The assignment requirement conditions eligibility on the child being assigned to a public school on the State’s bottom-performing list. O.C.G.A. § 20-2B-22(a)(3); Ver. Compl. ¶ 125.

Both requirements are shot through with exemptions. Rising kindergarteners are statutorily exempt from the attendance requirement. O.C.G.A. § 20-2B-22(a)(2). Children of active-duty military families are exempt by Defendant’s own regulation. GESA Regs. § 4.1.3; Ver. Compl. ¶¶ 124. And once a child receives a Promise Scholarship, the child remains eligible in every later year until high school graduation, without a new application (subject to annual recertification), and regardless of where the family lives or might move to or how the child’s assigned school performs.

O.C.G.A. § 20-2B-22(d); GESA Regs. §§ 4.2, 7.8; Ver. Compl. ¶¶ 126–27. Defendant denies applications that do not satisfy both requirements, and offers no religious exemption from either. Ver. Compl. ¶ 137.

III. Plaintiffs’ Religious Exercise and the Choice Forced Upon Them

Plaintiffs hold sincere religious obligations, grounded in Scripture, canon law, the Magisterium (i.e., the teaching authority vested in the Catholic Church by the Holy Spirit), and the Catechism, to provide their children an education permeated by their faith, and to provide responsibly for their families’ material needs and domestic peace. Ver. Compl. ¶¶ 17–31. Defendant is coercing each family into forfeiting their religious exercise in exchange for tens, if not hundreds, of thousands of dollars in public education benefits.

The Tootles homeschool and use Catholic schooling for their five children. Their two youngest children already hold Promise Scholarships. One child qualified for the “rising kindergartener” exemption to the attendance requirement. *Id.* ¶¶ 40–42. Another child qualified because the Tootles gave public school a chance for a year with one of their daughters. But after that year, they found that public school undermined the religious upbringing they wanted for their daughter. So, they withdrew her. *Id.* ¶¶ 32–40. Now, while two children have Promise Scholarships, their three older children are denied them because they have not spent two semesters in public schools that the Tootles know from experience would substantially interfere with their religious upbringing. *Id.* ¶¶ 43–48.

The Sandses educate their children through a Catholic homeschool curriculum, including a specialized curriculum Mrs. Sands adopted for a daughter with dyslexia. Ver. Compl. ¶¶ 49–61. All of their school-aged children are subject to the attendance requirement, except for their rising kindergartener whom Defendant exempts. However, their assigned elementary school came off the State’s failing list for 2026–2027, so the assignment requirement blocks their kindergartener

from the Promise Scholarship unless the family uproots to a failing school zone. But moving would violate the family’s religious obligations to avoid needless debt, loss, and family upheaval. On the other hand, moving could unlock up to \$280,000 for all of the Sandses’ children. And given their experience with schools falling off the eligibility list, an expensive move is extremely risky. *Id.* ¶¶ 62–69.

The McCalls educate their son at a Catholic hybrid homeschool after public school left their daughter traumatized and academically behind, and pressured her to hide her faith. *Id.* ¶¶ 70–86. All of their son’s assigned public schools (elementary, middle, and high schools) are on the State’s failing list. *Id.* ¶ 70. But Defendant’s attendance requirement blocks the McCalls’ son from participating in the Promise Scholarship. *Id.* ¶ 90.

Each family thus faces the same choice: abandon their religious obligations to access an enormous public benefit, or adhere to them and forfeit the benefit. *Id.* ¶¶ 45–48, 69, 91.

IV. The August 31 Deadline

The application window for the Spring 2027 semester opened August 1, 2026 and closes August 31, 2026; a second and final window for the 2026-2027 school year runs November 1–30, 2026. Because Defendant denies applicants who do not meet the attendance and assignment requirements, applying without an exemption is futile. *Id.* ¶ 136. Nor is any administrative cure available: Defendant’s regulations provide that “[p]rogram requirements and governing laws are established by statute and shall not be subject to appeal.” GESA Regs. § 19.5. Unless Defendant is restrained before the final window closes, Plaintiffs’ children will lose the entire 2026-2027 program year, and Plaintiffs must make this fall’s educational commitments—enrollment decisions, curriculum purchases, tuition contracts—without their religious liberty rights.

STANDARD OF REVIEW

“[A]n interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication.” *Cotton States Mut. Ins. Co. v. Stephen Brown Ins. Agency, Inc.*, 290 Ga. App. 660, 662 (2008) (citation omitted). “It is a stop-gap measure to prevent irreparable injury or harm.” *India-Am. Cultural Ass’n, Inc. v. iLink Pros., Inc.*, 296 Ga. 668, 670 (2015). Trial courts have “broad discretion” in granting interlocutory injunctions. *SRB Inv. Servs., LLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011).

Plaintiffs are entitled to an interlocutory injunction and a temporary restraining order here because (1) there is a substantial likelihood that they will prevail on the merits of their claims at trial, (2) there is a substantial threat that they will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to Plaintiffs outweighs the threatened harm that the injunction may do to Defendant; and (4) granting the interlocutory injunction will not disserve the public interest. *W. Sky Fin., LLC v. State ex rel. Olens*, 300 Ga. 340, 352 (2016). The Verified Complaint serves as both pleading and evidence in support of this Motion. *BEA Sys., Inc. v. WebMethods, Inc.*, 265 Ga. App. 503, 504 (2004).

ARGUMENT

I. No Threshold Doctrine Bars Relief.

Sovereign immunity poses no bar to this action. Count I seeks prospective relief against Defendant under 42 U.S.C. § 1983, a claim Georgia courts must entertain. *Howlett v. Rose*, 496 U.S. 356, 380-381 (1990). Count II seeks relief under the Georgia Religious Freedom Restoration Act, which act explicitly authorizes “[a] person whose religious exercise has been burdened in violation of this chapter” to “assert the violation as a claim . . . in a judicial proceeding and obtain appropriate relief against government.” O.C.G.A. § 50-15A-1(c). And because Plaintiffs do not

invoke Ga. Const. art. I, § II, ¶ V(b), its exclusive-defendant rule does not apply. *Cf. State v. SASS Grp., LLC*, 315 Ga. 893, 897–903 (2023).

Nor must Plaintiffs first apply for the scholarship and then be denied. Plaintiffs assert their own religious liberty rights, and their own future conduct—whether to enroll their children in public school, uproot their households, or forgo the benefit—turns on the validity of the challenged requirements. Application would be futile because Defendant’s own regulations place the statutory requirements beyond administrative relief. GESA Regs. § 19.5. Where no adequate administrative remedy exists, exhaustion is not required. *Ga. Dep’t of Behavioral Health & Developmental Disabilities v. United Cerebral Palsy of Ga., Inc.*, 298 Ga. 779, 787 (2016).

II. Plaintiffs Are Substantially Likely to Succeed on the Merits.

a. The attendance and assignment requirements violate the Free Exercise Clause as applied to Plaintiffs.

The attendance and assignment requirements burden Plaintiffs’ First Amendment rights. The Free Exercise Clause protects Plaintiffs’ right to “direct the religious upbringing of their children,” including by providing them a religious education. *Mahmoud*, 606 U.S. at 546–47. For Plaintiffs, religious education is not “merely a preferred practice but rather a religious obligation.” *Id.* at 547; Ver. Compl. ¶¶ 17–31. When a law poses “a very real threat of undermining” the religious beliefs and practices that parents wish to instill in their children, or “substantially interfere[s] with the religious development” of their children, that law infringes this right. *Mahmoud*, 606 U.S. at 544–49 (citing *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). Interference is not limited to curricular concerns. Rather, “pressure to conform to the styles, manners, and ways of the peer group” may also interfere with a child’s religious development. *Yoder*, 406 U.S. at 211.

The First Amendment’s protections are toothless if government could simply pay citizens to forfeit them. Since this incentive structure is equivalent to fining a person for obeying their

religion, such incentives “effectively penalize[] the free exercise” of religion and violate the First Amendment. *Carson v. Makin*, 596 U.S. 767, 780 (2022). Unsurprisingly, the Supreme Court has consistently held that government violates the First Amendment when it conditions receipt of public benefits on a citizen’s forfeiture of free exercise rights. For example, states may not, absent a compelling justification, condition receipt of unemployment benefits on an applicant’s willingness to forfeit his sabbath obligations (*Sherbert v. Verner*, 374 U.S. 398 (1963); *Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136 (1987); *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829 (1989)), or to work in the war industry (*Thomas*, 450 U.S. 707). Over the past decade, the Supreme Court has also made clear that this principle applies to public education benefits as well. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020); *Carson*, 596 U.S. 767.

Government therefore may not condition access to public education benefits “on parents’ willingness to accept a burden on their religious exercise.” *Mahmoud*, 606 U.S. at 561. By contrast, programs whose incidental effects “have no tendency to coerce individuals into acting contrary to their religious beliefs” impose no cognizable burden. *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988). But outright coercion is exactly what Defendant’s policies accomplish here.

First, take the attendance requirement. Defendant requires that Plaintiffs send their children to public school for two consecutive semesters to access the Promise Scholarship. But Plaintiffs’ religion forbids them to do this, and instead obliges them to provide a Catholic education for their children. And this is more than a mere academic dispute: the Tootles and the McCalls both know from experience that public school attendance “substantially interferes” with their children’s

religious development. Ver. Compl. ¶¶ 37–39, 71, 80–85. In addition to facing “pressure to conform” to their peer group, their children’s time and attention were diverted from important religious instruction. *Id.* ¶¶ 38, 71, 83. The Sandeses have not sent any children to public school at all. But they know doing so would substantially interfere just the same, because their children have interacted with neighbors who would be classmates, the curriculum would necessarily be secular, and the full-day public school schedule would conflict with religious education and sacraments. *Id.* ¶¶ 55, 58, 61. As a result, Plaintiffs cannot simultaneously practice their religion and satisfy Defendant’s demand of them.

Second, the assignment requirement. This also burdens Plaintiffs’ religious exercise. If a family has already participated in the Promise Scholarship program, Defendant permits them to live anywhere in the state and continue receiving scholarship money. But Defendant requires Plaintiffs to live in only certain sections of the state, and those sections vary based on a child’s age. So Plaintiffs must uproot their families so that their children are assigned to a failing school before they can satisfy Defendant’s requirement.

However, moving requires that the families forfeit their religious obligation to provide a harmonious family life and provide responsibly for their family’s material needs, and assumes the families could even sell the old homes and find new homes in a qualifying district. *Id.* ¶¶ 27–31, 65. Moreover, because Georgia changes the failing school list annually, there is a substantial risk that even if they disrupt their families, Plaintiffs’ children still would not be eligible. The Sandeses know this from personal experience, since they expected their kindergartener to be eligible based on his assigned elementary school, but he will miss his one chance at the Promise Scholarship because the state removed the school from its failing list as he started kindergarten. *Id.* ¶¶ 62–63, 66–67. Further still, the Tootles and Sandeses have children spread across elementary, middle, and

soon high school. But since some schools in a single assignment zone may not be on the failing list, these families could be forced to choose among their children—or to relocate repeatedly—so that all could be eligible. *Id.* ¶¶ 49–50. Defendant is coercing Plaintiffs into acting contrary to their religious beliefs—the very tendency whose absence was dispositive in *Lyng*, *see* 485 U.S. at 450—and burdens their free exercise rights in the process.¹

The attendance and assignment requirements trigger strict scrutiny. “[W]hen a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.” *Mahmoud*, 606 U.S. at 565. The burden Plaintiffs face here is nearly identical to the burden the Amish parents faced in *Yoder*. There, as here, parents have a religious obligation to teach their children the ways and beliefs of their religion. There, as here, parents have determined that public schools are hostile to their beliefs, substantially interfere with those beliefs, and pressure their children to conform to peers’ secular worldviews. There, as here, parents have determined that state coercion that pulls children away from the religious formation of their homes and communities burdens their religious beliefs. And there, as here, parents face financial penalties for obeying their religious obligations. To top it off, Defendant’s scheme here is far more injurious than the one in *Yoder*: Jonas Yoder faced a mere \$5 fine for following his faith, but the parents here sacrifice hundreds of thousands of dollars to do the same. Ver. Compl. ¶¶ 64, 68. Strict scrutiny applies.

The character of the burden controls, not the label on the law. A benefit condition that a family could satisfy without religiously forbidden conduct would present a different case. This

¹ It is true that secular parents may also want to foster harmonious family life and responsibly provide for their family’s material needs. But that does not unburden Plaintiffs’ religious exercise. To come within the Religion Clauses’ protection, “the claims must be rooted in religious belief.” *Yoder*, 406 U.S. at 215. *Yoder* made this rule clear by contrasting the religious Amish and the secular author, Thoreau. Both desired isolation from the secular world, but only the Amish had a constitutionally protected right to do it. *Id.* at 216.

condition cannot be satisfied that way: the only route to eligibility runs through a full school year of state-selected secular instruction and peer conformity pressure—the very interference Yoder and Mahmoud condemn. Compliance itself works the constitutional injury.

Strict scrutiny applies for another reason, too: Defendant’s actions are not neutral and generally applicable. A rule is not neutral and generally applicable, and thus triggers strict scrutiny, when it “treat[s] any comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62; see *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34 (2021) (where a system of exemptions exists, the State “may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason”). Here, Defendant allows military families and rising kindergarteners to access the Promise Scholarship without satisfying the attendance requirement, but he does not allow religious families to do the same. Similarly, Defendant allows families who have already received a Promise Scholarship to live wherever they want in Georgia, but he does not allow religious families to do the same. The attendance and assignment requirements are shot through with exemptions, are not neutral or generally applicable as a result, and must therefore satisfy strict scrutiny. *Id.* ¶¶ 124–27. Indeed, the military exemption exists only in Defendant’s own regulations, GESA Regs. § 4.1.3—proof that Defendant possesses discretion to create categorical exemptions from the attendance requirement, yet refuses one for religious exercise. See *Fulton*, 593 U.S. at 533–37.

The requirements fail strict scrutiny. Whether the requirements trigger strict scrutiny through *Mahmoud* or *Tandon*, Defendant cannot satisfy it. “To survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests.” *Mahmoud*, 606 U.S. at 565–66 (cleaned up).

First, Defendant must demonstrate that the attendance and assignment requirements advance interests of the highest order. They do not, because a law “cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) (cleaned up). Here, Defendant will be hard pressed to say he has any interest whatsoever in forcing families to attend public school and coercing them to live near failing schools. But even if he could, the secular exemptions he already permits each inflict exactly the same “damage” a religious exemption would, particularly since the scholarship program is already highly underutilized and there is no evidence that permitting exemptions for parents like the Plaintiffs here would work financial injury to the fund. There is no compelling interest in denying Plaintiffs the same exemptions Defendant already provides secular families.

Second, even if forced attendance and restricted living options were a compelling governmental interest, Defendant’s actions must be narrowly tailored. But they are not. Arizona, Florida, and North Carolina operate comparable scholarship programs with no attendance or assignment conditions at all, showing that Defendant’s denial of exemptions here is not necessary. *See Holt v. Hobbs*, 574 U.S. 352, 368–69 (2015) (less restrictive practices elsewhere undercut narrow tailoring); Ver. Compl. ¶¶ 138–41.

“[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.” *Fulton*, 593 U.S. at 541. But Defendant does not. This Court should order him to comply with the First Amendment.

b. The requirements violate Georgia’s Religious Freedom Restoration Act.

Georgia’s RFRA independently entitles Plaintiffs to relief. The statute commands that government “shall not substantially burden a person’s exercise of religion even if the burden results

from a rule of general applicability,” unless government “demonstrates that application of the burden to the person is: (1) In furtherance of a compelling governmental interest; and (2) The least restrictive means of furthering such compelling governmental interest.” O.C.G.A. § 50-15A-1(a)-(b). “Exercise of religion” embraces “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” including practices protected by the Free Exercise Clause. O.C.G.A. § 50-15A-2(2).

Each element is satisfied. As explained above, conditioning public education benefits on the abandonment of religious obligations is the paradigm of a substantial burden. *See supra Part II.a.* Plaintiffs easily meet their burden under the Georgia RFRA.

The burden is now Defendant’s, but he cannot meet it. Defendant must “meet[] the burden of going forward with the evidence and of persuasion” to show that the attendance and assignment requirements serve a compelling governmental interest with the least restrictive means. O.C.G.A. § 50-15A-2(1). There is no compelling governmental interest in coercing Plaintiffs to send their children to public schools, when Defendant does not coerce military families and kindergarteners to attend public schools. And there is no compelling interest in coercing families to move to, or remain in, a home zoned for a failing school, when Defendant already exempts prior-participating families from this requirement. ¶¶ 126–27.

Further, Defendant cannot meet this burden by pointing to generalized state interests. RFRA requires a finer analysis, because it states that Defendant must demonstrate its interest “to the person.” This means that Defendant cannot simply say, “If I make an exception for you, I’ll have to make one for everybody, so no exceptions.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 436 (2006) (interpreting the Federal RFRA, which is substantially identical to Georgia’s version). Defendant must answer, what is his interest in coercing *these*

parents to move to a home zoned for a failing school, and enroll *their* children in that failing school? Any attempt to answer that question will be an exercise in futility.

Defendant must therefore explain why he has an interest in Mary Tootle sending three of her five children to public school next year, and Yanellis Sands stopping homeschooling her five children (including a dyslexic daughter), and Joyce McCall sending her son to an environment she has already seen traumatize her daughter. Ver. Compl. ¶¶ 43, 49, 56, 80–85. And even if he did, Defendant would *still* have to show that coercing them as he does is the least restrictive means of achieving that interest, when he doesn’t force military families and rising kindergarteners to do the same. And he will also have to show why he has an interest in the Tootles, Sandses, and McCalls living only in government-selected regions of the state (and potentially even separate households), when he doesn’t restrict prior-participating parents in the same way. And he also must show why he is unable to serve these interests, when his peers in Arizona, Florida, and North Carolina can do so without problem. *Id.* ¶¶ 139–41.²

The burdens of evidence and persuasion here are insurmountable. Plaintiffs are likely to prevail on their RFRA claim.

² For the present motion, Plaintiffs seek an injunction halting the irreparable harm of being coerced to forfeit their religious obligations by being denied exemptions to the assignment and attendance requirements. While this is related to their request for damages, it is legally distinct from it. *See, e.g., Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1189 (D. Colo. 2023) (finding irreparable harm where defendant enforced an eligibility requirement for an education benefit which conflicted with plaintiff’s religious exercise), *Air Force Officer v. Austin*, 588 F. Supp. 3d 1338, 1356 (M.D. Ga. 2022) (finding that a RFRA plaintiff “suffered an irreparable injury” due to “monumental . . . pressure to violate [her] religious beliefs,” adding that “focusing exclusively on financial harm misses the mark.”). Nonetheless, Defendant cannot claim a “to the person” compelling interest in denying exemptions here due to a generalized impact on the Promise Scholarship budget, given that the Promise Scholarship went undersubscribed in its first year and costs the State less, per student, than the State’s per-pupil contribution to public schools. Ver. Compl. ¶¶ 9, 103–104, 131–34.

III. Plaintiffs are Suffering, and Will Continue to Suffer, Irreparable Injury Absent Relief.

The irreparable harm factor “is the most important one.” *SRB Inv. Servs.*, 289 Ga. at 8. And here, Plaintiffs’ irreparable injury is so clear that this factor is controlling.

Plaintiffs are harmed every moment that they are put to the choice of forfeiting their religious exercise or forfeiting valuable public benefits. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373; *accord Great Am. Dream, Inc. v. DeKalb Cnty.*, 290 Ga. 749, 752 (2012) (adopting *Elrod* under Georgia’s Constitution; monetary damages are inadequate for such injuries); *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (irreparable injury where free exercise rights burdened). As the Eleventh Circuit has held, “First Amendment claimants . . . do not need to make a specific showing of irreparable harm because an ongoing deprivation of First Amendment rights ‘constitutes a per se irreparable injury.’” *Associated Builders & Contractors Fla. First Coast Chapter v. Gen. Servs. Admin.*, 174 F.4th 26, 34 (11th Cir. 2026) (quoting *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020)).

The same applies to Plaintiffs’ rights under RFRA, given that Georgia’s RFRA is modeled on the Federal RFRA and links to federal First Amendment jurisprudence. *See* O.C.G.A. § 50-15A-2(2).

The application calendar makes the injury immediate as well. The current window closes August 31, 2026, and the final window for the 2026-2027 school year closes November 30, 2026. Ver. Compl. ¶ 136. If those windows close with the requirements still enforced against Plaintiffs, Plaintiffs’ children lose the entire 2026-2027 program year, and Plaintiffs must make this fall’s educational commitments without their religious liberty rights. A school year of a child’s education, once lost, cannot be re-run.

IV. The Threatened Injury Far Outweighs Any Harm to Defendant.

Plaintiffs' injuries are substantial. But Defendant has no harm to counterbalance them, because an order forcing Defendant to comply with the First Amendment and RFRA cannot injure him. *See, e.g., KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (government "has no legitimate interest in enforcing an unconstitutional ordinance"). Moreover, an injunction adds little, if anything, to Defendant's administrative burden, since he already processes applications from categories of children exempt from each challenged requirement. Accepting and adjudicating Plaintiffs' applications on the remaining criteria requires nothing the agency does not already do. Ver. Compl. ¶¶ 124–27. The threatened harm to Plaintiffs is constitutional, immediate, and irreversible; the harm to Defendant is, at most, ministerial.

V. An Injunction Serves the Public Interest.

"[T]he public interest is served when constitutional rights are protected." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019). The public therefore has no interest in enforcing an unconstitutional law. *KH Outdoor*, 458 F.3d at 1272. And given that Georgia recently enacted its RFRA, the public interest is served by ensuring that law is not ignored.

VI. Plaintiffs Have Complied with the Notice Requirements, and No Bond Should Be Required.

Plaintiffs have complied with O.C.G.A. § 9-11-65(b). The Verified Complaint is being served on Defendant contemporaneously with this Motion, and counsel is providing copies of both to Defendant and the Office of the Attorney General by e-mail on the date of filing. A written certification of counsel detailing these notice efforts accompanies this Motion.

Plaintiffs do not seek relief without notice. Instead, they seek a hearing at the earliest possible time and a temporary restraining order only to the extent necessary to bridge any gap between filing and hearing, so that relief remains practicable before the current application window closes

on August 31, 2026, and in all events before the final 2026-2027 window closes on November 30, 2026.

Further, no bond should be required. Georgia's bond provision is discretionary: "the court may require the giving of security by the applicant." O.C.G.A. § 9-11-65(c). Because the relief sought is eligibility-processing subject to all other statutory criteria and to the program's funding and priority rules, the risk of monetary loss is minimal, and Plaintiffs respectfully request that the Court require no security, or only nominal security (such as \$10).

CONCLUSION

Plaintiffs respectfully request that the Court: (1) enter a temporary restraining order restraining Defendant from enforcing O.C.G.A. § 20-2B-22(a)(2) and (a)(3) against Plaintiffs' children's Promise Scholarship applications, and directing that Defendant process Plaintiffs' applications even if they are submitted after the applicable application deadline, provided they are submitted within a reasonable time of the Court's order; (2) issue a rule nisi and set Plaintiffs' request for an interlocutory injunction for hearing at the earliest possible time, and in any event early enough that relief remains practicable before the final 2026-2027 application window closes on November 30, 2026; and (3) upon hearing, enter an interlocutory injunction to the same effect pending final judgment.

Certification of AI Use in Accordance with
Judge Dear Jackson's March 18, 2026 Standing Order

This document was generated with the assistance of Claude, Westlaw AI, and Codex (ChatGPT). I hereby certify under penalty of perjury that, despite reliance on an AI tool, I have independently reviewed this document to confirm accuracy, legitimacy, and use of good and applicable law. I hereby certify under penalty of perjury that every citation to law, case, statute, or the record in this document has been verified as accurate and that it exists as cited and for the proposition cited.

Respectfully submitted, this 24th day of August, 2026.

/s/ Nathan Loyd

Nathan Loyd Ga. Bar No. 249027
THOMAS MORE SOCIETY
121 W. Wacker Dr. Suite 650
Chicago, IL 60601
(312) 896-0151
nloyd@thomasmoresociety.org

Counsel for Plaintiffs

CERTIFICATION PURSUANT TO O.C.G.A. § 9-11-65(b)
AND CERTIFICATE OF SERVICE

The undersigned counsel certifies, pursuant to O.C.G.A. § 9-11-65(b), the following efforts to give notice of this Motion to Defendant and the reasons a temporary restraining order should issue:

(1) the Summons and Verified Complaint are being sent for personal service on Defendant on August 25, 2026, and have been emailed to Stephen DeBaun, General Counsel of the GSFC, whom the GSFC has designated to accept service of process pursuant to O.C.G.A. § 50-21-35;

(2) on the date of filing, counsel e-mailed complete copies of the Verified Complaint and this Motion, and the proposed order to Stephen DeBaun at the GSFC at sdebraun@gsfc.org;

(3) on the date of filing, counsel attempted to contact the Office of the Attorney General at 404-458-8600, but the call was not answered; instead, copies of the Verified Complaint, this Motion, and the proposed order will be sent for hand delivery on August 25, 2026; and

(4) because the current Promise Scholarship application window closes on August 31, 2026, and the final application window for the 2026-2027 school year closes on November 30, 2026, immediate and irreparable injury will result to Plaintiffs if enforcement of the challenged requirements is not restrained promptly. Plaintiffs request the earliest hearing the Court can convene, with Defendant present.

Respectfully submitted, this 24th day of August, 2026.

/s/ Nathan Loyd

Nathan Loyd Ga. Bar No. 249027

THOMAS MORE SOCIETY

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Chicago, IL 60601

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nloyd@thomasmoresociety.org

Counsel for Plaintiffs