AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

JAMES AKIYAMA and LEILANI AKIYAMA, individual minor children, by and through Mariko Akiyama; JAY DRANGEID, an individual; and U.S. JUDO TRAINING CENTER, a Washington non-profit corporation, *Claimants,*

- and -

UNITED STATES JUDO, INC., and
UNITED STATES OLYMPIC COMMITTEE, *Respondents*

Case Number 30 - 190 - 994 - 99

AWARD

This case was initiated by demand of claimants under 36 U.S.C. § 220529. Claimants seek review of the determination by respondent United States Olympic Committee ("U.S.O.C.") that (1) the rules of respondent United States Judo, Inc. ("U.S.J.I.") requiring contestants to bow at various times and places in judo matches do not offend 36 U.S.C. § 220522(a)(8) and therefore (2) U.S.J.I. is eligible to be recognized, or to continue to be recognized, as a national governing body under 36 U.S.C. § 220521.

Claimants claim that the mandatory bowing requirements set forth in U.S.J.I's rules do contravene the requirements of 36 U.S.C. § 220522(a)(8), and seek an Award reversing the determination of U.S.O.C. and revoking the recognition of U.S.J.I. as the national governing body for judo by U.S.O.C. if U.S.J.I. does not demonstrate, within 90 days after entry of the Award, that it has changed its rules so as to bring it into compliance with the requirements of 36 U.S.C. § 220522(a)(8).

Respondents U.S.J.I. and U.S.O.C. deny claimants' claims and seek an Award (1) affirming U.S.O.C.'s determination that the mandatory bowing requirements set forth in U.S.J.I's rules do not contravene the requirements of 36

U.S.C. § 220522(a)(8) and (2) dismissing claimants' claims with prejudice.[1]

A hearing was held before an Arbitration Tribunal consisting of Thomas J. Brewer, Philip E. Cutler and Gary R. Duvall on June 21, 22, and 23, 2000 in Seattle, Washington. The Record of Hearing dated June 29, 2000 memorializes the proceedings held at the hearing. Following the hearing, the parties submitted proposed findings of fact and conclusions of law and their proposed forms of award.

NOW, THEREFORE, we, the undersigned arbitrators,[2] having been designated in accordance with the provisions of 36 U.S.C. § 220529 and the rules and procedures of the American Arbitration Association, and being members of the Arbitration Tribunal in this case; and having been duly sworn; and having duly heard the proofs, arguments and allegations of claimants and respondents, do now make and enter this Award, which is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Claimant U.S. Judo Training Center ("Training Center") is a Washington non-profit corporation which trains amateur athletes in the sport of judo. Training Center has approximately 20 members. Training Center does not teach, nor does it require, its members to perform the mandatory bows complained of in this arbitration.

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[1] The parties to this arbitration are also involved in an action pending before the Hon. Robert S. Lasnik, United States District Court, Western District of Washington, in Cause No. C97-0286L ("the federal court action"). Plaintiffs in the federal court action allege a variety of claims that are not at issue here. This Award adjudicates claimants' claims arising under the Ted Stevens Olympic and Amateur Sports Act ("Amateur Sports Act"), 36 U.S.C. § 220501 *et seq.*, which are the only claims arbitrable before us under 36 U.S.C. § 220529. Nothing in this award is intended to address or adjudicate any of plaintiffs' other claims in the federal court action.

[2] Arbitrator Gary R. Duvall dissents from this Award. Accordingly, as permitted by 36 U.S.C. § 220529 and rule R-42, AAA Commercial Arbitration Rules, this Award is subscribed by Arbitrators Thomas J. Brewer and Philip E. Cutler, constituting a majority of the Arbitration Tribunal.

2. Claimants James Akiyama and Leilani Akiyama are amateur athletes in the sport of judo and members of Training Center. Both James and Leilani Akiyama are minors and represented in this proceeding by and through their mother, claimant Mariko Akiyama.

3. Claimant Jay Drangeid is also an amateur athlete in the sport of judo and a former member of Training Center.

4. Respondent U.S.O.C. is a federally chartered private corporation formed pursuant to an Act of Congress in 1951. Pursuant to the Amateur Sports Act, 36 U.S.C. § 220521, U.S.O.C. has been authorized since 1978 to recognize a national governing body ("NGB") for individual Olympic and Pan-American sports.

5. Judo is a sport recognized on the program of the Olympic Games.

6. Among the U.S.O.C.'s purposes are (a) "to coordinate and develop amateur athletic ability in the United States, directly related to international amateur athletic competition" and (b) "to obtain for the United States, directly or by delegation to the appropriate national governing body, the most competent representation possible in each event of the Olympic Games, the Paralympic Games, and Pan-American Games." 36 U.S.C. § 22503(2) and (4).

7. Respondent U.S.J.I. is a private non-profit Texas corporation having as its purpose the advancement of amateur judo competition. Since 1980, U.S.J.I. has been recognized by respondent U.S.O.C. as the NGB for amateur judo in the United States. U.S.J.I. has approximately 20,000 registered members.

8. The International Judo Federation ("IJF") governs the sport of judo with respect to Olympic and international competition. Respondent U.S.J.I. is a member in good standing of the IJF.

9. As the NGB for judo, U.S.J.I. has the authority and responsibility to comprehensively govern all aspects of amateur athletic competition in the sport of judo.[3]

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[3] It has the ***authority*** to, among other things, represent the United States in the IJF, the international federation for the sport of judo; establish and encourage the

10. In order to be eligible to be recognized, or to continue to be recognized, as the NGB for judo, U.S.J.I. is required, among other things, to:

A) Demonstrate that it is autonomous in the governance of the sport of judo. 36 U.S.C. § 220522(a)(5). Claimants do not challenge U.S.J.I.'s satisfaction of this requirement.

B) Demonstrate that it is a member of no more than one international sports federation that governs the sport of judo. 36 U.S.C. § 220522(a)(6). Claimants do not challenge U.S.J.I.'s satisfaction of this requirement.

C) Demonstrate that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in (a) the sport of judo or (b) any amateur sports organization that conducts programs in the sport of judo. 36 U.S.C. § 220522(a)(7). Claimants do not challenge U.S.J.I.'s satisfaction of

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attainment of national goals; serve as the coordinating body for amateur athletic activity in the sport of judo in the United States; exercise jurisdiction over and sanction international amateur athletic competition in the sport of judo in the United States and sanction the sponsorship of such competition held outside the United States; conduct amateur athletic competition, including national championships and international amateur athletic competition, in the sport of judo in the United States, and establish procedures for determining eligibility standards for participation in competition; recommend to the U.S.O.C. individuals and teams to represent the United States in the Olympic Games, the Paralympic Games, and the Pan-American Games; and designate individuals and teams to represent the United States in international amateur athletic competition (other than the Olympics, Paralympics and Pan-American Games) and certify the amateur eligibility of those individuals and teams. 36 U.S.C. § 220523(a).

It has the ***responsibility*** to, among other things: develop interest and participation in the sport of judo throughout the United States; coordinate with other amateur sports organizations to minimize conflicts in the scheduling of judo practices and competition; and keep participants in the sport of judo fully informed of applicable rules of competition by disseminating and distributing to amateur athletes, coaches, trainers, managers, administrators and officials the applicable rules of U.S.J.I., the IJF, the U.S.O.C., and other international sports organizations and committees. 36 U.S.C. § 220524.

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this requirement.

D) "[Provide] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate." 36 U.S.C. § 220522(a)(8). Claimants ***do*** challenge U.S.J.I.'s satisfaction of this requirement.

E) Demonstrate that it "does not have eligibility criteria related to amateur status or to participation in the Olympic Games, Paralympic Games, or the Pan-American Games that are more restrictive than those of [the IJF, the international sports federation governing the sport of judo]. 36 U.S.C. § 220522(a)(14). Claimants do not challenge U.S.J.I.'s satisfaction of this requirement.

11. U.S.J.I. does not have eligibility criteria relating to amateur status which are more restrictive than those rules of the IJF, the international judo federation of which it is a member. The same eligibility criteria apply to claimants as apply to any other prospective contestants in U.S.J.I.-sanctioned judo competition.

12. The IJF has adopted rules governing amateur judo competition. These Contest Rules comprehensively address the manner in which contestants in amateur judo competition must comport themselves. The IJF Contest Rules govern with respect to certain international competition, including the World Championships, the Junior World Championships, and the Olympic Games. Athletes from 182 nations compete in international judo competitions.

13. In 1998 the IJF amended its Contest Rules[4] to, among other things, require

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[4] Prior to 1998, IJF Contest Rules contained a similar bowing protocol. These rules were also adopted by U.S.J.I., While certain of the bows were not expressly mandated, the bowing protocol was interpreted as mandatory by most tournament officials in the United States, with the same consequences for non-compliance as stated in the text of Finding of Fact No. 18.

that contestants stop and bow in a prescribed manner (a) prior to entering the competition area, (b) immediately before entering onto the *tatami* mat, and (c) at their "mark" on the *tatami* mat immediately prior to the referee's start of the match. At the conclusion of the match, contestants are required to perform the same bows in reverse.

14. U.S.J.I. has adopted the IJF Contest Rules with respect to U.S.J.I.-sanctioned amateur competitions in the sport of judo in the United States. U.S.J.I. believes that its adoption of the IJF Contest Rules enhances U.S.J.I.'s ability to field teams and individuals to compete successfully in the Olympic Games and that such rules effectuate the purposes set forth below in Finding of Fact No. 28.

15. The current IJF Contest Rules, including those rules related to bowing, were adopted by the IJF, on recommendation of the IJF Referee Commission, after comprehensive study and analysis by representatives of its five continental "unions" (Africa, Asia, Europe, Oceana, and Pan-America). The members of the IJF Referee Commission that made this recommendation reflect a wide diversity of nationalities, ethnic backgrounds and religious beliefs.

16. Other judo organizations, such as United States Judo Federation and United States Judo Association, are members of U.S.J.I. U.S.J.I. encourages its own members to adopt and follow U.S.J.I. rules but they are not required to do so.

17. Sponsors of national and international judo tournaments held in the United States commonly seek the sanction, or approval, of U.S.J.I. and such sanction or approval is important to the sport and the athletes who participate in it. As a condition of granting its sanction or approval, U.S.J.I. requires that the IJF Contest Rules, including the mandatory bowing requirement, apply to the tournament competition. The IJF Contest Rules, including the mandatory bowing requirement, are uniformly recognized and enforced in judo competition on international, national and local levels.

18. Contestants who fail or refuse to perform the bows required by the IJF Contest Rules in judo matches governed by those rules typically are admonished and given another opportunity to do so by the referee. If the

contestant still refuses to bow, the referee, after consultation with other officials, disqualifies the contestant and the contestant is not permitted to continue the match. Moreover, if the winner of a match does not perform the bows in reverse at the conclusion of the match, the "win" is taken from him or her and the contestant is disqualified.

19. Claimant Mariko Akiyama, mother of claimant Leilani Akiyama, believes that bowing reflects a Shinto religious practice and also an historically oppressive practice of the Japanese military and/or royalty. She strongly objects to her children being required to bow in the manner and at the places specified in the IJF Contest Rules. Mariko Akiyama's beliefs are strongly and sincerely held.

20. John Holm, Mariko Akiyama's husband, is the director and head coach of claimant Training Center. His beliefs parallel those of Mariko Akiyama. In addition, Mr. Holm believes that the bowing protocol specified in the IJF Contest Rules has no place in the sport of judo, which he analogizes to wrestling. Mr. Holm's beliefs are also strongly and sincerely held.

21. Claimant Leilani Akiyama is thirteen years old. She refuses to perform the required bows prior to entering the competition area and immediately before entering onto the *tatami* mat. Leilani Akiyama also refuses to bow at her "mark" if her designated opponent has not appeared; she does not object to bowing at her "mark" as long as an opponent is present. Although Leilani Akiyama states that her refusal to bow is based on her religious beliefs, she does not attend any religious services nor does she consider herself a member of any particular religion or adherent of any particular religious faith, and she is unable to articulate any religious belief held by her which bowing offends; rather, her refusal to bow is based on her parents' objections to bowing, as summarized above. Leilani Akiyama's objections to bowing are strongly and sincerely held. Leilani Akiyama has been disqualified from judo competitions in the United States[5] because of her refusal to perform these required bows.

22. Claimant Jay Drangeid also refuses to perform the required bows prior to

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[5] All of the disqualifications referenced in Findings of Fact No. 21, 22 and 23 occurred prior to entry of the injunction in claimants' federal court action.

entering the competition area, immediately before entering onto the *tatami* mat, and at his "mark" if his designated opponent has not appeared. Mr. Drangeid considers himself a Lutheran. However, his refusal to bow is based on his personal Christian religious belief that bowing to a "thing" or a "place" is prohibited by the Bible. His belief is sincerely held and is religious in nature. He does not object to bowing at his "mark" as long as an opponent is present and believes that bowing to his opponent at the "mark" serves a useful purpose in putting both contestants on notice that the match is about to begin. Mr. Drangeid has also been disqualified from judo competitions in the United States because of his refusal to perform these required bows.

23. Amilcar Navarro is a Muslim and is also a member of Training Center. He believes that the Qur'an (Koran) prohibits bowing to any thing or to anyone other than Allah (God). Accordingly, he objects to all bowing, including bowing to an opponent. In total, Training Center has approximately ten Muslim members who have similar objections to bowing. Muslim members of Training Center have also been disqualified from judo competitions in the United States because of their refusal to perform any of the required bows. Mr. Navarro's belief is sincerely held and is religious in nature.

24. All of the persons who have been disqualified from competition as a result of their refusal to comply with the bowing protocol specified in the IJF Contest Rules were otherwise eligible to compete in the match or tournament from which they were disqualified.

25. Judo is ritualistic and highly structured. Judo's rituals and structure reflect its Japanese origin, and judo is permeated with Japanese tradition. For example, the judo practice hall, the place where dignitaries and other officials sit, the competition mat, the uniform contestants wear, and the various techniques and "holds" in judo are all referred to by their Japanese names. Moreover, the various commands given to begin the judo match, during the match, and at its conclusion are all given in Japanese.

26. The practice of contestants performing ceremonial bows at times and places similar to those specified in the IJF Contest Rules historically has been a part of the discipline and sport of judo. These ceremonial bows, as they are practiced in the modern sport of judo, are not understood or intended by

U.S.J.I. to be religious in nature. Instead, U.S.J.I. regards such bows as a useful feature of judo competitions for reasons discussed in more detail below, and as a secular, traditional sign of respect for the sport and the officials who administer it, the match that is about to begin, and one's opponent.

27. The IJF Contest Rules, including the mandatory bowing protocol, are consistently observed world-wide and must be familiar to U.S. judo athletes who aspire to or participate in international competition, including the Olympics.

28. U.S.J.I. did not make its decision to adopt the IJF Contest Rules, which include the mandatory bowing protocol described above, because it intended to discriminate against anyone based on religion, national origin, race, or any of the other factors referenced in 36 U.S.C. § 220522(a)(8). U.S.J.I. made that decision because it reasonably believed and intended that adoption of those rules would promote the following useful, legitimate and non-discriminatory purposes:

A) Promoting the fair and safe start of matches, particularly where participants and officials may not all speak the same language;

B) Reflecting, highlighting and preserving the etiquette and traditions of judo;

C) Promoting the dignity and unique identity of the sport, which U.S.J.I. regards as distinct from "wrestling;"

D) Promoting the effective presentation of the sport to spectators attending matches in person as well as those viewing matches on television or by similar visual presentation;

E) Enhancing the ability of U.S. amateur athletes to compete effectively and competitively in Olympic and other international competitions;

F) Enhancing the ability of U.S.O.C. and U.S.J.I. to perform their statutory duty under 36 U.S.C. § 22503 (4) to secure for the United States the most competent amateur representation possible for

Olympic and other international competitions; and

G) Assuring uniform and consistent administration of one set of rules that are applied in the same way to all contestants at U.S.J.I.-sanctioned tournaments.

These are the true and actual reasons for U.S.J.I.'s decision to adopt the IJF Contest Rules, are sincerely and reasonably held by U.S.J.I., and constitute legitimate, non-discriminatory reasons for U.S.J.I.'s decision and for the rules themselves.

29. U.S.J.I. reasonably believes that, if it were compelled to adopt different contest rules permitting individual contestants or teams to choose to bow, or not bow, or to choose which bows to perform and which bows to ignore, its ability to promote all of the above purposes would be adversely impacted.

30. It is possible to imagine a set of contest rules that might achieve some of U.S.J.I.'s purposes, as summarized above, but that would contain a "less restrictive alternative" that claimants might find less objectionable than the current bowing protocol. For example, an alternative set of contest rules might substitute another form of "pause" by contestants, such as standing at attention, in place of the bows now required under the current IJF Contest Rules. U.S.J.I. reasonably believes that adoption of such alternative rules is not in the best interests of its membership, is not in the best interests of the sport of judo, and would not promote purposes B, C, D, E and F, above, as well as those purposes are promoted by U.S.J.I.'s adoption of the current IJF Contest Rules.

31. No evidence was presented at the arbitration hearing establishing that the IJF Contest Rules or the mandatory bowing requirements specified in them were intended by either the IJF or U.S.J.I. to discriminate, or adopted by either the IJF or U.S.J.I. with the intention of discriminating, against athletes of any "race, color, religion, sex, age, or national origin."

32. Claimants do not claim, and no evidence presented at the arbitration hearing established, that the mandatory bowing requirements set forth in the current IJF Contest Rules are, or have been, selectively enforced or enforced in a discriminatory manner against anyone based on "race, color, religion, sex,

age, or national origin."

33. Athletes of diverse races, religions, and national origins compete in international judo competition, including the Olympics, without objection to the IJF Contest Rules, including the mandatory bowing requirements. The evidence presented at the arbitration hearing did not establish that any amateur athlete, other than the individual claimants in this case and members of claimant Training Center, has ever objected to the mandatory bowing rules or has ever refused to bow.

34. Until claimants raised the issue, neither U.S.O.C. nor U.S.J.I. had ever heard of anyone objecting to the bowing protocol on religious grounds. Countless Moslems and Christians have participated in judo competitions in the United States and around the world and observed the bowing protocol for decades. After claimants challenged the bowing protocol, several of IJF's Muslim officials assured IJF that the required bows do not contravene Islamic religious beliefs.

35. Claimants offered no persuasive statistical or other evidence that the bowing requirements contained in the current IJF Contest Rules have, or have had, a "disparate impact" on Christians, Lutherans, Moslems, or any other religious group or on persons of other races or national origin. Members of all such groups, except claimants and certain other members of Training Center, participate regularly in U.S.J.I.-sanctioned events without objection to the bowing protocol mandated by the IJF Contest Rules. No evidence was introduced at the arbitration hearing establishing that the religious, racial or national origin composition of the pool of contestants who participate in U.S.J.I.-sanctioned events differs in any statistically significant way from the U.S. population at large or from the national population of amateur judo athletes.

36. The evidence presented at the arbitration hearing did not establish that the reasons (see Finding of Fact No. 28 above) given by U.S.J.I. for its adoption of the current IJF Contest Rules and the mandatory bowing requirements set forth in those rules are, or were, a pretext for discrimination, illegitimate or unworthy of credence.

37. In view of U.S.O.C.'s and U.S.J.I.'s statutory duties under 36 U.S.C. §§

22503 (2) and (4) and 22523(a) to encourage and prepare amateur judo athletes in the United States to participate and compete successfully in international judo competitions such as the Olympic Games, it is reasonable for U.S.J.I. to adopt the same rules used in those competitions, the IJF Contest Rules, as the rules to be applied in U.S.J.I.-sanctioned events held in the United States. It is reasonable for U.S.J.I. to believe that athletes learning the sport in domestic competitions sanctioned by U.S.J.I. will be best prepared for competition at the international level if the domestic contests use the same rules that are applied at the international level. Adoption of the IJF Contest Rules was an appropriate decision by U.S.J.I. and necessary for it to accomplish and promote the organizational objectives mandated for it as an NGB by the Amateur Sports Act.

38. U.S.J.I.'s decision to adopt the IJF Contest Rules does not deny claimants and other amateur athletes, coaches, trainers, managers, administrators, and officials an equal opportunity to participate in amateur judo competitions without discrimination on the basis of race, color, religion, sex, age, or national origin.

From the foregoing Findings of Fact, we make the following

CONCLUSIONS OF LAW

1. The Arbitration Tribunal has jurisdiction over the parties to and the subject matter of this arbitration.

2. Claimants' claims are arbitrable.

3. As NGB for judo, U.S.J.I. is required by the Amateur Sports Act to "[provide] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate." 36 U.S.C. § 220522(a)(8).

4. We do not reach or decide the issue, raised by certain of the parties, whether U.S.J.I. is a governmental actor for "state action" purposes under the case

law interpreting and applying various provisions of the United States Constitution. *See, e.g., San Francisco Arts and Athletics, Inc. v. U.S. Olympic Committee*, 483 U.S. 522 (1987). U.S.J.I. is obligated to comply with the antidiscrimination and other provisions of the Amateur Sports Act, whether or not it is a governmental actor.

5. Our task in this case is to decide whether the above facts establish a violation by U.S.J.I. of Section 220522(a)(8) of the Amateur Sports Act. The parties have cited no cases to us interpreting 36 U.S.C. § 220522(a)(8), and have represented to us that no such case law exists. Thus, there are apparently no cases interpreting Section 220522(a)(8) or establishing the appropriate analytical framework for determining whether or not a rule adopted by an NGB violates the provisions of Section 220522(a)(8). We can, however, draw some conclusions from the text of Section 220522(a)(8). In that regard, we note the following:

   A) Unlike some other federal antidiscrimination statutes[6], Section 220522(a)(8) of the Amateur Sports Act contains no express language requiring NGBs to accommodate the religious beliefs of amateur athletes.

   B) The Amateur Sports Act does seem to impose an express duty on NGBs to accommodate the needs of athletes with disabilities in Section 220524(7) but contains no comparable language in Section 220522(a)(8).

   C) At least one recent federal antidiscrimination statute[7], enacted in 1993, contained express language requiring that actions challenged on grounds of discrimination against religion must be invalidated unless supported by a compelling governmental interest and no less restrictive alternative exists. No such language is contained in 36 U.S.C. § 220522(a)(8).

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[6] *E.g.*, 42 U.S.C. § 2000e(j). *See Boyle v. Jerome Country Club*, 883 F.Supp. 1422, 1431-32 (D.Id. 1995).

[7] The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, held unconstitutional in *City of Boerne v. Flores*, 521 U.S. 507 (1997).

D) Following the U.S. Supreme Court's decision in *Ward's Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), Congress amended Title VII in 1991 to add subsections (k)(1)(A), (B) and (C) to Section 703 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e2. These provisions created, legislatively, a "disparate impact" cause of action in employment discrimination cases brought under Title VII and require defendants to demonstrate that employment practices challenged in such cases are "job related . . . and consistent with business necessity." No such language is contained in 36 U.S.C. § 220522(a)(8).

E) Congress extensively amended the Amateur Sports Act in 1998. At that time Congress could have (i) imposed an express duty on NGBs to accommodate the religious beliefs or other sensibilities of amateur athletes, (ii) provided that 36 U.S.C. § 220522(a)(8) would be violated unless an NGB could demonstrate that a challenged practice was supported by a compelling institutional interest and no less restrictive alternative exists, or (iii) provided that 36 U.S.C. § 220522(a)(8) would be violated by proof that an NGB's practice has a discriminatory disparate impact and is not justified by business necessity. Congress knows how to say these things when it wishes to do so, and has done so several times in other statutes in the 1990s. It did not do so when it revised the Amateur Sports Act in 1998.

6. Respondents argued vigorously that: (i) Section 220522(a)(8) only forbids discrimination in "eligibility" rules; (ii) the IJF Contest Rules govern behavior of athletes in a judo contest but do not address, nor do they purport to address, an athlete's eligibility to compete in such contests; and (iii) eligibility is exclusively a function of membership in the appropriate NGB organization, which U.S.J.I. does not restrict on any forbidden basis. It is possible that this argument might have merit. Based on the briefing and evidence presented in this proceeding, however, and particularly the absence of any recognized form of authoritative legislative history indicating that this was the purpose of Section 220522(a)(8), we decline to affirm the U.S.O.C.'s determination on this ground.

7. At the arbitration hearing claimants took the position that the statute offering

the best analogy as to how Section 220522(a)(8) should be construed is Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, which forbids discrimination on various grounds, including religion, in the provision of public accommodations. Claimants suggested *Boyle v. Jerome Country Club*, 883 F. Supp. 1422 (D. Id. 1995), as a particularly instructive case offering useful guidance as to how Title II – and, by analogy, Section 220522(a)(8) – should be applied in a case involving alleged religious discrimination in the administration of a sporting event. The *Boyle* court concluded that the test set forth by the U.S. Supreme Court in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), was the appropriate test to use in analyzing how Title II should be applied to resolve such a dispute. We agree with this conclusion, for the reasons discussed below.

8. Respondents took the position at the hearing that analogies to the other federal anti-discrimination statutes do not provide useful guidance in analyzing the requirements of Section 220522(a)(8). Rather, respondents suggested that the U.S. Supreme Court's decisions in *Employment Division v. Smith*, 494 U.S. 872 (1990), and *City of Boerne, supra,* note 6, should govern. In general, those cases hold, as a matter of First Amendment law, that neutral rules of general application must be obeyed by religious objectors. Claimants objected to construing Section 220522(a)(8) based on constitutional authorities construing the duties of governmental actors under the First Amendment and argued that the case law construing federal anti-discrimination statutes offered a more useful analogy. Claimants also contended that the U.S. Supreme Court's decision in *W.Va. Board of Education v. Barnette*, 310 U.S. 624 (1943), creates an important exception to the rule of *Employment Division v. Smith* in cases where the conduct in question is a mandated gesture, such as the pledge of allegiance or, in this case, a bow. We do not regard the constitutional decisions concerning the power of government to proscribe certain conduct as criminal, or limiting the power of government to mandate recitation of the pledge of allegiance by public school students, as controlling on the issue submitted in this arbitration.

9. Claimants here have challenged U.S.J.I.'s adoption of the IJF Contest Rules as a violation of Section 220522(a)(8) of the Amateur Sports Act. We conclude that the *Burdine* standard is the most appropriate measure of

U.S.J.I.'s duties under this statutory provision. We reach this conclusion for several reasons. First, as discussed in *Boyle*, federal courts construing Title II, the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 *et seq.*), and 42 U.S.C. § 1981 have all concluded that the *Burdine* analysis best applies the requirements of those statutes. Except for "disparate impact" cases, this is also the standard used by the federal courts in construing Title VII of the Civil Rights Act. Second, we regard the operative language in the text of Title II as closely analogous to the language of Section 220522(a)(8). All of the Title II cases cited to us that have been decided since *Burdine* have applied the *Burdine* test to construe that statute. *Boyle, supra*; *Hornick v. Noyes*, 708 F.2d 321 (7th Cir. 1983); *Robinson v. Power Pizza, Inc.*, 993 F. Supp. 1462 (M.D. Fla. 1998).[8] Third, as discussed above in Conclusion of Law No. 5, we see nothing in the text of Section 220522(a)(8), or in the Amateur Sports Act generally, indicating that Congress intended that provision to be construed as requiring affirmative accommodation of religious objectors or invalidation of NGB decisions unless supported by compelling interests and no less restrictive

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[8] One case, cited to us by claimants, *Olzman v. Lake Hills Swim Club, Inc.*, 495 F.2d 133 (2d Cir. 1974), applied a different ("disparate impact") standard in a Title II case in 1974. We decline to follow that analysis, and prefer the *Burdine* test, for four reasons. First, the *Olzman* court could not have applied *Burdine* because the case predates *Burdine* by seven years, and thus the court had no opportunity to consider whether the *Burdine* standard is preferable (or required) in a Title II case. Second, as discussed in the text, all of the more recent Title II cases cited to us apply the *Burdine* standard. Third, the "disparate impact" standard applied in *Olzman* was based on the then-recent *Griggs v. Duke Power*, 401 U.S. 424 (1971), line of cases finding a judicially-created "disparate impact" cause of action in Title VII; this line of authority was later pruned almost beyond recognition in *Ward's Cove*, *supra*. The "disparate impact" cause of action that exists today in Title VII cases was created by legislative amendments to the statute added by Congress in 1991 – amendments that have no parallel in either Title II or in Section 220522(a)(8). Finally, nine years after *Olzman* was decided the U.S. Supreme Court held, in *Guardians Assn. v. New York City Civil Service Commn*, 463 U.S. 582 (1983), that Title VI, a statute analogous to Title II, "only prohibits intentional discrimination, not actions that have a disparate impact on minorities." *See N.Y. Urban League Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *see also Larry P. v. Riles*, 793 F.2d 969, 981 (9th Cir. 1986). If the language of Title VI does not support a disparate impact claim, we doubt that *Olzman* would be followed today in its holding that the language of Title II does.

alternative exists. We also see nothing in the text of the Amateur Sports Act indicating that Congress intended Section 220522(a)(8) to permit claims based on a "disparate impact" theory of recovery or that this statutory provision requires that an NGB's justifying reasons must meet a "business necessity" standard. We conclude that this statutory provision forbids discrimination on the enumerated grounds, and that the *Burdine* standard is the appropriate analytical approach to use in assessing whether or not U.S.J.I.'s decision to adopt the IJF Contest Rules violates Section 220522(a)(8).

10. Under *Burdine*, claimants here have the burden of proving a *prima facie* case of discrimination on the basis of religion, race, or national origin. Claimants[9] have met their burden of proving a *prima facie* case of discrimination against them individually and against at least some members of Training Center on religious grounds. Claimants failed to make a *prima facie* showing of discrimination on any of the other grounds specified in Section 220522(a)(8) of the Amateur Sports Act.

11. Under *Burdine*, the burden then shifts to respondent U.S.J.I. to articulate one or more legitimate, non-discriminatory reasons for its decision to adopt the IJF Contest Rules. As discussed above in the Findings of Fact, respondent U.S.J.I. has met its burden in this regard by articulating a number of legitimate, non-discriminatory reasons for its decision to adopt the IJF Contest Rules.

12. Finally, under *Burdine* the burden then shifts to claimants to present evidence that the reasons advanced by U.S.J.I. are a pretext for other, impermissible or discriminatory reasons.[10] Claimants presented no credible evidence at the arbitration hearing establishing that any of the reasons advanced by U.S.J.I. for its decision to adopt the IJF Contest Rules are

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[9] Respondents have not challenged the standing of Training Center to raise the anti-discrimination concerns of its members. We assume, without deciding, that Training Center has standing to bring this action.

[10] *See Rose v. Wells Fargo & Co.*, 902 F.2d 1417, 1420-21 (9th Cir. 1990); *Dehorney v. Bank of America N.A.*, 879 F.2d 459, 467 (9th Cir. 1989); *Hornick, supra,* 708 F.2d at 325, n.8; *Boyle, supra,* 883 F. Supp. at 1429.

illegitimate, pretextual, not U.S.J.I.'s true reasons, or unworthy of credence.

13. For these reasons, we conclude, applying the *Burdine* analysis, that U.S.J.I.'s decision to adopt the IJF Contest Rules did not violate Section 220522(a)(8) of the Amateur Sports Act. We reject any argument that it is U.S.J.I.'s burden to meet a higher standard. For the reasons discussed above, Section 220522(a)(8) does not impose an affirmative duty on U.S.J.I. to accommodate religious objectors, does not impose on U.S.J.I. a requirement that its decisions can survive scrutiny under that provision only if supported by a compelling institutional interest and there are no less restrictive alternatives available, does not require a showing of "business necessity," and does not authorize a theory of recovery based on alleged "disparate impact."[11]

14. Alternatively, even if the applicable law did require U.S.J.I.'s reasons to satisfy a more stringent "business necessity" standard in order to avoid a conclusion that its decision to adopt the IJF Contest Rules violates Section 220522(a)(8), we also conclude that U.S.J.I.'s reasons would and do satisfy such a requirement. Adoption of the IJF Contest Rules for amateur judo competition in the United States is a reasonable exercise of U.S.J.I.'s authority as NGB for judo, and necessary for it to accomplish and promote the organizational objectives mandated for an NGB by the Amateur Sports Act.

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[11] *Robinson v. Power Pizza, Inc., supra,* in our view, correctly determined that the *Burdine* test should be applied in that Title II case, but may have mistakenly erected something like a "business necessity" requirement for testing the sufficiency of the defendant's reasons. This is not justified under the *Burdine* line of cases. Under *Burdine*, the defendant's duty is to come forward with "legitimate, non-discriminatory reasons" for its conduct showing that its actions were "taken for other than impermissibly discriminatory reasons." *Rose*, *supra* note 9, 902 F.2d at 1420-21; *Boyle*, *supra,* 883 F. Supp. at 1429. Such reasons are sufficient under *Burdine* unless plaintiff can then show that such reasons were a "pretext for discrimination" or a "pretext for another motive which is discriminatory." *Hornick*, *supra*, 708 F.2d at 325, n. 8; *Boyle*, *id.*. We conclude that U.S.J.I.'s reasons amply satisfy the *Burdine* standard, and that claimants failed to prove that those reasons were pretextual. On the contrary, as discussed in the Findings of Fact, we find that U.S.J.I.'s reasons were sincerely and reasonably held, and constituted legitimate, non-discriminatory reasons for its decision to adopt the IJF Contest Rules.

15. Alternatively, if Section 220522(a)(8) does authorize claimants to bring a "disparate impact" claim of violation as discussed in *Griggs v. Duke Power,* 401 U.S. 424 (1971),and *Olzman v. Lake Hills Swim Club, Inc.*, 495 F.2d 133 (2d Cir. 1974), we also conclude that claimants failed to present evidence at the arbitration hearing proving any such violation in this particular case.

16. The determination of respondent U.S.O.C. that (1) the rules of respondent United States Judo, Inc. requiring contestants to bow at various times and places in a judo match do not offend 36 U.S.C. § 220522(a)(8) and therefore (2) respondent U.S.J.I. is eligible to be recognized, and to continue to be recognized, as a national governing body under 36 U.S.C. § 220521, should be affirmed, and claimants' claims in this arbitration should be dismissed with prejudice.

Based on the above Findings of Fact and Conclusions of Law, we make and enter the following

AWARD

1. The determination of respondent United States Olympic Committee that (1) the rules of respondent United States Judo, Inc. requiring contestants to bow at various times and places in a judo match do not offend 36 U.S.C. § 220522(a)(8) and therefore (2) respondent United States Judo, Inc. is eligible to be recognized, and to continue to be recognized, as a national governing body under 36 U.S.C. § 220521, is AFFIRMED.

2. Claimants' claims in this arbitration are DENIED and DISMISSED WITH PREJUDICE.

3. Case filing fees shall be borne as incurred.

4. The administrative fees and other expenses of the American Arbitration Association (AAA), with the exception of the $500 filing fee, totaling $3000 shall be borne one-third by the claimants collectively and two-thirds by respondents collectively. The payment obligation of respondents set forth in this paragraph is joint and several.

5. The compensation and expenses of the Arbitrators totaling $52,607.22 shall

be borne one-third by claimants collectively and two-thirds by respondents collectively. Therefore, ***claimants shall pay to the AAA the sum of $3,105.74***, representing that portion of arbitrator compensation and expenses still due the AAA. Also, ***respondents shall pay to the AAA the sum of $6,211.48,*** representing that portion of arbitrator compensation and expenses still due the AAA. The payment obligation of claimants, and the payment obligation of respondents, set forth in this paragraph are joint and several.

6. This Award does not address or adjudicate any claims or issues not submitted to this arbitration or any claims or issues reserved by the United States District Court for the Western District of Washington in Cause No. C97-0286L for later adjudication by that Court.

7. This Award is in full settlement of all claims, howsoever denominated and by whomever made, submitted to this Arbitration involving claimants and respondents. Except as expressly set forth herein, ***all claims, howsoever denominated and by whomever made, submitted to this Arbitration involving claimants and respondents are DENIED and dismissed with prejudice.***

Dated: 8/17/2000

THOMAS J. BREWER, *Arbitrator*

Dated: 8/17/00

PHILIP E. CUTLER, *Arbitrator*

State of Washington)
) ss.
County of King)

On this 17th day of August, 2000, before me personally came and appeared THOMAS J. BREWER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Margaret Mousseau
(Notary's Signature)

Printed Name: Margaret Mousseau
Notary Public in and for the State of Washington, residing at Seattle WA.
My commission expires: 8/24/03.

State of Washington)
) ss.
County of King)

On this 17th day of August, 2000, before me personally came and appeared PHILIP E. CUTLER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Cheryl S. Storrs
(Notary's Signature)

CHERYL S. STORRS NOTARY PUBLIC COMMISSION EXPIRES 5-01-04 STATE OF WASHINGTON

Printed Name: Cheryl S. Storrs
Notary Public in and for the State of Washington, residing at Seattle.
My commission expires: 05-01-04.