



1        SAN DIEGO, CALIFORNIA, MONDAY, JULY 1, 2013; 9:07 A.M.

2

3                MR. BROYLES: Good morning, your Honor.

4                MR. SLEETH: Good morning.

5                MR. CARELLI: Good morning, your Honor.

6                THE COURT: I'm going to issue a tentative ruling  
7 or a statement of intended decision and then direct  
8 counsel to prepare a final statement of decision and a  
9 judgment. I want to make sure that there is an adequate  
10 record in this case since it's not unlikely that this case  
11 might go further than the trial court.

12                I have reviewed and re-reviewed and reread the  
13 declarations in this case, the testimony that was given,  
14 the exhibits. I've looked at the video again and again.  
15 I've read the trial briefs and I've read several cases.  
16 And I've reviewed the extensive argument in this case.

17                I have considered, obviously, the seminal case of  
18 *Lemon versus Kurtzman*. I've also read many, many cases.  
19 I found two cases of particular help: *Brown versus*  
20 *Woodland School District*, in which the Court concluded  
21 that having kids play-act witchcraft was not religious for  
22 purposes of the 1st Amendment; and *Alvarado versus the*  
23 *City of San Jose*, where the City erected an Aztec serpent  
24 statue, and it had some religious background. People were  
25 putting -- burning incense and putting flowers at the base  
26 of the statue, and the Court also indicated that this did  
27 not violate the 1st Amendment.

28                This has been for the Court a very difficult

1 challenge. This is not an easy case for a variety of  
2 reasons. It's an important case, and I've spent a lot of  
3 time thinking about it. And as I say, it's been  
4 difficult, but I have appreciated counsel's thoroughness.  
5 Even though someone will prevail in this case and someone  
6 will not prevail, I think all counsel have provided the  
7 Court with a very erudite and professional presentation.

8 I don't know if there's any more law that could  
9 be cited. And as I say, I've tried to give counsel the  
10 opportunity to be thorough, and counsel have been, and I  
11 do appreciate that.

12 I'm going to give a brief rundown of the  
13 chronology and the facts in this case that I think are  
14 salient.

15 Yoga. Yoga is generally referred to as a  
16 physical, mental, and spiritual practice dating back to  
17 ancient India. I think Dr. Candy Gunther Brown, who is  
18 certainly an eminent scholar, went all the way back to  
19 1500 B.C. when she described yoga.

20 It is a school of Hindu philosophy. It has been  
21 associated with Eastern religions, specifically Hinduism,  
22 Buddhism, and Jainism. The goal of Indian yoga  
23 practitioners going back to B.C.E., which is, I think,  
24 Before the Common Era, otherwise known as B.C. time, is to  
25 attain human salvation and a release from human suffering  
26 and the cycle of Indian rebirths and to ultimately spend  
27 eternity with a universal power or the divine.

28 As first mentioned in an ancient Hindu text known

1 as the yoga sutras, an Indian sage named Pantanjali, who I  
2 think lived between 200 B.C.E. or B.C. and 200 C.E. or  
3 A.D., developed what has been referred to as classical or  
4 Ashtanga yoga.

5 Ashtanga yoga, which is what we're about in this  
6 case, is a form of yoga developed and popularized by  
7 Pattabhi Jois, and it's been referred to as a modern form  
8 of classical yoga.

9 Pattabhi Jois was born in India in 1915,  
10 established an institute for teaching Ashtanga yoga in the  
11 1940s. He visited Encinitas, of all places, in 1974, and  
12 introduced Ashtanga yoga to the United States. And I  
13 think his son resides in Encinitas, and there are several  
14 Jois shalas or studios in Encinitas.

15 As developed and popularized by Pattabhi Jois,  
16 Ashtanga yoga prescribes eight limbs. And the eight limbs  
17 are named in Sanskrit, and then they've been translated.  
18 The first limb is the yama. These are moral codes. The  
19 second limb is the niyama, and that is translated as  
20 self-purification and study. The third limb is asana or  
21 postures.

22 Now, the postures are significant in this case  
23 because they are the physical aspect of Ashtanga yoga.  
24 Exhibit 10, which is the yoga institute poster, shows  
25 many, many postures. I think there are about a hundred  
26 poses. And they have several levels from the primary to  
27 the intermediate and finishing poses.

28 And it appears that when Ashtanga yoga was

1 practiced in India as the true eight-limbed Ashtanga yoga,  
2 the asanas were quite involved, took a long time, and were  
3 progressively difficult and obviously very, very  
4 difficult. The primary poses are more in line with what  
5 we would consider stretching and isometrics, not as  
6 difficult.

7 The fourth limb of Ashtanga yoga is pranayama or  
8 breath control.

9 The fifth is pratyahara withdrawing the mind from  
10 the senses.

11 The sixth is dharana, concentration.

12 Seven is dhyana, deep meditation.

13 And then the eighth limb, the final limb, is  
14 samadhi, which has been translated as a union with the  
15 universal or the divine.

16 Now, the Jois Foundation, there's been little  
17 direct evidence as to exactly what the structure of the  
18 Jois Foundation is. There's no evidence that it is a  
19 religious foundation, per se, but it's clear that the  
20 foundation is deeply involved in yoga, Ashtanga yoga.  
21 They maintain shalas or studios. P.K. Jois's wife,  
22 Pattabhi Jois's son and his wife live in Encinitas and  
23 actively teach.

24 It's clear that the foundation has a mission to  
25 establish and teach Ashtanga yoga in the community, at  
26 least the physical postures, breathing, and relaxation.  
27 It is very involved in Ashtanga yoga in the community.

28 The foundation has an interest in extending

1 physical fitness and health and welfare programs with  
2 Ashtanga yoga as its core in the schools as an alternative  
3 to traditional physical education. There's evidence that  
4 this has been done in connection with a research study  
5 conducted by both the University of Virginia and the  
6 University of San Diego.

7           The structure is to offer to the schools an  
8 alternative physical education that doesn't involve  
9 concerns that some educators have regarding traditional  
10 P.E., allowing all students to participate, not just ones  
11 that are well-coordinated or bigger or not as heavy.  
12 There's an elimination of bullying.

13           And anyway, that's been debated. The goal of  
14 Jois is to introduce Ashtanga yoga as an alternative, and  
15 that would be along with ultimately corollary disciplines  
16 along with the physical education and health and wellness  
17 class in specifically organic gardening, culinary arts,  
18 food preparation, and character education.

19           And the University of San Diego is involved in a  
20 protocol where students that are involved in this new  
21 alternative would be weighed, they would have their  
22 resting heart rates measured, and they would be sort of  
23 like control groups to get anecdotal evidence as to the  
24 benefits or the problems with this alternative Ashtanga  
25 yoga, physical education, health and wellness teaching.

26           The Encinitas Unified School District is a public  
27 school district consisting of nine elementary schools. It  
28 serves approximately 5600 K through 6th grade students

1 from Encinitas and the La Costa area of Carlsbad.

2 As mandated by the Education Code, the district  
3 is required to teach 200 minutes of physical education  
4 every ten days. It's also required to teach certain  
5 subjects like reading by certificated or credentialed  
6 teachers. The district also teaches certain elective or  
7 enrichment classes such as karate, which they call  
8 Kidrate, music and technology, which is computer offering.  
9 These are taught by noncredentialed consultants that are  
10 hired by the district through an outsourced HR firm, Regur  
11 Development. These are hired by the district, but they  
12 are hired through this human resources outfit, and they  
13 are not credentialed certificated teachers because they  
14 don't teach required subjects like reading and science.

15 In 2011, the district superintendent, Timothy  
16 Baird, expressed an interest in replacing traditional  
17 physical education with yoga as a health and wellness  
18 offering and had some concerns about traditional P.E. He  
19 obviously discussed the situation with the Jois Foundation  
20 that was interested in accommodating his interests.

21 In 2011, a pilot program in yoga was introduced  
22 at Capri Elementary School. This was one of nine schools  
23 in the district, and this is the first time this was done.  
24 Jois funded a position at one school, and that was taught  
25 by Jen Brown, Jennifer Brown, who testified and also  
26 submitted a declaration.

27 Jennifer Brown had a connection with the Jois  
28 Foundation and was, as she testified, on her own when she

1 taught this pilot program. She has an interest in India,  
2 obviously. She has studied Sanskrit. She was trained by  
3 Jois and I think taught at the Jois shala or studio, and  
4 she taught this pilot yoga class at Capri Elementary.

5 She traveled to India over the summers, sent  
6 postcards that were put up in the students' classroom, she  
7 had a poster on the wall that showed the eight-limbed  
8 Ashtanga yoga, had some Sanskrit, said "namaste," which  
9 she testified she interprets as respect. There's been  
10 expert testimony that it means, "I see the light in you."

11 In any event, there were some questions, some  
12 parent complaints, and the district removed what it calls  
13 cultural references. The Sanskrit was removed. The names  
14 of these poses were not referred to in Sanskrit, but they  
15 had kid names.

16 Jennifer Brown has denied any religious teaching  
17 whatsoever. There was nothing shown in her personal life  
18 that could be considered spiritual or religious. Her  
19 interest in yoga, she testified, was only as it pertains  
20 to health and welfare. She got started in yoga to  
21 eliminate migraines. And in any event, as I said, she  
22 testified she was on her own. So there was no developed  
23 curriculum. She just did her teaching based on what she  
24 thought was appropriate.

25 The superintendent and the assistant  
26 superintendent were pleased with the results at Capri.  
27 There were some concerns of a few parents. They responded  
28 to them. And then in 2012, Assistant Superintendent David

1 Miyashiro was assigned to work with Jois to expand the  
2 yoga program to all nine schools as a physical education  
3 alternative. And then the plan was to ultimately develop  
4 a comprehensive health and welfare program with yoga as  
5 its physical core adding organic gardening, food  
6 preparation, and character education later on. And this  
7 would be monitored by the University of San Diego that  
8 would collect data regarding the height, weight, resting  
9 heart rates of the children so that they could compare  
10 that with other forms of physical education.

11 On July 24th, 2012, the district presented to  
12 Jois a grant proposal. And that was Exhibit 1. That  
13 grant proposal specifically mentions Ashtanga yoga, and it  
14 also discusses a partnership between the Jois Foundation  
15 and the Encinitas Union School District. Those are  
16 mentioned in the -- in the MOU.

17 The MOU, which is Exhibit 2, was executed, and  
18 that is a document that was signed on August 31st by the  
19 assistant superintendent for business services. No. That  
20 was -- no. That was the MOU with the Regur Development  
21 Group, which was to hire the yoga teachers. That's the  
22 third-party HR firm.

23 Both Dr. Baird and Dr. Miyashiro testified that  
24 notwithstanding the language in the grant, Ashtanga yoga  
25 was not taught. The eight-limb Ashtanga yoga that has  
26 been referred to by the district's expert was not taught.  
27 And that has been the subject of debate in this trial.  
28 But the superintendent's testimony very clearly was he

1 didn't know what Ashtanga yoga was. His interest was  
2 teaching yoga strictly as a physical offering having  
3 nothing to do with anything spiritual.

4           The grant also mentions that the teachers will be  
5 certified by Jois, and both Dr. Baird and Dr. Miyashiro  
6 deny -- unequivocally deny any certification by Jois,  
7 unequivocally deny that Jois is a partner. Jois, the  
8 grant and the proposal, was to provide \$533,000 for the  
9 district to develop this comprehensive health and welfare  
10 program with yoga as its core and that the program would  
11 be developed strictly and exclusively by the district, not  
12 in partnership with Jois; that it would not be Ashtanga  
13 yoga, per se; and that the Jois foundation would not  
14 certify any of the teachers, that they would certainly not  
15 hire the teachers and lease them, so to speak, to the  
16 school district. And I'll mention that further. But  
17 both -- but Dr. Baird specifically denied --  
18 notwithstanding the words in the grant, denied that that  
19 was done.

20           In the summer of 2012, the assistant  
21 superintendent, Dr. Miyashiro, met with the Jois  
22 representative, compiled a candidate list from Jois and  
23 from the district. He testified that the district sent  
24 out e-mails and got several candidates that were  
25 interested in teaching yoga to the children in the  
26 district.

27           Jois also provided a list, and there were 22  
28 candidates in the pool in the summer of 2012. There was a

1 three-member team that had training sessions to determine  
2 the proficiency in teaching yoga to kids of these 22  
3 candidates. Dr. Miyashiro, a gentleman named Russell Case  
4 from the Jois Foundation, and then there was an individual  
5 from the Regur Development Corporation, the third-party HR  
6 firm, that conducted this workshop and evaluated these 22  
7 candidates to teach yoga poses to children.

8           There was no official certification, as I say,  
9 whatever certification is that the Court determines that  
10 certification means, that they have a proficiency to teach  
11 yoga poses to children. And there was nothing religious  
12 whatsoever in the training session in selecting these  
13 candidates, and there was no certification. The object  
14 was to determine whether these 22 candidates could  
15 establish a proficiency in teaching these primary poses or  
16 postures to children. The district hired ten teachers.  
17 The testimony was that five were from the district's list,  
18 more or less, and five, more or less, were from the Jois  
19 list.

20           An interesting question was asked to  
21 Dr. Miyashiro -- I found it interesting -- whether the  
22 district considered retaining a religious studies expert  
23 to determine the qualifications of these candidates or  
24 what they were doing. And, of course, the answer was, no,  
25 the district didn't hire a religious studies expert as  
26 part of the process. In any event, the principals then  
27 selected nine of the ten. I don't know what happened to  
28 the one, but there are nine schools. And the principals

1 selected from this list their teachers, their P.E. or  
2 their yoga teachers, for their particular school.

3 And the district then utilized Leslie Wright, who  
4 is the district curriculum specialist, to develop a  
5 written curriculum in consultation with the principals,  
6 and Jois was not part of the curriculum development. And  
7 I'll get to the curriculum again, but the exhibit is  
8 essentially a comprehensive lesson plan for the teachers  
9 to teach yoga.

10 In the 2012 school year -- 2012-13 school year,  
11 the first semester yoga was taught in, I think it was,  
12 four schools, maybe five. But it was four or five  
13 schools. And then in the second semester, the yoga P.E.  
14 health and wellness class was expanded to all nine schools  
15 in the district.

16 There were staff development meetings every  
17 Friday. Jois was not involved in those staff development  
18 meetings, although there is evidence that Mr. Case came by  
19 to say hello on one occasion.

20 Now, in the -- during this period -- and I'm more  
21 concerned with the last semester, but the evidence is that  
22 about 2 percent of the students opted out of the new  
23 alternative P.E. The testimony from the principal at  
24 El Camino was there were 19 out of 800 students that opted  
25 out.

26 And there were -- from the very beginning, there  
27 were a lot of complaints and questions, and there was kind  
28 of a firestorm of protest from the people opted out. And

1 a lot of the information was conclusory and based on I'm  
2 not sure what -- based on research and I suspect that  
3 there was a lot of -- there was a lot of tweeting and  
4 there was a lot of Internet work. And I think there was  
5 probably coordination by one of the petitioners, Jennifer  
6 Sedlock, and she had written a long letter to the board  
7 and the superintendent with the tagline "Jennifer Speaks,"  
8 indicating that she was a professional speaker and author  
9 speaking to the head and the heart. So Jennifer spoke,  
10 and people listened. And there was a lot that really  
11 wasn't connected with religion. And I think Exhibit 10 is  
12 her letter to the district and to the superintendent.

13 She does make reference to the issue in this case  
14 when she says, "How many vehement parents do you need to  
15 hear from to realize this crosses a religious line and  
16 it's a divisive program." She then says some interesting  
17 things. "I didn't have to look far to find the Mayo  
18 Clinic and the American Yoga Association both saying that  
19 Ashtanga yoga is not good for kids and yoga for kids under  
20 16 is not advisable."

21 She then suggests, "Why not offer alternatives  
22 for those who would rather do traditional P.E.? I've  
23 taught P.E. for teachers in the past, and I'm sure there  
24 are parents who would volunteer to teach if it is a  
25 financial or teaching issue at this point."

26 And then she says, "I am concerned with what this  
27 study is trying to do." And I'm not sure what study she's  
28 referring to, but I assume it's the University of

1 Virginia/University of San Diego study. "I am standing up  
2 for the physical activity of P.E. that we enjoyed as a  
3 nation since long before I was a child. I have researched  
4 more about the Jois Foundation, Ashtanga yoga, et cetera.  
5 Personally, I have a 6th grade boy with ADHD. Can you  
6 imagine how this program would be terribly hard and  
7 punishing for him? I've read the research," and then she  
8 goes on and says, "most children would not choose to sit  
9 still in poses for hours sitting in class. If given the  
10 choice, my young son needs to run and play.

11 "In my research, I found many studies encouraging  
12 more recess, not silent meditation and stretching for  
13 young growing bodies. My 2nd grade daughter thinks yoga  
14 is uncomfortable, hurts, and is boring."

15 Now, that is indicative of what the opt-out  
16 people heard and did and doesn't really get to the issue  
17 in this case. It just adds to what has been somewhat  
18 confusing dialog, which is not part of the Court's  
19 determination regarding this entire important issue. The  
20 issue is the 1st Amendment and not other things.

21 The petitioners both testified, and the testimony  
22 of Mr. Sedlock was that he heard about yoga at  
23 back-to-school night in 2012. He thought it conflicted  
24 with his faith. He was very concerned about Sanskrit.

25 And the Sedlock daughter drew something called a  
26 mandala, which I don't know if it has religious  
27 significance or not -- I think it might -- in an art class  
28 a year before yoga was taught at her school.

1 Mrs. Sedlock was very, very critical of the  
2 offering, and she observed an adult yoga demonstration for  
3 three minutes. What I -- the Court thinks is interesting  
4 is neither petitioner ever observed a yoga class, and that  
5 has been somewhat striking. And the Court will go into  
6 that a little later. But there has been a lot of direct  
7 uncontroverted evidence as to what actually does and  
8 doesn't go on in the class, but there's been no direct  
9 evidence contradicting that.

10 In any event, the district answered the  
11 complaints of the opting-out parents and had a frequently  
12 asked questions with answers. There were -- there was an  
13 attempt by the district to mollify these parents. They  
14 assured everyone there was absolutely no religious  
15 component to this. This was a physical education  
16 alternative involving stretching, strength, balance,  
17 breathing, et cetera, and they invited parents to observe  
18 a yoga class and went to great lengths to answer  
19 questions. And they made some changes just to be -- to  
20 make sure that the parents' concerns were taken care of.

21 After the opt-outs, the district treated yoga as  
22 an elective like other enrichment classes, specifically  
23 karate, music, and technology. The original plan was that  
24 yoga would be an alternative P.E. class. Now the yoga  
25 P.E. class is in addition to other P.E.

26 The students, according to the district  
27 testimony -- and this has been -- it's been questioned as  
28 suspect, but there's been no contrary evidence. The

1 uncontradicted, although, according to the petitioners,  
2 suspicious testimony of the assistant superintendent is  
3 that the students are provided with at least 200 minutes  
4 of physical education every ten days over and above yoga.  
5 So there's no evidence to say that that is not accurate  
6 notwithstanding the suspicion of some.

7           The district also removed any what they  
8 considered cultural components of the pilot class that  
9 could be arguably deemed religious. Ms. Brown's Ashtanga  
10 tree poster was removed I think almost immediately. That  
11 was her personal poster. All Sanskrit language was  
12 removed. I guess she took the postcards from India down.

13           She had read a portion of a text called *Myths of*  
14 *the Asanas*, and there was some connection between this  
15 Hindu text and some of the poses, and that was eliminated.

16           The names of the poses were changed to  
17 kid-friendly, kid-familiar poses. The so-called lotus  
18 position was renamed criss-cross applesauce. There was  
19 a -- something called a mudra, which is where you put your  
20 thumb and your forefinger together. That was eliminated  
21 and instead what was substituted was something called the  
22 brain highway where you alternate your fingers with your  
23 thumb. And there was no namaste or om'ing. And I suppose  
24 some youngsters that maybe saw a 1960s movie of somebody  
25 meditating -- or maybe they picked it up someplace else.  
26 But if they said "namaste" or said "om," they were either  
27 ignored or discouraged.

28           In any event, we now look at yoga in the fall of

1 2013. And we've had extensive testimony and the video.  
2 Although the poses are clearly yoga poses performed in a  
3 definite sequence and involved controlled breathing and  
4 some introspection and thinking, the district contends  
5 that it is EUSD yoga, not Ashtanga yoga, not any other  
6 kind of yoga. It is EUSD yoga devoid -- completely devoid  
7 of any religious, mystical, or spiritual trappings.

8 The testimony in declarations of the yoga  
9 teachers, the principals, the videos, and the written  
10 curriculum bears this out. The written curriculum, which  
11 is Exhibit 7, was produced by Regur Development and is  
12 copyrighted by the Encinitas Unified School District.

13 Instead of the 100-or-so yoga poses from the  
14 Ashtanga Institute, which go from opening sequences to  
15 primary to intermediate to finishing, there are a  
16 hundred-and-some poses. And as I say, some of them are  
17 very, very -- look very, very difficult and would  
18 obviously require a great deal of practice and probably  
19 years to master.

20 These are very basic primary poses that -- some  
21 are akin to isometric or stretching exercises such as the  
22 boat and the sinking boat where a child will lay on his or  
23 her back, extend his legs, arms up. That's the boat. And  
24 then the sinking boat is you slowly lower your legs and  
25 arms down causing stress on your abdominal muscles.

26 In any event, the written curriculum which was  
27 prepared by Leslie Wright, the district curriculum  
28 specialist, showed about half-hour lesson plans -- plans

1 for about a half-an-hour lesson. And they have a  
2 character connection. I'm just picking one.  
3 Perseverance. And then a focus -- and there are different  
4 people from different walks of life. Babe Ruth, for  
5 example. "Every strike brings me closer to my next  
6 homerun." That's perseverance. And the children will  
7 connect breath with movement, and they will go through an  
8 opening sequence, and then they've got standing poses:  
9 Gorilla, lizard, surfer. Seated: Half butterfly, boat,  
10 butterfly, peacock. And then some optional.

11 And then the students are asked, "How are you  
12 feeling? How are you breathing? Did you show  
13 perseverance in class today?" And then they have the  
14 resting pose after a telephone, pretzel, butterfly,  
15 flower, turtle, cross-cross applesauce. Then they lay  
16 down and think about things for a few minutes and then go  
17 on to their next class. And there has been a uniform  
18 denial of anything spiritual, religious, or anything like  
19 that.

20 So that's kind of an overview of the facts and  
21 the chronology. The question that the Court has is  
22 Ashtanga yoga or yoga a religious activity? The district  
23 suggests that this is EUSD yoga and that the Court should  
24 decide the case by answering "No" to that question and  
25 ending it. The Court disagrees.

26 And the Court has determined whether this is or  
27 is not a religious activity after reading a lot of cases  
28 and considering the testimony of Dr. Candy Gunther Brown,

1 who's probably -- I don't know that you could be a more  
2 eminent or qualified scholar on religious studies. The  
3 Court had the pleasure of a few days of a very, very  
4 comprehensive erudite college class on comparative  
5 religions and religious studies.

6           The Court has also read *Malnak versus Yoga*,  
7 *Freedman versus Southern California Medical Group* dealing  
8 with what is and isn't religious or a religion. And the  
9 *Malnak* case went into some detail, and the opinion and  
10 concurring opinion regarding ideas as religion, and  
11 *Freedman* went to mind-numbing details deciding that a  
12 vegan was not religious.

13           And *Alvarado* I think summed it up by saying at  
14 Page 1223, "The City's confusion and trepidation are  
15 understandable. Attempting to define religion in general  
16 and for the purposes of the establishment clause is a  
17 notoriously difficult, if not impossible, task. Few tasks  
18 that confront a Court require more circumspection than  
19 that of determining whether a particular set of ideas  
20 constitutes a religion within the meaning of the 1st  
21 Amendment," and I agree.

22           But after considering the cases, the testimony in  
23 this case, and the testimony of Dr. Brown, who was asked,  
24 "Is Ashtanga yoga religion?" -- and Dr. Brown went on for  
25 three pages -- her answer was "Yes." And began, "Ashtanga  
26 yoga fits within that practice, experience-oriented  
27 category of religion that I laid out for you yesterday.  
28 Religious rituals are more than verbalizations of beliefs

1 and are central to Ashtanga. Rituals are highly  
2 structured symbolic activities that can focus both mental  
3 and physical energy to create a kind of flow of  
4 experience. The repetition of movements trains the mind  
5 and is also believed to change spiritual realities."

6 And then she went on and on. And Dr. Brown also  
7 testified that karate, Tai Chi, acupuncture, and  
8 chiropractic are also religious. So the scholars agree  
9 that the roots of yoga are religious as practiced in the  
10 traditions of some Eastern religions such as Hinduism and  
11 Buddhism. To some in the -- to some in the world, yoga  
12 has been and still is a physical, mental, and spiritual  
13 practice, the object of which is to attain  
14 self-purification and ultimately union with the universal  
15 spirit or the divine.

16 Accordingly, the Court determines that yoga is  
17 religious. And that brings the Court to the key issue in  
18 this case, as the Court sees it. Since yoga and Ashtanga  
19 yoga have religious roots and Eastern Hindu Buddhist  
20 metaphysical religious practice, can EUSD yoga be taught  
21 in the public school district?

22 And the seminal case, which is very instructive,  
23 is *Lemon versus Kurtzman*, which was a 1971 United States  
24 Supreme Court case. And that's a case where a couple of  
25 cities provided financial assistance to parochial schools  
26 to teach secular subjects. And the Court determined in a  
27 very well-written pretty clear opinion that that violated  
28 the establishment clause because the parochial or Catholic

1 schools were taught by sisters or nuns who had dedicated  
2 their lives to their religion. They were taught in  
3 schools that had crucifixes and other objects throughout.  
4 The schools were essentially part of or very close to  
5 Catholic churches.

6           And the Court determined that it would be very,  
7 very difficult, if not impossible, for these Catholic  
8 sisters to teach secular subjects without some religious  
9 overtones. And the Court distinguished between teachers  
10 and books.

11           And in response to any thought that the City's --  
12 the government could monitor and make sure that wasn't  
13 done, the Court said that would be an excessive  
14 entanglement because of the disconnect between the  
15 Catholic nuns, the churches, the schools, and the cities.  
16 So *Lemon* developed the so-called Lemon test, which is a  
17 three-prong test.

18           The first prong is whether or not the purpose of  
19 the activity is secular. In this case, the district's  
20 purpose is to teach physical education, health and  
21 wellness. And it has, for purposes of this trial, I  
22 think, been conceded that, yes, that is a secular purpose.  
23 So that disposes of the first prong.

24           The second prong is whether the class's primary  
25 effect is to advance or inhibit religion. The experts  
26 disagree. And Dr. Singleton, for example, who is a doctor  
27 of divinity, says that yoga is pervasive in the United  
28 States and can be -- can be taught completely free of any

1 Hindu or religious connection.

2 The district's expert who testified, Ms. Silver,  
3 has taught yoga for many years and testified that there  
4 was nothing whatsoever religious in teaching yoga as it  
5 exists today in the United States.

6 Dr. Brown testified just the opposite. She  
7 testified extensively. She also submitted a very  
8 extensive declaration. Dr. Brown has an obvious bias and  
9 I think can almost be determined to be on a mission  
10 against Ashtanga yoga.

11 Her qualifications are eminent. Her testimony  
12 regarding religion is unassailable, unless I suppose  
13 you're a religious scholar and you may take some issue  
14 with maybe something that happened in 1000 B.C. in India  
15 or her translation of something from some Hindu text. But  
16 I think she's very well qualified to teach not only at  
17 Harvard, but also to teach the Court about comparative  
18 religion.

19 But a lot of her testimony regarding Ashtanga  
20 yoga and teaching yoga as it pertains to this case is  
21 based on her opinion and some research that she's done, I  
22 think, to fulfill her goal of eliminating yoga from any --  
23 from any school -- any school, period.

24 And the -- I'm going back to Brown again  
25 regarding this expert determination. And this is at 1382.  
26 "Testimony by expert witnesses does not raise a genuine  
27 issue of material fact where it is of little use in  
28 determining whether a practice is unconstitutional. The

1 Supreme Court generally has not relied on expert testimony  
2 to determine whether a school practice reasonably appears  
3 to endorse religion. Instead of engaging in a," quote,  
4 "'battle of experts,'" end quote, "in deciding the  
5 establishment clause cases, courts have relied upon  
6 assumptions about a hypothetical observer," in this case,  
7 a hypothetical child, "to determine whether a government  
8 action conveys an endorsement of religion." The expert  
9 testimony offered by the Browns, the petitioners in that  
10 case, has little relevance to this inquiry.

11 So then we get to what the courts look at, and  
12 that is is there a preponderance of credible, competent  
13 evidence that a reasonable informed student in the spring  
14 of 2013 would objectively perceive from his or her EUSD  
15 yoga classes a message of endorsement of some Eastern  
16 religion or some disapproval of Christianity or some  
17 Western religion?

18 And again, we look at, I think, *Brown* and  
19 *Alvarado* for guidance.

20 *Brown* says, "Further, the Browns characterize  
21 their proffered expert testimony as demonstrating that the  
22 challenged sections through the use of neurolinguistic  
23 programming gradually and subconsciously will foster and  
24 promote a magical world view that renders children  
25 susceptible to future control by occult groups and more  
26 likely to become involved in occult practices later in  
27 their lives.

28 "Such testimony is irrelevant to the primary

1 effect test, which determines whether a government action  
2 will have the primary or direct and immediate effect of  
3 advancing religion. The claimed long-term propensity for  
4 involvement in the occult through neurolinguistic  
5 programming clearly is not a primary or direct or  
6 immediate effect."

7           And the Court -- we'll discuss this in a little  
8 bit more detail, but Dr. Brown, the expert, said -- and I  
9 think this is her bottom line position, that by  
10 introducing these children to Ashtanga yoga, even though  
11 it's just the primary stretching, strengthening exercises  
12 with kid names, that will get them on the path to -- by  
13 the -- I guess in later years, needing more, needing more,  
14 getting more, going to shalas, becoming -- going up the  
15 Ashtanga yoga tree so that at some point in their lives,  
16 they will be -- really become Hindu yoga practitioners  
17 seeking the sacred Hindu texts. And that is not what the  
18 courts say should be considered in the primary or direct  
19 and immediate effect.

20           Brown also says, "We agree with the District  
21 Court that the primary effect of a challenged practice  
22 generally is considered under the reasonable observer  
23 standard. This hypothetical observer is informed as well  
24 as reasonable. We will assume that he or she is familiar  
25 with the history of the government issue. However, these  
26 assumptions are less valid for elementary school children  
27 who are less informed, more impressionable, and are  
28 subject to peer pressure -- more peer pressure than the

1 average adult.

2 "Courts have thus considered the more vulnerable  
3 nature of school-aged children when analyzing the primary  
4 effect of State actions in the elementary school  
5 environment."

6 And at 1380, the Court says, "The Browns then  
7 argue that the resemblance of the challenged sections to  
8 the practices of witchcraft cause children to reasonably  
9 believe that they are engaging in witchcraft ritual.  
10 However, a practice's mere consistency with or  
11 coincidental resemblance to a religious practice does not  
12 have the primary effect of advancing religion."

13 And then at 1381, "The establishment clause is  
14 not violated because Government action happens to coincide  
15 or harmonize with the tenets of some or all religions."

16 And finally in *Alvarado*, "The reasonable observer  
17 is not an expert on esoteric religions, nor can he or she  
18 be turned into one by any publicity generated by the  
19 plaintiff's lawsuit. Furthermore, a reasonable observer  
20 cannot be expected to infer an endorsement of religion  
21 practiced by a revolutionary group in Southern Mexico."

22 And citing the *Krasner* case, "The 1st Amendment  
23 does not prohibit practices which, by realistic measure,  
24 create none of the dangers which it is designed to  
25 prevent. The measure of constitutional adjudication is  
26 the ability and willingness to distinguish between real  
27 threat and mere shadow." And that is *Alvarado* at 1223 and  
28 1232.

1           So that's the legal framework that the Court has  
2 to follow in determining the answer to the question of the  
3 reasonable objective observer in an EUSD yoga P.E. health  
4 and wellness class. And we've got the evidence on the yes  
5 side. Yes, a student would perceive an endorsement of  
6 some religion or a rejection or a negative look on some  
7 other religion.

8           And the district has offered several parent  
9 declarations, and the Court determines these are not  
10 objective observers. These are not people that have gone  
11 into the class. These are parents that have opted out  
12 before putting their children in the class.

13           There's a lot of irrelevant information in the  
14 declarations, a lot of opinions, and some of them are  
15 information from the pilot program and from the first  
16 semester. And I'm just going to go through very briefly a  
17 couple.

18           Ms. Gray says, "I also learned after the fact in  
19 social studies last year at Capri my daughter and her  
20 classmates were only taught about Hinduism and Buddhism  
21 even though they were supposed to learn about other  
22 religions, specifically Christianity and Buddhism."

23           And she indicates, "At some point, I conducted an  
24 Internet search about Ashtanga yoga," and then she found a  
25 quote from P.K. Jois where he said that for yoga to be  
26 effective, it must be both a spiritual and religious  
27 experience.

28           And I don't want to trivialize this, but I'm

1 just -- I've read these declarations, and it's almost like  
2 a trial by Wikipedia, which isn't what the Court does.

3 She goes on to say, "The reason we opted her out  
4 of the program is because our family is Christian, and we  
5 believe that it is the responsibility of parents to  
6 provide religious training and instruction to the  
7 children, not the government."

8 That was said in several -- that was said word  
9 for word in several declarations. And it is true that the  
10 government doesn't teach religion, but it is a -- it  
11 causes the Court to question the objectivity certainly of  
12 the declarants.

13 Ms. True filed a declaration dealing with what  
14 she observed in September of 2012, and that was not 2- --  
15 that was not the second semester that the Court is  
16 concerned with. And she said exactly the same thing.  
17 It's -- their family's Christian, and it's the job of them  
18 to instruct their children, not the government. I mean,  
19 it's word for word.

20 Ms. Nordal in her declaration said, "I remember  
21 thinking that at the scene" -- the scene was -- oh, that  
22 was the fall of 2012, also. "I remember thinking at the  
23 time that the scene was unlike any of the traditional P.E.  
24 programs I remember having as a kid. From my observation,  
25 this was not physical exercise -- vigorous physical  
26 exercise, which is what kids need. I do not believe it is  
27 fair or legal or that LCH is offering students a  
28 religiously infused physical education program. EUSD's

1 program is unnecessarily divisive and discriminates  
2 against other religions, including our religion  
3 Christianity."

4 And finally, Ms. Vigil, who repeats word for word  
5 the statement about the job of teaching religion is their  
6 family, not the government, talks about the fall of 2012.  
7 "From my research, I discovered that the founders and  
8 leaders of Jois Ashtanga yoga believe that Ashtanga yoga  
9 is inextricable from religious belief and that it is even  
10 bad to do yoga without religious intent." Now, that was  
11 not part of the evidence. Where she got that, I'm not --  
12 I'm not sure.

13 And then we've got -- we've got Dr. -- Dr. Brown.  
14 And there are a few quotes that I want to read from  
15 Dr. Brown. And as I say, Dr. Brown, after a bit, is  
16 not -- is not objective, is not credible. And I'm reading  
17 from some of her testimony.

18 Dealing with what is happening now, Dr. Brown  
19 read the declarations and saw the video. "We still see  
20 even without that language the same poses and structure  
21 and ritual sequence in the order that's done in Ashtanga;  
22 the same order, the same opening, the same closing. There  
23 is still the emphasis on vital breath. Breath is still  
24 very important. Again, this is vital breath, not just  
25 breathing. It's coordinated. The declarations and the  
26 videos still show the mudras, the mindfulness, the  
27 balance, the sound meditation. Many children are still  
28 chanting and praying and saying 'om' to a mudra,

1 suggesting that they perceive that this is more than  
2 exercise. And it's still yoga, it's still yoking that  
3 frames this as something more than an exercise. It is to  
4 infuse all of life. It's how to live. You see that all  
5 over the place in the videos and the teacher  
6 declarations."

7           The Court has read the teacher declarations, the  
8 Court has heard some of the teachers testify, the Court  
9 has seen the video, and the Court disagrees with the --  
10 assuming Dr. Brown saw the same video, it -- I disagree  
11 with that's what the video shows.

12           She also says, "People start yoga. They don't  
13 even know him. They don't even want to know him. But for  
14 anyone who practices yoga correctly, the love of God will  
15 develop. And after a time, a greater love for God will be  
16 theirs whether they want it or not. And Manju Jois, the  
17 son of Pattabhi, is still alive. He explains why his  
18 father and why he doesn't talk about the spiritual aspect  
19 of yoga.

20           "It's because in the West, Hinduism is very, very  
21 hard to understand. That is why yoga asanas are  
22 important. You just do. Don't talk about the philosophy.  
23 99 percent practice; 1 percent philosophy. That's what he  
24 meant," meaning Pattabhi. "You just keep doing it, keep  
25 doing it, keep doing it. Then slowly, it will start  
26 opening up inside of you and automatically draw you into  
27 the spiritual path."

28           And then I -- the Court asked her a question:

1 "But it's not necessarily religious. Isn't it like saying  
2 the Pledge of Allegiance?"

3           And the Court said to her answer, "I understand.  
4 I'm just saying if you want to instill love of country,  
5 then some would say a good ritual is to begin a session  
6 with the Pledge of Allegiance."

7           And Dr. Brown answered, "Sure. And actually,  
8 this has been referred to as civil religion."

9           And she goes on, "What I do have an opinion about  
10 is based on my long-term research, that there's a lot of  
11 empirical evidence that when people engage in religious  
12 practices, not just yoga, but yoga in particular, there's  
13 evidence of some people's world view changing through that  
14 yoga practice and often in very dramatic ways as they  
15 practice it over time. Not right away, but over months  
16 and years.

17           "So you get the kids in, and they -- and Jois  
18 Foundation specifically targets children because it takes  
19 a process of time. And so you learn the yoga poses, and  
20 then you get into the advanced classes, and then you start  
21 introducing theory, and then you start explaining.

22           "But even if that weren't the case, there's this  
23 progression that takes place where you introduce a  
24 beginner, beginning yoga practices, first six months to a  
25 year, and then they graduate to the advanced level  
26 courses. And then you start providing the instruction in  
27 theory. And in the sacred text of Hinduism" --

28           And the Court said, "So it's like a threshold

1 drug?"

2 "Sure. I mean, this is camouflage, right? You  
3 get people to actually -- this applies not just to yoga,  
4 but my prayer research, right? I mean, that is -- that  
5 is -- I mean, why is that Pentacostalism -- why is it that  
6 Pentacostalism is the fastest-growing form of Christianity  
7 globally and Christianity growing so rapidly?" And she  
8 has a point of view very, very clearly.

9 The district's counsel asked her to opine what  
10 would happen if the district cut any links with Jois.

11 And Dr. Brown said, "If they're teaching yoga, if  
12 it's substantially the same program like as what we have  
13 in the curriculum now, then I think it's still religious  
14 because I see religion all over the place in what's being  
15 taught now whether -- I mean, it's everywhere."

16 And then with regard to Jois, the Court said, "So  
17 you're really saying there's a credibility problem?"

18 And she said, "I think that's true."

19 So Dr. Brown is the petitioner's case, I think.  
20 That is the -- what the petitioner's case relies on. And  
21 as I say, the Court has reviewed, re-reviewed, thought  
22 about her testimony, her declaration, which is a lot to  
23 read and a lot to hear and a lot to think about.

24 She sees religion everywhere in this. She had  
25 mentioned, for example, "namaste." "Namaste" is a yoga  
26 term, and it's, she says, translated, "I see the God in  
27 you. I see the light in you." The curriculum in the EUSD  
28 program is, "I respect you." And I -- and I suppose kids

1 are not supposed to say "Namaste." And if they do,  
2 they're ignored or they're told not to. Where they pick  
3 it up, who knows? There's a lot of yoga in Encinitas, and  
4 a lot of parents do yoga. And I suppose kids go to yoga.

5 And there are a lot of things that are, I  
6 suppose, religious. When somebody sneezes saying, "God  
7 bless you," Dr. Brown might say it's religious. If  
8 there's a holiday party at school and a kid says, "Merry  
9 Christmas," that's religious. But there's a point where,  
10 as the cases say, you've got to separate theory and shadow  
11 from reality.

12 Now, those are the yes people. That's -- those  
13 are the people that say the -- a hypothetical objective  
14 student would see religious overtones to EUSD yoga.

15 Then we've got evidence that has concluded the  
16 answer is no, and we've got the written curriculum. And  
17 the written curriculum is, as I say, the lesson plans for  
18 the teachers to follow. Like in any other course  
19 offering, the district, the curriculum writer, in this  
20 case Ms. Wright, says to the teachers, "This is what  
21 you're going to teach. This is how you're going to teach  
22 it. This is what you're going to do. And we're going to  
23 refine it. We're going to go over it. We're going to  
24 discuss it. And this is the -- this is what you do. How  
25 you do it individually, you've got some leeway, but you've  
26 got to follow this."

27 This is not a -- like it was originally with  
28 Jennifer Brown in the pilot program. And this curriculum

1 is pretty straightforward. There is a physical component,  
2 obviously, and there is a character component. And there  
3 is a focus and there is a -- there is a famous person and  
4 a quote that is to be focused on.

5 And I indicated in one of them Babe Ruth was --  
6 the quote was, "Every strike brings me closer to my next  
7 homerun," and that's for perseverance. And again, there  
8 are -- these are -- there are many of them. And I've gone  
9 through them. You could pick out any one.

10 This is a 30-minute class. The question of  
11 inquiry, "How am I aware of myself and the world around  
12 me?" The character connection is responsibility. Focus.  
13 "The time is always right to do what is right," Martin  
14 Luther King, Jr. Then the discussion for five minutes is,  
15 "How can I show responsibility? On campus, turning my  
16 homework in on time. At home, making my bed. In the  
17 community, recycling."

18 And then there's a breathing exercise. The  
19 teacher can choose a couple. Dragon breath, belly  
20 breathing, floating arms, connect breath with movement,  
21 kite, cat, cow. And then the posture is 20 minutes. The  
22 opening is Opening Sequence A, the kangaroo and the  
23 warrior. And then the standing pose is big toe, volcano,  
24 elephant, and mouse pose, seated fold, butterfly,  
25 half-butterfly, back-bending, boat, mouse pose, optional  
26 is the windmill, and then there's a candle pose. And then  
27 five minutes for relaxation.

28 "Before the closing sequence, take a moment to

1 check in with your students." That's the direction to the  
2 teacher. "How are you feeling? How are you breathing?  
3 How did you show respect in class today?"

4 And then the closing sequence: Telephone,  
5 pretzel, butterfly, flower, turtle, cross-cross  
6 applesauce, and rest. And there are the lesson plans.  
7 The curriculum are similar. They're all 30-minute  
8 classes, and they all have quotes.

9 For collaboration, Phil Jackson, "The strength of  
10 the team is each individual member. The strength of each  
11 member is the team." The Reverend Jesse Jackson, for  
12 empathy, "Never look down on anybody unless you're helping  
13 them up."

14 So those are the -- that's the curriculum, and  
15 the Court has determined there's nothing religious about  
16 that. The moral teachings are universal, and I suppose  
17 there might be -- I guess you could take a religious  
18 teaching and say, "Well, they're the same." And they  
19 might be, but they're so universal. To say they're  
20 religious is not appropriate.

21 The teacher declarations are all pretty much the  
22 same. They go through their backgrounds.

23 For example, Kristin McCloskey says, "A typical  
24 class consists of some breathing exercises to help center  
25 their minds and relax. Next, I lead the kids through a  
26 warmup we call opening sequence. That consists of poses  
27 to help open up the hamstrings, shoulders and back after  
28 the warmup. I lead the kids through a few standing poses,

1 which all helps strengthen their leg muscles and open up  
2 their hip joints.

3 "Next, kids do some balancing poses, which are  
4 excellent for working different sides of the body and  
5 require quite a bit of concentration on focus. The kids  
6 then sit down on their mats to do a few seated poses of  
7 forward bends and twists. They all do the boat pose,  
8 which strengthens the hip flexors and abdominal muscles.

9 "We also finish class in a comfortable seated  
10 position, cross-cross applesauce, and then tune into  
11 breath again. At the end of class, all kids take rests on  
12 their mats for three to five minutes before heading back  
13 to class.

14 "In addition to the yoga postures, I also teach  
15 kids character traits that tie into the school's character  
16 traits, such as respect, perseverance, and commitment.  
17 There's absolute nothing religious that I teach in my yoga  
18 class. I do not teach any religion in the classroom. I  
19 teach yoga poses such as mountain, gorilla, surfer,  
20 bamboo, cat, cow, and downward-facing dog to children. I  
21 teach children to pay attention to their breathing and to  
22 monitor their attitude as we go through a lesson."

23 Nicole Gerber says, "What I am teaching is in no  
24 way religious. I follow the -- I strictly follow the  
25 curriculum which is currently being designed by our team  
26 of credentialed teachers and yoga instructors and is being  
27 written by the district's curriculum writer under the  
28 supervision of EUSD's assistant superintendent.

1           "The curriculum includes daily breathing  
2 exercises, yoga poses which enhance strength, balance,  
3 flexibility, and endurance, relaxation, and character  
4 development activities based on EUSD's character ed  
5 program. The poses we use -- are using in our curriculum  
6 are based off the Ashtanga sequence, but have been renamed  
7 with kid-friendly titles and have been rearranged in a  
8 developmentally and physically appropriate way. We have  
9 decided to add a number of poses outside the Ashtanga  
10 sequence that fit nicely into appropriate grade levels."

11           And then finally -- and then Christian Eady and  
12 says essentially the same thing: "In my class," and she  
13 says parenthetically, "(we sometimes run a lap to warm up  
14 when class is held outside). We perform breathing  
15 exercises, perform yoga poses, and the class ends with a  
16 reflection on a character trait and a rest. I have not  
17 taught anything that has anything to do with religion."

18           And then Kim Wood says, "In my yoga class, the  
19 students learn how to breathe with intention. Controlled  
20 breathing helps calm the mind and the body. The students  
21 learn how to connect breath with movement, which helps  
22 increase focus, concentration, and strength."

23           And the testimony of the principal, Carrie Brown,  
24 said essentially the same thing. She's the principal.  
25 She monitors the class. There's absolutely nothing  
26 religious.

27           The testimony of the district's expert Andrea  
28 Silver says, "I've been teaching yoga for years and years

1 to adults. Nothing religious. It's done for health.  
2 It's done for physical health. It's done to relax. It's  
3 done to get rid of migraines. It's done for reasons  
4 having absolutely nothing to do with religion."

5 And the intervenor introduced experts. Those  
6 experts, other than one, were not comparative religion  
7 experts. But they are familiar with yoga, they are very  
8 involved with yoga, and they conclude that yoga today is  
9 ubiquitous. It's all over the place. It's done for  
10 health and welfare, for no religious overtones.

11 And Brandon Hartsell says, "Though the roots of  
12 yoga originate in India, the modern practice of yoga is  
13 typically comprised of the physical system of exercises  
14 coupled with breath work and mindfulness practices that is  
15 unconnected to a religious denomination."

16 Mark Singleton, Ph.D, has a doctorate from the  
17 divinity faculty of Cambridge University. He's a scholar  
18 of yoga and tradition. And I suppose he's the counterpart  
19 of Dr. Candy Gunther Brown. I'm sure he's qualified  
20 having a doctorate. Whether he's as qualified as  
21 Dr. Brown, I don't know. She is an eminently qualified  
22 religious scholar.

23 But what he says contrary to Dr. Brown is, "The  
24 essential point is that yoga, as it has developed in the  
25 United States in the past 150 years, is a distinctly  
26 American cultural phenomenon. It is rooted in American  
27 culture as much and sometimes more than in Indian  
28 culture."

1           So the Court has reviewed the testimony and the  
2 exhibits, the "ABCs of Yoga for Kids," for example. It's  
3 Exhibit 7. It's seven -- or it's 26 poses with kid names.  
4 The sequence obviously is to ease into things. Dr. Brown  
5 talked about rituals. And following the Ashtanga model,  
6 it is obvious that if you're going to have anyone,  
7 particularly kids, do something that's difficult and  
8 strenuous, you don't start off with that. You start off  
9 with a warm up, you ease into it, you end with a rest.  
10 And that's what the curriculum and what the teachers say  
11 they do.

12           The teachers have a handful of poses from the  
13 Ashtanga primary series, and the evidence is that there's  
14 a handful having nothing to do with Ashtanga yoga. So  
15 comparing the testimony of Dr. Brown, who really is the  
16 only -- the only testimony and the only declarant taking  
17 the view that an objective student would perceive religion  
18 in the EUSD yoga class, when you compare that with the  
19 sworn testimony of every district witness and the  
20 declarations, the Court determines that based on this  
21 record, a reasonable student would not objectively  
22 perceive that EUSD yoga either advances or inhibits  
23 religion.

24           And that gets, then, to the third test. Does  
25 EUSD yoga foster excessive entanglement with religion?

26           The district's earlier efforts to monitor the  
27 program were at an earlier time when questions were  
28 raised. The district removed arguably religious cultural

1       trappings from the -- from the program. And when -- and  
2       in the -- in *Brown versus Woodland Joint Unified School*  
3       *District*, the Court -- I'm going to read one final quote.  
4       "The Browns claim that the school district's appointment  
5       of a curriculum review committee to consider the purported  
6       religious content of the impressionist curriculum" --  
7       that's the witchcraft curriculum -- "demonstrated an  
8       excessive administrative entanglement. This one-time  
9       review, which was conducted in response to the complaints  
10      of, among others, the Browns clearly does not cause the  
11      school district to become entangled with religion.  
12      However, even if the review had entangled the school  
13      district with religion at the time, this is irrelevant to  
14      whether the school district continues to be entangled with  
15      religion."

16                 And in *Lemon*, the schools were near the churches.  
17      The secular subjects were taught by nuns with crucifixes.  
18      The schools had crucifixes and other religious artifacts  
19      around. And the schools were private Catholic schools  
20      that hired, fired, coordinated, regulated independently.  
21      And the Court determined to have the cities monitor would  
22      be an excessive entanglement.

23                 Here the evidence is that the district has  
24      complete control over the curriculum and the teachers.  
25      It's no different from any other -- any other -- any other  
26      teacher. If any teacher in the district performed  
27      teaching with something objectionable such as infusing  
28      religion, the district would have the obligation and the

1 ability to take appropriate action, including termination.

2 The yoga program, the EUSD yoga program, is no  
3 different. If the district determined that a particular  
4 teacher was infusing something religious, the district  
5 could deal with it. It's completely different --  
6 different from *Lemon*.

7 Let me say, though, that the -- a troublesome  
8 issue has been the influence of the Jois Foundation.  
9 There's been evidence on information and belief. There's  
10 been a lot of indirect evidence as to Jois. The opinion  
11 of Dr. Brown, as I had read from her testimony, is that  
12 the Jois Foundation is on a sinister mine-control  
13 conspiracy having a grand design to get these children and  
14 yoke them, to get them on a path to become practicing  
15 Hindus or Buddhists or Jainists.

16 And it does appear that their -- that certainly  
17 Jois has a -- I guess you could call it a mission to have  
18 Ashtanga yoga, at least the physical part of it, taught in  
19 the -- in the public schools.

20 And Jen Brown does have a connection with the  
21 Jois Foundation. Jen Brown has been to India, has learned  
22 Sanskrit, teaches at a Jois shala, yoga -- she was taught  
23 yoga by the wife of Pattabhi Jois. Her son lives in  
24 Encinitas, and his wife Nancy Jois apparently teaches at  
25 the district.

26 So that has been a troublesome issue for the  
27 Court, probably the most troublesome issue. That's an  
28 issue that the Court has thought about a lot. The Court

1 does not believe that the district is in any sort of  
2 conspiracy with the Jois Foundation. And I suppose, then,  
3 the question is is the district being duped? I don't  
4 think so.

5 So the Court is persuaded by the testimony of the  
6 district witnesses, particularly Dr. Brown -- Dr. Baird  
7 and Dr. Miyashiro, of complete innocence from Jois. And  
8 as with any other grantor, if somebody wants to give money  
9 to a school district to teach something, if Jois doesn't  
10 like what the district does as an independent school  
11 district with legal obligations, I suppose Jois can do  
12 something with its money that doesn't involve the  
13 district.

14 But the Court believes that the testimony of the  
15 district witnesses is credible, and the Court can't  
16 control what the district does in the future. But based  
17 on this record, the district -- the Court concludes that  
18 the district is not teaching any religious component in  
19 its health and welfare program, which is the cornerstone  
20 of which is yoga or Ashtanga yoga.

21 From kindergarten through high school, physical  
22 education has traditionally involved physical activity and  
23 breath control, whether it's jumping jacks, dodgeball,  
24 kickball, running. It has involved character teaching;  
25 perseverance, determination, sportsmanship, respect. And  
26 certain wellness teachings; get a good night's rest, eat  
27 properly.

28 This physical education health and wellness class

1 is no different except that the physical aspect, instead  
2 of kickball or something else, is EUSD yoga, which  
3 involves a particular stretching and breathing routine  
4 which is different from traditional physical education.

5 The Court is not determining whether this is  
6 educationally sound, as that determination is clearly up  
7 to the educators in the district. What the Court is  
8 determining is that based on this record, EUSD yoga passes  
9 muster under the United States and California  
10 Constitutions and the Education Code.

11 So the Court will direct Mr. Sleeth to prepare a  
12 statement of decision in accordance with the statement of  
13 intended decision and a judgment denying the writ of  
14 mandate.

15 Make sure you serve that on Mr. Broyles for his  
16 approval as to form and conduct -- as to form and content.

17 So with that, we are in recess.

18 MR. SLEETH: Thank you, your Honor.

19 MR. BROYLES: Thank you, your Honor.

20 MR. CARELLI: Thank you.

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22 (The proceedings were concluded at 10:40 a.m.)

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