Case No. D064888

COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

Stephen Sedlock, *et al.*,

Plaintiffs and Appellants,

v.

Timothy Baird, *et al.*,

Defendants and Respondents.

Appeal from San Diego County Superior Court
Case No. 37-2013-00035910-CU-MC-CTL
Honorable John S. Meyer

APPLICATION OF ATLANTIC LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF INTERVENOR AND RESPONDENT YES! YOGA FOR ENCINITAS STUDENTS

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TO THE HONORABLE JUDGES OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT:

Atlantic Legal Foundation respectfully applies, pursuant to Rule 8.200(c) for leave to file the accompanying *amicus curiae* brief in support of Intervenor and Respondent YES! Yoga for Encinitas Students.

Amicus Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm that provides legal counsel, without fee, to scientists, educators, and other individuals and trade associations. The Foundation's mission is to advance the rule of law in courts and before administrative agencies by advocating for limited and efficient government, free enterprise, individual liberty, school choice, and sound science. The Foundation's leadership includes distinguished legal scholars and practitioners from across the legal community. Of particular significance here, the Foundation has litigated numerous First Amendment cases as "first chair" counsel, counsel for *amici curiae* and as an *amicus*. The Foundation also has an abiding interest in educational choice and educational innovation.

The Foundation's interest in this case stems from its concern that a group of parents are attempting to prevent a school district from

introducing an innovative form of physical education based on the parents' misunderstanding of the school district's program, lack of information, a misconception of the meaning of "religion" in society and constitutional doctrine, and an apparent fear of anything that deviates from their own preconceptions.

Atlantic Legal Foundation is especially concerned that the opinion of the Superior Court appears to be ambivalent at best and confused at worst about whether yoga, as taught and conducted in the Encinitas Union School District (EUSD) schools, can be considered "religious." The Foundation seeks to brief the issue whether "EUSD yoga" is "religious." The Foundation will argue that yoga as part of the physical education program at the EUSD schools cannot reasonably be seen as "religious" and that, therefore, there was no need for the Superior Court to engage in a lengthy discussion of the United States Supreme Court's teaching on the Establishment Clause of the First Amendment.

Amicus and its counsel are familiar with the issue presented and the scope of its presentation by the parties. Counsel for *amicus* has read appellants' and respondents' briefs on the merits, and the opinion of the court below.

Amicus believes that its brief will be of substantial assistance to the Court in resolving this appeal.

No party nor any counsel for a party in the pending appeal has authored the proposed *amicus* brief in whole or in part, nor made a monetary contribution intended to fund the preparation or submission of the brief, and no person or entity has made a monetary contribution intended to fund the preparation or submission of the brief, other than the *amicus curiae*, its members, or its counsel in the pending appeal.

All parties to this appeal have consented to the filing of this brief.

Dated: October 16, 2014

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF ATLANTIC LEGAL FOUNDATION IN SUPPORT OF RESPONDENT YES! YOGA FOR ENCINITAS STUDENTS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The undersigned counsel hereby certifies that the interested entities or parties required to be listed pursuant to California rules of Court, Rule 8.208(e)(1) and (2) are as follows:

_X_ There are no interested parties that must be listed in this certificate under Rule 8.208.

This form is being submitted on behalf of *Amicus Curiae* Atlantic Legal Foundation.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Dated: October 16, 2014

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INTEREST OF *AMICUS CURIAE*

The Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm that provides legal counsel, without fee, to scientists, educators, and other individuals and trade associations. The Foundation's mission is to advance the rule of law in courts and before administrative agencies by advocating for limited and efficient government, free enterprise, individual liberty, school choice, and sound science. The Foundation's leadership includes distinguished legal scholars and practitioners from across the legal community. Of particular significance here, the Foundation has litigated numerous First Amendment cases pertaining to educational institutions as "first chair" counsel, counsel for *amici curiae* and as an *amicus*. The Foundation also has an abiding interest in educational choice and educational innovation.

The Foundation's interest in this case stems from its concern that a group of parents are attempting to prevent a school district from introducing an innovative form of physical education based on the parents' misunderstanding of the school district's program, lack of information, a misconception of the meaning of "religion" in society and

constitutional doctrine, and an apparent fear of anything that deviates from their own preconceptions.[1]

Atlantic Legal Foundation is especially concerned that the opinion of the Superior Court appears to be ambivalent at best and confused at worst about whether yoga, as taught and conducted in the Encinitas Union School District (EUSD) schools, can be considered "religious." The Foundation will argue that yoga as part of the physical education program at the EUSD schools cannot reasonably be seen as "religious" and that, therefore, there was no need for the Superior Court to engage in a lengthy discussion of the United States Supreme Court's teaching on the Establishment Clause of the First Amendment.

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[1] No party nor any counsel for a party in the pending appeal has authored this *amicus* brief in whole or in part; nor made a monetary contribution intended to fund the preparation or submission of the brief other than the *amicus curiae*, its members, or its counsel in this appeal.

Introduction and Statement of the Case[2]

This case concerns a challenge by parents of students in the Encinitas Union School District (EUSD) to a yoga-based health and wellness program which was initiated with funding provided by a private philanthropic foundation – the Jois Foundation – which has a mission to establish and teach "Ashtanga yoga" and an interest in encouraging the use of yoga.

The objective of the school district's yoga-based physical education program was to improve focus, discipline, and behavior, as well as physical fitness, of students.

Stephen and Jennifer Sedlock, Christian parents of two children who attended El Camino Creek Elementary School, and the children, through a guardian ad litem, initiated this action against the EUSD Superintendent, Timothy Baird, and Board of Trustees of the District, seeking a writ of mandate prohibiting the continuation of the yoga. Petitioners alleged that the teaching of yoga in the District schools violated various provisions of the California Constitution concerning

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[2] We will not burden the Court with an extensive recitation of the facts, which are set out in detail in the Superior Court's opinion, in the brief of YES! Yoga for Encinitas Students (hereafter "YES!").

religion (article I, §4; article IX, §8; and article XVI, §5), and that the District was not providing 200 minutes of physical education as required by Education Code section 51210, subdivision (g). Petitioners also brought an action for injunctive and declaratory relief under sections 525, 526, and 1060 of the Code of Civil Procedure to stop the District from using state resources to endorse Ashtanga yoga, alleging that the practice unlawfully promotes religious belief while discriminating against other religions.

The EUSD yoga program provides for parents to have their children opt out, and the Sedlock children indeed opted out of the yoga program for religious reasons. None of the Sedlock children ever took an EUSD yoga class, and neither of the Sedlock parents ever saw a children's EUSD yoga class before initiating this challenge to the program. It is also of note that after parents complained about "religious" aspects of yoga as used in the "pilot program" of using yoga in one school, EUSD removed what were considered "cultural components" or aspects of the yoga classes that arguably could be deemed religious, for example by changing the names of the yoga

postures from Sanscrit words to English names and by removing posters that might have a Hindu religious connotation.

Appellants concede that "the District initiated a religious 'cleansing' campaign, which became progressively aggressive as trial approached" and that by the time of trial, "the District had attempted to remove many overtly religious references included in the November 2012 curriculum (e.g., references to the "inner spirit of the child" and guided meditation scripts)." (AOB at 26; see also Trial Court Decision, CT VI, 1088:3-15: EUSD "responded by removed [sic] anything considered a cultural components [sic] or that could arguably [sic] deemed religious." Nonetheless, Appellants contend that the spring 2013 EUSD yoga program "still includes . . . religious elements," consisting mainly of the physical yoga positions, on top of which the Seldocks superimpose their own "spiritual" connotation. (*See* AOB at 26-28.)

The Appellants contend that yoga is necessarily "religious."[3] They assert that the physical act of practicing yoga inculcates religion even in those who engage in the exercises – as many do – without any

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[3] In his closing argument, the Appellants' counsel claimed that yoga generally offends the constitution, and cannot be taught in public schools. (RT 951, 990-991, 992, 993, 1004, 1006.)

awareness of the religious origins of yoga nor with any religious purpose.[4]

The trial court rejected petitioners' theory and denied the petition. That holding is correct. Unfortunately, however, the trial court's opinion was seemingly ambivalent as to whether modern-day yoga is "religious." One the one hand, the trial court determined that "yoga and Ashtanga yoga have religious roots" and that "yoga is religious" (see CT VI, 1093:

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[4] The Appellants place emphasis on the Trial Court's finding that during the sessions some EUSD students closed their eyes and put their thumbs and forefingers together forming circles while in the lotus position and that the EUSD video (Exhibit 14, clip 3) shows that during the sessions some EUSD students did close their eyes and put their thumbs and forefingers together (forming circles) on each hand while in the lotus position. The Appellants also speculate, without any proof, that because a few children used their thumbs and finger to make a circle and said "Om" they learned that "practice" from earlier versions of the yoga class in the EUSD schools, rather than from their parents, from private yoga classes, or from other sources outside public school. (ARB 29-30.) Moreover, there is record evidence that readily explains that these occurrences do not reflect anything taught in school, but rather, as yoga teacher Jennifer Brown explained derives from the fact that "Encinitas is a community with a lot of yoga studios, and a lot of parents that practice yoga. I have many students who come to class and mimic what they see their parents do. . . ." See CT II, 451:22-26 (J. Brown Decl.).

Moreover, by the "reasoning" advanced by the Appellants, if an athlete says a private prayer or makes a religious sign before or after his or her athletic event (to [superstitiously] invoke good luck) that would be evidence that the athletic event is "religious," especially if the sport has historic links to religion (see Point II.B., *infra*) and would condemn as unconstitutional that sport if it were at a public elementary, middle school or high school or at a state university.

19 (Trial Court Decision)), but also concluded that "'EUSD yoga' [is] completely devoid of any religious, mystical, or spiritual trappings." (CT VI, 1090.) The latter conclusion is correct as a matter of fact and law.

The testimony of Dr. Candy Brown, the Appellants' expert was, as the the trial court noted, "Petitioner's whole case." (CT VI 1100.) But Dr. Brown's testimony proved too much. As the trial court observed "Dr. Brown sees religion everywhere in this." (CT VI 1101.) Dr. Brown, for example, opined that yoga was part of a "sinister mind-control conspiracy having a grand design to get these children and yoke them, to get them on a path to become practicing Hindus or Buddhists or Jainists." (CT VI 1106.) Dr. Brown's fundamental error is failing to understand that context is critical and that certain practices can have dual purpose – religious and secular – or that what was once religious has become secular; the consumption of wine is one example – it was originally solely religious (in many religions – classical Greek polytheism, Judaism, Christianity for example), but is now more often practiced as a purely social activity as well as being part of religious ritual.[5]

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[5] Dr. Brown also testified that karate, Tai Chi, acupuncture, and (continued...)

Dr. Brown conceded that "Beginner classes may say nothing about yoga philosophy – which is introduced in 'advanced' classes." (See CT I, 68:82-69:15 [C. Brown Decl.]; RT II, 336:5-337:25 [Brown, Test.]), and it is indisputable that the EUSD yoga classes were "beginner classes" in the extreme, and at least starting with the Fall of 2013 said nothing about yoga philosophy or the Hindu or Buddhist or Jain religions. The yoga classes were not, therefore, "religious."

As YES! expert witness, Brandon Hartsell said, "Though the roots of yoga originate in India, the modern practice of yoga is typically comprised of the physical system of exercises coupled with breath work and mindfulness practices that is unconnected to a religious denomination." (CT 663-666.) As another YES! expert witness, Mark Singleton, declared,"The essential point is that yoga, as it has developed in the United States in the past 150 years, is a distinctly American cultural phenomenon. It is rooted in American culture as much and sometimes more than in Indian culture." (CT 652-656.)

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[5](...continued)
chiropractic are religious. CT 1093 (Statement of Decision at 14); RT 307 (Testimony of Dr. Brown). In fact, is seems that she sees almost everything as "religious."

After a thorough review of the curriculum, testimony of EUSD academic officials, teachers and viewing of videos of students engaged in the school yoga program, the trial court determined that "[t]here is nothing religious contained in the written curriculum, and there has been uniform denial of anything spiritual, religious, or anything like that being taught in the classes" (CT 1091.)

The judgment should be affirmed on the basis of the threshold finding that yoga, as taught in EUSD schools, is "completely devoid of any religious, mystical, or spiritual trappings."(CT 1090.)

We respectfully submit that there was no need for the trial court, and certainly there is no need for this Court, to proceed with a constitutional analysis of whether the schools' use of yoga in its physical education curriculum advances or promotes religion or whether "EUSD yoga" excessively entangles the school district with religion government by applying the three-pronged *Lemon [v. Kurtzman* (1971) 403 U.S. 602] test.[6]

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[6] The trial court's understanding and application of the "*Lemon* test" was essentially correct, and we will not, therefore, brief those points, but urge affirmance.

ARGUMENT

I. PETITIONERS' CLAIMS FAIL BECAUSE THEY CANNOT ESTABLISH THAT YOGA AS TAUGHT IN THE EUSD SCHOOLS IS RELIGIOUS.

Before determining whether EUSD's yoga program violates the religious freedom provisions of the California Constitution, this Court must address the threshold question "whether the [action] in question can be defined as 'religious' for establishment purposes." *Alvarado v. City of San Jose* (9th Cir. 1996) 94 F.3d 1223, 1227-1228 (citing *Malnak v. Yogi* (D.N.J. 1977) 440 F. Supp. 1284, 1312-1313, *aff'd* (3d Cir. 1979) 592 F.2d 197.) If the school district's yoga program is not religious, it cannot violate the religious freedom provisions of the California Constitution.

A. The EUSD Yoga Curriculum Is Not Religious.

The trial court determined that the EUSD yoga program is "completely devoid of any religious, mystical, or spiritual trappings." (CT 1090.)

In determining whether a challenged government action with religious roots is religious for Establishment purposes, "context is determinative." *(Newdow v. Rio Linda Union School Dist.* (9th Cir.

2010) 597 F.3d 1007, 1019; see also, *McGowan v. State of Maryland* (1961) 366 U.S. 420, 444 [Sunday closing laws].) What was once religious may not now be religious. An activity with unquestionably religious roots and religious purposes can transform over time into a secular activity or may be executed in a manner that is not religious. Thus, the religious roots of an activity do not compel a finding that the activity is necessarily religious and violative of the Establishment Clause now.

It would be absurd to declare that for Establishment Clause purposes any practice that descended from religion is "religious." Our culture (and, indeed, most cultures), including literature, music, philosophy, and even science, has religious roots. (See *McGowan v. State of Maryland*, *supra* at pp. 503-504 ["Cultural history establishes not a few practices and prohibitions religious in origin which are retained as secular institutions and ways long after their religious sanctions and justifications are gone."]) Few people today, for example, consider that there is a religious connotation when they utter the word "goodbye" to on parting because that word originated in the phrase "God be with you." (Meriam-Webster Online, http://www.merriamwebster.com/

dictionary/good-bye (last visited 10/14/2014)). The word "holiday" comes from "holy day." (*Id.,* http://www.merriam-webster.com/dictionary/holiday (last visited 10/14/2014)). Similarly, when someone sneezes it is customary to say "God bless you" or "Bless you," which is merely a polite expression, but one that obviously has religious origins.

Altman v. Bedford Cent. School Dist. (S.D.N.Y. 1999) 45 F. Supp.2d 368 ("*Altman I*"), *rev'd on other grounds*, (2d Cir. 2001) 245 F.3d 49 ("*Altman II*") is instructive.[7] In that case the "religious" aspects of yoga instruction were far more palpable than in yoga taught in the EUSD schools. "[A]lthough the presenter was dressed in a turban and wore the beard of a Sikh minister, he did not in his yoga exercise presentation advance any religious concepts or ideas." *(Altman II,* 245 F.3d at pp. 65-66) and thus the Second Circuit affirmed the district court's finding that the school district did not violate the Establishment Clause by inviting a Sikh minister to conduct yoga exercises for students in gym class.

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[7] In *Altman II,* the trial court's decision finding that yoga was not religious was affirmed, but the trial court's rulings that the celebration of "Earth Day" had religious elements was reversed, and other aspects of the trial court's judgment were also reversed, and certain of plaintiffs' claims were dismissed on standing and mootness grounds. (See *Altman II,* 245 F.3d at p. 74.)

The trial court in *Altman* noted that "yoga practices are widely accepted in the western world, simply for their exercise benefits . . . ." *(Altman I*, 45 F.Supp.2d at p. 385.)

The Second Circuit considered what was taught to the children rather than the religious roots of the activity. The Second Circuit was not troubled by the fact that the yoga teacher was a religious figure because what he taught was not religious. The facts in *Altman* are strikingly similar to those in the case at bar: "The evidence at trial fails to show that the [Sikh priest] made any effort to teach religion or foster any religious concept or idea connected with Yoga. *It was simply a breathing and relaxation exercise presented by the witness, who arrived at school dressed in a turban and the customary garb of a Sikh minister. There is evidence that Plaintiffs' children, on request, were allowed to opt out of the yoga exercise.*" (*Altman I*, 45 F. Supp. 2d at p. 385; see also *Altman II*, 245 F.3d 49 at p. 60.) Here, the yoga being taught in the EUSD schools is not religious and is not taught by members of the clergy.

In *Altman*, the district court concluded that the celebration of Earth Day at one school constituted a religious ceremony because the worship of the Earth is a recognized religion (Gaia), which has been and is now current throughout the world, the proceedings took on much of the

attributes of the ceremonies of worship by organized religions, and the faculty advisor's statements paralleled one statement in Genesis and hence was found to constitute "clearly religious teaching." (*Altman II*, 245 F.3d at pp. 76-77, citing *Altman I*, 45 F. Supp. 2d at pp. 393-393.) But the Second Circuit had "difficulty with the [district] court's conclusion . . ." that "the celebration of Earth Day at Fox Lane High constituted a religious ceremony, . . ." (*Altman II*, 245 F.3d at p. 76), because "there was no worshiping of the Earth nor any religious significance in any of the components of the Earth Day celebration" (*id.* at p. 77) and "[W]e see no greater religious significance in the . . . colorful reference to 'Mother Earth' in this context than if the article had referred to 'Father Time.'" (*Id.* at p. 78.) "Indeed, the rituals employed in the. . .ceremonies, although more imaginative, strike us as not fundamentally different from rituals codified by Congress for showing respect to the United States flag." (*Id.* at pp. 78-79, citing 36 U.S.C. § 301(b)(1) (Supp. IV 1998) and 4 U.S.C. § 9 (Supp. V 1999).)

In short, an objective observer similarly would not view the EUSD schools' yoga program as a form of worship or endorsing a religion. (See *Altman II*, 245 F.3d at p. 79.)

The Appellants attempt to distinguish *Altman* by inferring what the record in *Altman* contained or did not contain, without any evidence in the reported *Altman* decisions to support their inference. (See ARB at pp. 28-29.) Indeed, the trial court's decision in *Altman I* is quite detailed and comprehensive in its recitation of the facts in that case.

Much more clearly religious expressions have been held not to violate the Establishment Clause because of the context in which they are used. Thus, in *Newdow,* the Ninth Circuit held that although the phrase "under God" in the Pledge of Allegiance has "religious significance," in the context of the Pledge as a whole, the phrase is patriotic rather than religious. (*Newdow v. Rio Linda Union School Dist.* 597 F.3d at pp. 1019, 1021.) As the Supreme Court has very recently held, "the Establishment Clause must be interpreted 'by reference to historical practices and understandings.'" *(Town of Greece v. Galloway* (2014) 572 U.S. —, 134 S.Ct., 1811, 1819.) What was once religious may not now be religious. An activity, in that case a prayer opening a town board session, with unquestionably religious roots and religious purposes can transform over time into a secular activity or may be executed in a manner that is

not religious. The religious roots of an activity do not compel a finding that the activity is "religious" and violative of the Establishment Clause.

Appellants' reliance on *Malnak v. Yogi* (3d Cir. 1979) 592 F.2d 197 is misplaced because the facts of that case are readily distinguishable from those in the case at bar. In *Malnak*, the issue was whether Transcendental Mediation ("TM") is a religion. The Third Circuit's description of TM is sufficient to demonstrate the vast difference between EUSD yoga and TM: "Essential to the practice of Transcendental Meditation is the 'mantra'" or the sound aid used while meditating; each meditator has a personal mantra which is necessary to receive the beneficial effects said to result from Transcendental Meditation. (*Malnak, supra*, 592 F.2d at p. 198.) "To acquire his mantra, a meditator must attend a ceremony called a 'puja.' *Every student who participated in the SCI/TM course was required to attend a puja as part of the course.* A puja was performed by the teacher for each student individually. *During the puja the student stood or sat in front of a table while the teacher sang a chant and made offerings to a deified 'Guru Dev'.*" (*Ibid.*, italics added.)

The *Malnak* trial court described the TM "puja" ceremony as follows:

> (T)he puja is sung at the direction of Maharishi Mahesh Yogi, a Hindu monk. *The words and offerings of the chant invoke the deified teacher*, who also was a Hindu monk, of Maharishi Mahesh Yogi. In the chant, this teacher is linked to names known as Hindu deities. *Maharishi Mahesh Yogi places such great emphasis on the singing of this chant prior to the imparting of a mantra to each individual student that no mantras are given except at pujas* and no one is allowed to teach the Science of Creative Intelligence/Transcendental Meditation unless he or she performed the puja to the personal satisfaction of Maharishi Mahesh Yogi or one of his aides. . . .

(Malnak v. Yogi (D.N.J.1977) 440 F. Supp. 1284, 1311-12 (italics added.)

Malnak provides no support for appellants' position. The differences between the yoga taught in the EUSD schools and Transcendental Meditation taught in the New Jersey schools are palpable. Unlike this case, the activities were religious at their core and mandatory.

The Superior Court cited *Malnak* for its analysis of "three useful indicia" of religion. Religious traditions address "ultimate concern[s]," *(ibid.)*, they tend to be "comprehensive," *Malnak*, 592 F.2d at p. 209, and they are associated with "formal, external, or surface signs." (*Ibid.*; see also *Altman I*, 45 F. Supp. 2d at p. 377.) Applying that standard, yoga as taught in the EUSD schools is not religious, because nothing in the

EUSD yoga classes address "ultimate concerns," nor do they teach a "comprehensive" belief system, and the classes do not consist of "formal services, ceremonial functions," or have clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions." *(Malnak,* 592 F.2d at p. 209.)

B. The Religious Origins of Yoga Are Insufficient to Characterize Modern Yoga as Religious.

If Appellants' position were to be adopted – that the religious origins of a practice can establish that the practice is "religious" for constitutional analysis, the result would be absurd. Very, very many scholastic sports – including the "traditional" physical education classes for which appellants pine – would be proscribed because they have religious roots. The following examples illustrate our point.

Almost all track and field events would be banned from schools because they have their origins in the ancient Greek Olympic Games. The first ancient Olympic Games can be traced back to 776 BC. They were dedicated to the Olympian gods. They continued for nearly 12 centuries, until Emperor Theodosius banned them in 393 A.D. as a "pagan cult." (See "Ancient Olympic Games," http://www.olympic.org/

ancient-olympic-games [last accessed October 13, 2014].) The Olympic Games were closely linked to the religious festivals of the cult of Zeus, and owed their importance to religion. (*Ibid.*) The ancient Olympic Games featured track and field events and combat events such as pentathlon, boxing, discus, gymnastics, javelin, jump, running, weightlifting, wrestling and equestrian events. (Nigel B. Crowther, "The Ancient Olympic Games" in *Sport in Ancient Times* (2007); "Ancient Olympic Events," Perseus Project of Tufts University, http://www.perseus. tufts.edu/Olympics/sports.html [last accessed 10/13/2014].) The track and field events have changed little since ancient times and are ubiquitous in public schools at all levels from elementary school to college.

Gymnastics, also a popular high school and college sport, can be traced to funeral games of the Mycenean period, between 1600 B.C. and 1100 B.C. (Wendy J. Raschke, *Archaeology Of The Olympics: The Olympics & Other Festivals In Antiquity* (1988) pp. 22-23.)

Lacrosse, which is growing in popularity at high schools and colleges, originated with the First Nations Iroquois/Native American origin, where it was played as part of ceremonial ritual to give thanks

to the Creator or Master. (Origin of Men's Lacrosse, http://filacrosse.com/ origin [last accessed October 13, 2014]; Tom Rock, *More Than a Game. Lacrosse at the Onondaga Nation Connects the Current Generation with its Ancestors*, Lacrosse Magazine (November/December 2002), http://web.archive.org/web/ 20070822224214/http://www.redhawkslax.com/ news.lacrossemag.html [last accessed October 13, 2014].)

The Asian martial arts judo, jiujitsu, karate, now found as scholastic sports, trace their origins to an Indian Buddhist monk who founded Zen Buddhism in Western India, and to the fabled Shaolin Temple in China. (*Karate History*, Karate International, http://www.karateinternational.net/ history.html [last accessed October 13, 2014]; *Shotokan Karate of America*, Lineage, http://ska.org/lineage [last accessed October 13, 2014].)

The first recorded game that was similar to basketball was ullamaliztli, played by the Aztecs of Mexico, on a "tlachtli" or ball court (the game is sometimes referred to as Tlachtli). It was a played with a large rubber ball and the object was to throw the ball through an elevated stone hoop. The game was important for entertainment, politics and

religion. (Aztec Sports and Games, http://www.aztec-indians.com/aztec-games.html (last accessed October 13, 2014); Ancient Aztec Games, The Aztec Ball Game, http://www.aztec-history.com/ ancient-aztec-games.html [last accessed October 13, 2014].)

If Appellants' association of religious origins with a legal definition of "religious" for "establishment" analysis were adopted, the scholastic athletic cupboard wold be bare indeed.[8]

Culture and education would also be stripped of many of its masterpieces of literature starting with the classic Greek and Roman myths, the classic Greek plays based on them, and other great works. Indeed, the number of allusions to the Bible or Greek mythology in

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[8] Some even say that American football is a religious rite, at least in Texas. (See Brad Townsend, *A new religion: Football caught on early and became Texas' passion*, The Dallas Morning News (27 December 2010), http://www.dallasnews.com/sports/super-bowl/the-game/20101206-a-new-religion-football-caught-on-early-and-became-texas_passion.ece (last accessed October 13, 2014). Tom Landry, the legendary former coach of the Dallas Cowboys professional football team is quoted as having said "Football is to Texas what religion is to a priest." Texas Proud, FAMOUS TEXAS QUOTES, http://texasproud.com/culture/famous-texas-quotes (last accessed October 13, 2014). There is even a well-known "cult" movie, "Varsity Blues," a 1999 film about a small town in Texas where high school football is a religion. (Varsity Blues (Paramount Pictures) 1999.)

literature is astounding. Shakespeare references the Bible hundreds, if not thousands of times. Authors who include Biblical or classical references or even base whole works on the Bible, classic Greek religious myths or other religious sources include (to name but a few) Dante Alighieri, Joseph Conrad, Fyodor Dostoevski, William Faulkner, Nathaniel Hawthorne, Ernest Hemingway, James Joyce, Herman Melville, John Milton, Mark Twain, Leo Tolstoy, and Emile Zola.

Music education would be sorely diminished if it did not include both teaching about and performing Gregorian chants, masses (written by composers from the Renaissance to the 20th century), Baroque church cantatas, and oratorios.

Art education would be impossible if it could not teach sculpture and mosaics of ancient Greece and Rome, the great cathedrals and mosques of the medieval and baroque periods, painting and sculpture of all periods from the Middle Ages onward, much of which is dominated by religious themes and if students could not use those themes in their own work.

CONCLUSION

For the foregoing reasons, this Court should hold that yoga as taught in the Encinitas Union School District schools is not religious and affirm the judgment of Superior Court.

October 16, 2014

Respectfully submitted,

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Certificate of Word Count

Sedlock v. Baird, No. D064888
(Cal. Rules of Court 8.204(c)(1)

The undersigned certifies that pursuant to the text of this brief *amicus curiae* of Atlantic Legal Foundation contains **4,495** words, exclusive of the matters that may be omitted under rule 8.204(c)(3), as counted by word count feature of WordPerfect X5, the word processing program used to prepare this brief.

October 16, 2014

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Case Name: Sedlock, et al. v. Baird, et al.
Court of Appeal Case Number: D064888
Superior Court Case Number: 37-2013-00035910-CU-MC-CTL

PROOF OF SERVICE

I, the undersigned, am currently employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 17383 Sunset Boulevard, Suite A315, Pacific Palisades, CA 90272.

On **October 16, 2014**, I served the foregoing documents described as:

APPLICATION OF ATLANTIC LEGAL FOUNDATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* IN SUPPORT OF INTERVENOR AND RESPONDENT YES!YOGA FOR ENCINITAS STUDENTS; and

BREIF *AMICUS CURIAE* OF ATLANTIC LEGAL FOUNDATION IN SUPPORT OF RESPONDENT YES! YOGA FOR ENCINITAS STUDENTS

on each interested party, as follows:

BY OVERNIGHT MAIL, by placing a true copy(ies) of the document(s) identified above into a sealed envelope or package as designated by Federal Express, addressed as set out below, and depositing said envelope/package with delivery fee provided for, into the a box maintained by Federal Express at 17383 Sunset Boulevard, Pacific Palisades, CA 90272, prior to this day's pickup time.

Name and Address	Party Represented or Reason For Service
Court of Appeal of the State of California Fourth Appellate District, Division One 750 B Street, Ste. 300 San Diego, CA 92101 Attn: Clerk's Office	Original and four copies – for filing
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 10·16·14

Sonya Bucher