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Does Teaching Yoga to Children in Public Schools Violate the Establishment Clause of the First Amendment?

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I. INTRODUCTION

Teaching yoga and mindfulness to children is a trend on the rise. The percentage of U.S. children ages four to seventeen that practice yoga more than doubled from 2012 to 2017, while the percentage of children that meditate increased roughly nine-fold during the same period.[1] The rise is due in part to America's schools establishing more yoga and mindfulness programs. A 2015 study found three dozen different yoga organizations offering yoga programs in 940 K-12 schools across the country.[2]

However, yoga's rise in popularity has led to a backlash. Schools have faced an increasing number of lawsuits from concerned parents on the grounds that offering yoga programs in schools violates the Establishment Clause of the First Amendment by promoting Eastern religions.[3] These First Amendment challengers argue that yoga is inherently religious and cannot be separated from the Hindu religion.[4] But for many people, yoga is entirely secular and undertaken to improve physical and mental health. Moreover, many school-based yoga programs have successfully structured their classes to separate the physical aspects of yoga from its religious aspects, thereby offering children a beneficial option for improving their physical and mental health.

This article argues that yoga programs in public schools and state-run facilities, unlike school prayers, should be upheld as constitutional under the Establishment Clause if the programs are sufficiently modified from yoga's religious roots. In exploring this issue, this article will discuss the benefits of yoga and mindfulness for children. It will also compare the origins of yoga to contemporary yoga in the United States. This will be followed by a discussion of the Establishment Clause and how courts determine whether a state activity violates the Establishment Clause under the *Lemon* test. The article concludes with an analysis of cases challenging yoga and meditation programs in public schools and discusses why courts agree yoga is not inherently religious if sufficiently separated from its roots in the Hindu religion.

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[1] LINDSEY I. BLACK ET AL., NAT'L CTR. FOR HEALTH STATS., NCHS DATA BRIEF, NO. 324, USE OF YOGA, MEDITATION, AND CHIROPRACTORS AMONG U.S. CHILDREN AGED 4–17 YEARS (2018), https://www.cdc.gov/nchs/data/databriefs/db324-h.pdf.

[2] Bethany Butzer et al., *School-based Yoga Programs in the United States: A Survey*, 29 ADVANCES MIND-BODY MED. 1 (2015).

[3] *See infra* Part VI; *see also* Matthew Moriarty et al., *Yoga and the First Amendment: Does Yoga Promote Religion?* FED. LAW. 69, 74 (2013).

[4] *See infra* Part VI.

II. THE BENEFITS OF YOGA AND MINDFULNESS FOR CHILDREN

Research indicates that yoga and mindfulness improve both physical and mental health in school-aged children.[5] One-third of youth in the United States are overweight or obese, and a lack of daily physical activity is one of the key influencing factors.[6] As a form of mindful movement, yoga is particularly well-suited to provide an alternative way for children to engage in physical activities. Studies show that yoga and mindfulness help improve balance, strength, and flexibility[7] as well as students' physical well-being, including their body posture, sleep quality, fatigue, and diet.[8]

In addition, research shows that yoga reduces anxiety and stress in children and overall helps regulate their emotions. For example, a study of high school students found that doing forty minutes of yoga three times per week for sixteen weeks significantly improved the students' ability to regulate their emotions compared to participating in a standard physical education class.[9] Additional studies demonstrate that yoga supports academic success, likely by alleviating stress and anxiety and improving focus and memory.[10] Finally, research suggests that yoga reduces other problems in schools like bullying,[11] unexcused absences,[12] and detentions.[13]

Yoga programs are also expanding beyond schools to residential and juvenile detention facilities around the United States to help youth cope with childhood trauma. One study found that yoga programs designed specifically for victims of trauma can improve mental and physical health.[14] In fact, an extensive report from the Georgetown Law Center on Poverty and Inequality shows that trauma-informed and gender-responsive yoga programs can be transformative for girls in the juvenile justice system and give them tools to help them thrive.[15]

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[5] *See, e.g.*, Julia C. Folleto et al., *The Effects of Yoga Practice in School Physical Education on Children's Motor Abilities and Social Behavior*, 9 INT'L J. YOGA 156, 160 (2016).
[6] *Obesity in Children*, WEBMD, https://www.webmd.com/children/guide/obesity-children#1 (last visited Nov. 16, 2020).
[7] Folleto et al., *supra* note 5.
[8] David Chen & Linda Pauwels, *Perceived Benefits of Incorporating Yoga into Classroom Teaching: Assessment of the Effects of "Yoga Tools for Teachers"*, 4 ADVANCES PHYSICAL EDUC. 138, 140 (2014), https://www.scirp.org/journal/paperinformation.aspx?paperid=49338.
[9] Leslie A. Daly et al., *Yoga and Emotion Regulation in High School Students: A Randomized Controlled Trial,* 2015 EVIDENCE-BASED COMPLEMENTARY & ALT. MED., Aug. 2015, at 6.
[10] *See* Marshall Hagins & Andrew Rundle, *Yoga Improves Academic Performance in Urban High School Students Compared to Physical Education: A Randomized Controlled Trial*, 10 MIND, BRAIN, & EDUC. 105, 113-14 (2016).
[11] Erin E. Centeio et al., *Using Yoga to Reduce Stress and Bullying Behaviors Among Urban Youth*, 9 HEALTH 409, 414 (2017).
[12] Jennifer L. Frank et al., *Effectiveness of a School-Based Yoga Program on Adolescent Mental Health and School Performance: Findings from a Randomized Controlled Trial*, 8 MINDFULNESS 544, 550 (2017).
[13] *Id.*
[14] *See* Alison M. Rhodes, *Claiming Peaceful Embodiment Through Yoga in the Aftermath of Trauma,* 21 COMPLEMENTARY THERAPIES CLINICAL PRACT. 247, 248 (2015).
[15] REBECCA EPSTEIN & THALIA GONZALEZ, CTR. ON POVERTY & INEQ. GEO. L., GENDER & TRAUMA SOMATIC INTERVENTIONS FOR GIRLS IN JUVENILE JUSTICE: IMPLICATIONS FOR POLICY AND PRACTICE 5

To provide a clear picture of how the advantages of yoga can legally be offered to children in schools, the following sections will discuss how yoga is practiced in the United States and what constitutional limitations exist for school-based yoga programs.

III. CONTEMPORARY YOGA IN THE UNITED STATES

Yoga is a set of physical, mental, and spiritual practices that originated in India.[16] "Yoga" is a Sanskrit word meaning to "unite, join, or yoke" and comes from an oral tradition that was transmitted directly from teacher to student.[17] While yoga is referenced in sacred Hindu texts, such as the *Bhagavad Gita* and the *Katha Upanishad*, the Indian sage Patañjali is credited with collating this oral tradition in his classic work, the *Yoga Sutras*.[18] The *Yoga Sutras*, widely regarded as the authoritative text on yoga, is a collection of aphorisms outlining the "eight limbs" or steps of yoga.[19] These eight limbs serve as a guide for living an impactful life and originate from the Sanskrit word "ashtanga."[20] While the first four limbs concentrate on controlling one's body through physical poses and breathing exercises, the last four limbs are associated with the more religious components of yoga and attaining a higher state of consciousness.[21]

Contemporary yoga in America is very different from the *Yoga Sutras*; it usually only incorporates three of the traditional limbs of yoga: the physical postures (or "asanas"), combined with the practice of breath control (or "pranayama"), and meditation (or "dhyana").[22] Yoga scholar and expert Dr. Mark Singleton testified in *Sedlock v. Baird,* discussed below, that the two most popular forms of yoga practiced in the United States—hatha yoga and Ashtanga yoga—were originally developed as universal practices that anyone could practice no matter their religion.[23] He testified that Ashtanga yoga developed at a time in India when there were extensive experiments with various physical exercises,

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(2017), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/gender-and-trauma-1.pdf.

[16] *See* Ishwar V. Basavaraddi, *Yoga: Its Origin, History and Development*, MINISTRY OF EXTERNAL AFF. GOV'T INDIA (2015), https://mea.gov.in/in-focus-article.htm?25096/Yoga+Its+Origin+History+and+Development; *see also Yoga,* CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/yoga (last visited Sept. 23, 2020).

[17] Basavaraddi, *supra* note 16; Edwin Bryant, *The Yoga Sutras of Patañjali*, INTERNET ENCYC. OF PHIL., http://www.iep.utm.edu/yoga/ (last visited Sept. 8, 2020).

[18] Bryant, *supra* note 17.

[19] *Id.* ("The tradition of Patañjali in the oral and textual tradition of the Yoga Sūtras is accepted by traditional Vedic schools as the authoritative source on Yoga, and it retains this status in Hindu circles into the present day.").

[20] Mara Caricco, *Get to Know the Eight Limbs of Yoga*, YOGA J. (July 10, 2017), https://www.yogajournal.com/practice/the-eight-limbs.

[21] *Id.*

[22] *See* Declaration of Brandon Hartsell at 3, Sedlock v. Baird, 185 Cal. Rptr. 3d 739 (2013) (No. 37-2013-00035910), https://yogaencinitasstudents.files.wordpress.com/2013/05/hartsell-declaration.pdf; *see also* Caricco, *supra* note 20.

[23] Declaration of Mark Singleton at 1-2, Sedlock v. Baird, 185 Cal. Rptr. 3d 739 (2013) (No. 37-2013-00035910), https://yogaencinitasstudents.files.wordpress.com/2013/05/declaration-of-dr-singleton.pdf [hereinafter Singleton].

including aerobics and gymnastics.[24] Further, records show that the inspiration for some of the standing yoga poses came from non-yogic sources.[25] Dr. Singleton correctly concluded that modern yoga in the United States is a "distinctly American cultural phenomenon" developed with numerous non-religious theories and practices.[26]

Whether yoga is exercise or something more religious has also been a point of controversy in terms of taxation. Different jurisdictions have varying stances on whether private yoga studios should be taxed like fitness centers. For example, Washington, D.C. recently implemented a sales and use tax on all gyms and recreational sports facilities, including yoga studios.[27] However, in 2012, New York took the opposite stance and decided not to tax yoga studios like it taxes gyms.[28] Despite these disagreements among various state-taxing authorities, surveys have shown that for many, yoga is primarily a secular activity practiced for physical and mental health reasons rather than for religious purposes.[29]

In addition, the overall consensus among the judiciary is that contemporary yoga is not inherently religious and is commonly practiced for physical well-being rather than as a religious practice. For example, the court in *Sedlock v. Baird* stated that "while yoga *may* be practiced for religious reasons, it cannot be said to be *inherently* religious or overtly sectarian" and distinguished it from other clearly religious activities like Catholic Mass.[30] The district court in *Altman v. Bedford Central School District* recognized that yoga is generally used for physical purposes in the West and held that the yoga course in question did not teach religion or foster any religious concepts connected with yoga.[31]

Even if yoga is considered religious by a court, as the next section discusses, a yoga program can still be constitutional if it does not violate the Establishment Clause of the First Amendment.

IV. THE ESTABLISHMENT CLAUSE

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[32] This clause operates to protect the religious freedom of all Americans and requires government neutrality with respect to religion. Case law has interpreted this to mean that the Constitution forbids not only state practices that "aid one religion . . . or prefer one

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[24] *Id.* at 3.
[25] *Id.*
[26] *Id.* at 4.
[27] D.C. CODE MUN. REGS. tit. 9, § 427 (LexisNexis, LEXIS through D.C. Register, Vol. 67, Issue 45, October 30, 2020).
[28] N.Y. STATE DEP'T OF TAX'N AND FIN., TB-ST-329, TAX BULLETIN HEALTH AND FITNESS CLUBS 2 (2014), https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/health_and_fitness_clubs.htm.
[29] *See Highlights from the 2016 Yoga in America Study*, YOGA ALL. (Jan. 13, 2016), https://www.yogaalliance.org/Learn/About_Yoga/2016_Yoga_in_America_Study/Highlights.
[30] Sedlock v. Baird, 185 Cal. Rptr. 3d 739, 756-57 (Cal. Ct. App. 2015) (emphasis in original).
[31] Altman v. Bedford Cent. Sch. Dist., 45 F. Supp. 2d 368, 385 (S.D.N.Y. 1999), *aff'd. in part & rev'd. in part on other grounds*, 245 F.3d 49 (2d Cir. 2001).
[32] U.S. CONST. amend. I.

religion over another," but also those practices that "aid all religions" and thus endorse or prefer religion over nonreligion.[33]

Although the purpose of the Establishment Clause is to prevent entanglement between religion and government, the Supreme Court has recognized that total separation is not realistic or even desirable "in an absolute sense."[34] For example, in *Lynch v. Donnelly*, the Supreme Court found a Christmas crèche displayed in the heart of the city to be constitutional, aptly stating that, "[in] our modern, complex society, whose traditions and constitutional underpinnings rest on and encourage diversity and pluralism in all areas, an absolutist approach in applying the Establishment Clause is simplistic and has been uniformly rejected by the Court."[35]

The line between actions deemed permissible and actions barred by the Establishment Clause is not easily drawn; rather, courts scrutinize each activity to determine whether it violates an establishment of religion.[36] As a result, when determining whether an action or statute violates the Establishment Clause, courts engage in a fact-specific inquiry on a case-by-case basis taking into account the full context of the action.[37] For example, although the Supreme Court struck down an Alabama law that required a mandatory moment of silence for meditation or voluntary prayer in school in *Wallace v. Jaffree*,[38] some neutrally crafted mandatory moments of silence have been held constitutional after examining each law's legislative history and implementation.[39] The *Sedlock* court reiterated this sentiment in the context of yoga when it stated that a yoga program in a school may be held constitutional in one instance but religious in another based on a review of the totality of the circumstances.[40]

To determine whether a state activity violates the Establishment Clause, courts utilize a three-prong test first set forth in *Lemon v. Kurtzman*.[41] Although the Supreme Court has modified or ignored the *Lemon* test in various cases,[42] it is still the starting point for many challenges, including challenges to teaching yoga in public schools.[43]

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[33] Everson v. Board of Educ. of Ewing Twp., 330 U.S. 1, 15 (1947); *see also* Wallace v. Jaffree, 472 U.S. 38, 53 (1985); Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 17 (1989); Torcaso v. Watkins, 367 U.S. 488, 495 (1961).

[34] Lemon v. Kurtzman, 403 U.S. 602, 614 (1971).

[35] Lynch v. Donnelly, 465 U.S. 668, 678, 685 (1984).

[36] *Id.* at 678-79.

[37] *See id.*; *see also* Newdow v. Rio Linda Sch. Dist., 597 F.3d 1007, 1019 (9th Cir. 2010).

[38] *Jaffree*, 472 U.S. at 61.

[39] *See* Bown v. Gwinnett Cnty. Sch. Dist., 112 F.3d 1464, 1473 (11th Cir. 1997); *see also* Brown v. Gilmore, 258 F.3d 265, 281 (4th Cir. 2001).

[40] Sedlock v. Baird, 185 Cal. Rptr. 3d 739, 759 (Cal. Ct. App. 2015).

[41] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).

[42] *See, e.g.*, Zelman v. Simmons-Harris, 536 U.S. 639, 662-63 (2002) (upholding school voucher program without using the *Lemon* test); Good News Club v. Milford Cent. Sch., 533 U.S. 98, 119 (2001) (ignoring the *Lemon* test in holding that allowing religious school groups to use school facilities does not violate the Establishment Clause); Cnty. of Allegheny v. ACLU, 492 U.S. 573, 620-21 (1989) (using modified version of the *Lemon* test to find the display of a nativity scene in a courthouse unconstitutional but allowing the display of a menorah outside county building).

[43] *See* Malnak v. Yogi, 592 F.2d 197, 199 (3d Cir. 1979); Altman v. Bedford Cent. Sch. Dist., 45 F. Supp. 2d 368, 375 (S.D.N.Y. 1999); *Sedlock*,185 Cal. Rptr. 3d at 748.

V. THE *LEMON* TEST

Under the *Lemon* test, a court must determine: (1) whether the government's action has a secular or a religious purpose; (2) whether the primary effect of the government's action is to advance or inhibit religion; and (3) whether the government's policy or practice fosters an "excessive entanglement" between government and religion.[44]

A. Secular or Religious Purpose

The first prong requires that a state statute or action have a sincere, secular legislative purpose.[45] However, even if a government action serves a religious purpose, it may be constitutional if a secular objective also exists.[46] For instance, in *Newdow v. Rio Linda School District*, the court found that a school district that allowed students to voluntarily recite the Pledge of Allegiance had the secular purpose of encouraging patriotic exercise.[47] In *Florey v. Sioux Falls School District,* the court held that recognition of holidays at school may be constitutional if the purpose is to provide secular instruction about religious traditions rather than to promote the particular religion involved.[48] In contrast, courts did not find secular purpose when a judge displayed a poster of the Ten Commandments in his courtroom[49] or when a crucifix was placed in a public park to honor servicemen.[50] Overall, in order to satisfy this prong, the challenged action does not need to be entirely secular; an action will most likely be upheld so long as a religious purpose does not predominate.[51]

In addition, many activities that originally served a religious purpose may cease to be religious over time. For example, in *McGowan v. State of Maryland*, the Supreme Court upheld Sunday Closing Laws in Maryland for the secular purpose of promoting the health and welfare of its citizens, despite their religious origin.[52] In doing so, the Court stated, "To say that the States cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and State."[53] The idea that a religious activity can become secular over time is particularly

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[44] *Lemon*, 403 U.S. at 612-13.
[45] Edwards v. Aguillard, 482 U.S. 578, 586-87 (1987).
[46] *See, e.g.*, Sch. Dist. of Abington Twp. v. Schempp, 374 U.S. 203, 296-303 (1963) (Brennan, J., concurring) ("[T]he 'Establishment' Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions." (quoting McGowan v. Maryland, 366 U.S. 420, 442 (1961))); *see also* Lynch v. Donnelly, 465 U.S. 668, 680 (1984).
[47] Newdow v. Rio Linda Sch. Dist., 597 F.3d 1007, 1018-19 (9th Cir. 2010).
[48] Florey v. Sioux Falls Sch. Dist., 619 F.2d 1311, 1315 (8th Cir. 1980).
[49] ACLU of Ohio v. Ashbrook, 375 F.3d 484, 495 (6th Cir. 2004).
[50] Gonzales v. N. Twp. of Lake Cnty., 4 F.3d 1412, 1414, 1421 (7th Cir. 1993).
[51] *Ashbrook*, 375 F.3d at 491.
[52] McGowan v. Maryland, 366 U.S. 420, 449 (1961).
[53] *Id.* at 444.

significant in yoga cases where challengers commonly argue that yoga cannot be separated from its religious roots.

In summary, the first prong is a threshold question that must be met before analyzing the other two prongs of the *Lemon* test.[54] However, courts generally defer to a government's statement regarding the secularity of purpose as long as the stated purpose is "not a sham."[55]

B. Advance or Endorse Religion

If there is a secular purpose, the second prong of the test is triggered. Here, a court may invalidate a state action irrespective of a secular purpose if the principal or primary effect of the action is one that advances or inhibits religion.[56] In *Doe v. Beaumont Independent School District*, a school created a special volunteer counseling program that only recruited clergyman.[57] The court held that the school's action clearly favored religion over nonreligion and thus violated the second prong of the *Lemon* test.[58] In contrast, in *Agostini v. Felton*, the Supreme Court upheld a federally funded program that hired public school teachers to provide remedial instruction to children in parochial schools.[59] The Court concluded that, because the remedial education program allocated services based on religion-neutral criteria, it did not have the practical effect of advancing religion.[60] Overall, the effect of the government action cannot exhibit a preference of one religion over another, including a preference for secularism.

The Supreme Court has also made it clear that a government action or law that "confers an 'indirect,' 'remote,' or 'incidental' benefit" related to religion is not necessarily unconstitutional.[61] Further, a government action's "coincidental resemblance to a religious practice does not have the primary effect of advancing religion."[62] For example, in *Johnson v. Poway Unified School District*, the Ninth Circuit concluded that a teacher's display of Tibetan prayer flags did not violate the Establishment Clause because the school's use of the flags was completely secular, despite their religious significance in some circumstances.[63] In another set of cases, the use of public school facilities by student groups for religious purposes in colleges or high schools, or even on a rental basis by outside religious organizations, was not held to be an advancement of religion because the public

[54] Edwards v. Aguillard, 482 U.S. 578, 585 (1987).
[55] *Id.* at 586-87; *see also* Doe v. Beaumont Indep. Sch. Dist., 173 F.3d 274, 286-87 (5th Cir. 1999).
[56] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).
[57] *Doe*, 173 F.3d at 279, 289.
[58] *Id.*
[59] Agostini v. Felton, 521 U.S. 203, 208 (1997).
[60] *Id.* at 232.
[61] Comm. for Pub. Ed. & Religious Liberty v. Nyquist, 413 U.S. 756, 771 (1973).
[62] Brown v. Woodland Joint Unified Sch. Dist., 27 F.3d 1373, 1380 (9th Cir. 1994).
[63] Johnson v. Poway Unified Sch. Dist., 658 F.3d 954, 974 (9th Cir. 2011).

could easily see there was no official endorsement of the religious bodies or their messages.[64]

It is important to note that this prong is analyzed from the perspective of an objective "observer who is familiar with the history of the government" action in question, rather than from the perspective of an individual student.[65] As the *Sedlock* court stated:

> A subjective standard is not used because, "[i]f an Establishment Clause violation arose each time a student believed that a school practice either advanced or disapproved of a religion, school curricula would be reduced to the lowest common denominator, permitting each student to become a 'curriculum review committee' unto himself or herself."[66]

Therefore, the analysis is an objective one that does not focus on the perspective of one student; however, courts may generally consider "the more vulnerable nature of school-age children" in this analysis.[67]

C. Excessive Entanglement Between Government and Religion

The final prong asks whether the government practice promotes an excessive entanglement with religion.[68] Here, courts focus on whether the action "involves comprehensive, discriminating, and continuing state surveillance of religion."[69] To rise to the level of excessive entanglement, the government action must involve more than a brief, one-time decision or inquiry. For example, in *Nurre v. Whitehead*, a school prevented a student from playing a musical composition at commencement because of its religious title.[70] The court decided there was no administrative entanglement because the action of the school consisted only of a one-time review of song titles for overtly religious references.[71] In contrast, in *Lemon*, the Supreme Court ruled that a state statute that paid salary supplements to teachers who were employed by a religious organization and teaching in parochial schools was unconstitutional, even though the teachers only taught courses offered in public schools and only used texts and materials from public schools.[72] The Court concluded that an excessive entanglement with religion arose from the statutory scheme because "[a] comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment

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[64] *See* Widmar v. Vincent, 454 U.S. 263, 274 (1981); *see also* Bd. of Educ. of Westside Cmty. Schs. v. Mergens, 496 U.S. 226, 252 (1990); *see also* Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist., 508 U.S. 384, 395 (1993).
[65] Sedlock v. Baird, 185 Cal. Rptr. 3d 739, 749-50 (Cal. Ct. App. 2015).
[66] *Id.* at 750 (quoting *Brown*, 27 F.3d at 1379).
[67] *Id.* at 750.
[68] Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971).
[69] Vernon v. City of L.A., 27 F.3d 1385, 1399 (9th Cir. 1994).
[70] Nurre v. Whitehead, 580 F.3d 1087, 1091 (9th Cir. 2009).
[71] *Id.* at 1098.
[72] *Lemon*, 403 U.S. at 606-07.

otherwise respected."[73] Entanglement therefore depends on the nature and extent of government surveillance.[74]

VI. SUMMARY OF LEGAL CHALLENGES TO SCHOOL-BASED YOGA IN THE UNITED STATES

Although there are only a few cases analyzing challenges to school-based yoga programs under the *Lemon* test, these cases are informative and support the proposition that yoga programs must be evaluated as a whole, taking into account the full context. A yoga program will most likely be held constitutional if the government's stated purpose is to promote the health and well-being of students, the program is sufficiently modified from yoga's religious roots so that it does not advance or endorse Hinduism, and the school district does not heavily monitor the program on a regular basis.

A. Malnak v. Yogi

Decided in 1979, *Malnak* was one of the earliest cases challenging a school-based meditation course.[75] Although *Malnak* did not directly address a yoga program, meditation and yoga have similar religious roots and thus the analysis used by the court applies to yoga programs as well. The case began when a group of parents sued to enjoin the teaching of an elective course called the Science of Creative Intelligence Transcendental Meditation (SCI/TM) in five New Jersey public high schools, claiming a violation of the Establishment Clause.[76]

The SCI/TM course at issue was "taught four or five days a week by teachers trained by the World Plan Executive Council—United States, an organization whose objective [was] to disseminate the teachings of SCI/TM throughout the United States."[77] The textbook used in the class was developed by the creator of Science of Creative Intelligence (SCI), Maharishi Mahesh Yogi.[78] Students were also required to participate in a ceremony known as a "puja."[79] The court described the puja as "ceremonial student offerings to deities" where "the student stood or sat in front of a table while the teacher sang a chant and made offerings to a deified 'Guru Dev.'"[80] Each puja lasted between one and two hours and was held on Sundays.[81]

The Third Circuit held that the course violated the second and third prongs of the *Lemon* test.[82] The court agreed with the district court that the primary effect of the course

[73] *Id.* at 619.
[74] Lynch v. Donnelly, 465 U.S. 668, 684 (1984).
[75] Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979).
[76] *Id.* at 198.
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* at 198, 200.
[81] *Id.* at 198.
[82] *Id.* at 199-200.

was to advance a religious concept.[83] It based the decision on the textbook, expert testimony, and particularly, the students' participation in pujas.[84] In addition, the court upheld the district court's determination that "the government aid given to teach the course and the use of public school facilities constituted excessive governmental entanglement with religion."[85]

Though many circuit courts have cited to *Malnak,* Judge Arlin Adams's concurrence is the most frequently referenced part of the opinion because it provides a modern definition of religion.[86] In his concurrence, Judge Adams concluded that the traditional definition of religion could not be confined to a single "Supreme Being" because it "would deny 'religious' identification to . . . millions of Americans."[87] He then proposed three inquiries that can be used as guidelines to determine the existence of a religion.[88] The first inquiry involves analyzing "the nature of ideas in question" and whether the content addresses fundamental questions or ultimate concerns about "deeper and more imponderable" matters.[89] The second inquiry is whether the doctrine is comprehensive as opposed to an isolated teaching.[90] Finally, the third inquiry examines whether there are "formal, external, or surface signs" associated with traditional religions, like services, the presence of clergy, or observation of holidays.[91]

Applying his new definition to the facts in *Malnak,* Judge Adams focused on the SCI aspect of the course.[92] First, he found that SCI provides answers to ultimate concerns, such as the way to unlimited happiness and the force of the universe.[93] Second, SCI is not an isolated theory but rather an adequately comprehensive theory presenting a claim of ultimate truth.[94] Third, while there were no organized clergy, there were formal observances and structures such as the use of mantras and the pujas.[95] Therefore, Judge Adams concluded that "[a]lthough transcendental meditation by itself might be defended," SCI made the course religious in nature, thereby satisfying his three-part definition of religion.[96]

However, in the cases following *Malnak*, courts did not find that the yoga programs in question shared any of the indicia of religion as the meditation-based SCI course did and, despite their religious roots, were taught in a secular way.

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[83] *Id.* at 199.
[84] *Id.*
[85] *Id.*
[86] *Id.* at 207 (Adams, J., concurring).
[87] *Id.* at 205-07.
[88] *Id.* at 207-10.
[89] *Id.* at 208.
[90] *Id.* at 209.
[91] *Id.*
[92] *Id.* at 213-14.
[93] *Id.* at 213.
[94] *Id.*
[95] *Id.* at 214.
[96] *Id.* at 213-14.

B. Altman v. Bedford Central School District

Altman was a 1998 case in which an athletic director of a high school in Bedford, New York, invited a Sikh minister to teach a yoga class.[97] The minister "wore a Sikh turban, a traditional Sikh robe, and the beard of a Sikh minister," and had "the trademark name of 'the Yoga Guy.'"[98] He guided the students in "breathing and stretching exercises" to help students attain a state of relaxation, followed by statements such as "I am happy, I am good."[99] The school district compensated him for his time and travel.[100]

A group of parents sued, claiming that hiring a Sikh priest to teach yoga "exercises on school premises constituted an endorsement of Eastern religions" and thereby violated the Establishment Clause.[101] However, the district court found that the yoga exercises were not unconstitutional because, although the teacher was dressed as a Sikh minister, "he did not . . . advance any religious concepts or ideas."[102] The Second Circuit decision, which concerned many other issues than yoga, did not alter the district court's findings on the yoga class.[103]

Altman supports the conclusion that a yoga program is not inherently religious if it does not advance religious concepts or ideas. Even though the students were taught breathing and physical exercises by a Sikh minister, because he did not touch on religion in any way, the class was upheld as constitutional under the Establishment Clause.

C. Sedlock v. Baird

Heard in 2015, *Sedlock* is the most recent case involving a constitutional challenge to a school-based yoga program and provides a useful summary and analysis of case law on the legal interplay between yoga and the First Amendment.[104] In this case, plaintiffs Stephen and Jennifer Sedlock, along with their two minor children, filed suit against the Encinitas School District, the school's superintendent, and the District's five governing board members, alleging that an Ashtanga yoga program implemented in the district's physical education program violated the religious freedom sections of the California Constitution.[105]

During the 2012–2013 school year, the District established a yoga program in nine schools.[106] The program was funded by the Jois Yoga Foundation, a nonprofit organization dedicated to promoting Ashtanga yoga in the community and in schools.[107] The Jois Foundation awarded the District $533,720, and the District agreed to "provide the oversight

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[97] Altman v. Bedford Cent. Sch. Dist., 245 F.3d 49, 60 (2d Cir. 2001).
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] *Id.*at 55-56, 60.
[102] *Id.* at 65-66.
[103] *Id.* at 65, 82.
[104] Sedlock v. Baird, 185 Cal. Rptr. 3d 739 (Cal. Ct. App. 2015).
[105] *Id.* at 742.
[106] *Id.* at 745.
[107] *Id.* at 744.

for the implementation of a comprehensive yoga instruction for [kindergarten through sixth grade] students and the development of a curriculum supporting yoga instruction with a focus on life skills."[108]

When the program was first instituted, "parents complained that the program was religious."[109] The District addressed these concerns by removing cultural components and anything that could be perceived as religious.[110] The revised curriculum consisted of a "series of grade-specific lesson plans for teaching various yoga poses, proper breathing, relaxation, and character traits."[111] However, in 2013 the plaintiffs sued, claiming that the classes promoted Hinduism and violated the Establishment Clause of the California Constitution.[112] Because the Establishment Clause of the California Constitution provides the same protections as the federal Establishment Clause, the California Court of Appeal conducted its analysis under First Amendment jurisprudence and, applying the *Lemon* test, held that the District's yoga program did not advance religion.[113]

To reach this holding, the court applied the three prongs of the *Lemon* test. First, the court concluded that the program had a secular purpose, due in part to the plaintiffs' stipulation to that effect.[114] In addition, the evidence supported that the yoga program's purpose was to promote the physical and mental health of the students.[115]

Second, the court found that the yoga program's purpose neither endorsed nor disapproved of religion.[116] The court, consistent with prior case law, analyzed the yoga practice as a whole and concluded that the District's curriculum contained nothing that could be deemed cultural or religious.[117] The court summarized a typical lesson plan as containing a physical component of yoga poses, where all Sanskrit language was removed and the names of the poses were changed to kid-friendly poses.[118] The plans also included a "character component" in which children reflected on non-religious motivational quotes from famous people, such as Babe Ruth, Phil Jackson, and Reverend Jesse Jackson.[119] Finally, the lesson plans closed with a breathing exercise and five minutes of relaxation and self-reflection, where students were instructed to reflect on how they were feeling or how they showed respect in class.[120] Based on these factors, the court concluded that the program as implemented was "entirely secular" in nature.[121]

Third, the court held that the District's yoga program did not foster an excessive entanglement with religion and the relationship between the Jois Foundation and the

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[108] *Id.* at 745 (alteration in original).
[109] *Id.* at 745-46.
[110] *Id.* at 746.
[111] *Id.*
[112] *Id.* at 742.
[113] *Id.* at 748-49.
[114] *Id.* at 749.
[115] *Id.*
[116] *Id.* at 750.
[117] *Id.* at 751.
[118] *Id.* at 746, 750.
[119] *Id.* at 750.
[120] *Id.* at 751.
[121] *Id.*

District "was strictly that of a passive funder and grant recipient."[122] Although the District revised the curriculum in 2012 to remove Sanskrit pose names to alleviate parents' concerns, the court found that action did not equate to religious entanglement or continued surveillance of religion.[123] The court also refuted the plaintiffs' argument that continuous monitoring would be required by the District in the future "to ensure that religious elements were not introduced into" the curriculum.[124] According to the court, such monitoring would be no greater than ensuring "that an ordinary classroom teacher is not inculcating religion in his or her students."[125]

Further, the court concluded that, although the Jois Foundation awarded the District a grant to implement an Ashtanga yoga program, there was no excessive entanglement between the District and the Jois Foundation.[126] The court noted that the District controlled the curriculum, and there was no evidence that the Jois Foundation "attempted to monitor or influence the yoga program."[127] Finally, even though one yoga teacher worked part time for the Jois Foundation, the Foundation's involvement was limited to ensuring that yoga teachers were qualified in teaching yoga poses.[128] Based on this analysis, the California Court of Appeal determined that the school district's yoga program "did not constitute an establishment of religion in violation . . . of the California Constitution."[129]

The *Sedlock* decision was consistent with prior case law and reaffirmed that courts are likely to uphold yoga classes so long as they do not incorporate religious aspects of the Hindu practice of yoga but rather are part of the school district's curriculum to promote children's physical and mental well-being.[130] The court also agreed with prior precedent that yoga is not inherently religious.[131] In doing so, the court emphasized that although many cultural practices have historical associations with religion, some practices are kept after their connections to religion are gone.[132] The court cited expert testimony that yoga is commonly practiced in the United States for reasons distinct from religion, such as physical and mental health.[133] It further pointed out that the yoga program in question did not meet "any definition of religious activity," including the definition created by Judge Adams in *Malnak*.[134]

Interestingly, *Sedlock* was heard within a few years of the Supreme Court of India dismissing two petitions that sought to make yoga mandatory in all schools run or funded

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[122] *Id.* at 759.
[123] *Id.* at 758.
[124] *Id.* at 759.
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.* at 759.
[130] *See id.* at 749; Altman v. Bedford Cent. Sch. Dist., 245 F.3d 49, 65-66 (2d Cir. 2001); Malnak v. Yogi, 592 F.2d 197, 199-200 (3d Cir. 1979).
[131] *Sedlock*, 185 Cal. Rptr. 3d at 755.
[132] *Id.*
[133] *Id.* at 756.
[134] *Id.* at 755.

by the federal government for students in the first through eighth grade.[135] A petition filed by a spokesperson for the Bharatiya Janata Party (BJP), the Hindu Nationalist party of Prime Minister Narendra Modi, sought a decision that the State has a responsibility to provide yoga classes and textbooks in schools for the purpose of improving health.[136] Another petition also sought to make yoga a mandatory subject in school curriculum.[137] However, the Supreme Court of India dismissed the first petition in 2016 and the second in 2017, stating it could not dictate what schools teach and that it is the responsibility of the government and its experts to design the educational curriculum.[138] The Court also expressed concern for other religious minorities, such as Christians and Muslims, who might object to a mandatory yoga class in what is an officially secular school system.[139]

Naturally, many are comparing these decisions with *Sedlock* and asking why the courts reached what seem like conflicting decisions. By examining the decisions in the context of the different meanings of yoga in India versus the United States, the seemingly conflicting decisions make sense. As Dr. Singleton discussed in his testimony, contemporary yoga in the United States is rooted more in American culture than in Hindu religion and is seen as more of a holistic health practice than a religious one.[140] This is different in India, where for many devout Hindus yoga is still primarily a religious activity that is meant to steer the practitioner.[141]

D. More Yoga, More Litigation

Although there are only a handful of cases challenging school-based yoga programs, this number will surely increase as more schools across the country offer yoga programs. For example, in 2016, elementary school parents in Cobb County, Georgia, objected to a yoga-based mindfulness program on the grounds that the program promoted Buddhist beliefs.[142] Many Christian parents complained and even held a prayer rally to halt

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[135] *Supreme Court Dismisses Plea for Making Yoga Compulsory in Schools*, ECON. TIMES (Aug. 8, 2017), https://economictimes.indiatimes.com/news/politics-and-nations /supreme-court-dismisses-plea-for-making-yoga-compulsory-in-schools/articleshow/59966701.cms; *see also* Vishal Arora & Anuradha Sharma, *Is Yoga Religious? An Indian Court Mulls Mandatory School Exercises*, WASH. POST (Oct. 28, 2013), https://www.washingtonpost.com/national/on-faith/is-yoga-religious-an-indian-court-mulls-mandatory-school-exercises/2013/10/28/74117ade-3ffc-11e3-b028-de922d7a3f47_story.html.

[136] Jan Dizon, *India Supreme Court Dismisses Plea to Require Yoga in Schools*, WORLD YOGA NEWS (Nov. 9, 2016), https://www.worldyoganews.com/india-supreme-court-dismisses-plea-to-require-yoga-in-schools/. Many question the BJP's intent and whether the push for mandatory yoga were more for political gain rather than for the health and well-being of children. Neeta Lal, *The Politics of Yoga*, The Diplomat (Apr. 4, 2016), https://thediplomat.com/2016/04/the-politics-of-yoga/.

[137] Utkarsh Anand, *Supreme Court Dismisses Plea to Make Yoga Compulsory in Schools*, CNN NEWS 18 INDIA (Aug. 8, 2017), https://www.news18.com/news/india/supreme-court-dismisses-plea-to-make-yoga-compulsory-in-schools-1485643.html.

[138] Anand, *supra* note 137; s*ee also* Dizon, *supra* note 136.

[139] Arora & Sharma, *supra* note 135.

[140] Singleton, *supra* note 23, at 4.

[141] Mark L. Movsesian, *Yoga in Public Schools, American and Indian*, L. & RELIGION F. (Dec. 9, 2013), https://lawandreligionforum.org/2013/12/09/yoga-in-public-schools-american-and-indian/.

[142] Cole v. Cobb Cnty. Sch. Dist., No. 17-1378, 2018 WL 460127, at *2 (N.D. Ga. Jan. 18, 2018).

the program.[143] Despite the fact that the school district curtailed the program by removing Sanskrit words and any activities thought to be associated with Eastern religions,[144] the school shut down the yoga program and transferred the assistant principal in charge of implementing the program to another school miles away.[145]

In 2017, the assistant principal filed a lawsuit against the school district and the superintendent.[146] Among the various allegations, she claimed that the school violated the Establishment Clause by deferring to the religious views of the complaining Christian parents rather than remaining neutral and by shutting down the program and transferring her to another school.[147] Although the school board settled this case,[148] there is no doubt that there will be more cases in the future as yoga programs increase in other states.

In a move that foreshadows this increase, the Alabama House of Representatives recently passed a bill to reverse a 1993 ban forbidding yoga from being taught in public schools.[149] This new bill will allow school districts to offer yoga on an elective basis but requires instruction to focus exclusively on poses, exercises, and stretching techniques with English as opposed to Sanskrit names.[150] If the bill passes the state senate, it will be interesting to see how courts respond to potential constitutional challenges from parents. It is unclear if courts in states like Alabama will follow precedent from different jurisdictions, like *Sedlock*, *Altman*, and *Malnak*.

VII. CONCLUSION

There are many benefits of incorporating yoga for children in school and for youth in state-run residential and juvenile detention facilities. Studies have shown that yoga can help improve physical and mental well-being, contribute to academic success, and even help youth cope with childhood trauma.[151] However, yoga's rise in popularity in schools and government-run facilities has resulted in increased litigation on the issue of whether yoga programs violate the Establishment Clause of the First Amendment. As the case law indicates, the focal point of a court's analysis depends on the actual curriculum delivered to students by a school district rather than yoga's religious roots. Courts have consistently rejected the argument that yoga is inherently religious, using both Judge Adams's

[143] *Id.*; *see also* Rose French, *Classroom Yoga Exercises Prompt Parent Concerns in Cobb*, ATLANTA J.-CONST. (Dec. 15, 2016), https://www.ajc.com/news/local-education/classroom-yoga-exercises-prompt-parent-concerns-cobb/fJOGtzRYXr8UP56OsM5DFJ/.
[144] French, *supra* note 143.
[145] *Cole*, 2018 WL 460127 at *3.
[146] *Id.* at *1.
[147] *Id.* at *9.
[148] Kristal Dixon, *Cobb School Board Approves Settlement Over Yoga Lawsuit*, ATLANTA J.-CONST. (Nov. 11, 2019), https://www.ajc.com/news/local/cobb-school-board-approves-settlement-over-yoga-lawsuit/ljkVilVEAC1F4mAuG3Bv9M/.
[149] Brandon Moseley, *House Passes Bill to End Ban on Yoga in Alabama Schools*, ALA. POL. REP. (Mar. 11, 2020), https://www.alreporter.com/2020/03/11/house-passes-bill-to-end-ban-on-yoga-in-alabama-schools/.
[150] *Alabama Bill May Lift Yoga Ban in Public Schools but Prohibit 'Namaste' Greeting,* GUARDIAN (Mar. 8, 2020), https://www.theguardian.com/us-news/2020/mar/08/alabama-yoga-ban-public-schools-prohibit-namaste.
[151] *See supra* Part II.

definition of religion and evidence showing that contemporary yoga in the United States is commonly practiced for reasons entirely distinct from religion. Moreover, even if there are religious aspects in a school-based yoga program, it may still be upheld if: the primary purpose of the yoga program is for exercise and well-being; the program is sufficiently modified from its religious roots; and the school district is not involved in heavy monitoring of program on a regular basis. School districts and other state-run institutions looking to offer the physical and mental benefits of yoga to children should take close note of these requirements to protect yoga programs from First Amendment challenges.