UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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PLANS, INC.,

Plaintiff,

v.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, TWIN RIDGES ELEMENTARY SCHOOL DISTRICT, DOES 1-100,

Defendants.

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NO. CIV. S-98-0266 FCD PAN

MEMORANDUM AND ORDER

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Plaintiff PLANS, Inc. ("PLANS") brought an action against the Sacramento City Unified School District ("SCUSD") and Twin Ridges Elementary School District ("Twin Ridges"), alleging that their operation of public schools using the Waldorf method of education violates the First Amendment of the United States Constitution, as well as several provisions of the California Constitution. This matter is before the court on PLANS's motion for summary judgment, pursuant to Rule 56 of the Federal Rules of

Civil Procedure. At the outset, the court notes that PLANS sets forth no evidence whatsoever regarding SCUSD, and therefore PLANS's motion is considered only with respect to Twin Ridges. For the reasons set forth below, PLANS's motion is denied.[1]

BACKGROUND[2]

PLANS (People for Legal and Non-Sectarian Schools), a non-profit California corporation whose members include taxpayers residing in both school districts at issue here, is "organized for the purpose, among other things, of educating the public regarding Waldorf education." (Pl's. Compl. ¶ 2.)

Waldorf education involves alternative teaching methods, including the integration of the arts into all subjects, so as to creatively teach children the substantive concepts. Students begin each school day with a two-hour main lesson, learning subjects in intensive three to four week blocks. Storytelling, reading of myths and legends, learning handcrafts, cooking, gardening, painting, music, and movement are also part of the Waldorf method. Another characteristic of Waldorf education is that the same teacher progresses through each grade with his or

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[1] Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

[2] Unless otherwise noted, the facts set forth herein are derived from the Ninth Circuit opinion, PLANS, Inc. v. Sacramento City Unified Sch. Dist., 319 F.3d 504 (9th Cir. 2003) and this court's Memorandum and Order, filed September 24, 1999, granting School Districts' motion for summary adjudication on the secular purpose issue and denying School Districts' motion for summary judgment.

her class, through the eighth grade.[3] Currently, there are more than 60,000 children in more than 700 Waldorf schools throughout the world.

Austrian-born Rudolf Steiner developed the Waldorf system of education in 1919 when he founded a school in Germany for the children of the Waldorf-Astoria cigarette factory workers. Before he founded the Waldorf method of education, Steiner formulated a "spiritual science" known as "anthroposophy." Literally translated from its Greek origin, "anthroposophy" means "knowledge of the human being." PLANS alleges that anthroposophy is a religion inseparable, in theory and in practice, from Waldorf education. (Pl's. Stmt. Of Disp. Facts, ¶¶ 3-4.)[4]

1. SCUSD

In 1993, as part of its voluntary desegregation plan, SCUSD proposed that several of its schools become magnet schools with a specialty focus. One of the district's schools, the Oak Ridge School, chose the Waldorf method as its magnet focus. The Oak Ridge staff's goals were to further SCUSD's desegregation plan, provide an innovative learning environment for its students, promote creativity, improve reading skills, and provide a caring environment for the students. The SCUSD School Board approved

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[3] PLANS concedes that these attributes characterize the Waldorf method, but allege that these are not the only attributes of Waldorf education. PLANS, however, does not identify additional characteristics of the Waldorf method used at John Morse or Yuba River.

[4] SCUSD and Twin Ridges dispute this fact, and reference the court's Amended Pretrial Conference Order, filed April 24, 2001, which found that whether anthroposophy is a religion is a materially disputed fact in this matter. The court also found that whether the Waldorf methods used at John Morse and Yuba River advance and promote anthroposphy is a disputed fact.

Oak Ridge's magnet focus in April of 1995, and Oak Ridge began operating as a Waldorf methods magnet school in September of 1995.

Rudolph Steiner College, which provides teacher training in Waldorf education, submitted a proposal for the training of the Oak Ridge teachers in the use of Waldorf methods in a public school setting. Betty Staley, the Dean of Faculty, created the teacher training program in 1995. The SCUSD School Board accepted Rudolf Steiner College's proposal in February of 1996. The parties dispute whether the teacher training program excluded all topics of a spiritual, religious, or anthroposophical nature.

Just prior to the 1997-98 school year, the Oak Ridge School moved and became the John Morse Waldorf Methods Magnet School ("John Morse"). The parties dispute whether anthroposophy is part of the John Morse curriculum.

2. Twin Ridges

After the closing of a nearby private Waldorf school, Waldorf parents in Nevada City investigated the possibility of founding a charter school that would use Waldorf methods. In August of 1994, Twin Ridges agreed to sponsor the school in order to provide area residents with an alternative form of education which was both innovative and academically challenging. The Twin Ridges Alternative Charter School ("TRACS") opened in September of 1994. The following year, TRACS became the Yuba River Charter School ("Yuba River").[5] The parties dispute whether the Yuba River curriculum incorporates anthroposophy.

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[5] Yuba River teachers did not participate in the Rudolf Steiner College training program created for the SCUSD faculty.

3. **Procedural History**

On May 6, 1999, School Districts filed a Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Issues including, *inter alia*, the request for dismissal on the grounds that PLANS lacked taxpayer standing. This court granted summary adjudication in favor of School Districts on the "secular purpose" prong of the Lemon test (Summary Judgment Order 18-19, 25), but ruled that disputed issues of fact existed on the second "advancement" or "endorsement" prong, and third "excessive entanglement" prong. (Id. 19-24.) This court denied summary judgment on the issue of standing, but later dismissed on the basis of lack of taxpayer standing. On appeal, the Ninth Circuit reversed and remanded on the basis that PLANS had standing to bring a "good-faith pocket-book" challenge. (PLANS, Inc. v. Sacramento City Unified Sch. Dist., 319 F.3d 504 (9th Cir. 2003). (quoting Doremus v. Bd. of Educ., 342 U.S. 429, 434-35 (1952)).)

The matter is before this court on PLANS's motion for summary judgment on the grounds that anthroposophy is a religion, and since anthroposophy is inextricably intertwined with Waldorf education, the Waldorf methods being used in the public schools at issue violate the Establishment Clause.

STANDARD

Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c)); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). If there is "any evidence in the record from any source from which a reasonable inference in the [nonmoving

party]'s favor may be drawn, the moving party simply cannot obtain a summary judgment . . . ." In re Japanese Electronic Products Antitrust Litigation, 723 F.2d 238, 258 (1983) (*rec'd. on other grounds sub nom.* Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).)

The moving party bears the responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. Chelates Corp. v. Citrate, 477 U.S. 317, 323 (1986)(quoting Rule 56(c)).

If the moving party also bears the burden of persuasion on the challenged claim at trial, its showing must "entitle it to a directed verdict if the evidence went uncontroverted at trial." Houghton v. South, 965 F.2d 1532, 1536 (9th Cir. 1992) (quotation omitted); cf. Chelates, 477 U.S. at 331 (Brennan, J., dissenting) ("If the moving party will bear the burden of persuasion at trial, that party must support its motion with credible evidence . . . that would entitle it to a directed verdict if not controverted at trial." Chelates, 477 U.S. at 331 (Brennan, J., dissenting); Anderson, 477 U.S. at 252 ("The judge's inquiry, therefore, unavoidably asks . . . whether there is evidence upon which a jury can properly proceed to find a verdict for the party

producing it, upon whom the onus of proof is imposed." (quotation omitted)).

In other words, the claimant movant must establish a right to summary judgment by showing that the pretrial record demonstrates the claimant is entitled to judgment as a matter of law. Therefore, the claimant movant must show that no reasonable fact-finder at trial could fail to regard the claimant as having discharged its preponderance of the evidence burden. See Edison v. Reliable Life Ins. Co., 664 F.2d 1130, 1131 (9th Cir. 1981) (to obtain summary judgment in its favor, insurer claimant must prove no realistic possibility that fact-finder will find policy language at issue, and dispute must revolve around legal effect of language.)

In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence. See T.W. Elec. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987) (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. See Falls Riverway Realty, Inc. v. City of Niagara Falls, 754 F.2d 49, 57 (2d Cir. 1985); Thornhill Publ'g Co., Inc. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

ANALYSIS

In order for PLANS to successfully move for summary judgment in this matter, PLANS must prove it is entitled to judgment as a matter of law on two related issues: (1) whether anthroposophy constitutes a "religion" for Establishment Clause purposes[6]; and (2) if anthroposophy is a religion, whether there is anthroposophical curriculum at the two public Waldorf-method schools at issue, thereby constituting a violation of the Establishment Clause. PLANS has failed to demonstrate that there exists no genuine issue as to any material fact on both matters.

A. Anthroposophy as a Religion

1. Definition of Anthroposophy

As an initial matter, in order to prove that anthroposophy is a religion and that the Waldorf methods being used at the public schools in School Districts are anthroposophical, PLANS must first define "anthroposophy." PLANS simply concludes that "[a]nthroposophy is easily defined as a religion under all currently prevalent tests." (Pl's. Mem. of P & A at 9.) However, PLANS fails to define a single, unequivocal set of

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[6] The court recognizes that on October 21, 2004, PLANS submitted a recent Third Circuit decision, Campbill Soltane v. U.S. Dept. of Justice, 381 F.3d 143 (2004), in support of its contention that anthroposophy constitutes a religion for Establishment Clause purposes. However, this case sheds no light on this issue, since it neither defines anthroposophy nor holds that it is a religion for purposes of Establishment Clause analysis.

beliefs or practices, which can be definitively labeled "anthroposophy." Therefore, PLANS ignores the crucial first step in analyzing whether anthroposophy is a religion. Rather, PLANS attempts to define anthroposophy by reference to the teachings of Rudolf Steiner. (See Pl's. Mem. of P & A at 7-8.) "[Steiner] teaches about a hierarchy of beings, including spiritual beings that are led by God, who interact with people through Lucifer, Ahriman, and the Archangel Michael." (Id.) PLANS also states that "[a]nthroposophy expressly teaches about numerous spiritual beings and spiritual hierarchical structures and explains man's relationship to these beings and structures." (Id. at 12-13.) While, the above assertions may disclose aspects of some type of religious belief, they do not themselves provide a clear, unequivocal definition of anthroposophy. As a result, PLANS has not met its burden as the definition of anthroposophy remains a disputed issue of material fact.

2. Alvarado Test

Even assuming PLANS provided a definition of anthroposophy, it must also prove that anthroposophy constitutes a "religion" for Establishment Clause purposes.[7] In Alvarado v. City of San

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[7] PLANS argues that School Districts have "substantially shifted their position" with regards to this issue. (Plaintiff's Memorandum of Points & Authorities ("Pl's. Mem. of P & A") at 5.) However, School Districts assumed anthroposophy was a religion in their motion for summary judgment only for purposes of that motion. As the court found in its Pretrial Order, this issue is (continued...)

Jose, 94 F.3d 1223 (9th Cir. 1996), the Ninth Circuit heavily relied on the concurring opinion of Judge Adams in Malnak v. Yogi, 592 F.2d 197 (3d Cir. 1979) ("Malnak II"), which set forth three factors to consider in determining what constitutes a "religion" for Establishment Clause purposes. These factors are:

> First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.

Alvarado, 94 F.3d at 1229, quoting Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. 1981), cert. denied 456 U.S. 908 (1982).[8]

The Alvarado court addressed the question of whether a statute of a "Plumed Serpent" in the City of San Jose promoted or endorsed religion. The court analyzed the three indicia of religion set forth above, and determined that the plaintiff's claim that "New Age" is a religion lacked substantial merit. Alvarado, 94 F.3d at 1230. Accordingly, the court held for the City, concluding that the display presented no "cognizable religious issue." Id. at 1229.

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[7](...continued)
materially disputed between the parties. (Pretrial Order 2-4, IV, A-D, VII 1.)

[8] See also Friedman v. Southern California Permanente Medical Group, 102 Cal.App.4th 39 (2002), which similarly relies on Africa and Malnak II.

School Districts have set forth considerable evidence that anthroposophy is a "philosophy," not a "religion." (See Defs.' Opp. at 6-9; Amicus Curiae Brief of the Anthroposophical Society in America in Support of Defs.) School Districts argue that any group which includes "atheists, agnostics, and devout believers alike among its membership" cannot "be deemed a religion without stretching this key legal concept beyond any meaning[]". (Defs.' Opp. at 6.) Notably, PLANS concedes that "[a]nthroposophists claim that [a]nthroposophy is merely a science - a belief system that does not require one to reject his or her religion to pursue . . . ." (Id. at 14.)

As the evidence submitted by both parties indicates, a determination of whether anthroposophy constitutes a "religion" for Establishment Clause purposes is necessarily a fact-intensive process. PLANS argues, however, that anthroposophy is a religion as a matter of law, based on Malnak II, 592 F.2d 197. (See Pl's. Mem. of P & A at 11-15.) In Malnak II, the Third Circuit affirmed the district court's finding that the teaching of a course called the Science of Creative Intelligence Transcendental Meditation ("SCI/TM") in a public high school violated the Establishment Clause. Malnak II, 592 F.2d at 197. The SCI/TM course taught that "'pure creative intelligence' [was] the basis of life, and that through the process of Transcendental Meditation students [could] perceive the full potential of their

lives." Id. at 198. In finding that the course involved religious activity, the Third Circuit relied on its careful review of the course textbook, expert testimony, and the uncontested facts regarding the class' incorporation of puja, a religious ceremony that involves the chanting of a mantra. Malnak II, 592 F.2d at 199.

However, PLANS's reliance on Malnak II is misplaced, since it is factually distinguishable. None of the factors relied on by that court in finding the course involved "religious activity" are present here. Malnak II involved one specific class which incorporated the beliefs of a globally-recognized, formal religion (Hinduism), a religious exercise (chanting mantras), and a religious ceremony (Hindu puja). Here, PLANS argues that the *entire* curriculum of the schools at issue is religious, without pointing to a single textbook, religious exercise, or religious ceremony for support. In fact, PLANS cites no curriculum evidence whatsoever from either school district to support its conclusion that both Waldorf method schools use "inherently religious curriculum." (See Pl's. Undisp. Facts, 115-176.)

B. Establishment Clause Violation

A government action challenged with violating the Establishment Clause must satisfy the test set forth by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971). To pass muster under the Lemon test, the challenged

practice must: (1) reflect a clearly secular legislative purpose; (2) have a primary effect that neither advances nor inhibits religion; and (3) avoid excessive government entanglement with religion. Id. at 612-613.

The Ninth Circuit applied the Lemon test in Brown v. Woodland Joint Unified School Dist., 27 F.3d 1373 (9th Cir. 1994), where parents of children in the defendant school district brought suit against the district, challenging the use of "Impressions," a teaching aid containing literary selections and suggested classroom activities as violating, *inter alia*, the Establishment Clause of the First Amendment. Id. at 1377. The activities challenged included the students pretending to be witches and repeating chants from various traditions. Id. The parents objected to the curriculum as promoting the religion of witchcraft. Id. The Brown court applied the Lemon factors and found there was no constitutional violation, since a coincidental resemblance to witchcraft ritual was not an endorsement by the school district of witchcraft. Id. at 1380.

As noted earlier, this court granted summary adjudication in favor of School Districts on the "secular purpose" prong of the Lemon test (Summary Judgment Order 18-19, 25). PLANS neither mentions this fact, nor addresses the second "advancement" or "endorsement" prong of the test. Instead, in seeking summary judgment, PLANS relies exclusively on the third prong of the

Lemon test to argue that "because of the unique interrelationship between Waldorf education and [a]nthroposophy, the public funding of Waldorf schools results in an excessive entanglement between government and religion . . .." (Pl's. Mem. of P & A at 18.) However, the only evidence PLANS sets forth to support this contention is the fact that Twin Ridges teachers attended training classes at Rudolf Steiner College. PLANS argues that "excessive entanglement" exists merely because teachers from public and private Waldorf schools attend the same classes, and because public Waldorf teachers are often hired from private Waldorf schools. (Pl's. Mem. of P & A at 19.)

PLANS presents no curriculum evidence from either school at issue to support such claims, and, notably, the court's pretrial order specifically lists the curriculum in the two schools as a "disputed fact[]." (Pretrial Order 3, ¶ IV 2 A-D, 3 A-D.) Since the issue of "excessive entanglement" based on the curriculum at the schools is a question of fact, and PLANS offers no citations to the record, PLANS's argument is insufficient on its face.

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CONCLUSION

Triable issues of material fact exist as to whether anthroposophy is a religion, as well as whether the Waldorf method of education implemented at John Morse and Yuba River advances and promotes anthroposophy. Therefore, PLANS's motion for summary judgment is DENIED.

IT IS SO ORDERED.

DATED: November 15, 2004

FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE