

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

FILED

Julia Kalish; Suzanne Leitner-Wise; )  
Suzanne Leitner-Wise Inc. d/b/a )  
U.S. 1 Yoga Teacher Training; )  
and Beverly Brown, )

Plaintiffs, )

v. )

Christine T. Milliken, in her official )  
capacity as Chair of the State )  
Council of Higher Education for )  
Virginia; Susan A. Magill, in her )  
official capacity as Vice-Chair of the )  
State Council of Higher Education )  
for Virginia; Gilbert T. Bland, in his )  
official capacity as Secretary of the )  
State Council of Higher Education )  
for Virginia; B.R. (Bob) Ashby, )  
Whittington W. Clement, James W. )  
Dyke Jr., Mimi M. Elrod, Mary C. )  
Haddad, G. Gilmer Minor III, )  
Katharine M. Webb, and Alan L. )  
Wurtzel, in their official capacities )  
as members of the State Council of )  
Higher Education in Virginia; and )  
Daniel J. LaVista, in his official )  
capacity as Executive Director of the )  
State Council of Higher Education )  
for Virginia, )

Defendants. )

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CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil Action No.

1:09CV1333

CMH/TRJ

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**PLAINTIFFS' ORIGINAL COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

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1. This civil-rights lawsuit seeks to vindicate the right of yoga-teacher trainers to teach others—including others who wish to become yoga instructors

themselves— about the methods, techniques, and philosophy of yoga. The Commonwealth of Virginia has made it illegal for anyone to teach how to become a yoga instructor without first getting the government’s permission. But teaching is speech, and that means the government must have a powerful reason before it may stop people from talking with one another. The justifications that the Commonwealth has put forward fall far short.

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2. Plaintiffs all teach private yoga-teacher training classes in Virginia. The State Council of Higher Education for Virginia (“SCHEV”) has recently announced that the Plaintiffs and others cannot offer these classes without first registering with the Commonwealth. Registration would require the Plaintiffs to pay substantial fees, fill out dozens of pages of paperwork, and get government bureaucrats, who have no expertise in the study of yoga, to approve their curricula. As Plaintiffs will demonstrate in this lawsuit, these requirements constitute an impermissible prior restraint on speech for which the Commonwealth of Virginia has no constitutionally acceptable justification.

### **JURISDICTION AND VENUE**

3. Plaintiffs bring this lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202. Plaintiffs seek injunctive and declaratory relief against the enforcement of Va. Code Ann. §§ 23-276.1-.10, .12, .14-.15. and 8 Va. Admin. Code §§ 40-31-10 to -320 (collectively, “Vocational School Law”) which, facially and as applied, violate Plaintiffs’ First Amendment right to speak with others about how to teach yoga without first obtaining permission from the Commonwealth.

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343.

5. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

#### **PARTIES**

6. Plaintiff Julia Kalish is an adult resident of Loudoun County, Virginia. Ms. Kalish currently teaches a yoga-teacher training class in Leesburg, Virginia, and plans to continue to teach yoga-teacher training classes in Virginia.

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7. Plaintiff Suzanne Leitner-Wise is an adult resident of Alexandria, Virginia. Ms. Leitner-Wise currently teaches a yoga-teacher training class in Alexandria, Virginia, and plans to continue to teach yoga-teacher training classes in Virginia. Ms. Leitner-Wise is the President of Suzanne Leitner-Wise Inc. d/b/a U.S. 1 Yoga Teacher Training, through which she manages her yoga classes.

8. Plaintiff Suzanne Leitner-Wise Inc. d/b/a U.S. 1 Yoga Teacher Training is a Subchapter-S corporation incorporated in Delaware with its primary place of business in Alexandria, Virginia. Through its President, Plaintiff Suzanne Leitner-Wise, U.S. 1 Yoga Teacher Training offers yoga-teacher training classes in Alexandria, Virginia and plans to continue offering yoga-teacher training classes in Virginia.

9. Plaintiff Beverly Brown is an adult resident of Alexandria, Virginia. Ms. Brown currently teaches a yoga-teacher training class in Alexandria, Virginia, with Suzanne Leitner-Wise. She plans to continue to teach yoga-teacher training classes in Virginia.

10. Defendant Christine T. Milliken is the Chair of SCHEV, the Commonwealth agency responsible for enforcing Virginia's Vocational School Law. Defendant Milliken is sued in her official capacity.

11. Defendant Susan A. Magill is the Vice-Chair of SCHEV and is sued in her official capacity.

12. Defendant Gilbert T. Bland is the Secretary of SCHEV and is sued in his official capacity.

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13. Defendants B.R (Bob) Ashby, Whittington W. Clement, James W. Dyke Jr., Mimi M. Elrod, Mary C. Haddad, G. Gilmer Minor III, Katharine M. Webb, and Alan L. Wurtzel are the remaining council members for SCHEV and are sued in their official capacities.

14. Defendant Daniel J. LaVista is the Executive Director of SCHEV and is sued in his official capacity.

#### STATEMENT OF FACTS

##### **Plaintiff Julia Kalish**

15. Plaintiff Julia Kalish has been studying yoga since 1998 and teaching yoga since 2005. She completed a 200-hour teacher-training program at the Health Advantage Yoga Studio in Herndon, Virginia, and an additional 300 hours of teacher training at the Samundra School for Global Living, headquartered in Frederick, Maryland. Ms. Kalish is registered as an "experienced Registered Yoga Teacher" by the Yoga Alliance, a private yoga-instructor certifier.

16. In 2007, Ms. Kalish decided she wanted to share her knowledge of yoga with other yoga practitioners who were interested in teaching. She decided the best way to communicate her knowledge of yoga would be to teach a teacher-training class.

17. Ms. Kalish contracted with the Flow Yoga studio in Leesburg, Virginia, to use their studio space so she could offer a teacher-training course there.

18. Ms. Kalish's teacher-training classes have had between eight and thirteen students. Her teacher-training class is nine months long and meets Friday, Saturday, and Sunday for one weekend per month.

19. In order to support herself, Ms. Kalish charges a fee for her yoga classes.

20. Ms. Kalish is currently teaching a yoga-teacher training class which is scheduled to conclude in May 2010. She plans to teach another yoga-teacher training class starting in September 2010.

**Plaintiffs Suzanne Leitner-Wise, U.S. 1 Yoga Teacher Training, and Beverly Brown**

21. Plaintiff Suzanne Leitner-Wise has been studying yoga since 1996 and teaching yoga since 1999. She has completed numerous private certifications and programs in various methods and styles of yoga.

22. Ms. Leitner-Wise completed a two-year yoga-teacher training diploma course in Surrey, England, and a teacher-training course approved by the British Yoga Teachers Association. She has been certified as a British Wheel of Yoga Teacher and is registered as an "experienced Registered Yoga Teacher" by the Yoga Alliance.

Additionally, Ms. Leitner-Wise has studied under many acclaimed yoga instructors.

23. In 2003, Ms. Leitner-Wise decided she wanted to share her knowledge of yoga with other yoga practitioners who were interested in teaching. She decided the best

way to communicate her knowledge of yoga would be to teach a yoga-teacher training class.

24. Ms. Leitner-Wise offers her class through her company, Suzanne Leitner-Wise Inc., d/b/a U.S. 1 Yoga Teacher Training.

25. Plaintiff Beverly Brown has been studying yoga since the mid-1980s and has been teaching yoga since 1999. She completed Ms. Leitner-Wise's teacher-training class in 2004.

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26. Ms. Leitner-Wise is currently teaching a yoga-teacher training course with two other instructors, including Ms. Brown. Ms. Leitner-Wise also occasionally invites guest teachers to talk about particular subjects with her students.

27. In order to support themselves, Ms. Leitner-Wise and Ms. Brown charge a fee for their classes.

28. Ms. Leitner-Wise and Ms. Brown's current teacher-training class has nine students. Classes generally meet several days a week for seven months.

29. Ms. Leitner-Wise and Ms. Brown's ongoing yoga-teacher training class is scheduled to conclude in March 2010. They plan to teach another yoga-teacher training class starting in September 2010.

#### **SCHEV Censors People Who Teach Others How To Be Yoga Instructors**

30. SCHEV sent letters to the yoga studios where Plaintiffs Kalish, Leitner-Wise, and Brown host their teacher-training classes. The letters stated that yoga-teacher training programs must apply for permission to teach from SCHEV or else cease teaching students about yoga-teaching methods.

31. Plaintiffs believe they have a right to teach yoga and yoga-teaching methods to people without first obtaining government permission. Plaintiffs do not want to limit their teaching to programs for which SCHEV has given its prior approval.

**Virginia's Complex, Time-Consuming, Expensive, and Subjective Application Requirements Place Heavy Burdens on Speech**

32. Virginia's Vocational School Law requires private individuals and institutions to acquire permission from SCHEV before teaching courses that prepare students for a vocation—i.e., courses in which teachers communicate information intended to impart students with a skill they can use to earn a living. *See* Va. Code Ann. §§ 23-276.1, 4(A)(2); 8 Va. Admin. Code § 40-31-170(B). The law contains exemptions for theological education, continuing education classes, and several other types of courses. *See* 8 Va. Admin. Code §§ 40-31-40 to -60.

33. SCHEV has interpreted Virginia's Vocational School Law to require yoga-teacher training classes that advertise or charge a fee and that are designed to produce yoga instructors to be registered as "career-technical" schools.

34. Virginia does not require a license to teach "regular" yoga classes—i.e., classes that are not geared towards training future yoga instructors.

35. On or about December 2008, SCHEV began to send letters to parties who offer yoga-teacher training classes, advising them that they must apply for SCHEV's permission to continue teaching those classes.

36. SCHEV has told the Plaintiffs, as yoga-teacher trainers and a yoga-teacher training business, that they must comply with all of the requirements that Virginia's Vocational School Law imposes.

37. Virginia's Vocational School Law requires yoga-teacher training Plaintiffs to complete a burdensome and subjective application procedure and to comply with a variety of regulations imposed by the Commonwealth on programs that teach what the Commonwealth considers to be vocations. These requirements and regulations include the following:

38. Yoga-teacher training programs must submit a \$2,500 application fee to SCHEV. *See* 8 Va. Admin. Code § 40-31-260(D).

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39. Yoga-teacher training programs must submit a surety instrument with SCHEV named as obligee in an amount equal to the total tuition they collect. *See* 8 Va. Admin. Code §§ 40-31-160(I), -180(B)(3).

40. Yoga-teacher training programs must submit a "school-plan report" to SCHEV that provides a description of their institutional objectives, organization and governance, academic program, the requirements to complete the teacher-training class, admission requirements, faculty, available student services, library resources, physical facilities, and financial resources. *See* State Council of Higher Educ. for Va., Directions for Preparing School Plan Report, <http://www.schev.edu/highered/pope/forms/newschool/Directions%20for%20Preparing%20School%20Plan%20Report.pdf>.

41. Yoga-teacher training programs must convince SCHEV that their courses are of the "quality, content, and length" to achieve their teacher-training program's "stated objective." *See* 8 Va. Admin. Code § 40-31-150(B).

42. Yoga-teacher training programs must demonstrate to SCHEV that the class instructors hold an associate's degree in an area related to their area of instruction or "possess a minimum of two years" of experience in what SCHEV considers to be the



“area of [their] teaching responsibility or a related area.” *See* 8 Va. Admin. Code § 40-31-150(B).

43. Yoga-teacher training programs must complete and submit to SCHEV an “[e]valuation” of their course’s “effectiveness” on a regular basis. *See* 8 Va. Admin. Code § 40-31-160(G).

44. Yoga-teacher training programs must demonstrate that they have established a “clearly defined process” for reviewing their curricula. *See* 8 Va. Admin. Code § 40-31-160(G).

45. Yoga-teacher training programs must either provide SCHEV with the results of an annual audit, reviewed or compiled financial statement, or fill out complicated accounting forms provided by SCHEV relating to their program’s financial status. *See* 8 Va. Admin. Code § 40-31-160(H)(1).

46. Yoga-teacher training programs are compelled to create and maintain records of all of their students’ applications for admission and records of each student’s progress. *See* 8 Va. Admin. Code § 40-31-160(E).

47. Yoga-teacher training programs must create transcripts for their students and contract with a third-party school or records-maintenance organization to preserve students’ “transcripts” in the event the program closes. *See* 8 Va. Admin. Code § 40-31-160(E).

48. Yoga-teacher training programs must ensure that students have access to a library that SCHEV determines to be “adequate and appropriate” for their program. *See* 8 Va. Admin. Code § 40-31-160(M).

49. Yoga-teacher training programs must create publicly available documents, brochures, catalogs, and/or policies detailing the history and development of their program; the program's mission statement and philosophy; the purpose of the teacher-training program and a statement demonstrating that the program fulfills its stated purpose; a student attendance and absence policy; a description of the type of conduct expected of students; an explanation of who has controlling ownership of the teacher-training program; the number of students who enrolled in and completed the program in the previous "academic" year; the number of students claiming Virginia residency who report employment in their field of study after six months and a year of completing the teacher-training program; the powers, duties, and responsibilities of the owners and managers of the program; the requirements for admission into the class; students' "rights, privileges, and responsibilities;" a description of a formal process to express grievances with the program; the number of students claiming Virginia residency in the teacher-training program; a description of financial-aid opportunities; a description of the yoga-teacher training program's content and length; a description of the class' probation, dismissal, and re-admittance policies; an explanation of "career advising" services offered; a written policy on "faculty accessibility;" and other information. *See* 8 Va. Admin. Code § 40-31-160(B), (C), (D), (F), (J); *see also* State Council of Higher Educ. for Va., School Catalog Checklist, <http://www.schev.edu/highered/pope/forms/newschool/School%20Catalog%20Checklist.doc>.

50. Yoga-teacher training programs must allow SCHEV to conduct "random" audits of their program to verify compliance with Virginia's Vocational School Law. *See* 8 Va. Admin. Code § 40-31-200(A).

51. Yoga-teacher training programs must fulfill numerous other requirements set forth in SCHEV's new school application or in Virginia's Vocational School Law.

52. "Any" violation of Virginia's Vocational School Law can be punished as a Class 1 misdemeanor, which carries a penalty of up to one year in prison and up to a \$2,500 criminal fine. *See* Va. Code Ann. §§ 18.2-11(a), 23-276.12(A); 8 Va. Admin Code § 40-31-230. Violations of Virginia's Vocational School Law are also punishable by a civil fine of \$1,000 per violation, up to a \$25,000 maximum fine each year. *See* Va. Code Ann. § 23-276.12(B); 8 Va. Admin. Code §§ 40-31-240, -260(D).

### **Injury to Plaintiffs**

53. Requiring Plaintiffs to apply for permission to teach is a prior restraint on speech and violates Plaintiffs' rights under the First Amendment.

54. Plaintiffs estimate that attempting to obtain permission to speak from SCHEV under Virginia's Vocational School Law and fully complying with SCHEV's burdensome application procedures would cost each of them several thousand dollars and take dozens of hours of work.

55. These costs, in time and in money, are imposed on Plaintiffs solely because of the nature and content of their speech. Requiring Plaintiffs to pay these costs in order to teach yoga instructors violates Plaintiffs' rights under the First Amendment.

56. Virginia's Vocational School Law places unbridled discretion in SCHEV to approve or reject new school applications, in violation of Plaintiffs' rights under the First Amendment.

57. Requiring Plaintiffs to apply for permission to teach impermissibly interferes with Plaintiffs' ability to discuss and disseminate knowledge concerning yoga

and yoga-teaching methods in violation of Plaintiffs' First Amendment right to freedom of speech and freedom of association.

58. Plaintiffs currently teach yoga-instructor courses that are scheduled to continue through Spring 2010.

59. Plaintiffs wish to continue teaching these courses, but Virginia's Vocational School Law forces them to either register with the Commonwealth or end these courses prematurely.

60. Plaintiffs do not want to apply to have their programs licensed as vocational schools, nor do they want to be forced to choose between completing SCHEV's expensive and burdensome application procedures and committing a crime.

61. In addition to finishing teaching their current yoga-instructor courses, Plaintiffs want to begin new classes in 2010.

62. Plaintiffs are uncertain about whether they should reserve studio space and purchase materials for next year's teacher-training classes because they do not know whether the Commonwealth will allow them to teach.

63. Plaintiff Julia Kadish, for instance, wishes to start enrolling students for her September 2010 yoga-teacher training course in the spring. Virginia's Vocational School Law, however, would force her to pay thousands of dollars to the Commonwealth before she signed up her first student. The only way to recoup these costs would be to charge her students significantly higher tuition, but that in turn would likely reduce the number of students who choose to enroll in her course. Rather than running the risk of not being able to recover the costs imposed by Virginia's Vocational School Law, Ms. Kadish is considering shutting down her yoga-teacher training course altogether.

64. Plaintiffs Suzanne Leitner-Wise and Bev Brown had been developing a 500-hour yoga-instructor course in addition to the 200-hour course that they currently offer students. They have ceased all development and promotion of that course, however, due to the high costs and administrative complexities that Virginia's Vocational School Law would impose.

65. All of the Plaintiffs will continue operating their yoga-teacher training programs, and will resume their plans for new programs, if they are not subject to Virginia's Vocational School Law.

66. Plaintiffs are concerned and afraid that continuing to teach yoga-teacher training classes without a government-issued license will subject them to severe civil and criminal penalties.

## **CONSTITUTIONAL VIOLATIONS**

### **Count One: Freedom of Speech**

67. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1 through 66 of this Complaint as if fully set forth herein.

68. Count One is brought pursuant to the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

69. The First Amendment protects Plaintiffs' right to speak about yoga and yoga-teaching methods.

70. Because Plaintiffs receive money to talk about yoga instruction, SCHEV requires them to apply for a license, which costs thousands of dollars and dozens of hours.

71. If Plaintiffs instead received money to talk about modern dance or theoretical physics, SCHEV would not require them to apply for a license.

72. Burdening Plaintiffs for speaking out about yoga instruction, rather than other topics, is a content-based restriction on speech.

73. Requiring Plaintiffs to get SCHEV's permission before teaching is a prior restraint on speech that violates the First Amendment.

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74. Requiring Plaintiffs to pay substantial fees and spend dozens of hours working to comply with SCHEV's regulations before teaching is an unconstitutional burden on Plaintiffs' speech.

75. SCHEV does not have sufficient justification for its infringement on Plaintiffs' right to speak about yoga and yoga-teaching methods.

76. Plaintiffs will suffer continuing and irreparable harm if Virginia's Vocational School Law is enforced against them.

#### **Count Two: Freedom of Association**

77. Plaintiffs incorporate and re-allege each and every allegation contained in Paragraphs 1 through 666 of this Complaint as if fully set forth herein.

78. Count Two is brought pursuant to the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

79. The First Amendment protects Plaintiffs' right to associate with yoga students for the purpose of jointly studying and discussing yoga, including yoga teaching methods, yoga philosophy, and yoga practice.

80. SCHEV does not have sufficient justification for its infringement on Plaintiffs' right to associate with yoga students.

81. Plaintiffs will suffer continuing and irreparable harm if Virginia's Vocational School Law is enforced against them.

### REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request relief as follows:

A. A declaratory judgment by the Court, pursuant to 28 U.S.C. § 2201, declaring that, facially and as applied to Plaintiffs, Virginia's Vocational School Law violates the First and Fourteenth Amendments to the United States Constitution;

B. A preliminary injunction prohibiting Defendants or their agents from enforcing Virginia's Vocational School Law to the extent that it requires yoga-teacher trainers to obtain government permission to teach yoga-teacher training classes;

C. A permanent injunction prohibiting Defendants and their agents from enforcing Virginia's Vocational School Law to the extent that it requires yoga-teacher trainers to obtain government permission to teach yoga-teacher training classes;

D. An award of attorney's fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and

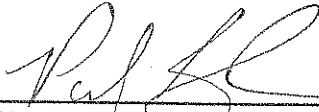
E. Such further legal and equitable relief as the Court may deem just and proper.

DATED this 1st day of December, 2009.

Respectfully submitted,

INSTITUTE FOR JUSTICE  
William H. Mellor (DC Bar No. 462072)\*  
Paul M. Sherman (VA Bar No. 73410)  
Clark M. Neily III (DC Bar No. 475926)\*  
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