

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____)	
STEPHANIE BABINES,)	
)	
<i>Plaintiff,</i>)	
)	Civil Action No. _____
v.)	
)	
ADAMS TOWNSHIP, PA; ZONING)	
HEARING BOARD OF ADAMS)	
TOWNSHIP, PA; and GARY PEACO,)	
Adams Township Code Enforcement Officer,)	
)	
<i>Defendants.</i>)	
_____)	

VERIFIED COMPLAINT

INTRODUCTION

Plaintiff Stephanie Babines is a young woman who has been denied an occupancy permit to open a dance and fitness studio in Adams Township because the small-town municipal officials do not approve of the type of dance she teaches. They believe it is “provocative,” full of sexual “innuendo,” and too dangerous for their township. Ms. Babines intends to teach women how to pole dance, power lap dance, and strip tease — all while fully clothed. The instruction contains absolutely no nudity, spectators, or sexual activity. The studio is not a men’s entertainment club or strip joint, nor is it a mere front for such activity. Rather, the dance Ms. Babines hopes to teach is part of a growing national exercise movement. Chronicled in U.S. News and World Report, The New York Times, Pittsburgh Magazine, and Oprah Winfrey’s talk show, pole dancing provides “a workout that combines aerobics, dance, yoga, [and] strength training.” Ms. Babines has seen her

dance classes help women get in shape, build self-confidence, and express their sexuality. A recent report documented how the craze has even spread to China. But while a repressive country like China allows dance studios to teach pole dancing, the defendants in this small Butler County town have misapplied their zoning code to deny Ms. Babines her right to teach this new combination of art and sport to interested adult women.

Ms. Babines brings this 42 U.S.C. § 1983 complaint for declaratory and injunctive relief to challenge the pall of orthodoxy imposed by defendants on the people in their town who wish to communicate unconventional ideas and to vindicate her free-expression rights under the United States and Pennsylvania Constitutions to teach others about lawful and constitutionally protected activity.

JURISDICTION AND VENUE

1. This action to vindicate plaintiff's rights protected by the First and Fourteenth Amendments to the U.S. Constitution is brought under 42 U.S.C. § 1983. This Court has original jurisdiction over this civil-rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper. Finally, this Court has supplemental and pendent jurisdiction to adjudicate state law claims under 28 U.S.C. §1367(a).

2. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) in that the defendants are subject to personal jurisdiction within the Western District of Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

PARTIES

3. Plaintiff Stephanie Babines is a citizen of the United States and is a resident of Cranberry Township in Butler County in the Commonwealth of Pennsylvania. She is the owner of Sparkles 02, Inc., a Pennsylvania corporation, and operates a dance and fitness program called *Oh My You're Gorgeous*.

4. Defendant Adams Township is a political subdivision of the Commonwealth of Pennsylvania existing and operating pursuant to the laws of the Commonwealth. The Township's central administrative offices are located at 680 Valencia Road, Mars, Pennsylvania.

5. Defendant Zoning Hearing Board of Adams Township is an instrumentality of Adams Township. Its functions include, among other things, granting or denying applications for occupancy permits for a new or changed use of land and/or buildings in Adams Township.

6. Defendant Gary Peaco is, and at all relevant times here mentioned was, a Code Enforcement Officer for Adams Township. In his capacity as an Adams Township Code Enforcement Officer, Defendant Peaco had a legal obligation to act in conformity with the U.S. Constitution and applicable federal and state laws. Defendant Peaco is named herein in his individual capacity. Defendant Peaco is a "person," as that term is defined in 42 U.S.C. § 1983, and at all relevant times has acted under color of state law.

FACTS

7. Ms. Babines is employed as a senior information technology professional and holds a degree in computer programming from Robert Morris University.

8. Since 2006, Ms. Babines has taught dance and fitness classes in addition to her work as a computer analyst.

9. In 2006, Ms. Babines founded her dance and fitness studio, *Oh My You're Gorgeous* ("OMYG"). She created a website for her studio (www.ohmyouregorgeous.com). She also advertises her dance and fitness classes under the name XXX-ERCISE.

10. Ms. Babines gives her studio and the classes she teaches sexy names to appeal to women who want to take dance classes that will help them to express their sexuality. There is no nudity or sexual activity in any of Ms. Babines' classes.

11. In 2007, Ms. Babines received her Pole Dancing Instructors Certification (PDIC), making her a certified pole-dancing fitness instructor, and in 2008, she received her Advanced Pole Dancing Instructors Certification (APDIC). She is also the only certified Hoopnotica Hoop Dancing Instructor in the greater Pittsburgh area.

12. Ms. Babines teaches dance and fitness classes for women that are designed to help them get in shape, build confidence, and express their sexuality. She has extensive dance and fitness experience and is a NESTA Group Aerobics instructor and a personal trainer. She used her management and fitness skills to start *OMYG*, a dance studio that is designed to help women to feel beautiful from head to toe, inside and out.

13. Ms. Babines teaches dance and fitness classes designed to help women express their sexuality because she believes that they improve women's self-esteem and provide an enjoyable way to exercise. Specifically, Ms. Babines considers pole dancing to be both an art and a sport, and she believes that pole dancing demonstrates that women can be powerful, physically strong, and beautiful with their clothes on.

14. There is no nudity involved in any *OMYG* classes and no spectators are allowed. The only people present during the classes are the instructor and the students.

15. Dance and fitness classes that Ms. Babines teaches include pole dancing, hoop aerobics, strip tease, power lap dance, “stiletto strut,” salsa dancing, belly dancing, cardio kickboxing, SeXXXercise — Abs and Core Work Out, and Pilates. The *OMYG* website describes the classes offered as follows:

- a. Pole Dancing: “Classes are for everyday women who are interested in focusing on the art of pole dancing. During this session you will learn; pole stretches, strengthening exercises, approaches, transitions, pole spins & poses. This class is great for building your confidence & self expression. Improve your posture, poise & balance while we transform, sculpt, tone & shape your body!”
- b. Hoop Aerobics: “a revitalizing workout that will sculpt the waistline, thighs, abdomen, arms and glutes. Hooping will strengthen the core, enhance cardiovascular health and will increase confidence with playful swaying of the hips. In this class we will focus on hooping basics, hooping on the torso, and performing moves on and off of the body using weighted, customized hoops.”
- c. Strip Tease: “Inject passion into your relationship! Discover the keys to dance with confidence. Become seductive in your jeans or work clothes by learning simple gestures & moves & realize your exterior beauty & erotic potential. Learn how to drive him crazy with zero physical contact (one of our biggest seduction secrets). Concentrate on seductive clothing removal & peel like a

pro. While flirtatious, fun & erotic, this session actually contains *no nudity and is set in a private, comfortable environment.*”

- d. Power Lap Dance: “Inspired by France’s (who else would I draw inspiration from?) famed ‘Crazy Horse’ Burlesque house. Strut, shimmy and hip roll your way through an exotic lap-dance workout designed to challenge your core and unleash your inner vixen! This class takes place in a safe, comfortable environment. No nudity is involved.”
- e. Stiletto Strut: “Bring your heels to class because you are going to cat-walk down the runway! This class includes a warm-up & stretching, posture correction, walking techniques, & some basic turns & dance spins.”
- f. Belly Dancing: “incorporates elements from Middle Eastern, West African, North African, Hip Hop, Flamenco, Indian dance, Yoga, Burlesque, and the circus arts. Her dance is forever evolving, integrating new and interesting forms and dynamic moves. In saying this, this art form can carry you through a fast paced shimmy till you drop movement, to a slow slinky almost serpentine style...in either case, it is geared to celebrate and accentuate every female form.”
- g. Salsa Dancing: “Learn the Salsa basics starting with: the rhythm, fun turn patterns, break step variations, leading and following ‘fun’-damentals, body control, comprehensive patterns and turns with Fundamental interactive styling. You’ll be dancing before you know it, while burning calories and toning your hips, thighs & abdominals while having fun!”

- h. Cardio Kick Boxing: “Tone muscles, lose weight fast and get into the best shape of your life with this class! Join us for a fun, interactive and challenging workout with out being over whelmed. This class incorporates kickboxing, circuit training and aerobic exercise into an awesome workout that will leave you looking forward to the next class, while burning approximately 700 calories. There is no sparring in this class.”
- i. SeXXXercise — Abs and Core Work Out: “This compound cardio strength workout is targeted for your abdominals and mid-section. You are guaranteed a cute and whittled waist-line and will gain a hotter & less inhibited performance in the bedroom!”
- j. Pilates: “Tone and reshape your body with basic exercises for the stomach, back, legs, and arms and discover AMAZING results! Improve your posture, increase flexibility and rejuvenate your spine.”

16. Ms. Babines also offers bachelorette parties in which she teaches pole dancing to prospective brides and their bridesmaids and friends.

17. The women who take classes from *OMYG* are seeking a workout that they cannot get in a gym; they take *OMYG* classes to engage in specialized exercise designed for women that allows them to have fun, feel confident about their bodies, and express their sexuality.

18. Pole dancing and other forms of exotic fitness classes have become increasingly popular forms of exercise and self expression. According to a February 24, 2007, New York Times article, “[p]ole dancing, once exclusively the province of exotic dancers, has flared up as a much-hyped Hollywood exercise craze.” Tina Kelly, *Pole Dancing Parties Catch on in Book Club*

Country, THE NEW YORK TIMES, Feb. 24, 2007 (attached as Exhibit 1). “Billed as ‘femme empowerment,’ such at-home pole dancing lessons are taking place in the realm of book clubs, with mothers — and grandmothers — learning slinky moves for girls’ nights in, bachelorette send-offs, even the occasional 60th birthday celebration.” *Id.*

19. Pole-dancing is “a workout that combines aerobics, dance, yoga, strength training, and a few good laughs in every session.” Kerry Hannon, *The Latest Fitness Craze: Pole Dancing*, U.S. NEWS AND WORLD REPORT, July 31, 2007 (attached as Exhibit 2). “Once featured only in men’s clubs and strip joints, pole dancing is emerging as the latest health-club rage.” *Id.*

20. This phenomenon is not limited to the United States: In China, pole-dancing “is nudging its way into the mainstream Chinese exercise market, with increasing numbers of gyms and dance schools offering pole-dancing classes.” Jimmy Wang, *From the Erotic Domain, an Aerobic Trend in China*, THE NEW YORK TIMES, July 25, 2008 (attached as Exhibit 3). In China, “a society where traditional values dictate that women be loyal, faithful and modestly dressed,” pole dancing “allow[s] women to stay fit and express their sexuality with an unprecedented degree of openness and freedom.” *Id.*

21. There are at least two other dance studios in the greater Pittsburgh area that offer pole-dancing classes — one studio operates in Verona and Pittsburgh’s South Side and the other in Jefferson Hills — and a number of local publications have covered the trend. Pittsburgh Magazine called pole dancing “a new twist on fit,” explaining, “once a bad-girl taboo, this Hollywood exercise craze has made its way to Western Pennsylvania.” *Try This! A New Twist on Fit*, PITTSBURGH MAGAZINE, July 2007 (attached as Exhibit 4). According to Pittsburgh Professional Magazine, “Pole dancing is a phenomenon sweeping the nation and beyond.” Taha Ebrahimi, *Pole Pleaser:*

A stripper's prop helps ladies stay fit while having fun, PITTSBURGH PROFESSIONAL MAGAZINE, September 2007, at 52-55 (attached as Exhibit 5). “Like everything else, it took awhile for pole-dancing classes to arrive in the Pittsburgh area,” according to the Pittsburgh *Tribpm*, but now “it’s only the hottest fitness trend since the StairMaster,” and “[d]esparate housewives across the country have been working the pole since Teri Hatcher released her ‘inner sexpot’ on an episode of ‘Oprah.’” Kim Lyons, *Strip aerobics: Pittsburgh women finally get their hands on the hottest exercise craze — pole dancing*, PITTSBURGH TRIBPM, May 15, 2006, at 3 (attached as Exhibit 6).

22. Ms. Babines’ classes were featured in a November 2007 Pittsburgh *Tribpm* article about pole-dancing classes in the Pittsburgh area. See Brianna Horan, *New eXXXercise gives fitness a twist*, PITTSBURGH TRIBPM, Nov. 8, 2007 (attached as Exhibit 7).

23. In order to teach her classes, Ms. Babines rents space from a dance studio in Cranberry, Pennsylvania, and offers lessons in private homes.

24. Because of scheduling constraints and the size of the studio she rents, Ms. Babines is unable to teach as many dance and fitness classes as she would like and the size of her classes is limited.

25. Many of Ms. Babines’ classes, including pole dancing, belly dancing, power lap dance, strip tease, and hoop aerobics, are full and she has had to turn away women who wanted to enroll in her classes.

26. In order to expand the dance and fitness classes she offers and increase her income from teaching those classes, Ms. Babines leased the property at 222 Mars-Valencia Road in February 2008, with the intention of building a dance and fitness studio.

27. Ms. Babines spent approximately \$10,000 transforming the property, which was formerly a children's clothing store, into a dance and fitness studio. She has installed flooring, mirrors, poles, bathroom fixtures, dressing rooms, additional walls, and light fixtures, among other things.

28. She advertised her new studio location on her website: www.ohmyyouregorgeous.com.

29. Ms. Babines also advertises a number of services on her website, including massage, manicures, teeth whitening, waxing, adult novelty and romance parties, limousine rentals, photography, and tarot card readings. She does not personally offer any of these services and instead contracts with other companies and persons who provide them. She does not intend to offer any of those services at the 222 Mars-Valencia Road dance studio.

30. Ms. Babines intends to use the dance studio solely to teach dance and fitness classes, to hold bachelorette parties where she will teach pole-dancing, and to sell non-sexually explicit merchandise such as poles, high-heeled shoes, feather boas, and t-shirts.

31. On March 6, 2008, in accordance with Adams Township Zoning Ordinance § 192-70, Ms. Babines applied for an occupancy permit to use the property as a dance and fitness studio.

32. The property is located in the Commercial/Industrial District under the provisions of the Adams Township Zoning Ordinance.

33. In her application for a certificate of occupancy, Ms. Babines stated her intended use was that of a "dance studio."

34. There is at least one other dance studio in Adams Township. That studio, North Pittsburgh Dance Academy, is located at 158 Brickyard Road.

35. On March 28, 2008, Ms. Babines received a letter from Adams Township Code Enforcement Officer Gary Peaco denying her application for a dance studio at 222 Mars-Valencia Road. Officer Peaco stated that the dance studio was classified as an “Adult Business” based on the content of Ms. Babines’ advertising and the *OMYG* website. The March 28, 2008, letter is attached as Exhibit 8.

36. Adams Township Zoning Ordinance § 192-6 defines “adult business” as: “An establishment consisting of, including, or having the characteristics of any or all of the following:

A. ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade, and offers for sale, books, magazines books, magazines, publications, tapes, or films that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas.

B. ADULT MINI MOTION-PICTURE THEATER -- An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas.

C. ADULT MOTION-PICTURE THEATER -- An enclosed building with a capacity for 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas.

D. ADULT CABARET:

(1) An establishment devoted to adult entertainment, either with or without a liquor license, presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas;

(2) A cabaret that features topless dancers, go-go dancers, strippers, male or female impersonators, or similar entertainers for observation by patrons.”

37. Ms. Babines appealed the denial of the occupancy permit for her dance and fitness studio to the Adams Township Zoning Hearing Board on April 24, 2008, asserting that the denial of her application for an occupancy permit was based on a false belief that she intended to operate an “Adult Business” at the property.

38. The Zoning Hearing Board held hearings on the matter on May 20, 2008, and June 24, 2008.

39. Five of Ms. Babines’ dance and fitness students testified on her behalf at the May 20 hearing.

a. M.H. (initials are used to protect third-party witnesses’ privacy), a self-described Christian grandmother, testified that she attended Ms. Babines’ pole-dancing and stiletto strut classes. She said the classes were designed to increase women’s self-esteem in a male-dominated society. She stated that Ms. Babines never offered for sale any sexually explicit material or sex toys during her classes.

b. D.H. testified that she attended an in-home pole-dancing party and that Ms. Babines did not present any sexually explicit content during the session.

c. L.K. testified that she took private in-home pole-dancing classes from Ms. Babines for eight months and that the weight-bearing exercises helped her counteract her early-stage osteoporosis.

d. C.S. testified that she attended a pole-dancing class as part of a bachelorette party for a teacher who was getting married. She stated that there was nothing sexual about the class.

e. M.M. testified that she takes lessons from Ms. Babines and that they are designed strictly for a workout or for a bachelorette party.

40. No community members testified in favor of denying Ms. Babines an occupancy permit for her dance studio at either the May 20 or June 24 hearings.

41. Defendant Gary Peaco testified at the May 20 hearing that he based his decision to deny the occupancy permit to Ms. Babines solely on his determination that her dance studio constituted an “adult business” under sections 192-6 (A) and (D) of the zoning ordinance. Defendant Peaco stated that he made his determination that the studio was an “adult business” by looking at Ms. Babines’ website www.ohmyouregorgeous.com.

42. Defendant Peaco said he did not need to interview Ms. Babines regarding her intentions for the property because her website spoke for itself. He testified that regardless of whether the activity involved nudity, the dance forms Ms. Babines intended to teach were “provocative” and contained sexual “innuendo,” and her dance studio should therefore be classified as an “adult business.”

43. Defendant Peaco further testified that the pink-and-black color scheme of Ms. Babines’ website and the high-heeled shoe in her logo indicated to him that she intended to operate an “adult business” at the 222 Mars-Valencia Road property.

44. Defendant Peaco also testified that he believed that Adams Township had the authority to regulate any Internet-based businesses that are operated out of township property.

45. Ms. Babines testified that the 222 Mars-Valencia Road property did not have Internet access and that her website www.ohmyyouregorgeous.com was not hosted in the state of Pennsylvania.

46. The Board issued its one-paragraph decision denying Ms. Babines' appeal on July 29, 2008. The Board upheld the March 28, 2008, decision of Defendant Peaco to deny an application for an occupancy permit for a dance studio to be located at 222 Mars-Valencia Road "on the grounds that 'Oh My You're Gorgeous' constitutes an adult business as defined in the Adams Township Zoning Ordinance and, as such, is not permitted by the Ordinance to be located at the 202 [sic] Mars-Valencia Road site because that site is located with[in] 1000 linear feet of a residential district and within 1000 linear feet of a bar." The July 29, 2008, decision is attached as Exhibit 9.

47. As a consequence of defendants' denial of Ms. Babines' application for an occupancy permit, she has not been able to open her dance and fitness studio and has had to limit the number of students and classes she can teach.

48. Ms. Babines has suffered injury as a result of defendants' actions, including but not limited to, financial injury, emotional and psychological pain and suffering, and injury to her reputation.

49. Ms. Babines has suffered and will continue to suffer irreparable harm to her rights to engage in expressive activity by teaching dance and fitness to others. She has no adequate remedy at law to redress the ongoing harm.

50. Injunctive relief is necessary to ensure that Ms. Babines is able to engage in expressive activity by teaching an art form, namely dance, to her students in Adams Township and fully describe her dance classes on her website without fear of retaliation by Adams Township officials.

**FIRST CAUSE OF ACTION
(FIRST AMENDMENT RIGHT TO FREEDOM OF EXPRESSION)**

51. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

52. Defendants' denial of plaintiff's application for an occupancy permit for her dance studio violated plaintiff's First Amendment rights because defendants' decision was based on the expressive content of the dance classes that plaintiff intended to teach and is thus a content-based restriction on plaintiff's expressive activity unsupported by any compelling governmental interest.

53. Defendants' denial of an occupancy permit to plaintiff for the operation of her dance studio because of the content of her website and advertising constitutes retaliation for plaintiff's constitutionally protected speech, in violation of plaintiff's First Amendment free-expression rights.

54. Defendants' zoning ordinance restricting the locations of "adult businesses" in Adams Township regulates expressive activity and is overbroad in violation of the First Amendment.

55. Defendants' zoning ordinance restricting the locations of "adult businesses" in Adams Township regulates expressive activity and is unconstitutionally vague as applied to plaintiff's dance studio.

**SECOND CAUSE OF ACTION
(ARTICLE I, SECTION 7 OF THE PENNSYLVANIA CONSTITUTION)**

56. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

57. Defendants' denial of an occupancy permit to plaintiff on the basis of the content of her dance classes violated her rights under Article I, Section 7 of the Pennsylvania Constitution.

**THIRD CAUSE OF ACTION
(UNLAWFUL APPLICATION OF ZONING ORDINANCE)**

58. Plaintiff incorporates by reference the allegations of the preceding paragraphs as though set forth at length herein.

59. The action of the Zoning Hearing Board of Township denying plaintiff's application for a certificate of occupancy was arbitrary, capricious, an abuse of discretion, and contrary to law because plaintiff's proposed use of the property as a dance studio is not an "adult business" as that term is defined in the Adams Township Zoning Ordinance.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests the following:

(a) an injunction prohibiting defendants from denying plaintiff an occupancy permit for her dance studio on the basis of the expressive content of her dance instruction;

(b) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that the defendants' denial of an occupancy permit to plaintiff for her dance studio violated plaintiff's free-expression rights under the First Amendment and Article I, Section 7 of the Pennsylvania Constitution;

(c) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that the defendants' interpretation of the zoning ordinance's restrictions on "adult businesses" to include dance and fitness studios involving no nudity violates the First Amendment right to freedom of expression and Article I, Section 7 of the Pennsylvania Constitution;

(d) a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and 42 U.S.C. § 1983 declaring that the defendants' denial of an occupancy permit to plaintiff for her dance studio because it constituted an "adult business" under the zoning ordinance was arbitrary, capricious, an abuse of discretion, and contrary to law;

(e) damages against defendants for violating plaintiff's rights under the United States Constitution, the Pennsylvania Constitution, and the law of Pennsylvania;

(f) an order awarding the plaintiff the costs incurred in this litigation including attorney's fees pursuant to 42 U.S.C. § 1988; and

(g) such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Sara J. Rose
Sara J. Rose
PA ID No.: 204936

/s/ Witold J. Walczak
Witold J. Walczak
PA ID No.: 62976

AMERICAN CIVIL LIBERTIES FOUNDATION
OF PENNSYLVANIA
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864
vwalczak@aclupgh.org
srose@aclupgh.org

/s/ Michael J. Healey
Michael J. Healey
PA I.D. No. 27283
HEALEY & HORNACK, P.C.
The Pennsylvanian, C-2
1100 Liberty Avenue
Pittsburgh, PA 15222
(412) 391-7711
mike@unionlawyers.net

Counsel for Plaintiff

August 28, 2008