



Selective Service System

National Headquarters / Arlington, Virginia 22209-2425

<http://www.sss.gov>

June 11, 2008

Mr. Arthur B. Spitzer
American Civil Liberties Union
of the National Capital Area
1400 20th Street, NW, Suite 119
Washington, DC 20036-5920

Re: Tobin Dana Jacobrown

Dear Mr. Spitzer:

This is in reply to your May 30, 2008, letter in support of Mr. Tobin Dana Jacobrown, a member of the Quaker church, who has declined to register with Selective Service because of his pacifist religious beliefs.

In his letter to Selective Service dated August 28, 2007, he argues that an exemption for conscientious objectors from the registration requirement should be listed on the registration form he was provided. He goes on to state, "I look forward to the day that a seventh exemption to registration with the Selective Service System will appear on your list, stating: I am a conscientious objector to all military service. And on that day, I will happily fill out that card, and check that box."

As you are aware, under the Military Selective Service Act conscientious objectors are not exempt from the registration requirement. Nor does the Act give Selective Service the authority to create an exemption. However, you contend that the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb) (RFRA) mandates that Mr. Jacobrown, as a conscientious objector, be exempted from the registration requirement [50 U.S.C. App. 453(a)]. While you indicate that the requirement substantially burdens a sincere exercise of religion, invoking RFRA, the courts have uniformly held that religious beliefs are not a legal defense for failing to register with the Selective Service. See U.S. v. Crocker, 435 F. 2nd 601 (8 Cir. 1971); U.S. V. Koehn, 457 F. 2nd 1332 (10 Cir. 1972); U.S. v. Bigman, 429 F. 2nd 13 (9th Cir. 1970) *Certiorari Denied*. See also U.S. v. O'Brian, 391 U.S. 367, 377. Providing for the national defense via the registration requirement is a compelling interest which strikes a sensible balance between religious liberty and competing governmental interests.

In view of statutory provisions to protect conscientious objectors, and an unbroken line of federal court decisions upholding the requirement that they register, it is reasonable to conclude that the federal law requiring conscientious objectors to register does not impose a substantial burden on their free exercise of religion. In Richter v. U.S., 181 F. 2nd 591, 594 (9th Cir. 1950) the court stated: "It is to be observed

that [50 U.S.C. App.] §456(j) of the Selective Service Act makes adequate provision for the protection of persons who by reason of religious training and belief are conscientiously opposed to participation in war, in any form; but they are required to register in order to claim exemption from combat duty or from non-combatant service."

Nevertheless, you have determined that there is "... no doubt that the existing registration requirement imposes a substantial burden on Mr. Jacobson's exercise of his religion", and therefore, contend that RFRA requires Selective Service to demonstrate that the requirement is the "least restrictive means" of furthering its compelling government interest. Assuming for the sake of argument that you are correct, the "least restrictive means" you suggest would allow Mr. Jacobson to exempt himself from the registration requirement and the draft by simply checking a box on a registration form to claim conscientious objector status. You state that "... this would be sufficient to confirm that he was not being counted as a potential combatant, and thus enable him to register." Of course, he wouldn't be registering for the draft; he'd be registering to not be drafted. As such, the "least restrictive means" suggested would allow anyone who wanted to avoid being drafted to just check a box on a registration form that he is a conscientious objector. This would not only undermine any future draft, it would conflict with federal law mandating that only Selective Service local boards can classify a person as a conscientious objector. By statute [50 U.S.C. App. 456(j)] classification as a conscientious objector is expressly conditioned on the registrant's claim being sustained by the local board. [See *Clark v. Gabriel*, 393 U.S. 256 (1968)]. (Note: Local boards have been inactive since the draft ended in 1973.)

My suggestion is that in lieu of refusing to complete a registration form until conscientious objectors are exempted from the registration requirement, Mr. Jacobson could follow the guidance provided by peace churches and conscientious objector organizations. They recommend that when conscientious objectors register they write on their registration form that they are a conscientious objector. This will not exempt them from the draft but in the unlikely event that conscription is reinstated it will help document their conscientious objector claim before a local board. Attached is guidance provided by the Center of Conscience & War, Quaker Life, and the Mennonite Church.

If you have any questions or need additional information, I can be reached at 703-605-4012.

Sincerely,

A handwritten signature in cursive script that reads "Rudy Sanchez". The signature is written in black ink and is positioned to the right of the typed name.

Rudy Sanchez
General Counsel

Enclosures