

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TOBIN DANA JACOBROWN
8161 Midway Avenue, NE
Indianola, WA 98342

Plaintiff,

v.

ERNEST E. GARCIA
Acting Director
Selective Service System
1515 Wilson Boulevard
Arlington, VA 22209-2425

UNITED STATES OF AMERICA
c/o the Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Defendants.

No. 1:09-cv-1420 (RMU)

COMPLAINT

(for declaratory and injunctive relief; violation of religious liberty)

Nature of the Case

1. Plaintiff Tobin Dana Jacobrown is a birthright Quaker and a conscientious objector to participation in any war. Upon reaching his 18th birthday he was required by law to register for the military draft. He was, and is, willing to register, so long as he can simultaneously register his claim to conscientious objector status, but the Selective Service System will not register or maintain any official record of such a claim. Plaintiff therefore has not registered, for under these circumstances registration is incompatible

with his sincere religious beliefs—both his fundamental belief in nonviolence and his fundamental belief in non-submission to a system that is unjust. His failure to register exposes him to present and future criminal and civil penalties. He seeks in this action a declaration that, pursuant to the Religious Freedom Restoration Act, he is not required to register, and an injunction protecting him against being penalized for failing to do so. Alternatively, he seeks an injunction requiring the Selective Service System to allow him to register as a claimant to conscientious objector status.

Jurisdiction, Venue and Authority for Relief

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 because plaintiff asserts claims under federal civil rights law.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(e).

4. Plaintiff's request for declaratory relief is authorized by 28 U.S.C. § 2201. Plaintiff's request for injunctive relief is authorized by 42 U.S.C. § 2000bb-1(c), 28 U.S.C. § 2202, and 5 U.S.C. § 702.

Parties

5. Plaintiff Tobin Dana Jacobrown is an adult citizen of the United States and a resident of Washington State.

6. Defendant Ernest E. Garcia is the Acting Director of the Selective Service System, an independent agency of the federal government.

7. The United States of America is named as a defendant pursuant to 5 U.S.C. § 702.

Facts

8. Pursuant to the Military Selective Service Act, 50 U.S.C. App. § 453, every male citizen of the United States must register with the Selective Service System upon reaching his 18th birthday. That obligation continues until the person's 27th birthday.

9. Plaintiff has reached his 18th birthday. He has not registered with the Selective Service System.

10. Plaintiff is a birthright member of the Religious Society of Friends (also known as Quakers). From an early age, he has been committed to nonviolence as a way of life.

11. The Military Selective Service Act, 50 U.S.C. App. § 456(j), exempts from military training and service persons who, by reason of religious training and belief, are conscientiously opposed to participation in war in any form. Such persons are generally referred to as "conscientious objectors."

12. Plaintiff is, by reason of religious training and belief, conscientiously opposed to participation in war in any form.

13. In the event of a draft, plaintiff would be exempt from military training and service pursuant to 50 U.S.C. App. § 456(j).

14. Plaintiff's sincere religious beliefs preclude him from registering for the draft unless he is able to do so in a manner that includes or reflects his claim to conscientious objector status.

15. Plaintiff would register with the Selective Service System if the Selective Service System would allow him to register, or otherwise officially assert, his claim to conscientious objector status in connection with his registration for the draft. Plaintiff would not object to being “drafted” if he were allowed to serve the nation in the field of medicine, education, environmental protection, or another non-military field.

16. The Selective Service System will not allow registrants to register, or otherwise officially assert, a claim to conscientious objector status in connection with their registration for the draft.

17. Plaintiff would register with the Selective Service System if the Selective Service System would maintain a record of his claim to conscientious objector status in connection with his registration for the draft.

18. The Selective Service System will not maintain any record of a registrant’s claim to conscientious objector status in connection with his registration for the draft.

19. Plaintiff has made himself known to the Selective Service System, and has requested the Selective Service System to allow him to register his claim to conscientious objector status at the time he registers for the draft. Alternatively, plaintiff has requested the Selective Service System to maintain a record of his claim to conscientious objector status in connection with his registration for the draft. The Selective Service System has refused to make any exceptions to its usual policies and practices so as to enable

plaintiff to register without violating his religious beliefs.

20. The only reason plaintiff has not registered with the Selective Service System is because the Selective Service System will not allow him to register his claim to conscientious objector status in connection with his registration for the draft, and will not maintain a record of his claim to conscientious objector status in connection with his registration for the draft.

21. Because the Selective Service System will not allow plaintiff to register his claim to conscientious objector status in conjunction with his registration for the draft, and will not maintain any record of his claim to conscientious objector status, plaintiff cannot register with the Selective Service System without violating his sincere religious beliefs—both his fundamental religious belief in nonviolence and his fundamental religious belief in non-submission to a system that is unjust.

22. Plaintiff's failure to register for the draft exposes him to both criminal and civil penalties and disabilities, both now and in the future.

23. Failure to register for the draft is a federal felony offense. Plaintiff is subject to criminal prosecution under 50 U.S.C. App. § 462.

24. Persons who are required to register for the draft and fail to do so are forever barred from obtaining federal student loans or grants. This bar includes Pell Grants, College Work Study, Guaranteed Student/Plus Loans, and National Direct Student Loans. Plaintiff is a college student, although he is currently on leave of absence from school. Plaintiff would have obtained

federal financial assistance in previous semesters had he been registered. Plaintiff intends to return to college next spring (January 2010), and would be eligible for federal financial assistance when he returns to school, but for his non-registration. Unless plaintiff registers for the draft, he will forever be barred from obtaining such financial assistance.

25. Persons who are required to register for the draft and fail to do so are forever barred from employment in the executive branch of the United States government and in the U.S. Postal Service. Unless plaintiff registers for the draft, he will forever be barred from employment in the executive branch of the United States government and in the U.S. Postal Service.

26. Persons who are required to register for the draft and fail to do so are forever barred from obtaining state financial aid and from obtaining employment in state government positions in most states, pursuant to state legislation. Unless plaintiff registers for the draft, he will forever be barred from obtaining state financial aid and from obtaining employment in state government positions in most states.

27. The Religious Freedom Restoration Act provides, in pertinent part:

(a) In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000bb-1.

28. The Religious Freedom Restoration Act requires the defendants to accommodate plaintiffs' religious beliefs if their failure to do so would substantially burden plaintiff's exercise of religion, and if they are able to do so without seriously compromising a compelling governmental interest.

29. The defendants' policies and practices substantially burden plaintiff's exercise of religion.

30. The defendants' policies and practices substantially burden plaintiff's exercise of religion by forcing him to choose between (a) violating his sincere religious beliefs by registering for the draft and (b) exposing himself to the serious criminal and civil penalties and sanctions listed in paragraphs 23-26, above.

31. The defendants' policies and practices substantially burden plaintiff's exercise of religion by coercing him to act contrary to his religious beliefs by the threat of both civil and criminal sanctions.

32. The defendants' policies and practices substantially burden plaintiff's exercise of religion by forcing him to engage in conduct that his religion forbids, *i.e.*, registering for the draft when the Selective Service System will not register or record his claim to conscientious objector status.

33. The defendants' policies and practices substantially burden plaintiff's exercise of religion by forcing him to engage in conduct that his religion forbids, *i.e.*, participating in or submitting to an unjust system.

34. The defendants' policies and practices have substantially burdened plaintiff's exercise of religion by depriving him of federal financial assistance for his college education that he would have received had he been registered, and will substantially burden plaintiff's exercise of religion by depriving him of federal financial assistance for his college education that he would receive in coming semesters if he were registered.

35. The defendants can accommodate plaintiffs' religious beliefs without seriously compromising a compelling governmental interest.

36. The defendants do not have a compelling interest in requiring plaintiff, who is by reason or religious training and belief conscientiously opposed to participation in war in any form, and who is therefore exempt from compulsory military training and service, to register for potential military service.

37. The defendants do not have a compelling interest in requiring plaintiff to register for the draft without simultaneously registering his claim to conscientious objector status.

38. The defendants do not have a compelling interest in requiring plaintiff to register for the draft while defendants refuse to maintain a record of plaintiff's claim to conscientious objector status.

39. The defendants' requirement that plaintiff register for the draft while defendants refuse to allow him simultaneously to register his claim to conscientious objector status is not the least restrictive means of satisfying any compelling governmental interest.

40. The defendants' requirement that plaintiff register for the draft while defendants refuse to maintain a record of his claim to conscientious objector status is not the least restrictive means of satisfying any compelling governmental interest.

41. A less restrictive means of satisfying any relevant compelling governmental interest would be for the Selective Service System to allow plaintiff to register, or in some manner officially assert, his claim to conscientious objector status at the time he registers for the draft.

42. A less restrictive means of satisfying any relevant compelling governmental interest would be for the Selective Service System to allow plaintiff to register for the draft and to maintain a record of plaintiff's claim to conscientious objector status.

43. There may be other less restrictive means of satisfying any relevant compelling governmental interest while enabling plaintiff to register for the draft without violating his sincere religious beliefs.

44. Prior to 1980, a Selective Service registrant was able to register his claim to conscientious objector status at the time he registered for the draft, and a record was kept of such a claim.

45. It would not be unduly burdensome for the Selective Service System to allow plaintiff to register his claim to conscientious objector status at the time he registered for the draft.

46. It would not be unduly burdensome for the Selective Service System to maintain a record of plaintiff's claim to conscientious objector status in connection with his registration for the draft.

47. It would entail only a trivial expense for the Selective Service System to allow plaintiff to register his claim to conscientious objector status at the time he registered for the draft.

48. It would entail only a trivial expense for the Selective Service System to maintain a record of plaintiff's claim to conscientious objector status in connection with his registration for the draft.

49. Exempting plaintiff from the obligation to register for the draft would not seriously compromise the government's ability to administer the Selective Service System.

50. Allowing plaintiff to register his claim to conscientious objector status at the time he registered for the draft would not seriously compromise the government's ability to administer the Selective Service System.

51. Maintaining a record of plaintiff's claim to conscientious objector status in connection with his registration for the draft would not seriously compromise the government's ability to administer the Selective Service System.

52. On information and belief, the reason for defendants' refusal to accommodate plaintiff's religious beliefs is administrative convenience.

53. Administrative convenience is not a sufficient reason to deny accommodation under the Religious Freedom Restoration Act.

54. Defendants cannot satisfy their statutory burden of demonstrating that the rigid application of their current policies and practices to the plaintiff is the least restrictive means of furthering a compelling governmental interest.

55. By reason of defendants' actions, plaintiff must live with the knowledge that he is viewed as a lawbreaker by the federal government and by many people who do not understand that his refusal to register is lawful. He must live with the knowledge that could be prosecuted on felony charges at any time for years to come. He must live with the knowledge that his ability to pursue his education may be limited by the ban on most government financial aid, and that his ability to pursue many careers may be limited by the ban on most government employment. These circumstances have imposed, are imposing, and will continue to impose upon plaintiff significant psychological and emotional stress, which will be relieved by a favorable judgment in this action.

56. Plaintiff is suffering, and unless granted relief by this Court will continue to suffer, irreparable injury by reason of the Selective Service System's refusal to exempt him from registering for the draft.

57. Plaintiff is suffering, and unless granted relief by this Court will continue to suffer, irreparable injury by reason of the Selective Service System's refusal to allow him to register his claim to conscientious objector status at the time he registers for the draft.

58. Plaintiff is suffering, and unless granted relief by this Court will continue to suffer, irreparable injury by reason of the Selective Service System's refusal to maintain a record of his claim to conscientious objector status in connection with his registration for the draft.

59. Plaintiff is suffering, and unless granted relief by this Court will continue to suffer, irreparable injury by reason of the Selective Service System's refusal to adopt the least restrictive means of satisfying any relevant compelling governmental interest in connection with the requirement that plaintiff register for the draft.

Claims for Relief

60. Defendants' demand that plaintiff register for the draft, under threat of civil and criminal sanctions, without allowing him to register his claim to conscientious objector status and while refusing to maintain a record of his claim to conscientious objector status, coerces plaintiff to act contrary to his religious beliefs and thereby violates his rights under the Religious Freedom Restoration Act.

61. Defendants' refusal to use the least restrictive means to further any compelling governmental interest in plaintiff's registration for the draft, while coercing plaintiff to register for the draft by threat of civil and criminal

sanctions, violates plaintiff's rights under the Religious Freedom Restoration Act.

62. Defendants' refusal to accommodate plaintiff's religious beliefs, while coercing plaintiff to register for the draft by threat of civil and criminal sanctions, violates plaintiff's rights under the Religious Freedom Restoration Act.

63. The Religious Freedom Restoration Act provides, in pertinent part, that "[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000bb-1(c).

64. The Administrative Procedure Act provides, in pertinent part, that a court shall:

hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) . . . not in accordance with law;

⋮

(C) in excess of statutory . . . authority, or limitations, or short of statutory right[.]

5 U.S.C. § 706(2).

Request for Relief

WHEREFORE, plaintiff asks that this Court

A. Enter judgment declaring that the registration requirement of the Military Selective Service Act imposes a substantial burden on plaintiff's exercise of religion.

B. Enter judgment declaring that requiring plaintiff to register for the draft while refusing to allow him to register his claim to conscientious objector status, and while refusing to maintain a record of his claim to conscientious objector status in connection with his registration, is not the least restrictive means of furthering any compelling governmental interest.

C. Enter judgment declaring that the defendants' demand that plaintiff register for the draft while refusing to allow him to register his claim to conscientious objector status, and while refusing to maintain a record of his claim to conscientious objector status in connection with his registration, violates plaintiffs' rights under the Religious Freedom Restoration Act.

D. Enter judgment declaring that unless and until the defendants allow plaintiff to register his claim to conscientious objector status at the time he registers for the draft, or agree to maintain a record of plaintiff's claim to conscientious objector status in connection with his registration for the draft, plaintiff is exempt from the registration requirement of the Military Selective Service Act.

E. Enter a permanent injunction prohibiting the defendants, their officers and agents and those acting in concert with them, from prosecuting, penalizing, punishing, imposing sanctions upon, withholding benefits from, or in any manner disadvantaging plaintiff on account of his failure to register for the draft.

F. Alternatively, enter a permanent injunction requiring the defendants to accept plaintiff's registration for the draft, to provide plaintiff with a registration acknowledgment card, and to maintain, in connection with plaintiff's registration, an official record of plaintiff's claim to conscientious objector status.

G. Award plaintiff his reasonable costs, attorney's fees and expenses of litigation.

H. Grant plaintiff such other and further relief as the Court deems just and proper.

/s/ Arthur B. Spitzer

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