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Contents

TRENDS IN CONSCIENTIOUS OBJECTOR CASES

BY MARIA SANTELLI, CENTER ON CONSCIENCE AND WAR

It's called the Conscience Committee and it is a committee of the Army. It is not clear exactly who they are or what defines the bar they have set, but if you apply for recognition as a conscientious objector in Israel, they will be deciding your fate.

As I listened to a panel of "Refusniks" (draft and war resisters in Israel) on a speaking tour in the US, I felt as though they were recounting pieces of the story of conscientious objection in the United States 100 years ago.

I felt grateful for the substantial advancements we have made in extending and defending the rights of conscientious objectors in the US. Also, though, I considered the significant work still ahead of us.

The Center on Conscience & War has worked with Conscientious Objectors (COs) for over 75 years. Over the course of those many years, we have observed trends of both accommodation and repression of conscientious objection. Recently, our office has experienced a sharp rise in cases from members of the military seeking discharge as COs. At the same time, we are observing – and COs are experiencing – troubling and unexpected events and consequences at the decision-making levels of the different military branches.

When a member of the US military applies for CO discharge, their application must go through their local chain of command for several levels of review, before it is forwarded to the final approval authority. Up to that point, the process is reasonably predictable: the CO has an interview with a Chaplain, a psychological evaluation, and a hearing with an appointed Investigating Officer (IO). There are some variables at this level, including skepticism that the CO's beliefs are sincere, harassment or other pressure from the immediate chain of command, delays, ignorance and unwillingness of the command to learn about the CO process, biases of the Chaplain and the Investigating Officer, and the extent to which a CO's beliefs will be accommodated while their application is being processed. Fear of further delay or harassment, and the consideration that the chain of command can weigh in on the application, cause some COs to be hesitant to make waves and pressure the command for relief. Nevertheless, these issues generally are not insurmountable, and each has a clear path for redress or remedy. Once the CO application package leaves the local command, however, things get considerably murkier.

Similar to Israel's Conscience Committee, the membership rolls of the CO review boards of the US military are not public[1]. We do not know how they are seated, how they are trained, how many they number, how long they serve, or the details of their meetings. The processes set into motion after a CO package arrives at the approval authority are not transparent or public, making the potential (and reality) of violations of the rights of COs high. Additionally, because military CO is considered Department of Defense "personnel policy," we are concerned that this absence of accountability and transparency could be undermining the very right to CO itself for members of the military.

Two recent cases underscore these concerns: one a young Army medic; the other, a seasoned Air Force officer. In the Army case, the CO is an atheist who, in just two drafts, composed a thorough, thoughtful, and very strong CO application. His record included several letters of support from peers and friends, a solid affirmation of his sincerity from the Chaplain, hours of hearing testimony of witnesses he called and those called by the IO – all of whom supported his claim. The Investigating Officer recommended approval, but no one else in the chain of command would do so. While his claim was pending, the CO endured harassment, excessive delays, isolation and psychological abuse. While this command seemed

[1] The DOD branches' approval authorities are as follows:

- Headquarters Department of the Army Conscientious Objector Review Board (HQ DA CORB)
- AF Personnel Command
- Navy Personnel Command
- Marine Corps Manpower Management (CMC MM)

severe, these tactics were not unfamiliar, and we were certain that they would have no negative impact on his final decision once the CO package arrived at the Department of the Army CO Review Board (DACORB).

After their review, DACORB voted unanimously to approve the discharge request. The record was strong; in our view, there was no other conclusion they could have come to. Then, in an unexpected turn of events – a change in policy not made public and not in the regulation (last updated in 2006) – the 13-page decision of DACORB was overturned in a single line by the Deputy Assistant Secretary of the Army. Not only was it a blow to this young soldier, it was disturbing to us. The record was impeccable. The decision by the declared authority, DACORB, was resoundingly affirmative, yet this soldier would be disapproved by the stroke of a pen.

The Air Force case is troubling for a similar reason. For officers in the Air Force, the final decision is made by the Secretary (SAF) or her designate, so there isn't the same question of transparency: we know in whose hands the officer's fate rests. The issue here was the basis – or lack thereof – for the denial. This CO claim was one you could call very traditional, based on familiar Christian teachings and the life of Jesus. Despite a supportive chaplain, a thorough investigation and hearing, and a positive IO recommendation, the designated representative of the SAF denied the application. The stated reasons for the denial were not only completely contrived, but also easily rebutted with testimony from the written application and the hearing transcript. It was unsettling – to say the least – not just to see a sincere and flawless application be denied, but for the justification to be so blatantly fabricated.

We have yet to see similar aberrations in the Navy and the Marine Corps, but there are troubling issues in those branches, too. They share the lack of transparency with the other branches, of course and in the Marine Corps, CO is handled by an office within Manpower Management that is also responsible for managing the Change of Station budget for the entire branch! The result is that conscientious objection is not a priority and is routinely delayed for months, while the department focuses on financial issues. Meanwhile, COs in the Marine Corps – undoubtedly the most bellicose branch of the Armed Forces – are disproportionately subject to pressure, harassment, and ridicule from their commands and peers, while their applications languish at Manpower Management.

There is no question that the rights of COs have come a long way in the last 100 years. We are a far cry from the military tribunals and the torture and abuse that on several occasions resulted in the deaths of men who resisted military service in WWI. The COs drafted in WWII were able to perform civilian-directed alternative service program for COs drafted in WWII (made possible by CCW's founders), and members of the military have had to opportunity to apply for CO discharge since 1962. These are substantial victories. But we still have a long way to go. Our work ahead is focused on guaranteeing transparency and accountability in the decision-making processes of the various branches; expeditious processing of CO applications at the lower and higher levels of the chains of command; updating the DOD process to the demands of RFRA as interpreted in the 2014 Supreme Court Decision on *Hobby Lobby*, by requiring fewer levels of skeptical review and instituting a non-discriminatory, more inclusive description of qualifying beliefs (i.e., accommodating religious training in Just War theory, etc.); and finally, putting an end to the environment of hostility that a CO is made to endure simply because their conscience tells them they cannot kill. ■

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HOBBY LOBBY AND THE RELIGIOUS FREEDOM RESTORATION ACT: NEW ARGUMENTS FOR MILITARY CONSCIENTIOUS OBJECTORS?[1]

BY DEBORAH KARPATKIN AND PETER GOLDBERGER

Much has been written about the *Hobby Lobby* cases, both before and after those important June 2014 Supreme Court decisions.[2] Those favoring robust enforcement of the Affordable Care Act ("ACA"), and full access to reproductive services under the ACA, were understandably concerned by the Court's ruling that the individually held sincere religious beliefs of the owners of private corporations would allow the corporations to avoid providing contraceptive services to their employees and the employees' dependents, notwithstanding the requirements of the ACA regulations. Those concerned about legal protections for religious liberty looked to the cases for their favorable decision on whether closely-held, for-profit corporations would to enjoy "free exercise" rights under the 1993 Religious Freedom Restoration Act ("RFRA")[3] based on their owners' sincere religious beliefs.

For this article, we examine *Hobby Lobby* and RFRA from the perspective of another interested constituency: advocates for the rights of military conscientious objectors. Would the Supreme Court's interpretation of RFRA lay the groundwork for reconsidering the legal treatment of the military COs? Do principles of free exercise of religion, as denigrated by the Supreme Court's First Amendment case law but robustly guaranteed by RFRA, allow a service member release from military service obligations on any basis beyond what is currently allowed by the conscientious objector regulations? This article explores RFRA, *Hobby Lobby*, and some recent cases, for insight into these and related questions.

SOME BACKGROUND: THE RFRA AND HOBBY LOBBY

Supported by a broad coalition of groups and adopted by a near-unanimous Congress, RFRA was enacted to override Supreme Court law narrowly interpreting the Free Exercise Clause of the First Amendment, and reinstating previous Supreme Court law calling for a "compelling interest"/"least restrictive means" test.[4] RFRA accordingly requires exceptions for religious objectors to laws that on their face are "neutral toward religion" but nevertheless burden the religious exercise of some of those subject to those laws. RFRA mandates that if a person's religious freedom is burdened by a federal law that is facially neutral towards religion, the government must prove that the burden is both "in furtherance of a compelling governmental interest" and also "the least restrictive means of furthering that compelling governmental interest."[5] If the government fails to meet this burden, the individual is entitled to an exemption from what the federal law would otherwise require. Alternatively, the court

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[1] A version of this article previously appeared in Vo. 72, No. 1 of the *Reporter for Conscience' Sake*, published by the Center on Conscience & War.

[2] *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. —, 134 S. Ct. 2751, 189 L. Ed. 2d 265 (2014) (decided jointly with *Conestoga Wood Specialties Corp. v. Burwell*).

[3] 42 U.S.C. §2000bb *et seq.*

[4] Congress overturned the interpretation of the First Amendment the Supreme Court announced in *Employment Division v. Smith*, 494 U.S. 972 (1990), *see* 42 U.S.C. §2000bb(a)(4), and it codified and reinstated the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

[5] 42 U.S.C. §2000bb-1(a)-(b).

might (at least arguably) order the government to alter its standards or procedures to ensure a "less restrictive means" than that currently provided by statute or regulation.

In *Hobby Lobby*, the Supreme Court held by a 5-4 vote that if the government wants to ensure contraceptive coverage to the companies' employees, RFRA requires that it do so without the objecting employers' participation. In reaching its ruling, the Supreme Court gave guidance on how RFRA was to be applied to individual cases. First, RFRA applies to "a person's" exercise of religion. The Court in *Hobby Lobby* concluded that "person" included the plaintiffs in those cases, notwithstanding that they were private, for-profit businesses. Second, RFRA's protection of the exercise of religion is intended to be construed broadly: "the exercise of religion shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."[6] Third, RFRA claims must be considered on an individual basis. The statute "requires the government to demonstrate that the compelling interest test is satisfied through application of the challenged law to the person – the particular claimant whose sincere exercise of religion is being substantially burdened." Accordingly, courts must "loo[k] beyond broadly formulated interests … and scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants."[7] Fourth, the Court affirmed its well established precedent regarding determinations of the sincerity of religious belief, noting its past holdings "that courts must not presume to determine …the plausibility of a religious claim."[8]

Neither RFRA nor *Hobby Lobby* refers specifically to military conscientious objectors. Nevertheless, the statute and the decision invite advocates to consider how its conclusions may affect the interpretation and application of the military regulatory scheme facing servicemen and women who seek CO status.[9]

ARE MILITARY CO REGULATIONS GOVERNED BY THE *HOBBY LOBBY* RULING?

Let us start with the question whether *Hobby Lobby* and RFRA will even be held to apply to military CO regulations. More generally, we know that military regulations are not *per se* exempt from RFRA, which expressly applies to all federal laws, departments, and agencies. As its legislative history makes clear, Congress specifically intended RFRA to apply to the military: "Under the unitary standard set forth in [RFRA], courts will review the free exercise claims of military personnel under the compelling governmental interest test."[10] But while applicable to military personnel generally, and while some recent decisions are encouraging (see below), RFRA's application to the regulations concerning military COs in particular cannot be assumed. The CO regulations concern military personnel decisions, and courts have historically given the military enormous leeway in how they run their personnel operations. Typically, military rules or regulations affecting military personnel matters – and discharge categories

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[6] RFRA, 42 U.S.C. §2000cc-3(g): *Hobby Lobby*, 134 S.Ct. at 2762, 2772.

[7] *Hobby Lobby*, 134 S.Ct. at 2779, quoting *Gonzalez v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 430-31 (2006)

[8] *Hobby Lobby*, 134 S.Ct. at 2778 (quoting earlier authority).

[9] These questions are not new. Advocates for military conscientious objectors have for some years argued that RFRA requires greater protection for military conscientious objectors. The Center for Conscience & War made this argument in its *amicus* petition to the Supreme Court in support of *certiorari* on behalf of Augustin Aguayo (S.Ct. docket #07-607).

[10] S. Rep. No. 103-11, at 12 (1993).

and processes are viewed by courts as military personnel matters – are typically upheld after at best a very deferential review.

Some insight into how the Supreme Court sees this issue came in its January 2015 decision in the *Holt v. Hobbs.*[11] *Holt* challenged, on religious freedom grounds, a regulation barring a Muslim inmate from growing a half-inch beard. Prison administrators' decisions generally receive the same kind of deference in court as do military personnel actions, as both are seen as unique institutions with particular expertise in the security issues that each of them deals with. But in *Holt,* applying its *Hobby Lobby* reasoning, the Court ruled unanimously for the inmate. It did not defer to the security concerns raised by the prison administrators. Indeed, prison officials could hardly articulate a good reason for banning a ½ inch beard, when ¼ inch beards were permitted. The Court made clear that its ruling was specific to the case's particular facts and left room for a different ruling in future cases. Even if the law does not permit "unquestioning deference" to prison administrators, the majority asserted, "courts must not blind themselves to the fact that the analysis is conducted in the prison setting." After *Holt* and *Hobby Lobby*, then, it still remains to be seen how much deference courts will allow the military in applying RFRA to military CO regulations.

Two post-*Holt* decisions have held that RFRA applies to military personnel decisions. Both decisions concerned the Army's refusal to allow a religious accommodation for an observant Sikh who wished to keep his turban and unshorn hair, contrary to Army regulations. Both decisions ruled in favor of the plaintiff.

In *Iknoor Singh v. McHugh*,[12] plaintiff, an observant Sikh college student, wanted to enroll in ROTC. His religious practices, requiring that he not cut his hair or beard, and wear a turban, did not conform to the Army's uniform and grooming standards. He sought a religious accommodation to allow his enrollment; the Army denied his request. The district court granted plaintiff's claim under RFRA.

Iknoor Singh's application of RFRA's standards warrants careful attention. In this case, there was no dispute that the Army's grooming and uniform rules, and its refusal to grant Mr. Singh and accommodation to allow him to keep his beard and long hear, and wear his turban, "substantially burdened [Plaintiff's] exercise of religion."[13] The court had no difficulty in ruling that RFRA applies to the military, citing to RFRA's legislative history,[14] and determined that the free exercise claims of military personnel are reviewed under the "compelling governmental interest" test. Then the court turned to the heart of the case: how to apply RFRA's "strict scrutiny" standard to the Army, given the "known backdrop of longstanding precedent involving judicial deference to military authorities charged with the management of military affairs."[15]

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[11] 574 U.S. —, 135 S. Ct. 853, 190 L. Ed.2d 747 (2015). *Holt* was brought under the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), RFRA's "sister statute." 135 S. Ct. at 859.

[12] 109 F. Supp. 3d 72 (D.D.C. 2015).

[13] 42 U.S.C. §2000bb-1(a). The government did at first argue that because Plaintiff was a civilian, the Army regulations did not apply to him. That argument lost steam when the Army processed and denied Plaintiff's request for accommodation.

[14] *Id*. at 88.

[15] *Id*. at 89.

To make its "compelling interests" argument, the Army claimed that its grooming standards were a matter of military necessity, urging that they were needed for good order and discipline, uniformity, unit cohesion, morale, safety, and the like. But the court examined those arguments carefully, and rejected them. As a factual matter, the court noted that the Army had permitted numerous exceptions to its grooming and uniform policies; and that the Army had granted religious accommodations to other Sikh soldiers, without negative consequences.

Addressing the second RFRA prong, the court also ruled that the Army not established that refusing Mr. Singh accommodation was the least restrictive means of advancing its interests. Noting that this was an "exceptionally demanding" standard, the court flatly rejected the Army's argument that there was no less restrictive means "to promote and maintain teamwork, motivation, discipline, esprit de corps and image, within the context of an officer development program." [16]

Leaning heavily on *Holt v. Hobbs*, *Singh v. McHugh* found its guidance in the Supreme Court's instruction that courts could not "defer to [the] mere say-so" of officials who say that they cannot accommodate a religious request, and that RELUIPA "demands so much more."[17] Citing *Holt*, the court declined to give "unquestioning acceptance" to the military's justifications for its grooming policies.

Sadly, Mr. Singh's victory did not result in a cleared path for other Sikh military men. In *Singh v. Carter*, Captain Simratpal Singh, a West Point graduate, was forced to seek a TRO preventing the Army from subjecting him to non-standard and discriminatory testing for his helmet and gas mask. After the TRO was granted, on RFRA grounds, the Army issued Captain Singh a religious accommodation.[18] Like the court in the *Iknoor Singh* case, the court was skeptical of, and rejected, the Army's arguments seeking to justify the special testing they were trying to impose on the plaintiff. The court concluded: "the proposed restriction on the plaintiff's right to free exercise by way of the individualized, intensive helmet and gas mask testing is not the least restrictive means of furthering the government's interest in helmet and gas mask safety."[19]

The *Singh* cases' skepticism about the Army's reasons for denying religious accommodation in the RFRA context may offer some guidance to lawyers and advocates for military conscientious objectors. The court's refusal to give "unquestioning acceptance" to the military's justifications for its actions, and refusal to "defer to the mere say-so" of military officials, can be a reference point for the sort of judicial oversight sought, but not always achieved, by lawyers representing military COs. For COs, the burdensome "clear and convincing evidence" and "basis in fact" standard of review sets a high bar to succeed on judicial review.[20] As discussed further below, RFRA may present opportunities for challenging that high bar.

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[16] *Iknoor Singh v. McHugh, id*. at 101.

[17] *Holt,* 135 S.Ct. at 866.

[18] *Simratpal Singh v. Carter*, 2016 U.S. Dist. LEXIS 26990 (D.D.C. 2016)

[19] Id. at *38.

[20] See, e.g., *Aguayo v. Harvey*, 476 F. 3d 971 (D.C. Cir. 2007) (habeas denied); *Hanna v. Secretary*, 513 F. 3d 4 (1st Cir. 2008) (habeas granted); *Watson v. Geren*, 569 F. 3d 115, reh. en banc denied, 587 F. 3d 156 (2d Cir. 2009 (habeas granted) *Kanai v. McHugh*, 638 F. 3d 251 (4th Cir. 2001) (habeas denied)

THE BURDENSOME REGULATIONS FACING MILITARY COS

Military CO applicants must proceed through a burdensome and rigorous regulatory process to be recognized as a conscientious objector. RFRA may give applicants a basis for challenging those burdensome regulations. Many aspects of the military CO regulations impose enormous burdens on the religious beliefs of the person seeking CO status. As lawyers and advocates well know, the application form is lengthy and complex. It demands written answers to probing, personal questions requiring that the applicant's most private and deeply held religious, spiritual, moral and ethical beliefs be explicated and explained. The applicant's claims are then investigated, including interviews by both a chaplain (often of a totally different faith tradition) and a psychologist or psychiatrist. The entire process is premised on skepticism about the applicant's sincerity and motives, leading to a "hearing" before an "investigating officer" of the very institution from which the CO is seeking separation. The applicant bears a heavy burden of persuasion in an environment that is far from neutral. There are then multiple levels of review, and in the end the application can be denied if there is any "basis in fact" at all to turn it down. This process necessarily takes many months, sometimes more than a year.

Hobby Lobby and the *Wheaton College* case,[21] decided on the same basis a week later, suggest that RFRA may also protect against burdensome *processes* for allowing religious exemptions from government programs. And of particular significance to military COs, RFRA explicitly places the burden on the government to prove its *inability* to accommodate any sincere objector, not the other way around. CO applicants who are particularly burdened by the CO process – especially where there is delay or other abuse of the process – may want to consider invoking RFRA's protections, either during the CO process, or on habeas appeal. Even more generally, as the *Simratpal Singh* case suggests, will the government be able to prevail against the argument that the burdensome CO process is the "least restrictive means" of processing a CO applicant for discharge, when other applicants for military discharge do not face such a burdensome process?

"WAR IN ANY FORM" AND NONCOMBATANTS ONLY?

The military regulations also define in advance only two very narrow categories of objection that will be honored – an absolute scruple against participating in "war in any form" and a refusal to use or train with weapons ("noncombatant status"). Those with equally sincere religious objections to participation in particular wars or kinds of wars, or to use or train with particular kinds of weapons, as well as religious objectors to other aspects of military life or the military mission, are not protected at all. Here again is an inconsistency with RFRA, which extends its protections equally to all religious objections to government-imposed obligations, without pre-defined limitations.

The requirement that a CO be opposed to participation in "war in any form" has previously been tested at the Supreme Court. In 1971, during the Supreme Court's most sympathetic era for Free Exercise claims, the Court nevertheless rejected, over a single dissent, a First Amendment challenge to the draft law and military regulations' refusal to accommodate selective objectors such as those who adhere to a "just war" theory.[22] That the objectors' claims were denied in *Gillette,* applying a *constitutional* compelling interest/least restrictive means analysis may not be determinative, because RFRA's

[21] *Wheaton College v. Burwell*, 573 U.S. —, 134 S. Ct. 2806 (2014) (order on application for injunction).

[22] *Gillette v. United States*, 401 U.S. 437 (1971).

"statutory phrase 'exercise of religion'," according to the *Hobby Lobby* majority, is not necessarily "tied to this Court's pre-[1990] interpretation of that Amendment."[23]

HOBBY LOBBY AND CO'S WITH NON-MAINSTREAM BELIEFS

Hobby Lobby also offers support for the argument advocates often advance on behalf of military COs – that what matters is the CO applicant's own personal religious convictions, even if those beliefs are illogical, religiously disputed, or not mainstream. The Supreme Court majority opinion focuses on the ability of the objecting parties to conduct business in accordance with "*their religious beliefs"* (emphasis in original).[24] The court explicitly declines to analyze or question the content or plausibility of those beliefs, and declined to consider whether the beliefs were "mistaken" or "insubstantial," even though the objecting business-owners themselves made *scientific* (not theological) claims (which experts disputed) to explain their opposition to certain forms of birth control as "abortifacients."[25] Military CO applicants' claims, by contrast, are frequently disputed or rejected on grounds of logical inconsistency or lack of "depth," a standard which the Supreme Court in *Hobby Lobby* suggests is not permitted under RFRA.

Not all post-*Hobby Lobby* RFRA cases are wins for the RFRA claimant in a military environment, and this is especially so where the military RFRA claimant has non-mainstream beliefs. Invoking RFRA does not automatically produce a favorable result. In *United States v. Sterling*,[26] an enlisted member of the Marine Corps was disciplined for putting a sign with a biblical quote in three places on her work station, visible to those coming by her work station to read them. She testified that she was a Christian, and that she posted the quotation in three places to represent the Christian trinity. She refused an order to remove the signs. A military judge determined that the signs were contrary to good order and discipline. On appeal, Sterling invoked RFRA, but her argument was rejected, on the grounds that her placement of the signs on her workstation was not "religious exercise" because it was not "part of a system of religious belief" and did therefore not trigger RFRA.[27] The case is now pending appeal. Sterling's RFRA argument may well be weak for other reasons. But given her testimony, the ruling that the workstation signs do not qualify as "religious exercise" and were not part of a "system of religious belief" is dubious and concerning.

Less concerning is the court's decision in *Wilson v. James*. There, plaintiff, an enlisted member of the Utah National Guard, claimed a RFRA violation when he was disciplined for an email he sent to a high level officer at West Point, from his military email account, protesting same-sex weddings in the West Point chapel. According to Wilson, the discipline substantially burdened the exercise of his religion (Latter Day Saint). The court rejected his RFRA claim, on the grounds that the discipline did not burden any "religious action or practice." In so ruling, the court distinguished a burden on "religious action or practice," protected by RFRA, from mere offense to "religious belief," not protected by RFRA.[28] While

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[23] 134 S.Ct. at 2772.

[24] 134 S.Ct. at 2778.

[25] 134 S.Ct. at 2759.

[26] NMCAA 201400250

[27] *Id*. at *14 -15.

[28] 2015 U.S. Dist. LEXIS 138984, at *22.

the court acknowledged that the discipline may have chilled plaintiff's speech about his religious beliefs, plaintiff did not assert that LDS religious doctrine required him to assert dissent to same sex marriage. Accordingly, applying RFRA standards, speech was not religious exercise; and even if it were, the discipline did not substantially burden the exercise of plaintiff's religious exercise, because the requirement that plaintiff not use his military email for such speech was appropriate. [29]

HOBBY LOBBY AND THE REFUSAL OF NON-COMBATANT ASSIGNMENTS

Hobby Lobby offers analysis to support military COs who refuse non-combatant assignments on the basis that those assignments make it possible for other servicemembers to wage war. *Hobby Lobby* acknowledges "a difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another."[30] While the Supreme Court majority here was referring to the rule under which the objecting employer need only advise the government of the name of its insurance provider, as a result of which the insurer would provide coverage for birth control to the objectors' employees at no additional cost to the employer, this argument may be made with equal force on behalf of military COs who share the religious belief in the sin of "complicity."

HOBBY LOBBY AND "NON-RELIGIOUS" CO'S

RFRA, by its terms, protects only "*religious* exercise." Perhaps the most severe limitation in present military CO regulations applies to those applicants whose conscientious objection to participation in war is not grounded in traditional religious belief and practice, but instead derives from equivalent moral and/or ethical beliefs. According to applicable military regulations, those CO applicants can be approved, but they first must demonstrate that their moral/ethical opposition to participation in war, to quote the Army regulation, was "gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated."[31] No similar "study, contemplation … rigor and dedication" test is imposed on CO applicants who base their beliefs on a more traditional religious foundation. Advocates for military COs have long struggled against this double standard and the resulting high hurdles placed before non-religious objectors.

The military's position on non-religious COs is derived from Supreme Court decisions addressing conscientious objector claims under the draft. The Selective Service law allowed CO status for those opposed to war by reason of what it referred to "religious training and belief." It may seem strange that a law using the term "religious" would be interpreted to include beliefs that the holders of those beliefs label differently. Yet the Supreme Court in *Welsh v. United States* (1970) and *United States v. Seeger* (1965),[32] interpreted the statutory language to include not only CO applicants whose beliefs were based on formal religious training and belief in a Supreme Being, but also whose beliefs were based on ethical and moral principles held with the strength of more traditional religious beliefs. If similar reasoning were

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[29] *Id*. at *25.

[30] 134 S.Ct. at 2778.

[31] AR 600-43 ¶1-5a(5)(b).

[32] 398 U.S. 333 (1970); 380 U.S. 163 (1965).

applied, *Hobby Lobby's* interpretation of RFRA also could also mean equal treatment for these "non-religious" military COs.

One RFRA case to date has been brought by an applicant with "non-religious" beliefs. In *Heap v. Carter*, a Dr. Heap, an atheist Humanist Celebrant, applied to be a Navy chaplain and was rejected. Asserting claims under, *inter alia*, RFRA, Dr. Heap claimed that the Navy rejected him as a Chaplain because the Navy did not recognize Humanism as a religion. The court dismissed Dr. Heap's RFRA claim, because he could not show that "becoming a Humanist Navy chaplain is dictated by the tenets of Humanism or that by not becoming a Navy chaplain he is somehow in violation of the tenets of Humanism. Rejecting Heap from the Navy chaplaincy does not put substantial pressure on Dr. Heap to modify his behavior and violate his beliefs." Nor had Dr. Heap shown that "becoming a Navy chaplain is part of the core belief system of Humanism." Accordingly, the court concluded the government had not substantially burdened Dr. Heap's religious exercise.[33] Dr. Heap also argued that his application to become a chaplain was rejected because he did not affiliate with an approved religion; the court rejected this argument as speculative. Significantly, the court did not reject Dr. Heap's argument that as an atheist humanist, he had a claim under RFRA.

CONCLUSION

The Supreme Court's *Hobby Lobby* opinion, reinforced by the Court's subsequent decision in *Holt*, and other recent cases, offers a sympathetic interpretation of RFRA's guarantee of individualized exemption from obligations imposed by federal laws for all those with religious scruples. Obviously, this is a dynamic and contested area of law, which is far from settled. As this article was written, additional RFRA cases involving ACA objectors were awaiting decision at the Supreme Court. The Supreme Court has now sent them all back to lower courts for further consideration in light of some changed and/or refined positions of the parties. *Zubick v. Burwell*, No. 14-1418 (and consolidated cases) (argued March 23, 2016). Based on the broad reading given in *Hobby Lobby* and other recent cases, advocates now have new arguments available to address the many burdens and challenges faced by military COs in the current legal and regulatory scheme. ■

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[33] *Heap v. Carter*, 112 F. Supp. 3d 402, 422 (E.D. Va. 2015).

CUSHING V. TETTER:[1] STILL A GOOD TOOL IN THE BOX

BY ALISON CARTER

This article explores a goldmine of findings in a 1979 federal district court case where an active duty Navy airman, alleging suicidal tendencies, successfully argued for a preliminary injunction. The injunction prevented the military from returning him to his unit before he had an opportunity to exhaust all administrative options available for challenging the order to return to duty.

Despite its age, it appears that this case has withstood the test of time and contains powerful holdings that are applicable to many fact patterns encountered in G.I. Rights advocacy.[2]

UNDERLYING FACTS

While held in disciplinary barracks following conduct related to his deteriorated mental state, (UA and alleged assault) Navy airman Cushing claimed he suffered from suicidal and homicidal tendencies related to stressors arising from his relationship with his command. A report by two civilian psychiatrists from a major hospital supported his claims. The military informed Cushing that he would return to his unit and full duties in an attack squadron deployed in the Mediterranean in four days based on a military doctor's mental evaluation.

Airman Cushing sought judicial review claiming, among other things, a Fifth Amendment due process violation; specifically, the short notice did not provide him adequate time to pursue an Article 138 complaint. The court found it could consider Cushing's claim and granted a preliminary injunction to prevent his return to his unit until he had exhausted all administrative remedies in challenging the military determination that he was fit for duty.

REVIEWABILITY BY THE COURT

Courts are generally reluctant to interfere with military command decisions due to the unique nature of the military and its regulations.[3] It is well established that servicemembers may resort to judicial remedies once they have exhausted all administrative remedies with some limitations.[4] There are, however, circumstances when the court is permitted to, and should, intervene when administrative remedies are still available to the servicemember.[5]

Accordingly, this article begins by laying out the principles applied by the *Cushing* court in deciding whether to review the case at all. The court took the principals set forth in *Mindes v. Seaman*[6] and updated them for holdings in subsequent cases.[7] The author finds it useful to identify the "*Mindes*

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[1] Cushing v. Tetter, 478 F.Supp.960 (DC Rhode Island, 1979)
[2] The author *Shepardized* the case and the underlying circuit court and Supreme Court decisions, finding no negative treatment to the *Cushing* holdings other than distinguishing for different facts. The author, however, advises readers to perform a thorough check of their own. Last disclaimer, the author deliberately ignores any mention in the opinion about judicial review of courts martial determinations, and focuses only on administrative determinations.
[3] Id. at 965. Referencing Orloff v. Willoughby, 345 U.S. 83, 73 S.Ct. 534, 97 L.Ed. 842 (1953).
[4] Id. at 965.
[5] Id. at 965-967.
[6] Mindes v. Seaman, 453 F.2d 197, 201-02 (5th Cir. 1971).
[7] Cushing at 966.

doctrine" as supplemented by the *Cushing* court, as a four-part sequential test. (Not to be confused with a four-factor balancing test found in Part III.)

The reader should take note that the *Mindes* doctrine has been replaced in some circuits relating to specific circumstances, such as servicemembers seeking money damages from individual commanders. Research your circuit holdings carefully. The *Cushing* application of the *Mindes* doctrine is still informative because it addresses a scenario familiar to G.I. Rights Hotline and MLTF advocates and apparently seldom reaching the courts.

CUSHING FOUR-PART TEST FOR JUDICIAL REVIEWABILITY

Part I asks whether there is an allegation of either a) deprivation of a constitutional right; b) violation of applicable statutes; or c) violation of the military's own regulations. The *Cushing* court found that Cushing's Fifth Amendment right to due process was violated when he was given only a four day notice of return to full duty, allowing inadequate time to file an Article 138 complaint to challenge the determination that he was fit for duty.[8] If Part I is satisfied, the court will continue its analysis.

PART II asks whether a) available intra-service corrective measures have been exhausted; b) if not, would to do so be fruitless;[9] or c) would irreparable harm be suffered by the servicemember while exhausting the administrative remedy due to a lack of interlocutory relief available administratively.[10] Here, the court found that Cushing would likely suffer irreparable harm while pursuing an Article 138 complaint because he would be sent back to the very environment responsible for exacerbating the medical condition that ultimately lead to disciplinary action against him.[11]

Once Parts I and II are satisfied, a four-factor balancing test is performed in Part III to determine if the claim is of "sufficient magnitude" to overcome "the principal of deference," a presumption established by the SCOTUS in *Orloff v. Willoughby* that the courts generally should not interfere with military decision-making due to the unique nature of the military.[12]

PART III, in other words, examines the substance of the servicemember's allegation that has survived Parts I and II in light of policy reasons behind the presumption of non-review of military matters.[13] The court must weigh as many of the four factors as are present in the case, but not in any particular order.[14] This approach, the court notes, was "was cited with approval" by the First Circuit.[15]

FOUR FACTORS USED TO WEIGH THE MAGNITUDE OF THE CLAIM.[16]

The first factor weighs the nature and strength of the plaintiff's challenge to the military determination. Constitutional claims normally are more important than claims based only on

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[8] Id. at 965-966.
[9] Id. at 967, referencing three cases, one of which was affirmed by the 5th Circuit.
[10] Id. at 967 referencing Suro v. Padilla, 441 F.Supp 14 (D.P.R. 1976).
[11] Id. at 966-967.
[12] Id. at 965.
[13] Id. at 965, 966.
[14] Id. at 966.
[15] Id. at 966 referencing Pauls v. Secretary of the Air Force, 457 F.2d 294 (1st Cir. 1972).
[16] Id. at 966. Analysis of each factor is found at 967-971.

statute or regulation. The second factor weighs the potential injury to the plaintiff if the court refuses to review.

The third factor weighs the type and degree of anticipated interference with the military function if the court reviews the case. Finally, the fourth factor weighs the extent to which the exercise of military-specific expertise or discretion is involved.

If the court determines that the magnitude of potential harm to the plaintiff sufficiently outweighs the interests of the military, making judicial review appropriate, it must then determine the scope of review it should apply to the military determination.[17] In this case, the court found the individual interest of possible deprivation of life and/or liberty without due process to be high. Conversely, it found the military interest in returning that individual to his unit in four days to be low, leading to a discussion of the appropriate scope of review.

PART IV uses three factors to determine if the court should broadly or narrowly review the military determination challenged by the servicemember. The first factor the *Cushing* court considered in determining its scope of review was the weight of the competing interests of the servicemember and the military command. When the servicemember's interest is strong and the military's interest is weak, a greater scope of review should be undertaken.[18] The results of the *Mindes* balancing test in Part III feed directly into this analysis. In this case, the court found that the servicemember's interest of possible deprivation of life or liberty without due process greatly outweighed the military's interest in staffing a position with a potentially mentally unfit person when there was no evidence presented that the particular individual was critical to the unit nor was he due to serve in combat.[19]

The second factor explores the extent to which the court has independent expertise in the nature of the military decision being challenged.[20] Here, the court found it was not suited to, but need not, determine fitness for duty, a determination usually reserved to the military. It was, however, perfectly capable of determining whether a medical determination has been made without due process, as the court often does in social security disability claims.[21]

Finally, the court must support its judgment with substantial evidence giving no consideration to unsubstantiated claims put forth by either party.[22] For example, in this case, the court found the civilian psychiatric evaluations to be thorough, taking hours to conduct specific tests, and the reports fully documenting the results of the tests and explanations for the professional conclusion. On the other hand, the military medical report was brief, and while acknowledging the civilian reports, provided no explanation as to why the military doctor disagreed with their findings.

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[17] Id. at 971
[18] Id. at 971
[19] Id. at 972
[20] Id. at 971
[21] Id. at 972
[22] Id. at 972

OTHER USEFUL DISCUSSIONS IN THE CASE

In addition to laying out a detailed framework for supporting judicial reviewability as discussed above, this case goes into depth in its analysis of how individual rights under the Fifth, Sixth and Eighth Amendments apply to military circumstances.

The opinion may be very helpful to anyone arguing deprivation of the right to medical care, specifically, insufficiency of a psychiatric examination. In addition to a finding of insufficiency for failure to conduct tests and properly consider and refute findings in civilian psychiatric reports, the court found the military psych evaluation unreliable because it began with a Miranda warning.

The court stated a servicemember has a "Fifth Amendment due process right not only to have a medical and psychological evaluation to determine if he/she is fit for duty, but that evaluation must include a confidential relationship. . .." It logically follows that if an effective evaluation for fitness for duty requires the servicemember to incriminate him or herself, the evaluation must be performed by a civilian doctor who can maintain confidentiality regarding any incriminating statements.

The court went to great lengths to protect Airman Cushing's due process rights and thoroughly developed its reasoning in overcoming the presumption against interference with military determinations. It is not practical to touch on every aspect of the opinion in this article, and I recommend you give the opinion a read. A great addition to the MLTF toolbox. ■

Alison Carter served the G.I. Rights Hotline as a volunteer counselor in Alaska from 2004 to 2009 and board member for most of that time. Inspired by NLG attorneys who collaborated on Hotline cases, Alison gave up her 20-year accounting career for a law degree. She graduated from the University of Arkansas School of Law in May 2015 and was sworn into the Alaska Bar on June 3, 2016. Her low-fee, solo practice will focus on Hotline support and criminal defense work, mainly serving active-duty and veteran military members. She is based in Fairbanks, Alaska but will also support the Hotline with Anchorage cases.

IT IS TIME TO ABOLISH DRAFT REGISTRATION AND RESTORE FULL RIGHTS TO PEOPLE OF CONSCIENCE

BY BILL GALVIN AND MARIA SANTELLI, CENTER ON CONSCIENCE & WAR[1]

A version of this article was first publishing on Feb. 24, 2016 at worldbeyondwar.org.

With the combat restriction for women in the US Armed Forces now lifted, discussion of draft registration is back in the news, the courts, and the halls of congress. But the problems with Selective Service System (SSS) Registration go much deeper than gender equality. There is little political interest in bringing back the draft. Yet draft registration remains a burden upon our nation's young men – and now, potentially our young women, as well.

The extrajudicial penalties imposed upon those who choose not to or fail to register make life more difficult for many who already are marginalized, and they particularly target conscientious objectors who believe that registering with Selective Service is a form of participating in war. There is no opportunity to register as a conscientious objector. Legal protection for conscientious objectors was provided in the constitutions of several of the original colonies,[2] and was written into early drafts of what became the First and Second Amendments to the Bill of Rights of the US Constitution.[3] Instead of honoring and upholding these freedoms and protections, modern lawmakers have subjected non-registrants to laws that deny education, employment and other fundamental opportunities. These laws amount to an unacceptable burden on those individuals who cannot, in good conscience, register, and **in fact serve to punish and marginalize those who are living their lives true to the very essence of our democracy**.

After the war in Vietnam ended in 1975, draft registration ended as well. In 1980 President Carter reinstated registration to send a message to the Soviet Union, which had just invaded Afghanistan, that the US could be ready for war at any time. This is still the law of the land today: virtually all males residing in the US and all male citizens between the ages of 18 and 26 are required to be registered with Selective Service.

The penalties for failure to register are potentially quite severe: it is a federal felony carrying a penalty of up to 5 years in prison and a fine of up to $250,000.[4] Since 1980 millions of young men have violated the law by failing to register. And of those who did register, millions more violated the law by failing to

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[1] The Center on Conscience & War (CCW) was founded in 1940 to protect the rights of Conscientious Objectors. Our work continues today, providing technical and community support to all those who oppose their participation in war or the preparation for war.

[2] Lillian Schlissel, *Conscience in America* (New York: Dutton, 1968) p. 28

[3] Ibid, p. 47. Here Schlissel is citing James Madison, Proposals to the Congress for a Bill of Rights, *Annals of Congress: The Debates and Proceedings in the Congress of the United States*, Vol. I, First Congress, First Session, June 1789 (Washington DC: Gales and Seaton, 1834). *See also* Harrop A. Freeman, "A Remonstrance for Conscience," Univ. Penn. Law Rev., vol. 106, no. 6, pp. 806-830, at 811-812 (April 1958) (reciting the drafting history in detail).

[4] 50 U.S.C. App. 462(a) and 18 U.S.C. 3571(b)(3)

register during the time period prescribed in the law.[5] Since 1980 a grand total of just 20 people have been prosecuted for failure to register. (The last indictment was on January 23rd, 1986.) Almost all of those prosecuted were conscientious objectors who publicly asserted their non-registration as a religious, conscientious or political statement.[6]

Initially, the government planned to prosecute a handful of public resisters and scare everyone else into complying with the registration requirement. (In criminology, this enforcement strategy is called "general deterrence.") The plan backfired: conscientious objectors facing prosecution were on the evening news talking about their values, asserting that they were answering to a higher moral law, and non-compliance with registration actually increased.

In response, beginning in 1982, the federal government enacted punitive legislation and policies designed to coerce people to register with Selective Service. These laws, commonly called "Solomon" laws after the member of Congress who first introduced them (not because of their supposed wisdom!), mandated non-registrants be denied the following:

- Federal financial aid to college students;
- Federal job training;
- Employment with federal executive agencies;
- S. Citizenship to immigrants.

Selective Service has stated consistently that their goal is to increase registration rates, not prosecute non-registrants. They happily accept late registrations until one turns 26, after which time it is no longer legally or administratively possible to register. Because there is a five-year statute of limitations for violations of the Selective Service law, once a non-registrant turns 31 he[7] can no longer be prosecuted, **yet the denial of federal financial aid, job training, and employment extends throughout his life.**

Selective Service has testified before Congress that there is nothing to gain by denying these benefits to those who are too old to be registered.[8] Yet, in a convoluted circular argument, government officials have asserted that getting someone to register is doing that person a favor, because failure to register makes them ineligible for these government "benefits." In fact, it was that attitude that caused the former director of Selective Service Gil Coronado to observe,

"If we are not successful in reminding men in the inner cities about their registration obligation, especially minority and immigrant men, they will miss out on opportunities to achieve the American dream. They will lose eligibility for college loans and grants, government jobs, job training and for

[5] Selective Service System Annual Reports to Congress, 1981-2011

[6] http://hasbrouck.org/draft/prosecutions.html

[7] We use the pronoun "he" because the law only affects males at this time.

[8] Richard Flahavan, Selective Service System Associate Director, Public and Intergovernmental Affairs, in a meeting between Selective Service and the staff of the Center on Conscience & War, Nov 27, 2012

registration-age immigrants, citizenship. Unless we are successful in achieving high registration compliance, America may be on the verge of creating a permanent underclass."[9]

Rather than work to eliminate these extrajudicial penalties for non-registrants, and really level the playing field for all, Selective Service has encouraged states to adopt *additional* penalties for those who do not register for the draft. According to the 2015 SSS Annual Report to Congress, more than two-thirds of the men registered in FY 2015 were coerced by measures such as driver's license restrictions or access to financial aid.[10]

In the years since the federal government implemented Solomon-style penalties, 44 states, the District of Columbia, and several territories have enacted legislation that encourages or coerces registration with Selective Service. These laws take myriad forms: some states refuse government financial aid to unregistered students; some refuse enrollment in state institutions; some of those who do not register pay out-of-state tuition; and some states levy a combination of these penalties. Bills that restrict employment with state governments have passed in 20 states and one territory.

Laws linking registration to a driver's license, learner's permit, or photo ID vary by state, from requiring registration in order to be eligible to receive an ID or license, which is the position taken by most states, to simply providing the opportunity for one to register. The only states that have not currently passed any state legislation regarding registration with Selective Service are Nebraska, Oregon, Pennsylvania, Vermont, and Wyoming.

Any violation of the law carries a potential penalty if one is convicted. Yet – and it is worth repeating — *the government has prosecuted no one for violating Selective Service law since 1986, while hundreds of thousands of US citizens have been penalized* since that time.[11] **This practice of penalization without prosecution or conviction subverts the system of law established by our Constitution. Furthermore, penalizing people in ways that are unrelated to their alleged offense – an offense for which they have not been charged – runs counter to our fundamental system of law and our notion of justice. If there is a political will to enforce a law, violators should be prosecuted and have the right to be judged by a jury of their peers. If there is no political will to enforce a law, the law should be rescinded.**

However, rather than rescind this unpopular and burdensome law, recent political and media attention has been focused on extending it to women. On February 2, 2016 the Chief of Staff of the Army and the Commandant of the Marine Corps both testified before the Senate Armed Services Committee in support of extending the registration requirement to women. Two days later, Representative Duncan Hunter (R-CA) and Representative Ryan Zinke (R-MT) introduced the Draft America's Daughters Act, which, if passed, would extend the registration requirement to women. It also would subject women, and disproportionately women of conscience, to potential criminal prosecution, as well as life-long extrajudicial punishment for their act of conscience.

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[9] FY 1999 Annual Report to the Congress of the United States, from the Director of Selective Service, p.8.

[10] https://www.sss.gov/Portals/0/PDFs/Annual%20Report%202015%20-%20Final.pdf

[11] ibid.

Most recently, both the House and Senate Armed Services Committees attached wording to the National Defense Authorization Act (NDAA) to require women to register. The House Rules Committee removed that provision in May, and instead requested two related studies from the Department of Defense (DOD): one to determine the effects on defense readiness if women were included in draft registration, and a second to determine the effect of eliminating Selective Service altogether. This language was preserved when the full House passed their version of the NDAA in May.

On June 14 the Senate passed their version of the NDAA, with their registration requirement for women still intact. An amendment to delete the requirement, from Senator Mike Lee (R-UT), and an amendment to eliminate Selective Service altogether and restore full rights to those who have resisted registration over the years, from Senator Rand Paul (R-KY), were not considered. Because the final Senate and House bills differ, the differences must be reconciled in Conference Committee.

Once the Conference Committee agrees on the wording of the NDAA, it will go back to the House and Senate for an 'up or down vote'. That means they must accept or reject what the Conference Committee proposes—they cannot amend what the Conference Committee proposes. If both houses of Congress approve it, it must go to the President for a signature. President Obama has threatened to veto the NDAA because he disagrees with some parts of it.

So what will ultimately happen, we still don't know.

Back in 1981, when the single-gender Selective Service registration was challenged as sex discrimination, the Supreme Court ruled that a male-only Selective Service registration was legal. They said, "[S]ince women are excluded from combat service," they are "simply not similarly situated for purposes of a draft or registration for a draft," and Congress, having constitutional authority to "raise and maintain" the military, had the authority to consider "military need" over "equity."[12]

But times have changed, and women are now at last recognized as "similarly situated." Now that women are no longer barred from combat, the reason the Court allowed a male-only registration system no longer exists. Several court cases in recent years have challenged the male-only draft on constitutional "equal protection" grounds, and one of those cases was argued before the 9th Circuit Federal Court of Appeals on December 8, 2015. On February 19, 2016, the court of appeals rejected the lower court's technical reasons for dismissing the case and sent it back for further consideration. With the justification for male-only registration now gone, the courts could soon strike down the current male-only system of draft registration on grounds of discrimination. Before Congress lets that happen, they might vote for universal conscription.

But adding women to the population punished by the legal and constitutional oversteps of the Selective Service System solves nothing.

With current federal and state Selective Service laws in place, if a man wants to go back to school later in life or seeks employment with federal or state government agencies, he may well find those opportunities blocked because he did not register. Without a photo ID or driver's license, the rights of individuals of conscience to travel are restricted. A photo ID is usually required to purchase an airline or train ticket, or tickets for travel on other modes of transportation even inside the US. The Universal

[12] *Rostker v. Goldberg,* 453 U.S. 57 (1981).

Declaration of Human Rights Article 13.1 states, "everyone has the right to freedom of movement and residence within the borders of each state."[13] The effect of these laws is to undermine this basic human right. Furthermore, if so-called Voter ID requirements continue to spread and are upheld by the courts, these laws may restrict the right of conscientious objectors to a fundamental democratic means of expression: the vote.

Few would argue that the legislators behind these punitive laws are knowingly and purposefully looking to harm or disenfranchise certain groups, but that is no less the effect of their actions. The time is ripe to challenge these laws – **not add women of conscience (or any other women) to the group being punished.** The time is also ripe to challenge the Selective Service System itself, and on February 10, Representative Mike Coffman (R-CO), along with Representatives Peter DeFazio (D-OR), Jared Polis (D-CO) and Dana Rohrabacher (R-CA) introduced a bill that would achieve both. H.R. 4523 would repeal the Military Selective Service Act, abolishing the registration requirement for everyone, while requiring that "a person may not be denied a right, privilege, benefit, or employment position under Federal law" for having refused or failed to register before the repeal. A petition is now circulating to support this sensible and timely effort. The amendment Senator Rand Paul introduced to the NDAA is identical to H.R 4523, and on June 9 Senator Paul also introduced a Senate version of the bill to abolish Selective Service, S. 3041. The Center on Conscience & War supports an end to draft registration for all. We will continue to follow this issue as it evolves.

Despite the spin that trivializes registration ("It's quick, it's easy, it's the law;" It's just registration, it's not a draft), these discussions serve as a renewed reminder that, as the Supreme Court said back in 1981, "the purpose of registration is to develop a pool of potential combat troops." The purpose of registration is to prepare for war. Our daughters *and our sons* deserve better. ■

Bill Galvin is a Vietnam-era conscientious objector. He has been working to support conscientious objectors since the early 1970's. Bill has been Counseling Coordinator with the Center on Conscience & War since 2000, where Maria Santelli has served as director since 2011.

[13] Article 13 of the Universal Declaration of Human Rights http://www.un.org/en/documents/udhr/index.shtml

ANNOUNCEMENTS

MLTF EVENTS AT NLG CONVENTION INCLUDE MEMBERSHIP MEETING AND WORKSHOP

The Military Law Task Force will hold its annual membership meeting at the National Lawyers Guild Convention on Thursday, August 4, from 1 - 4 p.m., at the NYU School of Law in New York City (room to be announced). The meeting will include a general discussion of the current military situation, MLTF's work and priorities in this period, and election of steering committee members. Following the meeting, members and friends will adjourn to a local bar for drinks and socializing.

The Task Force will also host a convention workshop on Friday, August 5, from 10:30 to 11:45 a.m. entitled **Connections — the Draft, the Poverty Draft, Veterans and US Imperialism**.

THE MILITARY LAW TASK FORCE of THE NATIONAL LAWYERS GUILD

ON WATCH is published quarterly by the Military Law Task Force of the National Lawyers Guild. Subscriptions are free with MLTF dues ($25), or $20 annually for non-members.

We welcome comments, criticism, assistance from Guild members, subscribers and others interested in military, draft or veterans law.

For membership info, see our website, or contact us using the info below.

Each issue is made available to the public on our website approximately one month after distribution to subscribers. A digital archive of back issues of this newsletter can be found on our website. See nlgmltf.org/onwatch/.

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The National Lawyer's Guild's Military Law Task Force includes attorneys, legal workers, law students and "barracks lawyers" interested in draft, military and veterans issues. The Task Force publishes On Watch as well as a range of legal memoranda and other educational material; maintains a listserv for discussion among its members and a website for members, others in the legal community and the public; sponsors seminars and workshops on military law; and provides support for members on individual cases and projects.

The MLTF defends the rights of servicemembers in the United States and overseas. It supports dissent, anti-war efforts and resistance within the military, offering legal and political assistance to those who challenge oppressive military policies. Like its parent organization, the NLG, it is committed to the precept that human rights are more sacred than property rights.

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