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8 UNITED STATES DISTRICT COURT
9
10 EASTERN DISTRICT OF CALIFORNIA

11 ELIZABETH BOARDMAN,

12 Plaintiff,

13 vs.

14 COMMISSIONER OF INTERNAL
15 REVENUE, Douglas H. Shulman,

16 Defendant.
17
18

Case No.:

COMPLAINT AND CLAIM FOR
INJUNCTIVE RELIEF (Free Exercise
of Religion; Religious Freedom
Restoration Act, 42 U.S.C. § 2000bb
et. seq.)

19
20 Summary and Introduction

21 Plaintiff Elizabeth Boardman is a lifelong Quaker and peace activist. As a
22 practice of her religion and following the dictates of her conscience, Boardman
23 refuses voluntarily to pay the percentage of her federal income taxes that is directed
24 towards war. For tax years 2007 and 2008, Boardman filed full federal income tax
25 returns, providing complete information to the Internal Revenue Service (hereinafter
26 “Service”) about her tax liabilities and retentions. Boardman stated in attached
27 correspondence that her conscience and religious beliefs would not allow her to pay
28

1 the full amount due. Boardman provided the Service with notice of deposit in a
2 financial institution of funds sufficient to satisfy her tax obligations and declared a
3 willingness to deliver such funds for peaceful uses.

4 Plaintiff is informed and believes and thereon alleges that Defendant
5 Commissioner of Internal Revenue employs punitive procedures and/or policies
6 against persons who fail or refuse to make full payment of taxes on grounds of
7 religion or conscience. Plaintiff is informed and believes and thereon alleges that,
8 acting pursuant to discretionary grants of authority codified at 26 U.S.C. §§ 6330(g)
9 and 6702(b)(2)(A)(i), defendant Commissioner attaches the label “frivolous” to a
10 taxpayer’s “refusal to ... pay taxes based on moral, religious, or ethical objections to
11 the government programs or policies for which the taxes will be used.” Plaintiff is
12 informed and believes and thereon alleges that defendant Commissioner threatens to
13 impose discretionary punishments on taxpayers who express conscientious or
14 religious objections to use of tax money for purposes of war.

15 Plaintiff is informed and believes and thereon alleges that the Service acted
16 with the intention of burdening, frustrating and thwarting the religious practice of
17 plaintiff Elizabeth Boardman when, as to tax years 2007 and 2008, the Service
18 deprived Boardman of rights and procedures which would otherwise have been
19 available, including a Tax Court determination of her claims; the Service
20 misrepresented statements of Boardman when it made decisions; and the Service
21 provided false, erroneous and/or misleading information to Boardman.

22 The religious practice of plaintiff Elizabeth Boardman and other pacifists is not
23 “frivolous.” Through her practice, Boardman upholds teachings of Jesus of
24 Nazareth and ideals of universal peace. She stands for the Quaker Peace Testimony
25 that was first declared in 1660 and that is of central importance in her religion. The
26 teachings of the Quaker religion that guide Boardman confirm the voice of her own
27 conscience in declaring that she cannot accede to, join in or pay for a system that
28 kills and wounds people, that devastates the homes and cities of survivors and that

1 multiplies forces of destruction it claims dishonestly to be suppressing.

2 Under the First Amendment to the United State Constitution, defendant
3 Commissioner cannot take actions “respecting an establishment of religion, or
4 prohibiting the free exercise thereof.” In violation of the constitutional limitation,
5 defendant Commissioner has promulgated regulations and employed enforcement
6 methods against plaintiff Elizabeth Boardman that are directed at prohibiting and
7 punishing her free exercise of religion.

8 Pursuant to the Religious Freedom Restoration Act of 1993, the Service is
9 required to institute procedures that minimally burden those whose are called by
10 conscience or religion to such antiwar tax practices. Plaintiff is informed and
11 believes and thereon alleges that efficient and respectful procedures for such
12 taxpayers of conscience can be established and maintained with no more burden on
13 or expense to the Service than the obstructive and insulting procedures now in place.

14 Accordingly, plaintiff Elizabeth Boardman alleges the facts herein and requests
15 that this Court issue a Permanent Injunction as requested below.

16
17 Jurisdiction and Parties

18 1. Plaintiff Elizabeth Boardman is a resident of the City of Davis, County
19 of Yolo, State of California. A substantial part of the events and occurrences on
20 which the action is based occurred in this district.

21 2. Defendant Commissioner of Internal Revenue is an officer of the United
22 States of America and is and was responsible for acts of the Service and its agents
23 alleged herein. The office is currently occupied by Douglas H. Shulman. All acts of
24 the Commissioner alleged herein were undertaken in his official capacity.

25 3. This action is authorized under 28 U.S.C. § 1331 as a federal question
26 arising under the Constitution and laws of the United States. Plaintiff further seeks
27 relief pursuant to the Religious Freedom Restoration Act of 1993, 42 U.S.C.
28 § 2000bb-1(c), also known as “RFRA.”

1 campaign for Northern California. Throughout her life, Boardman has studied – and
2 contributed to – the literature of pacifism and antiwar activism. She has participated
3 in a continual series of peace-directed activities including participation in vigils,
4 protests, marches, demonstrations and political campaigns. She frequently writes
5 letters of concern to public officials, newspapers and other public forums.

6 8. Late in 2002, Boardman joined a peace team in Baghdad, Iraq that was
7 protesting the impending invasion. She wrote about such activism in *Taking A*
8 *Stand: A Guide to Peace Teams and Accompaniment Projects* (2005).

9 9. Plaintiff Boardman upholds the Quaker principle affirming “that of God
10 in every person” which is to be hallowed and nurtured. Additional principles that
11 motivate her are commandments against killing and teachings of Jesus of Nazareth
12 to turn the other cheek and to forgive seventy times seven. She envisions the day
13 when swords shall be beaten into plowshares.

14 10. Plaintiff Boardman is opposed to the killing and wounding of persons
15 and to the destruction of homes and infrastructure that are the essence of war. She
16 rejects arguments that wars are necessary or effective. She declares, on the contrary,
17 that wars lead to cycles of revenge and retribution and that the military-industrial
18 complex is destroying the financial, political and commercial health of the nation.
19 Boardman fears that needless, ruinous wars waged by the United States are adding
20 to environmental devastation of the planet, exacerbating tensions and preventing
21 unified efforts that could lead to peace and restoration.

22 23 The Religious Character of Quaker Testimonies

24 11. The original Quaker religion was founded in England in the 17th
25 Century. The founders rejected the concept of a creed or authoritative statement of
26 principles, but based their faith and practice on direct experience or “experiment.”
27 Schisms occurred in later years, leading to multiple branches of modern Quakerism.

28 12. In the branch of Quakerism followed by plaintiff Elizabeth Boardman

1 and many Quaker peace activists, a branch often called “unprogrammed Friends,”
2 individuals are members of “Monthly Meetings” that are comparable to individual
3 churches. The word “meeting” refers to the central Quaker practice of corporate
4 worship. The word “monthly” refers to a monthly business meeting that includes
5 worship. Boardman is a member of the Davis Monthly Meeting that meets in Davis,
6 California. A “Yearly Meeting” is comparable to a regional group of churches. The
7 Davis Monthly Meeting is part of the Pacific Yearly Meeting, an ongoing
8 organization that conducts an annual weeklong event for members and attenders of
9 Monthly Meetings that are located in certain geographical regions in or near the
10 West Coast. Other Yearly Meetings have different geographical bases.

11 13. The Davis Monthly Meeting and Pacific Yearly Meeting support
12 Boardman in her practice of religious war tax resistance. She finds guidance in
13 teachings of Quakerism published by the Pacific Yearly Meeting: *Faith and*
14 *Practice: A Guide to Quaker Discipline in the Experience of Pacific Yearly Meeting*
15 *of the Religious Society of Friends* (2001). The publication is available online:
16 <http://www.pacificyearlymeeting.org/fp/index.html>

17 14. According to *Faith and Practice*:

18 The word “testimonies” refers to [a] set of deeply felt, historically rooted
19 attitudes and ways of living in the world. Testimonies bear witness to the
20 Truth as Friends in community perceive it: Truth known through
21 relationship with God. Testimonies are expressions of lives turned toward
22 the Light, outward expressions that reflect the inward experience of divine
23 guidance.

24 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg024.html>

25 15. *Faith and Practice* quotes Friend Wilmer A. Cooper, who wrote in 1991:
26 Another descriptive saying of Friends is that “Quakerism is a way of life,”
27 which is to suggest that the testimonies are the moral and ethical fruit of
28 the inward leading of the Spirit. ... Because the testimonies have a

1 religious base they might also be called the Quaker “articles of faith,” but
2 clearly for Friends it is faith that must be translated into action. *Ibid.*

3
4 The Quaker Peace Testimony and War Tax Resistance

5 16. The religious practice of antiwar tax retention, often called “war tax
6 resistance,” is an established practice in the Religious Society of Friends (Quakers),
7 the Mennonite Church and the Church of the Brethren. Persons of other faiths have
8 also been called to the practice of war tax resistance, including organized
9 fellowships of Roman Catholics, Methodists and Presbyterians.

10 17. Pacifism has been of central importance to Quakerism since the religion
11 was founded. Accused of participating in a religious uprising in 1660, Quaker
12 founders, led by George Fox, issued a formal declaration that became the seed
13 witness of the Quaker Peace Testimony:

14 All bloody principles and practices, we, as to our own particulars, do
15 utterly deny, with all outward wars and strife and fightings with outward
16 weapons, for any end or under any pretense whatsoever. And this is our
17 testimony to the whole world. ... That the spirit of Christ, by which we
18 are guided, is not changeable, so as once to command us from a thing as
19 evil and again to move unto it; and we do certainly know, and so testify to
20 the world, that the spirit of Christ, which leads us into all Truth, will never
21 move us to fight and war against any man with outward weapons, neither
22 for the kingdom of Christ nor for the kingdoms of this world.

23 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg055.html>

24 18. Weighty Quaker founders gave personal witness to the Peace Testimony.
25 When he was offered a militia captaincy in the Commonwealth of England as an
26 alternative to imprisonment for blasphemy, George Fox responded: “I told them I
27 lived in the virtue of that life and power that took away the occasion of all wars. ... I
28 told them I was come into the covenant of peace which was before wars and strife

1 were.” William Penn, who renounced the sword of English nobility, declared: “A
2 good end cannot sanctify evil means; nor must we ever do evil that good may come
3 of it.”

4 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg055.html> and

5 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg029.html>

6 19. Pennsylvania was founded by William Penn and many Quakers settled
7 there, establishing a government that often resisted through non-violent means the
8 military basis of British rule. Quakers practiced religious war tax resistance during
9 Colonial Wars and the Revolutionary War and refused to fight and refused to pay
10 war taxes or fees for exemption from military service, suffering seizures of money
11 and goods in addition to imprisonments and other punishments.

12 20. Religious pacifists have witnessed throughout the history of the United
13 States in support of the ideal of universal peace. War tax resistance, conscientious
14 objection to conscription and other forms of pacifist civil disobedience continued
15 through the War of 1812, the Mexican War and the Civil War. Although not a
16 Quaker, Henry David Thoreau spent a night in jail for refusing to pay poll taxes and
17 wrote *Civil Disobedience* encouraging such practices. Many Quakers on both sides
18 of the Civil War refused to pay taxes or fees imposed in lieu of military service.

19 21. Modern war tax resistance developed during the Indochina War. A. J.
20 Muste, a religious pacifist with Quaker connections, organized the publication of an
21 advertisement in the *Washington Post* in which numerous famous persons declared
22 their intentions to withhold tax payments as a war protest. Students at Swarthmore
23 College, a Quaker school, helped to organize a national campaign of refusal to pay
24 the war-based 10% excise tax on telephone charges, in which plaintiff Elizabeth
25 Boardman played an active role, as hereinabove alleged.

1 Conflict Between the Voluntary Tax System and the Quaker Testimony of Integrity

2 22. As stated in *Flora v. United States*, 362 U.S. 145, 176 (1960), "[o]ur
3 system of taxation is based upon voluntary assessment and payment, not upon
4 distraint." The "voluntary" character means that the taxpayer is obligated by law to
5 participate in the taxation process by collecting and organizing information,
6 preparing a tax return and delivering the tax return to the Service along with
7 payment. Volitional action is required to perform such obligations.

8 23. In *Primitive Christianity Revived* (1693), William Penn wrote:

9 That which the people called Quakers lay down as a main fundamental in
10 religion is this, that God through Christ hath placed a principle in every
11 man to inform him of his duty, and to enable him to do it; and that those
12 that live up to this principle are the people of God, and those that live in
13 disobedience to it are not God's people, whatever name they may bear or
14 profession they may make of religion. This is their ancient, first, and
15 standing testimony. With this they began, and this they bore and do bear
16 to the world.

17 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg051.html>

18 24. In *Faith and Practice*, discussion of the Quaker Testimony of Integrity is
19 headed by the inscription on George Fox's memorial tablet: "Live your faith."
20 "When lives are centered in the Spirit, beliefs and actions are congruent, and words
21 are dependable." <http://www.pacificyearlymeeting.org/fp/pymfp2001pg025.html>

22 25. Pacific Yearly Meeting's current *Faith and Practice* maintains a
23 guidance dated 1953:

24 We affirm our unchanging conviction that our first allegiance is to God,
25 and if this conflicts with any compulsions of the State, we serve our
26 countries best by remaining true to our higher loyalty.

27 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg055.html>

28 26. George Fox urged Friends to:

1 ...be patterns, be examples in all countries, places, islands, nations,
2 wherever you come; that your carriage and life may preach among all
3 sorts of people, and to them. Then you will come to walk cheerfully over
4 the world, answering to that of God in every one; whereby in them ye
5 may be a blessing, and make the witness of God in them to bless you.

6 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg052.html>

7 27. Fox had the enthusiasm of a Founder:

8 If but one man or woman were raised up by His power to stand and live in
9 the same spirit that the Apostles and Prophets were in, who gave forth the
10 Scriptures, that man or woman should shake all the country in their
11 profession for ten miles round.

12 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg048.html>

13 28. A modern Friend, Wolf Mendl, views Friends' Testimonies more
14 modestly in the current era:

15 The first Friends had an apocalyptic vision of the world transformed by
16 Christ and they set about to make it come true. The present generation of
17 Quakers shares this conviction of the power of the spirit, but it is doubtful
18 whether it will transform the world in our lifetime, or in that of our
19 children or children's children. For us it is not so important when the
20 perfect world will be achieved or what it will be like. What matters is
21 living our lives in the power of love and not worrying too much about the
22 results. In doing this, the means become part of the end. Hence we lose
23 the sense of helplessness and futility in the face of the world's crushing
24 problems. We also lose the craving for success, always focusing on the
25 goal to the exclusion of the way of getting there. We must literally not
26 take too much thought for the morrow but throw ourselves whole-
27 heartedly into the present. That is the beauty of the way of love; it cannot
28 be planned and its end cannot be foretold.

1 <http://www.pacificyearlymeeting.org/fp/pymfp2001pg048.html>

2 29. War and involvement with war is spiritually repugnant to Quakers who
3 are called to war tax resistance, such as plaintiff Elizabeth Boardman. In common
4 with other such persons, Boardman suffers spiritual pain from hateful propaganda
5 that leads to war, from celebrations of aggression and cruelty during war and from
6 massive, ruinous, piteous suffering caused by war. In common with other such
7 persons, Boardman feels outrage and despair over wars being waged by the United
8 States of America. Voluntary payment of taxes for such wars would violate the
9 integrity of plaintiff Elizabeth Boardman and other religious war tax resisters.

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1 Defendant Commissioner Refuses to Recognize Religious War Tax Resistance

2 30. Section 8.22.2.2.10.3 in the online Internal Revenue Manual states:

3 **Frivolous Issues or Issues that reflect a desire to delay or impede the**
4 **administration of federal tax laws**

5 The Tax Relief and Health Care Act of 2006 (TRHCA) added IRC 6330(g)
6 to IRC 6330. IRC 6330(g) provides "...if the Secretary determines that any
7 portion of a request for a hearing under this section or IRC §6320 meets the
8 requirement of clause (i) or (ii) of IRC 6702(b)(2)(A), then the Secretary
9 may treat such portion as if it were never submitted and such portion shall
not be subject to any further administrative or judicial review."

10 The requirements of clause (i) or (ii) of IRC 6702(b)(2)(A) are met and
11 Appeals may disregard any portion of the CDP or EH hearing request
12 when the request:

13 A. is based on a position which the Service has publicly
14 identified as frivolous, or

15 B. reflects a desire to delay or impede the administration of the
16 federal tax laws.

17

18 Example:

19 The taxpayer writes on Form 12153 that he is morally opposed to war and
20 refuses to pay the portion of his taxes equal to the percentage of the
21 federal budget being spent on the war effort. Notice 2008-14, section 1(h),
22 identifies as a "frivolous position" a taxpayer's disagreement with the
23 government's use of tax revenues or similar arguments described in Rev.
24 Rul. 2005-20. ***This revenue ruling describes as frivolous the refusal to***
25 ***file returns or pay taxes based on moral, religious or ethical objections***
26 ***to the government programs or policies for which the taxes will be used.***
27 This includes the use of taxes to pay for military expenditures. Because
28 this position is included in Notice 2008-14, it is a "specified frivolous
position." (Emphasis added; prior versions of Notice 2008-14 contained
equivalent definitions.)

1 31. Revenue Ruling 2005-20, referenced in § 8.22.2.2.10.3, specifies
2 “taxpayers [who] are attempting to reduce or eliminate their federal tax liability by
3 taking the position that they are not required to pay taxes if those taxes might be
4 used to support government programs or policies with which they disagree.”

5 32. A pamphlet published by the Service, “THE TRUTH ABOUT
6 FRIVOLOUS TAX ARGUMENTS” dated January 1, 2010 purports to contradict
7 popular contentions for not paying taxes:

8 **Contention: Taxpayers can refuse to pay income taxes on religious or**
9 **moral grounds by invoking the First Amendment.**

10 Some argue that taxpayers may refuse to pay federal income taxes based
11 on their religious or moral beliefs, or objection to the use of taxes to fund
12 certain government programs. These persons mistakenly invoke the First
13 Amendment in support of this frivolous position.

14 33. In a letter to plaintiff Elizabeth Boardman dated May 19, 2010 and
15 signed “for Ivy McChesney, Field Director,” agents of the Service declared that:
16 the courts held that a sound tax system could not function if denominations
17 were allowed to challenge the tax system because the government spent tax
18 payments in a manner that violates their religious beliefs.

19 34. Plaintiff Elizabeth Boardman does not desire to impair or impede the
20 administration of federal tax laws. Boardman is not attempting to reduce or
21 eliminate her federal tax liability. Boardman does not invoke the First Amendment
22 as justification for her refusal to pay the full amount of income taxes. Boardman is
23 not challenging the tax system through her practice of religious war tax resistance.

24 35. The position of plaintiff Elizabeth Boardman is that paying for war is
25 repugnant to her religion and to her conscience. She cannot and will not voluntarily
26 accede to and join in a system that makes war and that commands that she do so
27 likewise as of her own free will. She understands that the Service will collect the
28 amounts due by other means and that her assets may be levied or seized or that she

1 may be ordered to pay by a court. Refusing to make tax payments for war, bearing
2 witness on behalf of the Peace Testimony to the Service and to the world and
3 suffering levies and court orders is a practice of the religion of plaintiff Elizabeth
4 Boardman.

5 36. In connection with liabilities for tax years 2007 and 2008, the Service,
6 with apparent specific intent based on a determination of “frivolity,” obstructed,
7 thwarted and needlessly burdened the religious practice of plaintiff Boardman.

8 37. Protesting actions by the Service in connection with her 2007 federal
9 income taxes, Boardman wrote:

10 I am not a tax evader, I am not a libertarian, and I am not opposed
11 to taxation. I paid half of my tax bill for 2007, and would pay it all, if all
12 went to the constructive social programs our country desperately needs.

13 I am a long-time Quaker pacifist who has made a considered
14 decision to commit civil disobedience by refusing voluntarily to pay the
15 half of my income taxes that are earmarked for support of military
16 activities, including the killing of human beings. ...

17 In my effort to hold true to my deepest religious beliefs in pursuing
18 this course, I have received much misinformation and (perhaps deliberate)
19 misdirection from the Tax Advocacy Service and the IRS, on the phone
20 and in writing.

21 As a result, before I could file an appropriate appeal within the IRS
22 system, the balance due (with penalty and interest) on my 2007 tax bill, a
23 total of \$1159.49, was levied by the IRS from the Northern California
24 Community Loan Fund...

25 Although this levy has taken place, I have not received any “notice
26 of deficiency” from the IRS in relation to my 2007 taxes.

27 My concerns cannot be addressed by the Collection Due Process or
28 the Collections Appeal Program.

1 My claim is not “frivolous” according to the IRS document called
2 “The Truth about Frivolous Tax Arguments.”

3 38. In connection with taxes due for the tax year 2008, Boardman enclosed a
4 letter with her tax return mailed on March 14, 2009, in which she stated:

5 I believe that it is an inalienable human right of conscience to
6 refuse any form of participation in war, be it by military service in person
7 or by payment of war-supporting taxes.

8 The freedom of individual conscience is protected by international
9 treaties and covenants that are signed and ratified by the United States of
10 America. My human right to freedom of conscience is violated when I
11 am coerced to pay taxes that are used in support of military activity.

12 I understand that under current federal law, my refusal voluntarily
13 to pay for war can be characterized as an act of civil disobedience.
14 However, I believe that taking this action, holding back and putting in
15 escrow a portion of my income tax obligation, is entirely proper under
16 international human rights law.

17 39. During ensuing correspondence, Boardman wrote to the Service that she
18 could not “voluntarily contribute to the support of the Department of Defense” and
19 that she desired to obtain a Tax Court determination.

20 40. Plaintiff Boardman was denied the Tax Court determination she desired.
21 On April 13, 2010, she wrote to the Service:

22 “Just to keep the record clear, I wish to remind you now that I have
23 objected on the phone (3/14/10, G[.]) and by letter (3/16/10) to any
24 hearing which will result in denial of my right to appeal to a tax court. ...
25 Therefore, I was dismayed to receive your April 9 letter informing me that
26 such a hearing is now being arranged.”

27 41. Plaintiff Boardman did not receive notices that the Service was obligated
28 to provide as part of its procedures. The Service improperly levied on Boardman’s

1 Social Security benefits while disputes were pending. Anthony G., an agent of the
2 Service referred to above as “G.,” misrepresented the request of Boardman for an
3 equivalency hearing but deflected her request into a Collection Due Process.
4 Regina G., an agent of the Service, misrepresented statements of Boardman and
5 falsely stated that Boardman gave up the right to seek judicial review in Tax Court.
6 Paul K., an agent of the Service, threatened imminent seizures. Thereon, on
7 September 22, 2010, acting under compulsion, Boardman paid the amount
8 demanded by the Service on account of her tax obligations for the 2008 tax year.
9

10 Government Accommodations to Religious Dissenters and the Religious Freedom
11 Restoration Act of 1993

12 42. The development of Constitutional protections for religious dissenters is
13 reviewed in Leo Pfeffer, *Church, State and Freedom* (rev. ed. 1967). At page 611,
14 the author identifies:

15 the constitutional problem under the “free exercise” clause: how to
16 resolve this clash of conflicting interests, this demand of the individual to
17 practice his religion, and the demand of society through the state that he
18 do or refrain from doing certain acts, thereby conducting himself
19 inconsistently with the dictates of his religion.”

20 43. The current answer to the conflict is that the federal government
21 accommodates religious dissenters’ practices when accommodation “does not
22 override other significant interests.” *Cutter v. Wilkinson*, 544 U.S. 709 (2005).
23 Such accommodations are based on historical traditions.

24 44. The British colonial government accommodated the Quaker-dominated
25 Pennsylvania Assembly that either refused to appropriate money to pay for wars
26 waged by England against Indians and French Canadians or would appropriate
27 money only for humanitarian ends. In 1693, during King William’s War, the Royal
28 Governor of Pennsylvania acceded to the pacifists’ demands and promised them

1 that: “Your money ... will not be dipped in blood.”

2 45. Quakers’ refusals to bear arms or pay war taxes and their other forms of
3 civil disobedience have often been controversial. Notwithstanding acts of civil
4 disobedience, Quakers were respected in the American Colonies and in the newly-
5 liberated States. Drafters of the United States Constitution accommodated Quakers’
6 refusal to swear oaths by allowing persons to exercise powers of office upon making
7 an “Oath or Affirmation.” A number of the new States enacted constitutional or
8 statutory provisions exempting conscientious objectors from military service or
9 penalties based thereon.

10 46. During the Civil War, to accommodate pacifists’ demands, Congress
11 provided that the commutation fee for exemption from military service was to be
12 applied solely to the benefit of sick and wounded soldiers.

13 47. Conscientious objectors to military conscription began to perform
14 alternative service during the First World War. A formal Civilian Public Service as
15 an alternative to military service was established during the Second World War.
16 The Selective Service System, instituted thereafter, incorporates procedures for
17 conscientious objectors and alternative service.

18 48. Historically important Supreme Court decisions protected dissenters’
19 religious practices against attempts by States to curtail them, including protection of
20 Roman Catholics who maintained parochial schools, Lutherans who taught using
21 German language materials and Jehovah’s Witnesses who refused to salute the flag.

22 49. In *Sherbert v. Verner*, 374 U.S. 398 (1963), a Seventh-Day Adventist
23 was denied unemployment insurance because she refused to be available for work
24 on Saturday. The Court held that “to condition the availability of benefits upon this
25 appellant's willingness to violate a cardinal principle of her religious faith
26 effectively penalizes the free exercise of her constitutional liberties.” Even if the
27 State showed a compelling state interest and a risk of abuses, “it would plainly be
28 incumbent upon the [State] to demonstrate that no alternative forms of regulation

1 would combat such abuses without infringing First Amendment rights.”

2 50. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court held that that the
3 State was required to cooperate with Amish parents in providing alternatives to
4 mandatory education requirements. The court held that the “paramount
5 responsibility” and interest of the State in universal education was insufficient to
6 justify disregard of the Amish lifestyle and Amish child-rearing practices. “The
7 essence of all that has been said and written on the subject is that only those interests
8 of the highest order and those not otherwise served can overbalance legitimate
9 claims to the free exercise of religion.” The Court prohibited enforcement against
10 the Amish of “the Wisconsin law [that] affirmatively compels them, under threat of
11 criminal sanction, to perform acts undeniably at odds with fundamental tenets of
12 their religious beliefs.”

13 51. The Supreme Court reduced the scope of protections accorded religious
14 dissenters under the Free Exercise clause in *Employment Div., Dept. of Human*
15 *Resources of Oregon v. Smith*, 494 U. S. 872 (1990). The decision amounted to
16 overruling *Sherbert* directly and *Yoder* indirectly. Even under *Smith*, however,
17 government cannot “impose special disabilities on the basis of religious views.”

18 52. When religious persons of all denominations united in protest against the
19 *Smith* decision, Congress enacted the Religious Freedom Restoration Act of 1993 or
20 “RFRA.” RFRA reverses major consequences of *Smith* and declares a national
21 policy favoring religious freedom, re-instating principles of *Sherbert* and *Yoder* and
22 providing that “Government shall not substantially burden a person's exercise of
23 religion even if the burden results from a rule of general applicability.” An
24 exception is provided for a “compelling government interest,” but then government
25 must employ the “least restrictive means of furthering that compelling governmental
26 interest.” RFRA provides that federal statutory law adopted thereafter is subject to
27 RFRA unless such law explicitly excludes such application through a reference to
28 RFRA.

1 Grounds for Injunctive Relief

2 53. Plaintiff is informed and believes and thereon alleges that the Service is
3 selecting practitioners of religious war tax resistance for threats, punishment and/or
4 discriminatory bureaucratic action. From the facts alleged hereinabove, it appears
5 that Boardman has suffered from intentionally discriminatory action. Any such
6 threats, punishment and/or discriminatory action, whether directed at plaintiff
7 Boardman or at other war tax resisters of conscience, is in violation of the Free
8 Exercise clause of the First Amendment to the United States Constitution.

9 54. Under RFRA, and based on facts alleged hereinabove, the Service
10 should be required to establish alternative procedures for handling disputes, claims,
11 collections and litigation adverse to taxpayers who provide full and honest
12 disclosures of relevant information and who state *bona fide* reasons of religion or
13 conscience for failures to pay or refusals to pay the full amount due. Such
14 alternative procedures should be respectful, efficient and transparent and lead to a
15 Tax Court determination if the taxpayer desires. Plaintiff is informed and believes
16 and thereon alleges that such alternative procedures need involve no more expense
17 or delay in connection with tax collection from religious or conscientious war tax
18 resisters than is incurred under the present system.

19 55. Plaintiff Boardman has no adequate remedy at law. She does not
20 contend herein that the amount of any determination of tax or penalty by the Service
21 was improper and she does not seek any monetary damages.

22 56. Violations of plaintiff's constitutional right to freely exercise her religion
23 and deprivations of her religious freedom, including those that occurred in the past
24 and those that are threatened in the future, constitute irreparable injuries that should
25 not be borne and that impel plaintiff to seek the assistance of this court of equity.
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28

Prayer For Injunctive Relief

WHEREFORE, Plaintiff Elizabeth Boardman prays for relief as follows:

1. That the Court issue a permanent injunction ordering Defendant Commissioner and all those acting under him to comply with the Free Exercise clause of the First Amendment to the Constitution of the United States and with the Religious Freedom Restoration Act of 1993 according to the following principles:

a. The Commissioner shall put into operation procedures for processing disputes, claims, collections and litigation adverse to taxpayers who refuse to pay taxes because of conscience or religion that are respectful, efficient, transparent and minimally burdensome and that lead to Tax Court determinations upon taxpayer request;

b. No costs or punishment shall be inflicted, threatened or sought against conscientious or religious war tax resisters in excess of costs or punishment strictly required by Congressional enactment;

2. That plaintiff Elizabeth Boardman recover her costs and disbursements herein, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b).

3. Such other or further relief as the Court shall deem just.

Dated: March 13, 2012



Robert L. Kovsky, Attorney at Law
Attorney for Plaintiff
Elizabeth Boardman