Western New England Law Review

Volume 1 *1 (1978-1979)*
Issue 2

Article 6

1-1-1978

CONSTITUTIONAL LAW—EQUAL PROTECTION—FREE EXERCISE OF RELIGION—MASSACHUSETTS STATUTE DENYING BENEFITS TO THOSE DISCHARGED AS CONSCIENTIOUS OBJECTORS HELD UNCONSTITUTIONAL—Reynolds v. Dukakis, 441 F. Supp. 646 (D. Mass.1977)

David B. Schultz

CONSTITUTIONAL LAW—EQUAL PROTECTION—FREE EXERCISE OF RELIGION—MASSACHUSETTS STATUTE DENYING BENEFITS TO THOSE DISCHARGED AS CONSCIENTIOUS OBJECTORS HELD UNCONSTITUTIONAL—*Reynolds v. Dukakis*, 441 F. Supp. 646 (D. Mass. 1977)

David Reynolds received a bachelor's degree from the University of Massachusetts shortly before he enlisted in the United States Coast Guard on December 18, 1968. Early in the summer of 1969, Reynolds was commissioned as an ensign and agreed to a five-year military commitment. He served as a helicopter pilot until September 9, 1972 when, after three years and nine months of military service, Reynolds applied for a discharge as a conscientious objector.[1]

Between September 1972 and June 1973, Reynolds was assigned noncombatant duties. These duties, as well as all duties performed before September of 1972, were carried out satisfactorily. In June, 1973, after fulfilling four and a half years of his five-year military obligation, Reynolds received an honorable discharge from the United States Coast Guard. The discharge contained a notation that conscientious objection was the reason for severance from the service.[2]

In the fall of 1973, Reynolds was accepted into a graduate program at the University of Massachusetts. He applied for veterans' educational benefits from the federal government and from the Commonwealth of Massachusetts. Reynolds, however, received only federal veterans' benefits.[3] Under Massachusetts law,[4] Reynolds did not qualify as a veteran because he had been discharged as a conscientious objector and, therefore, was not eligible to receive educational benefits.[5]

---

1. Reynolds v. Dukakis, 441 F. Supp. 646, 648 (D. Mass. 1977).
2. *Id.* at 648-49.
3. *Id.* at 649.
4. MASS. GEN. LAWS ch. 4, § 7(43) (Michie/Law. Co-op 1973) defines a "veteran" as "any person, . . . (a) whose last discharge or release from his wartime service, as defined herein, was under honorable conditions . . . ." The statute further provides that "[n]one of the following shall be deemed to be a "veteran": . . . (c) Any person who was designated as a conscientious objector upon his last discharge or release from the armed forces of the United States."
5. Reynolds was informed of his ineligibility for veterans' benefits by Robert E. Feeney, Military Archivist for the Commonwealth of Massachusetts, in a letter dated September 26, 1973. After informing Reynolds that he was ineligible for benefits, Feeney stated that the Department of Education would make the ultimate decision of whether a tuition exemption certificate would be issued to Reynolds. For an un-

Because he was unable to meet his tuition payments as they became due, Reynolds withdrew from the University of Massachusetts. At the time of withdrawal Reynolds owed the university more than $300. He then worked as a sawmill operator until August 1976, when hurricane winds toppled a tree onto the truck in which he was riding, fracturing his skull and shattering a vertebra in his back. Reynolds, probably relying on the Massachusetts definition of veteran, did not apply for state medical and hospitalization benefits available to veterans.[6]

Claiming that the Massachusetts statute violated the first, fifth, and fourteenth amendments of the United States Constitution, Reynolds filed a class action in the United States District Court for the District of Massachusetts. He named Michael Dukakis,[7] Vahan Vartanian,[8] Robert Feeney,[9] and Leroy Keith[10] as defendants and sought declaratory and injunctive relief. The defendants filed a motion to dismiss the complaint on the ground that the court lacked subject matter jurisdiction.[11] After oral argument on the motion, the district court ordered the parties to file briefs on the question of whether the Massachusetts statute violated the plaintiff's equal protection rights.[12] After the briefs were filed, and without further oral argument, the three-judge district court[13] held that the Massa-

---

known reason, the Department of Education never made that decision. Brief for Plaintiff at 2, Reynolds v. Dukakis, 441 F. Supp. 646 (D. Mass. 1977).

6. The plaintiff's complaint was never "amended to allege that his failure to apply for medical benefits as a veteran was based on the prior ruling that he could not qualify [as a veteran]." 441 F. Supp. at 649. *See* Brief for Plaintiff, *supra* note 5, at 3.

7. Governor of the Commonwealth of Massachusetts.

8. Adjutant General and Commissioner of War Records of the Commonwealth of Massachusetts.

9. *See* note 5 *supra*.

10. Chancellor of the Board of Higher Education.

11. The Court disposed of this claim by ruling that subject matter jurisdiction existed "on the basis of 28 U.S.C. § 1331—federal question jurisdiction—and also on the basis of 28 U.S.C. § 1343—this case being a civil rights action alleged to arise under 42 U.S.C. § 1983." 441 F. Supp. at 649. The defendants also unsuccessfully argued that the plaintiff failed to state a claim upon which relief could be granted. The defendants were successful, however, in their attempt to show that a class action was unwarranted because the plaintiff failed to "establish the existence in fact of a class 'so numerous that joinder of all members is impractical' . . . ." *Id.* at 650. Therefore, the plaintiff failed to meet the class action requirements of FED. R. CIV. P. 23(a)(1). Only nine persons could be considered potential class members.

12. Reynolds v. Dukakis, No. 75-5109-J (D. Mass., July 29, 1976).

13. The plaintiff applied for a three-judge court on the basis of 28 U.S.C. §§ 2283-2284. Because the plaintiff sought an injunction against the operation of an allegedly unconstitutional statute, the case was properly before the court. The court's

chusetts statute was unconstitutional. The court found that a state statute which denies veterans' benefits to an individual honorably discharged as a conscientious objector was in conflict with the federal scheme that awards benefits to honorably discharged conscientious objectors.[14]

The *Reynolds* court reached a justifiable result. A strong argument exists, however, that state legislation which bars veterans' benefits to those discharged as conscientious objectors conflicts with neither the federal policy underlying the discharge of conscientious objectors nor the federal benefits to which conscientious objectors are entitled.[15] Rather than relying on a strained conflict with federal law, the court should have decided *Reynolds* on the basis of equal protection and first amendment standards. The court recognized

> a serious equal protection problem in a statute, . . . which withholds veterans' benefits from a person who exercises what the federal authorities have, at least by implication, found to be a

---

jurisdiction was maintained because the defendant made no valid allegations as to the plaintiff's failure to exhaust his administrative remedies. 441 F. Supp. at 648-50.

14. *Id.* at 653-54. "When a state legislature undertakes to enact legislation, the effect of which would be to frustrate the congressional intention and to produce results diametrically opposed to those sought by the federal law, the state legislation must give way." *Id.* at 653. A state statute which denies veteran status to an in-service conscientious objector, thereby barring his eligibility for veterans' benefits, "is clearly at cross purposes with the federal statutory scheme which now places no sanctions on [an in-service conscientious objector]." *Id.*

15. *Id.* at 655 (Julian, J., dissenting). The court found a conflict between the federal and state statutes arising out of the state's denial of veteran status granted Reynolds by Congress. The dissent saw no conflict because "[n]either the discharge of conscientious objectors . . . nor the granting to them of federal veterans' benefits is in any way frustrated or impeded by enforcement of [the Massachusetts statute]. There is no obligation on Massachusetts to supplement the benefits conferred by federal law on 1-O conscientious objectors." *Id.* at 655 (citations omitted). The federal benefits granted to veterans and the underlying policies of each are codified in 38 U.S.C. §§ 301-1007 (1970 & Supp. III 1978). Generally, courts favor decisions based on narrow grounds. If, for example, a state statute clearly violated the fourteenth amendment, but addressed an area of law clearly pre-empted by federal law, most courts would base their decision on the narrower pre-emption grounds rather than the broader constitutional grounds. *See* Note, *Pre-emption as a Preferential Ground: A New Canon of Construction*, 12 STAN. L. REV. 208 (1959). Assuming, in *Reynolds*, that a legitimate conflict exists beween the state and federal statutes, the conflict would appear to be the logical basis for decision. Where, however, only a strained conflict exists, most courts would then dispose of a case on constitutional grounds. In *Reynolds*, the plaintiff was eligible for, and did receive, federal benefits. The Massachusetts statute infringed on neither the policy nor the operation of federal law. Therefore, since here there is only a questionable conflict, the court should have based its decision on equal protection grounds.

> free exercise right, while that same statute does not withhold those same veterans' benefits from persons found by the military service to be, [unsuitable for the service].[16]

The district court filed three opinions. Chief Judge Caffrey, writing for the majority, found that a conflict existed between state and federal law. Judge Aldrich, concurring, felt that the equal protection argument deserved further consideration. Finally, Judge Julian, in dissent, found neither that a conflict existed between state and federal law nor that an equal protection argument was justified.

I. BACKGROUND

Conscientious objection to war is not a new concept in America. Exemptions from military service for those who were conscientiously opposed to war first appeared in colonial statutes more than 100 years before the American Revolution.[17] "However, the high cost of supporting a fighting militia and the general feeling that those of nonresistant faith were 'getting off too easily' caused most colonies to require the exempted person to either provide a substitute to fight in their stead or to pay a commutation fee."[18] This policy continued in various forms[19] until 1917 when personal military service became obligatory.

The Draft Act of 1917[20] exempted only those who could show they belonged to well-recognized religious organizations whose creed prohibited any mode of combatant participation. The language of this statute had the effect of denying military service exemptions to those having deeply rooted religious beliefs in opposition to war simply because the religious organization of which they were a member was not "well-recognized."

The "well-recognized" clause was finally omitted in 1940. It was replaced by the requirement that one show that his opposition to war was grounded in his religious training and belief.[21] In order

---

16. *Id.* at 654.

17. Conscientious objectors were probably first exempted in 1673 by the colonial legislature in Rhode Island. *See* Russell, *Development of Conscientious Objector Recognition in the United States*, 20 GEO. WASH. L. REV. 409 (1952).

18. *Id.* at 414 (footnote omitted).

19. *See* Mass. Act of Oct. 19, 1664 (commutation fee), Mass. Act of Jan. 22, 1776 (exempting Quakers), Draft Act of 1863, 12 Stat. 731 (substitutions and commutation fees), *cited in* Russell, *supra* note 17 (citing SELECTIVE SERVICE SYSTEM, CONSCIENTIOUS OBJECTION 40-41 (Special Monograph 11, 1950)).

20. Ch. 15, 40 Stat. 76 (1917).

21. Selective Training and Service Act, ch. 720, 54 Stat. 885 (1940).

to be granted an exemption from military service as a conscientious objector, an individual was required to show that his religious training and belief centered around a "Supreme Being."[22]

The "Supreme Being" standard soon proved to be inequitable for those who were sincerely opposed to war but could not ground their opposition upon a belief in a "God." In 1965, in *United States v. Seeger*,[23] the Supreme Court developed a new test to determine whether to exempt an applicant from military service on the basis of conscientious objection. Although Seeger's religious beliefs were sincere, he was convicted of refusing induction into the armed forces because his belief was not grounded on a "Supreme Being." Instead, Seeger believed in "goodness and virtue for their own sakes and [had] a religious faith in a purely ethical creed."[24] After recognizing the broad scope of the term "religion," the Court enunciated the new standard for conscientious objector exemptions: "[D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption?"[25] In order to gain an exemption based on conscientious objection, therefore, one must object to war in any form and show that his objection stems from religious training and belief.[26]

Once an individual is classified as a conscientious objector he is then subclassified as either opposed to any form of participation in any war or opposed only to service in combat. The members of the former group are classified as 1-O[27] while those in the latter

22. *Id.*

23. 380 U.S. 163 (1965).

24. *Id.* at 166.

25. *Id.* at 184. The *Seeger* decision, however, provided very little insight regarding the definitional limits of "religious training and belief." Congress defined religious training and belief as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code." *Id.* at 172 (citing Selective Training and Service Act, ch. 720, 54 Stat. 885 (1940), *as amended by* Selective Service Act, 62 Stat. 604 (1948)). This amendment was the result of the decision in Berman v. United States, 156 F.2d 377 (9th Cir. 1946), *cert. denied*, 329 U.S. 795 (1946), which held that philosophical, social, or political beliefs were not included in the definition of religious training and belief. Five years after *Seeger*, however, the Supreme Court indicated that philosophical, social, and political beliefs may fit within the definition of religious training and belief. Welsh v. United States, 298 U.S. 333 (1970). In *Welsh*, the plaintiff did not view his beliefs as being of a religious nature. The Court, however, noted the sincerity of his convictions and held that Welsh's beliefs were within the broad scope of the term "religious" as stated by the *Seeger* Court. *Id.* at 343.

26. *See* 50 U.S.C.A. app. § 456(j) (1970).

27. National Defense, 32 C.F.R. § 1622.14(a) (1977).

group are classified as 1-A-O.[28]

Those classified as 1-A-O actively serve in the military in a noncombatant function.[29] If their service has been satisfactory, they receive an honorable discharge and are entitled to all federal benefits available to veterans. Those classified as 1-O are assigned to alternate civilian service.[30] When the 1-O has completed his tour of duty, however, he is not entitled to veterans' benefits because he has not actively served in the military and, therefore, cannot be classified as a veteran.[31]

In 1962, provisions were made to cover the situation where an individual claims to be a conscientious objector after his induction into the service.[32] One may apply for a conscientious objection exemption after induction only if the belief upon which the application is grounded arose after induction.[33]

If the in-service conscientious objector is granted a 1-A-O classification, he will be transferred to noncombatant duty or discharged.[34] There is nothing on the 1-A-O discharge to indicate that conscientious objection is the reason for severance from the service.[35] The discharged 1-A-O is eligible for all federal and state veterans' benefits unless, for other reasons, he received an other-than-honorable discharge.

If the in-service conscientious objector is granted a 1-O classification, he is usually discharged.[36] Unlike the in-service 1-A-O, however, a notation is made on the in-service 1-O's discharge that the severance is the result of conscientious objection.[37] The notation of conscientious objection is made solely for the purpose of avoiding later confusion.[38] The notation in no way affects one's right to receive federal veterans' benefits. Massachusetts, however, used

---

28. *Id.* § 1622.11.

29. *Id.*

30. *Id.* § 1622.14(a).

31. Johnson v. Robison, 415 U.S. 361 (1974).

32. Dep't of Defense Directive No. 1300.6 (Aug. 21, 1962). *See generally* Comment, *God, the Army, and Judicial Review: The In-Service Conscientious Objector*, 56 CALIF. L. REV. 379 (1968).

33. Dep't of Defense Directive No. 1300.6, § IV(B)(2) (May 10, 1968). *See* Grubb v. Birdsong, 452 F.2d 516 (6th Cir. 1971).

34. National Defense, 32 C.F.R. § 75.7(b) (1977).

35. *Id.*

36. The discharge is granted for the convenience of the government. Dep't of Defense Directive No. 1300.6, § VI(C)(1) (May 10, 1968).

37. National Defense, 32 C.F.R. § 75.7(a) (1977).

38. Dep't of Defense Directive No. 1300.6, § VI(C)(1)(a) (May 10, 1968).

this notation as the basis for denial of veterans' benefits to any applicant who fit within the class.[39]

II. FEDERAL VETERANS' BENEFITS

Congress passed veterans' benefits legislation as part of its function to make all laws necessary and proper to raise and support armies.[40] These benefits were intended as compensation to those whose lives were significantly disrupted by military service.[41] The benefits were also intended to aid veterans in re-adjusting to civilian life.[42]

Originally, benefits flowed only to those veterans who received injuries in the service. After World War II, however, legislation was passed which recognized all veterans as eligible to receive benefits. Since World War II, the nature of the benefits offered has changed but the basic premise—that all veterans are eligible for benefits[43]—has not changed.

Under federal law, "[t]he term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable."[44] Whether one is entitled to collect federal veterans' benefits upon severance from the service depends on the type of discharge he received.[45] Regulations, established by the Department of Defense and made applicable to all military branches, gave certain superior officers discretion to grant different types of discharges based on a serviceman's record.[46] Since conscientious objection is not grounds for a dishonorable discharge, anyone granted a 1-A-O or 1-O classification after induction is eligible for federal veterans' benefits unless he fails to meet some other element included within the federal definition of a "veteran." The notation that the reason for severance was conscientious objection receives no consideration in the determination of eligibility for federal benefits.

---

39. *See* Mass. GEN. LAWS ch. 4, § 7(43) (Michie/Law Co-op 1973).

40. U.S. CONST. art. I, § 8, cl. 18.

41. Johnson v. Robison, 415 U.S. 361 (1974).

42. *Id.*

43. National Defense, 32 C.F.R. § 75.5(a) (1977) "[r]econgize[s] the claims of bona fide conscientious objectors in the military service. . . ."

44. 38 U.S.C. § 101(2) (1970).

45. National Defense, 32 C.F.R. § 75.7 (1977).

46. *Id.* § 41.

III. VETERANS' BENEFITS IN MASSACHUSETTS

The Massachusetts definition of "veteran" differs markedly from the federal definition. In pertinent part, the Massachusetts legislature has defined the term "veteran" to exclude "[a]ny person who was designated as a conscientious objector upon his last discharge or release from the armed forces of the United States."[47]

There is no legislative history available to describe the purpose of the Massachusetts statute. The 1954 statute was probably passed in accordance with the then prevalent federal policy aimed at punishing those in the service who refused to obey orders or wear a military uniform.[48] Those exhibiting this type of behavior were dishonorably discharged without regard to the consideration that conscience may have been the motivating factor behind the behavior. By 1962, however, the federal attitude toward conscientious objectors was more in line with current policy: It is more important to recognize a person's religious rights than it is to force him to serve in the military.[49] In 1962, the Department of Defense first implemented a policy for the discharge of those who validly claimed to be conscientiously opposed to war of any kind.[50] If the individual's service record was satisfactory a discharge under honorable conditions was granted, and the serviceman was entitled to full federal veterans' benefits. If the individual's service record was marred by his refusal to wear the uniform or to obey orders and carry out his assigned duties, the serviceman received a discharge

---

47. MASS. GEN. LAWS ch. 4, § 7(43) (Michie/Law Co-op 1973).

48. 441 F. Supp. at 652. This was a major thrust of plaintiff's argument. Conscientious objectors were first excluded from receiving federal benefits by the 1918 amendments to the Federal War Risk Insurance Act, ch. 104, 40 Stat. 609, 609-10 (1918), where they were classified with deserters and enemy aliens. A 1918 amendment to the Espionage Act of 1917 imposed fines and prison sentences on those who refused induction. The punitive nature of these acts demonstrates the strong public sentiment against conscientious objectors. In 1919, Massachusetts passed a statute granting employment preference to veterans. Conscientious objectors were excluded by this act. 1919 Mass. Acts ch. 150, § 1. The language of this statute was substantially similar to that of the Federal War Risk Insurance Act, ch. 104, 40 Stat. 609, 609-10 (1918). The language of the statute at issue in *Reynolds*, MASS. GEN. LAWS ch. 4, § 7(43), is substantially similar to the 1919 Massachusetts Employment Preference Act. Since the 1919 Act was aimed at reaching the conscientious objectors who failed to take orders, refused to wear the uniform, and exhibited general disruptive behavior, it is not unreasonable to conclude that MASS. GEN. LAWS ch. 4, § 7(43) was punitively designed with the same objectives in mind. Brief for Plaintiff, *supra* note 5, at 20-34.

49. *See* 38 U.S.C. § 3103 (1959); 50 U.S.C. app. § 456(j) (1967). *See also* Gillette v. United States, 401 U.S. 437 (1971).

50. Dep't of Defense Directive No. 1300.6 (Aug. 21, 1962).

under other-than-honorable conditions and was not eligible for federal veterans' benefits.[51] This policy is still in effect.[52]

The Massachusetts provision excluding conscientious objectors from veteran status has not been amended since its passage in 1954. It contains substantially the same language as a 1919 statute which was designed as a punitive measure against those conscientiously opposed to war.[53] The continuation of the same language implies that the statute at issue was also designed as a punitive measure against conscientious objectors.

IV. EQUAL PROTECTION

The fourteenth amendment guarantees that "[n]o state shall . . . deny to any person . . . the equal protection of the laws."[54] The Constitution does not, however, guarantee absolute equality to every person. The fourteenth amendment prevents unequal treatment of people who are similarly situated by forbidding state action which results in arbitrary and unreasonable discrimination.

A statute, by its very nature, must classify people into different groups for different purposes. The fourteenth amendment does not deny a state the right to make statutory classifications. To the contrary, a statute's strength depends upon an effective classification scheme. When a state makes classifications based upon recognized differences between people, there must be a reasonable basis for the classification. In addition, the distinguishing feature upon which the classification has been made must have a reasonable relation to the legislative purpose.[55]

---

51. Brief for Plaintiff, *supra* note 5, at 23-29. *See* note 44 *supra* and accompanying text. A veteran is one who receives a discharge under other-than-dishonorable conditions. This is a condition precedent to the right to receive either state or federal veterans' benefits. Certainly, one who receives an honorable discharge is eligible for veterans' benefits. As discussed in the text accompanying note 61 *infra*, one who receives a general discharge for unsuitability to the service may also be eligible for Massachusetts veterans' benefits as well as federal veterans' benefits.

52. Dep't of Defense Directive No. 1300.6 (May 10, 1968).

53. *See* note 48 *supra*.

54. U.S. CONST. amend. XIV, § 1.

55. *See* Williamson v. Lee Optical Co., 348 U.S. 483 (1955). If a state enactment classifies all persons who have received a law degree into a group, it may be said that there is a reasonable basis for identifying the common group characteristic. If the state enactment goes further to say that this class is the only class entitled to practice law in the state, it may be said that there is a reasonable relation between the classification made and the statutory purpose. On the other hand, if the state enactment says that only those persons who have received law degrees are entitled to practice medicine in the state, the enactment has exceeded the bounds of reason.

Each statutory classification includes some groups and excludes others. Some classifications may operate to exclude individuals who are similarly situated to those who are included by the classification. The legislature must have a reasonable basis for each classification.[56] When there is no reasonable basis for differentiating between groups, that is, no rational relation between the challenged classification and the purpose of the statute, the state has violated the equal protection clause.

In *Reynolds*, the statute barring veteran status to conscientious objectors classifies servicemen into two groups. Both groups received discharges under other-than-dishonorable conditions. The first group is composed of those who honorably completed their term of service and those who were discharged before completing their term of service because they were unsuitable for the service. Also included in this first group are those who were discharged as 1-A-O conscientious objectors because they were opposed only to participation in combat. All members of this group are classified as veterans and are eligible to receive veterans' benefits in Massachusetts. The second group is made up of those discharged honorably with a notation of conscientious objector because of their opposition to participation in war in any form and, therefore, classified as 1-O. The members of this group are not classified as veterans and, therefore, are not entitled to receive state veterans' benefits.

The plaintiff argued that the classifications made by the statute are, at the same time, both overinclusive and underinclusive.[57] The classification is overinclusive because it denies benefits to all conscientious objectors classified as 1-O regardless of the length of their active service.[58] Most 1-O conscientious objectors are never inducted into the service. Instead, they perform alternate civilian service. Therefore, they never actively serve in the military and are not entitled to benefits because they are not veterans.[59] The plaintiff was not similarly situated to this group of 1-O conscientious objector. Reynolds performed four and a half years of active mili-

---

There is no rational relationship between the classification scheme and the purpose of the statute.

56. *See id.* For instance, if a legislative act states that only those lawyers over six feet may practice law in the state, the state has arbitrarily and unreasonably discriminated among two similarly situated groups. Lawyers over six feet tall are benefited by this statute. Lawyers under six feet tall, however, are unreasonably burdened.

57. Brief for Plaintiff, *supra* note 5, at 4-11.

58. *Id.*

59. *See* Johnson v. Robison, 415 U.S. 361 (1974); Zweig, *Military Law*, 1976 ANN. SURVEY AM. L. 687, 699-700.

tary service. By including Reynolds in the same group as all 1-Os, the statute includes more people than necessary to accomplish its purpose of providing benefits to veterans.

The classification is underinclusive because, on the one hand, it grants benefits to 1-A-O conscientious objectors who have actively served in the military and, on the other hand, denies benefits to 1-O conscientious objectors who have actively served in the military.[60] By excluding Reynolds from the class of conscientious objectors who have actively served in the military, the statutory purpose is not accomplished because more people than necessary have been excluded. The classification also grants benefits to those discharged because of their unsuitability to the service. Persons severed from the service in this manner include homosexuals, abusers of alcohol, those who exhibit unsanitary habits and personality disorders as well as those who are apathetic, have defective attitudes or are unable to expend their effort constructively.[61] If these individuals have otherwise satisfactory service records, they receive a discharge under other-than-dishonorable conditions and are entitled to receive both federal and state veterans' benefits. Thus the statutory classification is again underinclusive because, by excluding Reynolds from the class composed of unsuitables, it includes fewer persons than necessary to accomplish its purpose.[62]

---

60. Brief for Plaintiff, *supra* note 5, at 4-11. The dissent adopted the view that Reynolds was not similarly situated with 1-A-O conscientious objectors and those discharged for unsuitability to the service. The view is grounded on the voluntary nature of the plaintiff's initiation of his discharge. Irrespective of their personal preferences, the government initiates the discharge of 1-A-O conscientious objectors and those found to be unsuitable. 441 F. Supp. at 656. Judge Aldrich, in his concurring opinion, effectively met this argument by observing that the conduct of a conscientious objector—expressing his convictions and initiating his own discharge—is no more voluntary than the conduct of one which leads to a discharge for unsuitability. This argument is strengthened by the fact that those experiencing the requisite degree of hardship may initiate their own discharge without incurring either state or federal sanction. *Id.* at 654-55. Thus, the dissent's finding that 1-O conscientious objectors are not similarly situated with 1-A-O conscientious objectors and those found to be unsuitable because of the voluntary/involuntary distinction is subject to three criticisms. First, following the dictates of one's conscience may, in fact, be an essentially involuntary act. Second, initiation of a discharge for "hardship" may be an essentially voluntary act. Finally, the conduct leading to a finding of unsuitability is often voluntary.

61. *See* AIR FORCE MANUAL, 39-12, c(11) (July 20, 1976).

62. The Massachusetts statute, however, makes it possible for a person to actively serve the minimum 180 days and subsequently be discharged for unsuitability to the service and yet remain eligible for veterans' benefits. Reynolds, however, who meritoriously served four and a half years before being discharged, was ineligible for veterans' benefits.

It is not argued here that 1-A-O conscientious objectors and unsuitables discharged after active service should not receive such benefits. However, the purposes of granting veterans' benefits are compensation for disruption to one's life,[63] reward for virtuous military service,[64] and stimulation of military service.[65] Granting benefits to Reynolds fulfills the statute's purposes as much as granting benefits to 1-A-O conscientious objectors and those discharged for unsuitability.

The *Reynolds* court recognized "that there appears to be a serious equal protection problem"[66] in the Massachusetts statute but found it unnecessary to decide the issue. Reynolds was similarly situated with all others who were eligible to receive veterans' benefits. Because of an unreasonable, arbitrary, and capricious classification scheme, however, Reynolds was denied the status of veteran and the accompanying benefits. Since there was no rational basis for the classification scheme and since there was no rational relation between the classification and a legitimate state goal, the Massachusetts statute should have been struck down as a violation of the fourteenth amendment's guarantee of equal protection.

V. First Amendment Claim

Reynolds also argued that the Massachusetts statutory scheme should be subject to strict judicial scrutiny because the classification interferes with the fundamental constitutional right to the free exercise of religion.[67] A similar argument was advanced in *Johnson v. Robison*[68] where a conscientious objector who never served in the military was denied veterans' benefits. There, the United States Supreme Court held that the denial of benefits was, at most, "an incidental burden upon appellee's free exercise of religion,"[69] and that the government's substantial interest in raising and supporting armies was "clearly sufficient to sustain the challenged legislation."[70]

---

63. *See* Johnson v. Robison, 415 U.S. 361 (1974).

64. Opinion of the Justices, 303 Mass. 631, 657 (1939) (Ronan, J., concurring). *See also* Brief for Plaintiff, *supra* note 5, at 17.

65. Hutcheson v. Director of Civil Serv., 361 Mass. 480, 281 N.E.2d 53 (1972); Opinion of the Justices, 303 Mass. 631, 647 (1939).

66. 441 F. Supp. at 654.

67. U.S. CONST. amend. I.

68. 415 U.S. 361 (1974).

69. *Id.* at 385.

70. *Id.*

The crucial distinction, however, between *Robison* and *Reynolds* is that Reynolds had already served four and a half years of active military service. He paid the price for veterans' benefits, both in terms of virtuous military service and disruption of his civilian life.[71] Robison, on the other hand, received his 1-O exemption before induction and claimed veterans' benefits because he performed alternate civilian service. He freely chose, prospectively, between active military service, with its attendant benefits, and alternate civilian service without those benefits.[72] Although *Robison* holds that denying benefits to one who had not earned them did not interfere with the free exercise of religion, the Supreme Court has held that no religious test may be used as a barrier to governmental benefits.[73] In *Sherbert v. Verner*,[74] a Seventh-Day Adventist was discharged from her employment because of her refusal to work on her day of worship and was, for the same reason, unable to find other employment. Her subsequent application for unemployment compensation benefits was denied on the grounds that she had failed without good cause to accept other suitable work. The Supreme Court held that the plaintiff's right to free exercise of religion was violated by the state's denial of benefits.[75] Accepting other employment would have infringed upon the plaintiff's deeply held religious beliefs. The Court found no compelling state interest to uphold the denial of benefits.[76] No invidious state discriminatory scheme may stand in the face of the vital interest in the free exercise of religion to which we are all entitled. In *Reynolds*, as in *Sherbert*, the plaintiff was faced with a choice of abandoning the religious dictates of his conscience or suffering from the denial of governmental benefits he justly deserved.

The *Sherbert* rationale is more instructive regarding the principal case than is *Robison* because the nature of the choice in *Sherbert* more closely resembles Reynolds's choice. Both plaintiffs were denied state government benefits that they were already entitled to but for their exercising their freedom of religion. Applying the *Sherbert* analysis to *Reynolds*, the court would have required the state to justify the statutory scheme by showing a compelling

---

71. *See* text accompanying notes 63-64 *supra*.
72. 415 U.S. at 385 n.19.
73. Everson v. Board of Educ., 330 U.S. 1, 16 (1947).
74. 374 U.S. 398 (1963).
75. *Id.* at 403. *See* Speiser v. Randall, 357 U.S. 513 (1958).
76. 374 U.S. at 409.

interest. In as much as there was no state interest capable of satisfying the less demanding rational basis test,[77] the statute would surely fall when subjected to closer judicial scrutiny.[78]

The sole distinction between *Reynolds* and *Sherbert* is that Reynolds was denied educational benefits while Sherbert was denied unemployment benefits. The distinction does not appear significant enough to make a difference. Statutory classifications should not place one in the position of choosing between his conscience and his education. Since the free exercise of religion is a fundamental constitutional right, strict scrutiny should have been applied. *Sherbert* makes clear that incidental burdens on free exercise of religion are not to be tolerated unless the state can show a compelling interest which justifies the burden.[79]

The Massachusetts statute barring the plaintiff from receiving veterans' benefits did not operate directly on the plaintiff's right to freely exercise his religious convictions.[80] Reynolds encountered no direct obstructions in the actual conduct of following his con-

---

77. 441 F. Supp. at 654-55 (Aldrich J., concurring).

78. The court did not address the issue.

79. In *Sherbert*, the plaintiff was ineligible for state benefits solely because she chose to adhere to her religious beliefs. The state ruling barring her from receiving unemployment benefits

> force[d] her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.
>
> Nor may the [state] court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's "right" but merely a "privilege." It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.

Sherbert v. Verner, 374 U.S. 398, 404 (1963) (footnote omitted). *See* Stevens v. Berger, 428 F. Supp. 896 (E.D. Ky. 1977); Lincoln v. True, 408 F. Supp. 22 (W.D. Ky. 1975).

> Despite the overwhelming frequency with which the courts have faithfully recited the formula that the [conscientious objector] exemption is simply a matter of legislative grace, one should not summarily dismiss the constitutional argument. With increasing vigor in recent years, the commentators have argued that there is more to this question than the courts have been willing to admit, suggesting that the Supreme Court might now speak differently on the subject should Congress attempt to withdraw its grant of grace.

Comment, *supra* note 32, at 398. *See* Brief for Plaintiff, *supra* note 5, at 12-15.

80. Governmental regulation of religious belief is clearly unconstitutional. Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

science. The statute does, however, indirectly burden the plaintiff's free exercise right. Because the statute denied veteran status to Reynolds, he did not receive the benefits necessary for the continuation of his education. Therefore, the operation of the statute had the effect of inhibiting in-service conscientious objectors from following their conscience.

In *Reynolds*, the state would not be able to meet its burden of showing a compelling interest. There is no state interest which can validly be claimed as compelling.[81] The Massachusetts classification interferes with the plaintiff's freedom of religion and is, therefore, an invidious discriminatory act.

VI. CONCLUSION

The district court decided *Reynolds* on the ground that there was a direct conflict between federal and state law. The nature of that conflict is unclear. A motion, now pending, has been filed for clarification of the judgment. Probably the court meant that when a state law is in conflict with a federal law the state law must fall. It is true that the supremacy clause makes federal law dominant over state law. It is also true that the pre-emption doctrine denies a state the right to legislate in certain areas. In *Reynolds*, however, there is no direct conflict between state and federal law. Nor is the legislative field of granting benefits to veterans flooded to the point of excluding state legislation. Each state may grant additional benefits to veterans if it so desires.

The *Reynolds* court reached the correct result, but did not support its decision on the most persuasive grounds. The court recognized an equal protection problem in *Reynolds* but did not decide the issue. The court should have dealt with this issue directly. The class of servicemen discharged as 1-O conscientious objectors is similarly situated with all other veterans who are eligible to receive veterans' benefits. There is no rational basis upon which such classification can be grounded.

Even if a rational basis could be found, there is no compelling state interest to satisfy a strict scrutiny test. *Reynolds* was a victim

---

81. 441 F. Supp. at 653. *See* Comment, *supra* note 32. The state may assert an interest in maintaining already trained recruits adequate in number to protect our country. *Id.* at 399. *But cf.* Gillette v. United States, 401 U.S. 437, 462 (1971); Braunfeld v. Brown, 366 U.S. 599, 607 (1961) (if the interest is compelling, the court must determine that there is no other way the state could accomplish its purpose).

of an invidious state discriminatory scheme which violated his fundamental constitutional right to the free exercise of religion. Since the Massachusetts statute distinguishes between veterans solely on the grounds of their religious beliefs, the statute should have been strictly scrutinized and found to be inherently unreasonable and, therefore, unconstitutional.

David B. Schultz