

ADMINISTRATIVE COMPLAINT AND REQUEST FOR RELIEF

Under the Religious Freedom Restoration Act (RFRA) and the U.S. Constitution

“If I have the gift of prophecy and can fathom all mysteries and all knowledge, and if I have a faith that can move mountains, but do not have love, I am nothing.” 1 Corinthians 13:2 (NIV).

Introduction

1. Religious freedom is one of the foundational principles of our nation. The familiar words of the First Amendment to the U.S. Constitution are: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

2. To help safeguard that freedom, and after the Supreme Court narrowly construed the First Amendment in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990), Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA). The RFRA provides a statutory right to challenge burdens that the federal government places on religious liberty. RFRA requires that the federal government provide accommodations including changes to rules to people whose religious practices are unduly burdened by a federal law or policy.

3. Marriage has long held a sacred role in many religious traditions, with the wedding ceremony being a cherished religious rite. When speaking of marriage, religious leaders from many faiths use words such as blessing, sacred covenant, holy union, sacred bond, and spiritual partnership.

4. In this case, Lori Long (“Ms. Long” or “Complainant”), a devout Christian, seeks to partake in the sacrament of holy matrimony (marriage) with her fiancé Mark Contreras. Ms. Long and Mr. Contreras have been engaged for more than five years. But under current statutory and administrative rules for Disabled Adult Child (DAC) benefits, Ms. Long, who is a DAC beneficiary, cannot marry Mr. Contreras. If she did, she would lose the healthcare and benefits that she needs to maintain her health and life as a person with a significant disability. These unnecessary rules unfairly burden Ms. Long’s religious beliefs and practice. Accordingly, Ms. Long respectfully requests that the Social Security Administration (SSA) comply with RFRA by accommodating her sincerely held religious beliefs and allowing her to marry her partner without losing her DAC benefits.

Complainant

5. Petitioner Lori Long is a 51-year-old U.S. citizen who currently receives Title II Childhood Disability Benefits (CDB) as a Disabled Adult Child (DAC). She also receives Medicare and Medicaid. Ms. Long lives in Salinas, California. Ms. Long is a practicing Christian.

Factual Allegations

6. Ms. Long was diagnosed at the age of 16 with an autoimmune disease later discovered to be ankylosing spondylitis. Her condition causes painful fractures in her spine, spinal deformity and significant difficulty engaging in activities of daily living. She has also developed additional medical complications as a result of ankylosing spondylitis. Ms. Long has extensive and complex medical needs.

7. Ms. Long has been receiving SSA Childhood Disability Benefits since 1989. Ms. Long's DAC benefit is based on the work records of her deceased parents. Her current federal benefits consist of a monthly stipend of \$1,296, Medicare, and Medicaid.

8. For many years, Ms. Long was completely unable to work due to her disability. For the past eight years she has worked part-time (about 15 hours a week) in retail sales positions. Based on the advice of her medical providers, she cannot regularly work for more than 15 hours per week without jeopardizing her health.

9. In December of 2015, Ms. Long met Mark Contreras, who also lives in Salinas, California. Mr. Contreras does not receive any Title II Social Security benefits. Ms. Long and Mr. Contreras fell in love and became engaged a year later. They immediately began planning their wedding.

10. The couple had to put their plans on hold when Ms. Long learned that marriage would end her eligibility for DAC benefits. Individuals receiving the DAC benefit lose their cash and insurance benefits if they marry. 42 USC § 402(d)(1)(D). The only exceptions to the DAC marriage penalty are if the DAC beneficiary marries another DAC, a person on traditional SSDI (based on their own work history), a person entitled to "old age" SSA benefits, or a person receiving another "secondary" benefit. 42 USC § 402(d)(5). If a DAC beneficiary marries someone who does not fit within these exceptions, she is disqualified for life from receiving DAC, even if she is later divorced or widowed. 42 USC § 402(d)(1)(D).

11. Ms. Long and Mr. Contreras were devastated by this news. Together, they made the difficult decision not to marry so that Ms. Long can continue to receive her DAC cash benefit as well as access to the lifesaving health care that she receives from Medicare and Medicaid.

12. Ms. Long and Mr. Contreras considered adopting a child, but, for religious reasons, they believe they should be married before adopting children.

13. Mr. Contreras is a practicing Catholic and Ms. Long regularly attends Catholic religious services with him, in addition to the religious services that she attends at her local non-denominational community Christian church. Ms. Long is a devout Christian and is significantly involved with both religious communities.

14. Religion has been a substantial part of Ms. Long's life from a young age. Ms. Long grew up learning a great deal about Christianity because her mother served for years as a lay eucharistic minister for the Catholic Church. When she was about 12 years old, she began assisting her mother and her aunt with teaching Sunday school. At about age 16, she was teaching vacation bible school on her own. By the time she was 18, Ms. Long took on the responsibility for creating her own lesson plans for Sunday school and vacation bible school. Ms. Long has relied upon her strong religious faith to help navigate challenges she has faced in life, including certain hardships related to her disability.

15. Ms. Long feels that her religious practice is incomplete because she is not able to engage in the sacrament of marriage. Ms. Long has a sincere religious belief that in marriage, two people become one flesh, achieving perfect unity with one another as described in Genesis 2:24. It means saying goodbye to one's single life and moving forward together in faith as one. She believes that such unity brings married couples closer to God. She believes that by service to one another as spouses, married couples are engaging in service to God.

16. Marriage plays a sacred role in many religious traditions. The Supreme Court has recognized that "[m]arriage is sacred to those who live by their religions," and that "[t]here are untold references to the beauty of marriage in religious and philosophical texts spanning time,

cultures, and faiths.” *Obergefell v. Hodges*, 576 U.S. 644, 656-57 (2015).¹

17. Not being able to marry also causes Ms. Long to miss out on other religious experiences. For example, every year, the Catholic church she attends with Mr. Contreras conducts a special prayer for married couples during Sunday Mass. Married couples are asked to stand and raise their hands while the priest leads the congregation in a special prayer and blessing for the couples and their marriages. As an unmarried couple, Ms. Long, and Mr. Contreras cannot participate in the special couples’ prayer. Ms. Long feels left out of an important religious experience because she and Mr. Contreras cannot participate and be blessed as a couple. Ms. Long also feels that she is not fully integrated within her religious communities, which limits her religious practices.

18. Not being able to marry affects Ms. Long’s roles within her religious communities. Ms. Long serves and has served in various roles, including Sunday school teacher, vacation bible schoolteacher, and leadership roles within the youth ministry. A large, framed picture of Ms. Long and the children that she works with hangs in the hallway of her community church in recognition of her service. Ms. Long believes that when working with young people, it is important to model proper religious behavior in addition to providing formal instruction on religious doctrine. The children she works with frequently ask why she is not married to Mr.

¹ See also Joe Iovino, “I do: How United Methodists understand Christian marriage” (Dec. 2015), <https://www.umc.org/en/content/i-do-how-united-methodists-understand-christian-marriage> (marriage is “a sacred covenant”); Maurice Lamm, “Jewish Insights into Marriage,” https://www.chabad.org/library/article_cdo/aid/465160/jewish/Jewish-Insights-into-Marriage.htm (“In marriage, the partners complete and fulfill themselves. This is their natural state and a blessing”); Hindu American Foundation, “What’s a Hindu wedding like?,” <https://www.hinduamerican.org/hindu-wedding-primer> (“In Hinduism, marriage joins two individuals or embodied, eternal souls for the purpose of jointly pursuing the purushartha or four aims of life: dharma, artha, kama, and moksha. Marriage is considered a spiritual partnership which unites the minds, bodies, and souls of the partners in this and future lives, and builds sacred bonds between their two families.”).

Contreras, which causes Ms. Long to feel distressed. By remaining in an unmarried long-term relationship, Ms. Long believes that she is not modeling proper behavior to her many former students, who consider her as a spiritual leader.

19. Ms. Long also has concerns that if she and Mr. Contreras do not marry during their lifetimes they may be eternally separated in the afterlife. Some teachers of Christian scripture assert that the bond between married people is eternal and continues in the afterlife. These teachers cite to Mathew 16:19, which states “whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.” Mathew 16:19 (NIV). While Ms. Long is not completely certain about this scriptural interpretation, her concern about their potential separation worries her and causes her to experience distress. Ms. Long believes that Mr. Contreras has been divinely called to be her husband. She cannot stand the thought that they may be eternally separated because they are unable to marry.

20. Ms. Long cannot survive without her DAC stipend and federal health benefits. Mr. Contreras could theoretically add Ms. Long to his employer-provided health insurance, but the extra premiums and out-of-pocket costs would cost almost 30 percent of their income. With the lost stipend, the entire financial hit would be more than 40 percent of household income. But even if this financial hit were feasible, the private insurance would not cover all the disability-related services and supports (such as attendant care and durable medical equipment) that Ms. Long needs or is likely to need due to her significant disability. These services and supports are covered by the federal health care programs (Medicare and Medicaid) Ms. Long receives.

21. Ms. Long cannot survive without Medicare and Medicaid because of her complex and substantial medical needs. For example, she developed inflammatory bowel disease as a complication of her ankylosing spondylitis and her bladder was surgically removed when she

was 16 years old. Ms. Long uses medical equipment, such as her ostomy supplies, which are expensive and specialized to her particular needs. She receives an average of 4-6 medication prescriptions per month. She is also being treated with a biologic, a special expensive treatment to try to slow down the progression of her disease. She has a power port – an implanted device that allows easy access to her veins –that needs to be flushed monthly with an anti-coagulant at an infusion center. She visits her primary care physician at least every two months; orthopedic specialist at least three times a year; a pain management specialist once a month; a rheumatologist twice a year; a physical therapist once or twice a year; a vascular specialist at least once a year; and a surgeon to handle obstructions at least twice a year. Ms. Long sometimes needs to visit the emergency department for emergencies such as abdominal obstructions. She requires periodic imaging such as MRI's, CAT scans, and x-rays. This year alone, Ms. Long has been hospitalized four times, for about a week each time.

22. Ms. Long has received in-home supportive services (IHSS) in the past and may need those services in the future. She is currently able to forgo IHSS because Mr. Contreras assists her with activities of daily living, such as cooking, laundry, and dressing when she has particularly bad pain flare-ups. However, with newer legal restrictions on access to pain medication, she is experiencing greater physical limitations due to pain. Being unable to receive treatments that adequately manage her pain increases the likelihood that she will need to resume use of IHSS.

23. Losing her DAC, Medicare, and Medicaid benefits would put Ms. Long's health and life at risk.

Religious Freedom Restoration Act (RFRA)

24. Petitioner hereby incorporates all of the allegations contained in the previous

paragraphs of this complaint as though fully set forth herein.

25. In 1993, Congress enacted the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb et seq., which provides a statutory right to challenge substantial burdens on religious exercise. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006). Congress found that “laws ‘neutral’ toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise.” 42 U.S.C. § 2000bb(a)(2). “RFRA was designed to provide very broad protection for religious liberty” and it reaches “far beyond what [...] is constitutionally required” by the First Amendment. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014). RFRA requires that the federal government provide exceptions or accommodations to people whose religious practices are unduly burdened by federal law or policy. *See Gonzales*, 546 U.S. 418; *Hobby Lobby*, 573 U.S. 682.

26. RFRA provides that the federal government may not “substantially burden a person’s exercise of religion,” even by “rule[s] of general applicability” except by using “the least restrictive means” to further a “compelling governmental interest.” 42 U.S.C. § 2000bb-1. This statutory provision is intended to reinstate the “*Sherbert Test*,” overturned in *Smith*, 494 U.S. 872 (1990), as a statutory right. *See* 42 U.S.C. § 2000bb(b) (“The purposes of this Act are [...] to restore 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) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and [...] to provide a claim or defense to persons whose religious exercise is substantially burdened by government.”).

27. RFRA applies to “all [f]ederal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after the enactment of [RFRA],” except for federal statutes “adopted after [the enactment of RFRA]” which “explicitly exclude[] such

application by reference to RFRA.” 42 USCS § 2000bb-3.

28. The DAC benefit and the termination of DAC benefits upon marriage were enacted as part of the Social Security Amendments Act of 1956. CHARLES I. SCHOTTLAND, Pub. L. No. 880, SOCIAL SECURITY AMENDMENTS OF 1956: A SUMMARY AND LEGISLATIVE HISTORY, 4 (1956). There is no “explicit exclusion” of RFRA’s application to the DAC marriage penalty rules.

29. RFRA relief is available to anyone “whose religious exercise has been burdened in violation of [RFRA].” 42 U.S.C. § 2000bb-1(c). Religious exercise includes belief, profession, and “the performance of (or abstention from) physical acts [...] engaged in for religious reasons. *Hobby Lobby*, 573 U.S. at 710 (internal quotations omitted).

30. Ms. Long’s beliefs about marriage set forth in this complaint are religious in nature. Ms. Long believes that marriage is a religious practice and that not being able to marry Mr. Contreras causes her to miss out on important religious experiences. Ms. Long also believes that failing to marry affects her leadership roles within her religious communities.

31. Ms. Long’s beliefs about marriage set forth in this complaint are sincerely held. Ms. Long feels great anxiety and distress about remaining unmarried because of her religious beliefs.

32. Forcing Ms. Long to forgo marriage to Mr. Contreras in order to retain her life-sustaining federal benefits imposes a substantial burden on Ms. Long’s ability to conduct herself in accordance with her sincerely held religious beliefs.

33. Accordingly, RFRA requires that SSA make an exception to allow Ms. Long to practice her religious beliefs regarding marriage while retaining her federal benefits.

United States Constitution – Due Process and Equal Protection

34. Petitioner hereby incorporates all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

35. “The right to marry is a fundamental right inherent in the liberty of the person[.]” *Obergefell v. Hodges*, 576 U.S. 644, 647, 135 S. Ct. 2584, 2591 (2015); *see also Zablocki v. Redhail*, 434 U.S. 374, 411 (1978) (the “right ‘to marry, establish a home and bring up children’ is a central part of the liberty protected by [Fifth and Fourteenth Amendment] Due Process”). The fact that her parents are deceased increases Ms. Long’s desire to express her love and build a family through marriage.

36. A “statutory classification” that “significantly interferes with the exercise of a fundamental right,” violates due process “unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.” *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). A state interest is sufficiently important only if it is “compelling.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

37. Disqualifying Ms. Long from receiving DAC benefits because of marriage violates her right to the due process fundamental right to marry under the Fifth and Fourteenth Amendments. There is no compelling state interest advanced by Ms. Long remaining unmarried. If restricting access to DAC benefits to people who do not have adequate alternative sources of support is considered a sufficiently important state interest, ending DAC benefits upon marriage is not closely tailored because there are other ways that goal can be accomplished that are less restrictive of the fundamental right to marriage.

38. The marriage penalty further violates Ms. Long’s constitutional right to equal protection under the Fifth and Fourteenth Amendments.

39. When government benefits are distributed unequally, the distinctions upon which

such unequal treatment is based “are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.” *Zobel v. Williams*, 457 U.S. 55, 60 (1982). Equal protection prohibits the government from “rely[ing] on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *Cleburne*, 473 U.S. at 440.

Restricting access to marriage based on disability, including placing harsher restrictions on survivors of childhood disability than those placed upon people with adult-onset disabilities, “lays an unequal hand,” *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), in violation of the right to equal protection of the law. *See United States v. Windsor*, 570 U.S. 744 (2013).

40. Therefore, withdrawing Ms. Long’s access to life-sustaining healthcare and benefits upon marriage violates the fundamental due process right to marriage and the right to equal protection provided by the Fifth and Fourteenth Amendments.

Request for Relief

WHEREFORE, Petitioner respectfully requests that SSA:

- (1) Declare, in writing, that Ms. Long’s religious beliefs and practices are substantially burdened by enforcement of 42 USC § 402(d)(1)(D);
- (2) Declare, in writing, that, pursuant to RFRA, SSA will consider Ms. Long’s eligibility for DAC to be unaffected by her marital status;
- (3) Provide Ms. Long with an official statement, in writing, setting forth the above requests;
- (4) Award Ms. Long reasonable costs, expenses, and attorneys’ fees pursuant to 28 U.S.C. § 2412; and
- (5) Award such additional relief as the interests of justice may require.

Dated: November 17, 2022

Respectfully submitted,

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