No. 13-15022

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELIZABETH BOARDMAN,
Plaintiff-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellee

ON APPEAL FROM THE JUDGMENT OF THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIEF FOR THE APPELLEE

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STATEMENT OF JURISDICTION

Elizabeth Boardman filed her complaint in this action on March 13, 2012, seeking injunctive relief against the Commissioner of Internal Revenue in his official capacity.[1] (ER 23-42.)[2] As the District Court

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[1] Boardman originally named Donald H. Shulman, then Commissioner of Internal Revenue, as the defendant. (CR 1.) Boardman noted, however, that the suit was brought against Shulman only in his official capacity. (*Id*. at 3, ¶2.) Accordingly, the suit was properly one against the United States, although the Commissioner is still identified as the defendant in the caption of the case. *See Dugan v. Rank*, 372 U.S. 609, 620 (1963).

[2] "ER" references are to documents in the Excerpts of Record filed by

(continued...)

(Hon. Morrison C. England) held, the court lacked jurisdiction because the suit was barred by the Tax Anti-Injunction Act, Section 7421(a) of the Internal Revenue Code (26 U.S.C.) (I.R.C.).

On December 6, 2012, the District Court issued a memorandum and order (ER 3-22) and entered a judgment dismissing Boardman's complaint (ER 2). The judgment was a final, appealable order that disposed of all claims of the parties. Boardman filed a timely notice of appeal on December 28, 2012. (ER 1.) *See* 28 U.S.C. § 2107; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

Boardman, a Quaker who practices war-tax resistance, brought this action seeking a permanent injunction ordering the Commissioner and the Internal Revenue Service to "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

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[2](...continued)
the appellant along with her opening brief. "CR" references are to documents in the record not included in the Excerpts of Record, as numbered on the Tax Court's docket sheet (ER 43).

that lead to Tax Court determinations upon taxpayer request." (ER 42.) Boardman also sought an injunction against costs or punishment against conscientious or religious war-tax resisters "in excess of costs or punishment strictly required by Congressional enactment." (*Ibid.*) The issues on appeal are:

1. Whether the District Court correctly held, pursuant to Fed. R. Civ. P. 12(b)(1), that it lacked subject-matter jurisdiction over Boardman's suit because the suit was barred by the Anti-Injunction Act, I.R.C. § 7421(a).

2. Whether the District Court also correctly held that Boardman's complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted.

STATEMENT OF THE CASE

Boardman brought this suit against the Commissioner of Internal Revenue alleging that "[a]s a practice of her religion and following the dictates of her conscience, [she] refuses voluntarily to pay the percentage of her federal income taxes that is directed towards war." (ER 23.) Boardman sought a permanent injunction ordering the Internal Revenue Service "to 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 determination upon taxpayer request," and ordering that "[n]o 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." (ER 42.)

The District Court granted the Government's motion to dismiss Boardman's complaint, pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). The court held that it lacked subject-matter jurisdiction because the suit was barred by the Anti-Injunction Act, I.R.C. § 7421(a). The court further held that Boardman's complaint failed to state a claim upon which relief could be granted. (ER 3-22.) The court denied Boardman's motion for leave to amend her complaint (ER 2, 22) because the defects thereof could not be cured by amendment, and Boardman now appeals.

STATEMENT OF FACTS

Boardman is a "lifelong Quaker and peace activist." (ER 23.) "As a practice of her religion and following the dictates of her conscience, Boardman refuses voluntarily to pay the percentage of her federal income taxes that is directed towards war." (*Ibid.*) Boardman filed her required federal income tax returns for 2007 and 2008 and "fully completed the returns with accurate information" (ER 5), but along with the returns she attached correspondence in which she stated that "her conscience and religious beliefs would not allow her to pay the full amount" of tax due for those tax years (ER 23-24). Accordingly, Boardman paid part of the tax shown on her returns for 2007 and 2008 (ER 5; *see* CR 11 at 1), and she informed the IRS that she had deposited "in a financial institution . . . funds sufficient to satisfy [the rest of] her tax obligations and declared a willingness to deliver such funds for peaceful uses" (ER 24).

Through a levy (*see* ER 36, ¶37) and "under compulsion" (ER 38, ¶41), Boardman paid the balance of her 2007 and 2008 tax liabilities to

the IRS.[3] Not satisfied with this procedure, however, on March 13, 2012, Boardman filed the instant complaint for injunctive relief. (ER 23.) Boardman alleged that the District Court had jurisdiction over her suit under 28 U.S.C. § 1331 and under "the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1(c), also know[n] as 'RFRA'." (ER 26, ¶4.)

"Refusing to make tax payments for war," Boardman alleged, is a practice of her religion. (ER 36, ¶35.) Although Boardman believes that the IRS has violated "the Free Exercise clause of the First Amendment" (ER 41, ¶53), she "does not invoke the First Amendment as justification for her refusal to pay the full amount of income taxes" (ER 35, ¶34). Boardman "understands that the Service will collect the amounts due by other means and that her assets may be levied or seized or that she may be ordered to pay by a court," but because "paying for war is repugnant to her religion and her conscience," she "cannot and will not voluntarily accede to and join in a system that makes war and that commands that she do so likewise as of her own free will." (ER 35-36, ¶35.) More

[3] Boardman alleged in her complaint that the IRS levied upon her assets to collect the remainder of her 2007 and 2008 income tax liabilities. (*See* ER 36, ¶37, and ER 37-38, ¶41.)

generally, Boardman alleged that the Commissioner, acting pursuant to the statutory authority of I.R.C. § 6702(b)(2)(A) and § 6330(g), has determined the "refusal to . . . pay taxes based on moral, religious, or ethical objections to the government's programs or policies for which taxes will be used" to be a "frivolous" legal position. (ER 34.)

Under § 6702, certain kinds of tax returns and certain kinds of specified submissions can be subject to the imposition of monetary penalties if they are based on a legal position that the Secretary of the Treasury has identified as frivolous under § 6702(c). (ER 24, 34-35.) Thus, § 6702(a) imposes a frivolous-return penalty on a taxpayer who files a return that does not contain adequate or accurate information about the declared tax *and* who does so based on a position that has been identified as frivolous under § 6702(c). As directed by § 6702(c), the IRS has issued a list of positions that it has identified as frivolous for purposes of § 6702. *See* Notice 2010-33, 2010 WL 1347082 (April 26, 2010), *modifying and superseding* Notice 2008-14, 2008 WL 116049 (January 28, 2008). The position that "[a] taxpayer may lawfully decline to pay taxes if the taxpayer disagrees with the government's use of tax revenues," is identified as a frivolous position. *See* 2010 WL at *2. And

prior to the enactment of § 6702(c), the IRS had notified taxpayers, pursuant to Rev. Rul. 2005-20, 2005 WL 583384, that there was no authority under the Internal Revenue Code or any other applicable law that allowed taxpayers to refuse to report income, or to pay less tax than they owed, based on religious or moral objections to particular Government programs or policies.

Notably, however, as long as a tax return contains accurate information meeting the standards of § 6702(a)(1), a taxpayer is not subject to the frivolous-return penalty imposed under § 6702(a). Because Boardman's returns contained accurate information regarding her tax liability for those years (*see* ER 5), Boardman was not subject to a penalty under § 6702(a).

Moreover, under § 6702(b), certain "frivolous submissions" will also be subject to the penalty imposed by § 6702(a). A frivolous submission includes a request for a Collection Due Process (CDP) hearing under I.R.C. § 6320 or I.R.C. § 6330[4] that is based on a position that the IRS

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[4] A CDP hearing may be requested upon receipt of a notice of intent to levy or upon the filing of a notice of federal tax lien. 26 U.S.C. §§ 6320, 6330. At a CDP hearing, the taxpayer may address collection issues including the appropriateness of the collection actions and collection

(continued...)

has identified as frivolous under § 6702(c). Additionally, the CDP provisions were amended by the Tax Relief and Health Care Act of 2006, P.L. 109-432, div. A, sec. 407, 120 Stat. 2960, to provide that if a portion of a request for a CDP hearing is based on a position that the IRS has listed as frivolous, the IRS may disregard that portion of the CDP-hearing request and that portion of the request will be subject to no further administrative or judicial review.[5] *See* I.R.C. §§ 6330(c)(4)(B), 6330(g). Although it appears from Boardman's complaint that she may have been offered an alternative to a CDP hearing, *i.e.*, an equivalency hearing, she rejected that alternative because there would be no Tax Court review of the war-tax resistance issue (pursuant to I.R.C. § 6330(g)). (ER 36-38.)

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[4](...continued)
alternatives, and may challenge the underlying liability if the taxpayer did not otherwise have an opportunity to dispute the liability. I.R.C. § 6330(c)(2).

[5] In this regard, the District Court somewhat overbroadly stated that the Tax Relief and Health Care Act of 2006, which added § 6330(g), allowed the IRS to deny Boardman any additional administrative or judicial review. (ER 5.) The limitation on further administrative and judicial review added by § 6330(g) is limited to issues based on listed frivolous positions that a taxpayer seeks to raise in CDP proceedings. Section 6330(g) does not encompass Tax Court review through deficiency procedures or District Court review through a refund suit.

As noted, Boardman did not allege that she had been charged with a penalty under § 6702, and, indeed, she has not been charged with either a frivolous return or frivolous submission penalty. Boardman's complaint is that the characterization of the refusal to pay taxes on religious or moral grounds as a frivolous position under § 6702(c) impermissibly burdened her religious practice. (ER 36.)

According to Boardman, she communicated to the IRS her objection to her taxes going toward the support of the Department of Defense and the Government's participation in war. (ER 35, ¶35; ER 36; ER 37, ¶39.) Boardman desired an IRS administrative hearing in which to voice her objections to the tax system, and the right to a final determination by the Tax Court. (ER 37, ¶¶39, 40.) Boardman alleged that under the RFRA, the IRS "is required to institute procedures that minimally burden those whose [*sic*] are called by conscience or religion to such antiwar tax practices" (ER 25), and she informed the IRS that her "concerns cannot be addressed by the Collection Due Process [[6]] or the Collections Appeal Program" (ER 36, ¶37).

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[6] *See* I.R.C. § 6330(b).

Thus, it appears, Boardman complained that the IRS did not provide her with the kind of administrative proceeding that she desired to express her war-tax resistance views. (ER 37, ¶¶39, 40.) Accordingly, Boardman sought through this action to force the IRS to provide her with a new procedure through which her challenge to the federal tax system could be heard.

For relief, Boardman requested that the District Court "issue a permanent injunction ordering [the Government] . . . to comply with the Free Exercise clause to the Constitution . . . and with the Religious Freedom Restoration Act of 1993" by "put[ting] 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 determination upon taxpayer request" (ER 42), and ordering that "[n]o 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" (*ibid.*).

The United States moved to dismiss the complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(1), for lack of subject-matter jurisdiction, and pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim. (CR 7.) The Government asserted that the relief Boardman sought was jurisdictionally barred by the Anti-Injunction Act, I.R.C. § 7421(a), which provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." In addition, the Government contended that the complaint failed to state a claim upon which relief could be granted because, even if Boardman had established subject-matter jurisdiction, as a matter of law, the Government's interest in maintaining a uniform, mandatory system of taxation is compelling and sufficient to defeat Boardman's claims of burden under the Free Exercise clause – under either the First Amendment or the RFRA. (CR 7 at 18.) Boardman opposed the Government's motion (CR 11), and alternatively requested leave to amend her complaint (*id*. at 20).

The District Court granted the Government's motion on both grounds. (ER 3-22.) The court observed that Boardman "seeks an

injunction requiring the government to reorganize the method it has chosen to assess and collect taxes." (ER 8.) Although Boardman claimed that she did not seek to interfere with tax assessment and collection, in fact, the court observed, she was requesting an order that the IRS implement new procedures and policies for collecting the taxes of taxpayers who oppose certain Government programs. Thus, the court noted, contrary to Boardman's protestations, her complaint was, in essence, an attempt to force extensive and burdensome changes to an already complex tax system. As such, the court concluded, the relief sought by Boardman would "certainly impede the collection of taxes," "would negatively impact [the Government's] established methods of assessing taxes . . .[and] would significantly burden tax collection." (ER 11.) Thus, the court held that the Anti-Injunction Act applied to bar the suit (*ibid.*).

The court further found that Boardman did not qualify under the judicial exception to the Anti-Injunction Act because Boardman had failed to demonstrate that the Government could not possibly prevail under any circumstances. Moreover, Boardman had a legal remedy in

the form of a refund suit. (ER 12-16.) The court thus held that it lacked jurisdiction over the complaint. (ER 22.)

Second, the court noted that "Supreme Court and Ninth Circuit cases estop [Boardman] from bringing her lawsuit, a religious objection to the country's tax system, even if she does not dispute her overall tax liability." (ER 21.) Accordingly, the court also granted the Government's motion to dismiss the complaint on the ground that it failed to state a claim. (ER 22.) The court denied Boardman leave to amend her complaint because the defects of the complaint could not be cured by amendment. (*Ibid.*)

Boardman now appeals.

SUMMARY OF ARGUMENT

The District Court correctly dismissed Boardman's complaint on the grounds that the court lacked subject matter jurisdiction and that the complaint failed to state a claim upon which relief could be granted. The relief Boardman sought was barred by the Anti-Injunction Act, I.R.C. § 7421(a), and Boardman's alleged cause of action is legally meritless.

1. Through this action, Boardman sought to require the IRS to accommodate her religious views and provide a new kind of procedure for her to express her opposition to paying income taxes to the extent those taxes support the Government's military activities. In her complaint, Boardman expressly sought injunctive relief against the Government for this purpose. The Anti-Injunction Act, however, provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom the tax is assessed." I.R.C. § 7421(a). The District Court correctly held that the relief Boardman sought was barred by the Anti-Injunction Act, given that "ruling in Plaintiff's favor would negatively impact [the Government's] established methods of

assessing taxes," and "that compelling [the Government] to adopt procedures catering to the religious or moral views of every taxpayer would significantly burden tax collection." (ER 9.)

Boardman cannot qualify for the narrow judicially created exception to the Anti-Injunction Act, which is available only where a taxpayer can show that the Government could not prevail on the merits of the suit under any circumstances, and that equity jurisdiction otherwise exists. The Government's position in this litigation is solidly supported by Supreme Court authority and by ample precedent from the courts of appeals. Indeed, it is Boardman's position that lacks legal support; the courts have ruled against positions like hers in numerous cases because of the Government's compelling interest in collecting taxes. Moreover, contrary to Boardman's contention, relief from the Anti-Injunction Act is not provided by the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb, *et seq*. Further, Boardman has a legal remedy in the form of a suit for refund. The District Court correctly dismissed Boardman's complaint for lack of subject matter jurisdiction.

2. The District Court also correctly dismissed Boardman's complaint for failure to state a claim upon which relief could be granted.

Boardman's premise – that she is entitled to injunctive relief directing the IRS to fashion procedures that would accommodate and acknowledge (in an unspecified manner) her opposition to supporting warfare through taxes – runs contrary to long-established precedent, and it is entirely devoid of support in statute or case law. For these reasons, the District Court also did not abuse its discretion in denying Boardman's motion for leave to file an amended complaint because any attempt at amendment would be futile.

The District Court's judgment is correct and should be affirmed.

ARGUMENT

I

The District Court correctly held that Boardman's complaint for injunctive relief, which sought to compel the IRS to establish new procedures that would accommodate her particular religious beliefs, was barred by the Anti-Injunction Act, I.R.C. § 7421(a)

Standard of Review

The District Court's dismissal of Boardman's complaint for lack of subject matter jurisdiction is reviewed *de novo*. *See Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 974 (9th Cir. 2012).

A. Introduction: the Anti-Injunction Act

The United States, as a sovereign, may not be sued without its consent, and the terms of such consent define the court's jurisdiction.[7] *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *United States v. Dalm*, 494 U.S. 596, 608 (1990); *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Waivers of sovereign immunity "cannot be implied but must be unequivocally expressed," *United States v. Mitchell*, 445 U.S. 535, 538 (1980), and must be "strictly construe[d]" in favor of the sovereign. *Lane*

[7] As noted above (n.1), the instant suit, which is against the Commissioner in his official capacity is, in reality, a suit against the United States.

v. Pena, 518 U.S. 187, 192 (1996). Consequently, no suit may be maintained against the sovereign unless the suit is brought in strict compliance with the terms of a statute under which the sovereign has consented to be sued. *United States v. Idaho*, 508 U.S. 1, 7 (1993); *Soriano v. United States*, 352 U.S. 270, 276 (1957). Boardman bore the burden of establishing jurisdiction, including a waiver of sovereign immunity. *See Sopcak v. N. Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995).

In her complaint, Boardman alleged that the District Court had jurisdiction over her suit under 28 U.S.C. § 1331 and the Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. 103-141, 107 Stat. 1488 (codified at 42 U.S.C. §§ 2000bb, *et seq*.). Section 1331, however, does not waive the Government's sovereign immunity (*see Arford v. United States*, 934 F.2d 229, 231 (9th Cir. 1991)), and although the RFRA, 42 U.S.C. § 2000bb-1(c), does waive the Government's sovereign immunity allowing "some forms of relief" for individuals whose exercise of religion has been burdened (*see Oklevueha Native American Church of Hawaii, Inc. v. Holder*, 676 F.3d 829, 840 (9th Cir. 2012)), the relief

Boardman seeks is specifically barred by the Anti-Injunction Act, I.R.C. § 7421(a).

The Anti-Injunction Act provides generally that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom the tax is assessed." I.R.C. § 7421(a). The principal purpose of the Anti-Injunction Act is to preserve the Government's ability to assess and collect taxes with "a minimum of preenforcement judicial interference" and "to require that the legal right to disputed sums be determined in a suit for refund." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). The absolute language of the Anti-Injunction Act "could scarcely be more explicit," and the Act is strictly enforced. *Bob Jones Univ.*, 416 U.S. at 736; *Maxfield v. U.S. Postal Service*, 752 F.2d 433, 434 (9th Cir. 1984).

The Anti-Injunction Act extends beyond the direct assessment and collection of taxes and embraces other activities that may culminate in the assessment or collection of tax. *See Hansen v. Dep't of Treasury*, 528 F.3d 597, 601 (9th Cir. 2007); *Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401, 405 (4th Cir. 2003); *Hobson v. Fischbeck*, 758 F.2d 579, 580-81 (11th

Cir. 1981). If a litigant cannot avoid the bar of the Anti-Injunction Act (by demonstrating that she fits within one of the narrow exceptions thereto), the court lacks jurisdiction over a taxpayer's request for relief. *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962). It is this Court's "general rule that the Anti-Injunction Act 'precludes federal jurisdiction' over actions seeking to enjoin the IRS's tax collection efforts." *In re J.J. Re-Bar Corp., Inc.*, 644 F.3d 952, 955 (9th Cir. 2012) (quoting *Hansen*, 528 F.3d at 601).

A limited judicial exception to the Act applies if the taxpayer establishes that (1) under no circumstances could the Government prevail on the merits of the case, and (2) equity jurisdiction exists. *Williams Packing*, 370 U.S. at 7. "To establish equitable grounds for an injunction, the taxpayer must show that he has no adequate remedy at law and that denial of injunctive relief would cause him immediate, irreparable injury." *Jensen v. IRS*, 835 F.2d 196, 198 (9th Cir. 1987).[8]

[8] Other statutory exceptions exist (*see* I.R.C. § 7421(a)), but Boardman has not invoked any of these, and they are not applicable.

B. The District Court correctly held that Boardman's suit, which sought "an injunction requiring the government to reorganize the method it has chosen to assess and collect taxes," was barred by the Anti-Injunction Act

The District Court correctly held that the Anti-Injunction Act barred it from exercising jurisdiction over Boardman's suit. As the court noted, Boardman stated that she "seeks an injunction requiring the government to reorganize the method it has chosen to assess and collect taxes" (ER 10), and she "requests that the [Government] implement new procedures and policies for collecting taxes" (ER 11). Specifically, in her complaint Boardman asked the District Court to "issue a permanent injunction ordering [the Government] . . . to comply with the Free Exercise clause to the Constitution . . . and with the Religious Freedom Restoration Act of 1993" by "put[ting] 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 determination upon taxpayer request" (ER 42), and ordering that "[n]o 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" (*ibid.*).

Boardman thus sought an order enjoining the Government from following certain tax collection procedures and directing the Government to create entirely new, comprehensive procedures tailored to collecting taxes from, and settling disputes with, "taxpayers who refuse to pay taxes because of conscience or religion." Such relief clearly would disrupt tax collection activities and impose a significant burden on the Government's assessment and collection procedures. Indeed, it would appear that there is no way to satisfy Boardman's request without creating an alternative tax collection method solely for her and others who share her views – not to mention new procedures for determining who would legitimately be able to invoke those alternatives.

The District Court correctly observed "that ruling in Plaintiff's favor would negatively impact Defendant's established methods of assessing taxes," and "that compelling Defendant to adopt procedures catering to the religious or moral views of every taxpayer would significantly burden tax collection." (ER 11.) The court also correctly concluded that Boardman's suit "challenges the statutory framework

pertaining to tax assessment and collection." (ER 11.) Thus, "[i]t is Congress, not this Court, that can give refuge to [the taxpayer]." *Babcock v. Commissioner*, T.C. Memo. 1986-168, 1996 WL 21878 (1986) (rejecting a Quaker's free-exercise challenge to income tax). The District Court thus correctly held that Boardman's suit fell within the scope of the Anti-Injunction Act, and was barred by it. (*Ibid.*)

C. Boardman's suit does not fall within the judicially created exception to the Anti-Injunction Act

1. Boardman failed to show that the United States could not prevail on the merits

The court also correctly held that Boardman could not qualify for the narrow judicial exception to the Anti-Injunction Act. First, Boardman failed to demonstrate that the Government could not, under any circumstances, prevail on the merits. *See Stonecipher v. Bray*, 653 F.2d 398, 401 (9th Cir. 1981); *Hansen*, 528 F.3d at 601. Boardman alleged in her complaint that the IRS had "promulgated regulations and employed enforcement methods against [her] that are directed at prohibiting and punishing her free exercise of religion," and that the IRS was required by the RFRA "to institute procedures that minimally

burden those whose [*sic*] are called by conscience or religion to such antiwar tax practices." (ER 25.) Boardman's allegations are misguided.

a. The Government has a compelling interest in collecting income taxes, and requiring that taxpayers comply with the tax laws is not a violation of the Free Exercise clause

Under the First Amendment of the Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Free Exercise Clause affords significant protection for diverse religious practices and beliefs in this country. *Bowen v. Roy*, 476 U.S. 693, 702 (1986) (First Amendment's guarantee of religion "holds an important place in our scheme of ordered liberty"); *Braunfeld v. Brown*, 366 U.S. 599, 603 (1961) ("[c]ertain aspects of religious exercise cannot, in any way, be restricted or burdened by . . . legislation. Compulsion by law of the acceptance of any creed or the practice of any form of worship is strictly forbidden."); *see also Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

On the other hand, the Supreme Court has observed that a person is not free from every burden on the exercise of religious beliefs that

results from legislative restrictions that implement neutral, secular governmental interests. *See Braunfeld*, 366 U.S. at 603. *See also Bowen*, 476 U.S. 693; *Hernandez v. Commissioner*, 490 U.S. 680, 699-700 (1989); *United States v. Lee*, 455 U.S. 252, 257-258 (1982). As explained by the Supreme Court, the Government may justify a limitation or burden on the exercise of religious belief by satisfying what is commonly referred to as the "compelling interest test," namely, by "showing that [the burden or limitation] is essential to accomplish an overriding governmental interest." [9] *Lee*, 455 U.S. at 257-258. *See Hernandez*, 490 U.S. at 699 ("[t]he free exercise inquiry asks whether the government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden"); *Sherbert*, 374 U.S. at 406-409.

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[9] Although the Supreme Court broadened this rule in *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-879, 885-890 (1990), holding that a showing of compelling interest was not required where the burden on free exercise results from application of a generally applicable and otherwise valid statute, as discussed below (*see* pp. 34-37, *infra*), the RFRA reinstated the pre-*Smith* rule requiring the Government to show a compelling interest to justify a statute's imposition of a substantial burden on the free exercise of religious beliefs.

In the federal income tax context, the Supreme Court has squarely and unequivocally held that the Government has a compelling interest in collecting income taxes and in protecting the fisc. *See Lee*, 455 U.S. at 260 (rejecting free-exercise challenge to social security taxes, stating that "the broad public interest in maintaining a sound tax system is of . . . a high order"); *Hernandez*, 490 U.S. 680, 698 (same) (quoting *Lee, supra*); *see also Bethel Baptist Church v. United States*, 822 F.2d 1334, 1340 (3d Cir. 1987) (Government's interests in collecting taxes and in maintaining functioning tax system are "compelling"); *Kahn v. United States*, 753 F.2d 1208, 1217 (3d Cir. 1985); *St. German of Alaska Eastern Orthodox Catholic Church v. United States*, 840 F.2d 1087, 1094 (2d Cir. 1988).

Free-exercise challenges to the federal tax laws, including those based on opposition to war, have been uniformly rejected because "religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *Lee*, 455 U.S. at 260; *see also Hernandez*, 490 U.S. at 699-700 (rejecting free-exercise challenge to denial of charitable deduction); *United States v. American Friends Serv. Comm.*, 419 U.S. 7 (1974) (reversing grant of injunctive relief prohibiting collection of tax through withholding despite fact that withholding system interfered

with Quakers' free-exercise rights). As this Court stated in *Autenrieth v. Cullen*, 418 F.2d 526, 588-589 (9th Cir. 1969):

> [N]othing in the Constitution prohibits the Congress from levying a tax upon all persons, regardless of religion, for support of the general government. The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of the tax. . . .

See also Jenkins v. Commissioner, 483 F.3d 90, 92 (2d Cir. 2007) ("It is well settled that the collection of tax revenues for expenditures that offend the religious beliefs of individual taxpayers does not violate the Free Exercise Clause of the First Amendment."); *Adams v. Commissioner*, 170 F.3d 173, 178 (3d Cir. 1999) (and cases cited therein); *Bethel Baptist Church*, 822 F.2d at 1339-1340 (rejecting free-exercise challenge to social security taxes); *Graves v. Commissioner*, 579 F.2d 392 (6th Cir. 1978) (rejecting Quakers' claim that income tax burdened their free-exercise rights because portion of taxes was allocated to defense budget). The rationale for the courts' rejection of free-exercise challenges to the federal income tax system is simple: "[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their

religious belief." *Lee*, 455 U.S. at 260; *see also Autenrieth*, 418 F.2d at 588-89.[10]

Recognizing the threat to the integrity of the federal income tax system posed by legally unsupportable positions, including the refusal to pay all or a part of income taxes (based on the belief that the taxes were allocated to defense spending), Congress enacted I.R.C. § 6702. Section 6702 provides for the assessment of a civil penalty of $5,000 against taxpayers filing a frivolous tax return; a frivolous return is one that does not contain information sufficient to judge the correctness of the tax stated on the return or that, on its face, is substantially incorrect, *and* that is based on a position that the IRS has identified as frivolous. I.R.C. § 6702(a). Apparently, because Boardman's returns accurately stated her tax liability, no penalties were assessed against her. Thus, Boardman's suggestion that the statute is aimed at stifling dissent (Br. 19) is incorrect because its focus is on the accuracy of the statement of one's tax liability, not on any particular message.

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[10] "The rationale of these Supreme Court and Ninth Circuit authorities applies equally whether the taxpayer refuses to pay or simply attempts to control the use of any taxes tendered to the Government." *Kennedy v. Rubin*, 1995 WL 552148, at *3 (N.D. Cal. 1995).

Rather, in enacting the legislation, Congress was seeking, among other goals, to deter individuals from declaring a tax reduced by amounts they adjudged would go to Government programs with which they disagreed. Thus, the Senate Report states that the penalty under § 6702 "could be imposed against any individual filing a 'return' showing . . . a 'war tax' deduction under which the taxpayer reduces his taxable income or shows a reduced tax due by that individual's estimate of the amount of his taxes going to the Defense Department budget." S. Rep. No. 97-494 (vol. I), at 278, *reprinted in* 1982 U.S.C.C.A.N. 781, 1024. Boardman did not allege that any such penalty was imposed upon her, and Congress did not intend the penalty to be imposed where taxpayers, like Boardman, show the correct tax due on their return. S. Rep. No. 97-494 at 278, *reprinted in* 1982 U.S.C.C.A.N at 1024-25.

To implement § 6702(a), Congress directed the Secretary, in § 6702(c), to "prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous." To that end, the Secretary has identified several frivolous positions, including the position that "[a] taxpayer may lawfully decline to pay taxes if the taxpayer disagrees with the government's use of tax revenues" and that

"[t]he Ninth Amendment exempts those with religious or other objections to military spending from paying taxes to the extent the taxes will be used for military spending." Notice 2010-33, ¶¶ 1(h), 9(g), 2010 WL 1347082 (Apr. 26, 2010). The IRS, citing *Lee*, 455 U.S. 252, and other longstanding authorities, further has described as frivolous "[a]ny claim that individuals may reduce their federal tax liability based on objections to the use of the taxes to support government programs or policies." Rev. Rul. 2005-20, 2005 WL 583384. *See also Jenney v. United States*, 755 F.2d 1384, 1387 (9th Cir. 1985); *Bradley v. United States*, 817 F.2d 1400, 1404 (9th Cir. 1987).

Recognizing the compelling governmental interest in maintaining the integrity of the tax system, the courts have uniformly held that the imposition of the penalty under § 6702 to taxpayers asserting sincere objections to war on religious grounds is constitutional. *See, e.g., Jenney*, 755 F.2d at 1387; *Kahn*, 753 F.2d at 1217 ("[t]he public interest served by section 6702 is of such a 'high order' that an assertion of first amendment rights do not outweigh the necessity of maintaining a functional revenue system") (citations omitted); *Nelson v. United States*, 796 F.2d 164, 168 (6th Cir. 1986) ("[c]ourts * * * have * * * uniformly

follow[ed] the guidance of *Lee* and agree that section 6702 does not unconstitutionally infringe on the exercise of religion"); *McKee v. United States*, 781 F.2d 1043, 1047 (4th Cir. 1986) ("First Amendment challenges to Section 6702 have been consistently rejected by the courts"); *accord Bradley,* 817 F.2d at 1404; *Borgeson v. United States*, 757 F.2d 1071, 1072 (10th Cir. 1985); *Welch v. United States*, 750 F.2d 1101, 1106 (1st Cir. 1985); *Wall v. United States*, 756 F.2d 52 (8th Cir. 1985).

In the same vein, Congress further recognized that legally unsupportable positions burden the tax system when they are raised in CDP proceedings (which have the effect of staying collection, I.R.C. § 6330(e)), and, consequently, barred taxpayers from raising in CDP proceedings any "issue that meets the requirements of clause (i) or (ii) of section 6702(b)(2)(A)," *i.e.*, any issue the Secretary has identified as "frivolous." I.R.C. § 6330(c)(4)(B). In adding § 6330(c)(4)(B), Congress noted that "frivolous returns and submissions consume resources at the IRS and in the courts that can better be utilized in resolving legitimate disputes with taxpayers." S. Rep. No. 109-336, at 49 (2006). Thus, pursuant to § 6330(c)(4), the IRS could disregard Boardman's war-tax

resistance argument in a CDP hearing, and that position would not be subject to further review. *See* I.R.C. § 6330(g). *See also Thornberry v. Commissioner*, 136 T.C. 356, 365-67 (2011).

Although, insofar as CDP proceedings are concerned, § 6330(c)(4)(B) authorizes the IRS to disregard the frivolous portion of a CDP request and § 6330(g) provides that the frivolous portion of a CDP challenge will not be subject to further review, § 6330(g) encompasses only CDP proceedings; those provisions have no application to District Court refund suits. Although it is not altogether clear, in the instant case, whether and to what extent Boardman sought a CDP hearing, it is clear that, as the District Court held, Boardman had available to her the refund-suit route, which she declined to take.

In short, it is well established that the Government does not violate the Free Exercise Clause by requiring that all taxpayers, without regard to their religious or nonreligious beliefs, comply with the income tax laws. Boardman, thus, could not establish that the Government could not prevail on the merits. By contrast, Boardman's position has been considered and rejected repeatedly by Congress, the IRS, and the courts.

The District Court correctly held that it lacked jurisdiction to grant her relief.

b. The RFRA does not relieve Boardman of the obligation to fully pay her tax liability

The above-described principles governing free-exercise challenges in the tax context remain valid following the enactment of the RFRA, 42 U.S.C. § 2000bb-1. As discussed below, Congress enacted the RFRA to create a new statutory right of free exercise employing the "compelling interest" test generally applicable in cases arising under the Free Exercise Clause prior to *Smith*.

In *Smith*, the Supreme Court considered whether the Free Exercise Clause permitted a state to deny unemployment benefits to persons dismissed from their jobs based on the religious use of peyote, a drug whose use generally was prohibited under state criminal law. The Supreme Court ruled (i) that the Free Exercise Clause did not require an exemption for the sacramental use of peyote from a generally applicable, neutral criminal law banning the use of that drug, and (ii) that unemployment compensation could be denied to persons who were discharged from employment based on their violation of a valid criminal

statute. In reaching that holding, the Supreme Court rejected the argument that the state must demonstrate a compelling interest for denying an exemption from the statute for religious use of peyote, stating that the compelling interest test was inapplicable to an "across-the-board criminal prohibition on a particular form of conduct." 494 U.S. at 884.

The RFRA reinstated the compelling interest test enunciated under pre-*Smith* precedent as to all legislation imposing a "substantial burden" on the free exercise of religion. Specifically, the RFRA provides, in relevant part:

> **§ 2000bb-1. Free exercise of religion protected**
>
> **(a) In general**
>
> Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b) of this section.
>
> **(b) Exception**
>
> Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--
>
> (1) is in furtherance of a compelling governmental interest, and

> (2) is the least restrictive means of furthering that compelling governmental interest.
>
> * * * *

42 U.S.C. § 2000bb-1. The Act's legislative history explains that courts should "look to free exercise of religion cases decided prior to *Smith* for guidance in determining whether or not religious exercise has been burdened and the least restrictive means have been employed in furthering a compelling governmental interest." H.R. Rep. No. 103-88, at 6-7 (1993). Thus, Congress intended to restore "the legal standard that was applied in those decisions." *Ibid.* *Accord* S. Rep. No. 103-111, at 9 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1892.

Prior to *Smith* the Supreme Court expressly held that religious belief in conflict with the payment of taxes "affords no basis for resisting the tax." *Lee*, 455 U.S. at 260. In addition, it was well settled, under pre-*Smith* precedent, that the federal income tax laws satisfied the compelling-interest test. (*See* pp. 24-26, *supra* (discussing cases holding that federal tax laws satisfy compelling-interest test).) Consequently, RFRA's reinstatement of the compelling-interest test works no change in the law in the federal income tax context. *See* H.R. Rep. No. 103-88,

supra, at 5 n.13 (noting that Supreme Court held that federal tax laws were constitutional under compelling-interest test in *Hernandez*, 490 U.S. 680 and *Lee*, 455 U.S. 252); *accord* S. Rep. No. 103-111, *supra* at 5 n.5, *reprinted in* 1993 U.S.C.C.A.N. at 1895 n.5.

As the Second Circuit has held, "[i]t is well settled that RFRA does not afford a right to avoid payment of taxes for religious reasons." *Jenkins*, 483 F.3d at 92. *See also Browne v. United States*, 176 F.3d 25, 26 (2d Cir. 1999); *Adams*, 170 F.3d at 176-80; *Droz v. Commissioner*, 48 F.3d 1120, 1122-1123 (9th Cir. 1995) (applying *Lee*, 455 U.S. 252, in rejecting claim that denial of exemption under I.R.C. § 1402(g) to taxpayer who had religious opposition to social security taxes violated RFRA); *Moore-Blackman v. United States*, 2010 WL 3342173, at *6 (D. Ariz. 2010). As stated by the Seventh Circuit regarding a challenge by a church-employer, on religious grounds, to federal employment tax laws:

> In several pre-*Smith* Free Exercise challenges to the application of federal tax laws, the Supreme Court and various courts of appeals concluded both that maintaining a sound and efficient tax system is a compelling government interest and that the difficulties inherent in administering a tax system riddled with judicial exceptions for religious employers make a uniformly applicable tax system the least restrictive means of furthering that interest. . . .

> We find this authority persuasive and see no reason to reach a different conclusion.

United States v. Indianapolis Baptist Temple, 224 F.3d 627, 630 (7th Cir. 2000) (and citing cases).

Regarding the judicial exception to the Anti-Injunction Act, Boardman "submits that the United States cannot prevail in defending the use of a 'frivolous' label for tax resisters who file correct returns and refuse to pay the full amount for religious reasons."[11] (Br. 51.) Boardman's overall argument on this point is convoluted, but the argument, in any event, does not seem applicable on the facts of this case; her argument does not address either the injunctive aspects of her case, or the actual relief sought.

In her complaint, Boardman requested relief in the form of "a permanent injunction ordering [the Government] . . . to comply with the Free Exercise clause to the Constitution . . . and with the Religious Freedom Restoration Act of 1993" by "put[ting] into operation procedures

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[11] The District Court noted that Boardman "fail[ed] to provide an argument regarding the first prong" of the judicial exception to the Act. (ER 12.) Accordingly, Boardman waived any argument on this point and her argument now raised on appeal should not be considered by the Court.

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 determination upon taxpayer request" (ER 42), and ordering that "[n]o 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" (*ibid.*). It is this request that the District Court ruled was barred by the Anti-Injunction Act.

Moreover, as noted above, the IRS has designated the war-tax resistance position as a frivolous position, as a matter of tax law, pursuant to the authority of § 6702(c) – in accordance with the overwhelming and unbroken line of authority that has rejected the position as a legitimate ground for not paying taxes. However, Boardman's returns were accurate and contained all the information necessary to determine her tax liability, and, thus, Boardman did not file frivolous tax returns within the scope of § 6702(a). (*See* ER 5.) And no penalties for frivolous submissions were asserted against Boardman.

Boardman, rather, seems to be anticipating future designations of her war-tax position as frivolous or future designations of similar assertions by other Quakers. In this regard, in her discussion of standing (Br. 44-46), Boardman correctly anticipates that that argument should fail for lack of standing. The harm Boardman claims to have suffered is that "[s]he must evaluate the risks of a $5000 penalty imposed at the discretion of the IRS along with difficulties in obtaining legal redress should such a penalty be imposed even if she wants to engage in war tax resistance." (Br. 45.) A plaintiff such as Boardman, however, lacks standing when she complains only of "conjectural" or "hypothetical" injury rather than an "injury in fact." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

On appeal, as was the case below, Boardman has made no viable argument that the United States could not prevail on the merits. Thus, she has not demonstrated any error in the District Court's holding. The law is clear that religious objections to paying the full amount owed under the income tax laws, including objections based on the opposition to war, do not provide a basis for Boardman's suit, notwithstanding the passage of the RFRA.

2. Boardman has an alternative legal remedy

In addition, there is no basis for equitable jurisdiction because Boardman has an adequate remedy at law and cannot show irreparable injury. For any tax year, Boardman may pay the tax she owes (which for the years at issue she has already done) and file a suit for a refund within the time limit for filing such a suit. *See* 28 U.S.C. § 1346(b); I.R.C. §§ 6532, 7422. The District Court correctly found that Boardman thus has an adequate legal remedy. (ER. 14.)

Boardman maintains that a suit for refund is not an adequate legal remedy because she "does not claim a tax refund." (Br. 49.) The Supreme Court has rejected this argument. In *American Friends Service Committee*, a religious corporation (the Committee) and employees of the Committee (the employees) brought suit for a refund of withholding taxes and also sought an injunction barring the United States from requiring the Committee to withhold taxes from wages. 419 U.S. at 8. Taking a position very similar to Boardman's, the employees argued that requiring the Committee to withhold taxes from their pay "did not allow them to bear witness to their [religious] beliefs by refusing to voluntarily pay a portion of their taxes." *Ibid*. Among other things, the employees

argued "that a refund suit would be an inadequate remedy, in view of the concession on their part that the taxes are due." 419 U.S. at 11.

The Court held that the Anti-Injunction Act barred the relief they sought. The Court rejected the employees' contentions regarding a refund suit because in a refund suit the employees "will have a 'full opportunity to litigate' their tax liability." *Ibid.* The Court further observed:

> Even though the remitting of the employees to a refund action may frustrate their chosen method of bearing witness to their religious convictions, a chosen method which they insist is constitutionally protected, the bar of the Anti-Injunction Act is not removed:
>
> > "[D]ecisions of this Court make it unmistakably clear that the constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act."

American Friends Service Committee, 419 U.S. at 11 (quoting *Alexander v. "Americans United," Inc.*, 416 U.S. 752, 759 (1974)). *See also Stonecipher*, 653 F.2d at 401 ("because Stonecipher can sue for a tax refund" he failed to show irreparable harm). Boardman also may not contend that such a remedy is inadequate because it requires her to pay

the tax in full. *Cf. Church of Scientology of California v. United States*, 920 F.2d 1481, 1489 (9th Cir. 1990) ("Mere allegations of financial hardship are insufficient to support a finding of irreparable harm." (citations omitted)). Finally, the fact that she may have chosen not to pursue a particular remedy available to her, *i.e.*, by eschewing a refund suit, does not make the Anti-Injunction Act inapplicable. *Alexander*, 416 U.S. at 762, n13.

D. The Administrative Procedure Act does not provide jurisdiction for Boardman's suit

Boardman asserts that the District Court had jurisdiction over her complaint under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq*. Section 702 of the APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." In this case, Boardman's complaint failed to show or allege that she was aggrieved in any way by final "agency action within the meaning of a relevant statute." *See* 5 U.S.C. §§ 551(13), 702, 704. Rather, she complained generally that the IRS had failed to establish a satisfactory grievance procedure for taxpayers like her, who

sincerely, for religious reasons, disagree with the Government programs and policies, and who do not want their taxes to support those programs.

At all events, Boardman's complaint falls within an exception to the waiver of sovereign immunity provided in Section 702, which states that nothing in that provision "affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground" or "confers authority to grant relief if any other statute that grants consent to suit explicitly or impliedly forbids the relief which is sought." 5 U.S.C. § 702. *See also* 5 U.S.C. § 701(a)(1) (judicial review unavailable under APA if "statutes preclude judicial review"); *Lee v. Blumenthal*, 588 F.2d 1281, 1283 (9th Cir. 1979). In this case, the Anti-Injunction Act is precisely such a limiting statute, precluding exercise of jurisdiction under the APA. *See Clark v. United States*, 462 Fed. Appx. 719, 721 (9th Cir. 2011); *Hughes v. United States*, 953 F.2d 531, 537 (9th Cir. 1992); *Lonsdale v. United States*, 919 F.2d 1440, 1444 (10th Cir. 1990).

Accordingly, the District Court correctly held that, under I.R.C. § 7421(a), it lacked jurisdiction to award Boardman the relief she sought.

II

The District Court correctly held that Boardman's complaint failed to state a claim upon which relief could be granted

Standard of Review

A district court's conclusion that a complaint fails to state a claim upon which relief can be granted is reviewed *de novo*. *See OSU Student Alliance v. Ray*, 699 F.3d 1053, 1061 (9th Cir. 2012). This Court reviews the District Court's denial of a motion for leave to amend the complaint for abuse of discretion. *See In re Western States Wholesale Natural Gas Antitrust Litigation*, __ F.3d __, 2013 WL 1449919, at *13 (9th Cir. Apr. 10, 2013).

In order to survive a motion to dismiss for failure to state a claim upon which relief could be granted, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S 662, 678 (2009). This test is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ibid.* The District Court correctly held that

Boardman's allegations against the United States lacked merit, and it properly dismissed her complaint and denied her request for leave to amend.

1. Boardman sued the Government to provide her with alternative procedures through which she could pay her correct tax liability, but still avoid "voluntarily . . . pay[ing] the percentage of her federal income taxes that is directed towards war," and to provide alternative procedures for handling disputes, claims, and collections for taxpayers who state *bona fide* religious reasons for refusals to pay the full amount of tax. (ER 23, 41.) As discussed in Argument I, Boardman's request for relief in this case is wholly without legal support. Indeed, Boardman's position in this case – that her free exercise of her religion has been impermissably infringed on by her being required to adhere to income tax laws and procedures of universal applicability – is "representative of a class of arguments that have universally been rejected" by the courts. *Jenkins*, 483 F.3d at 94 (quotation omitted). The case of *Adams v. Commissioner*, 170 F.3d 173, is both similar and illustrative. Priscilla Adams, a devout Quaker, brought suit in the Tax Court arguing "that the Religious Freedom Restoration Act ("RFRA") requires accommodation of her

religious beliefs so that her tax payments do not fund the military." 170 F.3d at 174. Ms. Adams "assert[ed] that she would voluntarily pay all of her federal income taxes if the money she paid were directed to a fund that supported only non-military spending, or if her payments could be directed to nonmilitary expenditures, or that . . . she would be willing to consider any other form of accommodation of her beliefs that could be offered by the government." *Id.* at 175.

The court of appeals rejected her position (170 F.3d at 176-80), and in doing so pointed to a "line of cases that have refused to recognize free exercise challenges to the payment of taxes or penalties imposed due to a refusal to pay taxes as a protest against the military activities of the United States." *Id.* at 178 (and citing cases). Accordingly, Boardman's complaint, which ran counter to a long and unbroken line of authority establishing the Government's compelling interest in the assessment and collection of taxes pursuant to laws of uniform applicability, failed to set forth any plausible claim. The District Court correctly granted the Government's motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6).

2. The District Court also properly exercised its discretion in denying Boardman's motion for leave to amend her complaint. As already discussed, Boardman's request for relief was wholly without legal support, and the District Court correctly concluded that any attempt by her to rephrase her allegations in order to state a viable claim would be futile. *See, e.g., Dougherty v. City of Covina*, 654 F.3d 892, 901 (9th Cir. 2011); *Albrecht v. Lund*, 845 F.2d 193, 195 (9th Cir. 1998). Boardman vaguely suggests that she might be able to add allegations about post-filing acts by the IRS against her and allegations about other Quaker war-tax resisters and that there might be a larger theoretical structure to her cause of action. (Br. 58.) Those contentions fail to establish any abuse of discretion in the court's denial of her leave to amend. Boardman's alleged cause of action in her complaint was without merit, and she has made no showing that that could be cured.

CONCLUSION

For the forgoing reasons, the judgment of the District Court is correct and should be affirmed.

Respectfully submitted,

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STATEMENT OF RELATED CASES

The Commissioner is not aware of any related cases pending in this Court.

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July 3, 2013

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I hereby certify that on July 3, 2013, I electronically filed the foregoing brief for the appellee with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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