
STATE OF WISCONSIN

Plaintiff/Petitioner

vs.

EMANUEL MILLER, JR.,

Defendant/Respondent

DECISION

Case No. 08-CX-5

Defendant, Emanuel Miller, Jr., was cited for his failure to comply with livestock premise registration requirements under sec. 95.51, Stats., and ch. ATCP 17, Wis. Admin. Code. There is no dispute that from a technical standpoint Miller has committed each element of the offense and the court will not dwell on that subject.

The focus of the court is Miller's position that he is constitutionally protected from registration under Article I, Section 18 of the Wisconsin Constitution, which reads in pertinent part: "The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; ...nor shall any control of, or interference with, the rights of conscience be permitted."

The applicable standard of review for a constitutional religious challenge is set forth in *State v. Miller*¹, 202 Wis.2d 56, 549 N.W.2d 235 (1996). This is known as the "compelling state interest/least restrictive alternative" test. Under this test, Miller carries the burden to prove: (1) that he has a sincerely held religious belief, and (2) that his religious belief is burdened by application of the state law at issue. Upon such proof, the burden shifts to the State to prove: (3) that the law is based on a compelling state interest, and (4) that the interest cannot be served by a less restrictive alternative. *Id.*, at p. 66.

(1) Miller has established that he has a sincerely held religious belief.

The hearing testimony establishes that Miller is a member of the Old Order Amish religious community (the Amish). As a general overview, the Amish follow the teachings of the Bible and Ordnung (rules) established by the church. A fundamental underpinning of the Amish is their belief that they are required to remain separate from the modern world and not conform to it. Transcript², pp. 26-28. This aspect of the Amish faith is well documented by the United States Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205, 210 (1972), wherein the Court stated "the Old Order Amish religion pervades and determines the entire mode of life of its adherents." The religion has a "long history as a successful and self-sufficient segment of American society." *Id.*, p. 235.

The testimony also established that the Amish remaining separate from the modern world obligates them to place their trust in God, not in men or government. One example of

¹ As far as the court is aware, no relation to the Miller involved in this case.

² All references are to the transcript of the hearing of September 23, 2009.

this is that the Amish do not participate in government assistance programs such as social security, unemployment compensation, Medicare, and Medicaid, among others. Transcript, pp. 27, 36-38, 71.

Miller testified that based on these religious beliefs, as discussed in his Amish community, it was his decision not to register his premises. *Id.*, p. 7. Miller and Noah Schwartz, the Bishop in charge of Miller's community, testified that the objections of the Amish to premises registration are:

- (1) That premise registration already is, or is a strong lead to, the "Mark of the Beast" contrary to the Book of Revelations in the Bible and that it is the path of the antichrist;
- (2) That premise registration requires Amish to put their faith in the protection of government as opposed to believing that God will protect them;
- (3) That premises registration would violate the Amish belief that they should remain isolated and separate from the modern world; and
- (4) That premise registration requires Amish to participate in and/or promote a *modern* computer based system, with the issuance of a number.

Transcript, pp. 9-10, 28, 30, 35-37³. Under the Amish faith, failure to follow the Biblical teachings and Ordnung is a sin—it leads to shunning/excommunication from the community. *Id.*, p. 31. Were Miller to register his premise, he believes (and his Bishop has told him) he will be committing a sin against his faith. This in turn would lead to eternal damnation. Transcript, pp. 40-41.

In its brief filed December 22, 2009, (pp. 8-10) the State focuses an argument on the assignment of a premises registration number as being no different than other numbers that are in daily use such as addresses and rural fire numbers. The State then asks this court to conclude that the Amish resistance to premise registration is therefore not a valid or legitimate belief because the Amish utilize many other numbers. However, this analysis only looks at the surface of Miller's belief. Deeper analysis shows that the number is but one part of Miller's objection. The deeper issue is Miller's belief that premise registration requires him to put his faith in government and not God and that he would be part of the process of putting in place an overwhelming force, the "Mark of the Beast" by participating in premise registration. In other words, he would be serving the power of man, not of God. Moreover, it is improper for secular authorities, the state (or this court), to impose its interpretation of what is or is not a reasonable religious belief of any particular religious community. As the United States Supreme Court stated in *Yoder*,

"This court does not evaluate, and in fact is prohibited from evaluating, a religious belief for ecclesiastical purposes. Irrelevant, too, is this court's opinion, if it has one, of the validity, the reasonableness, or the merits of the Amish religious beliefs."

³ In the interest of brevity, the court has not reiterated or cited to the numerous Bible passages that are set forth in the Transcript. Nonetheless, the court does conclude those passages do support the beliefs Miller has set forth.

Yoder, supra, p. 436. This court, therefore, cannot do what the State asks—it cannot say that that Miller’s belief is wrong, and therefore must be disregarded, anymore than this court can say that Miller’s belief is right and everyone must regard (follow) it.

In conclusion, on this issue the court observed Miller and Bishop Schwartz as they testified. They were direct, coherent, sincere and credible as to their statements about their faith. The court concludes that Miller sincerely believes, as he testified, that he would be committing a sin, placing his faith in government and not in God and furthering the Mark of the Beast, if he were to register his premises. Miller believes that if he participated in registration, he would be risking eternal damnation. *Id.*, p.41. The sincerity and conviction of this belief is born out by Miller’s statement that he would accept government punishment or leave the state before violating his religious beliefs. See *State v. Hershberger*, 426 N.W.2d 393, 396 (Minn. 1990).

(2) Miller has established that his religious beliefs are burdened by application of premise registration requirements.

Miller faces a choice of complying with premise registration or violating his religious beliefs and church requirements. In Miller’s Amish group, 100% make their living by farming and nearly all by dairy farming. Transcript, pp. 29 & 32. If Miller registers his premise, he will be shunned or excommunicated by his church and risks eternal damnation. *Id.*, at 41. If Miller does not register his premises, then:

- He cannot buy or sell livestock. Transcript, p. 141.
- He will not be able to obtain a milk producer’s permit. Exhibit 7 & 8.
- He will need to give up his primary means of power for field work, the horse.
- He will need to give up his primary means of transportation, the horse.

In more direct terms, the way of life—basic farming—that has served the Amish well for hundreds of years will be denied to them if they follow their religious belief instead of the government mandate.

The court observes that premise registration requirements affect those matters that we may all view as fundamental or important to the basics of life or religion, such as employment, travel and transportation, association, attendance at church, education, and other basic living necessities. This court agrees with the premise stated in *State of Ohio v. Swartzentruber*, 556 N.E.2d 531 (1989), that not all privileges⁴ or benefits are to be considered important or fundamental. However, certain privileges and benefits are important. “An important benefit or privilege is one that is needed to function in society.” *Id.*, p. 534. Such benefits include the privilege to earn a living in a legal occupation, the privilege to use the streets and highways to move about, the privilege of association and assembly, and those privileges the exercise of which is essential to a person’s religion. *Id.*

⁴ In *Swartzentruber*, supra, the court held that the privilege of deer hunting is not central to the Amish way of life.

As set forth above, premise registration goes to the heart of what it means for Miller to be Amish. Abiding by his religious belief, and not registering his premise, would require Miller to:

- change his source of income (livestock and crop farming would no longer be possible);
- change his means of transportation (horses would be unavailable) Transcript, pp. 20 & 30; and
- give up much of what is fundamental to the Amish way of life (Bishop Schwarz testified that the occupation of farming allows the Amish to maintain their separateness from the world. Transcript, pp. 29-32).
- put his faith in the protection of government as opposed to believing God will protect him. This is contrary to the fundamental Amish belief that it is for God's will to control their fate, not man or government. Transcript, pp 57, 73.

Dairy farming is one of the most successful ways the Amish have found to keep their families together and maintain their way of life. Transcript, p. 29-30. The record shows that if Miller does not register his premise, he cannot get a milk producer's permit.⁵ His means of earning a livelihood would be gone. Amish are dependent on livestock for food, transportation, farm work, and ultimately their income. "The traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living." *Yoder*, 406 U.S. at 216.

Miller can register his premise or maintain adherence to his Amish faith, he cannot do both. If Miller complies with the law, he must violate or give up his religious beliefs. If Miller complies with his religious beliefs, he must violate the law or give up all livestock and sacrifice his way of life. The court concludes that Miller, and the Amish, have a sincere, fundamental and important religious belief that is burdened by the requirement of premise registration.

(3) The State has established that it has a compelling state interest in animal health.

The State is relying on its interest in animal health/food safety for its requirements regarding premises regulation. Where religious freedom is being infringed upon, the State must establish a compelling interest in this subject, not just some interest, before it may impose its requirements. *State v. Kasuboski*, 87 Wis.2d, 407, 416 (App. 1978). In *State v. Miller*, supra, the court concluded that the State has a compelling interest in public safety on highways. *Id.*, p. 70. That conclusion was actually conceded by all parties in the *Miller* case. *Id.* Given the number of injuries and deaths on state roadways each year, this court understands why the parties in *Miller* reached that conclusion.

Similarly, disease outbreaks in farm animals can have devastating consequences. See exhibits D and E to the State's December 22, 2009 brief. See also Transcript, p. 146 Herds

⁵ The record shows he has been operating under his father's milk producer's permit. The legality of such operation is not before the court.

with an outbreak have been quarantined or destroyed. Restrictions on interstate or international sales can be imposed. Ongoing and expensive testing can be required of all Wisconsin animals to be sold out of state if an outbreak is not handled promptly and properly. Exempt or clean status of the state can be lost. Transcript pp. 150-151. Economic consequences to state farmers specifically, and the state generally, could be extraordinary.

The State therefore does have a compelling interest in animal health and food safety. That does not mean, however, that premise registration is necessary to serve that interest.

(4) The State has not established that its interest in animal health cannot be met by alternative means that are less restrictive of Miller's free exercise of religion.

The premises registration law suffers from a number of shortcomings. As a result of these shortcomings, Wisconsin's premises registration law does not further the State's interest in animal health. The shortcomings are:

- Premises registration is renewed every three years/there is no requirement to update changed information. As a result the law does not track common everyday occurrences such as farmers going out of business or changes in operations such as adding or dropping certain lines of animals (selling off sheep to go into hogs for example), or changes in ownership of the premise. Because of this, the alleged benefit of premises registration in eliminating the need to go door to door in an area of disease outbreak to find possible contaminated herds is illusory. With stale information, door to door checking for animals would still be necessary. Miller himself is a perfect example of how outdated information can get in a short period of time. In September, 2007, Miller kept cattle, swine, turkeys, goats, chickens and horses at his location. In September, 2010, Miller only kept cattle, chickens and horses at his location.
- Premise registration will never be 100%. As with any law, whether through ignorance, civil disobedience or willful noncompliance, there will never be 100% registration of all premises with regulated livestock. Just as with the lack of regular timely update information, without 100% compliance door to door checking in areas of disease outbreak will still be necessary. On this point, the State's expert Dr. McGraw said if there was one pasture with cattle that the DATCP would be unaware, then the response to the disease would be at risk. Transcript, p. 148. This will always be the case because there is no such thing as 100% compliance and farmers will change the livestock they raise.
- Premise registration can be done by third parties. Any person, other than an official of the Wis. DATCP can register any premises whether or not they own or rent the premise and whether or not they have any livestock at the premise. Transcript, p. 188. This leads to the potential for abuse/corruption. Its also leads to the potential for multiple conflicting registrations for one location.
- Premises registration does not require the owner/reporter to have a telephone. Amish do not have telephones. Again this leads to the need to go door to door to find out what is kept at each premise location.

- Premise registration has not assisted the DATCP with a disease outbreak. Transcript, p. 198. There is no other state in which premise registration has assisted in making the containment of an animal disease outbreak faster or less expensive. Id., p.199.
- The premises registration number does nothing to further or assist in the disease tracking aspects of registration. The number is just that, it is randomly generated seven digit alphanumeric code. The numbers are not coded for state, county, township, or address. Transcript, p. 200. When asked how this randomly generated number is more efficient than an address in assisting DATCP, the State's expert, Dr. Paul McGraw was not able to answer. Id., p. 201. In fact, he admitted that "I don't do anything with the number." Id., p. 204. Dr. McGraw admitted that a simple transposition error in the keeping the number could delay or stall a trace of an animal. Id., p. 203. Dr. McGraw testified that if there were such a transposition error, DATCP would rely on recordkeeping information (name, address, etc.) of Wis. Admin. Code Ch. 12 (more on this later). Id. Dr. McGraw acknowledged that address information would be easier to correct if transposed than the premise code. Id. He could not say why a premise registration number was even necessary. Id., p. 205.
- Premise registration, and particularly the number, may hinder or delay disease tracking. Because the numbers are randomly assigned, a farm in Texas could have a number that is one digit different from a farm in Wisconsin. Transcript, pp. 200-202. If a diseased animal were found, this would send an investigator on a wild goose chase across the country, delaying a timely response.⁶
- The premise registration number is no better than an address. Dr. McGraw, the State's expert indicated the number is used because that is how the program was set up by the USDA and therefore Wisconsin used that system. Transcript, p. 201. When asked if the number was somehow better than an address, Dr. McGraw stated. "I don't know that I can answer that." Id.

Less restrictive alternative one: Exemptions

The Wisconsin Supreme Court has said that "[a]compelling interest is not just a general interest in the subject matter but the need to apply the regulation without exception to attain the purposes and objectives of the legislation." *State v. Yoder*, 49 Wis. 2d 430, 438, aff'd sub. nom. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The premises registration statute allows for exemptions to registration. In *State v. Miller*, supra, the State argued that its interest in highway safety could only be met by use of a standard red/yellow truncated triangle slow moving vehicle sign because such sign was instantly recognizable. Id., p. 72. However, the State's argument failed under analysis of the statute itself (sec. 347.245) which contained exceptions for numerous types of vehicles and numerous types of alternative warning methods. Id. In this case, the statutes establishing premises registration requirements specifically provide for exemptions from registration. Section 95.51(3m) provides:

(3m) Exemptions. The department may promulgate rules specifying exemptions from sub. (2), including exemptions based on the number or type of livestock kept by a person or on the type of locations where a person keeps livestock.

⁶ For a more detailed analysis of this problem, see Brief for Twenty-two Farming, Ranching and Consumer Organizations, filed November 30, 2009, pp.17-19.

If premises registration is the “only” way to meet the State’s interest, then the statute could not allow for exemptions. The State’s position therefore fails of its own internal inconsistency.

Less restrictive alternative two: Admin. Code Ch. ATCP 12

The testimony in this case establishes a viable alternative to premises registration exists and is already in place. Wisconsin Administrative Code Ch. ATCP12 requires market operators, animal dealers and animal truckers to maintain a comprehensive set of records detailing the purchase, sale or transfer of livestock. Extensive testimony was received by the court regarding a 2007 pseudorabies outbreak in hogs in Clark County. The farm from which the infected hog was purchased had not complied with premise registration requirements. However, the farm was traced and located through name, address and other information required and maintained under ATCP Ch. 12. Upon location of the infected hog’s source, all the necessary locating of herds, testing, and depopulation of infected herds was carried out in a timely fashion. Transcript, pp. 168-170.

The State’s expert Dr. Paul McGraw testified that had full premise registration been in place in 2007 the investigating team may have saved up to three days in locating farms with swine herds within the affected pseudorabies outbreak area. Transcript, p. 156. However, the court had the opportunity to observe Dr. McGraw testify. This portion of his testimony did not come across as believable. His testimony about saving three days time is not credible in light of his other testimony. First, his exact statement was: “had we had *all of them registered*, we could have saved at least probably three days overall....” (Emphasis added) *Id.* The conclusion of his statement that time would have been “saved” is only as valid as its premise. His premise required that “all of them” be registered. Yet, Dr. McGraw testified that he was “not ... aware of” any regulatory scheme or program that has 100% compliance.⁷ *Id.*, p. 169. Thus his premise is faulty and therefore his conclusion is faulty. Simply put, because not every premise will ever be registered, the response teams will still need to go door to door.

Second, Dr. McGraw testified that had more premises been registered, they would have at least saved some time. However, this is not credible in light of other deficiencies, outlined above, with premise registration requirements. Specifically, premise registration renewal only takes place once every three years. The possibility for changes in livestock at any given premise would still require going door to door—to find out what each farmer has at that time, as opposed to when the farmer registered in the past. Finally, persons registering a premise are not required to have or maintain a telephone—they cannot be called. Perhaps these reasons are why Dr. McGraw testified that premise registration has never assisted the Wisconsin DATCP, or any other state, with a disease outbreak. Transcript, pp. 198-199. The State’s assertion that it must know where all “livestock” is located to enable it to handle a disease outbreak is based on a false premise—such a system must fail as there will never be

⁷ Dr. McGraw ultimately admitted that it is “probable there will always be some [unregistered premises]. Transcript, p. 169.

100% compliance, and the information will always be out of date. Ultimately, the State must go door to door.

In fact, using the number issued to a premise under premise registration would, under some circumstances, hinder disease tracking. As set forth above, a transposed digit in the number renders the number useless as the digits are totally random. Dr. McGraw said they would then rely on ATCP 12 to follow up.

The record in this cases shows that the Amish have participated and will continue to participate and cooperate by providing their names and addresses when they buy and sell livestock and have that information recorded. Transcript, 49-50. In other words, the Amish do comply with everything necessary for disease tracking under ATCP 12.

The court concludes that the evidence shows ATCP 12 to be the more reliable alternative that is also less restrictive.

Less restrictive alternative three: voluntary premise registration

Voluntary premise registration is also a potentially viable alternative. Transcript, p. 50. Only three states utilize mandatory premise registration⁸. Forty-seven states utilize voluntary registration. Those states, it appears, are able to achieve the same goals with a voluntary program as Wisconsin seeks to meet with a mandatory program. Voluntary premise registration would give the State some of the benefits it seeks, primarily knowing what animals are on voluntarily registered premises (at least at the time of the registration). The State legislation allows for exemptions to mandatory registration. It is only the bureaucracy of the DATCP that has chosen not to create exemptions.

In this regard, the court observes that the United States Federal Government is dropping/severely curtailing its requirements for the National Animal Identification System. New York Times, February 5, 2010, “USDA Plans to Drop Program to Trace Livestock.” The lead sentence of the article is:

“Faced with stiff resistance from ranchers and farmers, the Obama administration has decided to scrap a national program intended to help authorities quickly identify and track livestock in the event of an animal disease outbreak.”

The inference reasonably drawn from this action is that mandatory premises registration and animal identification is not “essential” to disease prevention and tracing.

Summary

The State has not shown how mandatory premise registration will further the State’s interest in animal health and food safety. Because of the shortfalls in the premise registration law, it provides no advantage, advancement or gain over existing programs and systems.

⁸ Wisconsin asserts a 100% compliance rate (Exhibit 16)—an assertion that must be false witnessed by the existence of this case and the testimony developed at the hearing is this matter.

There is no concrete evidence that premise registration serves the interest of promoting animal health and food safety better than other alternatives, which it must do to withstand this challenge. See *State v. Miller*, p. 72. There are no case studies, historical data or other evidence that mandatory premise registration furthers the goals of animal health and food safety. The premises registration program is an impermissible burden upon Miller's religious beliefs.

The court directs the Clerk of Court to enter a judgment of dismissal in this matter.

This is a final order for purposes of appeal.

Dated: March 9, 2010

By the Court:

Jon M. Counsell
Circuit Court Judge