

**IN THE CIRCUIT COURT, THIRTEENTH JUDICIAL CIRCUIT
RICHMOND, VIRGINIA**

David Alan Carmichael,)	
Jesse Carmichael,)	
)	
Plaintiffs,)	
)	
v.)	No. _____
)	
THE COMMONWEALTH OF VIRGINIA,)	(Judge
_____))	
Tim Kaine, Governor,)	
Pierce R. Homer, Sec. Trans.,)	
D.B. Smit, DMV Commissioner,)	
Robert F. McDonnel, Att. Gen.,)	
Linda Curtiss, Comm. Att.,)	
)	
Defendants.)	

COMPLAINT

1. This is a civil action for compensatory and punitive damages suffered by the Plaintiffs; for injunction to halt and prevent further damage suffered by the Plaintiffs; and for declaration and mandamus relief to facilitate correction and prevention of unlawful acts of the Defendants that are damaging the Plaintiffs.

2. It is an action in the alternative to change the legal names of the Plaintiffs' in the event that there is no better mechanism of law for certain relief.

3. This action is against the Defendants; the Commonwealth of Virginia through its agents, and government officers who are herein sued in their official capacity, or in

their private capacity for unlawful acts under the cloak of their office; because they arbitrarily, capriciously, in bad faith, without any rational basis, in breach of statute, regulation, the Virginia Constitution, the United States Constitution and in willful cognitive deliberate indifference to Virginia and United States law:

- a. Unlawfully denied or ignored the Plaintiffs' request for religious accommodation and petitions for redress;
- b. Denied rights benefits and privileges relating to the Plaintiff's civil capacities, and relating to the use of an automobile and access to applying for driver's licenses.
- c. Placing the unconstitutional condition upon the Plaintiffs to abandon the obligations of their Christian religion to not identify with a universally used personal identification number embodied in the SSN in order to do those things necessary in the ordinary course of life, Christian ministry, and business.
- d. Denying the Plaintiffs equal protection under the law and have denied the Plaintiffs due process.

4. The Defendants Attorney General and the Commonwealth Attorney are sued for injunction in their official capacity to prosecute the Plaintiffs according to Virginia Statute.

5. The Plaintiffs have an alternative cause of action for the change of their names depending on the outcome of their claims for other relief.

6. Plaintiffs seek compensatory and punitive damages.

7. Plaintiffs seek costs, expenses and attorney's fees.

JURISDICTION

8. This is a claim for damages arising under Articles I, V, and VI of the Virginia Constitution; The First, and Ninth Amendment to the United States Constitution; Law; Equity; The Common Law; Virginia Code Sections §1-200, §1-212, §1-248, §2.2-103, §2.2-104, §2.2-506, §2.2-511, §2.2-601, , §2.2-604, §2.2-3800, §2.2-3801, §2.2-3806, §2.2-3900, §2.2-3901, §8.01-8, §8.01-34, §8.01-42.1, §8.01-184, §8.01-185, §8.01-186, §8.01-188, §8.01-189, §8.01-190, §8.01-191, §8.01-194, §8.01-195.1 through §8.01-195.12 as applicable, §8.01-217, §8.01-221, §8.01-248, §8.01-257, §8.01-620, §8.01-635, §8.01-636, §8.01-637, §8.01-644, §46.2-208, §46.2-318, §46.2-320, 2.2§2.2-§57-1, §57-2, §57-2.02.

9. The Court has jurisdiction of all claims by reason of Code of Virginia, Sections §17-513, §8.01-184, §8.01-186, §8.01-189, §8.01-191, §8.01-195.1, §8.01-195.4, §8.01-217,

§8.01-221, §8.01-620, and §57-2.02.

10. Venue is in keeping with Code of Virginia §8.01-257, §261 and §262.

PARTIES

5. Plaintiff David Alan Carmichael was born in California to parents who were American citizens by birthright, and currently resides in Hampton, Virginia since May of 1988.

6. Plaintiff David Alan Carmichael comes, as father, next friend, or successor, with and on behalf of his seventeen-year-old son Jesse Carmichael. Jesse was born on November 2, 1990, Hampton, Virginia and lives there now with his mother and father.

7. Defendants are the Commonwealth of Virginia; Tim Kaine acting under the color of Governor; Pierce R. Homer, acting under the color of Secretary of Transportation; D.B. Smit in his official capacity as Commissioner of the Department of Motor Vehicles; and the Commonwealth Attorney; Robert McDonnell, Virginia Attorney General who has the power to deputize himself as prosecutor [Code of Va. §2.2-511.A(iii)]; and Linda Curtis, Commonwealth Attorney, Hampton, Virginia.

STATEMENT OF FACTS

8. Plaintiff David Alan Carmichael, served in the Navy from 1980 through 1997 and is currently a fulltime Christian minister through Freedom Ministries and Educational Christian Ministries which are Christian teaching and evangelism ministries.

9. Plaintiff Jesse Gray Carmichael, is a full-time Sophomore student at Thomas Nelson Community College in Hampton, Virginia, majoring in Science with a GPA over 3.85, with plans to continue his higher education at Montreat College seeking a dual degree in Environmental Field Studies and Outdoor Education.

9. Plaintiffs are devout Christians, actively involved in Christian serving, teaching, and other ministries, through their local church in Hampton, Virginia since 1983.

10. The Plaintiffs observe the Christian practice of abstaining from identification with a universally used identification number, known as the number of the beast in the Holy Bible, book of Revelation, Chapter 13.

11. In 1996, Plaintiff David Alan Carmichael was convinced that the Social Security Number (hereinafter SSN) is the **number** of the Beast revealed in the book of Revelation, Chapter 13. He was convinced that he and his family were under a mandate of God to abstain from association with a SSN.

11. The Social Security Administration (hereinafter SSA) informed Plaintiff David that there is no law that requires anybody to obtain a SSN to work or live in America, or just for the purpose of having one.

12. The SSA and other agencies of the United States, have policies and practices that inspire their agents to acquire people's name and personal information, and transmit those names and information to the SSA on a SS-5 or in similar form to establish a SS Account record and associated number to be associated with the person's name, religious or other objections of the subject person notwithstanding.

13. SSA has policies that instruct SSA agents to deliberately mislead people to dissuade them from filing a request to have their children's names taken off of SSA records.

14. If the Plaintiffs' names and personal information have been given to the SSA, it has been done by someone other than themselves, against their cognizant will, accomplished by deception, fraud, manipulation, coercion and through an agency wrongly leading people to file SS applications relating to the Plaintiffs' names.

15. In 1968, the Virginia General Assembly directed that Driver's license applications shall include the applicant's

Social Security Number (hereinafter, SSN), without indicating the purpose of requesting a SSN on a driver's license application.

16. On October 1, 1996, Plaintiff David sent a letter to the Commissioner of the SSA notifying her of his religious prohibition of SS participation, and notice of his rescission of any colorable contract that might have been made regarding him and those of his household. 5 USC §552a requires SSA to respond to such a complaint within ten days. No response was given. Since October 1, 1996, Plaintiffs have consistently adhered to the prohibitions of their religion, abstaining from association with a SSN, many woeful injuries notwithstanding.

17. March 17, 1997, Plaintiff was discharged from the U.S. Navy when he could not identify himself with a SSN. The United States Court of Appeals, Federal Circuit, ruled that failure to address Plaintiff's religious accommodation request according to regulations would make his discharge from the United States Navy unlawful. The United States Court of Federal Claims on remand ruled that Plaintiff David's discharge was indeed unlawful because of the Navy's failure to address his religious accommodation request. See *David Alan Carmichael v. United States*, 298 F.3d 1367 (2002); 66 Fed. Cl. 115(2005).

18. The Court of Appeals, in their August, 2002, ruling in David Alan Carmichael v. United States, 298 F.3d 1367 (2002) stated:

"Waiting indefinitely for the Social Security Administration to change his Social Security number may not have been a viable alternative for Carmichael if it would require a continued breach of his religious conviction."

19. From 1996 onward, Plaintiff David made numerous attempts, on behalf of his wife and himself, to obtain a religious accommodation to have the Department of Motor Vehicles (hereinafter DMV) remove from the DMV records, the SSNs previously associated with their names.

20. After obtaining a new customer number and successfully obtaining registration and title documentation after submitting the words "None. Religious Prohibition" in the SSN block on applications, Plaintiff David had reason to believe the driver's license records had been corrected.

21. Plaintiff learned later that the DMV was communicating with other agencies, associating the Plaintiff's name with a SSN. Shortly thereafter, the DMV sent to his wife, then to the Plaintiff David, a driver's license renewal application with a SSN on the application. Plaintiff could not renew, or allow his wife to renew, Virginia driver's licenses without violating the prohibitions of their faith

while a SSN continued to be used on the DMV records.

22. In the first half of 2002, Plaintiff David again attempted to obtain an accommodation from DMV, to obtain a Virginia driver's license without having to associate with a SSN. Plaintiff received responses but the Commissioner's responses **did not address the religious accommodation request.**

23. DMV Commissioner told Plaintiff David that the Commissioner could only change the current DMV record with a Court order or the SSA saying that the number is in error. He did not address the question put before him of canceling the account so that a new one might be instituted.

24. DMV has a policy that they will issue Customer Number beginning with the letter "D" or "R", though sometimes the letter 'A' is used for people whose names have never been associated with a SSN.

25. Plaintiff David is the Principal Ecclesiastical Officer of Educational Christian Ministries. Code of Virginia §57-16 provides that property owned by such religious organizations should have the property titled in the name of the Principal Ecclesiastical Officer. Without a religious accommodation to not associate with the number of the beast SSN, Plaintiff is being prohibited from carrying out the

directive of Code of Virginia §57-16 with regard to property owned by the ministry.

26. In July 2002, Plaintiff David Alan Carmichael was cited for driving without an operator's license. He did not have the money to pay a lawyer. He raised a Constitutional and law defense in the District Court on the basis of the Virginia Constitution, Article I, Section 16; and Code of Virginia §57-1 & §57-2. The District Court judge said that he did not have jurisdiction to visit those issues and rendered a guilty verdict. Plaintiff appealed to the Hampton Circuit Court for a trial *de novo*. Hampton Circuit Court Judge acted extremely abusively toward him. The judge asked the Plaintiff if he was a lawyer. When Plaintiff said "no", the Judge yelled at him saying, "You are not a lawyer and you are not going to practice law in my court. He refused to allow the Court reporter to record the proceeding. Plaintiff asked the Judge if it was a Court of Record. The Judge said, "Yes! This is a Court of Record but it is not going to be recorded."

Then he refused to allow the Plaintiff to make a motion for dismissal; refused to allow him to submit a written pleading with a motion for dismissal on the basis of the merits of law; refused to allow him to quote the Virginia Constitution, Virginia statutes or Virginia case law to show there was an

important conflict; refused to let him present original documents as evidence of his attempts to apply for a license.

Through it all, the Judge treated the Plaintiff with great disrespect that stirred much laughter among the over 100 people that were present in the court room. Plaintiff was fined \$50.00 plus costs. Plaintiff responded to the Judge with the utmost courtesy and said respectfully, "Thank you your honor."

27. Plaintiff has a duty of his religion to use an automobile or large truck in the ordinary course of his Christian Ministry. Denial of access to driver's licensing has placed a substantial burden on the obligations of Plaintiff's religion.

28. The Virginia DMV issues driver's license to people who cannot identify with a SSN for other than reasons of religion.

29. The Virginia DMV has a practice of coercing people to disclose SSNs under the force of the color of law even when the law, and the DMV forms, plainly do not require it.

30. Virginia Courts grant automobile use privileges to people convicted of drunken driving or who have otherwise demonstrated automobile use behavior that endangers the public.

31. Virginia exempts farmers and commercial fisherman from the Code of Virginia §46.2-300 requirement to have a driver's license to use their motor vehicles on the public highway in the ordinary course of business.

32. On April, 4, 2007, Governor Tim Kaine signed General Assembly House Bill 3082, CHAPTER 889, An Act to amend and reenact § 17.1-406 and to amend the Code of Virginia by adding a section numbered 57-2.02, relating to religious freedom.

Code of Virginia §57-2.02 says in the first phrase -

Religious freedom preserved; definitions; applicability; construction; remedies.

1. No government entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.

33. From May 23rd through 25th, 2007, The Plaintiff David, on behalf of himself and Plaintiff Jesse, renewed his attempts to obtain a religious accommodation when he learned that the Virginia General Assembly was considering a bill relating to the Protection of Religious Freedom like unto that Religious Freedom Restoration Act, 42 USC 2000bb instituted by the United States government. The Plaintiff's made their request directly to Governor Tim Kaine, citing his duty under

Va. Const. Art. V, Sect. 8. Copies were sent to Robert F. McDonnell, Attorney General, and D.B. Smit, Commissioner of the Department of Motor Vehicles.

34. On June 20, 2007, Plaintiff David, received a letter on the Governor's letterhead from Pierce R. Homer, who said:

"Governor Kaine has asked me to thank you for and respond to your most recent letter..."

- He cited Code of Va. 46.2-323 and 46.2-341.2 (non-existent statute) as that which has directed the DMV to collect SSNs. Without citing any authority for a waiver for secular reasons, and without mentioning the religious accommodation nature of the request, and without citing or considering provisions of constitutional or statutory law that might mitigate the statutory administrative requirements, Mr. Homer stated:

"As a result, DMV does not have the authority to remove this information from you DMV records unless each of you are able to provide a statement from the Social Security Administration or a court order stating that the SSN does not belong to you, nor has ever been associated with you."

35. - June 22, 2007, Plaintiff David reiterated the Plaintiffs' request for religious accommodation in a letter to Tim Kaine. Plaintiff cited to Tim Kaine the provisions of the Constitution of Virginia, Article V, Sections 7 & 8. In that

letter the following questions were put to Defendant Tim Kaine **admonishing him to obtain an opinion from the Attorney General** on the following issues related to the Plaintiffs' request to accommodate their religion (Original Numbers 1-13 converted to letters a-m for purposes of this outline format):

- a. By what authority does the DMV waive the SSN provision of §46.2, Paragraph B. for people who "do not have one" to quote the DMV manual? Is it the provision in §46.2-323, Paragraph B. that states "The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good cause shown?"
- b. Is there no provision in DMV procedures or statutes relating to them that provides for implementation of Article I, §16 of the Virginia Constitution or §57-1 & §57-2 of the Code of Virginia?
- c. Is not Article I, §16 of the Virginia Constitution self executing?
- d. Whereby Code of Virginia §57-1 & §57-2 states, "...nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities"; is the §57-1 & §57-2 statute not self executing? Can it not mitigate other statutes that touch-upon or conflict-with religious freedom?
- e. Does the Virginia General Assembly have the authority to diminish the civil capacities of those who cannot associate with the SSN on the basis of their religion?
- f. Is not religion, or the duty that we owe the Creator, and the manner of discharging it, a good cause?
- g. Does the governor not have the authority to interpose pursuant to the provisions of Article I, and Article V, Section 7 and on the basis of his oath and his natural obligations under the totality of law?
- h. What is the "Interest" of government with regard to the association of people with an SSN (a-c converted to 1-3):
 - 1) In general?
 - 2) As it relates to Code of Virginia, §46.2-323?
 - 3) As it relates to Code of Virginia, §46.2-341.12?
- i. Is it not a divine right, and natural right, to observe

the first-century *Anno Domini* law to not associate with the number of the beast? Is that not a right reserved and enumerated in Article I, §17 of the Constitution of Virginia?

- j. What provision of Virginia law obligates a man to claim a SSN as his?
- k. Are there any Federal laws that bring obligations upon Virginia touching upon this issue, and by what authority pursuant to the Constitution of the United States of America?
- l. Referring to Article I, §1 of the Constitution of Virginia, Am I not free and independent and have certain inherent rights, of which, when I enter into a state of society, I cannot, by any compact, deprive or divest my posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety?
- m. What ought the Governor to do in light of *Horen v. Commonwealth*, 23 Va. App. 735, 479 S.E. 2d 553 (1997); and *Alexandria v. The Texas Company*, 172 Va. 209; and *Thompson v. Smith, Chief of Police*. Supreme Court of Appeals of Virginia. 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604. Sept. 12, 1930?

36. Copies of the Plaintiff's June 22, 2007 letter were sent to Robert F. McDonnell and Pierce R. Homer.

37. On June 22, 2007, a Pastor of the Plaintiffs' sent a letter to Governor Tim Kaine asking him to speedily grant the Plaintiffs' religious accommodation request so that Plaintiff David could meet ministry needs of their Church.

38. July 23, 2007, Pierce R. Homer wrote to Plaintiff David. Mr. Homer noted that the Plaintiffs' requests were made on the basis of religion. He did not cite nor address any protections in law that relate to religion. He responded only to the first question put to Governor Tim Kaine. His

statements contradicted the statements in his previous letter where he commented upon the SSN waivers for reasons other than religion:

"Virginia law mandates that all applications for driver's licenses contain the SSN of the applicant... At present, there is no legal basis upon which to exempt an applicant from compliance with this requirement."

39. On July 30, 2007, Plaintiff wrote a third letter to Tim Kaine, reiterating Plaintiffs' request for religious accommodation. The letter cited violations of Virginia Constitution, Art. I, Sections 1, 2, & 16; Code of Virginia §57-1, §57-2, and §57-2.02; Virginia rules of law espoused in *Alexandria v. The Texas Co.*, 172 Va. 209; *Thompson v. Smith, Chief of Police*. Supreme Court of Appeals of Virginia. 155 Va. 367 (Sept. 12, 1930); and *Horen v. Commonwealth*, 23 Va. App. 735 (1997). Plaintiff David stated:

"I am through these letters doing what I can to remedy this situation. I had great hope that care would be taken on your part, in good faith, to resolve this problem rightly in keeping with good government."

40. On July, 30, 2007, Plaintiff David wrote to Pierce R. Homer, saying:

"I cannot see how you can rationally say that there "no legal basis upon which to exempt an applicant from compliance with this requirement." (*Sic*) Please read the Virginia Constitution, Article I. Particularly read the Virginia Constitution, Article

I, Section 16. Read the Code of Virginia, §57-1 & §57-2. Go on to read §57-2.02."

41. The State of Kentucky has a statutory mechanism to allow people to obtain a driver's license without identifying with an SSN if either the applicant's name has never been associated with a SSN or if they have a bona fide religious objection to the practice.

42. In December, 2007, Plaintiffs applied for United States Passports with a request for religious accommodation to waive the requirement to identify with a SSN. The passport form states:

"With the exception of your Social Security Number (see Federal Tax Law statement on Instruction Page 3), you are not legally required to provide the information requested on this form. However, failure to do so may result in Passport Services' refusal to accept your application or result in the denial of a US passport."

- The statement on Instruction Page 3 says:

Section 6049E of the Internal Revenue Code (26 USC 6039E) requires you to provide your Social Security Number (SSN), if you have one, when you apply for a US passport or renewal of a US passport. If you have not been issued a SSN, enter zeros in box #5 of this form. If you are residing abroad, you must also provide the name of the foreign country in which you are residing. The Department of State must provide you SSN and foreign residence information to the Department of Treasury. If you fail to provide the information, you are subject to a \$500 penalty enforced by the IRS. All questions on this matter should be directed to the nearest IRS office."

- Among some other references to the demand for a

SSN which are not included herein, the Information Page 3 also says:

"In addition to reporting your Social Security Number to Treasury and using it in connection with debt collection, the Department checks Social Security Numbers against lists of persons ineligible or potentially ineligible to receive a US passport."

43. In mid-January, 2008, both Plaintiffs received passports without being required to identify with a SSN or associate with a SSN related to the passport application or records.

44. In 1987, The Federal Court of Appeals decided a similar case in *Leahy v. District of Columbia*, 833 F.2d 1046 (D.C.Cir. 1987), applying the test found in Code of Va. §57-2.02.

FIRST CAUSE OF ACTION

REQUEST FOR TEMPORARY INJUNCTION AND/OR PERMANENT INJUNCTION WHERE APPLICABLE

45. The allegations in Paragraphs 1 through 44 of this Complaint are re-alleged and incorporated herein by reference.

46. The use of a private automobile by the Plaintiff's is absolutely necessary in the ordinary course of their life, Christian ministry and business.

47. The use of an automobile has been declared a common right and not a mere privilege as *stare decisis* in *Thompson v. Smith, Chief of Police*. Supreme Court of Appeals of Virginia.

155 Va. 367 (Sept. 12, 1930)

48. The use of an automobile as they are available to the plaintiff's in the ordinary course of life, Christian ministry and business is a property right in the pursuit of life, liberty, happiness and safety. According to *stare decisis* of *Alexandria v. The Texas Co.*, 172 Va. 209, Plaintiff's may enjoin or ignore the license requirement when and unconstitutional condition has been placed upon the privilege of the license.

49. Obligating the Plaintiff's to identify or associate themselves with a SSN places a substantial burden upon the obligations of their religion and practices.

50. Removal of the liberty to use the automobile at the time, place, private discretion, and to use it in Christian ministry by the direction of the Holy Spirit, and when there is good that they know they ought to do with the use of an automobile (See James 4:17), has been, is, and will be an unrecoverable loss to the Plaintiff and to those whom they minister to, and will interfere with, and places a substantial burden upon, the Plaintiff's obligations of religion. It also interferes substantially with, and places and unrecoverable burden upon, the Plaintiffs' other rights of life, liberty and the pursuit of happiness, and other property rights.

51. The Defendants have indicated that they will grant the Plaintiffs' requests to have driver's license records without associating them with a SSN for other than reasons of religion if the SSA eradicates the Plaintiff's names from their records,.

52. The Defendants have indicated that they will change their records if the Court says that the Plaintiffs names are no longer associated with any SSA record numbers.

53. If the Plaintiffs change their names, the SSA records will not be associated with their names, and the Defendants will grant the Plaintiffs' request to have driver's licenses.

54. It is unlawful for the Defendants to place an unconstitutional condition, violating the Plaintiffs' constitutionally protected rights of the highest order, in order for the Plaintiff to obtain the driver's license privilege technically required to exercise the common rights of automobile use in the ordinary course of life, business and ministry.

55. It is unlawful for the Defendants to deny the request for accommodation for religious reasons when the Defendants will make an accommodation for administrative technicalities. **It shows hostility toward religion, not**

neutrality.

56. Virginia Courts regularly grant injunctions or waivers, and grant driving privileges to those who have violated the driving laws endangering the public safety through reckless driving, or driving while intoxicated.

57. The Plaintiff David has over 30 years of automobile use, a history of safe driving and no history of dangerous driving. He has rarely been cited for minor infractions of traffic laws and has no citations for collisions. Neither of the Plaintiffs drink alcohol or consume intoxicants.

58. The Plaintiffs have a property right in their names and will suffer unrecoverable loss if they are have to change their names in order to fulfill the technicality required by the Defendants. Yet the general hurts and losses to be suffered by the change of name pales in comparison to the loss of liberty related to the use of an automobile in the ordinary course of life, ministry and business.

59. The Defendants have not evidenced that the Plaintiffs cannot safely operate their automobiles in the ordinary course of life, Christian ministry and business.

60. That Defendants cannot show that the Plaintiff will pose a hazard to the public if they are granted driver's licenses without identifying with a SSN on the driver's

license records.

61. The Plaintiffs have exhausted all other remedies to no avail due to deliberate indifference of the Defendants.

62. The Plaintiff's have demonstrated facts, law, and violations on the part of the Defendants, and have come with clean hands to show the Plaintiffs have an colorable action that has a very reasonable possibility of success.

63. There is no interest of government "in general" to coerce a man into affiliating with a unique number to fulfill divine, natural fundamental or common law. Coercing a man into affiliating with a unique number violates revealed divine law according to Revelation, Chapter 13.

64. The use of a unique number merely has the 'potential' to be advantageous "in general" for administrative convenience.

65. There is no compelling interest, or legitimate interest, or reasonable interest "to the person" in affiliating the Plaintiffs with a SSN.

66. There is a less restrictive means to fulfill the DMV tracking requirements, and the DMV has demonstrated it.

67. Farmers and commercial fisherman now use their motor vehicles in the ordinary course of business without licenses by statutory exemption and do not pose any special

hazard on the public safety.

68. In United States Court cases relating to religious objections to identifying with SSNs, where the strict scrutiny test of Code of Virginia 57-2.02 is applied, the religious objectors have prevailed against the government. See *Leahy v. District of Columbia*, 833 F.2d 1046 (D.C.Cir. 1987). *Callahan v. Woods*, 736 F.2d 1269, US Ct. App., 9th Cir. (1984). *Stevens v. Berger* 428 F.Supp. 896, U.S. Dist. Ct., E.D. N.Y (1977).

69. Code of Virginia §57-2.02 strict scrutiny test was implemented to counter government tendencies to apply the faulty rational basis test of *Employment Division v. Smith*, 494 U.S. 872 (1990) *citing* *Bowen v. Roy*, 476 U.S. 693 (1986), a SSN case. Even *Bowen v. Roy* indicated strict scrutiny would apply when the agency had other mechanisms to accomplish their record keeping/tracking requirements.

70. **Therefore Plaintiffs seek temporary injunction upon Defendants** Robert F. McDonnell, and Linda Curtis in their capacities to prosecute the Plaintiffs under 46.2-300 for using their automobiles, lack of licenses notwithstanding during the period that this complaint is being adjudicated.

71. **The Plaintiff's seek permanent injunction upon the Defendant the Commonwealth of Virginia, Department of**

Transportation, and Department of Motor Vehicles, and other Defendants as applicable, from associating SS Numbers with new records of the Plaintiffs.

72. **If necessary, the Plaintiff's seek permanent injunction upon Defendants Robert F. McDonnell, and Linda Curtis** to not prosecute the Plaintiffs under 46.2-300 for using their automobiles, lack of licenses notwithstanding, if the Defendants refuse to accommodate the Plaintiff's religious accommodation notwithstanding a Court ruling in favor of the Plaintiff.

SECOND CAUSE OF ACTION

(Violation of Code of Virginia, Section 57-2.02)

74. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

75. The Defendants failed to review the Plaintiff's request for accommodation of his religious conviction that he could not be identified with a SSN according to the standards and procedures required by Code of Virginia 57-2.02.

76. Failure of the Defendants to review the Plaintiff's religious accommodation request and to apply the standards of Code of Virginia 57-2.02 was arbitrary and capricious, in bad faith and without rational basis, and contrary to law. The failure of the Defendants review the Plaintiffs' request

according to the standards and mandatory published procedure, whereby Plaintiffs are seriously prejudiced, resulting in the denial of their access to application for a driver's license causing caused, and continue to threaten the Plaintiff's with a promise of loss of liberty and property under 46.2-300, and resulting in harm and damage and loss in liberty and property through emotional and mental anguish and suffering and damage to their reputation and other liberty and property. It also resulted in interfering with, and denying, the Plaintiffs' duties of religion and the manner of discharging it. Damages in the amounts and ways set forth in the Prayer request for, Relief below.

THIRD CAUSE OF ACTION

(Religious Discrimination and Wonton Violation of Sections Virginia Code Section 57-1 and 57-2.)

77. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

78. From about August of 2001 and continuing to date, the Commonwealth of Virginia and the other Defendants illegally and unlawfully discriminated against the Plaintiffs based on religion, depriving them of their civil capacities, unduly enforcing, restraining, molesting, and burthening the Plaintiff on account of the beliefs and practices of their religion in violation of the Act for Religious Freedom,

Virginia Code Section 57-1 & 57-2. The violation is actionable according to Code of Va. §8.02-221.

79. The discriminatory actions taken against the Plaintiffs on the basis of religion are arbitrary, capricious, in bad faith, without any rational basis; contrary to law divine, natural, common, fundamental and civil; whereby Plaintiffs were seriously prejudiced, resulting in their unlawful incapacity to apply for the benefit of a driver's license, driver's license benefits, and are threatened with loss of liberty, incarceration, punitive fines, and damage to their reputations and causing other damage and harm remedied in such amounts and ways set forth in the request for Relief below.

FOURTH CAUSE OF ACTION

(Violation of the Article I, Section 16, of the Virginia Constitution and the First Amendment of the United States Constitution)

80. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

81. The Commonwealth of Virginia, and the other Defendants illegally, unlawfully and unconstitutionally discriminated against the Plaintiffs on account of their religious faith, beliefs, convictions and practices, thereby depriving them of their right to the Free Exercise of Religion

as guaranteed by the Virginia Constitution, Article I, Section 16, and the First Amendment to the United States Constitution.

82. The failure of the Commonwealth to afford Plaintiffs and to fulfill their compelling interest to protect the Plaintiffs, in the free exercise of their religious faith, beliefs, convictions and practices was arbitrary, capricious, in bad faith, without any rational basis and contrary to Virginia Constitution, Article I, Section 16, and the First Amendment to the United States Constitution, whereby the Plaintiff's were and are seriously prejudiced, resulting in his denial of the privilege of access to driver's license, driver's license benefits, undue denial of the common right to use a private automobile available to them, undue denial of their property rights, and are threatened with loss of liberty, incarceration, punitive fines, and damage to their reputations and causing other damage and harm remedied in such amounts and ways set forth in the Request for Relief below.

FIFTH CAUSE OF ACTION

(Violation of Article I, Section 11 of the Virginia Constitution & Fifth Amendment to the United States Constitution)

83. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

84. The Plaintiffs have a life, liberty, pursuit of

happiness and other property interests in the use of their private automobiles in the ordinary course of life ministry and business. They are however being punished with the taking of their life, liberty, pursuit of happiness and other property rights in the ownership and use of a private automobile without due process of law as if they were some criminal who does, or is prone to, endanger the public safety by some unlawful, reckless or endangering act. When the Plaintiffs attempted redress through the Defendants, the Defendants deliberately, in bad faith, arbitrarily and capriciously shirked addressing the Plaintiffs' complaints, queries and other promptings for redress put before them.

85. The Defendants refused to apply the laws of Virginia to the Plaintiff's request for accommodation of his religious conviction that he could not be identified with a SSN.

86. Failure of the Defendants to review the Plaintiff's religious accommodation request, review and apply Virginia, and United States, Constitutional law, and the Act for Religious Freedom put before the Defendants as that law conflicted with the Defendants' practices against the Plaintiffs, and failure to apply the standards of Code of Virginia 57-2.02 was arbitrary and capricious, in bad faith and without rational basis, and contrary to law. The failure

of the Defendants review the Plaintiffs' request according to the law and conflict put before them, in their Constitutional office, by standards and mandatory published procedure, whereby Plaintiffs are seriously prejudiced, resulting in the denial of their access to application for a driver's license without due process of law, caused, is causing and continues to threaten the Plaintiff's with a promise of loss of liberty and property under 46.2-300, and resulting in harm and damage and loss in liberty and property through emotional and mental anguish and suffering and damage to their reputation and other liberty and property.

87. Damages in the amounts and ways set forth in the Request for, Relief below.

SIXTH CAUSE OF ACTION

**(Violation of Article V, Sections 7 and 8
of the Virginia Constitution)**

88. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

89. The Defendant Tim Kaine, acting under the color of Governor, directed Pierce R. Homer under the color of Secretary of Transportation, to act instead of the Governor whom was approached directly by the Plaintiff for redress. The Governor in bad faith, arbitrarily and capriciously failed to ensure that the law in Virginia was faithfully executed

when it was squarely put before him by the Plaintiff. The Virginia Constitution did not render authority to the office of Governor to abdicate the duties of Governor to some other man. Tim Kaine, under the color or cloak of Governor, violated his oath of office when he oversaw the violation of Virginia Constitutional law, and Virginia statutes relating to religious freedom, and when violated his obligations to Virginia Constitution, Article V, Sections 7 and 8, and the United States Constitution, to the hurt of the Plaintiff's and to the hurt of the Commonwealth.

89. Damages in the amounts and ways set forth in the Prayer Request for, Relief below.

SEVENTH CAUSE OF ACTION

WRIT OF MANDAMUS

94. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

95. Virginia Constitution, Article V, Section 7, requires one in the office of Governor to faithfully execute the law.

96. Virginia Constitution, Article V, Section 8, says the Governor can request an opinion in writing from the heads of his Executive Departments that shall be rendered to the Governor under oath. It does not give the authority of the

Governor to allow his Department Heads to usurp the Governor's office or duty. Code of Virginia §2.2-104 reminds the Governor that he has no authority to shirk his duty to some other person.

97. Virginia Constitution, Article I, Section 12 provides for the right of the Plaintiff to petition the Governor for redress.

98. Since the Defendants wantonly and willfully shirked their duty, they have abdicated their right to weigh in on these matters now that they have pushed the Plaintiffs beyond toleration to the point where they brought this action before the Court. The Defendants need guidance and supervision from the Court, and indeed have invited it when they told the Plaintiffs that the DMV would change their records upon a Court's instructions.

99. Therefore, the Plaintiff moves that a Writ of Mandamus be issued to the Defendant Tim Kaine, that he fulfill his obligation under the law, Va. Const., Art V, Sect. 7. That he ensure that his agency act on the law as declared by the Court pursuant to the judgments pleaded for herein.

EIGHT CAUSE OF ACTION

DECLARATION

100. The allegations in Paragraphs 1 through 99 of this

Complaint are re-alleged and incorporated herein by reference.

101. The Defendants are clinging to the administrative directive Code of Virginia 46.2-323 as if it were the highest law of the land; superseding Code of Virginia 57-1, 57-2, 57-2.02; several sections of the Virginia Constitution, especially Article I, Section 16; the U.S. Constitution, especially the First Amendment; and common, natural and divine law. The Defendants are endued with great coercive power yet, by their actions, are ignoring the authority for which that power has been granted. They are turning the authority structure of law topsy-turvy, putting administrative convenience of one 'means' of government above the 'ends' of government of the highest order. It must be determined if the Defendants actually have a duty under the law that the Court has the authority to mandate them to exercise. These questions of law that are critical to the resolution of the complaint are put to the Court for Declaration:

102. What is the standard for weighing and classifying the different levels of governmental interests such as compelling, legitimate, reasonable or other interests?

103. Is the protection of Freedom of Religion a compelling governmental interest, or some other interest such as legitimate or reasonable? What is the criteria to make the

determination?

104. Does not the law relating to regulating the use of automobiles on the public highway have an obligation to protect each man's right to lawfully use the automobile as well as to protect the public safety from the misuse of an automobile?

105. Is the Virginia Driver's license application requirement to identify with a SSN directory or mandatory?

106. Do the Defendants have the authority to waive the SSN requirement for a "good cause shown", religious freedom statutes and constitutional religious freedom protection notwithstanding?

107. Is Virginia Constitution, Article I, Section 16 self executing? What impact does that section have upon statutes and government practices in conflict with it in general, and in specific or unique circumstances? What then are the Duties of Officers serving under oath to the Constitution when a statute or policy is on its face at odds with Va. Const., Art. I, Sect. 16?

108. Does allowing an accommodation for an administrative technicality but denying the accommodation for reasons of religion show neutrality or hostility toward religion?

109. Is not the right and duty of religion to not

identify with the number of the beast protected by Va. Const., Article I, Sections 1, 15, 16 & 17, common law, natural law and divine law?

110. On the basis of Va. Const., Art. I, Sections 1, 11, 15, 16, and 17, and common law, natural law, and divine law, do the people of Virginia have the authority to require the Plaintiff's to identify with the SSN against their religious obligations? If not, by what authority can the Virginia legislature do so?

111. If the Defendants have the ability to correct or purge the record of the Plaintiffs old driver's license accounts by removing the SSN previously associated with them, do they have the obligation to do so considering the provisions of the Virginia Constitution and statutes related to the preserving Freedom of Religion, and relating to the purging of records?

112. Does Tim Kaine have a duty to interpose when an agent or agency of the Executive Department is violating divine, natural, fundamental, or statutory law, under the color of civil statute, and the matter is plainly put before him?

113. According to Virginia Const., Art. V. Sect. 7 & Code of Virginia §2.2-104, does Tim Kaine have a duty to act when

the Plaintiffs have put the matter before him, and when the Plaintiff has brought the matter back to him after M.R. Kaine's attempts to subrogate or abdicate his duty to a Department Head?

114. Does Pierce R. Homer, because he is the Secretary of Transportation under an oath to uphold the Constitutions of the United States and Virginia, have a duty to interpose when an agent or agency of the his Department is violating law under the color of civil statute when this matter has been plainly put before him, and delegated to him by the Governor.

115. Does D.B. Smit, because he is Commissioner of the Department of Motor Vehicles under oath to uphold the Constitutions of the United States and Virginia, when the matter has been put plainly put before him by the Plaintiff, the Governor, or the Secretary of Transportation, have a duty to interpose when his agency is violating law under the color of civil statute?

116. Is deliberate indifference of the conflict of law that is put before Tim Kaine, Pierce R. Homer, or D.B. Smit, a lawful act or an unlawful act? Does it constitute bad faith?

117. Are any of the Defendants liable for tort action and damages in their private capacity if found to act contrary to law, in violation of their duty, or in bad faith, or when they

violate the law and the Plaintiffs' rights acting merely under the color or cloak of State office or the color of law?

118. According to Code of Virginia, §8.01-195 (series) or other provision of immunity waiver law, is the Commonwealth of Virginia liable for tort action and damages on the basis of its violations of Virginia Statute, and Constitutional provisions, through the actions of the Commonwealth's officers and agents?

NINTH AND ALTERNATIVE CAUSE OF ACTION

(Change of Plaintiffs' names with suppression of the new record from public disclosure and reporting)

119. The allegations in Paragraphs 1 through 69 of this Complaint are re-alleged and incorporated herein by reference.

120. The Defendants have indicated that there is relief available to disassociate the Plaintiffs names with a SSN if the Plaintiffs' names and personal information is not associated with the SSA's records. There is no law directing or mandating the Plaintiffs associate with a SS record or number, or participate in the SS benefit program. The Plaintiffs have good cause to change their names, and to not have their name change reported to agencies that may try to associate the Plaintiff's names with a SSN against their will.

If other suitable relief to disassociate their names with a SSN is not readily adequate or available; to stop damage to

their life, liberty, reputation and eternal standing, and other good cause, the Plaintiffs move for such suitable relief as specified below.

REQUEST FOR RELIEF

Temporary And Permanent Injunction

(First Cause of Action)

(1) The Plaintiffs request the Court to temporarily enjoin Defendants Robert F. McDonnell, and Linda Curtis from prosecuting the Plaintiffs under 46.2-300 for using their automobiles, lack of licenses notwithstanding during the period that this complaint is being adjudicated.

(2) The Plaintiff's request the Court permanently enjoin the Defendant the Commonwealth of Virginia, Department of Transportation, and Department of Motor Vehicles, and other Defendants as applicable, from associating SSNs with new records of the Plaintiffs.

(3) If necessary, the Plaintiff's also request the Court permanently enjoin the Defendants Robert F. McDonnell, and Linda Curtis in their capacities to prosecute the Plaintiffs under 46.2-300 for using their automobiles, lack of licenses notwithstanding, if the Defendants refuse to accommodate the Plaintiff's religious accommodation notwithstanding a Court ruling in favor of the Plaintiff.

REQUEST FOR RELIEF

Compensatory and Punitive Damages

(First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action)

WHEREFORE, PLAINTIFFS David and Jesse Carmichael request judgment for damages against Defendant Commonwealth of Virginia follows:

(1) Compensatory Damages in the amount of \$25,000.00 for compensation for emotional, psychological and other stress, as well as damage to Plaintiff's reputation and liberty; or an other amount that is equitable on the basis of damage that is yet to be discovered. Such amount to stand alone, not considering compensatory damages paid by natural person defendants named in their private capacity.

(2) Punitive Damages in the amount of \$25,000.00 as a punitive measure for violations of law, equity and statute.

WHEREFORE, PLAINTIFFS David and Jesse Carmichael request damages judgment against Defendant Tim Kaine as follows:

(1) Compensatory Damages in the amount of \$10,000.00, or portion shared with other defendants in their private capacity (Commonwealth of Virginia not included) that will amount to a combined total of \$25,000.00 for compensation for emotional, psychological and other stress, as well as damage to Plaintiff's reputation and liberty; or an other amount that is

equitable on the basis of damage that is yet to be discovered.

(2) Punitive Damages in the amount of \$7,500.00 as a punitive measure for violations of law, equity, and statute.

WHEREFORE, PLAINTIFFS David and Jesse Carmichael request damages judgment against Defendant Pierce R. Homer follows:

(1) Compensatory Damages in the amount of \$10,000.00, or portion shared with other defendants in their private capacity (Commonwealth of Virginia not included) that will amount to a combined total of \$25,000.00 for compensation for emotional, psychological and other stress, as well as damage to Plaintiff's reputation and liberty; or an other amount that is equitable on the basis of damage that is yet to be discovered.

(2) Punitive Damages in the amount of \$7,500.00 as a punitive measure for violations of law, equity and statute.

WHEREFORE, PLAINTIFFS David and Jesse Carmichael request damages judgment against Defendant D.B. Smit as follows:

(1) Compensatory Damages in the amount of \$10,000.00, or portion shared with other defendants in their private capacity (Commonwealth of Virginia not included) that will total \$25,000.00 for compensation for emotional, psychological and other stress, as well as damage to Plaintiff's reputation and liberty; or an other amount that is equitable on the basis of damage that is yet to be discovered.

(2) Punitive Damages in the amount of \$7,500.00 as a punitive measure for violations of law, equity and statute.

Ad Damnum - \$50,000.00 compensation and \$47,500.00 punitive damages, for a total DAMAGES of \$97,500.00.

REQUEST FOR RELIEF

MANDAMUS

(Seventh Cause of Action)

WHEREFORE, PLAINTIFFS David and Jesse Carmichael request the court issue *Mandamus* relating to the findings of law and judgments, the relief sought, pursuant to this action, based on the Defendant's duties under law.

REQUEST FOR RELIEF

Declaratory Judgment

(Eighth Cause of Action)

(1) The Plaintiffs request the Court to declare the law pursuant to those questions proffered in Paragraphs 101. through 118. herein.

ALTERNATIVE MOTION FOR RELIEF

Change of Name

(Ninth Cause of Action)

IN THE ALTERNATIVE, PLAINTIFFS David and Jesse Carmichael move the court change the legal names of the Plaintiffs in the following ways:

Change David Alan Carmichael, and Change Jesse Gray

Carmichael, to names which shall be disclosed to the Court alone; wherein such new name shall not be reported except by the minimum record of Court as is necessary to legally sanction the change. The new names shall not be reported to the SSA.

ATTORNEY'S FEES, COSTS, AND EXPENSES

The Plaintiff comes to the Court with clean hands, and did put the conflict squarely before the Defendants, trying in good faith in every way to solve the problems administratively, short of filing this action at law. It is in the interest of the Commonwealth to protect the Plaintiffs' religious liberties and to properly adjudicate the matter before the court in the interest of public religious liberty, and in the interest of protecting the citizen from undue harassment, oppression, deliberate indifference, and other wrongful acts of bad faith on the part of the Defendants who have more than shirked their solemn duty. The cost of litigation ought not to be shouldered by the injured citizen, but by those who shoulder the fault.

The foregoing facts are true, confessed by me, David Alan Carmichael in my own person for the sake of myself and my eldest son Jesse who remains my ward:

Respectfully submitted,

David Alan Carmichael
As Principal Plaintiff and as
Father and friend of fellow
plaintiff, son Jesse Carmichael
1748 Old Buckroe Road
Hampton, Virginia (23664)
757-850-1245

April 28, 2008