

IN THE CIRCUIT COURT, THIRTEENTH JUDICIAL CIRCUIT
RICHMOND, VIRGINIA

David Alan Carmichael, *et al.*,)
)
)
 Plaintiffs,)
)
 v.) No. CL08-2067-4
) Judge Spencer
 THE COMMONWEALTH OF VIRGINIA,)
 et al.,)
)
 Defendants.)

PLAINTIFF DAVID ALAN CARMICHAEL'S BRIEF FOR JAN 15, 2009
HEARING ON PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION OR
DRIVER'S PERMIT

I complained and showed by affidavit and evidentiary documents that the act of the Virginia General Assembly, through Va. Code 46.2-300 and 46.2-323, and government officers and agents through their unlawful actions, are damaging me in violation of the Virginia Constitution and statutes that touch upon the defense of my rights of property and liberty under revealed, natural, fundamental and statutory law. The government is unlawfully compelling me to forsake my religion in order to use an auto-mobile on the public highways. It is unlawfully threatening me with criminal prosecution if I exercise my property rights and privileges to use my automobile in the ordinary course of life, business and ministry in my property and liberty right of the pursuit of happiness and safety, unless I abandon my obligations of

religion. I pled for remedy by declaratory judgment and injunction, *inter alia*. See COMPLAINT, PLAINTIFF'S AFFIDAVIT IN SUPPORT OF COMPLAINT STATEMENT OF FACTS, and PLAINTIFF'S EXHIBITS

The Defendant demurred and moved to dismiss. I responded on June 10, 2008 and moved for a temporary injunction June 14, 2008. On July 8, 2008, I filed a motion for the Court to expedite a hearing schedule on my motion for injunction. I did not know the procedure for scheduling a hearing through the judge's clerk. The Defendant scheduled a hearing on Defendant's demurrer and motion to dismiss. The hearing proceeded on September 11, 2008.

The Court ruled On October 3, 2008 that I have a cause of action, if the facts are proved, on the basis of the Defendants' violations of due process and free exercise of religion provisions of the Va. Const., Art. I, Secs. 11 & 16.

I filed a timely objection to the other counts dismissed. The Defendant moved to reconsider their motion to dismiss. December 3, 2008, I filed a notice of hearing for December 23, 2008, on my motion for injunction. The Defendant objected. In a telephone conference on December 18, 2008, about the schedule for this motion, the Court scheduled a hearing date of January 15, 2009 at 4:30 p.m.

In my complaint, motion, evidence submitted and by

affidav-its, I sustain my burden of putting forth facts that I have a bona fide religious practice that is being substantially burdened by the unconstitutional Virginia legislative act and acts of the Defendants that violate law. Among other Virginia law, I raised Va. Code §57-2.02 which says:

"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."

The Defendant Attorney put forth an assertion, but no facts to demonstrate by the standard of clear and convincing evidence, that the government has a compelling governmental interest in general to associate Social Security Numbers (SSN) with driver's license records. Ascribing a "compelling interest" to the driver's license requirement of §46.2-300, and the SSN directive of §46.2-323 is contradicted by the statute making two exceptions to the driver's license requirement and the government making exceptions to the SSN directive for reasons other than religion. (See Va. Code §46.2-300; Plaintiff Exhibits 5, 10A p. 16-17, p. 22, p. 29, p. 34; Plaintiff Exhibit 10B p. 44-45; PLAINTIFF AFFIDAVIT IN SUPPORT OF COMPLAINT STATEMENT OF FACTS) It is contradicted

by Va. Code §46.2-320 saying, "The Department **may** refuse to grant an application for a driver's license in any of the circumstances set forth in §46.2-608..." rather than saying 'must refuse' an application. Their assertion is also contradicted by the Virginia Supreme Court in *Thompson v. Smith*, 155 Va. 367 showing the has the power to issue an injunction so that Mr. Thompson could use an automobile, **revocation of his driver's permit notwithstanding:**

"[23] ... (Thompson's) only remedies at law were: (1) To proceed by petition for mandamus to compel the chief of police to restore to him his driving permit, or (2) to wait until arrested upon the charge of driving without a permit and then interpose the defense that the provisions of the ordinance under which his permit had been taken from him were void. In the instant case, neither of these remedies is as complete and adequate as a suit for injunction to protect the complainant against the wrongful interference, under the color of a void ordinance, with the lawful exercise of his common personal right to drive an automobile; and the bill alleges that, unless the chief of police be restrained, complainant "will sustain irreparable injury in his pursuance of happiness and in acquiring and the use of his property." (Emphasis Added) *Thompson v. Smith*, Chief of Police. Va. Sup. Ct. App., 155 Va. 367, 386-388, 154 S.E. 579, 71 A.L.R. 604. (Sept. 12, 1930)" (Emphasis Added)

I have put forth facts by evidentiary documents and affida-vits that prohibiting my use of an automobile in the ordinary course of life, ministry and business causes irreparable injury to my pursuance of happiness and safety, and acquiring and using my property, and exercising duties of religion. Facts show that I have been injured by being

removed from my automobile, prosecuted, fined and publically ridiculed by the Court when I was cited for using an automobile after being stopped under the guise of a safety inspection. Facts showed that I have demonstrated the safe use of an automobile on the public highways for over thirty years. The Defendant's have made no claim or introduced facts to the contrary. Facts showed that my wife and children have been injured in their property and liberty rights. Their injury is an injury to me. *Blackstone's Commentaries on the Laws of England, of the Rights of Parent and Child.* Facts show that my bona fide religion is substantially burdened by any requirement to embrace or tolerate the SSN as an element of my identity or participate in Social Security.

Injunction is necessary and available by Va. Code §8.01-620 & §8.01-624, as well as §57-2.02 which states:

"A person whose religious exercise has been burdened by government in violation of this section may assert that violation as a claim or defense in any judicial or administrative proceeding and may obtain declaratory and injunctive relief from a circuit court..." Va. Code §57-2.02, Para. D.

Va. Code §46.2-320 Authority To Deny License Is Not A Mandate

In my letters to the Defendants, **I requested to know by what authority** they refused my request for religious accommodation to the Va. Code §46.2-323 directive and in 2002 returned my application and fee for renewal of my driver's

license. (Plaintiff Exhibits 1-9; Plaintiff Exhibit 10A pp. 29-30) I repeatedly asked them how, and by what authority, an administratively convenient directory SSN provision can trump laws protecting religion. They never showed that authority. The Defendant, during oral argument (11 Sept. 2008 Trans., p. 7) and on page 6 of their motion for reconsideration, **revealed a statute that merely gives colorable discretion** for the "Department" to deny my application for a driver's license because I cannot fulfill the SSN directive of Va. Code §46.2-323 on the basis of religion. They asserted §46.2-320 and §46.2-608 as a mandate trumping the laws protection of religion in Va. Const. Art. I, §1, §16 & §17; Va. Code §57-1, §57-2, §57-2.02. The Defendant said:

"If an applicant, regardless of his religious faith, fails to furnish the required information, he cannot obtain a driver's license. Va. Code §§ 46.2-323, 46.2-320(A). " Defendant MOTION FOR RECONSIDERATION, p. 6

Neither Va. Code §46.2-320 nor 323 makes that assertion.

To the contrary, Va. Code §46.2-320, merely permissively says:

"A. The Department **may** refuse to grant an application for a driver's license in any of the circumstances set forth in §46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle." (Emphasis added)

Two circumstances set forth in §46.2-608 that might justify the refusal of an application based on this case are:

"The Department may reject an application ... when:

2. The applicant has neglected or refused to furnish the Department with the information required on the appropriate official form or other information required by the Department;

6. There is reason to believe that the application or accompanying documents have been altered or contain any false statement."

The terms used in §46.2-320, para. A., **"The Department may refuse to grant an application"** does not mandate the denial of my application. Such a phrase indicates the Department is not prohibited from granting me a license, religious, privacy, political or whimsical reason for not embracing the SSN as an element of my identity. The permissive term "may" starkly contrasts the Defendant Attorney's assertion that I "cannot obtain a driver's license" "regardless of (my) religious faith."

Va. Code §46.2-320 Does Not Grant Authority For Government To Burden Religion

Even though §46.2-320 has permissive terms that allow discretion in the granting or denying of license application, the Virginia Constitution's self executing provisions of Art. I, §1, §11 & §16, along with Code of Va. §57-1, §57-2, §57-2.02, ought to trump the colorable discretion of "The Department."

"It is basic that no showing merely of a rational relationship to some colorable state interest [will]

suffice; in this highly sensitive constitutional area, only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." Horen v. Com., 23 Va. App. 735, 479 S.E. 2d 553 (1997) citing *Sherbert v. Verner*, 374 U.S. at 406; 42 U.S.C. §2000bb(b)(1)

Va. Const., Art. I, §16 (with emphasis added) says:

"That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, **all men are equally entitled to the free exercise of religion**, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. **No man shall be ... enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief**; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities."

In contrast to the "may" provision of 46.2-320, constitutional law, as well as Va. Code §57-2.02 precludes "the Department" from denying the driver's license or denying driving privileges on the condition that they abandon their religion.

"[8] The principle is well settled that a state cannot grant a privilege subject to agreement that grantee will surrender a constitutional right even though state has unqualified power to withhold grant altogether." *City of Alexandria v. Texas Co.*, *Alexandria v. The Texas Co.*, 172 Va. 209 at 217, 1 S.E.2d 296 (Feb. 20, 1939)

Va. Code §46.2-320 Is Unconstitutional Grant of Legislative Power To "The Department"

Like in *Thomson v. Smith*, the legislature has failed to fix the legal principles which are to control the discretion of "The Department" in denial of a driver's license:

"[14-16] ...That portion of the ordinance here in question which authorizes the chief of police "to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the city," **fails to declare the policy of the law and fix the legal principles which are to control the discretion** of the chief of police in the **revocation of licenses** in determining what constitutes unfitness to drive an automobile on the streets of the city; and **is void because it delegates powers essentially legislative to an administrative officer.**" (Emphasis Added) *Thompson v. Smith*, Chief of Police. Va. Sup. Ct. App., 155 Va. 367, 385-86, 154 S.E. 579, 71 A.L.R. 604. (Sept. 12, 1930)

The failure of the legislature in **fix the legal principles which are to control the discretion** of the department denying a license for failure of applicant to identify themselves with a SSN is an unconstitutional delegation of legislative powers. The items in §46.2-608 that might conceivably apply in this case, do not fix principles for "The Department" upon which to make a determination as to which circumstance particular to those items warrants a rejection and which does not. It does not indicate a person in the Department who has power to make the determination, or who the final authority is, and what notice to the applicant is required. Thus, "The Department" has unlawfully legislated without lawful authority that religious reasons for not

identifying a person by a SSN are not to be approved but those who have never had a SSN associated with them, or those who have a Court determine that a SSN is no longer associated with them are the only people whose license application will not be rejected. (Plaintiff Exhibits 5, 10A p. 16-17, p. 22, p. 29, p. 34; Plaintiff Exhibit 10B p. 44-45)

Defendant Abused Discretion Given by Va. Code 46.2-320 in Denying Accommodation on the Basis of Religion

If Va. Code §46.2-320 is not found to unlawfully delegate a legislative power by failing to fix principles for discretion, the Defendants unconstitutionally abused their discretion in not applying the legal principles of the Virginia Constitution and Codes touching upon religion when they denied my license renewal application and my request for religious accommodation. Nowhere does §46.2-320 require the denial of an application for a driver's license in any of the circumstances set forth in §46.2-608. Nowhere in Va. Const., Art. I, §1, §11, & §16; Va. Code §57-1, §57-2, §57-2.02 is an exception to religious freedom made for driver's license applications and records.

Horen v. Commonwealth, 23 Va. App. 735, is On-Point and Supports Law Claims and Injunction Relief Sought in This Case.

The government is conditioning the use of an automobile on **compelling me to forego religious practices**. The authority

they cite for doing so is merely directory rather than mandatory. They make exceptions to the driver's license requirement, and make exceptions to the SSN requirement for reasons other than religion. They are doing it under the color of law citing Va. Codes §46.2-300, §46.2-320 and §46.2-323, while they boldly ignore the written law of Va. Const. Art. I, §1, §11, §16, and §17; and Va. Codes §57-1, §57-2, and §57-2.02. The legislative act codified in Va. Codes §46.2-300, §46.2-320 and §46.2-323, and the arbitrary denial of a license for non-SSN-identification on religious grounds, in contrast to license approval for non-SSN-identification for non-religious grounds, is capricious and exhibits hostility rather than neutrality toward religion in violation of the Virginia Constitution and statutes touching upon protection of religion.

"[3,4] **Where the state creates a mechanism for legitimate individualized exceptions but fails to include religious uses among these legitimate exceptions, discriminatory intent may be inferred.** *Ballweg v. Crowder Contracting Co.*, 247 Va. 205, 212-13, 440 S.E.2d 613, 618 (1994). **Failure to make allowance for bona fide religious uses "tends to exhibit hostility, not neutrality, towards religion..."** citing *Bowen v. Roy*, 476 U.S. 693, 106 S.Ct. 2147, 90L.Ed.2d 735 (1986); *Ballweg v. Crowder Contracting Co.*, 247 Va. at 213, 440 S.E.2d at 618." *Horen v. Commonwealth.*, 23 Va. App. 735, 743-744, 479 S.E. 2d 553 (1997)

"[6,7]... **A Substantial burden** is imposed on free exercise of religion **when governmental action** compels party to affirm belief he or she does not hold, discriminates on basis of religious beliefs, inhibits

dissemination of particular religious beliefs, or **compels party to forego religious practices**. Citing *Battles v. Anne Arundel County Board of Educ.*, 904 F.Supp.471, 476-77 (D.Md.1995); cf. *Ballweg v. Crowder Contracting Co.*, 247 Va. 205, 209-11, 440 S.E.2d 613, 616-17 (1994). " *Horen v. Commonwealth.*, 23 Va. App. 735, 745, 479 S.E. 2d 553 (1997)

Here I quote *Horen v. Commonwealth* at length:

"The Free Exercise Clause of the United States Constitution, Article I, U.S. Const. amend. I, the Constitution of Virginia, Va. Const., art. I, §16, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb(b)(2) (1994), prohibit state imposition of substantial burdens on the exercise of religion unless the state advances a compelling government interest which is furthered in the least restrictive manner.

In *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), the United States Supreme Court found that a religiously neutral law of general application that substantially burdens the free exercise of religion will survive free exercise challenge where the law rationally advances a legitimate state interest. However, where a law that substantially burdens the free exercise of religion is not "neutral," the government must prove that the law is necessary to advance a compelling government interest and does so in the least restrictive manner. *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972)

We find that Code § 29.1-521(10) is not a religiously neutral law. In relevant part, Code §29.1-521(10) makes it a class three misdemeanor for any person to "possess . . . at any time or in any manner, any wild bird . . . or any part thereof, except as specifically permitted by law and only by the manner or means and within the numbers stated.

Possession of owl feathers is permitted under Virginia law by taxidermists, academics, researchers, museums, and educational institutions.

See Code §29.1-415 through 29.1-422. Further, federal law specifically allows for the possession and use of eagle feathers in the Native American religion. See C.F.R. §22.22 (1984). However, at the time of trial there was no specific exception

for the possession of owl feathers for religious use under either Code §29.1-521(10) or under federal law. Consequently, while allowing for a variety of legitimate secular uses of owl feathers, Code §29.1-521(10) inexplicably denies an exception for bona fide religious uses and thereby draws specific subject matter distinctions in regulating the use of feathers.

Where the state creates a mechanism for legitimate individualized exceptions but fails to include religious uses among these legitimate exceptions, discriminatory intent may be inferred. *Ballweg v. Crowder Contracting Co.*, 247 Va. 205, 212-13, 440 S.E.2d 613, 618 (1993). Failure to make allowance for bona fide religious uses "tends to exhibit hostility, not neutrality, towards religion. . . ." *Bowen v. Roy*, 476 U.S. 693 (1986); *Ballweg*, 247 Va. at 213, 440 S.E.2d at 618. In *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, the United States Supreme Court, found that "[t]he Free Exercise Clause 'protect[s] religious observers against unequal treatment. '" 113 S. Ct. 2217, 2232 (1993). Accordingly, the Court held that because the city ordinance made exceptions for other religiously and secularly motivated animal killings, it could not be characterized as a law of neutral applicability. 113 S. Ct. at 2232. Like the ordinance in *Hialeah*, Code § 29.1-521(10) makes exceptions for some uses while excluding bona fide religious uses and therefore is not a religiously neutral statute. Consequently, Code § 29.1-521(10) must be examined under the "compelling interest" test as set forth in *Sherbert*. Finding that Code § 29.1-521(10) is not a religiously neutral statute and therefore must pass the compelling interest test, we do not reach the issue of whether this case involves an instance in which the burdening of the free exercise of religion is coupled with the burdening of another constitutionally protected right.

Even if we were to find that Code § 29.1-521(10) was a neutral law of general applicability, application of the compelling interest test would nonetheless be required under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb(b)(2) (1994) (hereinafter "RFRA"). Responding to *Smith*, Congress passed the RFRA in 1993. The RFRA was designed to

"restore the compelling state interest test . . . and to guarantee its application in all cases where free exercise of religion is substantially burdened." Id. at § (b)(1). "" **Horen v. Commonwealth**, 23 Va. App. 735, 479 S.E. 2d 553 (1997)

The RFRA referenced in *Horen* above is the model by which Va. Code §57-2.02 was framed. Our situation demands more scrutiny where other rights of property and liberty are being lost.

**United States Federal Court Rulings
In SSN Religious Objection Cases Support Injunction**

Where Federal Courts have considered both facts and merits in SSN religious objection cases **under the standard of scrutiny required by Code of Va. §57.2-02**, the religious objector prevailed, even when the person was applying for a benefit closely aligned with the Social Security program and its objects. See *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) where religious objector actually applied for welfare benefits. In a similar case, a divided U.S. Supreme Court abandoned strict scrutiny for the "rational basis" test in a SSN case, *Bowen v. Roy*, 476 U.S. 693 (1986).

Rather than requiring the government to "demonstrate" a compelling interest to the person, they were merely required to prove a rational basis for the SSN use to further a merely

"legitimate" interest of government. In a SSN objection/driver's license case following the *Bowen v. Roy* divided-court loosening of scrutiny for protection of religion, the Federal Court of Appeals rejected a lower court's use of the *Bowen v. Roy* "rational basis" in *Leahy v. District of Columbia*, 833 F.2d 1046 (D.C.Cir. 1987)

"Apparently because of the fragmented character of the Supreme Court's disposition in *Roy*, the district court took that case to have limited the application of *Sherbert* and *Thomas* and to have announced a less rigorous standard of scrutiny ("reasonable means of promoting a legitimate public interest") under which *Leahy's* claim would fail. This standard, proposed by Chief Justice Burger in a portion of his *Roy* opinion joined by only two other Justices (Justices Powell and Rehnquist), 106 S.Ct. at 2149, 2153-58, was expressly rejected by five Justices. See 106 S.Ct. 2158-60 (Blackmun, J.), 2164-69 (O'Connor, J., joined by Brennan, J., and Marshall, J.), 2169 (White, J.).⁵ As the Court restated with unmistakable clarity in *Hobbie v. Unemployment Appeals Comm'n of Florida*, --- U.S. ----, 107 S.Ct. 1046, 1049-50, 94 L.Ed.2d 190 (1987), the compelling state interest test of *Sherbert* and *Thomas* continues to define the Supreme Court's free exercise clause jurisprudence. "*Leahy v. District of Columbia*, 833 F.2d 1046, 1052 (D.C.Cir. 1987)

Virginia's *Religious Freedom Preserved (RFP)*, Va. Code §57-2.02, was enacted to counter the use of the rational basis test of *Bowen v. Roy* and *Employment Div. v. Smith*. Va. Code §57-2.02 is Virginia's version of the Federal Religious Freedom Restoration Act (RFRA), specifically like section 42 USC §2000bb-1. Yet, even with the less strict standard of *Bowen v. Roy*, I should be prevail since the Defendant makes

exceptions to the SSN identification requirement by law and practice for reasons other than religion.

"If a state creates such a mechanism, its refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent." *Bowen v. Roy*, 476 U.S. 693, 708; 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986)

The *Bowen v. Roy* Court indicated that the SSN objector would have prevailed had the Court applied the strict scrutiny compelling interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963). In *Bowen v. Roy* the Court was motivated to abandon strict scrutiny when the religious objector was trying to prohibit the Social Security Administration from using their own agency's number to administer the food stamp benefit program. Participation in Social Security is a requirement to participate in the food stamp program. Participation in Social Security is not a requirement to use an automobile or obtain a driver's license. Even more significantly, the *Bowen v. Roy* indicated that even the Social Security Administration's use of the SSN for welfare reporting, tracking, enforcing and identification purposes did not rise to the level of a "compelling" interest. They said that the use of the SSN was "rationally" used to further a "legitimate" purpose. If the use of a SSN rational for merely a "legitimate" interest, the use of the welfare

benefit agencies number cannot rise to the level of a "compelling" interest for to use of a Virginia automobile that is not a part of the welfare benefit program.

Thompson v. Smith, 155 Va. 367 is On-Point and Supports Injunction Relief Sought in This Case.

Like in *Thompson v. Smith*, I put forth and showed facts that I have been unlawfully stripped of valuable property rights and am in constant danger of sustaining further irreparable injury. The Court in *Thompson* said:

"The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day. This right is not a mere privilege which a city may permit or prohibit at will. " *Thompson v. Smith* at 377[5].

There is also the constant threat of a multiplicity of suits. Like in *Thompson v. Smith*, the suitable remedy for the sake of justice is injunction, or at least a temporary permit or restraining order. *Thompson v. Smith* is herein quoted at length so the Court can see the parallels to my case and my motion:

"[14-16] ...This being true, the provision that the person whose permit is revoked by the chief of police may apply to the judge of the municipal court for a reinstatement thereof cannot constitute an adequate remedy at law.

[17] But it is said that a suit for injunction will not lie in the instant case because no property rights of the appellant have been invaded. **Whether a right to use the public highways for the ordinary and usual purposes of life be a property right or not, it is a very valuable right, not a mere privilege.**

[18] The invalidity or unconstitutionality of a statute or ordinance is not of itself a ground of equity jurisdiction. A court of equity has not jurisdiction to enjoin acts only because they are attempted or threatened under color of an unconstitutional or void statute or ordinance. Further circumstances must be shown which bring the case within some recognized ground of equity jurisdiction, 14 R.C.L. Injunctions, sec. 141; Coal & Coke Ry. Co. v. Conley et al., 67 W.Va. 129, 67 S.E. 613; but **inadequacy of legal remedy or irreparable injury are well-recognized grounds of equity jurisdiction.**

[19] **It is recognized that an injunction will lie to enjoin the threatened enforcement of an invalid statute or ordinance where the lawful use and enjoyment of private property will be injuriously affected by its enforcement** (Bristol, etc., Co. v. Bristol, 97 Va. 304, 33 S.E. 588, 75 Am. St. Rep. 783; City of Roanoke v. Bolling, 101 Va.182, 43 S.E. 343), **or where the right of a person to conduct a lawful business will be injuriously affected thereby** (Parrish v. City of Richmond, 119 Va. 180, 89 S.E. 102), **unless the remedy at law be manifestly as complete and adequate as an injunction suit.** But it has been said that it is beyond the scope of the powers of a court of equity to enforce personal rights as distinguished from property rights. 32 C.J. Injunction, sec. 430, p. 272.

[20] **This distinction, we think, is not well made. Fundamental personal rights, such as the right of a person to travel the public highways of the state, are not less sacred and valuable rights, or less subject to the protection of a court of equity, in a proper case, than are property rights.**

[21,22] **An injunction suit is often a more appropriate and effective method of resisting the invasion of or interference with such a personal right under color of void statute or ordinance than any common-law remedy; and where the remedy at law is not as complete and as fully adequate as an injunction suit, or where the threatened or attempted enforcement**

of a void statute or ordinance will do irreparable injury to a person in interfering with the exercise of such a common fundamental personal right, a suit for injunction will lie. And, by irreparable injury is meant an injury of such a nature that fair and reasonable redress may not be had in a court of law, and that to refuse the injunction would [587] be a denial of justice. High on Injunctions (4th Ed.) sec. 22.

[23] Freedom from the restraint imposed by this void ordinance upon the exercise of Thompson's common right to drive his automobile on the streets of the city of Lynchburg is the real object of the complainant's bill. His only remedies at law were: (1) To proceed by petition for mandamus to compel the chief of police to restore to him his driving permit, or (2) to wait until arrested upon the charge of driving without a permit and then interpose the defense that the provisions of the ordinance under which his permit had been taken from him were void. In the instant case, neither of these remedies is as complete and adequate as a suit for injunction to protect the complainant against the wrongful interference, under the color of a void ordinance, with the lawful exercise of his common personal right to drive an automobile; and the bill alleges that, unless the chief of police be restrained, complainant "will sustain irreparable injury in his pursuance of happiness and in acquiring and the use of his property." (Emphasis Added) *Thompson v. Smith*, Chief of Police. Va. Sup. Ct. App., 155 Va. 367, 386-388, 154 S.E. 579, 71 A.L.R. 604. (Sept. 12, 1930)

My Obligation of Religion To Not Embrace The SSN As An Element of My Identity Is Bona Fide And Law Warrants Injunctive Relief

The prohibition against affiliation with the number of the beast is well known in the Western world and courts have recognized the belief as being a rational, biblically based belief that is observed by certain people of the Christian faith. See *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). I show by affidavit and evidentiary documents that I have *bona fide* convictions that pervade my life in belief and practice. I show the Defendant has unlawfully put a substantial burden upon my religion through the directive to associate myself with the number of the beast SSN as a bar to my being able to apply for a driver's license to fulfill the requirements of Va. Code §46.2-300. With that bar to me applying for a driver's license, Va. Code §46.2-300 threatens me with criminal penalty if I use an automobile for purposes of life, Christian ministry, or business unless I abandon those for commercial fishing or farming activities.

"A substantial burden is imposed on the free exercise of religion where governmental action compels a party to affirm a belief they do not hold, discriminates on the basis of religious beliefs, inhibits the dissemination of particular religious beliefs, or compels a party to forgo their religious practices." *Horen v. Commonwealth*, 23 Va. App. 735, 479 S.E. 2d 553 (1997) citing *Battles v. Anne Arundel County Board of Educ.*, 904 F. Supp. 471, 476-77 (D. Md. 1995); cf. *Ballewg v. Crowder Contracting Co.*, 247 Va. 205, 209-11, 440 S.E.2d 613, 616-17 (1993)

"Now all acts of legislature apparently contrary to natural right and justice, are, in our laws, and must be in the nature of things, considered as void. The laws of nature are the laws of God; whose authority can be superseded by no power on earth. A legislature must not obstruct our obedience to him from whose punishments they cannot protect us. All human constitutions which contradict his laws, we

are in conscience bound to disobey. Such has been the adjudications of our courts of justice. " **Robin v. Hardaway**, 1 Jefferson 109, 114, 1 Va. Reports Ann. 58, 61 (1772) *citing* 8 Co. 118. A. Bonham's case. Hob. 87; 7. co. 14 A. Calvin's case. [aff's. Gregory v. Baugh, 29 Va. 681, 29 Va Rep. Ann. 466, 2 Leigh 665 (1831)]; Cf. U.S. v. Cruikshank; U.S. v. Seeger; 96 U.S. Stat. 1211, Public Law 97-380;]

The Court Must Determine Who Shall Be Enjoined for the Purpose of A Temporary Injunction or Restraining Order

If either Robert F. McDonnell, or the Commonwealth of Virginia are not parties who are adequate to be named as a party where injunction shall lie then, I name W. Steven Flaherty, Virginia State Police Superintendant, 7700 Midlothian Turnpike Richmond, VA 23235; and/or Molly Joseph Ward, Mayor, Hampton City, 22 Lincoln Street, 8th Floor, City Hall, Hampton, VA 23669; and/or Charles Jordan, Chief of Police, Hampton Police Department, 40 Lincoln Street, Hampton, Virginia, 23669; as defendant(s) for the purpose of injunction.

Summary and Motion

Just like *Thompson v. Smith*, the remedies available at law are not complete or adequate apart from injunction to protect me against unjust interference and irreparable injury to my reputation, pursuit of happiness and safety, and using my property in life, ministry, and business. Va. Code §57-2.02 provides for the remedy of injunction. I show by fact

and law a preponderance that I should substantively prevail. Providing permit or injunction relieves my burden and the burden of the Commonwealth should a police officer investigate me for legal driving. The Commonwealth cannot show the method of documenting my legal driving poses a safety risk to the public. I am not a deadbeat dad, drunk driver, or unsafe or incompetent driver. I move the Court to either issue a temporary driver's permit to me as equitable relief, or provide a temporary restraining order or injunction against the parties named in the previous paragraph to prohibit them from enforcing the punitive criminal sanctions against me for using an automobile during this case.

Gonzales v. O Centro Espirita Beneficenteuniao Do Vegetal, 546 U.S. 418 (2006); and the prior Appeals Court and District Court rulings, *O Centro Espirita Beneficiente v. Ashcroft*, 389 F.3d 973 (10th Cir. 2004); 282 F. supp.2d 1236 (D.N.M 2002) and the other cases cited herein, are worth the Court's reading.

I move the Court to issue a temporary injunction, restrain-ing order or driver's permit for me to use an automobile during a fixed period while the facts, merits and remedies are being determined.

Truthfully and Respectfully,

David Alan Carmichael
1748 Old Buckroe Road
Hampton, Virginia (23664)
757-850-1245