

Case as 428 F.Supp. 896 (1977)

David STEVENS et al., Plaintiffs,  
v.  
Stephen BERGER, Individually and as  
Commissioner of New York State De-  
partment of Social Services, et al., De-  
fendants.  
No. 76 C 1554.  
United States District Court,  
E. D. New York.  
March 3, 1977.

Welfare recipients sought injunctive and declaratory relief to prevent welfare officials from requiring them to furnish social security numbers for their children as a condition of continued receipt of assistance. The District Court, Weinstein, J., held that the sincerely held religious belief of parents that if their children were to obtain social security numbers their spiritual well-being and chance to enter Heaven would be seriously jeopardized prevailed over requirement that such numbers be furnished as an aid to prevent welfare fraud.

#### Judgment for plaintiffs.

### 1. Constitutional Law § 84

Before a belief put forward as religious may be elevated to constitutional status, there must be some reasonable possibility that the conviction is sincerely held and is based upon what can be characterized as theological, rather than secular, e. g., purely social, political or moral views. U.S.C.A. Const. Amend. 1.

### 2. Constitutional Law § 84

Governmental questioning of truth or falsity of religious beliefs themselves is proscribed by First Amendment. U.S.C.A. Const. Amend. 1.

### 3. Constitutional Law § 84

Religious belief can appear preposterous to every other member of human race yet merit protections of the Bill of Rights. U.S.C.A. Const. Amend. 1.

social security numbers for their children as a condition of assistance, could weigh heavily in their favor, power of parent, even when linked to free exercise claim may be subject to limitation if it appears that parental decision will jeopardize health or safety of child or have potential for significant social burdens. U.S.C.A. Const. Amend. 1; Social Services Law N.Y. § 157 et seq.

### 9. Constitutional Law § 82

Gain to the subordinating interest provided by challenged governmental means must outweigh incurred loss of protected rights before an infringement of those protected rights will be countenanced.

### 10. Constitutional Law § 84

Once bona fide First Amendment issue is joined, burden that must be shouldered by government to defend a regulation with impact on religious actions is a heavy one, and basic standards is that a compelling state interest must be demonstrated. U.S. C.A. Const. Amend. 1.

### 11. Constitutional Law § 84

Notwithstanding fact that use of social security numbers, combined with computers, was an important tool in efforts to combat instances of welfare fraud, parents, who were recipients of welfare aid, could not be compelled against their sincerely held religious belief to furnish social security numbers for their children as a condition to continued receipt of assistance. U.S.C.A. Const. Amend. 1; Social Services Law N.Y. § 157 et seq.

McEvily & Kluewer, Community Legal Assistance Corp., Hempstead, N.Y., by Charles McEvily and Steven Satkin, Legal Intern, for plaintiffs.

Jonathan A. Weiss and Mary Susan Birkett, Legal Services for the Elderly Poor, New York City, amicus for plaintiffs.

Louis J. Lefkowitz, Atty. Gen., New York City, by Joan P. Seannell, Asst. Atty. Gen., New York City, for defendant Stephen Berger.

Jerome A. Campo, Hauppauge, N.Y., for defendant James E. Kirby.

David G. Trager, U.S. Atty., E.D.N.Y., Brooklyn, N.Y., by Leonard A. Schafani, Asst. U.S. Atty., for defendant Joseph Califano.

#### WEINSTEIN, District Judge.

Plaintiffs Virginia and David Stevens, acting for themselves and on behalf of their four minor children, seek a permanent injunction prohibiting the State of New York Department of Social Services, the Suffolk County Department of Social Services, and the United States Department of Health, Education and Welfare from withdrawing their welfare benefits. Insistence that the children obtain social security numbers as a condition of continued public assistance allegedly violates their right of free exercise of religion under the First Amendment of the United States Constitution and their right to privacy. While the social security number requirement is designed to reduce fraud by welfare recipients, in the particular circumstances of this case it does violate plaintiffs' rights.

I. Factual and Statutory Background  
The Stevens family was receiving Home Relief aid from the state, supplementing their below-subsistence private income. New York Social Services Law §§ 157 et seq. In January 1976, they received notice from the Suffolk County Department of Social Services that they were to supply a photostatic copy of each child's social security card, as required by New York's Welfare Regulations. 18 N.Y.C.R.R. § 351.2(c).

The Stevenses replied that the children had no social security numbers and that, because of their religious convictions, the parents would not obtain such numbers for them. They explained that, in their view, the use of social security numbers was a device of the Antichrist, and that they feared the children, if numbered in this way, might be barred from entering Heaven. (The adult Stevenses had obtained social security numbers years earlier, before developing their current convictions, and those numbers had been duly supplied to the Department of Social Services.)

Hoping to find some compromise solution, the Stevens sought to cooperate with the department to develop an alternative way to identify their children for the welfare system's record-keeping needs. The offer was rejected.

The Stevens unsuccessfully challenged the decision to cease aid at a hearing before the county. In August, the Commissioner of the New York State Department of Social Services affirmed the county's decision, and payments to the Stevenses under the Home Relief program were discontinued. The plaintiffs then instituted this action seeking injunctive and declaratory relief. A temporary injunction restored the plaintiffs to the relief rolls.

Before the trial, Mr. Stevens lost his job. The family, for this reason, was no longer entitled to Home Relief but was within the ambit of a federally-funded welfare program. Plaintiffs were permitted to file an amended complaint, naming the Department of Health, Education and Welfare as an additional defendant, since each member of a family receiving monies under national welfare programs must also supply a social security number as identification.

The Social Service Amendments of 1975 mandated that the numbers be provided to obtain assistance under Aid to Families with Dependent Children. P.L. 93-647. The applicable federal statute now reads:

(A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan.

42 U.S.C. § 602(a)(25), P.L. 93-647, 88 Stat. 2337. It was approved on January 4, 1975, four days after a seemingly contradictory segment of the Federal Privacy Act, P.L. 93-519, was passed. The Privacy Act provides that:

It shall be unlawful for any Federal, State or local government agency to deny

to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

P.L. 93-579, § 7(a)(1), 88 Stat. 1896, reprinted in 5 U.S.C.A. § 552a, note at 98 (Cum. Supp.1976). There is no need to deal with this apparent conflict, however, since section 7 of the Privacy Act then goes on specifically to exempt from its provisions "any disclosure which is required by Federal statute". P.L. 93-579, § 7(a)(2)(A), 88 Stat. 1896, reprinted in 5 U.S.C.A. § 552a, note at 98 (Cum. Supp.1976). Moreover, section 1211(b) of the Tax Reform Act of 1976, P.L. 94-456, 90 Stat. 1711, amending 42 U.S.C. § 405 explicitly provides that, notwithstanding prior law, social welfare agencies may require applicants for aid to supply their social security numbers as a prerequisite for qualifying for aid. The pertinent portion of section 1211 reads as follows:

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's licenses, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of the enactment of this subparagraph, be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged

with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of the Social Security Act.

P.L. 94-455 § 1211(b). See also, H.Conf. Rep.No.94-1515 at 490-91, 94th Cong., 2d Sess. (1976).

Because this case so clearly presents a dispositive First Amendment issue, there is no need to reach the question posed by plaintiffs of whether some constitutional right to privacy under the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments has been violated by the social security number requirement. We turn, therefore, to the issue of religious belief.

II. Requirement that Belief be Religious and Sincere

[1] Not every belief put forward as "religious" is elevated to constitutional status. As a threshold requirement, there must be some reasonable possibility 1) that the conviction is sincerely held and 2) that it is based upon what can be characterized as theological, rather than secular—e. g., purely social, political or moral views. Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (Amish Mennonite Church members' religiously-grounded desire—as contrasted to Thoreau-like rejection of current secular values—to keep children out of high school outweighed state interest in compulsory attendance law); United States v. Seeger, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965) (religious belief, as compared to personal moral code or political, sociological or economic considerations, outweighs government's need for compulsory military training); Teterud v. Burns, 522

F.2d 357 (8th Cir. 1975) (wearing of long, braided hair by Indian matter of religion, not esthetic); Theriault v. Carlson, 495 F.2d 390 (5th Cir.), cert. denied, 419 U.S. 1003, 95 S.Ct. 323, 42 L.Ed.2d 279 (1974) (issue of whether Ecclatarian movement is religious or political anti-authoritarianism); Founding Church of Scientology of Washington v. United States, 133 U.S.App.D.C. 229, 409 F.2d 1146 (1969), cert. denied, 396 U.S. 963, 90 S.Ct. 434, 24 L.Ed.2d 427 (1969) (issue of whether Scientology and "auditing" are religious, or are false labeling of medical devices); United States v. Kahane, 396 F.Supp. 687 (E.D.N.Y.1975) (issue of whether special diet was religious need). See also, Greenawalt, Book Review (Konvitz, Religious Liberty and Conscience: A Constitutional Inquiry), 70 Colum.L.Rev. 1133, 1135-36 (1970); Note, Free Exercise of Religion in Prisons—The Right to Observe Dietary Laws, 45 Ford.L.Rev. 92 (1976).

[2, 3] The court, in undertaking this difficult and sensitive factfinding task, recognizes stringent limitations on its right of inquiry. Under the United States Constitution, an individual's right to believe in anything he or she chooses is unquestioned. Religious beliefs are not required to be consistent, or logical, or acceptable to others. Governmental questioning of the truth or falsity of the beliefs themselves is proscribed by the First Amendment. Cantwell v. State of Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 908, 84 L.Ed. 1213 (1940); United States v. Ballard, 322 U.S. 78, 86, 64 S.Ct. 882, 886, 88 L.Ed. 1148 (1944). A religious belief can appear to every other member of the human race preposterous, yet merit the protections of the Bill of Rights. Popularity, as well as verity, are inappropriate criteria.

Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what

Handwritten notes: U.S. Stat. 93-647

they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views.

*United States v. Ballard*, 322 U.S. 78, 86-87, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944).

[4] When, however, an individual seeks to act on a belief, and that action poses a threat or inconvenience to other citizens, or to some important aspect of public law and policy, the requirements of an ordered society may demand that the courts make limited inquiry into *bona fides*. *Cantwell v. Connecticut*, 310 U.S. 286, 308-04, 60 S.Ct. 900, 908, 84 L.Ed. 1213 (1940); *Founding Church of Scientology v. United States*, 133 U.S.App.D.C. 229, 409 F.2d 1146, 1154-55 (1969). The difficulty of the investigation is compounded where the relevant belief does not, on its face, fit into any generally recognizable religious framework. As one court recently observed:

In order to determine if First Amendment rights of free exercise of religion have been or are being infringed upon, the Court must initially determine whether or not a religion or religious beliefs are actually involved. The task is, of course, greatly simplified where an historically established and recognized religion such as Islam, Judaism or Catholicism is involved. But where, as in the instant case, a newly established allegedly legitimate religion is involved the Court is necessarily put to the difficult task of determining whether a religion or religious activity is in fact involved.

*Theriault v. Silber*, 391 F.Supp. 578, 580 (W.D.Tex.1975).

[5] Delicacy in probing and sensitivity to permissible diversity is required, lest established creeds and dogmas be given an advantage over new and changing modes of religious belief. Neither the trappings of robes, nor temples of stone, nor a fixed liturgy, nor an extensive literature or history is required to meet the test of beliefs cognizable under the Constitution as religious. So far as our law is concerned, one person's religious beliefs held for one day are presumptively entitled to the same protection as the beliefs of millions which have been shared for thousands of years. Nevertheless, it is—as a matter of evidence and probative force—far easier to satisfy triers that beliefs are religious if they are widely held and clothed with substantial historical antecedents and traditional concepts of a society than it is where such factors are absent. Judges recognize intellectually the existence of new religious harmonies, but they respond more readily and feelingly to the tones the founding fathers recognized as spiritual.

For example, in *People v. Woody*, 61 Cal.2d 716, 40 Cal.Rptr. 69, 394 P.2d 813 (1964), the court decided that the use of the hallucinogen peyote by Indians in the ceremonies of the Native American Church was a valid expression of religious beliefs and not an unprivileged violation of the drug laws. But the court, in reaching this decision, relied in part upon evidence of a long history and a large membership. In *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965), the court distinguished a new class of religious objectors who did not believe in a Supreme Being in a traditional sense from those whose objections to the draft were personal and moral in nature. In doing so, however, the Court cited an extensive supporting literature from the pens of those generally acknowledged to be leaders of traditional religious institutions.

Although support from tradition, history or authority is not required, without it a plaintiff may be unable to produce enough

901  
other evidence of religiosity to satisfy this preliminary burden. A prisoners' religious sect, calling itself the Church of the New Song of Universal Life, demanded a series of special privileges, including the right to hold services in secret. Three cases involving the sect were considered in *Theriault v. Carlson*, 495 F.2d 390 (5th Cir.), cert. denied, 419 U.S. 1003, 95 S.Ct. 323, 42 L.Ed.2d 279 (1974). Two were remanded for full evidentiary hearings on the issue of whether the movement was political or genuinely religious. As an evidentiary matter, a district court in Texas concluded that the doctrine was:

a relatively non-structured, free-form, do-as-you-please philosophy, the sole purpose of which is to cause or encourage disruption of established prison discipline for the sake of disruption. Disruption of and/or problems for prison authorities is not the result of this so-called religion; it is rather the underlying purpose of it. *Theriault v. Silber*, 391 F.Supp. 578, 582 (W.D.Tex.1975). Consequently, no First Amendment issue had been raised. The case before us is, on the evidence, far different from *Theriault*.

#### B. Religious Foundations of Plaintiffs' Beliefs

[7] Once the question of sincerity is resolved, the next question is whether the belief is rooted in what may loosely be characterized as theological conviction, or whether it is the expression of some political or social ideology. The evidence is overwhelming that the belief is one which would meet any reasonable test of what is "religious".

A trier of fact faced with a First Amendment claim must necessarily come to terms with this distinction. History is replete with examples of persons who gave up, not just public benefits, but family, country and even life itself for their dedication to such sectarian ideals as political freedom or social egalitarianism. What the Supreme Court had to say about the belief of the Amish that their children should not attend public schools beyond the eighth grade is equally applicable to this case:

Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejec-

[6] After observing plaintiffs during the trial, after hearing their testimony and that of their minister, Pastor Jack Hickman, and

#### A. Sincerity of Plaintiffs' Beliefs

As the Supreme Court declared in *United States v. Seeger*, 380 U.S. 163, 185, 85 S.Ct. 850, 863, 13 L.Ed.2d 733 (1965), the "significant question" is whether a belief is "truly held". "This is the threshold question of sincerity which must be resolved in every case." *Id.*

David and Virginia Stevens are members of the St. John's Lutheran Church in Massachusetts, New York. They characterize their religion not as Lutheranism, but as "Messianic Judaism". They profess a belief in both the Old and the New Testaments, and view Christ not as the founder of a new faith but as the Messiah of the Jews. Among their religious traditions are the keeping of Shabbot as well as other Jewish holy days and festivals.

tion of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

*Wisconsin v. Yoder*, 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972) (footnote omitted) (emphasis supplied). Whether Thoreau's counsel might have convinced the Court that it was wrong to place that author's beliefs beyond the pale of constitutional religious protection, the Court's view that the Amish were safely within the boundaries was highly favorable to these plaintiffs.

It is clear from the evidence that plaintiffs' views have their roots, not in secular civil-libertarianism, but in religion. Others may have political objections to the increasing use of social security numbers. See, e.g., American Civil Liberties Union Foundation, The Privacy Report Volume III, No. 1 (Aug. 1975); Privacy Protection Study Commission, The Use of the Social Security Number in the Private Sector (Memorandum, Oct. 22, 1975); S.Rep.No.93-1183, in U.S.Code Cong. & Admin.News No. 14 at 8066 (Jan. 30, 1975). But plaintiffs do not reach their conclusion by political reasoning; theirs is the world of the spirit, not the flesh. They express a fear that the social security number is fast becoming what they describe as a "universal number" and that, as such, it is an instrument of the Antichrist. Mrs. Stevens declared with obvious sincerity:

I believe that an Antichrist will establish a system of numbers and will cause all people to have these numbers. [If they do not have them they will not be able to pay or sell or function in society.

Q. What is it about the social security number that makes it unique according to your belief . . . ?

A. The fact that, unlike other numbers, you must use it to work, you must have it to cash checks which would then lead to buying things—bank accounts. It is used for identification and without it you would have a pretty hard time functioning in society. . . . I think that is a pretty good description of the numbers the Antichrist will use.

Q. Because of the power behind it, are you saying?

A. Yes, the power behind it; the power it holds over you to control human life.

The primary source to which the plaintiffs point in support of their beliefs is biblical: the thirteenth chapter of the New Testament *Book of Revelation*. The American Lutheran Church, the denomination to which the Stevenses belong, apparently does not have a doctrinal interpretation of Chapter 13, or any doctrine generally concerning the Antichrist. Instead, testimony credited by the court indicated, individual members are encouraged to study the Bible and develop for themselves a personal understanding of its teachings. *Constitution of the American Lutheran Church*, reprinted in Handbook of the American Lutheran Church 45 (1975). Thus, it is not surprising to find that the Stevenses hold highly individualized beliefs as part of their general adherence to an orthodox religious tradition. To borrow a phrase from the Supreme Court in *Wisconsin v. Yoder*, the plaintiffs' belief is simply a "response to their literal interpretation of [a] Biblical injunction . . ." 406 U.S. at 216, 92 S.Ct. at 1533.

The reference to a scriptural source for the belief, plus the testimony by plaintiffs and their pastor about the study and reflection that led to its birth might well by themselves lead the court to conclude that the Stevenses' aversion to the use of social security numbers has no secular component. There is additional evidence in this case, however, which supports the plaintiffs' position. No finding as to the historical accuracy and theological soundness of these

plaintiffs' contentions are made since such judgments should be avoided by the courts. It also bears reiteration that "The validity of what he [or she] believes cannot be questioned." *United States v. Seeger*, 380 U.S. 163, 184, 85 S.Ct. 850, 863, 13 L.Ed.2d 733 (1965). "The religious views espoused by [plaintiffs] might seem incredible, if not preposterous, to most people. But those doctrines are [not] subject to trial . . ."

*United States v. Ballard*, 322 U.S. 78, 87, 64 S.Ct. 882, 887, 88 L.Ed. 1148 (1944). The evidence does support plaintiffs' contention that there is some arguable theological basis for their beliefs.

Both the trial testimony and the literature relied upon by plaintiffs indicated that, in western theology, a long and deep-seated tradition exists of conflict between God and state—more specifically, a belief that an omnipotent state will usurp the place of God on earth, and destroy those who will not make obeisance to the state. Out of this tradition comes, according to plaintiffs, the scriptural reference to what plaintiffs' witnesses refer to as the "mark of the Beast"—in the Stevenses' view, social security numbers.

The plaintiffs' expert, Dr. Willis E. Elliott, is an ordained minister of the United Church of Christ well versed in scriptural interpretation, with doctorates from the University of Chicago and from the Northern Baptist Theological Seminary. He explained that the *Book of Revelation* was written about 96 A.D., a particularly bleak time for early Christians who faced genocide under the edicts of the Roman emperor Domitian. Yet the imagery, apocalyptic tone, and the central concern with the figure of an Antichrist, he said, is adapted from earlier sources.

In the Old Testament, the seventh chapter of the *Book of Daniel* tells of Daniel's dream in which he saw "four great beasts another", who ruled the earth until that kingdom was finally recaptured by "one like the Son of man" who would rule on for eternity. *Daniel* 7:3,13. In *Daniel*, according to plaintiffs' interpretation, the beasts

are explicitly political powers who prevail for a time against the forces of God. *Daniel* 7:24-27. The "Son of man" who will ultimately conquer these forces is, according to plaintiffs' contention, the predicted Messiah of the Jews.

*Daniel*, like *Revelation* some two-and-a-half centuries later, grew, according to the testimony, out of a historical context threatening destruction of a religious group. The original model for the Antichrist, Antiochus Epiphanes, was king of Syria from 175 to 163 B.C. During his reign, Antiochus attempted to Hellenize his domain, and part of his program for accomplishing cultural homogenization was the destruction of the Jewish religion. See C. M. Laymon, *The Interpreter's One-Volume Commentary on the Bible* 13-14 (1971); *The Columbia Encyclopedia* 85 (2d ed. W. Bridgewater & S. Kurtz 1963). Instead, he inspired the revolt of the Maccabees.

Dr. Elliott described quite fully in his testimony his analysis of the perception Jews and Christians had of overweening secular authority.

The Antichrist is merely the reverse Christ and since Christ is a [Greek translation of a] Jewish word, the whole Messianic expectation of the Jews is involved in the Antichrist.

The reason Jews no longer use the term "Antichrist" is because the word "Christ" . . . has gotten hooked narrowly into Christianity. But it has always [meant] the threat and destruction to human liberty and life.

The threat of annihilation for the early Christians, plaintiffs explain, began with Emperor Nero who fixed the blame for the great fire that destroyed Rome in 64 A.D. on that fledgling religious community. The *Columbia Encyclopedia* 1478 (2d ed. W. Bridgewater & S. Kurtz 1963). The persecution was continued under Domitian. Once more, secular authority came into direct conflict with religious authority. The imagery of the Antichrist was particularly apt as applied to Roman emperors who elevated themselves above the temporal by

SECURITY COMMISSION

