

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.)

