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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

LAWRENCE C. LEWIS,)

Appellant,)

CASE NO: CV-2003-120

**DECISION ON JUDICIAL v.
REVIEW**

**STATE OF IDAHO, DEPARTMENT) OF
TRANSPORTATION,**)

Respondent.)

I. FACTUAL AND PROCEDURAL BACKGROUND

The above-entitled matter came before the court on January 9, 2004, for oral argument on appeal from the denial by the Idaho Department of Transportation of the application for renewal of his driver's license sought by Appellant Lawrence C. Lewis. The basis for the denial of the application was that Mr. Lewis refused to provide his Social Security number as required by Idaho Code § 49-306(2). Mr. Lewis asserts that the basis for his refusal are certain religious beliefs that he holds, namely that he should not be forced to participate in any way with the

United States social security scheme which he believes violates five of the Ten Commandments. Mr. Lewis believes that the Social Security number is "either the precursor to the 'Mark of the Beast,' or is actually the mark itself" Because of his religious beliefs, Mr. Lewis has attempted to have the Social Security Administration cancel his Social Security account. Because of his "Scriptural convictions," Mr. Lewis states that he is "prohibited from making application for a social security account and number - OR using it in ANY form to obtain benefits, even - especially - the renewal of Idaho Driver License." Brief on Remand, p. 17. Lewis also asserts that the Idaho Department of Transportation ought to have recognized that his "contract" with the Social Security Administration when he obtained a Social Security number at age 14 is unenforceable or void, citing various contractual theories.

After the initial appeal, by an order entered January 16, 2004, this court remanded this matter to the Idaho Department of Transportation to address the application of Idaho Code § 73402 and an individual's right to free exercise of religion. On remand, the Department conceded that Mr. Lewis holds a sincere religious belief that motivates his refusal to provide his Social Security number for driver's license purposes. The Department concluded that the State of Idaho has a compelling interest in collecting and using Social Security numbers from all applicants for driver's licenses because it is required to do so by the federal Welfare Reform Act in connection with enforcement of child support. In addition, the Department ruled that the State has a compelling interest in regulating public road safety and in properly identifying people issued driver's licenses. Because the use of Social Security numbers simplifies the verification of the applicant's identity and ensures that drivers transferring from another state are properly matched with their driving records, the goal of regulating public road safety is facilitated by tracking

drivers.

The Hearing Examiner also concluded that disclosure of one's Social Security number is the least restrictive means of achieving this compelling state interest because the use of Social Security numbers is the most efficient method of locating interstate driving records, identifying drivers in-state, and keeping dangerous drivers off the road.

Mr. Lewis timely appealed from the Order on Remand. In his Brief on Remand Mr. Lewis contended that the State of Idaho does not have a compelling state interest because the entire identification system will be changed in the near future. Mr. Lewis further argued that the use of Social Security numbers is not the least restrictive means of achieving a compelling state interest because the statute in question, Idaho Code § 49-306(2), omits a group of people—those who cannot in good conscience continue to use the Social Security system—from consideration. Mr. Lewis pointed out that the legislature, when amending Idaho Code § 49-306(2) the second time in 1999, did consider those who are unable or unwilling to obtain a Social Security number by allowing the applicant to present a birth certificate, together with a letter from the Social Security Administration and proof that the person is lawfully present in the United States for purposes of obtaining a driver's license. Idaho Code § 49-306(2)(b). Mr. Lewis believes that Idaho Code § 49-306(2) as it is currently "incompletely written" without a religious objector exclusion, unduly burdens his free exercise of religion.

II. STANDARD OF REVIEW

The Idaho Administrative Procedures Act (IDAPA) governs the review of department decisions to deny, cancel, suspend, disqualify, revoke or restrict a person's driver's license. In an appeal from the decision of the district court acting in its appellate capacity under the IDAPA,

the appellate courts review the agency record independently of the district court's decision. *In the Matter of the Driver's License Suspension of Marshall*, 137 Idaho 337, 48 P.3d 666 (2002). The reviewing court does not substitute its judgment for that of the agency as to the weight of the evidence [presented. LC.](#) § 67-5279(1). It instead defers to the agency's findings of fact unless they are clearly erroneous. *Id.* In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record. *Urrutia v. Blaine County, ex rel. Bd. of Comm's*, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000).

The court may overturn an agency's decision where its findings, inferences, conclusions, or decisions: (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of [discretion. LC.](#) § 67-5279(3). The party challenging the agency decision must demonstrate that the agency erred in a manner specified in LC. § 67-5279(3) and that a substantial right of that party has been prejudiced. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998). If the agency's decision is not affirmed on appeal, "it shall be set aside ... and remanded for further proceedings as necessary." LC. § 67-5279(3).

III. ANALYSIS

A. **Claims Relating to the Existence of Mr. Lewis' Social Security Number**

Mr. Lewis argues that he no longer has a Social Security number because his "contract" with the Social Security Administration is void or unenforceable on the bases that (1) he was a minor when he obtained his social security number and can avoid the contract; (2) the contract is

based on fraud; and (3) the contract is one of adhesion. Mr. Lewis also claims that when the Social Security Administration did not respond to his request to have his Social Security number cancelled or revoked, it was tantamount to "default" by the Social Security Administration on that issue.

With due deference to Mr. Lewis' somewhat innovative approach, the court finds no legal merit to Mr. Lewis' claim that he should not be regarded as having been assigned a Social Security number. There is no "contract" between Mr. Lewis and the Social Security Administration. Rather, registration for a social security number would be controlled by a United States statute or regulation. If the Social Security Administration did not respond to his inquiries attempting to revoke or withdraw his social security number, the failure to respond would not have any legal significance. The court affirms the conclusion of the Department in its Final Order issued on December 2, 2002, that Mr. Lewis is a person who has been issued a Social Security number by the Social Security Administration and who falls within the parameters of Idaho Code § 49-306(2)(a), rather than subsection "(b)" of that section.

Subsection (b) provides an exemption from the Social Security number requirement for certain applicants who have not been assigned a Social Security number. According to the legislative history information provided by the Department, when Idaho Code § 49-306 was amended in 1999, this class of applicants without Social Security numbers could include "legal residents on visa, exchange students, spouses and children of workers, and migrants with credentials." Respondent's Brief on Remand, p. 4, citing Statement of Purpose, S131170. Mr. Lewis does not qualify as "an applicant who has not been assigned a social security number" under Idaho Code §49-306(2)(b).

B. Constitutional Claims

Mr. Lewis contends that the statutory requirement under Idaho Code § 49-306(2) that an applicant for an Idaho driver's license must provide "the applicant's social security number as verified by the applicant's social security card or by the social security administration" violates his right to free exercise of religion. Idaho enacted the "Free Exercise of Religion Act," Idaho Code §§ 73-401, et seq., which became effective on February 1, 2001. Under the Act, "[f]ree exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral." LC. § 73-402(1).

The Act states that the "government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability." LC. § 73-402(3). The exception is if the government demonstrates the following:

- (3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:
 - (a) Essential to further a compelling governmental interest;
 - (b) The least restrictive means of furthering that compelling governmental interest.

Idaho Code § 73-402(3); *see, e.g., Roles v. Townsend*, 138 Idaho 412, 64 P.3d 338 (Ct. App. 2003)(tobacco-free policy of State Board of Correction did not violate inmate's right to freely exercise his Native American religion under Free Exercise of Religion Act where the State had compelling interests in eliminating tobacco in prisons and the policy was the least restrictive means to further those interests).

First, the court notes that the Idaho Code § 49-306(2) is facially neutral. Thus, the court must examine whether the Department has demonstrated that the requirement of a Social Security number on a driver's license furthers a compelling government interest and is the least

restrictive means of furthering that interest.

1. Compelling State Interest

The court has reviewed the cases and other authorities presented by both parties. As noted above, one of the reasons for the legislative amendment of Idaho Code § 49-306 in 1998 was Idaho compliance with 42 U.S.C.A. § 666, entitled "Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement." Under 42 U.S.C.A. § 666(13), all states must have in effect laws or procedures requiring the social security number of any applicant for a driver's license to be recorded on the application. Certainly, the government has a compelling state interest, not only in complying with federal laws, but a compelling interest in the support of children, thereby protecting and promoting their health and welfare. *See, e.g., Ziegler v. Ziegler*, 107 Idaho 527, 691 P.2d 773 (Ct.App.1985)(providing and assuring maximum opportunities for parental love, guidance, support and companionship is a compelling state interest that warrants reasonable interference with the fundamental right of travel when necessary); *Stoianoffv. Commissioner of Motor Vehicles*, 107 F.Supp.2d 439 (S.D.N.Y. 2000).

Further, in *State v. Wilder*, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003), in the context of the constitutional right to travel, the Idaho Court of Appeals held:

The requirement that drivers be licensed before operating motor vehicles on the streets and highways of this state promotes public safety and order by requiring that vehicle operators meet minimal standards for knowledge of the rules of the road and driving competence. It is reasonable, in furtherance of that objective, for the state to employ means to verify the identity of license applicants, such as the use of social security numbers. Other jurisdictions have held that the requirement that a social security number be furnished when applying for a driver's license or license plates is a legitimate exercise of the state's police power as an aid to establish identity. *Schmidt v. Powell*, 4 Ill.App.3d 34, 280 N.E.2d 236, 237-38 (1972); *Devon, Inc. v. State, Bureau of Motor Vehicles*, 31 Ohio App.3d 130, 508 N.E.2d 984, 986 (1986). We are likewise of the view that the requirement that an applicant divulge a social security number in order to obtain a driver's license is a

legitimate exercise of the state's police power.

Wilder, 138 Idaho at 646-47, 67 P.3d at 841-842.

There is no Idaho case directly addressing the use of Social Security numbers for driver's license applications in relation to the free exercise of religion. The Department asserted that the "social security number is a nationally recognized, uniform system of identification that simplifies the verification of a person's identity and prevents name variations or confusion of individuals with similar or identical names." Order on Remand, p. 2. The court has considered Mr. Lewis' arguments, including the fact that the Social Security Administration advises that the Social Security card is "For Security and Tax Purposes-Not for Identification." See Petitioner's Exhibit 1. The court interprets this statement to mean that a Social Security *card*, as opposed to the Social Security *number*, is not an identification card. See, e.g., Annotation, "Free Exercise of Religion as Applied to Individual's Objection to Obtaining or Disclosing Social Security Number," 93 A.L.R.S.^h 1, 11 (2001)(explaining federal requirements for use of the Social Security number as a "unique identifier").

The court notes that more than one person could have the same name, as well as the same birth date. The Department held that requiring Social Security numbers is consistent with the State's interest in the regulation and enforcement of motor vehicle laws in order to protect the health, safety and welfare of the traveling public. *Id.* The Idaho Court of Appeals has previously held that the State of Idaho, in today's mobile society, has a compelling interest in regulating and enforcing motor vehicle laws for "public protection, safety and order . . ." *Bissett v. State*, 111 Idaho 865, 868, 727 P.2d 1293, 1296 (Ct.App.1986); see also, *Tennessee v. Loudon*, 857 S.W.2d 878 (Tenn.Crim.App. 1993)(identification of motor vehicle operator by Social Security number

serves compelling state interest); *Terpstra II v. Indiana*, 529 N.E.2d 839 (Ind.Ct:App. 1988). The court upholds the decision of the hearing officer that the requirement of Idaho Code § 49306(2) for a driver's license applicant to provide his or her Social Security number serves a compelling state interest.

2. Least Restrictive Means

The Department asserts that because federal law requires the recording of an applicant's Social Security number on an individual's driver's license application, the use of the Social Security number for purposes of identification is not only the least restrictive means of identification, but the only means. The Department also argues that although there may be other means of establishing the identity of applicants, none is less restrictive than requiring the applicant's Social Security number. The court notes that there could be another numbering system for identification instituted by the State of Idaho, but it would not be uniform throughout the country. Therefore, it would be difficult to ascertain whether the specific individual has a driver's license in another state or has a poor driving record in another state. Although Mr. Lewis asserts that another system will replace social security numbers, such a system is not in place at this time. The reasoning was explained in a Missouri case quoted by the hearing officer:

The state may justify an inroad on religious liberty by showing that the regulation is the least restrictive means of achieving a compelling state interest. *Thomas v. Review Board*, 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). Even if the requirement that the license show a social security number be considered an inroad, the state has shown ample justification. It is important for the state to identify drivers and to learn about a person's driving record in other states. To keep dangerous drivers off the road, driver's licenses may be denied to those who have bad driving records elsewhere. The use of the social security number provides the most efficient method of locating interstate driving records. It is apparent that the state has a compelling interest and no less restrictive means for accomplishing its purpose. The infringement on appellants' religious beliefs is justified.


Penner v. King, 695 S.W.2d 887, 890 (Missouri 1985). The court concludes that the hearing officer was correct in its decision that the disclosure of an applicant's Social Security number on a driver's license number is the least restrictive means of achieving a compelling state interest "because social security numbers are the most efficient method of locating interstate driving records, identifying drivers in-state, and keeping dangerous drivers off the road." Order on

Remand, pp. 1-2.

The decision of the Department of Transportation in regard to the denial of Mr. Lewis' application for renewal of his driver's license is affirmed.

IT IS SO ORDERED.

DATED this ff day of March, 2005.



Steve Verby
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid,
delivered via courthouse mail, or faxed, this _____) ('~' day of March, 2005, to:

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