

American Christian Liberty Society

Where the Spirit of the Lord is, there is Liberty



6 November, 2006

Mr. Tommy Simmons
Legal Counsel To Commissioner Ron Lehman
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778-0001

Re: Compelling Governmental Interest As It Relates To Religious Freedom

Dear Mr. Simmons,

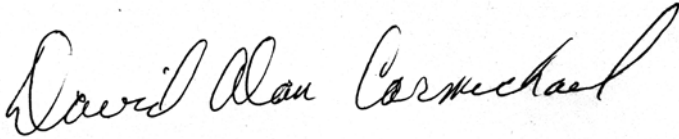
Thank you for your thorough legal brief. I have drafted a thesis in reply. It is not completely comprehensive on the whole of the discussion that is needed regarding a “compelling governmental interest” as it relates to the use of the SSN. Whether or not government has a “compelling” interest in coercing the populace to identify with a SSN is a subject that needs to be addressed in a follow-on thesis. The thesis that I have submitted to you rather addresses the fundamental question of the purpose of government and the method of defining “compelling” as it relates to governmental interests.

These are extremely important matters and your correspondence with me is timely. As is readily seen, the methods of coercion to compel identification with a SSN are increasingly draconian. Whether or not such methods are expedient politically, economically or for national security is debatable. We must not get distracted by a debate about whether government methods are legal; we must concern ourselves with whether the methods are lawful. Nazi Germany had methods that they considered “legal” but which sound minds understood as “unlawful.” Those methods, as well as Hitler’s coming to power, were instigated by a ‘terrorist’ act. If we eliminate religious and civil liberty as a response to a terrorist attack, the terrorist won the war by losing the battle.

Texas, as well as every State, is at a critical juncture where they must decide the course of government. It interestingly enough hinges upon compelling the populace, without exception for any reason, to identify with a unique identification number and to render biometric marks on their forehead and right hand. My hope is that my correspondence with you and your agency will lead to a Texas policy that will allow for individual religious accommodation where it is warranted on the basis of a bona fide religious conviction.

I have been contacted by Texan members of our Christian fellowship who have asked me to help them achieve the liberty to work even though they are unable to identify with a SSN due to religious prohibitions.

Sincerely yours,

A handwritten signature in black ink that reads "David Alan Carmichael". The signature is written in a cursive style with a large, looping initial "D".

David Alan Carmichael
Principal Minister

Encl: Compelling Governmental Interest As It Relates To Religious Freedom,
David Alan Carmichael, November 5, 2006

Compelling Governmental Interest As It Relates To Religious Freedom

David Alan Carmichael
November 5, 2006

This thesis is from an ecclesiastical position and a Biblical world view. The founders of our nation understood the foundation of law, government and individual liberty from a Biblical perspective as well. We must all view the law in the context of the authority from which it is derived to ensure that it is applied rightly, and in its proper context.

What are the “interests” of government? What is the hierarchy of authority with regard to the administration of government? We shall firstly address the second question in order to qualify the answers to the first question.

James Madison stated, “**Justice is the end of government.**” *The Federalist #51*. The 1776 charter of the independent American government, *The Declaration of Independence* states, “We hold these truths to be self-evident, **that all men are created equal, that they are endowed by their Creator with certain unalienable Rights**, that among these are Life, Liberty and the pursuit of Happiness. -- **That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.**” From the documents quoted above, notice the three words justice, rights, and just. They have the same derivation in language and are opposed to injustice, wrong, and unjust. The premier authority by which government must act is the **Creator** of men who is absolutely just. Men, who are under that authority who consent to Government, have no authority to consent to government powers that are unjust, or in another word – wrong.

The government that we in America have instituted is a government of law and not of mere men. Law is not created by mere men. Law is. Men’s acts can be measured against law to see if their acts are just and right rather than unjust and wrong. All the law is summed up in these words, “Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind & Thou shalt love thy neighbor as thyself.” If we love God, we will love our neighbor. If we love our neighbor, we will protect our neighbor’s rights. **The government that we have instituted is a means to the end of loving our neighbor.** Otherwise, the government we have instituted would merely be a work of our hands, a dumb idol, in violation of the first three of the Ten Commandments. The statutes enacted by our instituted government must be for the furtherance of our obligations before Almighty God. The statutes must be just and right, rather than unjust and wrong. Otherwise, the statutes are unlawful. The application of the statutes must be just and right, rather than unjust and wrong. Otherwise, the application is unlawful. The statutes and the application thereof by government actors must be right before Almighty God, and for meeting the needs of the society of neighbors. **Thereby, the liberty rights of all men are most secure.**

James Madison stated in *The Federalist #51*:

“You must first enable the government to controul the governed; and in the next place; oblige it to controul itself.” *Sic*

“It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part.”

“In a free government, the security for civil rights must be the same as for religious right. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects.”

“**Justice is the end of government.** It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger.”

Each act of government is presumed to be lawful since men only have the authority to consent to government that is just. Notwithstanding, an act of government that thwarts liberty is, on its face, unjust and contrary to the lawful purpose of government. If then an act of government clashes with an act of men that is itself “right”, the government’s action must be examined to determine whether it is truly fulfills the purpose of government or is rather fulfilling the interest of selfish men. When the manner in which the government discharges its duty indeed quashes liberty, scrutiny must be applied to the government’s acts to judge their validity and “justness” to the end for which government has been instituted. The Federal *Religious Freedom Restoration Act* (RFRA) and the Texas *Religious Freedom Act* (TRFA) both rest upon that principle.

It is “Right” and “Just” for men to act out their Life, Liberty and the pursuit of Happiness. Presupposed is the unalienable “obligation” of men to do that which is “right” before the “Creator” Almighty God. Presupposed none-the-less, the people of Texas avowed the precept in *The Texas Constitution, Article I – Bill of Rights, Section 6 – Freedom of Worship*, “**All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences.**” The *Virginia Constitution* states that **religion is**, “the duty which we owe to our Creator, and the manner of discharging it.” We refer to these Constitutions as fundamental law, which is the mechanism by which we have instituted these governments. The law which we have espoused in the Bills of Rights within these Constitutions is law that is pre-existent and immutable. It is law for which the governments are instituted to further, and to protect. The precepts have been articulated in the respective Bills of Rights to serve as tangible reminders to our instituted government’s actors that they are the agents of the neighbors whom they serve, to “rightly” protect each neighbor’s religious and civil liberty interests.

What is the definition of a “compelling” interest? How is the raising of a governmental interest to the level of “compelling” justified? As I understand it, **an**

interest of government rises to the level of “compelling” when it rests upon the very purpose of government’s existence. The purpose of government is to secure the liberty interests of each “person” that the government was instituted to serve. When a private liberty interest is protected, the public interest is served.

If a government act (interest) generally serves to further the purpose of government, it is “legitimate.” If it does not, it is illegitimate. Though an act might generally serve the purpose of government, it does not necessarily constitute a “compelling” interest for the “public” in general, or to a “person” specifically. It very well may rise to the level of a “compelling” interest to a “person” or to the “participants-at-large”, or even to the “public-at-large” depending on the particular facts of the circumstance and the rightful application of law.

There is an increasing tendency for government agents, bureaucrats, and lawyers to deliberately make arguments that are not true, and to let a wrong continue until someone shoulders the burden to counter the argument with truth. The venue where this is often seen is in prolific claims of “compelling governmental interest” with regard to every government agent action that clashes with individual liberty. It is proving the old adage that if a lie is told often enough, the hearers and the speakers will begin to believe it. It has come to the point now where government actors wrongly think that the interest of government is that which seems fitting to the government actors. They erroneously conclude that an act that they instigate is by its nature - compelling. Let’s not just click our heels together and say, “compelling governmental interest, compelling governmental interest, compelling governmental interest”. It will not take us back to Kansas because it is not a true statement. Non-truth is not the path to freedom but rather to bondage.

Whether or not the Federal government has a “legitimate” interest in a national welfare scheme is debatable. Take note: “The Social Security Act does not require a person to have a Social Security number to live and work in the United States, nor does it require a Social Security number simply for the purpose of having one.” *April 11, 2003 letter from Charles A. Mullen, Social Security Administration, Associate Commissioner, Office of Public Inquiries.* Social Security was conceived as, and remains, a voluntary program. It is not a “national” welfare program. The Federal government lacks the enumerated power to impose it as a “national” program. It has no power of enforcement nation-wide without each State adopting the Federal program. The fact that there is no lawful mandate for each “person” to participate, and that no Social Security program law applies in a State that does not adopt the Federal program, indicates that Social Security program does not rise to the level of a “compelling governmental interest” to the “public-at-large” or to each “person.” Society uses other mechanisms than government to care for the needs of its Old Aged, Retired, Surviving and Disabled people. Though the government “actors” certainly had an interest, and it certainly seemed rationally legal to some, Social Security is a contrivance of a political regime rather than an absolute duty of the Federal civil government. Governmental social welfare support schemes became a “reasonable” interest of government when people abandoned their family and the church, and the church abdicated its obligation

of true religion espoused in the book of James, “True religion” (the duty which we owe to our creator, and the manner of discharging it) is “...to visit the widows and orphans in their trouble...” James 1:27

Now that the Social Security Act exists and that it has participation, the government has a “legitimate” duty to fulfill the obligations of the program with regard to the “participants”-at-large rather than the “public”-at-large. Notice that I emphasized the terms legitimate, participants, and public. The Social Security program still has not risen to the level of a “compelling governmental interest” to the “person” to quote the terms cited by the Federal *Religious Freedom Restoration Act*. There are instances when the Social Security program does rationally rise to the level of a “compelling governmental interest” to the “person.” If a man abandons his duty to care for his family, and his family applies to the government to care for their trouble in lieu of going to their extended family or the church, the government has a “legitimate” duty to apply their social welfare relief program to the applicant (“participant”). **The government can claim no “interest” whatsoever if the woman does not apply to the government to care for her trouble.** If the woman takes the man to a government court to adjudicate her grievance against her prodigal husband, and the government enters a lawful judgment against the man, the government has a “legitimate” interest “to the person” (the delinquent man) in helping the women enforce the judgment. If the man is delinquent in paying the judgment damages, the Social Welfare program is bound to supply the woman “participant’s” need on the basis of the rules of the benefit program. Thus, on the basis of the government’s “legitimate” interest in carrying out its welfare program with regard to the “person” who applied for benefits and to the “person” who is delinquent with regard to a lawful judgment (presuming all requisite jurisdictional elements are met), “enforcement” of the “judgment” against the “person” who is delinquent might rise to the level of a “compelling governmental interest” to the “person.” The facts of the case determine the jurisdiction and relative interest of the government.

The governmental interest with regard to the situation described above can rise to the level of “compelling” only if it carries out the purpose for which government is instituted. The society, hopefully on the basis of its obligation to Almighty God, has instituted the governmental welfare program as a mechanism to love our neighbor. If our neighbor is not being cared for by his family, or is not being cared for by the Church or some other civic body, then it is a “legitimate” interest of the government to intervene on behalf of a “person” who applies for the help. The governmental interest rises to the level of “compelling” **only after** the facts of the specific “person” and situation justify a “legitimate” governmental interest.

In the hypothetical case study above, I addressed the measure of governmental interests. Let us suppose that a man who was delinquent on a dependant support judgment was to claim a religious conflict with the government enforcing the judgment against him by denying things to him unless he identifies himself by Social Security Number (SSN). Of course, if a man claims to be a Christian and does not care for his family, he is nothing more than an infidel. He would be suspect as to whether his objection to identifying with a SSN was a bona fide religious conviction or merely a

religious or political preference. Most people who have a bona fide religious conviction are willing to suffer great loss, even to their life, rather than identify with the SSN. Most who are convicted that deeply about the SSN are also dedicated that deeply to their marriage and to the support of their family.

In one situation, you may have a disingenuous man claiming a hardship against his religious beliefs but who is not truly sincere. He may be waving the religious card as a means to evade the consequences of his irresponsible delinquency, just as government lawyers glibly wave the “compelling governmental interest” card to skirt around lawful religious protections. In that case, the “compelling governmental interest” test should never be examined unless the man’s sincerity is proven. The precepts of judicial restraint require that religious sincerity not be presumed but proven. The Bible would put it, “Before the testimony of two or more witnesses, let every word be established.” **Judicial restraint is the means by which frivolous politically motivated faction is quelled, and governmental power is not arbitrarily elevated to the hurt of liberty.** Let’s assume the man’s religious objections are found to be sincere. We also assume that the government proved a “compelling” interest to the “person” on the specific set of facts in this case. The “least restrictive means” test must then be applied.

Another lie that is told often is that the “most convenient means” to accomplish a governmental interest is the “least restrictive means.” Let’s remember the truth. **The government has a preeminent obligation to secure religious liberty. It requires a protection of religious rights as a first resort of governmental action whereas social welfare benefit governmental action is of last resort.** The government has poured uncountable resources into producing a welfare program that is an interest of last resort. Are they not at least equally obligated to expend resources to support a first resort governmental interest? What is the comparative investment required to accommodate the first resort religious liberty interest compared to the investment made to care for the last resort welfare interest? Ought the government’s failure to provide an exemption for a predictable religious conflict to be used as the justification for non-accommodation?

Let’s keep the discussion on point in keeping with judicial restraint. Let’s also stay on point with our determination that the specific facts of this case study warranted a “compelling governmental interest”. The “compelling governmental interest” is to enforce the judgment against the man to ensure the proper support is getting to his dependent creditors. The “compelling governmental Interest” is not to speculate on the viability of the entire welfare scheme if one or several men do not identify with the program account number. The “compelling governmental interest” is not to speculate on the viability of the entire scheme of the universal identification number. The legitimate interest of government before the court as it applies to our case study is to make sure that the man has fulfilled his duty to support his dependants. If the man can prove that he is able to fulfill his support requirements and that he can be held accountable to the court for those requirements, extra-normal costs or administrative measures ought not to justify oppressive acts against the man on account of his religious obligations. Remember, the man’s duty to meet the needs of his dependants is also a religious obligation (religion – the duty which we owe our Creator, and the

manner of discharging it). Many resources have been invested to ensure the government is helping the man fulfill that (dependant support) religious obligation. Ought the one religious obligation (not violating several of the Ten Commandments, and the prohibitions of the Book of Revelation) to be sacrificed to meet the other religious obligation (loving our neighbor through social welfare), when both can be met?

Let's look at a more grievous scenario. Let's say this man is convicted that he love his wife and care for the needs of his dependants. He is also convicted that he must forsake worshipping the Anti-Christ through to use of the voluntary universal identification number which he understands is the number of the beast. Let's say the man loses his job because the Texas Workforce Commission (TWC) wrongly advises his employer to not hire him (contrary to the IRS statement on page 11 of IRS Publication 1586 – Reasonable Cause Waiver). Let's say he also loses his driver's license, and his occupational license, and he can't even take his kids fishing because he lost his recreational license due to **Section 666** of the Social Security code. Let's say he then cannot pay his mortgage and loses his house. Let's say nobody will rent an apartment to him because he won't give a number. Let's say he cannot get a bank account without confessing the number because of the Patriot Act. Let's say that because of all of this, he not only cannot survive, but he is scorned by family, friends, the church and society. After all of this, his wife does not have the same conviction. She becomes angry with him and files for a no-fault divorce. He then loses by default. His only response to her complaint is that he loves his wife and is committed to marriage forever. When he goes to Court because he is delinquent on his support judgment payments, he readily proves the sincerity of his beliefs. The government prevails in their assertion that it has a "compelling" interest to the "person" because of the fact that he is delinquent on his support payments. When it comes to the "least restrictive means" test, he is unable to show that he will fulfill his support obligations due to the fact that he cannot get a job, or cash a check, or drive, or get a place to live. Thus, the Court would probably order enforcement actions against him and do so citing the SSN with which the man was previously associated.

When He goes to court citing the Texas *Religious Freedom Act* (TRFA) because an employer refuses to hire him because he won't give a SSN, the employer prevails in their argument that they have a "compelling" governmental (IRS) interest to the "person" because the man has a support enforcement judgment against him. When he goes to court citing the TRFA because he cannot get a driver's license, the government prevails in their argument that 42 USC §666 establishes a "compelling" governmental interest to the "person" because he has a support enforcement against him. When he is homeless and goes fishing for his breakfast, he gets arrested for fishing without a license. He claims a defense on the basis of TRFA, but the government prevails in their argument that there is a "compelling" governmental interest to the "person" because the man has a support enforcement judgment against him. Once the cascade of catastrophe begins, it becomes more and more difficult for the man to sustain an argument in a "least restrictive means" question. **This cascade could have been checked if the man was not thwarted from being hired without identifying with the universal number.** If in the scenario above, the TWC web site had encouraged employers to comply with the

United States and Texas codified public policy regarding the protection of religious liberty, the man would have been hired in keeping with the Federal RFRA, the Texas TRFA, the tax code Reasonable Cause Waiver provision of 26 USC 6724 & the Federal tax regulation 26 CFR 301-6724-1, and IRS Publication 1586 – Reasonable Cause Waiver. Since he would have then been able to work and provide for his family, he could have shown the Court that he could be accountable to the Court to meet his dependant support requirements to support a “least restricted means” assertion. He would then not have an enforcement judgment against him. He thus would be able to counter a “compelling governmental interest” to the “person” claim against him when he tried to get a driver’s license, fishing license, etc. In fact, if he could work to support his family, his wife might not have filed for divorce.

The majority of this thesis is focused upon the true nature of law and the authority that validates government acts as “legitimate.” It does not, until the previous paragraph, focus upon of the current mechanisms in regulation and statute that provide loopholes to enable an employer to hire a person who cannot participate with the universal identification number. It is most important to know and understand law in its purest form. The only way to know and understand it in its purest form is to know the Author of law, the Creator. Those who do not know the Author of law, who therefore cannot understand the essence of law, will devise schemes contrary to law to close those loopholes that I revealed in the previous paragraphs. An example of the practice is shown in the lasts several paragraphs of the TWC website discussing the exemption for employers who cannot obtain a SSN from an employee. It suggests that employers conduct a litmus test prior to hiring in order to weed out those who might want to be employed without forsaking their right to not identify with the universal number. It suggests a method for them to do so in such a way to make it most difficult for the employee to protect their rights on the basis of religious liberty law. Rather than acting on the purpose of government, to protect liberty, the government sanctioned website inspires and recommends to employers a mechanism to undermine liberty in such a way as to evade temporal consequence. Do you see the dangerous trend?

Law, that which is right and just, preserves a way for those who are loyal to God. “He guards the paths of justice, and preserves the way of His saints.” Proverbs 2:8. The Federal *Religious Freedom Restoration Act* (42 USC 2000bb-1), Texas *Religious Freedom Act*, the *Reasonable Cause* waiver statute (26 USC §6724), its associated regulation (26 C.F.R. §301-6724-1), and the associated IRS information publication (IRS Publication 1586), are mechanisms that act like a relief valve to release the tension between the world government system’s insatiable lust for power and those who will not yield their worship of God for the sake of Mammon. Therefore, the TWC’s website should rather inspire and enable mechanisms for liberty if their true desire is to administer government to its proper end - **justice**.