

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,123

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a determination of the Department of Social Welfare terminating Food Stamp benefits for the petitioner's three children based on her refusal to apply for Social Security numbers for those children.<sup>(1)</sup> The issue is whether the petitioner should be exempted from the Department's requirement to obtain such numbers because her constitutional and statutory right to the free exercise of her religion may be unduly burdened by that requirement.

PROPOSED FINDINGS OF FACT

In lieu of a hearing in this matter, the parties have stipulated to the following findings of fact in this matter:

1. The [petitioners F. H. and P. H.] are husband and wife.
2. [F. H. and P. H.] live in [town], Vermont with their children:
  - a. [A. H.], 5-20-87/d.o.b.
  - b. [M. H.], 6-1-89/d.o.b.
  - c. [J. H.], 1-29-91/d.o.b.
3. In May, 1994, the Department of Social Welfare requested verification from [the petitioner's family] that a Social Security card had been applied for on behalf of [A. H.] (A copy of the notice requesting verification is attached as Exhibit #1.)
4. The Social Security issue came up in June, 1994 because in May, 1994, the [petitioner's family was]

due for a review and [A. H.] had turned seven years of age. According to outdated DSW policy, a child could receive Food Stamp benefits without a Social Security number until the child's seventh birthday. (A "666" number was used in place of the Social Security number.)

5. The notice advised [F. H.] that [A.] would be removed from the household Food Stamp grant if a Social Security number was not provided to the Department or at least verification that one had been applied for.

6. [F. H.] responded to the request for verification by requesting a Fair Hearing.

7. [F. H.] is aware that the Department requires verification of Social Security numbers for her children in order to participate in DSW programs.

8. In June, 1994, [F. H.] filled out a Statement of Need and signed it. The back of the form reads as follows:

I am required to provide and verify Social Security numbers for myself and my household or apply for them as a condition of eligibility for . . . Food Stamps in accordance with Section 16 (f) of the Food Stamp Act of 1977 and Title 7 of the Code of Federal Regulations, Part 273.6 and 273.2.

(A copy of the Statement of Need is attached as Exhibit #2.)

9. [F. and P. H.] believe that obtaining and using a Social Security number runs contrary to their religious dictates. The [petitioners'] belief stems from passages in the Book of Revelations that equate the numbering of individuals (especially in economic matters) with identification with what is referred to as the "beast" or anti-Christ. They believe that getting Social Security numbers for their children would amount to marking them for life with such a number, because once an individual receives a Social Security number, they will always have it. The [petitioners] believe that their children should have the choice, when they come of age, as to whether they get Social Security numbers.

10. The [petitioners] are unwilling to apply for Social Security numbers for their three children; the children do not have Social Security numbers.

11. The [petitioners] belong to the Evangelical Christian religion.

12. [F. H.] has belonged to that religion since she was sixteen years of age; her date of birth is 2-15-61.

13. [P. H.] has belonged to the Evangelical Christian religion since he was twenty-one years of age; his date of birth is 5-18-51.

14. The [petitioners] obtained Social Security numbers for themselves before they held their current religious beliefs.

15. The [petitioners] have tried to get rid of their Social Security numbers. They have been unable to determine a procedure for getting rid of their Social Security numbers.

16. The [petitioners] are sincere in their religious beliefs.

17. Once the Department realized that it was using outdated policy which allowed a child up to seven years of age to use a "666" number, the Department was required to take actions to terminate [M. H.] and [J. H.'s] Medicaid benefits.
18. In September, 1994, the Department sent the [petitioners] a notice requesting verification of Social Security numbers for [M. H.] and [J. H.] or at least verification that the numbers had been applied for.
19. The Department's notice went on to advise that Medicaid benefits would be terminated for [M. H.] and [J. H.] if Social Security numbers were not applied for or provided to the Department by September 20, 1994. (A copy of the notice requesting verification is attached as Exhibit #3.)
20. [F. H.] appealed the actions noted in Exhibit #3 by requesting another Fair Hearing.
21. The Department uses Social Security numbers:
- a. in its computer processing of program benefits, support enforcement, welfare fraud investigation and audits;
  - b. to verify Social Security and Supplemental Security Income benefits;
  - c. to prevent a person or family from receiving duplicate benefits under any program;
  - d. to make mass changes in Federal benefits easier to implement;
  - e. to exchange information with such agencies as the Social Security Administration, Unemployment Compensation or Internal Revenue Service for the purpose of:
    - i. verifying income;
    - ii. determining eligibility; and
    - iii. determining amount of benefits;
  - f. to serve as identification in the Lifeline Program when an exchange of information with Vermont's telephone companies has resulted in errors; and
  - g. to determine the accuracy and reliability of information given to the Department by applicants for and recipients of assistance.
22. The Department requires Social Security numbers from applicants/recipients of the Food Stamp and Medicaid programs in order to comply with federal regulations governing the administration of those programs. Noncompliance by a State with federal regulations may subject that State to loss of federal funds.
23. There are approximately 80,000 Vermonters receiving Medicaid benefits. There are approximately 56,000 Vermonters receiving Food Stamp benefits.

### FURTHER STIPULATION OF FACTS

This matter was remanded by the Board at the request of the Department of Social Welfare in order to allow the presentation of evidence showing that the use of the Social Security Number is the least restrictive method available to further its legitimate administrative interests. In lieu of further testimony on this issue, the parties further stipulated to the following facts:

### ORDER

The decision of the Department terminating the petitioner's three children from Food Stamp eligibility is reversed and the petitioner should be exempted from requirements that she apply for Social Security numbers for her three children.

### REASONS

There is no dispute in this matter that federal law and regulations, as well as state regulations governing the Food Stamp program require that recipients, including children of recipients, apply for and obtain Social Security numbers as a condition of maintaining eligibility for those programs.

The Food Stamp program is established and fully funded by the federal government through the Food and Nutrition Service of the U.S. Department of Agriculture, but is administered by the states which are required to use federal statutes and rules. In the Food Stamp program, the statute itself requires the use of Social Security numbers:

The Secretary and State agencies shall (1) require, as a condition of eligibility for participation in the food stamp program, that each household member furnish to the State agency their Social Security account number (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program. The Secretary and State agencies shall have access to the information regarding individual food stamp program applicants and participants who receive benefits under Title XVI of the Social Security Act [42 U.S.C.A. § 1381 *et seq.*] that has been provided to the Secretary of Health and Human Services, but only to the extent that the Secretary and Secretary of Health and Human Services determine necessary for purpose of determining or auditing a household's eligibility to receive assistance or the amount thereof under the food stamp program, or verifying information related thereto.

7 U.S.C. § 2025(e)

The federal regulations promulgated pursuant to this statute are extensive and provide specifically that social security numbers are a requirement for participation in the food stamp program, instruct states as to how they can assist applicants to obtain social security numbers and provide that they are to be used "to prevent duplicate participation, to facilitate mass changes in Federal benefits . . . and to determine the accuracy and/or reliability of information given by households." 7 C.F.R. §§ 2025 (a),(b),(f) and (g). The regulations specifically provide what actions are to be taken when recipients fail to comply with these regulations:

(c)Failure to comply. If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program . . .

(d) Determining good cause. In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency . . . Documentary evidence or collateral information that the household member has applied for SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSN, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e)Ending disqualification. The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

#### 7. C.F.R. § 273.6

The petitioner and her husband have refused to apply for a social security number for their three children for use in the Food Stamp program. Their refusal is based upon their interpretation of a portion of the Book of Revelations in the Bible which they believe requires them to resist the attachment of permanent and universally used numbers to their children because such numbers may represent the mark of a "beast" or "anti-Christ" warned against in Revelations as hazardous to one's spiritual well-being. The petitioner and her husband assert that the Department's requirements force them to choose between food and medical assistance needed by their children and their religious principles. They argue that such action by the state Department of Social Welfare places a significant burden on their right to the free exercise of their religion protected by the First and Fourteenth Amendments of the United States Constitution; Chapter I, Article 3 of the Vermont Constitution; and the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb.

The right to hold religious beliefs is absolutely guaranteed by the U.S. Constitution. However, conduct stemming from those beliefs, can, under certain circumstances be subject to governmental control. Standards and tests for the permissibility of government intrusion into this protected area have been established under all three grounds relied upon by the petitioner. However, as the standards under those grounds are similar and as their evolution is intertwined and complex, a brief summary of their history may assist in explaining those standards, particularly with regard to the use of Social Security numbers.

Modern U.S. Supreme Court interpretations of the free exercise clause of the First Amendment of the United States Constitution were fairly consistent from 1963 through 1981. During that time the Court decided three major cases

which generally held that state action which burdened the right to the free exercise of religion could only pass constitutional muster if the state showed both that the burden created furthered a compelling state interest and that there was no less restrictive way of protecting that interest. See Sherbert v. Verner, 374 U.S. 398 (1963)(reversal of state denial of good cause quit status to unemployment benefits applicant who quit work when required to work on sabbath of her religion); Wisconsin v. Yoder, 406 U.S. 205 (1972) (state burdened religious beliefs of Amish community by criminally prosecuting members who refused to send children to high schools until age 16 as required by state law) and Thomas v. Review Board 450 U.S. 707 (1981)(state finding of lack of good cause for a job quit based upon religious opposition to working on armaments products was unconstitutional burden).

In 1977, a federal court in New York was among the first to consider a constitutional challenge to the requirement of Social Security numbers as a condition for eligibility in the Aid to Families with Dependent Children program as reflected in the New York state welfare regulations raised by a family with religious beliefs very similar to those at issue here. Stevens v. Berger, 428 F.Supp. 896 (1977). The Court analyzed the petitioner's beliefs to assure that they were based on theology and sincerely held and after concluding that the plaintiffs had met their burden on that count decreed that the burden had shifted to the state under Sherbert and Yoder to show that there was a compelling state interest involved. The Court was convinced that the need to eliminate fraud and to provide for an orderly administration of the welfare program was sufficient to show that compelling interest. However, the Court also required the state to show that an exception for the petitioners to the methodology used was not possible which would accomplish the same objective. The state did not meet that burden and the Court remarked that other models in the government such as IRS rules for dealing with persons who had opted out of the Social Security system existed to suggest solutions to the state.

In 1984, a federal appeals court had the opportunity to consider a challenge to the requirement of Social Security numbers based on religious beliefs (again very similar to those expressed in this case) in the Aid to Families with Dependent Children program in California. Callahan v. Woods 736 F.2d 1269 (1984). The Ninth Circuit Court of Appeals, in large part relying on the Supreme Court decisions cited above, concluded that a three part test was required to determine the constitutionality of the state action and found that the first test, magnitude of the impact, was met because the Social Security number requirement in the AFDC program substantially interfered with the free exercise of the plaintiff's religious beliefs thereby triggering the second test, a showing by the state of a compelling state interest. The Court in that case determined that the state had met its burden of showing a compelling state interest but was still required to meet the third test, a showing of "the extent to which recognition of an exception from the statute would impede the objectives sought to be advanced by the state." Id. at 1273. While noting that the state had technically failed to meet its burden in that matter by producing no evidence on that issue, the Court, nevertheless, decided as a matter of equity to remand the case for such evidence because the legal requirements may not have been clear to the state. The case did not return after remand.

The Social Security number issue finally reached the U.S. Supreme Court in 1986, when a Native American family refused on religious grounds to apply for a number for their daughter as a condition of receiving ANFC benefits. Bowen v. Roy, 476 U.S. 693 (1986). By the time the trial below was ended, it appeared that the child already had a Social Security number which the parents did not want HHS to use. The appeal was filed by the Secretary of Health and Human Services from an injunction issued by a Pennsylvania federal court which prohibited HHS from using and disseminating the child's Social Security number and enjoined HHS and the Pennsylvania Department of Welfare from denying benefits to the child until her 16th birthday based on her refusal to allow the use of her number.

The majority of justices on the Court voted to reverse the injunction issued by the federal court, but there was no majority opinion as to the reasons therefore. Although the Vermont Department of Social Welfare argues that the Court was unpersuaded by the petitioner's first amendment claim, no such conclusion can be reached from reading that opinion. Three of the justices, Burger, Powell and Rehnquist, joined in an opinion adopting a new standard in exercise of religion cases which called on the state to demonstrate only a rational basis for its requirement so long as the burdening requirements were neutral on their face and of general applicability to everyone. Id., at 707-708.

Three of the justices, O'Connor, Brennan and Marshall, agreed that the federal court's injunction was overly broad but disagreed with the new standard articulated. That group would use the Sherbert/Yoder/Thomas standard and found that the state had a compelling interest in preventing fraud and efficiently operating the ANFC program. However, that group felt that HHS had failed in its burden of showing that granting an exemption to these ANFC recipients would harm its compelling interests. Bowen, at 732.

Two more members of the Court, Justices Stevens and Blackmun, felt the matter was moot. However, Justice Blackmun stated in dicta that he felt such a case should be ruled by the Sherbert/Yoder/Thomas standard as well. Bowen, at 716. Justice Stevens did not venture an opinion as to the standard in his opinion. Finally, Justice White alone felt that neither mootness nor an overboard injunction was at issue here. He stated that the case should be controlled by Thomas and Sherbert although he did not analyze the case under those tests. He did conclude that the injunction below should be upheld. Bowen, at 733.

In the Bowen case the most that can be said is that four members of the Supreme Court found the requirement of a Social Security number to be an impermissible infringement on the right to the free exercise of religion in the ANFC program and that three justices found that it was a justified infringement. No further cases on this particular matter have come before the U.S. Supreme Court.

One year later, in Hobbie v. Unemployment Appeals Commission of Florida, 480 U.S. 136 (1987), the Court specifically rejected an attempt by the state of Florida to rely on the Burger formulation set forth in Bowen. The Court pointed out that five justices rejected that standard (rational relationship) and stated, unequivocally that "[w]e reject the argument again today." Hobbie, at 141. The Court again relied on the Sherbert/ Yoder/ Thomas test and found the state unemployment compensation board's refusal to find "good cause" when a woman quit her job due to religious convictions which prevented her from working on the Sabbath to be an unjustified infringement on her right to free exercise of her religion.

Shortly after that decision was handed down, the United States Court of Appeals for the District of Columbia Circuit heard a case involving a religious refusal (the same religious reason as given by the petitioner in this case) to apply for a Social Security number to obtain a driver's license. Leahy v. District of Columbia, 833 F.2d 1046 (D.C. Cir. 1987). Writing for the Court, Justice Ruth Bader Ginsburg criticized the federal court below for misreading and relying on Bowen and instructed the Court below that Hobbie had specifically rejected Bowen and re-affirmed the viability of the compelling state interest test including the need for a showing by the state that the "least restrictive means of achieving the concededly vital public safety objective at stake" was used. Leahy, at 1049. That case was remanded for findings on the "least restrictive means."

Following this line of cases, it might not be that difficult to articulate a standard to use in constitutional cases were it not for the Court's more recent pronouncement in Employment Division v. Smith, 494 U.S. 872 (1990). That decision involved an appeal of a Native American drug counselor who worked for the

state of Oregon and who was discharged from his job after using peyote as part of a religious ceremony. He was thereafter denied unemployment compensation because he was fired for misconduct, specifically the violation of state criminal laws. The Court in that case articulated a standard much like that urged by Chief Justice Burger in Bowen, only requiring the State to show a reasonable relationship for imposing a standard which applied equally to all persons who broke the law.<sup>(2)</sup>

This decision apparently caused great concern among groups which protect the right to freely exercise one's religion and Congress was persuaded, in direct response to that decision, to enact the "Religious Freedom Restoration Act of 1993" which reads as follows:

#### Sec. 2000bb. Congressional findings and declaration of purposes

##### (a) Findings

The Congress finds that--

- (1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;
- (2) laws "neutral" toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;
- (3) governments should not substantially burden religious exercise without compelling justification;
- (4) in Employment Division v. Smith, 494 U.S. 872(1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and
- (5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

##### (b) Purposes

The purposes of this chapter are--

- (1) to restore the compelling interest test as set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and
- (2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

#### Sec. 2000bb-1. Free exercise of religion protected

##### (a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from

a rule of general applicability, except as provided in subsection (b) of this section.

(b) Exception

Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person--

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under Article III of the Constitution.

Sec. 2000bb-2. Definitions

As used in this chapter--

- (1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, a State or a subdivision of a State;
- (2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;
- (3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and
- (4) the term "exercise of religion" means the exercise of religion under the First Amendment to the Constitution.

Sec. 2000bb-3. Applicability

(a) In general

This chapter applies to all Federal and State law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.

(b) Rule of construction

Federal statutory law adopted after November 16, 1993 is subject to this chapter unless such law explicitly excludes such application by reference to this chapter.

(c) Religious belief unaffected

Nothing in this chapter shall be construed to authorize any government to burden any religious belief.

#### Sec. 2000bb-4. Establishment clause unaffected

Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of the First Amendment prohibiting laws respecting the establishment of religion (referred to in this section as the "Establishment Clause"). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment clause shall not constitute a violation of this chapter. As used in this section, the term "granting", used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

42 U.S.C. § 2000bb

The Vermont Supreme Court has recently held that the Religious Freedom Restoration Act controls the analysis of a free exercise claim under the federal constitution in cases which fall within its purview. Hunt. v. Hunt, Docket No. 93-424 (August 5, 1994).<sup>(3)</sup> Although these proceedings are quasi-judicial, rather than judicial, there is no reason to suppose that the petitioner's claim against the state should not similarly be analyzed with regard to the factors set forth in that law. Neither party has suggested that the Board lacks the jurisdiction to hear such a claim.

The Vermont Supreme Court characterized the above statute as requiring a return to "the traditional strict scrutiny analysis". Hunt at 11.<sup>(4)</sup> The elements of that test, as interpreted by the Vermont Supreme Court are two: first, the claimant must show that the state's action substantially burdens a sincerely held religious belief, and, second, if the first element is shown, the burden shifts to the state to show that its actions are the least restrictive means of advancing a compelling interest. Hunt at 11-12.

The petitioner is required to show as a threshold matter that a sincere religious belief is at issue. The Department has conceded that the petitioner's beliefs are sincere. That they are religiously based cannot be doubted as they spring specifically from an interpretation of the Bible with regard to moral conduct and salvation. Beliefs identical to the petitioner's have been characterized as religious in several decisions cited above. See Stevens, Callahan, and Leahy, *supra*.

It must next be determined whether the petitioner's religious beliefs are burdened by the state's requirement. The Social Security number requirement places the petitioner squarely in the position of either getting a number for her children in clear violation of her religious principles or in foregoing important benefits which provide food and medical care for her children. In the above cited decisions, the courts had no difficulty finding that foregoing ANFC benefits or a driver's license to be faithful to one's religious principles was a burden on the free exercise of religion. There is nothing in the facts here which would distinguish this case from those in terms of the interests at stake and the significant burden imposed.

As the petitioner has shown a substantial burden on a sincerely held religious belief, the burden shifts to

the Department to show that it has used the least restrictive means to further a compelling state interest. Although the petitioner claims that the state has no compelling interest in using Social Security numbers, the facts in this case and conclusions reached by other courts faced with this question, would indicate otherwise. All the justices in all the court cases above analyzing Social Security number use in the ANFC and Food Stamp programs, (Stevens, Callahan, and Bowen,) have found a compelling interest in the use of these numbers in order to efficiently administer the programs, obtain information about income and resources and to prevent fraud and the duplicate payments of benefits. The Department has argued that it has many thousands of cases which it must track and that those cases are best tracked through the use of Social Security numbers which allow ready access to information, not only in Vermont, but all over the country. There really can be no doubt that the Department has a compelling interest in seeing that benefits are paid timely to persons who are really eligible for them and that non-eligible persons are not paid.

The final question remaining is whether the Department showed that the Social Security number was the least restrictive method it could use in furthering its interest in efficient administration and avoidance of waste and fraud. In response to that burden, the Department provided a letter from the Director of the Program Development Division of the USDA Food and Nutrition Service which states merely that it is the federal position that "the SSN has to be obtained, and is used to combat fraud and prevent duplicate participation . . ." No explanation or evidence was put forth that this was the least restrictive method of carrying out its administrative duties. The Department offered no further justification of the SSN requirement beyond the federal letter.

Implicit in the Department's presentation of this evidence is its belief that it is precluded from exploring other methods which might be more compatible with the petitioner's religious beliefs by federal law and regulations. In other words, the Department believes that it is exempted from following the mandates of the Religious Restoration Act to accommodate, whenever possible, a client's need to practice the principles of her religion, by federal program requirements that mandate that recipients obtain Social Security numbers.

In light of the Vermont Supreme Court's recent decision in Howard v. Department of Social Welfare, Docket No. 93-342 (December 30, 1994), the Department's proposition is highly doubtful. In the Howard case, the Department attempted to negate its obligation under the Americans with Disabilities Act to accommodate disabled high school students who would not graduate before their nineteenth birthdays based on federal requirements preventing ANFC payments to high school students over the age of eighteen who were not expected to graduate before age nineteen. The Court in Howard rejected the Department's contention that it was required to enforce federal laws and regulations in spite of the existence of other laws which were clearly protective of the petitioner's rights. The Court noted, for instance, that in the case of a federal matching program that the Department could opt not to accept matching funds for persons who were protected by the ADA and pay them out of state funds. More importantly the Court pointed out that it was incumbent upon the state to request that the federal agencies make exceptions or accommodations for persons protected by a federal act before it could assume that it would be required to enforce such a regulation. Howard, at 9-10. The Court emphatically stated that it did "not believe that Congress intended public entities acting under authority of federal legislation to be exempt from the Rehabilitation Act and the ADA." Howard at p. 11.

There is no reason to suppose that the Supreme Court would believe that Congress intended public entities acting under authority of federal legislation to be similarly exempt from the Religious Freedom Restoration Act. Given the Court's analysis in Howard, the Department cannot stand by the federal

regulations and regional office interpretation to meet a showing of least restrictive method in this case. Although the Food Stamp program is funded wholly by the federal government, it is administered by the state and the state must show that it is not employing unconstitutional means in the administration of this program. If the state feels that the federal government is unconstitutionally thwarting its ability to provide food to eligible Vermont residents, it may have to challenge the federal decision. If the state agrees with the federal policy, it must be prepared to justify it. The state has neither challenged nor justified this policy.

The evidence shows that for several years the Department used internal identifying numbers to track the petitioner's children's benefits. The Department has offered no reason (other than the regulatory requirement and federal interpretation) as to why this would not continue to be possible and practicable. The petitioner has indicated her willingness to agree to such temporary numbers assigned to her children. Given the petitioner's willingness to cooperate, the substantial burden placed on her religion if she is required to use a Social Security number and the existence of other methods for accomplishing the same important governmental task, the petitioner's children should not be denied Food Stamp benefits based on her failure to supply Social Security numbers for them.

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1. This matter originally involved denial of Medicaid benefits for the same reason. However, the Medicaid appeal was withdrawn after the Medical Bureau of the Department of Health and Human Services granted a waiver of the Social Security number requirement to the petitioner.
2. Just a few months after this decision was made, the Vermont Supreme Court decided a case involving an alleged burden on religious beliefs caused by the state Department of Education's requirement that all private schools report the names of students attending and certify that certain basic courses were being taught. Vermont v. DeLaBruerre, 154 Vt. 237 (1990). The Court noted the Smith decision in a footnote but distinguished the instant case as involving different interests controlled by the standards previously articulated by the Supreme Court, particularly Yoder, Sherbert, Thomas an Hobbie. Id., at 248-249.
3. In that case, a member of a religious community found in contempt for failure to pay a child support order challenged whether state law which requires the use of support guidelines adopted by the Office of Child Support Enforcement can be enforced against a person who lives in a religious community and whose religious beliefs prevent him from earning a personal income under the free exercise of religion clause.
4. The Hunt court also analyzed the claims of the petitioner under Chapter I, Article 3 of the Vermont Constitution and concluded that it confers no "greater protection for a free exercise claim such as defendant's than the strict scrutiny standard at issue". Id. at 15. For that same reason, it is concluded that analysis under the Vermont Constitution would not give these petitioners greater protection of their right to the free exercise of religion.