Liberty Tree

Vol. 21, No. 9 — September 2019

Identity Prison

PART IV

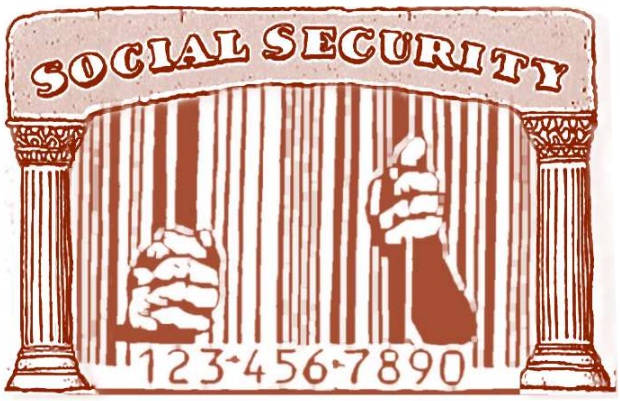
As discussed in three previous issues (March 2018, March 2019, and June 2019), a national ID system is being cemented onto these States united via the totalitarian "REAL ID" scheme. Laying aside many troubling aspects of the national ID scheme, we have been focusing on the deception practiced by many States' vehicle agency goons: that in order to get a REAL ID-compliant license[1] from your State, you must have a social security account number.

As previously pointed out, there is no federal legal requirement for any person to obtain an SSN — a number created by the federal government — unless such person wishes to receive federal benefits. Further, it is unconstitutional to mandate anyone to receive federal benefits. People living in the United States do not have to have SSNs, and quite a few still do not — especially those whose patriot parents *refused to apply for an SSN* for their children. But what about people who long ago applied for SSNs or have been using SSNs their parents applied for, and who have philosophical or religious objections to disclosing such numbers to any government agency for any purpose? Can they legally be forced to disclose such numbers to obtain State-issued driver's licenses?

"It shall be unlawful ... to deny to any individual .. a privilege provided by law because of such individual's refusal to disclose his social security account number."

Jurisdiction over the issuance of driver's licenses is held by the individual States, not the federal government. Because the SSN is a federal creation, its use is under federal jurisdiction; the States have no authority over that number and cannot make its disclosure a requirement under its own laws, unless it is to distribute federal benefits (*i.e.,* welfare and social security benefits administered by the State as part of a federal scheme).

There are three federal statutes which are generally viewed by State legislatures and their agency goons as providing them the legal authority to pass laws denying licenses to persons refusing to disclose any SSN(s) assigned to them by the Commissioner of Social Security. The first is 42 U.S.C. § 405(c)(2)(c)(i), addressed in this installment, the second is 42 U.S.C. § 666(a)(13), and the third is Pub. L. 109-13, 119 Stat. 311, Sec. 202(c)(1)(C), set forth as a note under 49 U.S.C. § 30301 (the "REAL ID Act"). But prior to enacting these statutes, the federal government also passed a measure protecting individuals who refuse to disclose their SSNs to State authorities from being denied rights or privileges as a result. How, then, are States getting away with doing just that?

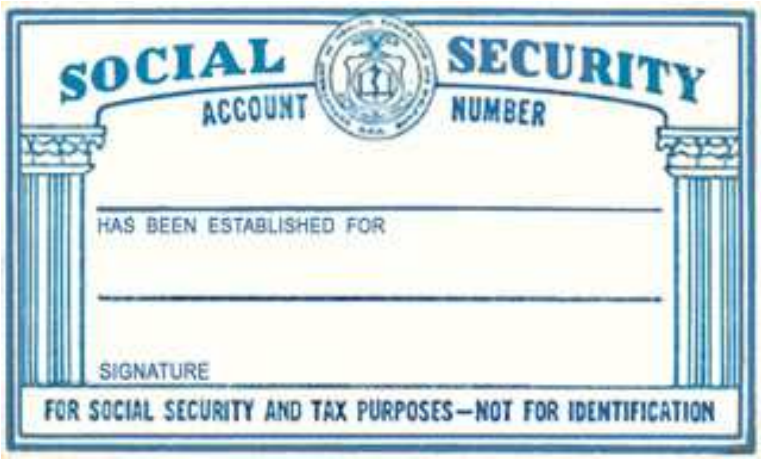


POLICY IS NOT FEDERAL REQUIREMENT

In 1976, to extend the use of the social security number to the States, Congress passed a provision codified at 42 U.S.C. § 405(c)(2)(C)(i) which purportedly *permits* State governments to "utilize" SSNs issued by the federal government to establish the "identification of individuals affected by" laws which ad-

1. An ID card that the federal government will accept in order to allow you to board a commercial airliner and enter certain federal facilities. But note that federal courts are always open; no ID is required to enter a courthouse, just submission to metal detection and an x-ray of one's belongings (We the People having become inured to such unconstitutional searches.)

(Continued on page 2)



Beginning with the sixth design of the Social Security card, issued first in 1946, SSA added a legend to the bottom reading "FOR SOCIAL SECURITY PURPOSES -- NOT FOR IDENTIFICATION." This legend was removed as part of the design changes for the 18th version of the card, issued beginning in 1972. The legend has not been on any new cards issued since that time. Notice that the removal of this legend occurred immediately prior to the enactment of federal legislative "policy" permitting the States to utilize SSNs for the purpose of "establishing the identification of individuals affected by [State] law."

(Continued from page 1)

minister taxes, public assistance, driver's licensing, or motor vehicle registration:

> 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 license, or motor vehicle registration law ***within its jurisdiction***, utilize the social security account numbers issued by the Commissioner of Social Security 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 Commissioner of Social Security.

To be sure, this "policy" does not *require* States to use or obtain SSNs in the administration of any laws, including driver's license laws, nor does it require individuals to disclose SSNs to States for any reason. Put another way: this federal provision does not authorize the States to require persons to have or obtain SSNs, but can (or did) the federal government authorize the States to require individuals to disclose SSNs already assigned to them by the SSA?

To underscore this question, it appears that the Social Security Administration explained in its October 1996 version of Publication No. 05-10002 ("Social Security: Your Number"): "The Social Security Administration (SSA) is aware of concerns about the increasing uses of the Social Security number for client identification and recordkeeping purposes. *You should not use your Social Security card as an identification card.* However, several other government agencies are *permitted* by law to use Social Security numbers, *but there is no law either authorizing or prohibiting their use.*"[2] Today's version of Publication No. 05-10002 contains no such explanation.

PROHIBITION ON DENYING RIGHTS, BENEFITS AND PRIVILEGES

At the end of 1974, prior to passing the policy of *allowing* States to use SSNs in the administration of taxes and driver's licensing — Congress passed a law forbidding the denial of any rights, benefits or privilege provided by law to persons who *refuse to disclose* social security numbers. Section 7 of Pub. L. 93-579 was set forth only as a note under 5 U.S.C. 552a, and it states:

> **Disclosure of Social Security Number**
> Pub. L. 93–579, §7, Dec. 31, 1974, 88 Stat. 1909 , provided that:
> "(a)(1) 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.
> (2) the provisions of paragraph (1) of this subsection shall not apply with respect to-
> (A) any disclosure which is required by Federal statute, or
> (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
> (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

This law has not been repealed. Nevertheless, some might argue that 42 U.S.C. § 405(c)(2)(C)(i) allows a State to deny a right, benefit or privilege provided by law when a person refuses to disclose his or her SSN because § 405(c)(2)(C)(v) further provides: "If and to the extent that any provision of Federal law heretofore enacted is *inconsistent* with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect." In other words,

(Continued on page 3)

2. All emphases are added throughout, unless otherwise noted.
3. Also codified at 42 U.S.C. § 408(a)(8) is a penalty for compelling the disclosure of an SSN in violation of U.S. law: "Whoever … discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States; shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both …"

(*Continued from page 2)*

despite the language of Sec. 7 of the Privacy Act, indicating that a "Federal, State or local government agency" cannot deny any individual a right, benefit, or privilege provided by law when an individual refuses to disclose his or her social security number, State governments have argued in court that the law allowing States to require the furnishing of a number in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law amounts to a "disclosure required by Federal Statute" for those purposes.

Patriots who stood up for the freedom of the States from Federal tyranny (L to R, *circa* 1996): Atty. Dave Hardy; Sheriff Richard Mack, Arizona; Sheriff Sam Frank, Vermont; Atty. Stephen Hallbrook; Sheriff Printz, Montana. Their case, *Printz v. United States*, reaffirmed the separation of jurisdiction between State and federal government.

CAN CONGRESS DELEGATE ITS LAW-MAKING POWER?

But the "policy" that States are permitted to utilize SSNs to establish the identification of individuals for driver's licenses and *may* require such individuals to furnish to the State or any agency an SSN does not simultaneously make it a federal requirement for an individual to *disclose* an SSN to State agencies. Referring again to Pub. L. 93–579, §7, above, a person can be denied a right, benefit, or privilege provided by law if disclosure of the SSN is *required by a federal statute*. Notably, 42 U.S.C. § 405(c)(2)(C)(i) does not directly mandate any individual to disclose an SSN to a State agency for any purpose. So while it appears that a State "may require" disclosure, an individual is at the same time *not* explicitly required by federal law to disclose such number to the State.

Thus, the prohibition against a State denying a privilege provided by law to a person who *refuses* to disclose "their" SSN is arguably *not* inconsistent with the policy set forth at 42 U.S.C. § 405. It follows, then, that while 42 U.S.C. § 405(c)(2)(C)(i) may permit states to use SSNs to administer driver licensing programs, they must still comply with Privacy Act requirements and prohibitions.

Of course, several federal courts who have addressed this issue have held that a person *can* be denied a privilege made by State law for refusing to disclose an SSN, claiming the permission in 42 U.S.C. § 405 to States *supersedes* the Privacy Act protections for individuals. For example, in *Greidinger v. Almand*, 30 F.Supp.3d 413 (D. Md. 2014), the federal district court first noted that Sec. 7(a)(2)(a) of the Privacy Act provides that the protection against losing a right or privilege for refusing to disclose a number does *not* extend to "any disclosure required by Federal Statute." The court then stated that "any federal statute which mandates the disclosure of Social Security numbers can *implicitly* or *expressly* override the protections provided." The court decided that by giving permission to the States to require (if they so desire) a person to furnish an SSN in the administration of a tax or driver's licensing law, § 405 "expressly permits the state to impose such a requirement under the color of federal law."

The court next admitted that the statutory language of § 405 was "less than clear," but cited Senate Rep. No. 94-938 at 392 (the Committee stating it "believe[d] that State and local governments *should have the authority* to use social security numbers for identification purposes when they consider it necessary for administrative purposes.")

Yet nothing in the Senate Report or the court's opinion considers whether or not Congress — which under the Constitution has the sole power to make federal laws in areas of federal jurisdiction — can delegate its law-making powers with respect to a number under its jurisdiction to the States who are enacting laws on matters exclusively under their own jurisdiction. Congress may only enact laws over the subject matters enumerated in the U.S. Constitution. States may enact laws over matters reserved to them and not expressly forbidden to them by the U.S. Constitution.

A State may not delegate its law-making powers to the Congress over

(Continued on page 4)

Continued from page 3)

matters under State jurisdiction. Likewise, Congress may not delegate its law-making powers to the States, since it has no jurisdiction over the powers exercised by the States and the States have no jurisdiction over the powers exercised by the federal government. Congress has no jurisdiction over motor vehicle registrations or operator licensing in the States. Thus, Congress had no "authority" to "permit" States to deny driver's licenses *for any reason*, and States *cannot* pass laws "under the color of federal law."

Interestingly, the phrase "color of law" means an appearance that an act performed is based upon a legal right or statute, but that in reality no such legal right or statute exists. Perhaps the *Greidinger* court committed a Freudian slip by claiming that the federal law "expressly permits the state to impose such a requirement [a requirement to furnish an SSN in order to obtain a license] under the color of federal law." Its slip inadvertently reveals that the State has no legal right whatsoever to impose disclosure of SSNs upon individuals.

NO STATE PARTICIPATION IN FEDERAL REGULATORY SCHEMES

No federal law, including the REAL ID Act, can, nor does, *directly* compel or require applicants to disclose social security numbers for the purpose of obtaining State-issued driver's licenses. Further, it cannot be stated often enough that no State is required to pass laws requiring applicants to disclose social security numbers, and no State is required or compelled whatsoever to issue only federally-compliant licenses. Again, this is due to the nature of our republic — the federal government only has jurisdiction over those matters specifically delegated to it, and it may not impose the administration of its laws or schemes upon the States. Congress cannot directly force a state to legislate or regulate in a particular way.

This was made clear in *Printz v. United States*, 521 U.S. 898 (1997). That Supreme Court decision reaffirmed the fact that the federal government cannot force states or local governments to enforce federal regulatory programs or schemes (such as requiring the disclosure of SSNs in order to enter federal buildings). Congress cannot take away a state's sovereignty, and federalism mandates that States remain independent from the federal government:

> We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty. Accordingly, the judgment of the Court of Appeals for the Ninth Circuit is reversed. *Id.,* at 935.

Under the *Printz* doctrine, the federal government cannot, even if it wanted to, force States to obtain social security numbers as a condition to issuing driver's licenses. To do so would constitute a federal subjugation of each State's law-making authority in direct violation of the fundamental and historical legal principle of "dual sovereignty."

As the *Printz* case demonstrates, the federal government cannot enact laws "compelling" the States to obtain SSNs from individuals, because that would violate each State's law-making authority. Likewise, the federal government cannot enact laws compelling individuals to disclose SSNs to States in violation of each State's own law-making authority. This is why Congress attempted to indirectly accomplish what it may not accomplish directly, by purportedly *allowing* the States to force individuals to disclose a federal number for State purposes under 42 U.S.C. § 405. A tangled web, indeed.

Nevertheless, the State legislatures have willfully failed to recognize the fact that they have no legal authority to condition the issuance of a State driver's license — even if such license were deemed a mere privilege provided by law — on a required disclosure of a federal number.

In a future installment, we will further examine the "authority" of a State to deny issuing licenses where individuals refuse to disclose SSNs in relation to 42 U.S.C. § 666 and the REAL ID Act. Stay tuned.