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11-9-2017

### Ricks v. State Contractors Board Clerk's Record Dckt. 45396

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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

GEORGE Q RICKS

Appellant,

v.

STATE OF IDAHO CONTRACTORS BOARD, IDAHO  
BOARD OF OCCUPATIONAL LICENSES, LAWRENCE  
WASDEN, Attorney General

Respondents,

*Appealed from the District Court of the First Judicial District of  
the State of Idaho, in and for the County of Kootenai.*

GEORGE Q RICKS  
13825 N Lauren Loop  
Rathdrum, ID 83858

*Attorney for Appellant*

LAWRENCE WASDEN  
Attorney General  
PO Box 83720  
Boise, ID 83720

*Attorney for Respondents*

45396

**FILED - COPY**  
DEC 14 2017  
Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE Q RICKS,	)	
	)	SUPREME COURT
APPELLANT,	)	CASE NO. 45396
	)	
VS.	)	
	)	
STATE OF IDAHO CONTRACTORS,	)	
BOARD, IDAHO BOARD OF	)	
OCCUPATIONAL LICENSES,	)	
LAWRENCE WASDEN, Attorney	)	
General	)	
	)	
RESPONDENTS	)	
_____	)	

CLERK'S RECORD ON APPEAL

GEORGE Q RICKS  
13825 N Lauren Loop  
Rathdrum, ID 83858

LAWRENCE WASDEN  
Attorney General  
PO Box 83720  
Boise, ID 83720

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

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8/10/2016	NCOC	DEGLMAN	New Case Filed - Other Claims	Lansing L. Haynes
		DEGLMAN	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Ricks, George (plaintiff) Receipt number: 0032263 Dated: 8/10/2016 Amount: \$221.00 (Credit card) For: Ricks, George (plaintiff)	Lansing L. Haynes
		DEGLMAN	Filing: Technology Cost - CC Paid by: Ricks, George (plaintiff) Receipt number: 0032263 Dated: 8/10/2016 Amount: \$3.00 (Credit card) For: Ricks, George (plaintiff)	Lansing L. Haynes
	COMP	HAYDEN	Civil Action For Violation of Constitutional And Statutory Rights	Lansing L. Haynes
	AMCO	HAYDEN	Amended Complaint Filed	Lansing L. Haynes
	SUMI	HAYDEN	Summons Issued	Lansing L. Haynes
9/27/2016	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 11/02/2016 03:00 PM) DA LESLIE HAYES APPEARING TELEPHONICALLY	Lansing L. Haynes
	MNDS	KOZMA	Defendant's Motion To Dismiss	Lansing L. Haynes
	MEMS	KOZMA	Memorandum In Support Of Defendant's Motion to Dismiss	Lansing L. Haynes
	NOHG	LEU	Notice Of Hearing Re: Defendants' Motion To Dismiss	Lansing L. Haynes
10/26/2016	MEMO	HICKS	Memorandum in Opposition to Defendant's Motion to Dismiss	Lansing L. Haynes
10/31/2016	MISC	DIXON	Reply To Plaintiff's Opposition To Defendants' Motion To Dismiss	Lansing L. Haynes
11/2/2016	DCHH	SVERDSTEN	Hearing result for Motion to Dismiss scheduled on 11/02/2016 03:00 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: DA LESLIE HAYES APPEARING TELEPHONICALLY 208-334-4538	Lansing L. Haynes
11/15/2016	MEMO	SVERDSTEN	Memorandum Decision and Order Granting in Part and Denying in Part Defendant's Motion to Dismiss	Lansing L. Haynes
11/25/2016	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 01/05/2017 03:30 PM) DA LESLIE HAYES APPEARING TELEPHONICALLY	Lansing L. Haynes
	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 01/25/2017 03:30 PM)	Lansing L. Haynes
		SVERDSTEN	Notice of Hearing	Lansing L. Haynes
11/29/2016	NOAP	FLODEN	Notice Of Appearance - Leslie M. Hays, Deputy Attorney General obo State of Idaho Contractors Board, Idaho Board of Occupational Licenses and	Lansing L. Haynes

George Q Ricks vs. State Of Idaho Contractors Board, Idaho Board Of Occupational Licenses, Lawrence Wasden

Date	Code	User		Judge
11/29/2016	MNDS	FLODEN	Defendant's Second Rule 12(b)(6) Motion To Dismiss	Lansing L. Haynes
	NOTH	FLODEN	Notice Of Hearing re: Defendants' Second Rule 12(b)(6) Motion to Dismiss	Lansing L. Haynes
	MOTN	KOZMA	Motion for Reconsideration	Lansing L. Haynes
	MEMS	KOZMA	Memorandum In Support Of Motion for Reconsideration	Lansing L. Haynes
12/7/2016	OBJT	LEU	Opposition To Plaintiff's Motion For Reconsideration	Lansing L. Haynes
12/8/2016	MEMS	JLEIGH	Memorandum In Support Of Defendants' Second Motion To Dismiss	Lansing L. Haynes
12/12/2016	RSCN	DIXON	Response to Status Conference Notice-Attorney For Defendants	Lansing L. Haynes
1/4/2017	ANSW	LEU	Reply To Defendant's Opposition To Plaintiff's Motion For Reconsideration	Lansing L. Haynes
1/5/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Reconsider 02/02/2017 02:30 PM) Plt	Lansing L. Haynes
	HRVC	SVERDSTEN	Hearing result for Status Conference scheduled on 01/25/2017 03:30 PM: Hearing Vacated	Lansing L. Haynes
	DCHH	SVERDSTEN	Hearing result for Motion to Dismiss scheduled on 01/05/2017 03:30 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: DA LESLIE HAYES APPEARING TELEPHONICALLY	Lansing L. Haynes
1/11/2017	NOTH	KOZMA	Notice Of Hearing RE: Plaintiff's Motion for Reconsideration	Lansing L. Haynes
2/2/2017	DCHH	SVERDSTEN	Hearing result for Motion to Reconsider scheduled on 02/02/2017 02:30 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Plt LESLIE HAYES APPEARING TELEPHONICALLY 208-334-4538	Lansing L. Haynes
2/10/2017	COMP	HICKS	Proposed Second Amended Complaint	Lansing L. Haynes
2/14/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion 03/06/2017 09:30 AM) Motion for Proposed 2nd Amended Complaint, Plt	Lansing L. Haynes
2/27/2017	MISC	KOZMA	Opposition to Plaintiff's Second Amended Complaint and Notice of Waiver of Time to Notice of Hearing	Lansing L. Haynes

George Q Ricks vs. State Of Idaho Contractors Board, Idaho Board Of Occupational Licenses, Lawrence Wasden

Date	Code	User	Judge
3/6/2017	DCHH	SVERDSTEN	Hearing result for Motion scheduled on 03/06/2017 09:30 AM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Motion for Proposed 2nd Amended Complaint, Plt LESLIE HAYES TELEPHONIC
3/20/2017	MEMS	KOZMA	Memorandum In Support Of Defendants' 3rd Rule 12(b)(6) Motion to Dismiss
	MNDS	KOZMA	Defendants' 3rd Rule 12(b)(6) Motion To Dismiss
3/22/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 04/27/2017 03:30 PM) DA-Leslie Hayes TELEPHONIC
	NOTH	JLEIGH	Notice Of Hearing RE: Defendants' 3rd Rule 12(b)(6) Motion To Dismiss
3/31/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 05/01/2017 03:00 PM) DA-Leslie Hayes TELEPHONIC
	HRVC	SVERDSTEN	Hearing result for Motion to Dismiss scheduled on 04/27/2017 03:30 PM: Hearing Vacated DA-Leslie Hayes TELEPHONIC
4/4/2017	NOTH	JLEIGH	Notice Of Hearing RE: Defendants' 3rd Rule 12(b)(6) Motion To Dismiss Vacating Hearing On April 27, 2017 And Resetting For 5/1/17
4/14/2017	MEMO	KOZMA	Plaintiff's Memorandum in Opposition to Defendants' 3rd Rule 12(b)(6) Motion to Dismiss
4/24/2017	MISC	SVERDSTEN	Defendant's Reply to Plaintiff's Memorandum in Opposition to Defendants' 3rd Rule 12(b)(6) Motion to Dismiss
5/1/2017	DCHH	TBURTON	Hearing result for Motion to Dismiss scheduled on 05/01/2017 03:00 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Under 100
5/2/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 06/08/2017 03:30 PM) (Continued from May 1, 2017)
		SVERDSTEN	Notice of Hearing
5/23/2017	BRFR	HICKS	Defendant's Supplemental Brief in Support of Defendant's Third Motion to Dismiss
6/1/2017	MISC	DEGLMAN	Plaintiff's Reply to Defendants' Supplemental Brief in Support of Defendants' 3rd Motion to Dismiss
6/6/2017	DRSB	KOZMA	Defendant's Supplemental Reply Brief in Support of Defendants' Third Motion to Dismiss

George Q Ricks vs. State Of Idaho Contractors Board, Idaho Board Of Occupational Licenses, Lawrence Wasden

Date	Code	User	Judge
6/8/2017	DCHH	SVERDSTEN	Hearing result for Motion to Dismiss scheduled on 06/08/2017 03:30 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: (Continued from May 1, 2017) DA-Leslie Hayes TELEPHONIC
6/12/2017	NOTC	LEU	Notice Of Filing Original Transcript - 10 pgs - Valerie Nunemaher
6/13/2017	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 07/18/2017 03:00 PM)
		SVERDSTEN	Notice of Hearing
6/20/2017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Reconsider 08/02/2017 01:30 PM) Hayes
6/26/2017	NOTH	JLEIGH	Notice Of Hearing RE: Defendants' Motion For Reconsideration
	MOTN	JLEIGH	Defendants' Motion For Reconsideration
	MEMS	JLEIGH	Defendants' Memorandum In Support Of Motion For Reconsideration
6/27/2017	FILE	LEU	New File Created---#2---CREATED
7/5/2017	ORDR	FLODEN	Memorandum Decision and Order Granting In Part and Denying In Part Defendants' Motion to Dismiss
7/14/2017	MNDS	DEGLMAN	Defendants' Fourth Rule 12 (b)(6) Motion To Dismiss
	MEMS	DEGLMAN	Memorandum In Support Of Defendants' Fourth Motion to Dismiss and/or Motion For Reconsideration
	NOHG	DEGLMAN	Notice Of Hearing Re: Defendants' Fourth Rule 12(b)(6) Motion to Dismiss
7/18/2017	DCHH	SVERDSTEN	Hearing result for Status Conference scheduled on 07/18/2017 03:00 PM: District Court Hearing Held Court Reporter: Kim Hannan Number of Transcript Pages for this hearing estimated: Leslie Hayes appearing telephonically 208-334-4538
7/20/2017	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 08/02/2017 01:30 PM)
		SVERDSTEN	Notice of Hearing
7 017	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Dismiss 08/02/2017 01:30 PM) DA-Hayes
	OBJT	DEGLMAN	Plaintiff's Reply in Opposition to Defendants' Motion for Reconsideration
7/31/2017	MISC	KOZMA	Defendants' Reply to Plaintiff's Reply in Opposition to Defendants' Motion for Reconsideration [and Fourth Motion to Dismiss]

George Q Ricks vs. State Of Idaho Contractors Board, Idaho Board Of Occupational Licenses, Lawrence Wasden

Date	Code	User	Judge
8/2/2017	DCHH	SVERDSTEN	Hearing result for Motion to Dismiss scheduled on 08/02/2017 01:30 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: DA-Hayes
	HRVC	SVERDSTEN	Hearing result for Status Conference scheduled on 08/02/2017 01:30 PM: Hearing Vacated
	DCHH	SVERDSTEN	Hearing result for Motion to Reconsider scheduled on 08/02/2017 01:30 PM: District Court Hearing Held Court Reporter: Val Nunemacher Number of Transcript Pages for this hearing estimated: Hayes
8/16/2017		HAYDEN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Ricks, George Q (plaintiff) Receipt number: 0031132 Dated: 8/16/2017 Amount: \$129.00 (Cash) For: Ricks, George Q (plaintiff)
	BNDC	HAYDEN	Bond Posted - Cash (Receipt 31133 Dated 8/16/2017 for 100.00)
	APDC	HAYDEN	Notice of Appeal
8/25/2017	MEMO	LEU	Memorandum Decision And Order Granting Defendant's Motion To Reconsider
8/29/2017	MISC	LEU	Defendants'/Respondents' Request For Additions To Clerk's Record On Appeal
9/1/2017	CVDI	HAYDEN	Civil Disposition entered for: Idaho Board Of Occupational Licenses, Defendant; State Of Idaho Contractors Board, Defendant; Wasden, Lawrence, Defendant; Ricks, George Q, Plaintiff. Filing date: 9/1/2017
	FJDE	HAYDEN	Judgment
	STAT	HAYDEN	Case status changed: Closed pending clerk action
11/8/2017	NLTR	HAYDEN	Notice of Lodging Transcript - 16 pages - Valerie Nunemacher
	NLTR	HAYDEN	Notice of Lodging Transcript - 15 pages - Valerie Nunemacher
	NLTR	HAYDEN	Notice of Lodging Transcript - 15 pages - Valerie Nunemacher
	NLTR	HAYDEN	Notice of Lodging Transcript - 11 pages - Valerie Nunemacher

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
(208) 818-9799

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 32263  
2016 AUG 10 PM 4:09  
CLERK DISTRICT COURT  
Tat H  
DEPUTY

In the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai

George Q. Ricks, )  
Petitioner )  
v. )  
State of Idaho Contractors Board )  
Idaho Board of Occupational Licenses )  
Lawrence Wasden Attorney General )  
Respondents )

CV 16-5927

Civil Action for Violation of Constitutional and  
Statutory Rights.

Complaint

Comes now the plaintiff and alleges as follows:

Count 1

The Idaho State Board of Contractors (ICB) acting through the Idaho Bureau of Licensing (IBOL) acting for the State of Idaho (Idaho) did unlawfully violate my fundamental right to contract, by denying plaintiff's application for an Individual Contractor Registration, because plaintiff refused to disclose a Social Security Number (SSN) based on a religious objection. Idaho Code (I.C.) 54-5210(a) requirement to provide a SSN in order to exercise the fundamental right to contract is incompatible with Article 1 Section 4 of the Constitution of the State of Idaho and I.C. 73-401(2), I.C. 73-402 enacted by the Idaho legislature in pursuance of Art. 1 Sec. 4 of the Constitution of the State of Idaho.

LANSING L. HAYNES

On or about the 14<sup>th</sup> day of June, 2014, plaintiff filed an Application for Individual Contractor Registration in Idaho with the IBOL, under the provisions of Title 54, chapter 52, I.C. Plaintiff included supporting documents along with the state provided form. See Certification of Agency Record on Appeal (CARA).

On or about June 19<sup>th</sup>, 2014 plaintiff received a letter from Maria Brown (Tech, Records Spec. 2) of the IBOL, stating her office had received and reviewed plaintiff's application. In order for plaintiff application to be processed, the following items were required: 1) Plaintiff's SSN, per I.C. 54-5210 (a). No other items were requested. No objection or request was made concerning how plaintiff answered question 14 (felony)

On July 7<sup>th</sup>, 2014 I sent a fax of an affidavit affirming (amongst other issues) my religious objections to disclosing an SSN in order to register as a contractor.

On July 25<sup>th</sup>, 2014 The IBOL in a letter dated and signed by Carol Klassen (TRS1) acknowledged receiving my application for Contractor Registration and supporting documents.

On August 12<sup>th</sup>, 2014 the ICB Acting by and through the IBOL acting for the State of Idaho denied my application for Contractor Registration based upon an incomplete application form according to rule 150. According to ICB notes: (A) Felony question not answered (even though ICB answered it for me and no requests or challenges were ever made of me to answer question 14 different than how I answered it). Therefore plaintiff reasonably presumed his answer was sufficient based on ICB silence. (B) SSN not provided. Plaintiff did complete said application form.

On September 18<sup>th</sup>, 2014 plaintiff filed a petition for Judicial Review

On October 30<sup>th</sup>, 2014 plaintiff received Certificate of Agency Record on Appeal. (CARA).

On November 25<sup>th</sup>, 2014 O. Ellsworth, attorney for respondent (ICB) filed memorandum in support of motion to dismiss petition for judicial review (based on petition was not timely filed.) of I.C. Title 6 Section 907, Therefore denying plaintiff administrative relief.

I.C. 73-401(2) "Exercise of religion" means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system or religious belief.

Plaintiff refused to provide an SSN in a manner substantially motivated by a religious belief. It is the plaintiff's religious belief that the SSN, as it is now being imposed, is a form of the mark, and in substance (essence) the number of the 2-horned beast written of in the Holy Bible, Book of Revelation chapters 13:16-18, 14:9-11, 15:2, 16:2, 19:20, and 20:4. Chapter 13:16-18 He also forced everyone, small and great, rich and poor, free and slave, to receive a mark on his right hand or on his forehead, so that no one could buy or sell unless he had the mark, which is the name of the beast or the number of his name. This calls for wisdom. If anyone has insight, let him calculate the number of the beast, for it is man's number. His number is 666. By forcing me to disclose an SSN in order for one to buy my labor or for me to sell my labor, is in essence the number of the beast and the card is a form of the mark. (Greek:

Charagma, meaning a scratch or etching. Stamp (as a badge of servitude) Strong's concordance of the Bible. Badge, a device or token, especially of membership in a society or group, Merriam Webster's Collegiate Dictionary 11<sup>th</sup> Edition. The SSA Website dealing with the history of designing SSN "understood that individuals would need to have a "token" that would provide a record of the number that had been assigned" to them. Assign :( L assignare, to mark.) 1: to transfer (property) to another esp. in trust or for the benefit of creditors.

Right to contract is a fundamental right. The U.S Supreme Court in *Hale v. Henkel* 201 U.S. 43, 74 stated that " the individual may stand upon his constitutional rights as a citizen, He is entitled to carry on his private business in his own way. His power to contract is unlimited... His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution." See also *Coppage v. Kansas*, 236 U.S. 1, 2.

I.C. 54-5210(a) is incompatible with I.C. 73-402(3)(a). Does the State of Idaho consider it essential to further a compelling government interest to force a citizen to provide an SSN in order to exercise a fundamental right? Is the SSN "material" in determining whether plaintiff is qualified to register as a contractor? I.C. 54-5210(a) is incompatible with I.C. 73-402(3) (b) as it is not the least restrictive means of furthering a compelling government interest. I.C. 73-122 offers alternative(s) to those who have not been "assigned" an SSN. (B) IDAPA, Rule 16.03.05 Section 103.03(a) and (b) allows a good cause exception for failure to apply for an SSN, or conscientiously opposed to using a national I.D. number, as does IDAPA 16.04.08 Section 133, I.C. 49-306(2)(b) 2 and 3. This however provides no remedies to those with a religious objection, who were assigned SSN's as infants, minors or adults, who have come to believe that the SSN as now being imposed is the number of the beast. See *Leahy v. District of Columbia* 833 F.2d 1046 (1987)

According to the House of Representatives, State of Idaho Federal Mandate Review, at one time under Idaho law, U.S. citizens were allowed to sign a waiver based on religious or moral grounds and were able to obtain a driver's license, permit or I.D., without giving the SSN. Legal maxims and other quotes from lord Coke: "A right cannot die." For such a high estimation is right in the eye of the law, as the law preserveth it form death and destruction: trodden downe it may bee, but never trodden out. Section 297 B.

In *Lewis v. Idaho department of transportation* decided August 17<sup>th</sup>, 2006, the Idaho Court of Appeals (ICA) concluded that the state is required by federal law to record the SSN of all drivers' license applicants. Under the federal preemption doctrine, this mandate preempts any state law including I.C. 73-402.

Plaintiff rebuts the state's claim that 42 U.S.C 666(a)(13)(A) pre-empted state law.

42 Use 666 is not positive law, it is a federal funding bill entirely voluntary on the part of Idaho to accept or reject, as cited in *Pennhurst State Sch, and Hosp. v. Halderman*, 451 U.S.1, 17, 191 S, Ct. 1531, 67 L. Ed. 2d 694 (1981). "The legitimacy of congress' power to legislate under the spending power thus rests on whether the state voluntarily and knowingly accepts the terms of the contract." Can the state of

**Idaho voluntarily waive its citizen's constitutional rights? Article 1 Section 4 Idaho Constitution, Guarantee of Religious Liberty.**

**Plaintiff rebuts the assumption that 42 USC 666, applies to everyone.**

**The state in Lewis relies on one sentence to claim the contract generally applies to everyone, regardless of any child support obligations, "in expounding a statute, we must be not be guided by a single sentence or member of a sentence, but took to the provisions of the whole law and to its object and policy". Pennhurst v. Halderman, 451.S.1 at 18, citing Philbrook v. Glodgett, 421 U.S. 707, 421 U.S. 713 (1975, quoting U.S. v. Heirs of Boisdore, 8 how. 113, 49 U.S. 122 (1849), and in Philbrook v. Glodgett 421 U.S. 707 at 714, "It familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its markers." Quoting Church of the Holy Trinity v. U.S., 143 U.S. 457, 143 U.S. 459 (1892).**

**It is clear and unambiguous that title 42 U.S.C. Chapter 7, Sub Chapter 4 parts A thru E apply to grants to states for Aid and Services to Needy Families with Children and for Child-Welfare Services. 42 U.S.C 654-State plan for child and spousal support. 42 U.S.C. 654(20) provide, to the extent required by section 666 of this title, that the state(A) shall have in effect all the laws to improve child support enforcement (CSE) effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws. 42 U.S.C 666-Requirements of statutorily prescribed procedures to improve effectiveness of child support enforcement.**

**It is clear that congress' objective according to section 666 relate and are germane to those under CSE obligations, or orders and have nothing to with the general public. 42 U.S.C 666(a) (13) Recording of SSN in CERTAIN FAMILY MATTERS. P.L. 105-33-August 5<sup>th</sup>, 1997-111 State. 629 Section 5536. Collection and use of Social Security Numbers FOR USE IN CHILD SUPPORT ENFORCEMENT.**

Lord Coke "The reason of the law is the life of the law." Section 1836. The reason of 42 USC 666 (a) 13(A) and (a)(16) is for the IV-D agency responsible for the administration of these prescribed procedures to have the tools (suspension of licenses) to enforce paternity or child support. These subsections have no life beyond the prescribed procedures relating to individuals dealing with an IV-D agency. 42 USC 666 is germane only to persons seeking the assistance of an IV-D agency. As stated by Justice Scalia in *Blessing v. Freestone* :: 520 U.S. 329 at 349 (1997). As we explained in *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981), such an agreement is "in the nature of a contract," *id.*, at 17: The State promises to provide certain services to private individuals, in exchange for which the Federal Government promises to give the State funds. In contract law, when such an arrangement is made (A promises to pay B money, in exchange for which B promises to provide services to C), the person who receives the benefit of the exchange promises between the two others (C) is called a third-party beneficiary. Until relatively recent times, the third-party beneficiary was generally regarded as a stranger to the contract, and could not sue upon it; that is to say, if, in the example given above, B broke his promise and did not provide services to C, the only person who could enforce the promise in court was the other party to the contract. Plaintiff is not a party to the contract, therefore 42 USC 666 (a) 13(A) does not apply to plaintiff.

42 USC 666 (a) 13(A), if generally applied to everyone, would conflict with the first amendment of the Constitution of the U.S.A free exercise clause. It would also be in conflict with 42 USC 2000 (bb) 1-4 which preempts 42 USC 666. In *Leahy v. District of Columbia* 833 F.2d 1046(1987) Circuit Judge Ruth Bader Ginsburg (U.S. Court of Appeals, D.C. Circuit) overruled the district court's less rigorous standard of scrutiny ("reasonable means of promoting a legitimate public interest") in dismissing plaintiff John C. Leahy, Jr.'s civil action. Leahy had been "assigned" an SSN in the mid-1960's, but asserted that in 1978-79 he had come to believe that "use of his SSN... would endanger his chances of being chosen for life after death." Justice Ginsburg stated "the District has not demonstrated that requiring a religious object or to provide his SSN in order to obtain a driver's license is the least restrictive means of achieving the concededly vital public safety objective at stake". Therefore, the requirement to provide an SSN, in order to exercise a fundamental right, (contracting), over a religious objection is repugnant to the "free exercise clause" of the 1<sup>st</sup> amendment of the U.S.A Constitution, and incompatible with 42 USC 2000 (bb) 1-4.

42 USC 2000 cc-3 (h). Nothing in this chapter shall be construed to pre-empt State law, or repeal Federal law, that is equally as protective of religious exercise, or more protective of religious exercise than this chapter. Therefore, I.C. 73-401 and 402 are the prevailing law.

Wherefore, the plaintiff requests under remedies provided in I.C 73-402(4) appropriate compensatory damages for loss of earnings, and all appropriate relief the court may deem just.

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The Idaho State Board of Contractors (ICB) acting through the Idaho Bureau of Licensing (IBOL) acting for the State of Idaho (Idaho) did unlawfully violate my fundamental right to contract, by denying plaintiff's application for an Individual Contractor Registration, because plaintiff refused to disclose a Social Security Number (SSN) based on federal law. (Privacy Act)

State law, I.C. 54-5210(a), conflicts with Federal law, the Privacy Act of 1974, P.L. 93-579, section 7, (a) and (b) 88 Stat. 1909 and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of congress in that it requires disclosure of an individual's SSN, in order for the individual to exercise his fundamental (Const.) right to contract. Whereas federal law declares it unlawful to deny any individual any right, benefit, or privilege provided by law because of such individuals refusal to disclose his SS account number.

Section 7(b) requires any Federal, State, or local government agency which requests an individual To disclose his SSN 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.

Only Congress has the authority to create, issue, and safeguard or prescribe the uses of SSNs. Individuals have private right of action under 42 USC 1983 for deprivation of any constitutionally or statutory federal right under color of state law. The Privacy Act clearly confers a legal right on individuals: The right to refuse to disclose his order SSN without suffering the loss "of any right, benefit, or privilege provided by law." 88 Stat. at 2194, *Schwier v. Zox*, 11<sup>th</sup> Cir. U.S.C.A #02-13214, Aug.11, 2003.

Wherefore, the plaintiff requests under remedies provided for in 42 USC 1983, appropriate compensatory damages for loss of earnings, and all other remedies, punitive or otherwise that the court deems just.

### Count III

I.C. 54 Chap. 52 is unconstitutional. It turns a fundamental right into a crime and an arbitrary government permitted activity.

It is void for vagueness as a "police power" of the State, as there is no clear definition of what constitutes incompetent, dishonest, or unprincipled.

It's wording shines an unfavorable light on contractors in general as if only they are dishonest or unprincipled and the ones who hire are but ignorant, innocent, victims, thereby violating the "Equal protection clause" of the 14 Amend. of the U.S. Const.

It usurps the sphere of the courts (Judiciary) and grants authority to an arbitrary bureau in regards to contractual disputes.

Dated this      day of August, 2016

2016 AUG 11 PM 4:08

CLERK DISTRICT COURT

*Wash*  
DEPUTY

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
(208) 818-9799

In the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai

George Q. Ricks, )  
Petitioner )  
v. )  
State of Idaho Contractors Board )  
Idaho Board of Occupational Licenses )  
Lawrence Wasden Attorney General )  
Respondents )

*Civil 10-5927  
Amended*

Civil Action for Violation of Constitutional and  
Statutory Rights.

Complaint

Comes now the plaintiff and alleges as follows:

Count 1

The Idaho State Board of Contractors (ICB) acting through the Idaho Bureau of Licensing (IBOL) acting for the State of Idaho (Idaho) did unlawfully violate my fundamental right to contract, by denying plaintiff's application for an Individual Contractor Registration, because plaintiff refused to disclose a Social Security Number (SSN) based on a religious objection. Idaho Code (I.C.) 54-5210(a) requirement to provide a SSN in order to exercise the fundamental right to contract is incompatible with Article 1 Section 4 of the Constitution of the State of Idaho and I.C. 73-401(2), I.C. 73-402 enacted by the Idaho legislature in pursuance of Art. 1 Sec. 4 of the Constitution of the State of Idaho.

LANSING L. HAYNES

On or about the 14<sup>th</sup> day of June, 2014, plaintiff filed an Application for Individual Contractor Registration in Idaho with the IBOL, under the provisions of Title 54, chapter 52, I.C. Plaintiff included supporting documents along with the state provided form. See Certification of Agency Record on Appeal (CARA).

On or about June 19<sup>th</sup>, 2014 plaintiff received a letter from Maria Brown (Tech, Records Spec. 2) of the IBOL, stating her office had received and reviewed plaintiff's application. In order for plaintiff application to be processed, the following items were required: 1) Plaintiff's SSN, per I.C. 54-5210 (a). No other items were requested. No objection or request was made concerning how plaintiff answered question 14 (felony)

On July 7<sup>th</sup>, 2014 I sent a fax of an affidavit affirming (amongst other issues) my religious objections to disclosing an SSN in order to register as a contractor.

On July 25<sup>th</sup>, 2014 The IBOL in a letter dated and signed by Carol Klassen (TRS1) acknowledged receiving my application for Contractor Registration and supporting documents.

On August 12<sup>th</sup>, 2014 the ICB Acting by and through the IBOL acting for the State of Idaho denied my application for Contractor Registration based upon an incomplete application form according to rule 150. According to ICB notes: (A) Felony question not answered (even though ICB answered it for me and no requests or challenges were ever made of me to answer question 14 different than how I answered it). Therefore plaintiff reasonably presumed his answer was sufficient based on ICB silence. (B) SSN not provided. Plaintiff did complete said application form.

On September 18<sup>th</sup>, 2014 plaintiff filed a petition for Judicial Review

On October 30<sup>th</sup>, 2014 plaintiff received Certificate of Agency Record on Appeal. (CARA).

On November 25<sup>th</sup>, 2014 O. Ellsworth, attorney for respondent (ICB) filed memorandum in support of motion to dismiss petition for judicial review (based on petition was not timely filled.) of I.C. Title 6 Section 907, Therefore denying plaintiff administrative relief.

I.C. 73-401(2) "Exercise of religion" means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system or religious belief.

Plaintiff refused to provide an SSN in a manner substantially motivated by a religious belief. It is the plaintiff's religious belief that the SSN, as it is now being imposed, is a form of the mark, and in substance (essence) the number of the 2-horned beast written of in the Holy Bible, Book of Revelation chapters 13:16-18, 14:9-11, 15:2, 16:2, 19:20, and 20:4. Chapter 13:16-18 He also forced everyone, small and great, rich and poor, free and slave, to receive a mark on his right hand or on his forehead, so that no one could buy or sell unless he had the mark, which is the name of the beast or the number of his name. This calls for wisdom. If anyone has insight, let him calculate the number of the beast, for it is man's number. His number is 666. By forcing me to disclose an SSN in order for one to buy my labor or for me to sell my labor, is in essence the number of the beast and the card is a form of the mark. (Greek:

Charagma, meaning a scratch or etching. Stamp (as a badge of servitude) Strong's concordance of the Bible. Badge, a device or token, especially of membership in a society or group, Merriam Webster's Collegiate Dictionary 11<sup>th</sup> Edition. The SSA Website dealing with the history of designing SSN "understood that individuals would need to have a "token" that would provide a record of the number that had been assigned" to them. Assign : ( L assignare, to mark.) 1: to transfer (property) to another esp. in trust or for the benefit of creditors.

Right to contract is a fundamental right. The U.S Supreme Court in Hale v. Henkel 201 U.S. 43, 74 stated that " the individual may stand upon his constitutional rights as a citizen, He is entitled to carry on his private business in his own way. His power to contract is unlimited... His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution." See also Coppage v. Kansas, 236 U.S. 1, 2.

I.C. 54-5210(a) is incompatible with I.C. 73-402(3)(a). Does the State of Idaho consider it essential to further a compelling government interest to force a citizen to provide an SSN in order to exercise a fundamental right? Is the SSN "material" in determining whether plaintiff is qualified to register as a contractor? I.C. 54-5210(a) is incompatible with I.C. 73-402(3) (b) as it is not the least restrictive means of furthering a compelling government interest. I.C. 73-122 offers alternative(s) to those who have not been "assigned" an SSN. (B) IDAPA, Rule 16.03.05 Section 103.03(a) and (b) allows a good cause exception for failure to apply for an SSN, or conscientiously opposed to using a national I.D. number, as does IDAPA 16.04.08 Section 133, I.C. 49-306(2)(b) 2 and 3. This however provides no remedies to those with a religious objection, who were assigned SSN's as infants, minors or adults, who have come to believe that the SSN as now being imposed is the number of the beast. See Leahy v. District of Columbia 833 F.2d 1046 (1987)

According to the House of Representatives, State of Idaho Federal Mandate Review, at one time under Idaho law, U.S. citizens were allowed to sign a waiver based on religious or moral grounds and were able to obtain a driver's license, permit or I.D., without giving the SSN. Legal maxims and other quotes from lord Coke: "A right cannot die." For such a high estimation is right in the eye of the law, as the law preserveth it form death and destruction: trodden downe it may bee, but never trodden out. Section 297 B.

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It usurps the sphere of the courts (Judiciary) and grants authority to an arbitrary bureau in regards to contractual disputes.

Dated this 11<sup>th</sup> day of August, 2016



George Q. Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
208-818-9799

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

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CLERK DISTRICT COURT  
*Mahe*  
DEPUTY

In the District Court of the First Judicial District of the State of Idaho, in and for the  
County of Kootenai

George Q. Ricks,	)	Case No. CV-16-5927
Plaintiff,	)	Motion for Reconsideration
V.	)	
State of Idaho Contractors' Board, Idaho Board	)	
of Occupational Licenses, Lawrence Wasden,	)	
Attorney General,	)	
Defendants,	)	
_____	)	

Come Now Plaintiff, George Q. Ricks, and hereby moves this Court to reconsider it's Memorandum Decision and Order filed November 15, 2016, pursuant to IRCP 11 (2) (b). Plaintiff also moves this Court to allow an Amended Pleading, if the Court deems just, pursuant to IRCP 15 (a)(2), 15 (c)(1)(B), and 8 (e). This motion is supported by a Memorandum in Support of Motion for Reconsideration.

Dated November 29, 2016

*George Q. Ricks*

Plaintiff's Motion for Reconsideration- 1

**Certificate of Service**

I hereby Certify on November 29, 2016 I caused to be served a true and correct copy of the foregoing by facsimile to:

Leslie M. Hayes

Deputy Attorney General

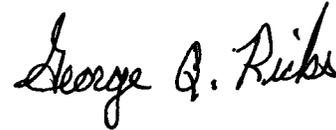
954 W. Jefferson Street, Floor 2

P. O. Box 83720

Boise, Idaho 83720-0010

Facsimile: 208-854-8073

Attorney for Defendants

A handwritten signature in black ink that reads "George B. Ricks". The signature is written in a cursive style with a large initial "G" and "R".

George Q. Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
208-818-9799

2016 NOV 29 PM 1:49  
CLERK DISTRICT COURT  
*Mark M. [Signature]*  
DEPUTY

In the District Court of the First Judicial District of the State of Idaho, in and for the  
County of Kootenai

George Q. Ricks,	)	Case No. CV-16-5927
Plaintiff,	)	Memorandum in Support of
V.	)	Motion for Reconsideration
State of Idaho Contractors' Board, Idaho Board	)	
of Occupational Licenses, Lawrence Wasden,	)	
Attorney General,	)	
Defendants,	)	
_____	)	

Come Now Plaintiff, George Q. Ricks, and submits this memorandum in support of his rule 11 (2)(b) Motion for Reconsideration.

**Argument in Support of Motion for Reconsideration**

1. Plaintiff did not timely receive Defendants' reply to Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss.

Though certified that Defendants caused to be served by U.S. Mail on October 31, 2016, the envelope had a Postmark of November 2, 2016. (Day of the Hearing.)

2. Defendants reply allege Plaintiff did not raise First amendment claim of the free exercise clause.

Plaintiff did raise First amendment claim of the "Free Exercise Clause" ( See page 5 of Original Complaint, Page 4 of Plaintiff's Memo. In Opp. To Defendants' Motion to Dismiss.) It was/ is Plaintiff's contention that I.C. 73-401,402 are the prevailing law in

light of Congress' intent embodied in 42 USC 2000cc-3(h).

3. Defendants allege that the Bowen Court decided the submission of a ssn does not violate the First amendment's Free Exercise Clause, and the Boerne Court ruled the Federal RFRA unconstitutional.

Bowen v. Roy at 711, 712, stated in relevant part: Appellees may not use the Free Exercise Clause to demand Government benefits, but only on their own terms, particularly... in the administration of the programs. See Bowen at 706-708. 708 states in relevant part: if a State creates a mechanism for individual exemptions, (see I.C. 73- 122 and page 3 of Plaintiff's Original Complaint.) it's refusal to extend an exemption to an instance of religious hardship suggests a discriminatory intent. See also Leahy, Page 5 of Original Complaint, Page 5 # 6 of Plaintiff's Memo.

The Boerne Court did rule the Federal RFRA to be unconstitutional as it applied to the States under the 14 amendment sec. 5. It still applies to Fed. Law. Burwell v. Hobby Lobby Stores, 134 S. Ct. 2751, 2760 (2014), and see Boerne at 514 which quotes the Smith Court and cites Sherbert, Thomas v. Review Bd. of Indiana, Hobbie v. Unemployment App. Comm. of Fla. and states in relevant part: Those cases, the Court explained, stand for "the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason." 494 U.S. , at 884.

#### Conclusion

For these reasons, it is respectfully requested the Court approve Plaintiff's Motion for Reconsideration.

Dated November 29, 2016

*George Q. Ricks*

Certificate of Service

I hereby Certify on November 29, 2016 I caused to be served a true and correct copy of the foregoing by facsimile to:

Leslie M. Hayes

Deputy Attorney General

954 W. Jefferson Street, Floor 2

P. O. Box 83720

Boise, Idaho 83720-0010

Facsimile: 208-854-8073

Attorney for Defendants

*George Q. Ricks*



## FACTUAL AND PROCEDURAL BACKGROUND

The facts are uncontested at this stage in the proceedings and are succinctly outlined in the Court's prior decision.

Plaintiff has a religious objection to providing his social security number. Plaintiff applied for an Individual Contractor registration from the Idaho Bureau of Licenses. The application required Plaintiff to disclose his social security number. Plaintiff was told on June 19, 2014 that in order to process his application, he would need to provide his social security number. Plaintiff refused to provide his social security number and instead provided an affidavit expressing his religious objection. Plaintiff's application was denied on August 12, 2014.

*Memorandum Decision and Order Granting in Part and Denying in Part Defendant's Motion to Dismiss*, November 15, 2016, p. 1.

The Court dismissed plaintiff's claim that providing his social security number as part of his contractor registration violated his religious freedoms. Plaintiff timely filed a motion for reconsideration, which could also be construed as a motion to amend his complaint. Plaintiff did not include a proposed amended complaint with his motion. In his motion, he cited to IRCP 11.2(b), 15(a)(2), 15(c)(1)(B), and 8(e). It is requested that the Court deny the motion for reconsideration because it offers no viable legal argument that was not previously addressed by the Court and that the Court request more information as it relates to the potential motion to amend the complaint, including the additional claims or defendants in the amended complaint and a copy of the proposed amended complaint.

## ARGUMENT

### 1. The Court Should Deny Plaintiff's Motion for Reconsideration

A motion for reconsideration is governed by the same standard as the original issue that was decided by the court. *Shea v. Kevic Corp.*, 156 Idaho 540, 545 (2014). "[A] motion for reconsideration need not be supported by any new evidence or authority." *Fragnella v.*

*Petrovich*, 153 Idaho 266, 276 (2012). In this instance, the defendants moved to dismiss the claims that are asked to be reconsidered under Rule 12(b)(6). When ruling on a Rule 12(b)(6) motion to dismiss, “the non-moving party is entitled to have all inferences from the record viewed in his favor.” *Young v. City of Ketchum*, 137 Idaho 102, 104, 44P.3d 1157,1159 (2002) (citation omitted). After presuming all claims in the non-moving party’s favor, the Court must ask whether a claim for relief has been stated. *Id.* (citation omitted). “The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims.” *Id.* (citation omitted).

Plaintiff asks the Court to reconsider its decision on three grounds: (1) that plaintiff did not receive defendants’ reply until after the hearing; (2) plaintiff did raise a First Amendment claim to relief; and (3) the submission of his social security number does violate the First Amendment’s Free Exercise clause and the Religious Freedom Restoration Act. While plaintiff does not need to cite to additional facts and authority in order for the Court to consider the motion for reconsideration, it should be noted that plaintiff raises no arguments that were not previously addressed by the Court.

As this Court is aware, at the hearing on this matter, defense counsel did note and the Court did recognize that plaintiff may not have yet received the reply filed in this matter. Second, it was not clear (and still is not) whether plaintiff in his complaint brought a First Amendment Free Exercise claim. Even in his motion for reconsideration, plaintiff refers to the statutory religious freedom provisions to support the argument that he did bring a First Amendment Free Exercise claim under the United States Constitution. As highlighted in the briefing and argument, whether submission of a social security number violates the First Amendment has been previously decided. *See Bowen v. Roy*, 476 U.S. 693 (1986). While

plaintiff notes that there can be carve outs or exceptions in the implementation of government programs, there is no such statutory mechanism in Idaho and there is no requirement that there be one under Idaho or Federal law.

Finally, plaintiff asserts that RFRA was not held unconstitutional as it applies to federal law and cites to *Burwell v. Hobby Lobby Stores*, 134 S.Ct. 2751, 2760 (2014). It is unclear how this distinction would be used to hold that Idaho's Contractor Registration Act is unconstitutional as it relates to plaintiff's religious freedoms. The only argument that can be construed from this paragraph is that plaintiff may be arguing that 42 U.S.C. §666 is an unconstitutional violation of his religious freedoms. However, there is no indication that this claim was raised in plaintiff's complaint as written.

For these reasons, it is requested that the Court deny the motion for reconsideration. There is no additional information provided by plaintiff that was not previously argued and considered by the Court in its prior decision.

**2. The Court Should Require Plaintiff to Submit Additional Information Before Deciding the Potential Motion to Amend Complaint**

Since plaintiff cited Rules 15(a)(2) and 15(c)(1)(B) it is assumed that he is also moving this Court for the opportunity to amend his complaint. His motion contains no argument related to new claims or new defendants that he seeks to add. It also does not contain a proposed amended complaint. The Court has broad discretion in determining whether to permit an amended complaint, including denying that motion if "it appears beyond doubt that [plaintiff] could prove no set of facts upon which relief could be granted." *Bissett v. State*, 111 Idaho 865, 868-69 (Ct. App. 1986). While "a party may amend his pleading only by leave of court and that 'leave shall be freely given when justice so requires[.]'" defendants need a minimal amount of information in order to determine whether to oppose the motion and the Court needs sufficient

information in order to determine whether it should grant this discretionary decision. See *Acheson v. Klausner*, 139 Idaho 156, 159 (Ct. App. 2003). Plaintiff has not provided any information, and therefore, it is requested that this Court decline ruling on this request until the time when plaintiff brings forward more information related to his proposed amendments.

**CONCLUSION**

For these reasons, and all the reasons in the record before the Court, it is respectfully requested that the Court deny the motion for reconsideration and request that plaintiff provide additional information before ruling on the motion to amend complaint.

DATED this 7th day of December, 2016.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

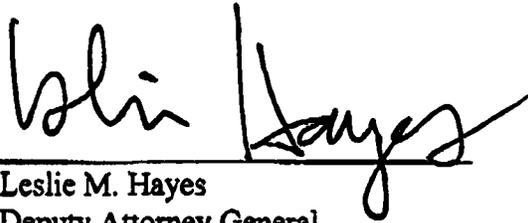
By   
Leslie M. Hayes  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of December, 2016, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:




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Leslie M. Hayes  
Deputy Attorney General

151

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

George Q. Ricks  
13825 N. Lauren Loop  
Rathdrum, ID. 83858  
Telephone: (208)818-9799

2017 JAN -4 PM 4: 36

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

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

George Q. Ricks,	)	
	)	Case No. CV-2016-5927
Plaintiff,	)	
	)	Reply to Defendant's Opposition
v.	)	
	)	to Plaintiff's Motion For Reconsideration
State of Idaho Contractors Board,	)	
	)	
Idaho Board of Occupational	)	
	)	
Licenses, Lawrence Wasden,	)	
	)	
Attorney General,	)	
	)	
Defendants,	)	
_____	)	

Come now Plaintiff and submits this reply to Defendant's opposition to Plaintiff's Motion For Reconsideration

**ARGUMENT IN REPLY**

The purpose of a Rule 12(b) (6) motion is to test the sufficiency of a complaint; "importantly, a Rule 12(b) (6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Accordingly, a Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief. Furthermore, when as here, a rule 12(b) (6) motion is testing the sufficiency of a civil rights complaint, "we must be especially solicitous of the wrongs alleged" and "must not dismiss the complaint unless it appears to a certainty that the plaintiff would not be entitled to relief under any legal theory which might plausibly be suggested by the facts alleged." *Edwards v. City of Goldsboro*, 178 F.3d 231 (1999), citing *Harrison v. U.S. Postal Serv.*, 840 F2d 1149, 1152 (4<sup>th</sup> Cir. 1988).

1. Defendants allege the facts are uncontested at this stage, but state they are unsure if Plaintiff has raised a 1<sup>st</sup> Amendment Free Exercise claim under the U.S. Constitution. Plaintiff states on Page 5 Paragraph 2 of original complaint "the requirement to provide a SSN, in order to exercise a fundamental right (contracting), over a religious objection is repugnant to the "free exercise clause of the 1<sup>st</sup> Amendment of the U.S.A. Constitution and incompatible with 42 U.S.C. 2000 bb 1-4. Plaintiff's original complaint attempted to show alternative forms of relief that could be granted to sustain his claims, either at the state or federal level. Plaintiff admits he was not as clear and concise as he could have been.

Question: Is plaintiff's phraseology defective? If so, Plaintiff asks leave to amend and requests to strike the words "repugnant to" and replace with the words "in violation of".

2. It being self-evident that the State of Idaho has adopted the U.S Constitution at Article 21 Section 20 of the Idaho Constitution and declaring same to be the supreme law of the land, Article 1 Section 3 of the Idaho Constitution.

Question 1: Did the Lewis Court rule that 42 U.S.C.666 a 13A preempted Article 1 sec. 4 of the Idaho Constitution?

Question 2 : If a federal statute (42 USC666 a 13A) is in violation of and or preempted by another federal statute 42 USC 2000 bb 1-4, can it preempt a state statute(s) I.C. 73-401, 402 enacted pursuant to and in harmony with said federal statute (42 USC 2000 bb 1-4) See also 42 USC 2000 cc-3(h). This is hypothetical as Lewis did not raise this question. See 42 U.S.C. 2000 h-4.

3. Defendants' allegation that the U.S. Supreme Court in *Bowen v. Roy*, 476 U.S., 693 (1986) concluded the submission of a SSN does not violate the 1<sup>st</sup> Amendment "FER" is without merit. The "Bowen" court merely stated that applicants or recipients of government aid could not use the "FER" to dictate the government's administration of such aid. Plaintiff is not an applicant or recipient of any government aid. The Bowen court did mention voluntary versus compelled compliance and the threat of penal sanctions, for conduct that has religious implications at 704-706. Plaintiff is not trying to dictate to the gov't. ,the gov't. is compelling the plaintiff to violate his religious convictions, under threat of criminal and economic sanctions, in order to secure the right to contract in a common occupation. The Bowen Court at 708 cites *Sherbert v. Verner*, 374 U.S. 401 and *Thomas v. Review Board of Indiana Emp. Sec. Div.*,450 U.S. 707 in regards to if a state grants a good cause exemption. See also *Leahy*, pg.5 par.2 of original complaint. The opinion in *Leahy* also cites "Bowen", "Sherbert", "Thomas" and under footnote 4 it states, Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion, citing *Hobbie v. Unemployment Appeals Comm'n. of Florida*, 480 U.S. 136, 107 S. Ct. 1046, 1049-50, 94 L. Ed. 2d 190 (1987) (quoting *Wisconsin V. Yoder*, 406 U.S. at 215, 92 S. Ct. at 1533

4. Defendants' allegation that Idaho does not have any statutory mechanism(s) for individual exemptions or alternatives to providing a SSN in order to get a license, permit, etc. is without merit. I.C. 73-122 Allows for individual exemptions, as does I.C. 49-306 2(a) & (b), IDAPA rules 16.03.05 sec. 103.03(a) and (b), 16.04.08 sec. 133. See original complaint Page 3 Paragraph 3.

5. Defendants' allege the Plaintiff did not argue that 42 U.S.C. 666 (a)(13)(A) violates his constitutional "FER". As written in his complaint.

Plaintiff states on Page 5 Paragraph 2 : 42 USC 666(a)(13)( A), if generally applied to everyone, would conflict with the first amendment of the Constitution of the U.S.A. free exercise

clause. It would also be in conflict with 42 USC 2000 bb 1-4 which preempts 42 USC 666. In plaintiff's original complaint, he is making alternative/hypothetical statements.

a. The state has over broadened the meaning and intent of Congress, by applying 42 U.S.C. 666 (a) (13) (A) to encompass everyone, and implying Congress compelled or authorized the States to deny citizens the right to contract if they do not disclose a SSN, even over a religious objection, as this would violate the U.S. Supreme Court's ruling in *S.D. v. Dole*, 483 U.S. 203 (1987).

b. Congress has violated the First Amendment (FEC) of the U.S. Constitution, 42 USC 2000 bb 1-4, the "Privacy Act", Idaho Constitution Art. 1 Sec. 4, I.C. 73-401, 402 and the right to contract, by applying 42 U.S.C. 666 (a)( 13)(A) to include everyone.

6. The right/liberty to contract is another distinguishing factor between Plaintiff's claim and Lewis' claim. A person can make a living without a driver's license, it is virtually impossible to make a living without the ability to contract. A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. *Schwartz v. Board of Bar Examiners* 353 U.S. 232 at 238,239 (1957).

Plaintiff's application was denied, not because he was unqualified, but because he refused to disclose a SSN over a religious objection.

7. Plaintiff's claims are not identical to Lewis', Leahy's are. 42 USC 666 a 13 A is prima facie evidence. Lewis did little to nothing to rebut the State's evidence that 42 USC 666 a 13 A preempted State and/or federal law. The state in Lewis relied on a federal district court's ruling out of the W.D. of Michigan. Federal district courts do not set precedent. *Leahy v. D.C.* overrules the federal district court's ruling as does *Bowen v. Roy* and other U.S. Supreme Court cases involving the Free Exercise of Religion.

8. Plaintiff can be granted relief for claims under Idaho law at I.C. 73-402 in connection with 42 U.S.C. 2000 h-4 or under federal law at 42 U.S.C. 1981, 1983 in connection with I.C. 6-903 (1).

#### CONCLUSION

For these reasons, and all reasons in the record before the Court, it is respectfully requested that the Court grant plaintiff's motion for reconsideration.

Dated this 4<sup>th</sup> of January, 2017.

*George Q. Ricks*  
Plaintiff

CERTIFICATE OF SERVICE

I hereby Certify that on this 4<sup>th</sup> day of January, 2017, I caused to be served a true and correct copy of the foregoing by facsimile to:

Leslie M. Hayes

Deputy Attorney General

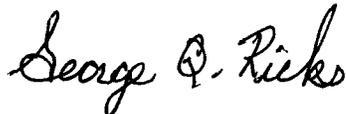
954 W. Jefferson Street, Floor 2

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Boise, Idaho 83720-0010

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Attorney for Defendants



George Q. Ricks

Plaintiff

George Q. Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
208-818-9799

2017 JAN 11 PM 4:46  
CLERK DISTRICT COURT  
*Marie M. Hoza*  
DEPUTY

In the District Court of the First Judicial District of the State of Idaho, in and for the  
County of Kootenai

George Q. Ricks,	)	Case No. CV-16-5927 ✓
Plaintiff,	)	NOTICE OF HEARING RE:
V.	)	PLAINTIFF'S MOTION FOR
State of Idaho Contractors' Board, Idaho Board	)	RECONSIDERATION
of Occupational Licenses, Lawrence Wasden,	)	February 2, 2017
Attorney General,	)	2:30 p.m. PST
Defendants,	)	

Notice is hereby given that on Thursday, February 2, 2017, at 2:30 p.m. Pacific Standard Time, Plaintiff, acting pro se, will present "Plaintiff's Motion for Reconsideration" for hearing before the Honorable Judge Lansing Haynes, at the Kootenai County Courthouse located at:

Kootenai County Courthouse  
Justice BLDG. 6-11  
324 West Garden Ave.  
P.O. Box 9000  
Coeur d' Alene, Idaho 83816

Dated this 5<sup>th</sup> day of January, 2017.

By *George Q. Ricks*

CERTIFICATE OF SERVICE

I hereby Certify that on this 5<sup>th</sup> day of January, 2017, I caused to be served a true and correct copy of the foregoing by facsimile to:

Leslie M. Hayes

Deputy Attorney General

954 W. Jefferson Street, Floor 2

P. O. Box 83720

Boise, Idaho 83720-0010

Facsimile: 208-854-8073

Attorney for Defendants



George Q. Ricks

Plaintiff

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
(208) 818-9799

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 FEB 10 PM 4: 53

CLERK DISTRICT COURT

*Jeanette Cho*  
DEPUTY  
9H

In the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai

George Q. Ricks,	)	
Petitioner	)	Case No. CV-16-5927
v.	)	Proposed Second Amended Complaint
State of Idaho Contractors Board	)	
Idaho Board of Occupational Licenses	)	
Lawrence Wasden Attorney General	)	
Respondents	)	

Comes now Plaintiff and submits this second amended complaint.

### Complaint

The Idaho State Board of Contractors (ICB) acting through the Idaho Bureau of Licensing (IBOL) acting for the State of Idaho did unlawfully violate my freedom to contract, by denying plaintiff's application for an Individual Contractor Registration, because plaintiff refused to disclose a Social Security Number (SSN) based on a religious objection. Idaho Code (I.C. 54-5210(a) requirement to provide a SSN in order to exercise the freedom to contract violates plaintiff's First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution. *Employment Div. v. Smith*, 494 U.S. 872 (1990). *Wisconsin v. Yoder*, 406 U.S. 205 (1972) *Sherbert v. Verner*, 374 U.S. 398 (1963). *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136

The State of Idaho in "Lewis" admitted that the requirement of an SSN in order to receive a driver's license did indeed burden Lewis' religious beliefs under I.C. 73-402, but that State law was allegedly pre-empted by federal law (42USC666) law to require an individual's SSN even over a religious objection. This allegation fails for the following reasons.

1) 42 USC 666 a 13 A applies only in certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L. 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536

2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 US 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.

3) I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the SSN is not the least restrictive means to further the state's alleged compelling interest.

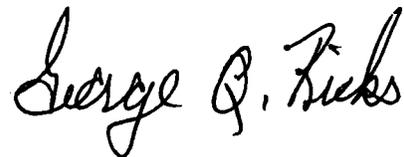
Bowen V. Roy, 476 U.S. 693 (1986) at 708, and cited and discussed in Leahy V. D.C. 833 F.2d 1046 (1987). The State of Idaho even admits to the inequity in Federal Mandate Review dated Jan. 19, 2005 and previously submitted to this court.

#### Conclusion

I.C. 54-5210(a) violates Plaintiff's 1st Amend (FER) and does not comply with federal law and U.S. Supreme court's decisions concerning the "FER". I.C. 73-122 is discriminatory.

Plaintiff seeks relief in the forms of declaratory judgement, and also damages under 42 USC 1981, 1983, 2000e-2(b) in connection with I.C. 6-903(1), 6-910.

Dated this 10<sup>th</sup> day of February, 2017.



LAWRENCE G. WASDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, 7995#7889  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073  
Attorney for Defendants

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]* #102  
2017 FEB 27 PM 3:59  
CLEAR DISTRICT COURT  
*[Signature]*  
DEPUTY *[Signature]*

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

GEORGE Q. RICKS, )  
 )  
 Plaintiff, ) Case No. CV-2016-5927  
 )  
 v. ) **OPPOSITION TO PLAINTIFF'S**  
 ) **SECOND AMENDED COMPLAINT**  
 ) **AND**  
 STATE OF IDAHO CONTRACTORS BOARD, ) **NOTICE OF WAIVER OF TIME TO**  
 IDAHO BOARD OF OCCUPATIONAL ) **NOTICE HEARING**  
 LICENSES, LAWRENCE WASDEN, )  
 ATTORNEY GENERAL, )  
 )  
 Defendants, )  
 )

Defendants Idaho Board of Occupational Licenses ("IBOL"), Idaho Contractors Board, and Attorney General Wasden, by and through undersigned counsel, and hereby submits its Opposition to Plaintiff's Motion to Amend Complaint. At Plaintiff's request, Defendants also waive the 14-day period of time required by I.R.C.P 7(b)(3)(A) for service of a notice of hearing and are able to attend the hearing scheduled on March 6 by telephone.

**OPPOSITION TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND NOTICE OF WAIVER OF TIME TO NOTICE HEARING 1**

## STANDARD OF REVIEW

“We recognize that the decision to grant or refuse permission to amend a complaint is left to the sound discretion of the trial court when a party proposes to amend its complaint after a responsive pleading is served.” *Hines v. Hines*, 129 Idaho 847, 853 (1997) (superseded by statute on other grounds) (citing I.R.C.P. 15(a)). A district court appropriately exercises its discretion when it (1) recognizes that the issue is one of discretion; (2) acts within the bounds of that discretion and applies the appropriate legal standard; and (3) reaches its decision through the exercise of reason. *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 612 (2005) (abrogated on other grounds) (quoting *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 210 (2002)). The courts liberally favor grants of leave to amend. *Hines*, at 853. Rule 15 serves a dual purpose: “[f]irst, to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality; and second, to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader’s claim and the facts that have been called into question.” *Clark v. Olsen*, 110 Idaho 323, 326 (1986).

Reasons for denying a motion for leave to amend include undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies through prior amendments, undue prejudice to the opposing party, and futility of proposed amendment. *Clark*, at 326 (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). A claim is futile when the new claims proposed fail to state a valid claim for relief. *Maroun*, at 612 (2005). “We also recognize that this Court has determined that a trial court properly refuses permission to amend a complaint when the record contains no allegations that, if proven, would entitle the party to the relief claimed.” *Hines*, at 853. “A complaint need only contain a concise statement of the facts constituting the case of action and demand for relief.” *Clark*, at 325 (citing I.R.C.P. 8(a)(1)). However, it needs to put defendant on notice of the facts and the claims for relief. *Clark*, at 325.

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///

**OPPOSITION TO PLAINTIFF’S SECOND AMENDED COMPLAINT AND NOTICE OF WAIVER OF TIME TO NOTICE HEARING 2**

## ARGUMENT

The Court should deny Plaintiff's request to amend his complaint because the proposed amended complaint would be futile. First it fails to cure the deficiencies contained in the original complaint and second it seeks to add claims from which no relief may be granted.

As this Court is aware, Plaintiff was granted to leave to file a proposed second amended complaint following the argument on his motion for reconsideration. During that argument, Plaintiff was informed that his First Amendment claim was not clearly contained in the first amended complaint and that he needed to properly assert that claim in a manner that placed Defendants on notice so that they could appropriately respond. Plaintiff has failed to do so. His Proposed Second Amended Complaint states the "requirement to provide a SSN in order to exercise the freedom to contract violates Plaintiff's First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution." He then goes on to make claims that have been previously dismissed and concludes that "I.C. 54-5210(a) violates Plaintiff's 1<sup>st</sup> Amend [sic] (FER) and does not comply with federal law and U.S. Supreme court's decisions concerning the 'FER.'" Permitting this amendment would be futile because it addresses claims that were previously dismissed by this Court and because it fails to state a claim upon which relief may be granted.

The primary defect in Plaintiff's Proposed Second Amended Complaint is that it fails to assert any facts and instead presumes to incorporate the facts previously alleged within the record. However, this defect can be cured with a proposed third amended complaint. What cannot be cured is Plaintiff's failure to raise a cognizable claim. As has been previously briefed and argued, there is no First Amendment right to withhold a social security number on the basis of a religious objection. See *Bowen v. Roy*, 476 U.S. 693 (1986). Therefore, any amendment would be futile and should be denied by this Court.

Further, Plaintiff appears to be asserting that his First Amendment right to free exercise of religion is somehow intertwined with this "freedom to contract," which this Court has already ruled does not exist because there is no fundamental right to the "freedom to contract."

**OPPOSITION TO PLAINTIFF'S SECOND AMENDED COMPLAINT AND NOTICE OF  
WAIVER OF TIME TO NOTICE HEARING 3**

While it is unclear what Plaintiff is trying to assert in this statement, it is also similar to claims that have been previously dismissed by this Court, and for that reason, the Court should deny Plaintiff's motion to amend his complaint.

**CONCLUSION**

For these reasons, it is respectfully requested that the Court deny Plaintiff's request to file its Second Amended Complaint.

DATED this 27<sup>th</sup> day of February, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Leslie M. Hayes  
Leslie M. Hayes  
Deputy Attorney General

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of February, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

  
 \_\_\_\_\_  
 Leslie M. Hayes  
 Deputy Attorney General

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]*

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CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

LAWRENCE G. WARDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, #7995  
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Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073

Attorney for Defendants

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

GEORGE Q. RICKS,	)	
	)	Case No. CV-2016-5927
Plaintiff,	)	
	)	<b>MEMORANDUM IN SUPPORT OF</b>
v.	)	<b>DEFENDANTS' 3<sup>rd</sup> RULE 12(b)(6)</b>
	)	<b>MOTION TO DISMISS</b>
STATE OF IDAHO CONTRACTORS BOARD,	)	
IDAHO BOARD OF OCCUPATIONAL	)	
LICENSES, LAWRENCE WARDEN,	)	
ATTORNEY GENERAL,	)	
	)	
Defendants.	)	

COME NOW Defendants Idaho Board of Occupational Licenses, ("IBOL"), State of Idaho Contractors Board, and Attorney General Lawrence Warden, by and through undersigned counsel, and submit this memorandum in support of its Third Rule 12(b)(6) Motion to Dismiss.

**FACTUAL AND PROCEDURAL BACKGROUND**

The facts are uncontested at this stage in the proceedings and are succinctly outlined in the Court's prior decision.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS- 1**

Plaintiff has a religious objection to providing his social security number. Plaintiff applied for an Individual Contractor registration from the Idaho Bureau of Licenses. The application required Plaintiff to disclose his social security number. Plaintiff was told on June 19, 2014 that in order to process his application, he would need to provide his social security number. Plaintiff refused to provide his social security number and instead provided an affidavit expressing his religious objection. Plaintiff's application was denied on August 12, 2014.

*Memorandum Decision and Order Granting in Part and Denying in Part Defendant's Motion to Dismiss*, November 15, 2016 ("Memo Decision"), p. 1.

Plaintiff filed this action because he has a religious objection to providing his social security number on his contractor's license application. In response to the complaint, Defendants moved to dismiss this action on the grounds that 42 U.S.C. § 666 preempts Plaintiff's religious objections under Idaho state law. The Court agreed and dismissed that portion of Plaintiff's Complaint in a November 15, 2016 Memorandum Decision and Order. The Defendants then moved to dismiss the Complaint on the remaining grounds that providing a social security number does not violate the "fundamental right" to contract because there is no right to contract, and that the Idaho Contractor Registration Act is not void for vagueness, a violation of the Equal Protection Clause or a violation of separation of powers. The Court granted that motion on February 2, 2017. Prior to that motion being heard, Plaintiff filed a motion for reconsideration and a motion to amend his Complaint. The Court denied the request to reconsider its decision on the first motion to dismiss, but granted Plaintiff the opportunity to submit a proposed amended complaint to add a claim that providing his social security number violates his First Amendment right. After briefing and argument, the Court granted Plaintiff's request and lodged his Second Proposed Amended Complaint on March 6. Defendants now move to dismiss the Second Amended Complaint on the grounds that Plaintiff has failed to state a claim upon which relief may be granted.

**MEMORANDUM IN SUPPORT OF DEFENDANTS' 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS- 2**

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## ARGUMENT

1. Requiring Plaintiff to Provide his Social Security Number as Part of His Application for a Contractor's License Does Not Violate his First Amendment Right to Exercise his Religion

In the Second Amended Complaint, Plaintiff alleged that “Idaho Code (I.C. 54-5210(a) [sic] requirement to provide a social security number in order to exercise the freedom to contract violates Plaintiff’s First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution.” Second Amended Complaint, p. 1. The Idaho Contractor Registration Act requires:

An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the board and which shall include the following information pertaining to the applicant:

- (a) Social Security Number for the natural persons or employer tax identification number for other persons;

I.C. § 54-5210(1)(a).

A neutral law of general applicability is reviewed under the rational basis test. *Miller v. Reed*, 176 F.3d 1202, 1206 (9<sup>th</sup> Cir. 1999). “Under this test, a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice.” *Miller*, 176 F.3d at 1206.

“Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs.” *United States v. Lee*, 455 U.S. 252, 260 (1982) (Finding that all employers must submit social security taxes even if it burdens religious practice). There is no violation of the free exercise clause when a state refuses to issue a driver’s license to a person that fails to provide a social security number under religious objection. *Miller*, 176 F.3d at 1204 (“We also conclude that Miller’s free exercise of religion is

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS- 3**

not violated by California's valid and neutral requirement that all applicants for a new or renewed driver's license provide a social security number.") There is also no violation of free exercise for citing someone for failure to possess a driver's license, display a license plate, or obtain liability insurance even if that person refuses to do those things due to religious objection. *See Bissett v. State*, 111 Idaho 865, 866-67 (Ct. App. 1986) ("[W]e hold that the laws do not unconstitutionally infringe upon Bissett's religious practice. Bissett remains subject to the law regardless of his refusal to consent to being regulated. . . . Compliance with the law may incidentally affect Bissett's practice of his religion, but it will not inhibit or alter Bissett's beliefs.")

In fact, as several federal district courts have noted, no case has been successful that has challenged a neutral law requiring the submission of a social security number as an infringement of First Amendment freedoms under the First Amendment or the Religious Freedom Restoration Act ("RFRA"). *See McIlwain v. Commission of Internal Revenue*, 2006 WL 2192113, \*3 (D. Oregon 2006) ("Federal Court have seen a number of challenges to the mandatory provision of social security numbers by individuals who believe that social security numbers are the 'mark of the beast' or a sin. . . . None of these challenges have been successful."); *Hill v. DNA Medical Staffing, LLC*, 2010 WL 2280510, \*1 (D. Arizona 2010); *see also Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999) (failure to hire due to failure to submit a social security number under a religious objection does not violate Title VII's religious protection because it would cause the employer to violate other federal law).

In *Miller* it was found that the law was facially neutral because all applicants were required to provide their social security numbers. In Idaho the same is true with the exception,

**MEMORANDUM IN SUPPORT OF DEFENDANTS' 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS- 4**

as pointed out by Plaintiff, of someone that does not have a social security number. See I.C. §73-122. Plaintiff does not contend that he does not have a social security number, and therefore, this provision would not apply to him. Instead, he contends that the burden upon his religious exercise by requiring that he submit his social security number on his Contractor's application, requires that he be exempt from this facially neutral provision. This Court has already been provided with the Statement of Purpose for the Idaho Contractor Registration Act and has already found that it is a neutral law of general applicability. Therefore, any incidental burden enforcement of that law places on Plaintiff's religious practice does not violate the First Amendment under the rational basis test.

This case is similar to the findings in *Bissett*, where the Court found that although Bissett's religious practice was burdened, his choice to drive - similar to Plaintiff's choice to work as a contractor - does not exempt Bissett from neutral generally applicable laws on religious grounds. That is because that while Plaintiff's religion may be incidentally affected, "it will not inhibit or alter [his] beliefs. Enforcement of motor vehicle statutes is not censorship of religious thought or expression. Bissett remains free to maintain his beliefs and to advocate his religion to others." See *Bissett*, 111 Idaho at 868.

Therefore, it is requested that this Court find that Plaintiff has failed to state a claim upon which relief may be granted and dismiss the Second Amended Complaint in its entirety.

**2. Plaintiff Raises No Additional Claims in His Second Amended Complaint That Have Not Previously Been Addressed by the Court's Prior Orders**

The remaining "claims" in the Second Amended Complaint do not appear to raise any additional or decipherable claims that have not previously been dismissed by the Court. In the remaining paragraphs, Plaintiff states that the *Lewis* case admitted that requiring a social security number does "indeed burden Lewis' religious beliefs," but that the Idaho Religious

Freedom statute (I.C. §73-402) was preempted by federal law (42 U.S.C. §666). Other than asserting the findings in *Lewis* and the prior findings of this Court, Defendants do not see a new or additional claim in this statement that needs to be addressed for purposes of dismissal of this matter in its entirety. Plaintiff then goes on to assert the rationale of *Lewis* in three numbered paragraphs, which will each be addressed in turn.

“1) 42 USC 666 a 12 A applies only in certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L. 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536.” Defendants are unable to respond to this paragraph or assert an argument for dismissal because there is no discernable claim asserted here.

“2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 US 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.” It appears, but is unclear, that Plaintiff is trying to assert that the Religious Freedom Restoration Act governs the validity of 42 U.S.C. §666. Defendants are unable to respond to this paragraph or assert an argument for dismissal because there is no discernable claim asserted here.

“3) I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the social security number is not the least restrictive means to further the state’s alleged compelling interest.” Given that Plaintiff states that this is not the least restrictive means, it is assumed that this argument is in support of the First Amendment claim. Therefore, this issue was addressed above in the argument related to Plaintiff’s First Amendment Free Exercise claim. Under the rational basis test, the Court does not need to decide whether there is a less restrictive means.

“*Bowen V. Roy*, 476 U.S. 693 (1986) at 708, and cited and discussed in *Leahy V. D.C.* 833 F2d 1046 (1987). The State of Idaho even admits to the inequality in Federal Mandate

**MEMORANDUM IN SUPPORT OF DEFENDANTS’ 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS- 6**

Review dated Jan. 19, 2005 and previously submitted to this court." Defendants are unable to respond to this argument and are unable to determine what, if any, cause of action is asserted here.

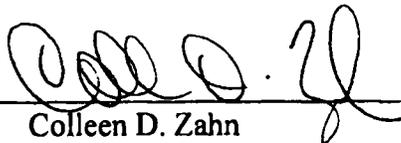
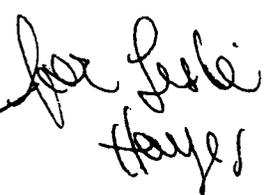
It is requested that the entirety of Plaintiff's Second Amended Complaint be dismissed.

**CONCLUSION**

For these reasons, and all the reasons in the record before the Court, it is respectfully requested that the Court dismiss the claims against Defendants.

DATED this 20<sup>th</sup> day of March, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By  for   
Colleen D. Zahn  
For: Leslie M. Hayes  
Deputy Attorneys General

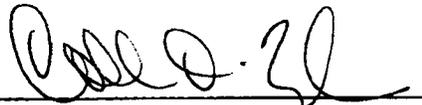
03/20/2017 15:42 #016 P.012/012

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of March, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

  
\_\_\_\_\_  
Colleen D. Zahn  
Deputy Attorney General

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, 7995#7889  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073

Attorney for Defendants

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:  
2017 MAR 20 PM 3:13  
CLERK DISTRICT COURT  
DEPUTY

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

GEORGE Q. RICKS,	)	
	)	Case No. CV-2016-5927
Plaintiff,	)	
	)	<b>DEFENDANTS' 3<sup>rd</sup> RULE 12(b)(6)</b>
v.	)	<b>MOTION TO DISMISS</b>
	)	
STATE OF IDAHO CONTRACTORS BOARD,	)	
IDAHO BOARD OF OCCUPATIONAL	)	
LICENSES, LAWRENCE WASDEN,	)	
ATTORNEY GENERAL,	)	
	)	
Defendants.	)	

COMES NOW Leslie M. Hayes, Deputy Attorney General, on behalf of Defendants State of Idaho Contractors Board, Idaho Board of Occupational Licenses ("IBOL"), and Attorney General Lawrence Wasden ("Defendants"), hereby moves this Court to dismiss Plaintiff's Second Amended Complaint on the grounds that Plaintiff has failed to state a claim upon which relief may be granted.

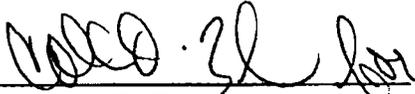
This motion is supported by a Memorandum in Support of Defendants' Third Rule 12

(b)(6) Motion to Dismiss to be filed forthwith.

Oral argument is requested.

DATED this 20<sup>th</sup> day of March, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

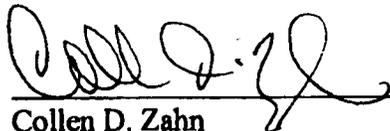
By  for   
Colleen D. Zahn  
For: Leslie M. Hayes  
Deputy Attorneys General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of March, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

  
Colleen D. Zahn  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of March, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:



\_\_\_\_\_  
Colleen D. Zahn  
Deputy Attorney General

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, 7995#7889  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073  
Attorney for Defendant

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: }  
2017 MAR 22 AM 11:11  
CLERK DISTRICT COURT  
DEPUTY

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

GEORGE Q. RICKS,	)
	) Case No. CV-2016-5927
Plaintiff,	)
	) <b>NOTICE OF HEARING RE:</b>
v.	) <b>DEFENDANTS' 3<sup>rd</sup> RULE 12(b)(6)</b>
	) <b>MOTION TO DISMISS</b>
STATE OF IDAHO CONTRACTORS BOARD,	)
IDAHO BOARD OF OCCUPATIONAL	) <b>Thursday, April 27, 2017</b>
LICENSES, LAWRENCE WASDEN,	) <b>3:30 PST (4:30 MST) ✓</b>
ATTORNEY GENERAL,	)
	)
Defendants,	)
	)

NOTICE IS HEREBY GIVEN that on Thursday, April 27, 2017, at 3:30 p.m. Pacific Standard Time, Defendants, through their counsel of record, will present "Defendants' 3rd Motion to Dismiss" for hearing before the Honorable Judge Lansing Haynes, at the Kootenai County Courthouse located at:

///  
///

Kootenai County Courthouse  
Justice BLDG 6-11  
324 West Garden Ave  
P.O. Box 9000  
Coeur d'Alene, ID 83816

Defendants' counsel, Deputy Attorney General Ms. Leslie M. Hayes, will appear **telephonically with the court clerk to initiate the call.**

DATED this 22<sup>th</sup> day of March, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Leslie M. Hayes  
Leslie M. Hayes  
Deputy Attorney General

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>th</sup> day of March, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

Leslie M. Hayes  
Leslie M. Hayes  
Deputy Attorney General

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, 7995#7889  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073  
Attorney for Defendant

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]*  
2017 APR -4 AM 9:13

CLERK DISTRICT COURT  
*[Signature]*  
*[Signature]*

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

GEORGE Q. RICKS,	)	
	)	Case No. CV-2016-5927
Plaintiff,	)	
	)	<b>NOTICE OF HEARING RE:</b>
v.	)	<b>DEFENDANTS' 3<sup>rd</sup> RULE 12(b)(6)</b>
	)	<b>MOTION TO DISMISS</b>
STATE OF IDAHO CONTRACTORS BOARD,	)	<b><u>VACATING HEARING ON APRIL</u></b>
IDAHO BOARD OF OCCUPATIONAL	)	<b><u>27, 2017</u></b>
LICENSES, LAWRENCE WASDEN,	)	<b>AND</b>
ATTORNEY GENERAL,	)	<b><u>RESETTING FOR:</u></b>
	)	<b>Monday, May 1, 2017</b> ✓
Defendants,	)	<b>3:00 PST (4:00 MST)</b>
	)	

NOTICE IS HEREBY GIVEN that the hearing set for Thursday, April 27, 2017, at 3:30 p.m. Pacific Standard Time has been **VACATED** and **RESET to Monday, May 1, 2017 at 3:00 PST (4:00 MST)**. Defendants, through their counsel of record, will present "Defendants' 3rd Motion to Dismiss" for hearing before the Honorable Judge Lansing Haynes, at the Kootenai County Courthouse located at:

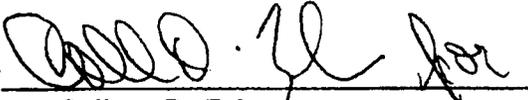
///

Kootenai County Courthouse  
Justice BLDG 6-11  
324 West Garden Ave  
P.O. Box 9000  
Coeur d'Alene, ID 83816

Defendants' counsel, Deputy Attorney General Ms. Leslie M. Hayes, will appear **telephonically with the court clerk to initiate the call.**

DATED this 4<sup>th</sup> day of April, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
Colleen D. Zahn  
For: Leslie M. Hayes  
Deputy Attorneys General

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of April, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

  
Colleen D. Zahn

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

2017 APR 24 PM 4:30

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

CLEK DISTRICT COURT  
*[Signature]*  
DEPUTY

LESLIE M. HAYES, 7995#7889  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073

Attorney for Defendants

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

GEORGE Q. RICKS,

Plaintiff,

v.

STATE OF IDAHO CONTRACTORS BOARD,  
IDAHO BOARD OF OCCUPATIONAL  
LICENSES, LAWRENCE WASDEN,  
ATTORNEY GENERAL,

Defendants.

)  
) Case No. CV-2016-5927  
)  
) **DEFENDANTS' REPLY TO**  
) **PLAINTIFF'S MEMORANDUM IN**  
) **OPPOSITION TO DEFENDANTS'**  
) **3<sup>RD</sup> RULE 12(b)(6) MOTION TO**  
) **DISMISS**  
)  
)  
)  
)  
)  
)  
)

COMES NOW Leslie M. Hayes, Deputy Attorney General, on behalf of Defendants State of Idaho Contractors Board, Idaho Board of Occupational Licenses ("IBOL"), and Attorney General Lawrence Wasden ("Defendants"), hereby submits Defendants' Reply to Plaintiff's Memorandum in Opposition to Defendants' 3<sup>rd</sup> Rule 12(B)(6) Motion to Dismiss ("Reply").

**DEFENDANTS' REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS - 1**

## ARGUMENT IN REPLY

Ricks' filed his opposition to Defendants' Third Motion to Dismiss arguing that a higher standard should be used in the Court's analysis, rather than the rational basis test asserted by Defendants, and that his additional indecipherable claims were "facts" in support of his First Amendment claim. Defendants now file this Reply asking this Court to dismiss the Second Amended Complaint in its entirety.

The requirement that Plaintiff provide his social security number as part of his contractor's license does not violate his First Amendment right to freely practice his religion. As highlighted in the Second Motion to Dismiss, the purpose of the statute is to stop unscrupulous or dishonest building contractors from working as contractors in the state of Idaho. The statute is neutral on its face and neutral in its application, only providing an exemption to those that are without a social security number. See I.C. §§54-5210(a), 73-122. Neutral laws of general applicability are reviewed under the rational basis test. *Miller v. Reed*, 176 F.3d 1202, 1206 (9<sup>th</sup> Cir. 1999). Plaintiff takes issue with this case as "ignoring" other case law and because it is "nullified by 42 USC 2000bb, 1-4." The cases cited by Plaintiff are "Bowen [*Bowen v. Roy*, 476 U.S. 693 (1986)], Sherbert [*Sherbert v. Verner*, 374 U.S. 398 (1963)], Yoder [*Wisconsin v. Yoder*, 406 U.S. 205 (1972)], and Thomas,<sup>1</sup> etc.". Each of these cases supports Defendants' position that the rational basis test applies and will be addressed below.

In *Sherbert*, the Court addressed the issue of whether an individual would be entitled to unemployment benefits if the reason for leaving employment was voluntary based on a religious objection. *Sherbert*, 374 U.S. at 399-402. The Court found that in order for the State to force

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<sup>1</sup> Defendants are unsure what case Plaintiff is referring to as "Thomas" or what other cases may be encompassed within "etc.".

an individual to choose between work and religion, it needed to be supported by a compelling government interest. *Id.*, at 404-406. However, the *Sherbert* test has only been applied in the unemployment compensation context and has since been eliminated by the United States Supreme Court and replaced by the rational basis test. See *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 883-885 (1990) (overruled due to legislative action) (“We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges.”); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (“In addressing the constitutional protection for free exercise of religion, our cases establish the general proposition that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.”) Therefore, *Sherbert* is inapplicable to this Court’s review on the Third Motion to Dismiss.

Next, Plaintiff cites to *Yoder* and *Bowen*. In *Yoder*, the Court found that a criminal sanction for the failure to send children to school under a compulsory attendance law because of religious objection could not be upheld under the First Amendment. See *Yoder*, 406 U.S. at 218. The distinction between *Yoder* and the present case – and why the rational basis test is applied here – was identified in *Bowen*.

We conclude then that government regulation that indirectly and incidentally calls for a choice between securing a governmental benefit and adherence to religious beliefs is wholly different from governmental action or legislation that criminalizes religiously inspired activity or inescapably compels conduct that some find objectionable for religious reasons. Although the denial of government benefits over religious objection can raise serious Free Exercise problems, these two very different forms of government action are not governed by the same constitutional standard.

DEFENDANTS’ REPLY TO PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS’ 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS - 3

*Bowen*, 476 U.S. at 706 (applying the rational basis test). Because there is no allegation that Plaintiff has been subjected a criminal sanction here, the test outlined in *Yoder* is inapplicable. Defendants are also unclear as to why the citation to *Miller* is “a misapplication of the *Bowen* decision,” when both cases apply a rational basis test.

Next Plaintiff goes on to argue that *Bissett v. State*, requires an “essential” governmental interest in order for the statute or regulation to be valid when weighed against the religious burden. See *Bissett v. State*, 111 Idaho 865, 867-68 (Ct. App. 1986) (“the state may justify its burden on Bissett’s religious liberty by showing that the regulations are essential to accomplish an overriding governmental interest.”) (citing *Yoder*, 406 U.S. 205). While the *Bissett* court does state that, a more detailed reading discloses that this case was decided pre-*Smith* and that the Court is applying the test outlined in *Sherbert* and *Yoder*. However, this demonstrates, that prior Idaho Court of Appeals, under a more stringent standard than the rational basis test, still found that the requirement to choose between voluntary activity (driving) and compliance with Idaho’s motor vehicle laws was an incidental burden on religious practice. *Bissett v. State*, 111 Idaho 865, 868 (Ct. App. 1986).

Finally, Plaintiff asserts that all the issues raised in the second section of the Third Motion to Dismiss are merely factual arguments to support the Second Amended Complaint. For that reason, Defendants will rest on the briefing presented in the opening Memorandum in Support of the Third Motion to Dismiss.

### CONCLUSION

Based on these reasons, and all the reasons before the Court in the record on this matter, it is requested that the Court dismiss the Second Amended Complaint in its entirety.

DEFENDANTS’ REPLY TO PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS’ 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS - 4

DATED this 24<sup>th</sup> day of April, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Leslie M. Hayes  
Leslie M. Hayes  
Deputy Attorneys General

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> day of April, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

Leslie M. Hayes  
Leslie M. Hayes  
Deputy Attorney General

DEFENDANTS' REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' 3<sup>RD</sup> RULE 12(b)(6) MOTION TO DISMISS - 5



The State of Idaho in "Lewis" admitted that the requirement of an SSN in order to receive a driver's license did indeed burden Lewis' religious beliefs under I.C. 73-402, but that State law was allegedly pre-empted by federal law (42USC666) law to require an individual's SSN even over a religious objection. This allegations fails for the following reasons.

1) 42 USC 666 a 13 A applies in only certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536.

2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 USC 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.

3. I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the SSN is not the least restrictive means to further the state's alleged compelling interest.

Bowen V Roy, 476 U.S. 693(1986 at 708, and cited and discussed in Leahy V. D.C. 833 F.2d 1046 (1987). The State of Idaho even admits to the inequity in Federal Mandate Review dated Jan. 19, 2005 and previously submitted to the Court.

#### Conclusion

I.C. 54-5210(a) violates Plaintiff's 1st Amend (FER) and does not comply with federal law and U.S. Supreme court's decision concerning the "FER". I.C. 73-122 is discriminatory.

Plaintiff seeks relief in the forms of declaratory judgement, and also damages under 42 USC 1981, 1983, 2000e-2(b) in connection with I.C. 6-903(1), 6-910.

Plaintiff's reasons are numbered in his Amended Complaint and the Court will address them one at a time.

**1) 42 USC 666 a 13 A applies in only certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536.**

Plaintiff misconstrues the purpose of this law and its applicability. 42 U.S.C. § 666(a)(13)(A)'s purpose is to aid in child support enforcement by requiring the collection of social security numbers on license applications:

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

...

(13) Recording of social security numbers in certain family matters

Procedures requiring that the social security number of--

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

42 U.S.C. § 666. This law applies to all applications for occupational licenses and requires states to record social security numbers on license applications to aid in interstate child support collection. The Idaho Contractor Registration Act's social security number requirement is Idaho's compliance with this federal mandate. The federal mandate does not apply only in "certain family matters" despite the heading of subsection 13. It does include "certain family

MEMORANDUM DECISION AND ORDER

3

matters” like marriage, divorce, and paternity determinations, but also applies to death records, and applications for drivers’, professional, and other licenses.

**2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 USC 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.**

42 USC § 2000 is the Religious Freedom Restoration Act. Here, Plaintiff is arguing RFRA (enacted 1994 and declared unconstitutional as applied against the state laws in *City of Boerne v. Flores*, 521 U.S. 507 (1997)) trumps the federal Child Support Enforcement Act (42 U.S.C. § 666, enacted in 1984). This is a statutory RFRA claim, not a Free Exercise Clause claim.

Defendants state “[i]t appears, but is unclear, that Plaintiff is trying to assert that the Religious Freedom Restoration Act governs the validity of 42 U.S.C. §666. Defendants are unable to respond to this paragraph or assert an argument for dismissal because there is no discernible claim asserted here.” There is a discernible claim asserted here, as Defendant recited it. Plaintiff is correct that RFRA “applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.” 42 U.S.C. § 2000bb-3.

As Defendants are “unable to . . . assert an argument for dismissal,” the Court cannot dismiss this claim given that “every reasonable intendment will be made to sustain a complaint against a motion to dismiss for failure to state a claim.” *Owsley v. Idaho Indus. Comm’n*, 141 Idaho 129, 133, 106 P.3d 455, 459 (2005).

MEMORANDUM DECISION AND ORDER

**3. I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the SSN is not the least restrictive means to further the state's alleged compelling interest.**

Defendants properly construe this only as part of Plaintiff's Free Exercise Clause claim<sup>1</sup> and properly responds that the rational basis test applies. Defendants argue that because the rational basis test applies, the Court does not need to decide whether there is a less restrictive means to achieve a compelling state interest. Defendants cite *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999) for this proposition:

*In Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the Court analyzed a free exercise of religion claim under a rational basis test. Under this test, a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice. *Id.* at 879, 110 S.Ct. 1595; see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citing *Smith*, 494 U.S. at 879, 110 S.Ct. 1595). Applying *Smith*'s rational basis test to the present case, we conclude that *Miller*'s free exercise claim fails.

Defendants are correct that neutral laws of general applicability are examined under the rational basis test for Free Exercise Clause claims, as stated above in *Miller*.

I.C. § 73-122 is a neutral law of general applicability which applies to anyone applying for a professional license, and requires them to list their social security number if they have one, and allows those without social security numbers to provide alternative identification:

#### 73-122. SOCIAL SECURITY NUMBER.

(1) The social security number of an applicant shall be recorded on any application for a professional, occupational or recreational license.

---

<sup>1</sup> Because RFRA was held unconstitutional as applied against state laws as a usurpation of regulatory authority properly belonging to the states in *Boerne*, and because Plaintiff is challenging a state law here, this cannot state a RFRA claim.

(2) The requirement that an applicant provide a social security number shall apply only to applicants who have been assigned a social security number.

(3) An applicant who has not been assigned a social security number shall:

(a) Present written verification from the social security administration that the applicant has not been assigned a social security number; and

(b) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and

(c) Submit such proof as the department may require that the applicant is lawfully present in the United States.

The law is not discriminatory. It applies to those with and without social security numbers. The same applies to the Child Support Enforcement Act, 42 U.S.C. 666, because it requires the states to ask for social security numbers on occupational licenses to aid in collecting child support. It applies to all states and all occupational licenses.

**Bowen V Roy, 476 U.S. 693(1986 at 708, and cited and discussed in Leahy V. D.C. 833 F.2d 1046 (1987). The State of Idaho even admits to the inequity in Federal Mandate Review dated Jan. 19, 2005 and previously submitted to the Court.**

The Court is unsure what this means. However, Plaintiff sets forth a RFRA claim against 42 U.S.C. 666 which Defendants fail to address.

Plaintiff makes other statements in his Second Amended Complaint regarding the free exercise of religion:

Idaho code (I.C. 54-5210(a) requirement to provide a SSN in order to exercise the freedom to contract violates plaintiff's First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution. . . .

The state of Idaho in "Lewis" admitted that the requirement of an SSN in order to receive a driver's license did indeed burden Lewis' [sic] religious beliefs under I.C. 73-402, but that State law was allegedly pre-empted by federal law

MEMORANDUM DECISION AND ORDER

(42USC666) law to require an individual's SSN even over a religious objection. This allegation fails for the following reasons. . . .

Plaintiff's second paragraph above asks the Court to overturn an Idaho Supreme Court case, which is beyond this Court's authority. Plaintiff's first paragraph above is foreclosed by *Miller v. Reed*, where the 9<sup>th</sup> Circuit Court of Appeals applied the rational basis test to a facially neutral California law of general applicability which required the plaintiff to submit a social security number.

**In *Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the Court analyzed a free exercise of religion claim under a rational basis test. Under this test, a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice. *Id.* at 879, 110 S.Ct. 1595; see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citing *Smith*, 494 U.S. at 879, 110 S.Ct. 1595). Applying *Smith*'s rational basis test to the present case, we conclude that Miller's free exercise claim fails.**

In *Smith*, the Supreme Court held: "[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." 494 U.S. at 879, 110 S.Ct. 1595 (internal quotations and citations omitted). The Court explained: "The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, 'cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development.'" *Id.* at 885, 110 S.Ct. 1595 (quoting *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988)).

**Miller concedes that California may regulate drivers' licenses and that all applicants for drivers' licenses are required to provide their social security numbers. See *Nowlin v. Department of Motor Vehicles*, 53 Cal.App.4th 1529, 62 Cal.Rptr.2d 409, 412-14 (1997). He does not deny that section 1653.5 is facially neutral, nor does he allege that section 1653.5 has the object of burdening religion or has more than an incidental effect on religious practices or beliefs. Finally, he does not deny that section 1653.5 is rationally related to California's legitimate interests in locating the whereabouts of errant parents for purposes of carrying out child support programs, collecting tax obligations, and collecting amounts overdue and unpaid for fines, penalties, assessments, bail, and vehicle parking penalties. See *id.* at 415; *Lauderbach*, 41 Cal.Rptr.2d at 436-39.**

MEMORANDUM DECISION AND ORDER

We conclude that California Vehicle Code § 1653.5 is a valid and neutral law of general applicability. Under *Smith*, the DMV's enforcement of it does not violate Miller's right to the free exercise of religion. *Cf. Bowen v. Roy*, 476 U.S. 693, 701-12, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986) (Burger, C.J., plurality) (foreshadowing the *Smith* analysis in rejecting a free exercise challenge to the requirement that applicants for a federal welfare program provide social security numbers).

*Miller v. Reed*, 176 F.3d 1202, 1206–07 (9th Cir. 1999) (emphasis added).

“[I]f prohibiting the exercise of religion ... is ... merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.” *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 892, 110 S. Ct. 1595, 1607, 108 L. Ed. 2d 876 (1990), *overturned due to legislative action* (Nov. 16, 1993) (however, this case was overturned by RFRA, and RFRA is inapplicable as applied against state law, and therefore this case still applies to challenges to state law). “[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *State v. Fluewelling*, 150 Idaho 576, 579, 249 P.3d 375, 378 (2011) (internal quotations omitted, citing *Employment Div., Dep't of Human Res. of Oregon v. Smith*). “When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs.” *City of Boerne v. Flores*, 521 U.S. 507, 535, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624 (1997).

Here, I.C. § 54-5210's requirement of providing social security numbers on contractor's license applications is a facially neutral law of general applicability. It does not mention religion and applies to any person applying for an Idaho contractor's license. The effect on the Plaintiff's

MEMORANDUM DECISION AND ORDER

exercise of his religion is only incidental to collecting his social security number and his exercise of religion is not substantially burdened merely because he must submit his social security number on a contractor's license application. Defendants are correct that Plaintiff's free exercise claim is precluded by *Miller v. Reed*, as well as *Employment Division v. Smith*.

Plaintiff applies the incorrect level of scrutiny to his free exercise claim. Plaintiff is applying strict scrutiny in an area of law where rational basis scrutiny is applied. Plaintiff fails to set forth a free exercise claim. Plaintiff does state a RFRA claim.

**Conclusion**

For the reasons stated above, Defendants' Motion to Dismiss is granted in part and denied in part.

Dated July 3, 2017.

Lansing L. Haynes  
District Judge Lansing Haynes

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5 day of July, 2017, a true and correct copy of the foregoing was mailed, postage prepaid, ~~faxed~~, or sent by interoffice mail to:

George Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho  
83858

Leslie Hayes  
P.O. Box 83720  
Boise, Idaho 83720-0010 #1601  
Fax: (208) 854-8073

By: *Juan McCoy*  
Deputy Clerk

**MEMORANDUM DECISION AND ORDER**

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

George Q. Ricks  
Acting Pro Se  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858  
208-818-9799

2017 AUG 16 PM 4:26

CLERK DISTRICT COURT

*Kath*  
DEPUTY

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

CIVIL ACTION FOR VIOLATION OF )  
CONSTITUTIONAL AND STATUTORY RIGHTS )

Case No. CV-2016- 5927

George Q. Ricks, )  
APPELLANT, )

NOTICE OF APPEAL

V. )

STATE OF IDAHO CONTRACTORS BOARD, )  
IDAHO BOARD OF OCCUPATIONAL )  
LICENSES, LAWRENCE WASDEN, )  
ATTORNEY GENERAL )

Respondents, )

\_\_\_\_\_ )

TO: STATE OF IDAHO CONTRACTORS BOARD, IDAHO BOARD OF OCCUPATIONAL  
LICENSES, LAWRENCE WASDEN, IDAHO ATTORNEY GENERAL AND THE DEFENDANTS'  
ATTORNEY, LESLIE M. HAYES, 7995#7889 DEPUTY ATTORNEY GENERAL, 954 W.  
JEFFERSON STREET, 2<sup>ND</sup> FLOOR, P.O BOX 83720, BOISE, ID. 83720-0010 AND THE CLERK  
OF THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR KOOTENAI COUNTY.

NOTICE IS HEREBY GIVEN THAT:

1. George Q. Ricks appeals against the above named respondent(s) to the Idaho Supreme Court from Memorandum Decision and Order, Granting in Part and Denying in Part Defendants' Motion to Dismiss. Entered in the above entitled action on the 5<sup>th</sup> day of July 2017, Honorable Judge, Lansing L. Haynes presiding. A copy of the judgment or order being appealed is attached to this notice.
2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to rule 11 (a) (3) I.A.R.
3. Preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.
  - A. Appellant contends he has stated a "hybrid" claim that requires stricter scrutiny than the rational basis test. Employment Div. v. Smith, 494 U.S. 872 (1990).
  - B. Appellant contends that the requirement of a SSN has no rational basis as to whether an individual qualifies to register as a contractor.
  - C. Appellant contends I.C. 73-122 is discriminatory towards those who have a religious objection over disclosing their SSN in order to register as a contractor. Bowen v. Roy, 476 U.S. 693 (1986).
  - D. Appellant contends that 42 U.S.C. 666(a) (13) (A) is germane only to those who seek the assistance of an IV-D agency.
  - E. Appellant contends his complaint should not have been dismissed under a rule 12(b) (6) motion.
4. No order has been entered sealing any portion of the record.
5. No transcript is requested.
6. Under rule 28 (a) I.A.R., Appellant by the foregoing designations requests that the clerk's record be limited to the following :
  - a. The original and any amended complaint.
  - b. Plaintiff's memorandum in opposition to Defendants' 3<sup>rd</sup> Rule 12 (b) (6) motion to dismiss.
  - c. Notice of Appeal

CERTIFICATION

I certify:

- 1. That the estimated fee for preparation of the clerk's or agency's record has been paid.
- 2. That the appellate filing fee has been paid.
- 3. That service has been made upon all parties required to be served pursuant to Rule 20.

AFFIDAVIT

State of Idaho

County of Kootenai

George Q. Ricks being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of his knowledge and belief.

*George Q. Ricks*

Subscribed and Sworn to before me this 16, day of Aug, 2017.

*Bobee Deglman*

Title  
 Notary Public  
 Residence  
 CDA, ID  
 Commission expires 1-25-2019



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CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF KOOTENAI

GEORGE Q. RICKS,

Plaintiff,

v.

STATE OF IDAHO CONTRACTORS  
BOARD, IDAHO BOARD OF  
OCCUPATIONAL LICENSES,  
LAWRENCE WASDEN, ATTORNEY  
GENERAL,

Defendants.

16-5927  
) Case No. CV ~~16-3780~~  
)  
) MEMORANDUM DECISION  
) AND ORDER GRANTING IN  
) PART AND DENYING IN PART  
) DEFENDANTS' MOTION TO  
) DISMISS  
)  
)  
)  
)  
)

Defendants' Motion is granted in part and denied in part.

Plaintiff's Second Amended Complaint first lays out the facts and argues the Idaho Contractor Registration Act's "requirement to provide a SSN in order to exercise the freedom to contract violates plaintiff's First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution." Plaintiff then cites four U.S. Supreme Court cases, none of which are controlling authority on that topic. Plaintiff continues:

MEMORANDUM DECISION AND ORDER

The State of Idaho in "Lewis" admitted that the requirement of an SSN in order to receive a driver's license did indeed burden Lewis' religious beliefs under I.C. 73-402, but that State law was allegedly pre-empted by federal law (42USC666) law to require an individual's SSN even over a religious objection. This allegations fails for the following reasons.

1) 42 USC 666 a 13 A applies in only certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536.

2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 USC 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.

3. I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the SSN is not the least restrictive means to further the state's alleged compelling interest.

Bowen V Roy, 476 U.S. 693(1986 at 708, and cited and discussed in Leahy V. D.C. 833 F.2d 1046 (1987). The State of Idaho even admits to the inequity in Federal Mandate Review dated Jan. 19, 2005 and previously submitted to the Court.

#### Conclusion

I.C. 54-5210(a) violates Plaintiff's 1st Amend (FER) and does not comply with federal law and U.S. Supreme court's decision concerning the "FER". I.C. 73-122 is discriminatory.

Plaintiff seeks relief in the forms of declaratory judgement, and also damages under 42 USC 1981, 1983, 2000e-2(b) in connection with I.C. 6-903(1), 6-910.

Plaintiff's reasons are numbered in his Amended Complaint and the Court will address them one at a time.

**1) 42 USC 666 a 13 A applies in only certain family matters. That being the collection and use of SSN FOR USE IN CHILD SUPPORT Enforcement. P.L 105-33 August 5<sup>th</sup>, 1997-111 Statute 629 Section 5536.**

Plaintiff misconstrues the purpose of this law and its applicability. 42 U.S.C. § 666(a)(13)(A)'s purpose is to aid in child support enforcement by requiring the collection of social security numbers on license applications:

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

...

(13) Recording of social security numbers in certain family matters

Procedures requiring that the social security number of--

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

42 U.S.C. § 666. This law applies to all applications for occupational licenses and requires states to record social security numbers on license applications to aid in interstate child support collection. The Idaho Contractor Registration Act's social security number requirement is Idaho's compliance with this federal mandate. The federal mandate does not apply only in "certain family matters" despite the heading of subsection 13. It does include "certain family

matters” like marriage, divorce, and paternity determinations, but also applies to death records, and applications for drivers’, professional, and other licenses.

**2) 42 USC 2000 bb 1-4 applies to all federal laws unless the particular federal law specifically states 42 USC 2000 bb 1-4 does not apply. 42 USC 666 is not exempt.**

42 USC § 2000 is the Religious Freedom Restoration Act. Here, Plaintiff is arguing RFRA (enacted 1994 and declared unconstitutional as applied against the state laws in *City of Boerne v. Flores*, 521 U.S. 507 (1997)) trumps the federal Child Support Enforcement Act (42 U.S.C. § 666, enacted in 1984). This is a statutory RFRA claim, not a Free Exercise Clause claim.

Defendants state “[i]t appears, but is unclear, that Plaintiff is trying to assert that the Religious Freedom Restoration Act governs the validity of 42 U.S.C. §666. Defendants are unable to respond to this paragraph or assert an argument for dismissal because there is no discernible claim asserted here.” There is a discernible claim asserted here, as Defendant recited it. Plaintiff is correct that RFRA “applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after November 16, 1993.” 42 U.S.C. § 2000bb-3.

As Defendants are “unable to . . . assert an argument for dismissal,” the Court cannot dismiss this claim given that “every reasonable intendment will be made to sustain a complaint against a motion to dismiss for failure to state a claim.” *Owsley v. Idaho Indus. Comm’n*, 141 Idaho 129, 133, 106 P.3d 455, 459 (2005).

MEMORANDUM DECISION AND ORDER

**3. I.C. 73-122 is discriminatory as it allows for individuals to use alternative documentation to apply for licenses; therefore the SSN is not the least restrictive means to further the state's alleged compelling interest.**

Defendants properly construe this only as part of Plaintiff's Free Exercise Clause claim<sup>1</sup> and properly responds that the rational basis test applies. Defendants argue that because the rational basis test applies, the Court does not need to decide whether there is a less restrictive means to achieve a compelling state interest. Defendants cite *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999) for this proposition:

In *Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the Court analyzed a free exercise of religion claim under a rational basis test. Under this test, a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice. *Id.* at 879, 110 S.Ct. 1595; see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citing *Smith*, 494 U.S. at 879, 110 S.Ct. 1595). Applying *Smith*'s rational basis test to the present case, we conclude that Miller's free exercise claim fails.

Defendants are correct that neutral laws of general applicability are examined under the rational basis test for Free Exercise Clause claims, as stated above in *Miller*.

I.C. § 73-122 is a neutral law of general applicability which applies to anyone applying for a professional license, and requires them to list their social security number if they have one, and allows those without social security numbers to provide alternative identification:

**73-122. SOCIAL SECURITY NUMBER.**

(1) The social security number of an applicant shall be recorded on any application for a professional, occupational or recreational license.

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<sup>1</sup> Because RFRA was held unconstitutional as applied against state laws as a usurpation of regulatory authority properly belonging to the states in *Boerne*, and because Plaintiff is challenging a state law here, this cannot state a RFRA claim.

(2) The requirement that an applicant provide a social security number shall apply only to applicants who have been assigned a social security number.

(3) An applicant who has not been assigned a social security number shall:

(a) Present written verification from the social security administration that the applicant has not been assigned a social security number; and

(b) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and

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The law is not discriminatory. It applies to those with and without social security numbers. The same applies to the Child Support Enforcement Act, 42 U.S.C. 666, because it requires the states to ask for social security numbers on occupational licenses to aid in collecting child support. It applies to all states and all occupational licenses.

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The Court is unsure what this means. However, Plaintiff sets forth a RFRA claim against 42 U.S.C. 666 which Defendants fail to address.

Plaintiff makes other statements in his Second Amended Complaint regarding the free exercise of religion:

Idaho code (I.C. 54-5210(a) requirement to provide a SSN in order to exercise the freedom to contract violates plaintiff's First Amendment right to the Free Exercise of Religion (FER) clause of the U.S. Constitution. . . .

The state of Idaho in "Lewis" admitted that the requirement of an SSN in order to receive a driver's license did indeed burden Lewis' [sic] religious beliefs under I.C. 73-402, but that State law was allegedly pre-empted by federal law

MEMORANDUM DECISION AND ORDER

(42USC666) law to require an individual's SSN even over a religious objection. This allegation fails for the following reasons. . . .

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**In *Employment Division v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the Court analyzed a free exercise of religion claim under a rational basis test. Under this test, a rationally based, neutral law of general applicability does not violate the right to free exercise of religion even though the law incidentally burdens a particular religious belief or practice. *Id.* at 879, 110 S.Ct. 1595; see also *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) (citing *Smith*, 494 U.S. at 879, 110 S.Ct. 1595). Applying *Smith*'s rational basis test to the present case, we conclude that Miller's free exercise claim fails.**

In *Smith*, the Supreme Court held: "[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." 494 U.S. at 879, 110 S.Ct. 1595 (internal quotations and citations omitted). The Court explained: "The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, 'cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development.' " *Id.* at 885, 110 S.Ct. 1595 (quoting *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988)).

**Miller concedes that California may regulate drivers' licenses and that all applicants for drivers' licenses are required to provide their social security numbers. See *Nowlin v. Department of Motor Vehicles*, 53 Cal.App.4th 1529, 62 Cal.Rptr.2d 409, 412-14 (1997). He does not deny that section 1653.5 is facially neutral, nor does he allege that section 1653.5 has the object of burdening religion or has more than an incidental effect on religious practices or beliefs. Finally, he does not deny that section 1653.5 is rationally related to California's legitimate interests in locating the whereabouts of errant parents for purposes of carrying out child support programs, collecting tax obligations, and collecting amounts overdue and unpaid for fines, penalties, assessments, bail, and vehicle parking penalties. See *id.* at 415; *Lauderbach*, 41 Cal.Rptr.2d at 436-39.**

MEMORANDUM DECISION AND ORDER

We conclude that California Vehicle Code § 1653.5 is a valid and neutral law of general applicability. Under *Smith*, the DMV's enforcement of it does not violate Miller's right to the free exercise of religion. *Cf. Bowen v. Roy*, 476 U.S. 693, 701-12, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986) (Burger, C.J., plurality) (foreshadowing the *Smith* analysis in rejecting a free exercise challenge to the requirement that applicants for a federal welfare program provide social security numbers).

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“[I]f prohibiting the exercise of religion ... is ... merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended.” *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 892, 110 S. Ct. 1595, 1607, 108 L. Ed. 2d 876 (1990), *overturned due to legislative action* (Nov. 16, 1993) (however, this case was overturned by RFRA, and RFRA is inapplicable as applied against state law, and therefore this case still applies to challenges to state law). “[T]he right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *State v. Fluewelling*, 150 Idaho 576, 579, 249 P.3d 375, 378 (2011) (internal quotations omitted, citing *Employment Div., Dep't of Human Res. of Oregon v. Smith*). “When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone burdened because of their religious beliefs.” *City of Boerne v. Flores*, 521 U.S. 507, 535, 117 S. Ct. 2157, 2171, 138 L. Ed. 2d 624 (1997).

Here, I.C. § 54-5210's requirement of providing social security numbers on contractor's license applications is a facially neutral law of general applicability. It does not mention religion and applies to any person applying for an Idaho contractor's license. The effect on the Plaintiff's

MEMORANDUM DECISION AND ORDER

exercise of his religion is only incidental to collecting his social security number and his exercise of religion is not substantially burdened merely because he must submit his social security number on a contractor's license application. Defendants are correct that Plaintiff's free exercise claim is precluded by *Miller v. Reed*, as well as *Employment Division v. Smith*.

Plaintiff applies the incorrect level of scrutiny to his free exercise claim. Plaintiff is applying strict scrutiny in an area of law where rational basis scrutiny is applied. Plaintiff fails to set forth a free exercise claim. Plaintiff does state a RFRA claim.

**Conclusion**

For the reasons stated above, Defendants' Motion to Dismiss is granted in part and denied in part.

Dated July 3, 2017.

Lansing L. Haynes  
District Judge Lansing Haynes

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5 day of July, 2017, a true and correct copy of the foregoing was mailed, postage prepaid, ~~faxed~~, or sent by interoffice mail to:

George Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho  
83858

Leslie Hayes  
P.O. Box 83720  
Boise, Idaho 83720-0010 #1001  
Fax: (208) 854-8073

By Susan McKay  
Deputy Clerk

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation

LESLIE M. HAYES, ISB #7995  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8073  
Attorney for Defendants

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: }  
2017 AUG 29 PM 1:38

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY  
M

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

GEORGE Q. RICKS,	)	
	)	Case No. CV-2016-5927
Plaintiff/Appellant,	)	
	)	<b>DEFENDANTS'/RESPONDENTS'</b>
v.	)	<b>REQUEST FOR ADDITIONS TO</b>
	)	<b>CLERK'S RECORD ON APPEAL</b>
STATE OF IDAHO CONTRACTORS BOARD,	)	
IDAHO BOARD OF OCCUPATIONAL	)	
LICENSES, LAWRENCE WASDEN,	)	
ATTORNEY GENERAL,	)	
	)	
Defendants/Respondents,	)	
	)	

Defendants Idaho Board of Occupational Licenses ("IBOL"), Idaho Contractors Board, and Attorney General Wasden (Defendants), by and through their counsel of record, respectfully submit this Request for Additions to Clerk's Record on Appeal, pursuant to Idaho Appellate Rule 19(c).

**DEFENDANTS' REQUEST FOR ADDITIONS TO CLERK'S RECORD ON APPEAL- 1**

Defendants request a reporter's transcript in both hard copy and electronic format for the following hearings:

COURT REPORTER	DATE	TITLE	EST. PAGES
Val Nunemacher	2/02/2017	Plaintiff's Motion to Reconsideration	<100
Val Nunemacher	3/06/2017	Plaintiff's Motion for Proposed 2 <sup>nd</sup> Amended Complaint	<100
Val Nunemacher	5/01/2017	Defendants' 3 <sup>rd</sup> Motion to Dismiss	<100
Val Nunemacher	6/08/2017	Defendants 3 <sup>rd</sup> Motion to Dismiss (continued from 5/01/2017)	<100

Defendants request the following additional documents (including all exhibits or attachments thereto) to the Clerk's Record on Appeal in addition to those documents requested by Plaintiff in his notice of appeal:

	DATE FILED	PLEADING
1	11/29/2016	Motion for Reconsideration
2	11/29/2016	Memorandum in Support of Motion for Reconsideration
3	12/07/2016	Opposition to Plaintiff's Motion for Reconsideration
4	1/04/2017	Reply to Defendant's Opposition to Plaintiffs' Motion for Reconsideration
5	1/05/2017	Hearing Scheduled: Motion to Reconsider 2/02/2017 at 2:30 p.m. (Docket Entry)
6	1/11/2017	Notice of Hearing Re: Plaintiffs' Motion for Reconsideration February 2, 2017, 2:30 p.m.
7	2/14/2017	Hearing Scheduled: Motion for Proposed 2 <sup>nd</sup> Amended Complaint 3/06/2017 at 9:30 a.m. (Docket Entry)
8	2/27/2017	Opposition to Plaintiff's Second Amended Complaint and Notice of Waiver of Time to Notice of Hearing

## DEFENDANTS' REQUEST FOR ADDITIONS TO CLERK'S RECORD ON APPEAL- 2

9	3/20/2017	Defendants' 3 <sup>rd</sup> Rule 12(b)(6) Motion to Dismiss
10	3/20/2017	Memorandum in Support of Defendants' 3 <sup>rd</sup> Rule 12(b)(6) Motion to Dismiss
11	3/22/2017	Hearing Scheduled : Motion to Dismiss 4/27/2017 at 3:30 p.m. (Docket Entry)
12	3/22/2017	Notice of Hearing Re: Defendants' 3 <sup>rd</sup> Rule 12(b)(6) Motion to Dismiss Thursday, April 27, 2017, 3:30 p.m. PST (4:30 MST)
13	4/04/2017	Notice of Hearing Re: Defendants' 3 <sup>rd</sup> Rule 12(b)(6) Motion to Dismiss Vacating Hearing on April 27,2017, and Resetting for Monday, May 1, 2017, 3:00 PST (4:00 MST)
14	4/24/2017	Defendants' Reply to Plaintiff's Memorandum in Opposition to Defendants' 3 <sup>rd</sup> Rule 12(b)(6) Motion to Dismiss
15	7/05/2017	Memorandum Decision and Order Granting in Part and Denying in Part Defendants' Motion to Dismiss

The undersigned, Leslie M. Hayes, hereby certifies:

a) That a copy of this notice of appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Val Nunemacher  
Kootenai County Courthouse  
Justice Building 6-11  
324 W. Garden Ave.  
Coeur d'Alene, ID 83616

b) That arrangements for the payment of the fee for preparation of the reporter's transcript have been made and that Respondents are otherwise exempt under Idaho Code §§ 67-2301 and 31-3212(2) from payment of clerk's fees in connection with such preparation.

c) That Respondent is exempt under Idaho Code §§ 67-2301 and 31-3212(2) from paying the any fees for the preparation of the additions to the clerk's record.

**DEFENDANTS' REQUEST FOR ADDITIONS TO CLERK'S RECORD ON APPEAL- 3**

d) That a copy of Defendant's Request for Additions to Clerk's Record on Appeal was and/or will be simultaneously with filing, served all other parties required pursuant to I.A.R. 19(c).

DATED this 29<sup>th</sup> day of August, 2017.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
Leslie M. Hayes  
Deputy Attorney General

\*\*\*\*\*

**CERTIFICATE OF SERVICE**

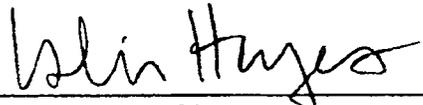
I HEREBY CERTIFY that on this 29<sup>th</sup> day of August, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

Val Nunemacher, Court Reporter  
Kootenai County Courthouse  
Justice Building 6-11  
324 W. Garden Ave.  
Coeur d'Alene, ID 83616

- U.S. Mail
- Email [valeriecsr@aol.com](mailto:valeriecsr@aol.com)
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

  
Leslie M. Hayes  
Deputy Attorney General

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 SEP -1 PM 1:43

CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF Kutler  
DEPUTY  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

GEORGE Q. RICKS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF IDAHO CONTRACTORS BOARD, )  
 IDAHO BOARD OF OCCUPATIONAL )  
 LICENSES, LAWRENCE WASDEN, )  
 ATTORNEY GENERAL, )  
 )  
 Defendants, )  
 )

Case No. CV-2016-5927  
L.W.  
[Proposed] JUDGMENT

JUDGEMENT IS ENTERED AS FOLLOWS Plaintiff's Complaint is dismissed without  
prejudice in its entirety.

Dated this 1 day of <sup>September</sup>~~August~~, 2017.

Lansing L. Haynes  
The Honorable Judge Lansing Haynes

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1 day of ~~August~~ <sup>Sept.</sup>, 2017, I caused to be served a true and correct copy of the foregoing by the following method to:

George Quinn Ricks  
13825 N. Lauren Loop  
Rathdrum, Idaho 83858

*Plaintiff - Pro Se*

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile:

Leslie M. Hayes  
Deputy Attorney General  
Civil Litigation Division  
P.O. Box 83720  
954 W. Jefferson, 2<sup>nd</sup> Floor  
Boise, ID 83720-0010

*Attorney for Defendants*

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: 208-854-8073

*#579  
or  
9/5/17 @ 101  
#722*

**JIM BRANNON**

*Gusman McCoy*  
Clerk

JUDGEMENT 2

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2017 NOV -8 AM 8:05

CLERK DISTRICT COURT

DEPUTY

GEORGE Q. RICKS, )  
 )  
Petitioner/Appellant, ) SUPREME COURT NO.:  
 ) 45396  
 )  
vs. ) KOOTENAI CASE NO.:  
 ) CV-16-5927  
STATE OF IDAHO CONTRACTORS )  
BOARD, et al., )  
 )  
Defendants/Respondents.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 3, 2017, I lodged an original transcript, totaling 16 pages, and three copies of the following hearing(s):  
Motion to Reconsider held on February 2, 2017, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.

*Valerie Nunemacher*

Valerie Nunemacher, CSR, CCR, RPR

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

STATE OF IDAHO  
COUNTY OF KOOTENAI } ss  
FILED:

2017 NOV -8 AM 9: 03

CLERK DISTRICT COURT

DEPUTY

GEORGE Q. RICKS, )  
 ) SUPREME COURT NO. :  
Petitioner/Appellant, ) 45396  
 )  
vs. ) KOOTENAI CASE NO. :  
 ) CV-16-5927  
STATE OF IDAHO CONTRACTORS )  
BOARD, et al., )  
 )  
Defendants/Respondents.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 3, 2017, I lodged an original transcript, totaling 15 pages, and three copies of the following hearing(s):  
MOTION TO DISMISS held on March 6, 2017, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.



Valerie Nunemacher, CSR, CCR, RPR

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2017 NOV -8 AM 9: 03

CLERK DISTRICT COURT

DEPUTY

GEORGE Q. RICKS, )  
 ) SUPREME COURT NO.:  
Petitioner/Appellant, ) 45396  
 )  
vs. ) KOOTENAI CASE NO.:  
 ) CV-16-5927  
STATE OF IDAHO CONTRACTORS )  
BOARD, et al., )  
 )  
Defendants/Respondents.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 3, 2017, I lodged an original transcript, totaling 15 pages, and three copies of the following hearing(s):

MOTION FOR PROPOSED SECOND AMENDED COMPLAINT held on

(JM) ~~March 6~~ <sup>May 1</sup>, 2017, for the above-referenced appeal with the

District Court Clerk of the County of Kootenai in the First Judicial District.

*Valerie Nunemacher*

Valerie Nunemacher, CSR, CCR, RPR

To: Clerk of the Courts  
Idaho Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
Fax 208-334-2616

STATE OF IDAHO  
COUNTY OF KOOTENAI }  
FILED: }SS

2017 NOV -8 AM 9:03

CLERK DISTRICT COURT

DEPUTY

GEORGE Q. RICKS, )  
 )  
Petitioner/Appellant, ) SUPREME COURT NO.:  
 ) 45396  
 )  
vs. ) KOOTENAI CASE NO.:  
 ) CV-16-5927  
 )  
STATE OF IDAHO CONTRACTORS )  
BOARD, et al., )  
 )  
Defendants/Respondents.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on November 3, 2017, I lodged an original transcript, totaling 11 pages, and three copies of the following hearing(s):  
THIRD MOTION TO DISMISS held on June 8, 2017, for the above-referenced appeal with the District Court Clerk of the County of Kootenai in the First Judicial District.



Valerie Nunemacher, CSR, CCR, RPR





IN THE SUPREME COURT OF THE STATE OF IDAHO

GEORGE Q RICKS, )  
 )  
 APPELLANT, )  
 )  
 VS. )  
 )  
 STATE OF IDAHO CONTRACTORS, )  
 BOARD, IDAHO BOARD OF )  
 OCCUPATIONAL LICENSES, )  
 LAWRENCE WASDEN, Attorney )  
 General )  
 )  
 RESPONDENTS )  
 )

SUPREME COURT  
CASE NO. 45396

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record and transcripts were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 9 day of November 2017

I do further certify that the Clerk's Record and transcripts will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 9 day November 2017.

JIM BRANNON  
Clerk of the District Court

By: [Signature]  
Deputy Clerk

