IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

David Alan Carmichael	)	
	)	
Plaintiff - Appellant,	)	**Appeal No. 13-2546**
	)	
v.	)	**(Formerly CA No. 3:13CV129**
	)	**In U.S. District Court, Eastern**
Kathleen Sebelius, *Et. Al.*	)	**District of Virginia, Richmond**
	)	**Division)**
Defendants - Appellees.	)	
_____	)	

APPELLANT MOTION FOR REHEARING - EN BANC

I move for a re-hearing **en-banc** because material facts were overlooked in the decision; the opinion is in conflict with a decision of the U.S. Supreme Court, this court, and another court of appeals and the conflict is not addressed in the opinion; and the proceeding involves one or more questions of exceptional importance.

The opinion is in conflict with a decision of the U.S. Supreme Court:

I came to the U.S. District Court to declare a vitally important question of law regarding 42 USC § 666 and its power to coerce the states to impose upon me, and by implication other natural persons of my Christian faith community, to chose between violating an eternally damning biblical prohibition or be prohibited from exercising property rights of profession, occupation, recreation, driving and marriage. The question I brought to the court has not yet been determined as a

matter of first impression in a United States Court. A Michigan State Court, *Cary Champion v. Sec. State* 762 N.W.2d 501 (2009) **misapplying** *Michigan Dept. of State v. United States*, 166 F. Supp.2d, (W.D. Mich 2001), assumed to make a determination of this federal question and made a determination that is wholly contrary to relevant U.S. Supreme Court decisions, U.S. Court of Appeals decisions in a case regarding me ruled upon in the Ct. App. Fed. Cir. and the Ct. Fed. Claims, a case with on the question of the same religious practice in the Ct. App. D.C. Cir., and a case in U.S. District Court where facts and questions were actually adjudicated resulting in protection for religion. See my citings and appropriate applications of *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S.973 (2006) (hereinafter *UDV)*; *Sherbert v. Verner*, 374 U. S. 398 (1963); *Wisconsin v. Yoder*, 406 U. S. 205 (1972); *David Alan Carmichael v. United States*, 298 F.3d 1367, U.S. Ct. App., Fed. Cir. (Aug 2002) *; Leahy v. District of Columbia*, 833 F.2d 1046 (U.S. Ct. App., D.C. Cir. 1987); *Stevens v. Berger*, 428 F.Supp. 896, (U.S. Dist. Ct. E.D. New York, 1977). In contrast to those cases, mere sophistry was declared in my case, without adjudication, to the substantial hurt of law and due process framed to protect religion, life, liberty and property.

Virginia and other states' courts and bureaucracies are now relying on that Michigan abhorrent erroneous conclusion of a federal question. I, being one of my

faith being injured by the edict and its force, brought the matter to the federal-question expert, the U.S. District Court, who tragically rubber-stamped the Michigan case when it dismissed my case without prejudice while simultaneously making a declaration of law with its pen as if it had taken jurisdiction.

The proceeding involves one or more questions of exceptional importance:

Mine was a case asking the U.S. Court to determine that application of law in a federal question about an issue where an act of Congress is damaging me tangibly penalizing me because of my adherence to sincere and *bona fide* religion. It is a case of first impression in a U.S. Court. It had already been determined by a U.S. Courts that indeed the SSN identification requirement was a substantial burden on my religion and I indeed alleged many things that are, in the ordinary meaning of the words, a substantial burden on my religion. Thus, the proceeding involves one or more questions of exceptional performance.

Like in the case of *David Alan Carmichael v. United States,* 298 F.3d 1367, U.S. Ct. App., Fed. Cir. (Aug 2002), I cannot identify with, or associate my identity with the number of the beast SSN.

> ""He believed it to be the "Number of the Beast" discussed in Chapter 13 of Revelations in the New Testament of the Bible."" *Id.*
>
> ""If the Navy failed to follow its own policies and did not properly provide Carmichael with religious accommodation procedures, Carmichael's discharge may be involuntary because he was faced with the untenable option of violating his religious conviction, or else resigning or being discharged."" *Id.*

It is an adjudicated fact in that case courts that the government's requirement to have me be identified with a SSN is such a substantial burden to my religion that I could not tolerate compliance even at the cost of being stripped of my livelihood and my retirement, reputation, medical care, esteem, survival and other things associated with it. Though my case presented to the District Court is replete with this assertion, the District Court claimed that I failed to alleged it. This *Carmichael* case was put before both the District Court and this 4th Circuit yet they both completely ignored it.

If the 4th Circuit judges assigned to the case believe Congress has the prerogative to impose upon me to forsake Christ in order to exercise ordinary privileges and immunities of natural people in or out of society, then they are to in opposition to those important cases that I cited.

The conflict is not addressed in the opinion:

Since my case in the District Court and my documents of appeal are replete with the conflict of religion, the flippant disregard of the conflict by the District Court and the Court of Appeals is glaring denial of due process since the conflict is amply evidenced through all my documents. The 4th Circuit opened is *per curiam* Opinion as if the case sounded in merely technical bureaucratic administrative preferences with no hint that there is a conflict of that gravely important matter of religion.

> "David Alan Carmichael appeals the district court's order dismissing his civil action challenging the requirements that he provide a social security number to apply for a Virginia [driver's] license and that his record with the Virginia Department of Motor Vehicles contain his social security number." *per curiam opinion opening statement.*

Take note that in this statement there is no hint of the religious conflict nor is it addressed anywhere in the opinion. The 4th Circuit here behaved like the U.S. Navy in *David Alan Carmichael* v. *United States,* 298 F.3d 1367

> "The Deputy CNP further noted that when and if the Social Security Administration responded to Carmichael's request, Carmichael could resubmit his MPIN request for more favorable consideration. The Deputy CNP stated that it would be inappropriate to alter Carmichael's military records until the Social Security Administration formally acknowledged "XXX-XX-XXXX" as his Social Security number. Instead, the Deputy CNP denied Carmichael's request by reference to Executive Order 9397 (Nov. 22, 1943) (requiring the use of Social Security numbers where a government agency establishes a new system of permanent account numbers), Secretary of the Navy Notice 1070 (Dec. 1, 1971) (generally establishing the Social Security number as the sole MPIN for naval non-retired personnel), and Naval Military Personnel Manual article 4610100 (requiring that the MPIN assigned to naval personnel upon first entering the Navy be the "Social Security Number (SSN) shown on the member's OA-702, Social Security Account Number Card"). <u>The Deputy CNP did not refer to Carmichael's letter as a request for religious accommodation, nor did he address the Navy's religious accommodation policies</u>." *David Alan Carmichael* v. *United States,* 298 F.3d 1367 (Aug 2002) (Emphasis added)

My expectation in this motion for rehearing *en banc* is that there is someone within the 4th Circuit with the discernment to distinguish the subtleties that were discerned by the Ct. App., Fed. Cir. in *Carmichael*. **Matters of religion matter**. They fall under the category of immunity rather than prerogative.

Because of the U.S. Constitution's powers being limited to those things in Article I; and because even those things delegated are bounded by the Bill of Rights, including but not limited to the First and Ninth Amendments, protection for religion exists notwithstanding 42 USC §2000bb, *et seq.*, Religious Freedom Restoration Act. Like the Navy's religious accommodation policy being able to make exceptions to the SSN identification requirement, any social welfare program or other scheme of Congress or Virginia is no less subject to accommodation or outright immunity.

> "Were it otherwise, the Navy's religious accommodation policy would be eviscerated. Specifically, the trial court erred in holding that applicable law required the denial of Carmichael's request to change his MPIN. We recognize that Secretary of the Navy Notice 1070 (Dec. 1, 1971) established that "[e]ffective January 1, 1972, the [Social Security Number] will become the sole military personnel identification number for all naval personnel [with exceptions for personnel who retired or transferred before that date]," and Naval Military Personnel Manual article 4610100 requires that the MPIN to be assigned to all naval personnel upon entering into the service be the "Social Security Number (SSN) shown on the member's OA-702, Social Security Account Number Card." Nevertheless, these directives do not automatically exempt the MPIN from the Navy's religious accommodation policy. **The whole point of the religious accommodation policy is for the Navy to make exceptions to its otherwise generally-applicable rules in order to accommodate an individual service member's religious convictions** where military necessity permits. *Id.* (Emphasis added)

In light of the Fed. Cir.'s view of the importance of religion in *Carmichael*, and the U.S. Supreme Court's in *UDV*, and the D.C. Circuit's in *Leahy v. District of Columbia*, and Congress's in the RFRA, neither the U.S. District Court in

Richmond or the 4th Circuit so far evidence the correct application of the rule of law regarding state administration conflicts with obligations of religion and the protection afforded to religion.

Material facts were overlooked in the decision:

The allegations of my claim in the District Court invoked evidentiary adversarial due process rather than the District Court cherry-picking the government's bureaucratically popular sophistry where no evidence was even offered by them. Even in the point of the reasonably colorable claim of *res judicata* and the *Feldman-Rooker* rule, whether or not those demurrer's stand rests on the test of facts. I made allegations that are indeed true and would overcome the facial appearance of *res judicata* and *Feldman-Rooker*. However, their excluding due process related to evidentiary examination precludes my access to refuting Defendant allegations.

Thus, in the cursory visit of my case by on Appeal, the 4th Circuit overlooked relevant facts since its clear by the docket and that the District Court evaded having actual facts processed by consideration of evidence. Facts cannot exist in the record if there is no evidentiary due process. There are no facts available for them to review, in what was supposed to be a *de novo* review of substantive facts related to the questions of law and due process. My case was flippantly dismissed. See enclosed Judgment and Opinion (5 pages)

One fact that is critically obvious and important is that the *Champion* opinion effectively declared that no exception to the SSN identification requirement is tolerable. Yet to the opposite, the government in this case indeed offered that it is lawful for Virginia in their making exceptions to the requirement since there is no United States or other law that demands a person obtain a SSN to live or work in the United States or for the purpose of having it. According to Va. courts, and the U.S. Supreme Court, acts that make exceptions for technical grounds yet deny exceptions for religious reasons are hostile to religion, not neutral:

> ""Consequently, while allowing for a variety of legitimate secular uses of owl feathers, Code § 29.1-521(10) inexplicably denies an exception for bona fide religious uses and thereby draws specific subject matter distinctions in regulating the use of feathers."
>
> "Where the state creates a mechanism for legitimate individualized exceptions but fails to include religious uses among these legitimate exceptions, discriminatory intent may be inferred. Ballweg v. Crowder Contracting Co., 247 Va. 205, 212-13, 440 S.E.2d 613, 618 (1993). Failure to make allowance for bona fide religious uses "tends to exhibit hostility, not neutrality, towards religion. . . ." *Bowen v. Roy*, 476 U.S. 693 (1986); Ballweg, 247 Va. at 213, 440 S.E.2d at 618."" *Horen v. Commonwealth*, 479 S.E.2d 553, 558 (Va. Ct. App. 1997) (Emphasis added)

One other fact is that the 4th Circuit said, "... and that his record with the Virginia Department of Motor Vehicles contain his social security number." Nowhere in any record, in any case, any where, has there been any evidence submitted by any government that there is actually a social security administration record assaulting my identity with that damnable number of the beast which Virginia claims I ought to be identified.

I alleged and can prove that the United States has already exercised accommodations to their requirements for a SSN on their records related to me notwithstanding their normally requiring a SSN for the payment of large sums of money and for United States identification documents. But these were the facts that I alleged accompanied by evidentiary exhibits rather than mere sophistic government allusions offered without of evidentiary support by the government. **The deck is stacked**!

In summary:

This conflict between the obligation of religion to forsake the number of the beast and the government's passion to institute it despite our law and traditions protecting religion has progressed to the point of absurdity. Imagine the cost that I might incur should I have the ability to hire a lawyer to fight this battle as it ought. It would run most likely into six figures. I don't have that. Every month I face having to make choices to determine which utility or doctor bill I will postpone paying in order to buy groceries. The need to push this as far as it has is a grave indicator of how far we have left our roots of the faith and freedom for which we parade on holidays.

When the Lord revealed to me the nature and identify of the Beast's number and mandated that I forsake it, I knew nothing of law. I did not know whether I could both obey the law of God and the law of man. I diligently sought out those truths

and discovered that, in truth, SSN association is technically voluntary and that our people have been systematically deceived into believing it is not. Yet now, as evidence by these proceedings, the power and force of government under the color of law is being applied not only as if association with a SSN were not voluntary, but even to the point of trumping protection of *bona fide* religion. My fight in this battle is foremost for my very survival. Yet admittedly, it is important that someone fight this battle to the benefit of 'the least of these' who even less have the ability to wrestle such opposition.

It is for unrighteous expediency that I am at every turn swept under the rug. Therefore, all the various counts are submitted to you, according to and in association with all my submissions. Should the facts and law be fully and rightly vetted, I ought to prevail on all eight counts making the ninth remedial case in equity unnecessary. However, I came to the court primarily for it to declare *Champion v. Sec. State* 762 N.W.2d 501 (2009) to be false. The federal principle and immunity regarding religion cannot tolerate 666 to trump the state's law and due process instituted to protect religion. Should the 4th Circuit *En Banc* grant me a hearing, I will concentrate my dissertation on that particular point.

My documents submitted to the 4th Circuit and the District Court are a treatise that ought to be thoroughly considered.

May the Lord make His mercy perfect in you. May His peace prevail in your hearts. May He plant in you faith unimaginable.

With genuine sincerity and respect,

David Alan Carmichael
Appellant

June 9, 2014