

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL STOLLENWERK :  
 :  
 : CIVIL ACTION  
 v. :  
 :  
 : NO. 04-5510  
 JEFFREY B. MILLER et al. :

**MEMORANDUM AND ORDER**

**Juan R. Sánchez, J.**

**February 24, 2006**

Pennsylvania's requirement that an applicant disclose his Social Security number to purchase a handgun or receive a license to carry a handgun is invalid under the federal Privacy Act.<sup>1</sup> On Michael Stollenwerk's complaint, I will enjoin the enforcement of Pennsylvania's statute and the State Police from requiring a Social Security number to conduct a background check.

Stollenwerk, a member of the United States Army stationed in Fort Belvoir, Virginia, is a legal resident of Lancaster County, Pennsylvania. On June 29, 2003, Stollenwerk selected a handgun to purchase at US Prospectors Sporting Goods store in Columbia, Lancaster County. In addition to identification required by the Brady Act,<sup>2</sup> the dealer asked Stollenwerk for his Social Security number under the Pennsylvania Uniform Firearms Act (UFA).<sup>3</sup> Even though Stollenwerk declined to disclose his Social Security number, the dealer telephoned the Pennsylvania State Police for the

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<sup>1</sup>Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896, 1909 (1974), *reprinted in* 5 U.S.C. § 552a note (2003).

<sup>2</sup>18 U.S.C. § 922 *et seq.*

<sup>3</sup>18 Pa.C.S. § 6101 *et seq.*

required background check to complete the purchase. The State Police refused to run Stollenwerk's name through the Pennsylvania Instant Check System (PICS) without a Social Security number. Without a PICS check, the dealer could not legally sell Stollenwerk the handgun.

On June 30, 2003, the State Police told Stollenwerk, in response to his request, he could not appeal the denial of his handgun purchase because no PICS check was conducted. On July 7, 2003 Stollenwerk applied to the Lancaster County Sheriff's Office for a license to carry a firearm. Stollenwerk again refused to disclose his Social Security number but provided his driver's license, passport, voter registration card, utility bills and bank statements as forms of identification. By letter, the Pennsylvania State Police reiterated Stollenwerk was required to provide his Social Security number before he could purchase a firearm or obtain a license to carry a firearm. Lancaster County Sheriff Terry A. Bergman denied Stollenwerk's license to carry a firearm on July 11, 2003, because he refused to provide his Social Security number.

Stollenwerk repeated the application process in November 2003 with the same result: without a Social Security number the State Police would not conduct a background check for the purchase of a firearm and the Lancaster County Sheriff would not issue a license to carry a firearm. Stollenwerk filed this suit under 42 U.S.C. § 1983<sup>4</sup> asking the Pennsylvania State Police and the Lancaster County Sheriff be enjoined from enforcing the requirement for disclosing a Social Security number.

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<sup>4</sup>42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

## DISCUSSION

Since there is no dispute regarding the material facts, this Court considers the case under cross motions for summary judgment. Fed. R. Civ. P. 56(c). I review all of the evidence in the record and draw all reasonable inferences against Stollenwerk. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Stephens v. Kerrigan*, 122 F.3d 171, 176-77 (3d Cir. 1997). A motion for summary judgment will not be denied because of the mere existence of some evidence in support of the nonmoving party. *Orsatti v. N.J. State Police*, 71 F.3d 480, 482 (3d Cir. 1995).

When Stollenwerk applied to purchase a handgun and for his license to carry, the Pennsylvania State Police derived its requirement for a Social Security number from two statutes: the federal Brady Act and the UFA. In 1993, the Brady Act amended the federal Gun Control Act by allowing a dealer to sell a handgun immediately only if the purchaser possesses a state handgun permit issued after a background check, § 922(s)(1)(C), or if state law provides for an instant background check, § 922(s)(1)(D). The regulations for the Brady Act make disclosure of a Social Security number voluntary.<sup>5</sup>

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<sup>5</sup>28 C.F.R. §25.7 (emphasis added) provides:

§ 25.7 Querying records in the system.(a) The following search descriptors will be required in all queries of the system for purposes of a background check:

- (1) Name;
- (2) Sex;
- (3) Race;
- (4) Complete date of birth; and
- (5) State of residence.

(b) A unique numeric identifier may also be provided to search for additional records based on exact matches by the numeric identifier. Examples of unique numeric identifiers for purposes of this system are: Social Security number (**to comply with Privacy Act requirements, a Social Security number will not be required by the NICS to perform any background check**) and miscellaneous identifying numbers (e.g., military number or number assigned by Federal, state, or local authorities to an individual's record). Additional identifiers that may be requested by the system after

In Pennsylvania disclosure is not voluntary. The seller of a handgun must collect the Social Security number of the purchaser. 18 Pa.C.S. § 6111(b)(1).<sup>6</sup> The seller must also inspect photo identification and telephone the State Police for a background check for which “[t]he purchaser and the licensed dealer shall provide such information as is necessary to accurately identify the purchaser.” 18 Pa.C.S. § 6111(b)(3).

A license to carry a handgun must be obtained from the sheriff in the county where the applicant resides. 18 Pa.C.S. § 6109(b).<sup>7</sup> In determining whether to issue a license, the sheriff must

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an initial query include height, weight, eye and hair color, and place of birth. At the option of the querying agency, these additional identifiers may also be included in the initial query of the system.

<sup>6</sup>18 Pa.C.S. § 6111(b) Duty of seller.--No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

(1) For purposes of a firearm as defined in section 6102 (relating to definitions), obtained a completed application/record of sale from the potential buyer . . . . The application/record of sale shall include the name, address, birth date, gender, race, physical description and Social Security number of the purchaser . . . .

<sup>7</sup>The UFA includes section 6109, which provides in relevant part:

(a) Purpose of license.--A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle throughout this Commonwealth.

(b) Place of application.--An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth. If the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides or, if a resident of a city of the first class, with the chief of police of that city.

(c) Form of application and content.--The application for a license to carry a firearm shall be uniform throughout this Commonwealth and shall be on a form prescribed by the Pennsylvania State Police. The form may contain provisions, not exceeding one page, to assure compliance with this section. Issuing authorities shall use **only** the application form prescribed by the Pennsylvania State Police.

18 Pa.C.S. § 6109 (emphasis added).

conduct a background check. 18 Pa.C.S. § 6109(d). The State Police have a mandatory role in the sheriff's investigation. *Pennsylvania State Police v. McPherson*, 831 A.2d 800, 803 (Pa. Commw. Ct. 2003) (holding the State Police have authority and duty to investigate the criminal background of a license applicant). The sheriff is required to use the State Police form to submit an application for a background check. 18 Pa. C.S. § 6109(c).

In response to the 1995 amendments to the UFA and the Brady Act, the Pennsylvania State Police inaugurated PICS on July 1, 1998, to conduct background checks and issue the required unique approval numbers for firearms sales and license applications. *Pennsylvania State Police v. Pecora*, 862 A.2d 734, 736 (Pa. Commw. Ct. 2004). The regulations<sup>8</sup> also require a uniform form for purchase of or license to carry a handgun. 37 Pa. Code § 33.114. Those regulations require the State Police to reject an incomplete form.<sup>9</sup> Refusing to disclose a Social Security number results in an incomplete form. The right of appeal from a denial is only afforded those for whom a PICS check has been performed. 37 Pa. Code § 33.121.

Stollenwerk argues the two Pennsylvania requirements for Social Security numbers violate the federal Privacy Act. Section 7 of the Privacy Act states:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

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<sup>8</sup>In addition to the statutory requirement for a Social Security number, the state regulations also suggest a Social Security card as an alternate form of identification for those whose religious beliefs prohibit photo identification. 37 Pa. Code § 33.102.

<sup>9</sup>37 Pa. Code § 33.111(d)(1) The applicant is provided an application/record of sale form and the applicant shall complete the applicable blocks as indicated on the form. If the applicant does not complete all of the required information or checks "yes" to any of the questions under transferee's/purchaser's information on the form, the sale/transfer may not take place.

- (A) any disclosure which is required by Federal statute, or
  - (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
- (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896, 1909 (1974), *reprinted in* 5 U.S.C. § 552a note (2003).

The Privacy Act<sup>10</sup> was designed to discourage improper uses of Social Security numbers. *Yeager v. Hackensack Water Co.*, 615 F. Supp. 1087, 1091 (D.N.J. 1985). The report of the Senate Committee supporting adoption of the Act states the use of Social Security numbers as universal identifiers in both the public and private sectors is “one of the most serious manifestations of privacy concerns in the Nation.” S. Rep. No. 93-1183, *as reprinted in* 1974 U.S.C.C.A.N. 6916, 6943.

The first question is whether the Privacy Act applies to state agencies. The Third Circuit has not addressed the issue. The Act itself expresses an intent to govern federal agencies.<sup>11</sup> Privacy Act § 2(b)(6), *reprinted in* 5 U.S.C. § 552a note. The remedy in section 3 of the Privacy Act limits

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<sup>10</sup>The right of privacy as to Social Security numbers is statutory rather than constitutional. A Social Security number is not within one of the “zones of privacy” recognized as “fundamental” or “implicit in the concept of ordered liberty.” *In re Turner*, 193 B.R. 548 (Bankr. N.D. Calif. 1996) (requiring a Social Security number does not violate a document preparer’s constitutional right to privacy). Mandatory disclosure of “one’s social security number does not so threaten the sanctity of individual privacy as to require constitutional protection.” *Doyle v. Wilson*, 529 F. Supp. 1343, 1348 (D. Del.1982); *see also McElrath v. Califano*, 615 F.2d 434, 441 (7th Cir. 1980).

<sup>11</sup>Section 2(b)(6) of Pub. L. 93-579 requires “Federal agencies . . . be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual’s rights under this Act.” 5 U.S.C. § 552a note.

actions to federal agencies. 5 U.S.C. § 552a(g).<sup>12</sup> Section 7 of the Act, however, states “[i]t shall be unlawful for any Federal, **state or local government agency** to deny any individual any right, benefit or privilege . . . .” Section 7 of Pub.L. 93-579, *reprinted in* 5 U.S.C. § 552a note (emphasis added).<sup>13</sup> By its words, section 7 is not limited to federal agencies.

Although the rest of the Privacy Act is codified, section 7 is not. Within the Privacy Act, Congress stated section 3 was an amendment to Title V, which governs federal administrative agencies. *See* 88 Stat. at 2178. Section 3 added a new section to Title V and was codified as 5 U.S.C. § 552a. *Id.* at 2177. Congress made no such statement about section 7 of the Privacy Act and the revisor of the U.S. Code placed section 7 in an “Historical and Statutory Note” following 5 U.S.C. § 552a. 5 U.S.C. § 552a (note).<sup>14</sup>

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<sup>12</sup>Section 552a(g)(1)

Civil remedies.--Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request . . . ;

(B) refuses to comply with an individual request . . . ;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness . . . ; or

(D) fails to comply with any other provision of this section . . . ,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

5 U.S.C. § 552a(g).

<sup>13</sup>The Privacy Act applies only to government agencies. *Ford v. Bank of America*, No. 99-2368, 2000 WL 1028238 (10th Cir. July 26, 2000), 221 F. 3d 1351 (10th Cir. 2000) (table) (holding Privacy Act does not apply to banks because they are not agencies under the Act); see also *Krebs v. Rutgers*, 797 F. Supp. 1246, 1254 (D. N.J. 1992) (holding Rutgers is not a state institution and therefore not an agency).

<sup>14</sup>The Sixth Circuit gives greater weight to the codified section of the Privacy Act, restricting causes of action to those against federal agencies, than to Section 7, enjoining federal, state and local practices. *Schmitt v. City of Detroit*, 395 F.3d 327, 330 (6th Cir. 2005) (holding the failure to codify Section 7 renders the section inapplicable to any agency but a federal agency). The facts of *Schmitt*

The Statutes at Large prevails over the Code when the two are inconsistent. *Schwier v. Cox*, 340 F.3d 1284, 1288 (11th Cir. 2003) (citing *Stephan v. United States*, 319 U.S. 423, 426 (1943); *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964)). The Code establishes prima facie the laws of the United States. 1 U.S.C. § 54(a). “But the very meaning of ‘prima facie’ is that the Code cannot prevail over the Statutes at Large when the two are inconsistent.” *Stephan*, 319 U.S. at 426 (U.S. 1943) (holding error in codification does not allow a second direct appeal in a treason case). Even where Congress has enacted a codification into positive law, the Supreme Court held a “change of arrangement . . . cannot be regarded as altering the scope and purpose of the enactment.” *Welden*, 377 U.S. at 98; *see also Darby v. Cisneros*, 509 U.S. 137, 138 n.1 (1993) (referring to text from the Statutes at Large rather than the variant in the Code); *U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 448 (1993) (enforcing a section of a statute omitted from the Code); *U.S. v. Ward*, 131 F.3d 335, 340 (3d Cir. 1997) (holding error in codification does not prevent testing a defendant for HIV); *Int’l Tel. & Tel. Corp. v. United States*, 536 F.2d 1361, 1372

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are not compelling. Ten months after the mayor apologized, the plaintiff sought damages against the city for which a contractor printed Social Security numbers on the envelopes containing tax bills. 395 F.3d at 328. The district court had dismissed all claims except that for declaratory relief. The Sixth Circuit, unable to reconcile the apparent contradiction between who was liable under sections 552a and 7, opted to enforce the “unambiguous definition of a core term”— the definition of an agency – in section 552a and restrict causes of action to cases against federal agencies. *Schmitt* 395 F.3d at 330. The Sixth Circuit remanded the case to dismiss the final count. *Id.* at 331.

*Schmitt* is distinguishable from *Schwier* and the case at hand because the original claim in *Schmitt* involved a claim for damages under section 552a(g), which applies only to federal agencies. A district court relied on *Schmitt* when it decided a county agency could not be sued under the Privacy Act. *Fetzer v. Cambria County Human Serv.*, 384 F. Supp. 2d 813, 816 (W.D. Pa. 2005). *Fetzer* did not involve the collection of Social Security numbers and was brought under section 552a(g). *Id.* at 816. *Fetzer* also cited a Ninth Circuit case which held the remedies of section 552a(g) are limited to actions against federal agencies. *Dittman v. Cal.*, 11 F.3d 1020, 1026 (9th Cir. 1999).



(Ct. Cl. 1976) (discrediting plaintiff's claim the section in question was a mere "historical note").

Congress enacted section 7 of the Privacy Act, but did not direct codification. This Court is not free to disregard the plain language of the statute which forbids Federal, state and local agencies from requiring Social Security numbers to secure rights, benefits or privileges. This Court must "give effect . . . to every clause and word of a statute . . . and be reluctant to treat statutory terms as surplusage." *Tavarez v. Klingensmith*, 372 F.3d 188, 190 (3d Cir. 2004) (citations omitted).

The Eleventh Circuit, having given effect to the language of section 7, turned next to the question of a private right of action. *Schwier*, 340 F.3d at 1289. In *Schwier*, the court applied the factors from *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997), to determine section 7 created a private right of action under section 1983. *Schwier*, 340 F.3d at 1289. Under *Blessing*, a federal right is created when Congress intends the provision to benefit the plaintiff, the right is not so vague and amorphous its enforcement would strain judicial competence, and the statute unambiguously imposes a binding obligation on the states. *Schwier*, 340 F.3d at 1290-91, citing *Blessing*, 520 U.S. at 340-41. The *Schwier* court held section 7 is intended to benefit individuals, is specific rather than amorphous and is mandatory. *Id.*

I am persuaded by the reasoning of the Eleventh Circuit in *Schwier* because the case at hand involves the collection of Social Security numbers as did *Schwier*, not the dissemination of the numbers. The question in this case is whether it is permissible for a state agency to require a Social Security number to purchase or carry a handgun. Stollenwerk withdrew his request for damages under section 552a(g) during oral argument and is now seeking only declaratory relief under section 1983. Since Stollenwerk is not relying on section 552a(g), the limitation of section 3 to federal

agencies does not apply here, only the prohibitions of section 7 apply.<sup>15</sup>

If either of section 7's exceptions – for federal statutes or schemes in effect before 1975 – apply, Stollenwerk would be required to disclose his Social Security number. By the plain language of section 7(b), federal statutes may require the disclosure of Social Security numbers. *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 844 (9th Cir. 1999) (holding when federal law requires an employer to collect Social Security numbers, doing so is not a denial of religious

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<sup>15</sup>Section 7 arguably restricts only the collection of Social Security numbers, not the dissemination of a person's Social Security number, which is addressed in section 3. The question of dissemination of Social Security numbers has been removed from this case by Act 2005-66, November 30, 2005, amending 18 Pa.C.S. § 6109, deleting the requirement a Social Security number be displayed on the face of a license to carry a handgun. 2005 Pa. Laws 335.

The dissemination of Social Security numbers has almost always been held to be a violation of the Act. *Doe v. Chao*, 306 F.3d 170, 175 (4th Cir. 2003) (finding a violation in the dissemination of Social Security numbers of those receiving Black Lung benefits, but no damages); *Greidinger v. Davis*, 988 F.2d 1344, 1354 (4th Cir. 1993) (holding public disclosure of Social Security numbers collected on voter registration forms impermissibly burdened the right to vote; remand either to stop collecting or stop disclosing); *Tribune-Review Pub'g Co. v. Allegheny County Hous. Auth.*, 662 A.2d 677, 683 (Pa. Commw. 1995) (refusing release of county agency payroll records because they contain Social Security numbers); *State ex rel. Beacon Journal Pub'g Co. v. City of Akron*, 640 N.E. 2d 164, 169 (Ohio 1994) (holding the City need not release the Social Security numbers of 2,500 employees to the news media, over three dissents which argued potential criminal conduct was not enough to shield Social Security numbers); *Aronson v. Internal Revenue Serv.*, 767 F. Supp. 378, 388 (D. Mass. 1991) (denying the release of Social Security numbers even though they would undoubtedly make it easier for a commercial service to find those to whom tax refunds are due).

Display of Social Security numbers is a form of dissemination and is, therefore, impermissible. *Kentucky Rest. Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672, 687 (W.D. Ky. 2002); *Russell v. Bd. of Plumbing Exam'rs of Westchester*, 74 F. Supp. 2d 339, 348 (S.D.N.Y. 1999) (finding a violation of Section 7 in requiring Social Security numbers to apply for a plumbing license, printing the number on the face of the license and requiring display of the license).

Limited dissemination is not always a problem. *Schmidt v. U.S. Dep't Veterans Affairs*, 218 F.R.D. 619, 631 (E.D. Wisc. 2003) (holding disclosure within an agency is not a violation of Privacy Act and no damages proved). Union records pose particular problems and courts differ on the release of Social Security numbers. *Int'l Bhd. of Elec. Workers Local Union No. 5 v. U.S. Dep't of Hous. & Urban Dev.*, 852 F.2d 87, 89 (3d Cir. 1988) (releasing workers' names and addresses but not Social Security numbers permitted for union wage monitoring). *But cf. AFSCME v. City of Albany*, 725 P.2d 381, 383 (Or. App. 1986) (holding section 7 does not prohibit disclosing Social Security numbers).

freedom); *Davis v. Comm’r*, No. 12859-98 80 T.C.M. (CCH) 31 (2000) (requiring Social Security numbers for dependency exemptions); *In re Turner*, 193 B.R. 548 (Bankr. N.D. Cal. 1996) (requiring a debtor’s Social Security number does not violate the free exercise of religion); *In re Adair*, 212 B.R. 171 (Bankr. N.D. Ga. 1997) (holding bankruptcy court is not an agency, debtor has to give Social Security number); *In re Rausch*, 197 B.R. 109 (Bankr. D. Nev. 1996), *aff’d by In re Rausch*, 213 B.R. 364 (D. Nev. 1997) (holding a petition preparer must supply Social Security number).

In 1976, Congress amended the Social Security Act with exceptions to the Privacy Act to allow the collection of Social Security numbers for “the administration of any tax, general public assistance, driver’s license, or motor vehicle registration law.” 42 U.S.C. § 405(c)(2)(C)(i).<sup>16</sup> Other exceptions in the statute include: birth certificates, 42 U.S.C. § 405(c)(2)(C)(ii); federal crop insurance, 42 U.S.C. § 405(c)(2)(C)(iv); longshore and harbor workers’ compensation, 42 U.S.C. § 405(c)(2)(C)(ix); blood donation, 42 U.S.C. § 405 (c)(2)(D)(i)(I), and jury selection, 42 U.S.C. § 405(c)(2)(E)(ii). Courts have held claimants may be required to disclose Social Security numbers to receive benefits. *Kaufmann v. Pa. Dep’t of Pub. Welfare*, 778 A.2d 795, 799 (Pa. Commw. Ct. 2001) (requiring Social Security number for food stamp benefits and driver’s license is permissible); *Claugus v. Roosevelt Island Hous. Mgmt. Corp.*, No. 96CIV8155, 1999 WL 258275 at \*4 (S.D. N.Y. April 29, 1999) (holding the Privacy Act does not apply to the income verification process for public housing under the section 405 exceptions).

A state agency may collect Social Security numbers if it does so under a program in existence before 1975. Section 7(a)(2)(B); *McKay v. Thompson*, 226 F.3d 752, 755 (6th Cir. 2000) (affirming

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<sup>16</sup>The exceptions for drivers’s licenses settled a long string of cases in which drivers refused to disclose their Social Security numbers. *See e.g. Brady v. Utah*, 894 P.2d 1269, 1270 (Utah 1995).

a district court which found Tennessee's voter registration statute requiring Social Security numbers pre-dates 1975). States may not impose a requirement for Social Security numbers in statutes enacted after 1975. *Schwier*, 340 F.3d at 1291; *McKay v. Altobello*, No. CIV.A. 96-3458, 1997 WL 266717 at \*5 (E.D. La. May 16, 1997) (holding Louisiana could not prove scheme in place before 1975, so could not collect Social Security numbers with voter registration); *Warren v. Harper*, No. CIV.A. 12,744, 1992 WL 296896 at \*3 (Del. Ch. Ct. Oct. 15, 1992) (assuming without deciding requiring Social Security numbers to sign a nominating petition is a violation of the Privacy Act).

Courts have denied municipalities the right to collect Social Security numbers for licensing purposes. *Kentucky Rest. Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672, 687 (W.D. Ky. 2002) (holding the City "may ask for an applicant's Social Security number, [but] it may not deny a license [for nude dancing clubs or dancers] because the applicant refuses to disclose this information."); *Russell v. Bd. of Plumbing Exam'rs of Westchester*, 74 F. Supp. 2d 339, 348 (S.D.N.Y. 1999) (finding a violation of section 7 in requiring Social Security numbers to apply for a plumbing license, printing the number on the face of the license and requiring display of the license).

Other courts have held states may not collect Social Security numbers in connection with arrest or bail. *Connecticut v. Vickery*, No. CR2-90-59545 *et al.*, 1991 WL 32153, at \*6 (Conn. Super. Ct. Feb. 15, 1991) (holding the Privacy Act prohibits the state from imposing the disclosure of a Social Security number as a condition of release on bond); *State v. Agnew*, No. C-010542, 2002 WL 1391798, at \*3 (Ohio App. Ct. June 28, 2002) (reversing a conviction for obstructing official business for refusing to give a Social Security number during a traffic stop). *But cf. Johnson v. Fleming*, No. 95 CIV. 1891, 1996 WL 502410, at \*4 (S.D. N.Y. Sept. 4, 1996) (demanding a Social

Security number incident to arrest does not deny the plaintiff any benefit and so does not violate the Privacy Act).

It is beyond cavil the legal ability to purchase or obtain a license to carry a handgun is a “right, benefit, or privilege.”<sup>17</sup> Section 7(a)(1). The Defendants make no claim the Pennsylvania requirement to disclose a Social Security number to purchase or for a license to carry a firearm was enacted before 1975. Nor do the Defendants claim to have advised Stollenwerk whether the disclosure was mandatory or voluntary, by what authority it was sought and what uses would be made of his Social Security number. Section 7(b).

The Pennsylvania requirement for a Social Security number to issue a permit to purchase a handgun or a license to carry a handgun falls within no exception to the Privacy Act. Therefore, the State Police may not require the disclosure of an applicant’s Social Security number to receive the benefit, privilege or right of purchasing or carrying a handgun. Section 7(a).

In deciding section 7 of the Privacy Act prohibits requiring the disclosure of a Social Security number to buy or carry a handgun, I distinguish an unpublished opinion out of the Fourth Circuit on similar facts. *Deeds v. County of Fairfax*, 151 F.3d 1028 (4th Cir. 1998) (table), No. 97-1310, 1998 WL 372817 (4th Cir. June 5, 1998). In *Deeds*, a gun permit applicant sued the county after a newspaper published a picture of her standing next to a white board bearing her Social Security number. The Fourth Circuit affirmed the district court, which held the county substantially complied with the terms of Section 7(b) by informing the applicants the disclosure of a Social Security number was mandatory, the information was solicited pursuant to the Virginia Code, and informed the applicant that the social security number was necessary to complete a background check. *Deeds*,

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<sup>17</sup>Fortunately, I need not decide which of the three it is.

1998 WL 372817 at 3.

I distinguish *Deeds* from the case at hand because I read section 7 to force disclosure of a Social Security number only when “required by Federal statute,” section 7(a)(2)(A), or pursuant to a “system of records in existence and operating before January 1, 1975,” section 7(a)(2)(B). Complying with the strictures of section 7(b) cannot overcome the mandatory language of section 7(a): “[i]t shall be unlawful for any Federal, state or local agency to deny to any individual any right, benefit, or privilege . . . because of such individual’s refusal to disclose his social security account number.” Only when one of the exceptions in section 7(a)(2) applies, does the direction of section 7(b) apply. Sections 7(a) and (b) are not written in the alternative, both sections apply to federal, state and local agencies. If an agency asks for a Social Security number, the agency must label the request mandatory or voluntary; a request may only be mandatory if one of the two exceptions in section 7(a) applies. Any agency which asks for a Social Security number must disclose the authority by which it requests the number and what uses will be made of the number.

Neither of the exceptions of section 7(a) apply to Pennsylvania’s requirement an applicant to purchase a handgun or for a license to carry disclose his Social Security number. Therefore, Stollenwerk’s rights under section 7 of the Privacy Act were violated. When I consider the elements of section 1983, I find Defendants Miller, Thierwechter and Bergman, under color of law, violated a right secured to Stollenwerk by federal law. I will enjoin the enforcement against Stollenwerk of that part of 18 Pa.C.S. § 6111(b)(1) which requires the seller of a handgun to collect a Social Security number and will enjoin the Pennsylvania State Police and Lancaster County Sheriff from requiring a Social Security number to perform a background check for the purchase of a handgun or the issuance of a license to carry a handgun.

Under section 7(b), the State Police and the Sheriff must tell Stollenwerk the disclosure of his Social Security number is voluntary and the uses to be made of the number. Then, Stollenwerk will be able to make an informed decision whether to disclose his number. *See Ingerman v. N.J. Dep't of Health*, No. 88-1541, 1988 WL 52247 at 2 (D.N.J. May 23, 1988) (complying with section 7(b) would have allowed EMT applicants to make an informed decision whether to disclose Social Security number); *Shapiro v. City of New York*, No. 94 Civ. 8135, 1999 WL 64290 at 4 (S.D. N.Y. Feb. 8, 1999) (holding the Finance Department and the Police Department must state whether disclosure of Social Security numbers is “mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it”).

Nothing in this decision should be read to affect in any way the requirement that the State Police and the Lancaster County Sheriff conduct a background check before issuing either a number permitting purchase or a license to carry a handgun. If Stollenwerk declines to disclose his Social Security number, he may find his application takes significantly longer to process than that of an applicant who has disclosed his Social Security number. That is his decision to make.

Stollenwerk asks for an injunction and attorney fees which I will grant. Section 7 does not allow damages, only injunctive relief. *Pontbriand v. Sundlun*, 699 A.2d 856, 869 (R.I. 1997).<sup>18</sup> The Lancaster County Sheriff argues he should not be liable in this case because it was not his requirement that Stollenwerk supply a Social Security number to receive a license to carry. Since 1998, the sheriffs departments of the state have been required to use the form provided by the State

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<sup>18</sup>*Pontbriand* is a particularly egregious case in which the governor disseminated the names and Social Security numbers of persons with more than \$100,000 in accounts in failed financial institutions. The Rhode Island Supreme Court found no authority in section 7 for the award of remedies other than injunctive relief. *Pontbriand v. Sundlun*, 699 A.2d 856, 868-69 (R.I. 1997).

Police for their background checks. 18 Pa.C.S. § 6109(c). It is the State Police who require a Social Security number. The Sheriff's Office, however, contacted the United States Army Criminal Investigative Command at Fort Belvoir, Virginia in April, 2004 to elicit Stollenwerk's Social Security number. That contact was made long after Stollenwerk had refused to disclose his Social Security number and after his application for a license to carry had been denied. For that reason I will deny the Motions for Summary Judgment filed by Defendant Terry Bergman, Sheriff of Lancaster County, as well as those filed by Jeffrey B. Miller and John Thierwechter of the Pennsylvania State Police. An appropriate order follows.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL STOLLENWERK :  
 :  
 v. : CIVIL ACTION  
 :  
 : NO. 04-5510  
 JEFFREY B. MILLER et al. :

**ORDER**

And now this 24<sup>th</sup> day of February, 2006, Plaintiff Michael Stollenwerk's Motion for Summary Judgment (Documents 26) is GRANTED. The Motions for Summary Judgment of Defendant Terry Bergman, Sheriff of Lancaster County, and Defendants Jeffrey B. Miller and John K. Thierwechter (Documents 24 and 36) are DENIED. Judgment is hereby entered in favor of Plaintiff Michael Stollenwerk and against Defendants Terry Bergman, Sheriff of Lancaster County, Jeffrey B. Miller, Commissioenr for the Pennsylvania State Police, and John K. Thierwechter, Major, Pennsylvania State Police, ENJOINING Defendants from denying Plaintiff Michael Stollenwerk a permit to purchase or a license to carry a handgun solely on grounds he has not disclosed his Social Security number and assessing attorney fees and costs.

BY THE COURT:

\s\ Juan R. Sánchez

Juan R. Sánchez, J.