



LIBERTY TREE

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PREREQUISITES FOR PASSPORTS

A Congressman's aide called the Passport Agency to assist a constituent and U.S. citizen whose U.S. passport application was being delayed. Additional information had been demanded before the passport would issue. "What kind of documentation do you *want*?" asked the aide of the agent who answered the phone.

"Well, whatever they'll give us," said the agent.

"Yes, but what is it that you *need*?" the aide persisted.

The agent exploded: "We just want whatever they'll give us!"

TAKING NAMES ... AND WHATEVER YOU'LL GIVE 'EM

Despite the clarity of the Fourth Amendment, "The right of the people to be secure in their ... papers ... against unreasonable searches and seizures, shall not be violated," federal apparatchiks often attempt to obtain information outside their legal authority. Agents who control immigration and passport issuance are seemingly allowed wide discretion and latitude in decision-making. Combine this with a "homeland security" police state attitude, and proving one's "entitlement" to a U.S. passport may become increasingly difficult for patriots.

One area of uncertainty patriots encounter when applying for passports is whether a social security number is required to obtain one, since many patriots do not have or do not use such number. Some who have declined to write an SSN on the application have received passports right away, but others have experienced delay, requests for additional information, or harassment.

TRUTH AND CONSEQUENCES

To be prepared for less-than-satisfactory encounters with the Bureau of Consular Affairs, it is important to understand one's rights and responsibilities under the law. First, who is entitled to receive a passport? Title 22 U.S.C. § 212:

No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States.

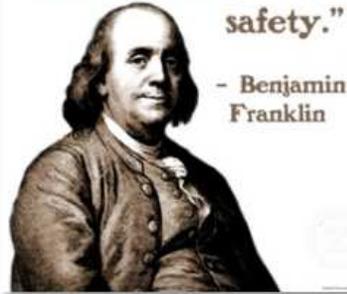
We see that citizens, nationals, resident aliens, and any other persons owing allegiance to the United States are entitled to passports. The law provides that to obtain a passport, a person must sub-



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The tyrannical beauty of
measureless
intangibles

"Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety."



- Benjamin Franklin

Editorial by Dick Greb

Despite Ben's warning so many years ago — or perhaps because it was so long ago — there are many clueless people today who appear willing to make that infamous trade. But for Patriots, anytime the government offers greater safety in our everyday lives as the justification for some new program or another, liberty's alarm bells should be going off in our heads. (So many alarms are being raised these days that the din threatens to drown out everything else!)

It is a natural inclination to want to minimize the risk of serious harm to ourselves and our families. That is why safety is such a frequent and popular excuse of government for its various control mechanisms. But there's more to it than that.

Safety in vagueness

Another reason for the popularity of the safety excuse is government's self-serving fondness for vague concepts, especially when it comes to the extent of its powers. Consider, for example, the overwhelming weight of legislation which rests on the *claimed* power to "promote the general welfare" and the *delegated* power to "regulate Commerce among the several States."¹ By construing vague terms in their most expansive sense (unless the term relates to a limitation on their power, in which case it is construed in the most restrictive sense), government eventually, but inevitably, usurps all power to itself.

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CONSEQUENCES OF FAILURE TO PROVIDE INFORMATION: With the exception of your Social Security Number (see Federal Tax Law statement on Instruction Page 3), you are not legally required to provide the information requested on this form. However, failure to do so may result in Passport Services' refusal to accept your application or result in the denial of a U.S. passport.

Section 6039E of the Internal Revenue Code (26 U.S.C. 6039E) requires you to provide your Social Security Number (SSN), if you have one, when you apply for a U.S. passport or renewal of a U.S. passport. If you have not been issued a SSN, enter zeros in box #5 of this form. If you are residing abroad, you must also provide the name of the foreign country in which you are residing. The Department of State must provide your SSN and foreign residence information to the Department of Treasury. If you fail to provide the information, you are subject to a \$500 penalty enforced by the IRS. All questions on this matter should be directed to the nearest IRS office.

Excerpts from the passport application form, DS-11.

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mit an application and take an oath. According to 22 U.S.C. § 213, the application "shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport." 22 U.S.C. § 211a authorizes the Secretary of State to "grant and issue passports ... under such rules as the President shall designate and prescribe," but Executive Order 11295 redelegated the rule-making authority to the Secretary of State, who has promulgated the rules in the Code of Federal Regulations.

Under 22 CFR 51, an applicant must provide: (1) a truthfully completed application, (2) a signed oath that they do not owe allegiance to any other country, (3) proof of identity, (4) proof of citizenship, (5) two current photos meeting the agency's specifications, and (6) payment of fees.¹

IDENTITY AND PROOF OF CITIZENSHIP

The passport application, DS-11, issued OMB No. 1405-0004, is approved as an information collection form² under authorizing statute 22 U.S.C. 211a *et seq.* As the supporting statement for the DS-11 states:

The issuance of U.S. passports requires the determination of identity and nationality with reference to the provisions of Title III of the Immigration and Nationality Act (INA) ... the 14th Amendment to the Constitution of the United States, and other applicable treaties and laws. Implementing regulations are at 22 CFR Part 50 and 51. The specific regulations pertaining to the Application For a U.S. Passport are at 22 CFR 51.20 and 51.21.

The law, the regulations, and the supporting statement for the application form all show the issuance of a passport hinges on two things: the determination of identity and nationality. Whether or not a person has or uses an SSN is not a requirement for the issuance of a passport.

The applicant bears the burden of proof with respect to being a U.S. citizen or national (22 CFR 51.40) and establishing his or her identity (22 CFR 51.23). For a citizen born in the United States, a birth certificate is primary evidence of citizenship, and a "state, local or federal government officially issued identification with photograph" is primary evidence of identity. If those cannot be submitted, the passport agent is authorized to consider secondary documents, including affi-

davits of witnesses.

'TRUTHFULLY' FILLING OUT THE FORM

On the passport application form DS-11, we find:

With the exception of your Social Security Number ... you are not legally required to provide the information requested on this form. However, failure to do so may result in Passport Services' refusal to accept your application or result in the denial of a U.S. passport.

There is a fundamental problem with this statement — if a person is not "legally required" to fill it out, then what legal authority could a passport agent have to penalize them by denying them a passport? Indeed, while a passport is property of the U.S. Government, and may be thought of as a type of benefit, a U.S. citizen is also *entitled* to one based on "identity and nationality," and these are established by the submission of primary or secondary documents.

Again, the OMB supporting statement states: "The DS-11 seeks only the information necessary to establish the identity and nationality of the passport applicant and to resolve suspected fraud cases." However, the form contains questions that do not appear to

serve this purpose, such as requests for one's occupation and employer, email, phone numbers, emergency contact information, and travel plans.

The passport agency dismisses criticisms that these are unnecessary for establishing identity/nationality by claiming they are "useful" for contacting the applicant and timely issuing of the passport. They may be useful for the agency, but an applicant might want to bear in mind that not every question is "required" to be answered.

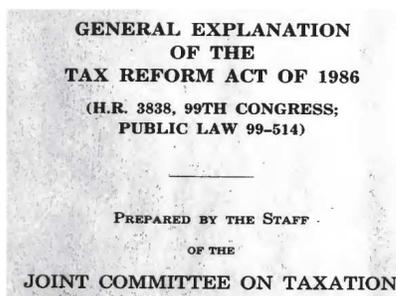
Keep in mind, too, the difference between leaving a field blank vs. providing an answer. Answers are statements and can be used "as evidence in the prosecution of any individual who makes a false statement on the application," according to the agency.³ A non-answer, on the other hand, is no statement at all.

THE PECULIAR REQUIREMENT OF AN SSN

The DS-11 application form states: "Section 6039E of the Internal Revenue Code ... requires you to provide your Social Security Number (SSN) if you have one ... If you fail to provide the information, you are subject to a \$500 penalty enforced by the IRS."

Notice that failure to provide an SSN may result in a "\$500 penalty enforced by the IRS," *not* a denial of passport. That is

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5. Compliance provisions applicable to U.S. persons resident abroad and green card holders.... 1018

1. These requirements are found, in order, at 22 CFR 51.20, 51.21, 51.23, 51.41 and 51.42, 51.26, and 51.51. See http://www.access.gpo.gov/nara/cfr/waisidx_10/22cfr51_10.html.
2. The Paperwork Reduction Act of 1980 requires federal agencies to obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public. Supporting statements are a part of that process, and can be found at www.reginfo.gov.
3. See the supporting statement.

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District Department of Transportation

POLICE

**UNBUCKLED**drivers fined
\$50 and 2 points
in the District.**CLICK IT****or TICKET**

Playing on the safety excuse for seat belts, this Washington, D.C. ad campaign perfectly measures the real danger of not wearing seat belts: confiscation of your property, perhaps even beatings from the police.

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Hiding behind intangibles

Yet another aspect that makes such excuses as ‘safety’ so accommodating to would-be tyrants is that, being intangible, they are, for all intents and purposes, measureless. That is, there is no real objective standard by which to determine that the populace is safer because of some new government program or legislation. That’s not to say that government doesn’t throw around statistics to show it is accomplishing its goals, it’s just that those statistics can never *prove* any real effectiveness. For example, as was reported in last month’s *Liberty Tree*, red-light cameras are being installed everywhere, purportedly to discourage people from running red lights, and thereby reduce the number of traffic accidents and injuries. But how do you objectively determine whether or not such cameras have actually reduced the number of accidents? Since there is no way to know the number of accidents that would have occurred in any given time period if no cameras were installed, how could you possibly determine whether fewer accidents occurred because of the cameras?

Even if the number of accidents was lower after cameras are installed, that couldn’t *prove* the decrease was a *result* of them. After all, just because one thing happens after another doesn’t mean the first *caused* the second.² In fact, according to the website *ScienceDaily*, the contrary may be true, as “[c]omprehensive studies from North Carolina, Virginia, and Ontario have all reported **cameras are significantly associated with increases in crashes**, as well as crashes involving injuries.”³ But if you’re a money-grubbing government control freak, such inconvenient facts are no problem; you just have to convince a largely unthinking public that the increase is really a decrease from what *it would have*

been if the cameras hadn’t been there to reduce the number! ⁴

Mandate’s can be dangerous

You have the same situation with seat belt and helmet laws. There is just no way to objectively prove in real-life accidents whether wearing such safety devices prevented death or not wearing them caused it. Certainly, there have been people not wearing seat belts who lived through accidents, and many who die strapped in. So, the bottom line is they’re not a sure bet either way. Of course, even if survival was a certainty, the government still has no business mandating that I take that precaution. And, you should also factor in the possibility that the safety device increases the likelihood of an accident in the first place. For example, the purported benefits of wearing a motorcycle helmet come about *only if I’m involved in an accident*, but wearing it limits my peripheral vision and my hearing, thus increasing the possibility of being in an accident *every time I ride*. In other words, I am forced to trade real and measurable present impairments for a possible yet immeasurable future benefit. Naturally, anyone willing to make that trade-off should be free to do so, but those unwilling should likewise be free to do without them.

The point is that, like vague terms with respect to powers, immeasurable intangible rationalizations are a tyrant’s best friend. You simply can’t go wrong when there’s no objective way to measure the effects of your actions. After all, how do you count how many times something doesn’t happen?

Consider all of the anti-terrorism controls put into place since September 11, 2001. They must be working, because nobody has hijacked any more planes and flown them into buildings. And yet, before that day, nobody had ever done that either — it only happened *on that day*.

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1. See the Preamble and Article I, Section 8, Clause 3 of the Constitution, respectively. As has been discussed many times in past articles, the general welfare clause did NOT grant a separate power, but was only a general description of some powers granted to the government in Article I, Section 8. Also, “regulate” as used in the Constitution meant to make regular – that is, facilitate and otherwise prevent obstructions to the flow of interstate commerce - and not, as the government would have you believe, to control every aspect of every item that has any connection whatsoever to the movement of goods across state lines or to the goods so moved.
2. The Latin phrase *post hoc ergo propter hoc*, “after this therefore because of this,” describes the logical fallacy of assuming that because one thing occurred after another, the first is the cause of the second. Mere temporal succession, however, does not entail causal succession. See <http://www.logicalfallacies.info/presumption/post-hoc/>.
3. <http://www.sciencedaily.com/releases/2008/03/080311151159.htm>
4. Of course, the same logical fallacy comes into play here as well — more accidents after cameras are installed doesn’t mean cameras caused the increase. But a change in the character of accidents from red-light running cross-traffic crashes to red-light stopping rear-end crashes might be a clue.

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How then can we know that those controls (so-called) have prevented anything? Certainly, they didn't prevent attempts to set off explosives on planes, as evidenced by the 'shoe' and 'underwear' bombers. Actually, the 'underwear' bomber was able to board a plane with explosives because agents of our government pulled strings so he could bypass normal security checks. See, *e.g.*, "The Truth About Flight 253 Has Been Revealed" by eyewitness Kurt Haskell.⁵ Consider also the odd coincidence of the 9-11 attacks occurring *at the exact same time* as training exercises which mirrored the attacks and hampered responses to the real threat by adding confusion to the mix.⁶ With the government behind at least some of the attacks, how can anyone trust them when they say even more stringent controls are needed? The only sure way to reduce the number of terrorist attacks is for the government to simply stop engaging in them. But then, that doesn't further the police state they're constructing all around us.

Responsible for yourself

In the end, the claim of safety is nothing but an illusion anyway. And as long as the public continues to be duped into accepting this illusion of safety at the cost of their real liberty — and more importantly, the liberty of their children and grandchildren — they will end up, as Ben said, being neither free nor safe. The longer it continues, the less remembrance of liberty successive generations will have of it, and never knowing freedom, will be less likely to strive for it. Paraphrasing Jefferson: "Ignorant and free shall never be." Thankfully, ignorance is curable, and Liberty Works Radio Network is poised to distribute the remedy. With your continued help, and the



Seatbelt tyranny fully revealed on a 40-foot-high poster; the penalty for an action which harms no one is \$200. A tiny nod to the original excuse for seatbelt laws is in the corner: "Save a Life."

help of like-minded Patriots willing to join with us, we can continue to promote individual liberty and limited government, and bring our nation back from the precipice of tyranny. Because together we must stand, or separately we will be stood on!



The poster child of immeasurable intangibles: is "distracted driving" the next milestone on the road to tyranny?

5. <http://www.lewrockwell.com/pr/haskell-truth-flight253.html>

6. See *Vanity Fair*, August 2006, "9/11 Live: The NORAD Tapes" at: <http://www.vanityfair.com/politics/features/2006/08/norad200608?currentPage=all>

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why questions regarding the requirement are to be directed to the IRS, not to the passport agency.

Title 26 U.S.C. 6039E(a) and (b), in relevant part, state that "any individual who ... applies for a United States passport ... shall include with any such application a statement which includes ... the taxpayer's TIN (if any)." By using the words "if any," Congress recognized that not all citizens have SSNs.

When the Joint Committee on Taxation explained why §6039E was added to the Tax Reform Act of 1986, they described it as "compliance provisions applicable to U.S. persons resident abroad and green card holders." Congress, they said, was "concerned that a substantial percentage of U.S. persons resident overseas may fail to comply with the requirement to file tax returns." Therefore, "requiring that an [IRS] information return be completed in conjunction with the applications for passports ... serves to notify inadvertent nonfilers of their continuing duty to file a U.S. tax return."⁴ Of course, it also informs the IRS who has passports.

Section 6039E(d) provides:

4. See www.jct.gov/jcs-10-87.pdf

5. 26 U.S.C. §6039E(c)

"... any agency of the United States which collects (or is required to collect) the statement under subsection (a) shall - (1) provide any such statement to the Secretary [of the Treasury], and (2) provide to the Secretary the name (and any other identifying information) of any individual refusing to comply with the provisions of subsection (a).

Thus, the passport agency has the responsibility to provide the SSN statement to the IRS, or, in the absence of an SSN statement, provide the applicant's name and identifying information to the IRS. So all applicants' names are sent to the IRS, whether or not they report "their" SSN. The IRS alone determines whether to apply and collect the \$500 penalty, and can do so "unless it is shown that such failure [to provide a TIN] is due to reasonable cause and not to willful neglect."⁵

In sum, refusing to fill in the SSN number on a passport application form cannot be used to deny a person a passport, but it *could* be used by the IRS to levy a civil penalty of \$500. The choice is yours. But if you are a patriot, and experiencing delays, denials, or harassment due to your strict adherence to the law, Save-A-Patriot Fellowship stands ready to help.

