

CONGRESSIONAL TESTIMONY

FROM: Jonathan Eric Agin, Esq.
TO: House Ways and Means Committee,
Subcommittee on Social Security
DATE: February 2, 2012
RE: H.R. 3475

Good morning Mr. Chairman and members of the Committee. Thank you for allowing me to be here today to testify on this issue of vital importance.

My family's story begins with the diagnosis of our amazing daughter, Alexis Gina Agin, with a terminal brain tumor at the age of two on April 10, 2008. Ultimately, this terrible disease took her life on January 14, 2011, just two weeks shy of her fifth birthday. Alexis was and is my hero. Fighting valiantly until the end, she has inspired thousands around the world with her journey.

In 2010, my wife and I travelled with Alexis up and down the East Coast trying several experimental treatments, in a desperate attempt to save her. With each trip, Alexis' medical bills mounted. When it came time to file our 2010 taxes, compiling all of our receipts for the medical expenses was time-consuming and emotionally draining. Accordingly, my wife and I, through our accountant, filed with the IRS for an extension. In October 2011, after completing the difficult and grueling task of finalizing our 2010 taxes, I received a telephone call from our accountant advising us that someone had already filed a tax return for 2010 using Alexis' social security number. Beyond being completely stunned at that very moment, we were advised that we would not be able to file an electronic return. Instead, our accountant would have to complete the paper forms and file them in the traditional manner. More importantly for purposes of HR 3475, he told us that we ultimately would have to prove that our deceased daughter was, in fact, our daughter. In situations involving this type of criminal fraud, the IRS credits the first filer and presumes that the initial filing is accurate.

That same day, we reached out to the community of grieving cancer parents that we have come to know since April 2008 and told them what had happened. With incredulous amazement, we learned within a single hour of no fewer than fourteen other families whose children had died and also had experienced the additional travesty of their child's social security number being stolen. Clearly we were not alone. We then learned through our own research and from other parents that this is, in fact, a very widespread issue impacting parents who lose a child due to any and all reasons imaginable.

Not surprisingly, when I first learned that Alexis' social security number had been fraudulently used, I wanted to know how someone could have found it. Within a matter of seconds on the internet, I was able to locate her complete social security number and other personal identifying information, including her birth and death dates, on several websites intended for genealogical research. I immediately contacted one of the services, who directed

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me to the service's outside counsel. When I asked the attorney to remove my daughter's personal information from the website, he advised me that the service was within its legal rights to display the information and that it refused to remove her social security number. The attorney cited as support for their position a 1980 consent judgment between the United States Government and a private citizen, Ronald Perholtz. It was at that point that we truly realized how significant this problem is, and more importantly, how the federal government is partly to blame. It is my belief that the federal government is responsible for providing identity thieves the information required to commit this costly crime. By affording widespread access to this type of information, the federal government provides the perfect platform for the commission of this crime.

The common denominator in this story is the Death Master File (hereinafter "DMF"). The Social Security Administration makes the DMF available to the National Technical Information Service (NTIS) of the Department of Commerce, who then sells the DMF to private and public sector customers, including government agencies, financial institutions, investigative entities, credit reporting organizations, genealogical researchers and other industries. Some of these purchasers, namely organizations hosting websites aimed at facilitating genealogical research, then make available the DMF for free to the public at large. It therefore is available to nearly anyone and perpetuates identity theft and fraud against the federal and state governments at astronomical levels. As a taxpayer and parent of a child who passed away from cancer, I am outraged at the most private information of our children being made commercially available. Not only is this a significant invasion of my child's privacy, but it adds to the tremendous grief that my wife and I live with on a daily basis and will continue to live with for the rest of our lives. While it may seem trivial to some, Alexis' social security number is one of the only things that we have left of her identity. Thus, the theft of it robbed us of something truly priceless.

Due to an ongoing media probe and public pressure, the IRS for the first time recently responded to inquiries on this issue, and estimated that there were approximately 350,000 fraudulent tax filings in 2010. According to IRS officials, these fraudulent filings claimed \$1.25 billion in refunds.¹ The cost to the federal government to investigate and prosecute that magnitude of fraud could be spent in much better ways, including research to fund cures for our children.

In addition, it is worth noting that the federal government discloses far more information than is required under the 1980 settlement. In June 2008, the Inspector General of the Social Security Administration issued a critical report detailing how publication of the DMF has resulted in the breach of citizens' personally identifiable information.² The report concludes that the Social Security Administration "discloses far more detailed personal information in the DMF than required under the original consent judgment that resulted in the creation of the DMF. Under the terms of the agreement, SSA was to compile a list that identified deceased numberholders' SSNs, surnames and dates of death. However, SSA expanded the information

¹ Dale McFeatters, Govt. shares blame as ID theft worsens, available at http://bostonherald.com/news/opinion/op_ed/view/2011_1105govt_shares_blame_as_id_theft_worsens (November 5, 2011).

² Office of the Inspector General, Social Security Administration, *Personally Identifiable Information Made Available to the General Public Via the Death master File*, Audit Report A-06-08-18042 (June 2008).

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published in the DMF to include the decedent's date of birth, first and middle name, and last known residential state/zip code."³ The report's conclusion is simple: less information should be released, and greater efforts at accuracy and protection must be taken.

Significantly, Ronald Perholtz, the man who filed the lawsuit that led to the 1980 consent judgment resulting in creation of the DMF, sought release of the information to help reduce fraud. Specifically, he wanted the information as a tool for pension companies to identify theft of pension benefits. Soon after learning the DMF was created, Mr. Perholtz learned that the DMF frequently listed the social security numbers of people who were not, in fact, dead.⁴ Now, he believes that changes need to be made in order to stop this type of fraud. Indeed, Mr. Perholtz stated that he is willing to renegotiate the original settlement as he feels so strongly that the DMF is being abused.⁵

H.R. 3475 is a solution to a significant problem that affects not only grieving parents, but also every family who loses a loved one. It also is a solution to a problem that was never anticipated, and would eliminate dissemination by the federal government of extraneous information that it is not required to release. This additional information, along with the readily accessible nature of individuals' social security numbers, has provided identity thieves an avenue to commit this crime and defraud the taxpayers and government.

Those who argue that the release of this information is critical to combat fraud and conduct genealogical research fail to understand that this Bill is not intended to prevent or limit the lawful use of Social Security Numbers or genealogical research. First, I would say to any individual conducting genealogical research, why do you need to know my daughter's social security number? Why should it be publicly available to anyone with a computer? What purpose does her full social security number, along with her birth and death dates, address, and other personal identifying information have for your familial research? The clear answer is that it has absolutely no purpose. Alexis didn't die a long time ago—she died last year. While it may be difficult to find information about your ancestors from generations ago, it should not be hard to confirm your familial connection (or lack thereof) to someone born just six years ago.

More importantly, this Bill will not prevent credit bureaus and financial institutions from fulfilling their charge of protecting us from fraud. To the contrary, because access to this information will be more restricted, these institutions will be more empowered knowing that the potential incidence rates of identity theft and fraud will be curtailed. Potentially far fewer instances of fraud against lawful citizens will be committed, thus reducing the amount of investigation necessary. The intent of this legislation is not to limit or prohibit financial institutions from investigating fraud; rather it is to prohibit the widespread publication and easy access of personal information that is utilized by criminals to defraud the government. As for hospitals and other institutions who claim to utilize the DMF to determine if their patients are deceased, I submit that there are other far less destructive methods to make such determinations and conduct your research. Again, this Bill is not aimed at those who have a legitimate need for

³ *Id.* at 6.

⁴ Thomas Hargrove, Social Security 'Death File' designed to fight fraud but now aids it, available at www.scrippsnews.com (November 14, 2011).

⁵ *Id.*

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access to individuals' social security numbers and they will continue to have access to this information.

I have been told that in most cases, the government does not have the resources to prosecute this crime. It either is too costly, or the government simply does not have the ability to track and punish those who are stealing from it and taxpayers alike. If this crime was prevented, to the best extent possible upfront with this simple measure, there would be little concern regarding the cost to prosecute as more resources could be made available, stiffer penalties proscribed and additional deterrents fully understood.

In closing, this is not a victimless crime. My daughter is a victim. She was victimized twice. Once by the cancer that stole her from this earth, and then by a cold-hearted criminal who stalked her and utilized her death for profit. It disgusts me to no end to know that someone prayed upon my daughter's death for his or her own gain. It is an added insult for a grieving parent. It is nothing short of a despicable crime and the release of Alexis' complete social security number and other personal identifiers to the general public facilitated this crime. But this simply is not an emotionally charged issue, as some argue. Fraud is not something that we simply should accept as a necessary consequence of easy access to information. Yes, security breaches will always be possible regardless of the measures that we put into place. But when there is a simple fix to a significant problem that affects all taxpayers, the fix should be taken seriously and enacted with haste. It is time that this loophole is closed and this legislation is the manner in which to accomplish this aim. Nothing short of this will accomplish the task. It is simple and to the point, and in this era when our government is struggling to find ways to save money for the taxpayer, it is a very easy fix with little to no consequences or repercussions to citizens of this country.

Thank you Mr. Chairman and distinguished members of the Committee.

Jonathan Eric Agin