

NO FREEDOM WITHOUT PRIVACY:

THE REAL ID ACT'S ASSAULT ON AMERICANS' EVERYDAY LIFE



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SUMMARY OF FINDINGS AND RECOMMENDATIONS

Congress passed the Real ID Act in 2005 to set minimum standards for the issuance and appearance of state driver's licenses and identification cards. But the Real ID Act goes much further. It establishes a network of government databases and electronic checkpoints that, in effect, create America's first-ever national ID card system.

If the Real ID Act is not repealed, life in the United States will never be the same. More than 245 million licensed drivers and ID card holders in the United States—including more than 11 million New Yorkers—will be compelled to exchange their current licenses for Real ID-compliant cards. It is certain to create a bureaucratic tangle at the Department of Motor Vehicles.

But the Real ID Act is more than an annoying hassle. Though the Real ID Act is not a household name, it is a central component of the Bush Administration's assault on Americans' liberty and privacy rights, and one that if not repealed now would forever change the fabric of American life. The Real ID Act would make driver's licenses the cornerstone of a mega-database network that would contain vast amounts of personal information on Americans. It requires driver's licenses and ID cards to have a "machine-readable zone" that would be readily accessible to thousands of state and local government officials and the private sector, and could easily be used to track people's activities and develop detailed profiles of their habits and lifestyles.



FORMER PRESIDENT GEORGE W. BUSH

The Bush administration's Real ID Act would establish a network of government databases and electronic checkpoints that would, in effect, create America's first-ever national ID system. This scheme would erode Americans' liberty and privacy to provide an illusion of security.

This report documents the many threats that the Real ID Act poses to American democratic traditions, including:

- Facilitating the tracking by the government and corporations of Americans' daily lives by creating an ID system to enable the consolidation of our movements, our purchases and our personal information into a network of interlinking databases.
- Creating a treasure trove for identity thieves by establishing a one-stop shop for millions of Social Security numbers, birthdates, addresses, signatures, digital photographs as well as an array of source documents such as birth certificates and financial records.
- Imposing one of the federal government's greatest unfunded mandates at a time when New York State faces a projected three-year \$47 billion budget deficit.
- Imposing higher fees at the DMV and bureaucratic hassles on Americans that will result in thousands of New Yorkers having a difficult time obtaining a Real ID card, potentially causing the denial of access to crucial rights and government services.
- Threatening the security of Americans by encouraging identity theft, and undermining the core law enforcement tools necessary for effective crime fighting.

Twenty-one states have already passed legislation opposing the Real ID Act and 11 of those states have passed binding statutes preventing implementation: Maine, New Hampshire, Montana, South Carolina, Georgia, Washington, Oklahoma, Arizona, Alaska, Louisiana and Idaho. In total, lawmakers in more than 40 states have introduced legislation opposing the Real ID Act.

State opposition has been based on several factors, including the Real ID Act's threat to privacy, its imposition of an unfunded federal mandate, increased bureaucracy and hassles for American citizens, and a desire to preserve the principle of federalism.

National organizations like the National Governors' Association and the National Conference of State Legislatures also have taken umbrage at the Bush administration's expectation that states foot the bill for Real ID implementation. The NCSL called the Real ID Act "the most egregious example" of unfunded mandates in President Bush's FY09 Budget.

RECOMMENDATIONS

New York's elected officials must join the bipartisan national movement against the Real ID Act and take the following steps to protect state residents from the harms that the Real ID Act will cause to their rights, privacy and pocket-books.

■ New York's 31 federal lawmakers must support repeal of the Real ID Act.

Congress must take the lead in repealing the national ID card provisions contained in the Real ID Act, and New York's congressional delegation should be at the forefront of this effort. The Identification Security Enhancement Act is a bi-partisan bill that would repeal the controversial national ID card sections contained in the Real ID Act, and replace those sections with a workable program for improving identity security. New York's federal lawmakers should support this crucial bill. President Barack Obama should support Congress in its efforts to repeal the Real ID Act.

■ Governor Paterson and the New York State Legislature must pass legislation opposing the Real ID Act.

Issuing driver's licenses has long been the responsibility of states and not under purview of the federal government. The New York State Legislature should pass legislation to oppose implementation of the Real ID Act, and Governor Paterson should support such legislation. The Real ID Act will cost New Yorkers hundreds of millions of dollars to enforce. At a time when the state is facing a multibillion dollar deficit, it should not be funding an optional, experimental and unproven federal licensing program.

■ Governor Paterson should sponsor a states' compact with New York's regional neighbors in opposition to the Real ID Act.

Governors across the country, and across the political spectrum, have taken a strong stance against the Real ID Act. In New Hampshire, Democratic Gov. John Lynch signed a bill that calls Real ID "contrary and repugnant" to the state's constitution. In Montana, Democratic Gov. Brian Schweitzer signed a bill rejecting the Real ID Act and declaring it "inimical to the security and well-being of the people of Montana." Republican South Carolina Gov. Mark Sanford signed legislation rejecting Real ID and later explained, "Does it make any sense to begin a *de facto* national ID system without debate? As a practical matter, this sensitive subject received far less debate than steroid use in baseball."

Governor Paterson should take the lead in organizing resistance among Northeast and Mid-Atlantic governors to reject the Real ID Act. State Sen. Eric T. Schneiderman, D, 31st Dist., recently proposed a "Governors' Compact" for the region to jointly renounce state implementation of the Real ID Act. We encourage Governor Paterson to support Senator Schneiderman's proposal.

I. INTRODUCTION

Imagine living in New York City in 2020 under the Real ID Act.

You wake up in the morning and get ready for work. It's Election Day, so you stop by your local polling site and swipe your Real ID card before voting for Congress, state senator and assembly member. After voting, you go to the subway and swipe your Metrocard at the turnstile to board the train. Recent security concerns motivated the MTA to link Metrocard information with the Real ID system to keep a record of who's entering the subway system.

You swipe your Real ID card to enter your office building. You ride the elevator to the 9th floor where the receptionist scans your Real ID card. You also swipe your card when you leave for lunch, and when you visit the pharmacy to pick up your anti-depressant pills. Since the latest federal anti-drug abuse program began, all prescription drug purchases require swiping a Real ID card.

Back at work, you swipe your Real ID card to get back into the building. You're lucky: The mail room employees have to use their Real ID cards to go to the bathroom. The management at your company has explained that it needs to know its employees' whereabouts at all times for security reasons.

The clock finally strikes 6 p.m., and you're ready to grab some drinks with co-workers before heading to a Yankees game. You visit the local bar where the bouncer swipes your Real ID card. You start a tab, and the bartender keeps your Real ID card behind the counter. After a few beers, you sign the check and board the subway – again using your Real ID card – and catch a train to Yankee Stadium. After the nation made the switch to using Real ID cards,

the Department of Homeland Security ("DHS") asked that all ballparks require ticket holders to swipe their Real ID cards to protect against terrorist attacks. All of the country's ballparks complied with the request.

After the game, you decide to celebrate the Yankees' victory at a local bar. After a couple of drinks and another swipe of your Real ID card, you call it a night. Tomorrow is another day.

While the above scenario describes a typical day for many New Yorkers, it is different in one significant way: Almost everything you did could have been recorded, stored and tracked by the government and private corporations.

The government kept track of your subway travel and pharmaceutical purchases. Your employer kept track of when you arrived and left work, and how long you took for your lunch break. Your health insurance provider knows how many times you attended a bar. A private security company recorded your attendance at the baseball game.

At the end of each day, all of this personal information could be compiled into a national database of information about you and hundreds of millions of law-abiding Americans.

Welcome to life under the Real ID Act.

This report documents the many threats the Real ID Act poses to American values. It first chronicles the long history of American resistance to the establishment of a national ID card system. It then reviews the legislative history behind the Real ID Act, and details the Act's requirements. Next, the report explains the privacy, bureaucratic, civil rights, fiscal and security concerns raised by the Real ID Act, as well as alternative driver's license security models. Then we hear voices from across New York State who are part of the growing opposition to the Real ID Act – from voting and civil rights activists to gun owners and fiscal conservatives. The report concludes with a review of the battle against the Real ID Act in New York State, and recommendations that New York State reject implementation of the Real ID Act and that Congress repeal the national ID card provisions contained in the Act.

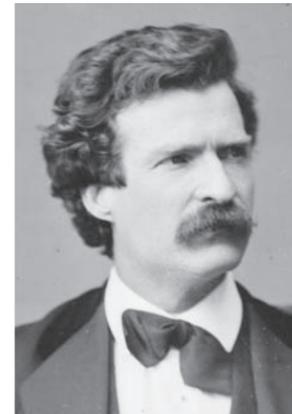
II. HISTORY OF AMERICAN RESISTANCE TO NATIONAL ID CARDS

The passage of the Real ID Act in 2005 marked a quiet but significant change in the history of Americans' privacy rights. American democracy was founded on a system in which citizens possess certain inalienable rights, the right to privacy being chief among them. Law-abiding Americans are free to come and go where and when they please without fear that the government is monitoring them. Yet a national identification system such as the one created by the Real ID Act will erode this freedom to its core.

Richard Sobel, a Harvard University legal scholar, laid out the effects of a national ID system on a free society:

Under a national identification system, rights are derived from credentials. People obtain ersatz-identities based on identification documents and numbers or places in databanks. The requirement to prove identity or appear in a national databank in order to obtain and exercise certain rights demeans the foundation on which free government is based. The use of personal information for governmental action without consent or due process violates liberty and property rights.¹

While the debate surrounding the Real ID Act comes at a time of great technological advances and new questions on the surveillance capabilities of these new technologies, challenging government encroachment on privacy is not new. Rather, it represents an important American tradition. In the United States, plans for a national ID card and related government intrusions have been rejected repeatedly throughout our history.



In 1867, author Mark Twain cautioned, "The mania for giving the Government power to meddle with the private affairs of cities or citizens is likely to cause endless trouble...and there is great danger that our people will lose our independence of thought and action which is the cause of much of our greatness."²

In 1928, Supreme Court Justice Louis D. Brandeis wrote that the "right to be let alone" is "the most comprehensive of rights and the right most valued by civilized men." Supreme Court Justice William O. Douglas cautioned in a decision in 1952 that "the right to be let alone is indeed the beginning of all freedom."³

The battle against a national ID system first arose during the debate in the 1930s preceding the establishment of the Social Security system. Many Americans feared that a Social Security card would become a de facto national ID Card. As a result, for years Social Security cards stated on their face that they were not to be used for identity purposes.⁴

In 1973, an advisory committee for President Richard Nixon's Health, Education and Welfare Secretary Caspar Weinberger issued a report on the effects of using technology to collect, store and use data about individual citizens. The committee rejected outright a national ID card as a threat to privacy and liberty. It stated:

We recommend against the adoption of any nationwide, standard, personal identification format, with or without the SSN, that would enhance the likelihood of arbitrary or uncontrolled linkage of records about people, particularly between government or government supported automated personal data systems. What is needed is a halt to the drift toward [a national ID system] and prompt action to establish safeguards providing legal sanctions against abuse of automated personal data systems.⁵

In line with this thinking, in 1974, Congress passed the landmark Privacy Act, which warned that Social Security numbers must not be used as a national identity system. The Act stated: “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.”⁶

The proposal for a national identity card emerged once again during the Reagan administration in 1981. At a cabinet meeting in July of that year, then-Attorney General William French Smith argued that a revamped Social Security card as a national worker ID would be necessary to reduce illegal immigration. Another cabinet member jokingly suggested it would be much easier to simply tattoo an identification number on everybody’s arm. According to then-Domestic Policy Advisor Martin Anderson, President Reagan exclaimed, “My God! That’s the mark of the beast,” effectively ending the Reagan administration’s discussion of a national identity card system.⁷

When the administration finally presented its immigration reform proposals after the cabinet meeting, Attorney General French firmly stated, “[t]he administration is explicitly opposed to the creation of a national identity card.”⁸

That account prompted yet another round of national debate on the prospect of a national ID system. Responding in strong opposition to such a program, conservative columnist William Safire described the fundamental role of privacy in a free society in a 1982 column in *The New York Times*:

One of the great differences between free and enslaved societies is the right of the individual to live and work without the government knowing his every move...There can sometimes be privacy without freedom, as those in solitary confinement know, but there can be no freedom without privacy.⁹

In 1986, when language to establish a national ID system for verifying the legal status of job applicants resurfaced in a congressional debate, it was ultimately struck from the Immigration Reform and Control Act. The proposal was scrapped in large part because legislators recognized that a national ID system clashes with fundamental American principles.

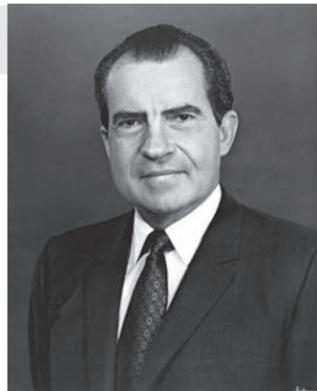
“We may face the danger of ending up like Nazi Germany,” U.S. Rep. Edward Roybal said during the floor debate on the proposal. “I do not say that we are going to go back to the Nazi regime, but ... it will be the beginning of the violation of rights, and we ...in this nation may be known by numbers.”¹⁰

The idea surfaced yet again within the Clinton administration’s ill-fated national health care system proposal in the form of a national medical ID card. Critics at the time feared the plan would create a comprehensive database of everyone’s medical history. Invoking George Orwell, President Clinton himself acknowledged that many people believe “any kind of identification card like that sort smacks of Big Brotherism.”¹¹

Most recently, the government’s reaction to the attacks of Sept. 11, 2001 renewed and amplified calls for a national ID. But the terrorist attacks did not reduce the threats that a national ID system would impose on Americans’ privacy, liberty and traditions.¹²

**FORMER PRESIDENT
RICHARD NIXON**

The Nixon administration, rarely recognized for its restraint, rejected outright a national ID system as a threat to privacy and liberty.



**FORMER PRESIDENT
RONALD REAGAN**



President Reagan balked at a 1981 proposal to create a national worker ID, likening the idea to the biblical “mark of the beast.”

The Real ID Act is expected to cost New York State at least \$84 million annually – a sum that could pay the starting salaries of about 2,300 public school teachers statewide or 2,000 police officers in New York City. New York State, which is facing a projected three-year \$47 billion budget deficit, has no money to spend on an optional, experimental and unproven national ID program.

III. LEGISLATIVE HISTORY OF THE REAL ID ACT

The Real ID Act was born out of the federal government’s attempt to ensure that states do not issue identity documents such as driver’s licenses to individuals based on fraudulent documents.

On Nov. 27, 2002, President Bush signed into law the “Intelligence Authorization Act for Fiscal Year 2003,”¹³ which created the National Commission on Terrorist Attacks Upon the United States, also known as the “9/11 Commission.” Congress and the president instructed the 9/11 Commission to examine the causes of the terrorist attacks of Sept. 11, 2001 and to recommend corrective measures to prevent future terrorist acts.¹⁴

On July 22, 2004, the 9/11 Commission released a 585-page public report.¹⁵ The final report contained one recommendation about establishing federal standards for driver’s licenses. The recommendation focused on preventing terrorists from obtaining identity documents based on fraudulent information.¹⁶ Specifically, the Commission stated:

Recommendation: Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver’s licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that *people are who they say they are* and to check whether they are terrorists.¹⁷ (Emphasis added)

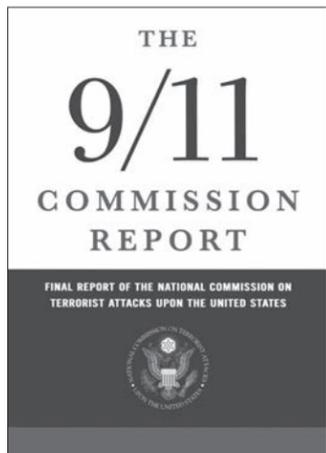
In September 2004, both chambers of Congress introduced legislation to implement the 9/11 Commission’s recommendations, including the identity documents recommendation.¹⁸ The House proposed mandating specific requirements on the states, while the Senate chose to mandate certain standards but let the states and other stakeholders negotiate with federal agencies to set the final requirements.

In an October 2004 letter co-signed by Office of Management and Budget Director Joshua Bolton, then-National Security Advisor Condoleezza Rice urged Congress to give states a substantial role in setting the driver’s license standards:

The Administration welcomes efforts in Congress to address the 9/11 Commission’s recommendations concerning uniform standards for preventing counterfeiting of and tampering with driver’s licenses and birth certificates, but believes that additional consultation with the states is necessary to address important concerns about flexibility, privacy and unfunded mandates.¹⁹

Lawmakers reconciled the two bills during a lengthy and contentious conference committee. The final version of the law contained elements of both proposals, but the Senate’s version was used as the blueprint for the final bill.²⁰ On Dec. 17, 2004, President Bush signed into law the Intelligence Reform and Terrorism Prevention Act (IRTPA).²¹

IRTPA created a rulemaking advisory committee that included federal officials, security experts, DMV administrators, privacy advocates, and public safety officials. The committee was tasked with recommending minimum standards for the issuance of identity documents and addressing the concern raised by the 9/11 Commission that the government must ensure that individuals applying for driver’s licenses are who they say they are.²² It also included a requirement for setting of clear stan-



The Real ID Act goes far beyond the 9/11 Commission’s recommendation to set federal standards for state driver’s licenses.

Real ID requires the development of a massive database network that will make our personal information easily available to thousands of federal government bureaucrats in all 50 states and six U.S. territories. Government officials can and will abuse this system. Consider the following example:

In 2005, Sheriff Kevin Beary of Orange County, Fla. was angered by a letter to the editor published in the local newspaper that accused him of being too fat and criticized his deputies’ use of stun guns. Believing the critic had libeled him, Beary had his staff find the letter writer’s address through the state’s driver’s license database. It is illegal to obtain someone’s personal information from a state driver’s license database, except for clear law enforcement purposes. Beary sent the woman a scathing letter, which she considered an attempt to intimidate her.

dards for source document verification, as well as security features to prevent document tampering.²³

But many House members objected to the compromise. Chief among them was Rep. James Sensenbrenner Jr., R-Wisc., who was chairman of the House Judiciary Committee. During the floor debate on the conference



**WISCONSIN REP.
JAMES SENSENBRENNER JR.**

Rep. Sensenbrenner, former House Judiciary Committee chairman, vowed to “not rest” until the Real ID Act became law. He helped force the bill through Congress with minimal debate.

report, Sensenbrenner vowed to his constituents that he would champion the stiffer federal mandates set forth in the original House bill: “I want to say to them, and to everyone else that is listening, I will not rest until these provisions are enacted into law.”²⁴ Sensenbrenner did not want to allow states and other stakeholders to help write the regulations, preferring to have the federal government impose standards on the states.

In January 2005, Sensenbrenner introduced the Real ID Act in the House. The bill contained the same driver’s license provisions as the failed House version of IRTPA. It included a provision to repeal the section of IRTPA that created the rulemaking advisory committee. It also included border security and other provisions intended to reform the process for granting asylum. Some critics said that it was more focused on stemming illegal immigration than improving security.²⁵

On Feb. 10, 2005, the House passed the Real ID Act by a vote of 261-161.²⁶ Almost all of New York’s House delegation voted against the Real ID Act. The House bill was sent to the Senate where it stalled at the committee level.

The Real ID Act went far beyond the 9/11 Commission’s recommendations. The 9/11 Commission did not recommend a national ID system, and it did not recommend the creation of a massive network of interlinking databases to store and disseminate personal information on millions of law-abiding Americans.

Determined to force Senate action, the Republican leadership in Congress appended the Real ID Act to the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief—an \$82 billion spending bill to fund the ongoing wars in Iraq and Afghanistan and provide financial support to the victims of the Indian Ocean tsunami. The strategy made lawmakers opposed to the Real ID Act vulnerable to attacks that they were withholding funding for the troops and victims of natural disaster.

A May 5, 2005 editorial in *The New York Times* sharply criticized congressional leaders for resorting to procedural trickery to subvert debate on the Real ID Act:

Attaching a bad bill to a vital one is a sneaky business, making it nearly impossible for thoughtful members of Congress to vote against it. In this case, in order to provide financial support to American troops doing dangerous service abroad, lawmakers are stuck also supporting a plan that eliminates the chance of doing anything serious about identity security.²⁷

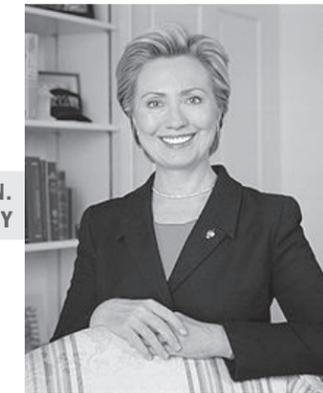
The Wall Street Journal editorial page, a bastion of conservatism, blasted the Real ID Act, warning of its harmful consequences:

It’s not hard to imagine these *de facto* national ID cards turning into a kind of domestic passport that U.S. citizens would be asked to produce for everyday commercial and financial tasks.²⁸

The National Governors Association and the American Association of Motor Vehicle Administrators also went on record opposing the legislation.²⁹

Then-Senate Majority Leader Bill Frist ignored a request from a bipartisan group of senators urging him to allow hearings and permit a separate vote on the Real ID Act. The 12 senators, including Senator John McCain, R-Ariz., warned that “legislating in such a complex area without the benefit of hearings and expert testimony is a dubious exercise and one that subverts the Senate’s deliberative process.”³⁰

Former Sen. Hillary Clinton, D-NY, lashed out on the Senate floor at congressional leaders for stifling debate on the Real ID Act.



**FORMER SEN.
HILLARY CLINTON, D-NY**

“I am outraged that the Republican leadership, first in the House and now, unfortunately, in the Senate would put this seriously flawed act into this emergency supplemental bill for our troops in Afghanistan and Iraq.”³¹

The Senate unanimously approved the emergency appropriations bill. The House approved it by a vote of 368 to 58 with nine New York Representatives voting against the bill.³² President Bush signed the Real ID Act into law on May 11, 2005.

The Real ID Act’s passage received scattered press coverage, but civil liberties and civil rights organizations, privacy rights groups and state lawmakers took notice and opposition began to grow.

IV. WHAT IS THE REAL ID ACT?

The Real ID Act contains five sections.³³ The first section amends procedures for granting asylum in the United States.³⁴ The third section concerns border security.³⁵ The fourth and fifth sections amend rules for allowing temporary workers to enter the United States.³⁶ These sections, Titles I, III, IV and V, are not addressed in this report.

Title II of the Real ID Act attempts to set federal minimum standards for the issuance and appearance of state driver’s licenses and identification cards.³⁷ According to the Real ID Act, driver’s licenses and ID cards will have to meet minimum standards to be accepted for “official purpose[s]” by federal agencies. “Official purpose” is defined as including, but not limited to, boarding a commercial aircraft, entering a nuclear facility, entering federal facilities—such as federal courthouses—and any other purpose the U.S. Secretary of Homeland Security determines is necessary.³⁸ DHS has stated that it does not have to seek the approval of Congress to change the definition of “official purpose.”³⁹

Not only is there no prohibition on states, municipalities and businesses from expanding the circumstances where a Real ID will be required,⁴⁰ but DHS even publicly acknowledges in their regulations that Real ID cards could become requirements for access to public benefits, employment, voting, liquor and firearms.⁴¹

The Real ID Act permits states to issue driver’s licenses that do not conform to the Act’s standards, but it stipulates that a non-conforming license must “clearly state on its face that it may not be accepted by any federal agency for federal identification or any other official purposes.” Non-conforming licenses also must have a unique design or color for easy identification by federal personnel and law enforcement officials, creating a “scarlet letter” for anyone who cannot obtain a Real ID card.⁴² Under the regulations, Real ID compliant licenses and IDs likewise must be uniquely marked.⁴³

New York lawmakers have criticized the federal government for not providing the state enough money to meet its unique security concerns. The state received about \$208 million in federal homeland security grants for the 2007 fiscal year, a sum that included \$134.1 million for New York City. DHS has suggested states spend up to 20 percent of their homeland security grants on the Real ID program. But New York needs that money to pay for anti-terrorism training for local first-responders; for chemical, biological, radiological and nuclear weapons detection training; for protection of critical infrastructure; and for upgrades to emergency response systems.

To comply with the Real ID Act, states must meet a long list of minimum conditions, including:

■ **Standardized information and features on driver's licenses.** The surface of a driver's license must contain the following minimum information about the holder: full legal name, date of birth, gender, unique identification number, full facial digital photograph, address of principal residence, and signature. The surface of the card must include the dates the license took effect and its expiration, state of issuance as well as certain security features such as a DHS approved marking.⁴⁴

■ **A "machine-readable zone."** Similar to a bar code, the machine-readable zone must contain minimum information to allow any entity with a reader to capture the data on a driver's license. The Real ID Act mandates the following minimum information be included in the machine-readable zone: license expiration date, issuance date, state or territory of issuance, holder's legal name, date of birth, gender, address, unique identification number, and inventory control number for the physical documents maintained by the state.⁴⁵

DHS has granted states the authority to add information to be contained in the machine readable zone, including biometric information, such as iris scans or fingerprints.⁴⁶ DHS has decided that the personal information contained in the machine readable zone will not be encrypted, which means that it will be easily accessible to government agents and the private sector.⁴⁷ Moreover, there is no prohibition on third party access to information contained in the machine-readable zone.⁴⁸

■ **Documentation requirements for proving eligibility.** An applicant will have to present certain minimum information in order to qualify for a Real ID license, including:

- a photo identification document, or a non-photo document that includes full legal name and birth date;
- documentation of birth date;
- proof of Social Security number or proof of eligibility for one;
- documentation of name and principal address; and
- evidence of lawful status in the United States.⁴⁹

Every person applying for a Real ID card must be subject to a "facial image capture," even if his or her application is denied, and the photo must be stored in the motor vehicles database, even if no card is issued. If no card is issued, then the digital photo will be stored for a minimum of five years. If a card is issued, then the digital photograph will be stored for two years after the expiration date of the card.

States must capture digital images of all source documents presented by the applicants and store them in a transferable format for at least 10 years. Paper copies of the identification documents used to prove eligibility for a Real ID card must be retained for at least seven years.⁵⁰

■ **Verification by states of the "issuance, validity and completeness" of every document.**⁵¹ The Real ID Act requires that states verify the validity and completeness of documents presented to obtain a Real ID card. Such verification must occur with the document-issuing agency. The Real ID Act also mandates that states have access to federal databases, such as the Systematic Alien Verification for Entitlements ("SAVE") system, a program that assists states in verifying the immigration status of benefits applicants.⁵² DHS acknowledges that federal databases critical to the verification procedures do not exist yet.

■ **National interlinking database.** The Real ID Act mandates that all states and U.S. territories—Guam, Puerto Rico, Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands and the U.S. Virgin Islands—provide electronic access to one another of their state's motor vehicles database. Access must be provided to at least all of the data fields contained on a Real ID card, including: full legal name; date of birth; gender; license number; address of principal residence; signature; issue and expirations dates; and a full facial digital photograph.⁵³

There is no prohibition on one state electronically accessing source documents contained in DMV databases in

other states.⁵⁴ The governance of the interlinked national database has not been determined, and was largely ignored by DHS in its final regulations.⁵⁵

The Real ID Act directs states to prepare a comprehensive security plan for all DMV offices, driver's license storage and production facilities, and databases to protect the privacy and security of the personally identifiable information held in state DMV databases.⁵⁶ However, the final DHS regulations implementing the Real ID Act do not define the specific content of the privacy policy.⁵⁷ Rather, it requires that states, and not DHS, prepare a security plan to protect personal information.

In the original statute, states had until May 2008 to comply with the Real ID Act. In the draft regulations for Real ID implementation, DHS extended the compliance deadline to December 2009. By May 2013, non-compliant IDs were to no longer be accepted for "official purpose."

The final Real ID regulations moved the compliance deadline: DHS will grant an extension until Dec. 31, 2009 to any state that requests one.⁵⁸ Residents younger than 50 from states who become "materially compliant" will be able to use their non-Real ID compliant licenses for official purposes until December 2014. Residents older than 50 from states that become "materially compliant" will be able to use their non-compliant licenses for official purposes until December 2017.

V. WHAT'S WRONG WITH THE REAL ID ACT?

The Real ID Act creates—for the first time in American history—a national ID card system. It will facilitate tracking by the government and business sector of Americans' daily lives by consolidating our movements, our purchases and our personal information into a network of interlinking databases. It will create a treasure trove for identity thieves, establishing a one-stop shop for millions of Social Security numbers, birthdates, addresses, signatures, digital photographs as well as an array of documents such as birth certificates and financial records. It will impose higher fees at the DMV and bureaucratic hassles on New Yorkers. It will result in thousands of New Yorkers having a difficult time obtaining the identity card, potentially causing the denial of access to crucial rights and government services. And the Real ID Act represents one of the federal government's greatest unfunded mandates.

A. The Real ID Act Violates Americans' Privacy Rights

The Real ID Act poses one of the greatest threats to Americans' privacy rights in this nation's history.

Nearly 80 years ago, Supreme Court Justice Louis Brandeis described the "right to be let alone" as "the most comprehensive of rights and the right most valued by civilized men."⁵⁹ The Real ID Act effectively rescinds the right to be let alone. It will establish an enormous electronic infrastructure that government and law enforcement officials, as well as private corporations, could use to track law-abiding Americans' activities and movements.

Unregulated advances in technology have already enabled the government and business sector to amass detailed records on Americans' lives. For example, retail chains use "customer loyalty" cards to keep track of what products consumers buy, airlines collect data on where people fly, internet operators maintain extensive records of people's web habits, the Treasury Department keeps a database of financial records reported by banks and other institutions, and the Department of Health and Human Services holds the name, address, Social Security number and quarterly wages of every documented worker in the United States.⁶⁰

While the proliferation of detailed government and private sector databases on Americans is troublesome, the privacy threat is reduced as long as all of this information is scattered across many different databases. One of the greatest threats posed by the Real ID Act is that it creates an infrastructure that allows the government to consolidate the oceans of personal data it keeps into a single network accessible by government employees throughout the country, and it will make it far easier and more efficient for the private sector to consolidate personal information on Americans, including information on Americans' consumer habits and lifestyle choices.

A uniform personal identification system for all Americans will fundamentally change the use of identification docu-

ments in the United States. Whereas all 50 states currently have different practices, statutes and regulations governing driver's license eligibility and the contents of driver's license databases, the Real ID Act creates uniform requirements for the entire country. No longer will a state's driver's license database, or even the card itself, be its own.

A uniform card and database on hundreds of millions of Americans will create enormous incentives for federal, state and local governments, as well as businesses, to collect the information provided by this system. For example, while some New York City bars already require patrons to scan their driver's licenses in order to enter, there isn't a nationally driven incentive for bars to collect this information. But once the Real ID Act is implemented, bars throughout the country will be able to collect the same exact information on Americans, triggering a strong incentive for third parties such as marketers or health insurance providers to begin compiling and analyzing the information collected at the door.

1. National Database on Americans

The Real ID Act creates a national database by requiring state motor vehicle agencies to store and make available to all 56 states and federal territories all of the data printed on driver's licenses and ID cards, as well as access to the extensive records maintained by motor vehicle agencies.⁶¹ Moreover, all states will be compelled to store digital images of personal identity documents used to obtain a Real ID card.⁶² For example, an applicant's birth certificate, or documents such as bank statements or tax records used to prove an applicant's address, will be digitally stored in a format that potentially could be accessed by DMV employees in all states and territories.

Under the current system, identification documents are kept by a variety of federal, state and local government agencies. For example, DHS holds documents relating to a person's immigration status, while a local public benefits office may have information regarding a person's housing benefits. The Real ID Act creates one national database with the capability of containing all of this personal information. Moreover, thousands of government employees throughout the country easily could access this personal information.

It is wrong to assume that the information contained in the Real ID database will be limited to a person's driving records or even to the source documents needed to obtain a Real ID license. The authors of the Real ID Act deliberately put *no limits* on what information can be stored in this national database. This means future administrations will be able to include, for example, such additional information as an individual's travel records or gun ownership. Moreover, individual states may add to the list of documents and information stored in their database, and thus make this information accessible to the rest of the nation. For example, the birth certificate or Social Security number of somebody who lives in New York will be accessible to DMV clerks in Florida, Texas, Puerto Rico or Oregon.

Jim Harper, director of information policy studies at the Cato Institute and a member of DHS's Data Privacy and Integrity Advisory Committee, testified before the Senate Judiciary Committee that the consolidated databases would encourage government prying:

Massed personal information will be an irresistible attraction to the Department of Homeland Security and many other government entities, who will dip into data about us for an endless variety of purposes.⁶³

Moreover, as Real ID cards become part of everyday life for Americans, the information contained in the database will only increase.

2. Government Spying on Americans' Everyday Activities

The Real ID Act greatly enhances the government and private sector's ability to collect information about Americans'

The bar code technology required on all Real ID cards would make it easier for businesses to collect massive amounts of information about your personal life. Health insurance carriers could monitor how often you visit a gym or a bar and use that information to set your premiums. Retailers could use the data to engage in highly-targeted direct marketing campaigns, resulting in a crush of junk-mail and unwanted solicitations. That information could even be sold to data brokers or the government, which means government officials could potentially know the books you read or your lifestyle habits.

private lives. A Real ID card could become required for everyday use unless there are constitutional or statutory barriers preventing its usage. Moreover, the unencrypted information contained in a Real ID card's machine-readable zone will be made available to anyone with an electronic reader.

DHS will initially require a Real ID card for limited activities, such as when boarding an airplane or entering a federal building. But over time Americans will have to produce a Real ID card to perform any number of daily activities. DHS has already stated that the ancillary benefits of the Real ID Act will not be fully reached until a Real ID card becomes part of "everyday transactions" for Americans,⁶⁴ and has suggested that a Real ID card will become a requirement for receiving public benefits, voting and buying alcohol.⁶⁵

The requirements won't end there. The Real ID Act places no limits on when state governments, the private sector or federal agencies can compel people to present or swipe Real ID cards. For example, a Real ID card could become a requirement for obtaining prescription drugs or entering any area considered at risk for a terrorist attack, such as the New York City subway, the National Mall in Washington DC, or the Buffalo Bills' Ralph Wilson Stadium in Orchard Park, NY.

DHS argues that it can unilaterally add requirements for Real ID card use without congressional authorization. This has led elected officials such as Republican Governor Mark Sanford of South Carolina to refuse to implement the Real ID Act and to write to then-Department of Homeland Security Secretary Michael Chertoff the following:

[T]he present law clearly provides the Secretary of DHS substantial discretion to expand the scope of Real ID...This means while current federal rules limit the required places we would need a Real ID, we have no assurances that at some point we won't need a Real ID to open a bank account or purchase a gun.⁶⁶

Under a Real ID regime, Americans will be forced to go through an endless series of electronic checkpoints in the course of their daily routines. Each checkpoint will leave a digital record that both government and businesses could capture and use to develop detailed "lifestyle" profiles of people's activities. For example, swiping a card to get into your neighborhood bar will leave a digital fingerprint of your attendance. That information may be shared with government officials, such as the local police, as well as your medical insurance provider who will use it to determine your health insurance premium.

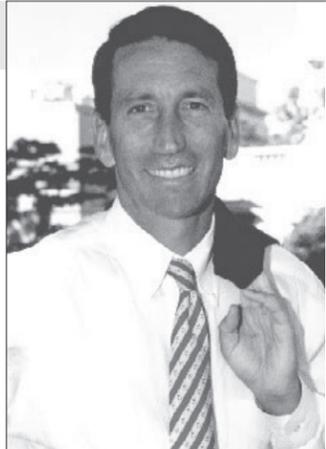
Retailers will inevitably compile these digital fingerprints and profit from them. They can use the data to engage in highly-targeted direct marketing campaigns, resulting in a crush of junk-mail and unwanted solicitations, or they could sell the information to data brokers or the government. Everyone from the government to Walmart could know when and what people purchase at their stores. They could know the books people read, the types of birth control they use, and the medications they buy.⁶⁷

Real ID cards are required to be designed with the potential to feature additional data-gathering technologies, such as radio frequency identification (RFID) chips and biometric data. RFID chips, currently used in toll-booth payment passes, emit a short-range radio signal containing information that identifies each chip. With RFID chips installed in Real ID cards, the government, business sector or even individual criminals could capture someone's personal information and track his or her movements remotely without the individual's knowledge. Biometrics is a technology that identifies a person through his or her physical attributes, such as fingerprints, facial features, iris patterns or DNA. DHS does not currently require biometric information in Real IDs, but welcomes states to include such information if they so choose.⁶⁸ RFIDs are already used in United States passports.

Encrypting information in the machine-readable zone could lessen the threat of data collection by the government and private sector. Yet DHS has refused to require encryption, citing concerns that it will hinder the government's ability to scan the information contained in a Real ID card.⁶⁹

**SOUTH CAROLINA GOV.
MARK SANFORD**

Gov. Sanford, the current Chair of the Republican Governors Association and a national leader in the states' movement against Real ID, is concerned that Real IDs would become necessary to perform routine transactions, such as opening a bank account or buying a gun.



3. A History of Government Abuse and Data Mining

One of the most damaging legacies of the Bush administration is its consistent attacks on Americans' privacy rights. Unfettered data mining was a keystone to the administration's domestic security strategy.



The Pentagon's Total Information Awareness system showed the extremes the Bush administration was willing to travel to collect Americans' most sensitive personal information.

Press reports in November 2002 revealed that the Pentagon was building a computer system to compile and analyze vast quantities of Americans' personal information. The system, called Total Information Awareness, would have provided intelligence analysts and law enforcement officials with instant access to hundreds of millions of Americans' credit card and banking information, phone records, e-mail, travel documents and other information without a warrant.⁷⁰ Once public, the plan sparked widespread public opposition. Congress took action, first banning the system's use against Americans and later shutting it down all together.⁷¹

The uproar triggered by Total Information Awareness did not curb the Bush administration's use of data mining, or the administration's willingness to violate privacy laws. In July 2005, the Government Accountability Office determined that the Transportation Security Administration's covert gathering of 250,000 people's personal information as part of its "Secure Flight" program violated the federal Privacy Act of 1974, which requires the government to notify the public when it gathers information about people. "Secure Flight" sought to conduct computerized checks of airline passengers against terrorist watch lists.⁷²

In May 2006 it was reported that the National Security Agency had gained wholesale access to the customer records of several major private telecommunications companies. The NSA used that access to compile a vast database of millions of phone calls made by law-abiding Americans.⁷³

And in 2008, the *Wall Street Journal* reported that the Total Information Awareness project may have only been hidden and disguised—not comprehensively disabled.⁷⁴ The government's pursuit of information about Americans' personal lives continues unabated, regardless of what name the government puts on it.

The Real ID system is the next massive surveillance scheme designed to allow the government to collect large amounts of information on Americans' lives with little oversight by Congress or the public.

As with all of these programs, there would be great potential for mismanagement and abuse of the Real ID database. While the Bush administration is no longer in office, the system remains in place and the threats to Americans' privacy remains unabated. The custodians of these databases are, like all people, subject to mistakes and lapses in judgment.

B. Bureaucratic Nightmare for Americans

Opposition to enforcement of the Real ID Act encompasses a wide range of perceived problems—both philosophical and practical. Many opponents of the Real ID regime point to the Act's impact on the hundreds of millions of Americans who will need to travel *in person* to prove their identity and lawful status when obtaining a Real ID card. New Yorkers will pay significantly for Real ID through higher fees and bureaucratic hassles.

State DMVs throughout the country will be required to build the systems to support Real ID from scratch, which will mean countless opportunities for error and technical glitches that will undoubtedly result in additional time spent at

the DMV correcting database problems. The law places substantial new demands on DMV staff, including the need to verify the authenticity of source documents against a network of national databases that have yet to be created, meaning New Yorkers will likely face slower services, longer lines, increased technical glitches and repeat visits to the DMV.

There are no exceptions in the Real ID Act for the in-person rule—Americans who are elderly, have health problems, full-time jobs, or young children for whom they cannot afford child care all must travel to the DMV and endure this cumbersome process. In some parts of the state, individuals may have to travel significant distances to reach the county DMV office.

In his letter to DHS explaining why his state would refuse to comply with the Real ID Act, South Carolina Governor Mark Sanford explained:

Real ID will substantially raise wait times at DMV offices across our state, and this will also result in productivity losses that have not been quantified in any DHS estimates...increasing wait times in our state from the current 15 minutes, which our DMV employees worked so hard to achieve, up to one or two hours is a real problem.⁷⁵

The Real ID Act's requirements would more than double the workload of state DMVs, according to a report by the National Governors Association, National Conference of State Legislators and American Association of Motor Vehicle Administrators. In particular, license renewals will become a much bigger burden, as each licensed driver applying for a Real ID-compliant license will be processed as if being issued a license for the first time.⁷⁶

States are bracing for a bureaucratic nightmare. Officials in Virginia expect waits to renew a driver's license to increase by as much as 200 percent.⁷⁷

Once Real ID is implemented, make sure you bring a book with you to the DMV—a long one.

C. Discrimination Against Americans

Beyond the bureaucratic hassles, the requirements to obtain a Real ID card will result in thousands of New Yorkers having a hard time getting one, a situation that could potentially result in denial of access to crucial rights and government services.

To be approved for a Real ID card, applicants will have to present documents establishing their full legal name, U.S. citizenship or lawful immigration status, birth date, Social Security number or eligibility for a Social Security number, and principal residence. Should an individual be unable to provide any of those documents, the state will be prevented from issuing that person a Real ID compliant driver's license.⁷⁸

A November 2006 study by the Brennan Center for Justice found that as many as 7 percent of voting-age U.S. citizens—millions of Americans—do not have ready access to documents that prove their citizenship status. But to be approved for a Real ID card, you need to present documents that prove your U.S. citizenship or lawful immigration status.

Under the Real ID Act, thousands of unfortunate citizens, many of them elderly, would undoubtedly lose their driving privileges as well as potentially many fundamental rights and vital public services—because they're missing a piece of paper.

Nobody enjoys a trip to the DMV, but the Real ID Act will make the experience even more aggravating and time consuming. The law assigns DMV employees several new responsibilities, including validating documents like birth certificates against government databases, determining applicants' citizenship status, and photographing all applicants—even those denied Real ID cards. It is sure to create more red tape, delays and longer lines.

Officials in Virginia expect the wait to renew a driver's license to increase by as much as 200 percent. South Carolina Gov. Mark Sanford said he expects average wait times in his state's DMV offices to increase from 15 minutes to up to two hours.

Thousands of unfortunate citizens, many of them elderly, will undoubtedly find themselves caught in a bureaucratic mess and lose their driving privileges—as well as potentially many fundamental rights and vital public services—because they're missing a piece of paper. New Yorkers who lose their records due to fires, floods or natural disasters will have a very difficult time obtaining a Real ID card.

As DHS already hopes that Real IDs will become part of "everyday transactions" and the final DHS regulations allow state governments, local governments, and private companies the right to require a Real ID for any purpose they see fit, being unable to obtain a Real ID could ruin people's lives.

A November 2006 study by the Brennan Center for Justice found that as many as 7 percent of voting-age U.S. citizens—millions of Americans—do not have ready access to documents that prove their citizenship status.⁷⁹ The study also found that even among those who did have documents proving their citizenship status, millions of Americans did not have access to documents that reflect their current legal name.⁸⁰ For example, the study found that only 48 percent of voting-age American women have a birth certificate with their legal name, as opposed to their maiden name.⁸¹ The study also found that low-income Americans are far less likely to possess citizenship documents. At least 12 percent of U.S. citizens earning less than \$25,000 a year do not have access to documents proving their citizenship.⁸²

Another 2006 survey by the Center on Budget and Policy Priorities concluded that roughly 11 million U.S. citizens do not have a birth certificate at home. It found that low-income people are nearly twice as likely to lack a birth certificate as people with higher incomes; the elderly are much more likely than the non-elderly to lack a birth certificate; and blacks are much more likely than whites to lack the document.⁸³

The problems faced by Americans without source documents are not theoretical. A recent *New York Times* article illustrated the gravity of the problem in describing the experience of U.S. citizens subject to new Medicaid documentation requirements. A federal rule implemented in 2006 to prevent undocumented immigrants from receiving Medicaid resulted in lost benefits for tens of thousands of American citizens because they could not produce documents such as birth certificates to prove their citizenship.⁸⁴ Real ID will cause similar—or worse—problems.

These facts show that Real ID will further marginalize vulnerable groups—such as African-Americans, elderly, rural and poor Americans—and potentially lead to them losing crucial rights and services in large numbers.

Alabama's experience with attempting to comply with the Real ID Act provides another vivid example of the bureaucratic nightmares that will arise if more states attempt to implement the Act. In 2005, Alabama tried to comply with the Real ID Act's requirement that the name on a person's driver's license exactly matches the name on a person's Social Security card. The state's Department of Public Safety compared databases of driver's license records with databases of Social Security records. As was required, the state began to mail letters informing state residents that information on their driver's license was incorrect and instructed people to visit one of seven offices statewide to correct the error. Chaos ensued as thousands of people, most of them elderly, descended on the offices to try to correct their records. In response, the state put a stop to the effort after sending only 65,000 letters.⁸⁵

D. Fiscal Nightmare—Americans will Pay the Price

At a moment when the United States faces its worst financial crisis since the Great Depression, the Real ID Act represents an enormous additional financial burden to states. While DHS estimates Real ID enforcement will cost \$9.9 billion nationally,⁸⁶ only approximately \$80 million has been provided to the states to pay for implementation—less than 1 percent of the total cost.⁸⁷

DHS initially estimated Real ID would cost about \$23 billion.⁸⁸ That figure sparked outrage among government leaders and state legislatures throughout the country, as well as organizations like the National Conference of State Legislatures and the National Governors' Association. In February 2007, a Maryland state representative referred to Real ID as “one of the biggest unfunded mandates that's ever existed.”⁸⁹ Responding to the flood of criticism, DHS adjusted its calculations to produce the much lower \$9.9 billion estimate (with \$5.8 billion to be paid for by individuals through higher licensing fees).

This lower figure is deceiving for a number of reasons, including:

■ **DHS Assumes 75 Percent Participation in the Real ID Program.** It is preposterous to assume, as DHS does, that 25 percent of Americans will not apply for a Real ID because they already possess a U.S. passport. A national ID system cannot possibly be effective if a quarter of the population remains outside of the system.⁹⁰ Moreover, as the number of routine transactions requiring a Real ID expands, Americans will be forced to participate simply to lead normal lives.

■ **DHS Ignores Significant Costs to States.** In its final regulations, DHS acknowledged that many of the databases needed for the Real ID verification system are not fully operational and others, such as the national database to verify birth certificate authenticity, do not exist. It did not include the cost of developing and building these databases in its estimate. Regardless of this substantial omission, DHS still stated that states would have to pay the federal government fees to use the database systems.⁹¹

■ **DHS Fails to Consider Ongoing Costs.** Under the Real ID Act, New Yorkers will have to renew their licenses more than ever before (due to a renewal requirement for any “material change” to identity information). Yet DHS fails to include the cost of renewals, re-verification of information and documents, and interstate residency change information exchange costs. It also fails to consider the cost of continuing additional background checks for DMV agents, all of which will drive the Real ID price tag higher and higher.

Regardless of the exact amount of its final multi-billion dollar price tag, Americans of all political stripes agree that the money to pay for Real ID simply does not exist. And former DHS Secretary Chertoff has offered little comfort to those concerned about paying for Real ID.



FORMER DHS SECRETARY
MICHAEL CHERTOFF

In a Real ID society, New Yorkers would have to pay higher fees at the DMV. Asked by a congressional committee about how to pay for Real ID's multi-billion dollar price tag, Homeland Security Secretary Michael Chertoff responded: “I think the concept, though, was that this—like all driver's licenses—is largely a fee-based system.” He suggested that drivers carry the heavy financial burden of Real ID by paying significantly higher license fees.

During testimony before the U.S. Senate Homeland Security and Governmental Affairs committees on Real ID, Chertoff stated: “I think the concept, though, was that this—like all driver's licenses—is largely a fee-based system, and that, ultimately, the cost of building Real ID should be amortized over the driver's license fee.”⁹² With the cost of implementing Real ID in New York State estimated to be hundreds of millions of dollars, Chertoff's statement gives the state's taxpayers and lawmakers little hope that the federal government will pick up the tab.

Chertoff suggested that states could use up to 20 percent of their annual State Homeland Security Grant Program funding to pay for implementation.⁹³ This funding is typically used by states and localities to pay for anti-terrorism training for local law enforcement; for chemical, biological, radiological and nuclear weapons detection training; for protection of critical infrastructure; and for upgrades to first-responder systems.⁹⁴ While both Democratic and Republican leaders in New York have long fought for New York's fair share of Homeland Security funding, DHS suggests those funds be drawn away from crucial anti-terror programs to pay for the Bush administration's Real ID boondoggle.

New York State, which is facing a \$51 billion budget deficit over the period 2009-2012, has no money to spend on an optional, experimental and unproven federal license program.⁹⁵ With New York lawmakers struggling to find ways to balance the budget, Real ID will only add additional wasteful costs. In his 2007 comments on the Real ID draft regulations, New York State DMV Commissioner David Swarts stated, “all costs associated with the implementation should be funded by the federal government.”⁹⁶ The \$2.26 million grant New York received in June 2008 to begin improving driver's license security⁹⁷ comes nowhere near the \$84 million that Swarts estimated Real ID would cost the state annually.⁹⁸

E. Real ID Threatens Security

The Real ID Act—with its interlinking databases, digital storage of sensitive and personal documents, and non-encrypted machine-readable zone—threatens the nation's fight against the proliferation of fraudulent documents, encourages identity theft, and undermines the core law enforcement tools necessary for effective crime fighting.

Security experts have laid out five reasons the Real ID Act threatens security: (1) It relies too heavily on identity se-

curity as a terrorist-fighting tool; (2) it will lead to an enormous increase in the number of identity thefts in the United States; (3) it increases dramatically the value of a fraudulent driver's license and will not prevent the proliferation of such fraudulent licenses; (4) it will drain from the resources allocated to protecting the nation's ports and infrastructure; and (5) it will drive millions of undocumented immigrants into the shadows, making them reluctant to report crimes, serve as witnesses in criminal prosecutions, or provide crucial intelligence to law enforcement agencies.

In a series of editorials, the writers at *The Wall Street Journal* summarized the position of many security experts on this issue:

"Mr. Sensenbrenner has said that Real ID will stop the next Mohamed Atta...But the 9/11 hijackers entered the country legally, which means they qualified for valid driver's licenses. Nothing in the new law changes that reality, or the fact that you still don't need a driver's license to board a plane. Other forms of ID, such as a passport, will continue to suffice."⁹⁹

"The bigger problem with Mr. Sensenbrenner's bill is that it takes our eye off the ball...Homeland security is about taking useful steps to prevent another attack. It's not about keeping gainfully employed Mexican illegals from driving to work, or cracking down on the imagined hordes gaming our asylum system."¹⁰⁰

"It's not hard to imagine these *de facto* national ID cards turning into a kind of domestic passport that U.S. citizens would be asked to produce for everyday commercial and financial tasks."¹⁰¹

1. Danger of Over-Reliance on Identity Based Security

Security analysts warn of the dangers of relying too heavily on identity based security. Identity documents do not indicate criminal or terrorist intent. In fact, they often can shield it. Timothy McVeigh, who murdered hundreds of innocent people in Oklahoma City, was a decorated military veteran. Theodore Kaczynski, the Unabomber, was a math professor. Neither of these men had previous links to terrorism. A national ID system would not have tipped off authorities to the evil intentions of these infamous killers. In fact, it would have made them seem like trustworthy citizens.

Security expert Bruce Schneier, the founder of BT Counterpane—a prominent network data security firm—wrote in the *Bulletin of Atomic Scientists*:

In an ideal world, what we would want is some kind of ID that denoted intention. We'd want all terrorists to carry a card that said 'evildoer' and everyone else to carry a card that said 'honest person who won't try to hijack or blow up anything.' Then security would be easy...This is, of course, ridiculous; so we rely on a substitute. In theory, if we know who you are, and if we have enough information about you, we can somehow predict whether you're likely to be an evildoer. But that's almost as ridiculous.¹⁰²

Relying too heavily on identity based security can undermine the effectiveness of more proven law enforcement techniques.

2. Increase Identity Theft

It should come as no surprise that privacy experts predict that the Real ID database and unencrypted machine readable zone would be a treasure trove for identity thieves, creating a one-stop shop for millions of Social Security numbers, birthdates, addresses, signatures, digital photographs as well as an array of source documents, such as birth certificates and financial records.

Identity theft is a widespread and growing problem in the United States. It is the most widely reported type of consumer fraud. The Federal Trade Commission ("FTC") received more than 246,000 complaints of identity theft in 2006 alone. The number of identity theft complaints has increased in each of the past seven years, and the FTC warns that the vast majority of identity theft cases are never reported. In one study, the agency concluded that nearly 8.4 million people, or 4.7 percent of U.S. adults, were the victims of identity theft in 2007 alone.¹⁰³

Security analysts warn that the Real ID Act would lead to more cyber-crime by creating one nationwide database of

sensitive personal information.¹⁰⁴ Eugene Spafford, chairman of the policy committee of the Association for Computing Machinery, contends that the Real ID Act creates the potential for identity theft in an unprecedented level. He cites the huge potential for human error, fraud and security holes.¹⁰⁵

The consequences of identity theft would be more pronounced under a Real ID regime. Thieves with access to the Real ID mega-database could make copies of birth certificates or Social Security cards, making it difficult for victims to recover their identities. Real ID cards will be billed as more secure and will have more applications than current driver's licenses, allowing identity thieves armed with a Real ID in somebody else's name to inflict more harm on their victims than ever before.¹⁰⁶

Data brokers—firms that amass data and share it with other businesses and federal, state and local governments—have had enormous difficulty protecting information from identity thieves. ChoicePoint, a major data broker, acknowledged in February 2005 that it had unknowingly sold the personal information of about 145,000 people to identity thieves. In March 2005, data broker LexisNexis Group reported that identity thieves had broken into its database and stolen the personal information of about 310,000 people. That same month, Boston College warned 120,000 alumni that hackers had stolen their personal information.¹⁰⁷

Simple carelessness and bad luck can trigger database breaches as well. In May 2006, a laptop computer and external hard drive containing the birthdates and Social Security numbers of millions of veterans, military personnel and their families were stolen from the home of a Department of Veterans Affairs employee. The government recovered the laptop and hard drive and determined that none of the personal information was copied or misused. The employee violated department procedure by bringing the laptop home, a mistake that put millions of people at risk.¹⁰⁸

The Real ID database network would be particularly vulnerable to thieves because it would have hundreds of access points across the country. Its tremendous size would also increase risks of human error and abuse. Information stored in the database would only be as secure as the state or DMV office with the weakest security system or least trustworthy staff. Despite the heightened risks, DHS has provided few standards for securing state databases. It simply urges states to develop best practices, deflecting responsibility to protect the databases onto the states.¹⁰⁹

3. Increase Value of Fraudulent IDs

The Real ID Act will not eliminate fraudulent driver's licenses but will instead dramatically increase the value of a fraudulent license. The government can raise the price of forgery, but it cannot stop it. A determined terrorist always will be able to obtain fraudulent documents. Thousands of fraudulent driver's licenses have been procured by bribing state officials involved in identity theft rings.¹¹⁰

In recent years, scores of DMV employees around the country have been implicated in schemes to sell fraudulent licenses and data to identity thieves. A clerk in the Buffalo DMV was arrested in January 2008 on several felony charges after she agreed to change the birth date on an undercover police officer's driver's license from 1989 to 1986 for \$100. The clerk also was suspected of altering birth dates on the driver's licenses of two teenagers so they could dance at strip clubs and work at casinos.¹¹¹

The entire 11-person staff of a DMV office in Newark was fired in February 2003 after investigators determined fraud was so rampant that no one in the office could be trusted. That incident was part of crackdown on corruption throughout New Jersey's DMV system that produced more than 100 arrests and the firing of the top managers of 28 of the state's 45 DMV offices.¹¹²

Six former employees of a DMV office in Bridgeport, Conn. were convicted on corruption charges for selling thousands of driver's licenses to criminals and undocumented immigrants between October 2003 and March 2004. An accomplice in the scheme testified in court that people paid between \$2,500 and \$3,000 for a fraudulent license.¹¹³ In 2006, three workers at a DMV office in Norfolk, Va. were arrested after they sold phony driver's licenses to undercover FBI agents for \$2,000 a piece.¹¹⁴

Imagine losing your birth certificate in a house fire. Without this source document, you may find it very difficult to qualify for a Real ID card. Because of a lost piece of paper, you could become trapped in a bureaucratic tangle and lose your driving privileges—as well as access to other vital public services.

The problems faced by Americans without source documents are not theoretical. A recent *New York Times* article illustrated the gravity of the problem: A 2006 federal rule intended to prevent undocumented immigrants from receiving Medicaid resulted in lost benefits for tens of thousands of American citizens because they could not produce documents such as birth certificates to prove their citizenship. Real ID will cause similar—or worse—problems.

The Real ID Act will not solve the problem of fraudulent licenses, but it could intensify it by raising the value of a counterfeit driver's license.

4. Shifting Resources Away from Effective Anti-Terrorism Initiatives

The Real ID Act will drain resources from more effective approaches to strengthening security. The billions of dollars spent to create a national ID card system will drain government resources from more important anti-terrorism initiatives, such as strengthening port security and investing in additional resources for improved intelligence and law enforcement investigations.

DHS Secretary Chertoff has suggested that states could use up to 20 percent of their annual State Homeland Security Grant Program funding to pay for implementation of the Real ID Act.¹¹⁵ The goal of this grant program is to “provide funding to enhance the capacity of state and local jurisdictions to prevent, respond to, and recover from incidents of terrorism involving chemical, biological, radiological, nuclear, or explosive (CBRNE) weapons and cyber attacks.¹¹⁶ Under the Real ID Act's funding scheme, states may be forced to divert funds already allocated for crucial anti-terror programs.

5. Drive millions of people into the shadows

Security advocates contend that the Real ID Act's requirement of proof of lawful immigration status will push millions of immigrants “into the shadows”—they will continue to live in the United States but refuse to come in contact with local, state, and federal government officials to report a crime.

According to Margaret Stock, chair of the International Security Affairs committee of the Association of the Bar of the City of New York, a lieutenant colonel in the Military Police Corps in the U.S. Army Reserve, and an associate professor in the US Military Academy at West Point:

In my view, denying driver's licenses and identification documents to noncitizens who can prove their identity undermines rather than enhances national security by pushing a large undocumented foreign national population deeper into the shadows and fueling a black market in false documents. Moreover, such restrictions weaken the potentially invaluable law enforcement utility of Department of Motor Vehicles (DMV) databases by reducing, rather than expanding, government data about individuals in this country...

Though touted as a security measure, the restrictive licensing provisions defy basic principles of counterterrorism security.¹¹⁷ The Report of the 9/11 Commission established the overarching importance of effective intelligence-gathering and information-sharing in preventing terrorist acts. Restrictive licensing only widens gaps in intelligence gathering by excluding from motor vehicle databases millions of non-citizens who are lawfully in the U.S. and millions more who have no lawful immigration status. This deprives law enforcement of valuable opportunities to screen individuals, confirm their identity, and develop intelligence on who is in our country. Indeed, information from the driver's licenses of the hijackers was invaluable after 9/11 in tracking where the terrorists had been in the United States and with whom they had associated.¹¹⁸ This information was also used to prosecute many individuals who would not have been discovered otherwise.^{119,120}

VI. OVERWHELMING STATE OPPOSITION TO THE REAL ID ACT

Issuing driver's licenses has long been the responsibility of states—not the federal government. As such, many states bristled at Congress' sudden mandate on the subject.

Maine led the revolt. On Jan. 25, 2007, Maine lawmakers passed a resolution declaring their refusal to implement the Real ID Act and urging its repeal. The resolution stated that the Real ID Act would cost Maine approximately \$185 million, would invite identity theft and the invasion of privacy, and would not strengthen security against terrorism.¹²¹

SOME ORGANIZATIONS THAT OPPOSE THE REAL ID ACT:

- | | |
|---|---|
| American Federation of Labor—Congress of Industrial Organizations | Leadership Conference on Civil Rights |
| American Association of Motor Vehicle Administrators | Mexican American Legal Defense and Education Fund |
| American Bar Association | National Association of Latino Elected Officials |
| American Civil Liberties Union | National Center on Domestic and Sexual Violence |
| American Conservative Union | National Center for Transgender Equality |
| American Federation of State, County, and Municipal Employees | National Coalition Against Domestic Violence |
| American Jewish Committee | National Congress of American Indians |
| American Library Association | National Conference of State Legislatures |
| Asian-American Legal Defense and Education Fund | National Council of Jewish Women |
| Association of American Physicians & Surgeons | National Disability Rights Network |
| Association for Computing Machinery | National Gay and Lesbian Task Force |
| Brennan Center for Justice | National Governor's Association |
| Center for American Progress | National Network to End Domestic Violence |
| Center for National Security Studies | National Organization for Women |
| Citizens Against Government Waste | National Taxpayers Union |
| Common Cause | Presbyterian Church (USA), Washington Office |
| Competitive Enterprise Institute | Puerto Rican Legal Defense and Education Fund |
| Consumer Action | Republican Liberty Caucus |
| Council of State Governments | September 11th Families for Peaceful Tomorrows |
| Free Congress Foundation | Service Employees International Union |
| Gun Owners of America | United Automobile Workers |

The Real ID Act stirred fierce opposition in New Hampshire, where Democratic Gov. John Lynch signed a bill in June 2007 that calls Real ID “contrary and repugnant” to the state's constitution. The New Hampshire law expressly forbids the sharing of motor vehicle records data with other states or the federal government.¹²² Lynch said:

Here in New Hampshire, we pride ourselves on being frugal, and here in New Hampshire, we pride ourselves on respecting the privacy of our neighbors. We are not about to be coerced into an unfunded mandate, especially one we'd have to pay for with our privacy.¹²³

Republican South Carolina Gov. Mark Sanford invoked federalism while explaining his decision in June 2007 to sign legislation rejecting Real ID. Then, in a wide-ranging letter to DHS Secretary Chertoff in March 2008 explaining his state's opposition to Real ID, he questioned, “Does it make any sense to begin a *de facto* national ID system without debate? As a practical matter, this sensitive subject received far less debate than steroid use in baseball.” After detailing his opposition to Real ID based on fiscal, privacy, security, federalism and bureaucratic concerns, Sanford closed by explaining, “I have written...to honestly lay out what I consider to be grave consequences to the taxpayer, privacy interests, and civil liberties in our country if we continue with Real ID in its present form.”¹²⁴



MONTANA GOV. BRIAN SCHWEITZER

Gov. Schweitzer signed legislation in April 2007 rejecting the Real ID Act and has rallied governors throughout the country to join in opposition to the federal law.

In Montana, Gov. Brian Schweitzer, a Democrat, signed a bill in April 2007 rejecting the Real ID Act. The law declares that Real ID is “inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. Congress in violation of the principles of federalism contained in the 10th Amendment to the U.S. Constitution.”¹²⁵ Since then, Gov. Schweitzer has become a national leader in opposition to the Real ID Act.

VII. DRIVER'S LICENSE SECURITY ALTERNATIVES TO THE REAL ID ACT

While the 9/11 Commission recommended setting minimum national standards for driver's license issuance as an important step for U.S. national security enhancement, the Real ID Act does not represent the maximum—or the only—set of possible security standards. Following the Real ID Act is not the most secure way for a state to issue and verify driver's licenses.

In fact, States that have publicly declared their refusal to comply with the Real ID Act have already received approval from the Department of Homeland Security for their driver's license security plans.

For example, in March 2008, Montana State Attorney General Mike McGrath sent a letter to DHS Secretary Chertoff explaining that the State of Montana had no intention to comply with the Real ID Act as Montana had passed a state law prohibiting Real ID's implementation. He also described independent steps Montana had taken to increase driver's license security, including the training of state personnel in advanced anti-fraud techniques, the use of digital photography to prevent multiple license distribution, and enhanced security features on driver's license cards.¹³²

Despite McGrath's letter clearly indicating that Montana would not comply with the Real ID Act, DHS Assistant Secretary for Policy Stewart Baker sent McGrath a letter praising Montana's commitment to improving the driver's license issuance process. Citing Montana's independent security measures, DHS awarded the state with an extension to comply with Real ID.¹³³

A similar situation unfolded in South Carolina. In March 2008, South Carolina Governor Mark Sanford sent DHS Secretary Chertoff a wide-ranging letter explaining why South Carolina refused to comply with the Real ID Act. In the letter, Sanford described steps South Carolina took to secure driver's licenses independent of federal government prompting. These steps included advanced document fraud training for DMV staff, enhanced security features of DMV field offices, and a state-of-the-art "one customer, one record" relational computer database.¹³⁴

Once again, despite Sanford's letter refusing to comply with the Real ID Act, DHS replied by granting South Carolina an extension for Real ID compliance, citing South Carolina's independent security enhancements.¹³⁵ Secretary Chertoff stated in his letter to Governor Sanford, "The federal government should be interested in results, not words, and your letter offers results that will greatly improve South Carolina's driver's license security."¹³⁶

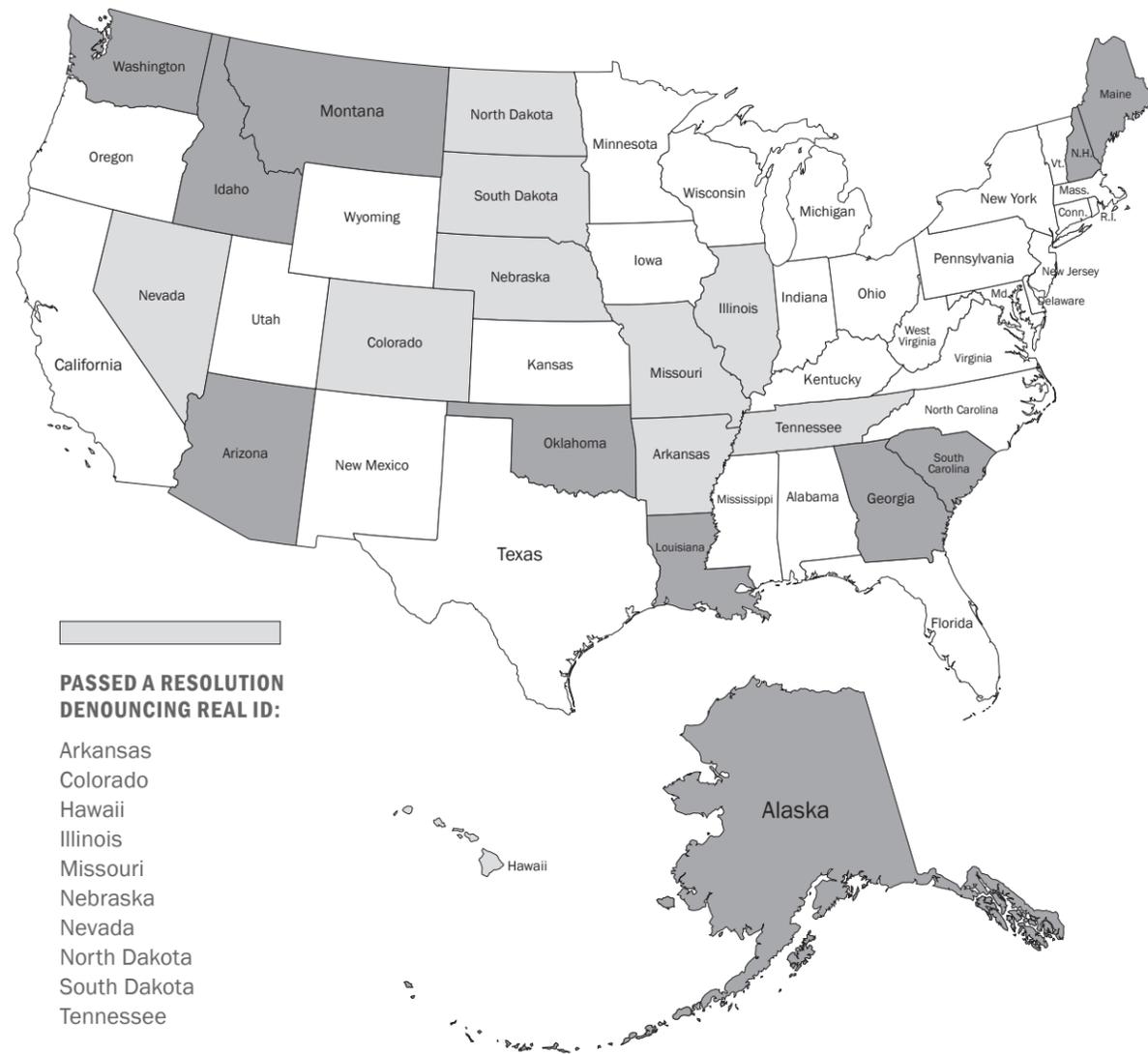
While Montana and South Carolina took independent action to enhance their states' driver's license security plans and refused to even request an extension for Real ID compliance, DHS acknowledged that the states' security enhancements outside of the Real ID legal framework were important and noteworthy steps. In fact, both McGrath and Sanford cited their states' driver's license security plans as some of the most advanced in the country.

Similarly, while New York State did not solicit an extension to comply with the Real ID Act, DHS granted one in recognition of New York's advanced driver's licenses security standards.¹³⁷

Though best practices for driver's license security have come from various sources, some of the most advanced thinking on the subject has come from within New York State. While it received little coverage in the press, included in Governor Eliot Spitzer's initiative in September 2007 to restore undocumented immigrants' access to driver's licenses was a detailed plan to make New York's license security system one of the most advanced in the United States. Spitzer's program was ultimately scrapped due to political opposition but it included state-of-the-art anti-fraud measures, including:

- **Document Verification Unit:** The DMV intended to build a first-in-the-nation center based in Albany where specially-trained staff would verify the validity of foreign identity documents submitted to obtain driver's licenses.

- **Document Scanning Workstations:** The DMV intended to build state-of-the-art document scanning machines to authenticate foreign passports submitted to obtain licenses.



PASSED A STATUTE PROHIBITING REAL ID:

Alaska
Arizona
Georgia
Idaho
Louisiana
Maine
Montana
New Hampshire
Oklahoma
South Carolina
Washington

PASSED A RESOLUTION DENOUNCING REAL ID:

Arkansas
Colorado
Hawaii
Illinois
Missouri
Nebraska
Nevada
North Dakota
South Dakota
Tennessee

In January 2008, following the release of the final Real ID regulations, Schweitzer sent a letter to 17 other governors calling on them to join him in opposing Real ID by not requesting a Real ID compliance extension from the DHS and referring to such a request by a state as a "Faustian bargain."¹²⁶

Oklahoma's law rejecting the Real ID Act, signed in May 2007, contains similar language to the Montana statute. It goes a step further by ordering the deletion from all state databases any biometric data previously collected and stored in connection with motor vehicle registration or the issuance of driver's licenses.¹²⁷

As of January 2008, 21 states have passed legislation or resolutions opposing the Real ID Act and 11 of those states have passed binding statutes preventing implementation.¹²⁸ States that passed binding statutes preventing Real ID implementation include Maine, New Hampshire, Montana, South Carolina, Georgia, Washington, Oklahoma, Arizona, Alaska, Louisiana, and Idaho. In total, lawmakers in more than 40 states have introduced legislation opposing the Real ID Act.¹²⁹

State opposition has been based on several factors, including the Real ID Act's threat to privacy, its imposition on states as an unfunded federal mandate, concerns about increased bureaucracy and hassles for American citizens, and a desire to preserve the principle of federalism.

National organizations like the National Governors' Association and the National Conference of State Legislatures also have taken umbrage at the Bush Administration's expectation that states foot the bill for Real ID implementation.¹³⁰ The NCSL called the Real ID Act "the most egregious example" of unfunded mandates in President Bush's FY09 Budget.¹³¹

Data brokers—firms that amass data and share it with other businesses and federal, state and local governments—have had enormous difficulty protecting information from identity thieves. ChoicePoint, a major data broker, acknowledged in February 2005 that it had unknowingly sold the personal information of about 145,000 people to identity thieves. In March 2005, data broker LexisNexis Group reported that identity thieves had broken into its database and stolen the personal information of about 310,000 people. That same month, Boston College warned 120,000 alumni that hackers had stolen their personal information.

■ **Photo Comparison Technology:** The DMV planned to implement new high tech tools to scan the digital photograph of every license applicant against photographs in the current database to ensure multiple fraudulent licenses could not be obtained by the same person.

■ **Residency Requirement:** The DMV was investigating ways to implement a residency requirement for New York State driver's licenses. Currently, license applicants need only provide a mailing address or a post office box to be considered a New York State resident. This enhancement would have created new requirements for those applying for licenses to demonstrate their residency within New York State.^{138,139}

While New York State's driver's licenses are already some of the most secure in the nation, additional independent security steps could make New York licenses even more secure without complying with the unproven Real ID scheme and compromising New Yorkers' privacy and security. Additional steps to secure New York licenses could include sophisticated anti-fraud strategies such as issuing licenses on tougher-to-replicate enhanced card stock, incorporating advanced laser engraving techniques on licenses,¹⁴⁰ or even encrypting existing driver's licenses and identification cards.¹⁴¹

Security experts and driver's license industry professionals have identified a wide array of security techniques states can employ to enhance their driver's license security that do not include Real ID compliance. If New York State rejects the Real ID Act, it will have the authority and the flexibility to maximize a security plan that best suits the local needs and priorities for the State.

VIII. COMMUNITY VOICES AGAINST THE REAL ID ACT

Perhaps the most under-examined aspect of the Real ID Act is the impact it will have on various communities in New York State—and across the country. Groups of Americans from wide-ranging backgrounds, viewpoints and interests will face serious potential consequences if Real ID becomes a part of American life. This section explores what Real ID will mean to a selection of communities in New York State.

A. Voting Rights

SUSAN LERNER,
COMMON CAUSE NY:



“Common Cause NY and others in the voting rights community see the Real ID Act for what it really is: yet another backhanded attempt by the government to move our country towards a national voter ID system. Such a system will disenfranchise hundreds of thousands—potentially millions—of Americans. Voter identity schemes like the Real ID Act are a fix to a problem that doesn't exist. The danger to our democracy from Real ID Act implementation far outweighs any potential benefits.”

Advocates in the voting rights community, familiar with the harm identification schemes inflict on the right to vote, strongly oppose the Real ID Act and have mobilized to defeat Real ID and other voter ID requirements around the country.

The DHS's final regulations on Real ID allow any state or local government to require a Real ID for any purpose, including as a voter ID card. In this context, national voting rights organizations such as Common Case, Demos, the Brennan Center for Justice, and the Leadership Conference on Civil Rights have all opposed the Real ID Act.

As mentioned in Section V, national studies have demonstrated that 7 percent of voting-age Americans do not have

access to documents that prove their citizenship and at least 12 percent of Americans earning less than \$25,000 per year do not have access to those documents.¹⁴² Studies also show that low-income people are nearly twice as likely to not have a birth certificate as people with higher incomes; the elderly are much more likely than the non-elderly to lack a birth certificate; and blacks are much more likely than whites to not possess the document.¹⁴³

The cumulative effect of these realities in light of the inevitable fusion of Real ID with a national voter ID system is alarming. The net result will be the wholesale disenfranchisement of potentially hundreds of thousands of American citizens who lack the appropriate documentation to obtain a Real ID card.

To prevent this from happening, the voting rights community will continue to oppose the Real ID Act and call for its repeal until the threat to the nation's electorate is eliminated.

B. Civil Rights

JENIGH GARRETT,
NAACP LEGAL DEFENSE
AND EDUCATION FUND:



“Real ID will erect bureaucratic hurdles to civic participation that will siphon certain members of our society out of the mainstream. The combination of poverty and the persistent effects of racial discrimination will disproportionately place the burden of satisfying the identity requirements of Real ID on African Americans. Our history binds us to the promise of an equal chance to access opportunity in our society. Real ID moves us away further away from that promise.”

The civil rights community was one of the earliest and most outspoken opponents of the Real ID Act as the federal law's documentation requirements would disproportionately burden communities of color.

For example, some elderly African-Americans cannot secure identity documents because they were born at home because segregation barred their mothers from hospitals. One study estimates that one-fifth of African-Americans born between 1939 and 1940 were never issued birth certificates, notwithstanding the fact that the United States began keeping uniform birth records in 1914.¹⁴⁴

This problem is not limited to elderly African-Americans. As noted in Section V, Congress began requiring recipients of Medicaid benefits to present “documentary evidence of citizenship or nationality” in 2006, a requirement similar to those in the Real ID Act. This new requirement caused some states to experience the greatest reduction in Medicaid benefits in more than a decade, denying thousands of poor women and children critical health care. The resulting racial disparities in Alabama were stark: Although less than half of the children on Medicaid in Alabama were African-American, African-American children made up 60 percent of the population denied Medicaid benefits because they could not meet the federal documentation requirements.¹⁴⁵

A study by the George Washington University School of Public Health and Health Services demonstrates that the effects of such burdensome requirements extend beyond Alabama's borders. The study, which sought data from more than 200 federally funded health centers around the country that listed the Medicaid program as a major funding source, reported that two-thirds of the responding health centers cited individuals' difficulty in meeting documentation requirements as a significant cause of the reduction in health benefits provided.¹⁴⁶

One unfortunate reality of the Real ID Act is that it places a government-sanctioned barrier to the rights, benefits and opportunities that all Americans need to thrive. Rather than moving our country forward, these barriers will thwart progress toward racial equality in the United States.

C. Domestic Abuse Survivors



PATTI-JO NEWELL, NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE:

“If implemented, the Real ID Act will pose new threats to domestic violence victims. Just as victims of domestic violence go to great lengths to protect their sensitive personal information, abusers go to any lengths to track them down. We should not establish any new system that, like any other system, will invariably be breached and undermine the many other important strides that New York has taken to prevent risk to victims of domestic violence and their children by protecting their information. The Real ID act, if implemented, would move New York in the wrong direction.”

Advocates for victims of domestic violence have good reason to oppose the Real ID Act: It may give abusers greater access to their victims.

During the first round of comments on DHS’s draft regulations for implementation of the Real ID Act, many domestic violence and sexual assault prevention organizations—including the National Coalition Against Domestic Violence, the National Center on Domestic and Sexual Violence, the National Organization for Women and the National Network to End Domestic Violence—expressed grave concern about the Real ID Act’s potential consequences for victims of domestic violence.

Much opposition centered on the Real ID Act’s undermining of state-level address confidentiality programs that allow domestic violence victims and other protected groups to list alternate addresses on driver’s licenses and in driver’s license databases to hide personal information from abusers.

To its credit, DHS responded to this concern by allowing states to create exemptions to the Real ID Act’s “primary address requirement” for individuals enrolled in state address confidentiality programs.

However, the Real ID Act’s potential consequences for domestic violence victims do not stop there.

Advocates remain concerned about the requirement to store all Real ID applicants’ full legal names and legal addresses in the DMV database as well as personal documents, such as birth certificates or bank records. These state DMV databases, which under the Real ID Act will be interlinked with the DMV databases of the other 56 state and federal DMV jurisdictions, will give determined abusers new methods to find their victims.

Domestic violence victims often flee from states where their names and addresses are accessible through the DMV database, but Real ID would open that information to bureaucrats throughout the country, creating thousands of access points to victims’ personal information. (See Section V, the *National Database on Americans* section.) The security of a victim’s personal information will only be as strong as the weakest link at any DMV office throughout the country.

D. Union Members and Working Class Americans

The labor movement has opposed the Real ID Act for reasons fundamental to its mission: Unions stand for fair and equal treatment of all workers in the workplace, and unions oppose laws or work rules that impede workers’ ability to do their jobs and make a decent living. The Real ID Act will prevent people from finding and keeping jobs. As explained earlier, in order to obtain a Real ID, most New Yorkers will need to provide a litany of documents, including a birth certificate, Social Security card and proof of lawful status in the United States. Yet many workers simply do not have access to these documents, and thus could be denied a Real ID card.

The implications of a denial could be disastrous. The comprehensive immigration reform bill Congress debated in



MAY CHEN, UNITE-HERE:

“No matter how DHS wants to spin it, the Real ID Act is a dangerous threat to all workers throughout New York. The Real ID Act would create a surveillance society in the workplace, with onerous, intrusive, and costly documentary requirements for the workers. UNITE HERE and other unions will continue to work against dangerous legislation like the Real ID Act.”

2007 included a provision that would have required every person applying for a job in the United States to prove his or her eligibility for employment by possessing a Real ID card. The inability to obtain a Real ID card would have prevented people from working.

Some of the largest unions in the United States, including the SEIU, AFL-CIO, AFSCME and UNITE HERE, have opposed Real ID for this reason.

Labor has also opposed the Real ID Act because the law provides employers tools to spy on workers and crackdown on union organizing. The machine-readable zone required on Real ID cards would make it easier for employers to monitor workers. Employers could track employees as they enter and exit the workplace. They could time workers’ lunch breaks. They could even monitor trips to the restroom.

Finally, the Real ID Act will divide America into two classes—those who possess Real ID cards and those who don’t. With so many Americans unable to provide the required documents to obtain a Real ID, hundreds of thousands of American workers will be pushed to the margins of the economy and society.

E. Gun-Owners



KEN MATHISON, SHOOTERS COMMITTEE ON POLITICAL EDUCATION:

“The Real ID Act is yet another attempt by the government to encroach deeper and deeper into all of our lives. Gun owners know the value of the right to privacy and know when something threatens that right. Our community and all of those who love freedom will continue to oppose the Real ID Act. We expect lawmakers in Albany, as well as in Washington DC, to oppose the Real ID Act.”

Gun owners in New York and across the country are strongly opposed to the Real ID Act, believing a national ID system would fundamentally erode privacy rights. Future administrations and law enforcement officials could monitor gun ownership in the United States using the system of databases and electronic checkpoints the Real ID Act estab-

lishes. The Act creates the infrastructure for a backdoor national gun registry, where every firearm purchased could be tracked, recorded and traced.

Under the Real ID Act, government officials could require that Real ID cards indicate the bearer's concealed carry status or firearm ownership. Not surprisingly, concerns amongst gun owners have contributed to widespread opposition to the Real ID Act from conservative and libertarian communities across the country. Organizations such as the American Conservative Union, Gun Owners of America, and the Libertarian Party all passionately oppose Real ID.

F. Jewish-American Community

National ID systems have been used by some of the most nefarious regimes in world history. And for the Jewish community, the phrase, "your papers, please," calls to mind one of the darkest periods in human history.

In 1938, all Jewish identity papers in Germany were marked with a "J-stamp" to distinguish between those who were Jews and thus targeted for certain social laws, and those who were not. Once the German extermination of European Jews began, the Nazis systematically used the identity card to identify and round up Jews. National identity cards were also used to identify Jews in Nazi-occupied Norway and Vichy France.¹⁴⁷

While nothing so extreme is likely to happen in the United States, Real ID cards could be used as a means to discriminate against people based on race, ethnicity, national origin, gender identity, immigration status, religion or any other classification the government requires. Additionally, the Real ID Act would create a checkpoint society. Just as those existing in occupied Poland, France or Norway knew they were required to carry identity papers at all times, U.S. citizens would ultimately need to carry their Real ID card with them everywhere they went. DHS Secretary Chertoff has already referred to Real ID's use in "everyday transactions" and as a way of "reconfiguring society"¹⁴⁸—and the Jewish community knows to take such statements seriously.

G. LGBT Community



PAULINE PARK, NEW YORK ASSOCIATION FOR GENDER RIGHTS ADVOCACY:

"Few people realize the impact that the Real ID Act will have on our community. Lesbian, gay, bisexual and transgendered New Yorkers would be especially vulnerable to discrimination that could result from an invasion of privacy created by the Real ID Act and laws like it. We are proud to join our allies from around New York State in opposing this disastrous federal intervention in the lives of members of the LGBT community."

There are a number of ways the Real ID Act will uniquely affect the LGBT community.

For example, the machine-readable zone required on all Real ID cards presents privacy concerns unique to LGBT individuals. The Real ID Act would enable the private sector to track and record peoples' private activities, such as

attending certain nightclubs or making purchases at certain stores. It is easy to imagine this sort of information being used to expose an individual's sexuality or to discriminate on the basis of sexual orientation.

The requirement that Real ID applicants must visit a DMV headquarters and submit a series of documents, including an original birth certificate and Social Security number, for screening against various federal databases, raises special concerns for transgender Americans. Many transgender applicants who choose not to or cannot surgically alter their sex will be exposed to additional scrutiny, humiliation and potential discrimination when their gender assignments in federal databases clash with their gender assignments on source documents or their personal appearance.¹⁴⁹ As the required uses for Real IDs grow, transgender New Yorkers may be forced to "out" themselves to DMV agents, employers, civil service bureaucrats, security guards and others to explain discrepancies.

For a community with a long history of abuse and discrimination by law enforcement personnel,¹⁵⁰ being required to expose information about one's gender history to countless government officials causes great concern. Thirty states have no laws explicitly prohibiting discrimination based on sexual orientation, leaving the LGBT community vulnerable when personal information is shared with state and local law enforcement officials without adequate protection.

LGBT New Yorkers who cannot settle document discrepancies or choose not to obtain a Real ID card could be pushed further to society's margins. For a community that has struggled so long for equality and fairness, this is simply unacceptable.

IX. NEW YORK AND THE REAL ID ACT

The debate in New York on the Real ID Act has focused largely on the question of whether undocumented immigrants should have access to a state driver's license. Unfortunately for New Yorkers, the important privacy and fiscal concerns associated with the Real ID Act have been left largely unexplored.

On April 19, 2007 the NYCLU sent a letter to then-Governor Eliot Spitzer asking him to refrain from implementing the Real ID Act in New York State.¹⁵¹ The NYCLU listed the reasons outlined in this report and called for New York State to opt out of the federal Real ID Act.¹⁵²

In May 2007, New York State DMV Commissioner David Swarts adopted some of the NYCLU's concerns and submitted comments to the DHS in response to draft regulations on the Real ID Act. While Commissioner Swarts reserved the right to enforce the Real ID Act in New York State, his letter to DHS included harsh criticisms of the Act. The commissioner's letter highlighted the following concerns:

■ Will the privacy rights of New Yorkers be protected?

The [draft regulations on Real ID] require that states must provide to all other states electronic access to information contained in the motor vehicle database of the state...The NYS DMV is concerned about the potential for information security breaches by requiring information exchange ...between jurisdictions. The exchange of Personal, Private, and Sensitive Information (PPSI), with unknown motor vehicle employees in other jurisdictions, increase the vulnerability of identity theft. The use of this information is beyond the scrutiny of the state of record. The privacy claim is only as strong as its weakest link among all employees in the fifty states.¹⁵³

■ Will DHS protect the confidential information of domestic violence victims, undercover police officers and judges?

NYS DMV is concerned about confidential information (i.e., name history, address history, personal identifiers, etc.) that may be included in the barcode [on a Real ID card]. For example, NYS law now protects certain categories of individuals such as domestic violence victims, undercover police officers and judges. DHS should evaluate whether the release of such information would disrupt the important balance between privacy and national security, and detail what data elements should be included in the barcode.¹⁵⁴

■ **Is the federal government paying for implementation of the Real ID Act in New York?**

All costs associated with implementation should be funded by the federal government...We estimate that the annual cost of issuing Federally Approved Driver Licenses under the proposed regulations would be approximately \$84 million—costs that should be borne by the federal government... Please note that this figure does not include the costs that cannot be determined from the required verification systems that the federal government has not yet developed. It furthermore does not include the costs for the development and operations of the verification databases required by this Act.¹⁵⁵

■ **Will DHS reverse the requirement that non-Real ID licenses be marked inadequate, thus creating a two-class system in the United States?**

We respectfully submit that the current law impinges on the prerogative of the states, and that a far less intrusive measure would accomplish precisely the same aim. Instead of impinging on state licenses, the law could require an affirmative declaration on federally approved licenses such as: 'Meets Federal Standards.'¹⁵⁶

At around the same time that the Spitzer administration submitted comments to DHS critical of the Real ID Act, lawmakers in the New York State Assembly and Senate introduced resolutions calling on the New York State congressional delegation to support measures to repeal the Real ID Act. Assembly Bill No. 648 was introduced by Assembly Members Adriano Espaillat, Joan Millman and Felix Ortiz and Senator Eric Schneiderman introduced its companion bill, Res. No. J2096, in the Senate.

As the Spitzer administration deliberated on whether or not to implement the Real ID Act, another conversation began to take shape regarding overturning a past DMV policy. In 2002, then-Governor George Pataki instituted a requirement that all New York driver's license applicants provide a Social Security number to prove their lawful immigration status when applying for a license.¹⁵⁷ Prior to Pataki's change in regulations, New York residents did not have to prove their immigration status when applying for a driver's license. As a result of Pataki's policy change, approximately 500,000 New Yorkers lost their eligibility for a driver's license.¹⁵⁸

In response to Pataki's change in policy, numerous labor unions, immigrants' rights and civil rights organizations launched a coalition dedicated to restoring access to driver's licenses to all New Yorkers. These organizations built support among elected officials throughout the state. In New York City, the organizations successfully lobbied for passage of a City Council resolution "urging New York State to opt out of implementing the [Real ID Act's] provisions regarding issuance of driver's licenses to immigrants."¹⁵⁹

When Eliot Spitzer ran for governor, he promised to restore access to driver's licenses to all New Yorkers.¹⁶⁰ On Sept. 21, 2007, Spitzer kept his promise and announced a reversal of the Pataki-era policy. Under Spitzer's proposal, New Yorkers would no longer have to prove their immigration status when applying for a driver's license. Instead, applicants would be required to submit secure identity documents, such as valid foreign passports, when applying for a driver's licenses.¹⁶¹

Labor unions and immigrants' rights and civil rights organizations praised the new policy and described it as one that would enable hundreds of thousands of New Yorkers to access insurance and legally drive, as well as emerge from the shadows and become greater contributing members of society and the economy. Even relatives of those who died on Sept. 11, 2001 supported the new policy.¹⁶²

However, Spitzer's proposal stoked fierce opposition, and on Nov. 14, 2007, Spitzer bowed to intense political pressure and announced that he had withdrawn the proposal to restore access to driver's licenses.



The New York Alliance Against the Real ID Act represents more than two dozen organizations from across the political spectrum that oppose the Real ID Act.

A Rising Anti-Real ID Voice in New York

In order to educate New Yorkers on the privacy and fiscal threats posed by the Real ID Act, a new coalition formed in the early months of 2008 to convince Spitzer, and his successor Governor David Paterson, to reject the Real ID Act.

The New York Alliance Against the Real ID Act represents organizations from across the political and issue spectrum that have joined together to oppose implementation of the Real ID Act in New York State. More than two dozen organizations are part of the Alliance, ranging from Common Cause New York, People for the American Way, and the National Council of Jewish Women, to the Libertarian Party of New York State, the Constitution Party of New York, and the Shooters Committee on Political Education.¹⁶³

The Alliance continues to work to convince New York's elected officials to join the national movement against the Real ID Act and refrain from implementing the Real ID Act in New York State.

The consequences of identity theft would be more pronounced under a Real ID regime. Thieves with access to the Real ID database could produce copies of birth certificates or Social Security cards, making it difficult for victims to ever recover their identities. Real ID cards will be billed as more secure and will have more applications than current driver's licenses, allowing identity thieves armed with a Real ID in somebody else's name to inflict more harm on their victims than ever before.

RECOMMENDATIONS

New York's elected officials must take the following steps to protect state residents from the harms that the Real ID Act will cause to their rights, privacy, and pocketbooks.

1) New York's 31 federal lawmakers must support repeal of the Real ID Act.

Congress must take the lead in repealing the national ID card provisions contained in the Real ID Act. The Identification Security Enhancement Act is a bi-partisan bill that would repeal the controversial national ID card sections contained in the Real ID Act, and replace those sections with a workable program for improving identity security. The Identification Security Enhancement Act will:

- Reinstatement of Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004, which implemented the recommendations of the 9/11 Commission. Real ID subverted these recommendations in the interest of cheap political gain.
- Bring all critical stakeholders back to the table to discuss identification security by reconvening a group of "negotiated rule makers" to develop workable, secure standards for improving license and ID card security. Included in this group will be state licensing and elected officials, the U.S. Department of Transportation, Department of Homeland Security, security experts, privacy advocates, and experts on civil liberties.
- Protect New Yorkers' fundamental rights to privacy and due process by ensuring that personally identifiable information on any future driver's license is encrypted, establish due process rights for challenging database errors, prevent the private sector from 'skimming' personal information, and respect state privacy laws.

New York's Democrats and Republicans alike should sign on as co-sponsors of the Identification Security Enhancement Act or a similar Real ID repeal bill.

2) Governor Paterson and the New York State Legislature must support legislation opposing the Real ID Act.

Issuing driver's licenses has long been the responsibility of states and not under purview of the federal government. That is why 21 states have already passed legislation opposing the Real ID Act and 11 of those states have passed binding statutes preventing implementation.¹⁶⁴ Lawmakers in more than 40 states have introduced legislation opposing the Real ID Act.¹⁶⁵

State opposition has been based on several factors, including the Real ID Act's threat to privacy, its imposition on states as an unfunded federal mandate, concerns about increased bureaucracy and hassles for American citizens, and a desire to preserve the principle of federalism.¹⁶⁶

The New York State Legislature should pass legislation to oppose implementation of the Real ID Act, and Governor Paterson should support such legislation. The Real ID Act will cost New Yorkers hundreds of millions of dollars to implement. At a time when the state is facing a multibillion dollar deficit, it should not be funding an optional, experimental and unproven federal licensing program.¹⁶⁷

3) Governor Paterson should sponsor a states' compact with New York's regional neighbors in opposition to the Real ID Act.

Governors across the country, and across the political spectrum, have taken a strong stance against the Real ID Act. In New Hampshire, Democratic Gov. John Lynch signed a bill in June 2007 that calls Real ID "contrary and repugnant" to the state's constitution. In Montana, Gov. Brian Schweitzer, a Democrat, signed a bill in April 2007 rejecting the Real ID Act and declaring it "inimical to the security and well-being of the people of Montana."¹⁶⁸ Republican South

Carolina Gov. Mark Sanford signed legislation in June 2007 rejecting Real ID and later explained, "Does it make any sense to begin a de facto national ID system without debate? As a practical matter, this sensitive subject received far less debate than steroid use in baseball."¹⁶⁹

Governor Paterson should take the lead in organizing resistance among Northeast and Mid-Atlantic governors to reject the Real ID Act. Senator Schneiderman recently proposed a "Governors' Compact" for the region to jointly renounce state implementation of the Real ID Act. We encourage Governor Paterson to support Senator Schneiderman's proposal.

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¹⁵⁹ Resolution Expressing Continued Opposition to the Real ID Act of 2005. New York City Council., Res. No. 1009-A. 2005. (available at <http://webdocs.nycouncil.info/textfiles/Res%201009-2005.htm?CFID=503424&CFTOKEN=92507760>).

¹⁶⁰ Bernstein, Nina. "A Promise on Immigration Now a Problem for Spitzer." *New York Times*. 24 Jan. 2007; Anderson, Christine. Statement to Polish Daily News. 23 Jan. 2007.

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¹⁶² In a letter to Gov. Spitzer, relatives of those who died September 11, 2001 wrote:

September 11th Families for Peaceful Tomorrows strongly disagree with certain New York lawmakers who have been equating immigrants with terrorists in an attempt to undermine the recent decision by Governor Spitzer to expand immigrant access to driver's licenses.

Make no mistake—immense grief is still being experienced six years later by those of us who lived through the violent loss of a loved one on 9/11. It is very easy to turn that grief into hatred for groups of people who are not like us. Statements equating Governor Spitzer's decision with "assisting" Osama Bin Laden are wrong, hurtful, irresponsible, and they propagate a climate of racism towards immigrants

We all want to be safe. The broadening of government-issued driver's licenses protects our safety

by ensuring that people are competent to drive and held responsible for infractions of the law... We are offended by anyone who has tried to manipulate the memories of those we lost on September 11th by issuing statements to exploit the tragic events of 9/11 and use those events for political gain.

See Welty, Adele. Letter to New York Governor Eliot Spitzer on behalf of September 11th Families for Peaceful Tomorrows. 14 Apr. 2007. (available at http://www.nyclu.org/files/real_id_911_families_letter.pdf).

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