

**PREPARED REMARKS ON THE REAL ID ACT  
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**TO UTAH HOUSE GOVERNMENT OPERATIONS COMMITTEE  
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**SALT LAKE CITY**

Good day Chairman Donnelson and other members of the Utah House Government Operations Committee. My name is Karen McCreary and I am the Executive Director for the American Civil Liberties Union of Utah. Thank you for the opportunity to speak to you today.

The American Civil Liberties Union's opposition to the Real ID Act is well known. I testified at last year's hearing before this committee in favor of a resolution Opposing Real ID . We have spent considerable time studying the provisions of the Act and its implications for the constitutional rights of all Americans. Through our advocacy at the state and federal levels, and through our website ([www.Realnightmare.org](http://www.Realnightmare.org)), we have made lawmakers and the public aware of the substantial burdens that the Real ID Act imposes on states and their citizens. These burdens come in the form of: enormous costs that are minimally paid for by the federal government (which makes this is a huge unfunded mandate); massive invasion of everyone's privacy; an increase in exposure to ID theft and the potential for "Kafkaesque" encounters with the excesses of bureaucratic government.

Because the ACLU's general position is so well known, I will focus my testimony on the recently finalized Department of Homeland Security (hereafter Department) regulations and their significant shortcoming when it comes to the states. I will also talk about the relevant portions of the most recent budget submitted by the Bush

Administration that demonstrate the continuing failure on the part of this Administration to ask for the necessary funding for implementation of the Real ID Act. Finally, I will discuss a couple of constitutional issues, one of which is of particular relevance and significance to Utahns.

On January 11, 2008, the Department of Homeland Security issued its final regulations for implementing the Real ID Act. The Department had published proposed regulations in March of 2007. The proposed regulations generated more than 21,000 public comments that raised a range of concerns. Unfortunately, the final regulations fail to address the majority of concerns that were raised.

### **Cost of Implementing Real ID**

One of the biggest problems that the regulations fail to address is how states will pay for those measures that are needed to come into compliance with Real ID. The regulations acknowledge that compliance “carries with it significant cost and logistical burdens, for which Federal funds are generally not available.” The Department estimates it will cost at least \$9.9 billion to pay for Real ID. This is a revision of their earlier cost estimate of \$23.1 billion. As our analysis indicates, the Department has relied on fuzzy math and questionable assumptions to reach that reduced figure. For example, although the Department anticipates that a Real ID requirement will become widespread throughout American society, they reduce the cost by claiming that 25% of the country will never bother getting a Real ID because they already have passports. In this and other ways, the Department has fudged the numbers in order to bring down the cost. It is important to note, however, that to date, Congress has appropriated less than 1% of the Department’s reduced estimate.

## **Information Technology Overhauls**

Another significant problem is the impact that Real ID will have on states' information technology systems. The Act requires sweeping changes to state driver's licenses and the systems by which those licenses are administered. It imposes a requirement for uniform data elements on state licenses. It also imposes a requirement of information sharing among states' databases. The regulations do not, however, provide any guidance on how data sharing will be implemented. Leaving this critical question unanswered is another way the Department has attempted to drive down the cost.

What is unfortunately clear is that the states will be forced to make expensive changes to their information technology systems and in some cases states will find themselves discarding many of the recent improvements they have made. The Act and the regulations will in effect coerce states into making extensive overhauls of their information technology systems.

## **Privacy**

Because we do not know what the infrastructure of the data sharing will look like, there is no way to know how the privacy of Utahns' personal information will be safeguarded. The Department has been petitioned repeatedly by groups like the ACLU and the Association of Computing Machinery to create some sort of standard for protecting the data that will be stored in the massive interlinked database that will be created under Real ID. On this question, the Department has punted over and over again. The final regulations contain no national security plan for Americans' personal information; instead they hypothesize that the states will figure it out. Further, the Department contemplates that the American Association of Motor Vehicle

Administrators will operate the database. This private association has no accountability to Utahns or the American public. It is not bound by either the Privacy Act, which applies to federal agencies, or the Drivers' Privacy Protection Act, which applies to state DMVs. From a privacy standpoint, this dodge on the part of the Department is unacceptable.

### **Reenrollment**

Under the final regulations, Utah DMV, like other DMVs, will have to reprocess existing licensees. The regulations acknowledge that all applicants will need to complete "an application process similar to those of a first time driver." This means that Utah DMV will have to revamp how applications for new licenses and renewals are handled. Many of the Real ID requirements (such as presenting source documents, verifying identity and taking a digital photo) will require an in-person application. Utahns will not be able to take advantage of the recent progress made by Utah DOT that allows them to use the Internet or mail. UTah DOT will be swamped by its customers and there will be long lines. And you will have angry constituents.

Utah DOT could also be overwhelmed by the need to develop and maintain a document storage and retention capacity. This will require additional staff, new equipment and computer software, and the remodeling and redesigning of numerous offices. This will also require extensive new training in detection of fraudulent documents. The Department's regulations impose on Utah DOT and other DMVs the increased cost and burden of this training without providing any funding to pay for it.

### **Bush Administration Budget**

As you probably realize by now, implementation of Real ID is going to cost a whole lot of money. And that is one area where the Bush Administration has demonstrated its true lack of interest in helping the states and shown its willingness to pass on this unfunded mandate. The President's FY 2009 budget was its last chance to get the funding portion of Real ID right. Instead of asking Congress for the \$1 billion in startup funds that the National Conference of State Legislatures and National Governors Association have repeatedly stated are absolutely necessary, the budget contains only \$110 million, to be split between Real ID and other Homeland Security programs. The message is clear: the Bush Administration cannot figure out how to pay for Real ID.

### **Constitutional Problems with the Act**

The Real ID Act burdens Americans' right to travel, which has been recognized by the Supreme Court to derive from the First Amendment. In addition, because a Real ID will be required to enter a federal building, including a courthouse, there are significant implications for due process, the right to trial before a jury of one's peers, and the right to petition government officials. Instead of responding to these concerns, the Department essentially threw its hands in the air, simply *disagreeing* in its final regulations that these requirements posed problems for the constitutional rights of Americans, or saying that those problems were a result of the statute itself and the Department was unable to mitigate them.

### **Real ID Act Will Increase Exposure to ID theft**

Jim Harper of the CATO institute, an expert in ID security was here last year and testified to the horrors of REAL ID in terms of privacy and theft. The Privacy Rights

Clearinghouse which has worked with thousands of ID theft victims, has come out strongly against REAL ID. It notes that a lot of what makes it so difficult for victims of ID theft is that they run up against a presumption that the transactions completed in their name are legitimate. REAL ID may strengthen that presumption. Real ID will also create new opportunities for ID thieves to commit their crime. The law requires DMVs to store scanned copies of birth certificates, Social Security cards, and any other documents that individuals present when they apply for a license. It creates a database that is linked between all states, a national database. That extensive national data base will be accessible by millions employees at all levels of government around the nation; the potential for inappropriate access and theft is high. And REAL ID mandates a nationally standardized “machine-readable zone” that will let merchants and other private parties scan personal data off licenses with increased ease, putting all that information into wider circulation.

### **Conclusion**

This is just a brief review of our concerns about the Real ID Act. More information on the ACLU’s position on the Act and the regulations can be found at [www.Realnightmare.org](http://www.Realnightmare.org).

In closing, let me say that we do not believe that the Real ID Act can really be fixed. A national ID card is inherently problematic for all the reasons I’ve laid out. That is why seven states – Georgia, Maine, Montana, New Hampshire, Oklahoma, South Carolina and Washington – have opted out of the program. That is why we support Utah HB 449 which prohibits Utah from participating in Real ID. On the national level we support an alternative to Real ID, the Identification Security Enhancement Act (S. 717 in

the U.S. Senate and H.R. 1117 in the House). This bill addresses many of the problems I have discussed. It would repeal Title II of the Real ID Act of 2005 and restore a negotiated rulemaking process set up by the Intelligence Reform and Terrorism Prevention Act of 2004, which had already begun to meet and set standards for securing driver's licenses and ID cards when the Real ID Act stunted its progress. That negotiated rulemaking process could develop a plan for enhancing ID security faster than it will take to implement Real ID, while respecting states' traditional role in determining licensing rules and protecting Americans' privacy.

Real ID is indeed a real nightmare, but it is one from which we can still wake up.

Please vote in favor of House Bill 449. Thank you and I will be happy to try to answer any questions you may have.