



**TESTIMONY SUBMITTED TO
THE SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
SUBMITTED BY
ANDY HOOVER, COMMUNICATIONS DIRECTOR, ACLU OF PENNSYLVANIA
RE: IMPLEMENTATION OF THE FEDERAL REAL ID ACT
STATE CAPITOL, HARRISBURG
FEBRUARY 8, 2017**

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Chairman Aument, Chairman Haywood, and members of the committee, thank you for the opportunity to submit testimony for today's hearing on the federal Real ID Act. Founded in 1920, the American Civil Liberties Union is one of the nation's oldest civil rights organizations. Today, the ACLU is supported by more than one million members nationwide, including 28,000 members in the commonwealth. I am here today on behalf of the members of the ACLU of Pennsylvania.

In 2005, Congress passed the Real ID Act as an amendment to an appropriations bill to fund American troops overseas and to provide aid to the victims of the 2004 tsunami in South Asia. The act passed without hearings and without public consideration, and it undermined a process involving diverse stakeholders who were considering improvements to identification requirements in the wake of the work of the 9/11 Commission.

According to the statute, Real ID was to be implemented by the Department of Homeland Security by May of 2008. With extensions that have been granted to 24 states, Real ID will not be fully implemented until at least October 1, 2020.

After the passage of Real ID, the General Assembly considered and debated legislation to block the implementation of Real ID in the commonwealth over the course of several sessions. Both chambers first passed non-binding resolutions to protest Real ID and urging Congress to repeal the act or significantly amend it to protect privacy and diminish the fiscal impact. In June, 2007, the Senate unanimously passed SR 126, offered by then-Senator Robbins, which read in part:

The REAL ID Act requires the creation of a massive public sector database containing information on every American that is accessible to all motor vehicle agency employees and law enforcement officers nationwide and that can be used to gather and manage information on citizens, which is neither the business nor the responsibility of government... The REAL ID Act enables the creation of additional massive private sector databases, combining both transactional information and driver's license information gained from scanning the machine-readable information contained on every driver's license(.

Ultimately, in October 2011, the Senate unanimously passed what was then Senate Bill 354, offered by Senator Folmer. In April 2012, the House passed the bill with just five votes against it, and Governor Corbett signed the bill into law, which became Act 38 of 2012. Five members of this committee voted in favor of the bill as members of the Senate, and three members of the committee voted in favor of SB 354 as member of the House.

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The states were in all-out rebellion against Real ID. Pennsylvania was the 16th state, and the largest state, to opt out of Real ID by statute, and the ACLU of Pennsylvania was a vocal supporter of the pushback against what was widely viewed as creating a de facto national ID card of our state drivers' licenses and non-driving IDs.

To some extent, the rebellion worked. The Department of Homeland Security (DHS) kicked the Real ID can further down the road, and by doing so, DHS allowed the states to spread the cost of implementation over multiple fiscal years. If the law is finally implemented in 2020, it will go into effect a full 12 years after the statute's mandated implementation date.

Of course, the elongated implementation process illustrates that Real ID is nothing more than security theater. If the requirements of the act are so crucial for increased security, why is the final implementation date of Real ID 12 years after it was required to be implemented by statute, 15 years after the law was passed, and *19 years* after the terroristic attacks of September 11, 2001?

A Pennsylvania driver's license or non-driving ID is acceptable for air travel today, February 8, 2017, and it will be acceptable on January 21, 2018. But on January 22, 2018, identification cards issued by the Department of Transportation will no longer be secure from the perspective of DHS.

Pennsylvania law requires that a person has their driver's license renewed every four years. If the General Assembly repeals Act 38 and implements Real ID, will these supposedly unsecure IDs still be acceptable for air travel for four more years until every license holder in Pennsylvania has the opportunity to renew their license or non-driving ID? Or will everyone who wants to fly need a Real ID-compliant identification card on January 22, 2018, creating a rush on PennDOT offices between now and then?

These are the kinds of questions that members of the General Assembly and the Wolf administration must ask of federal officials, rather than simply accepting the Doomsday narrative of DHS.

If the intent of the General Assembly is to repeal Act 38- and there are strong indications that is your intent, in light of today's scheduled committee meeting to vote on Senate Bill 133- the ACLU of Pennsylvania strongly encourages that repeal to be coupled with increased privacy protections for Pennsylvania license and ID holders. The worst possible outcome for the people of the commonwealth would be repeal of Act 38 without additional safeguards for our personal data.

Our recommendations include the following:

Create an option for a drivers license and non-driving ID that is not Real ID compliant

At least three states- Arizona, New Hampshire, and Washington- have created a dual ID system in which license and ID holders can choose between a card that is compliant with

Real ID and one that is not. This system allows people who recognize the privacy risks of Real ID to have another option and ensures that Pennsylvanians are not forced into a system that they may not otherwise choose.

An option for a non-compliant ID should be the default option for applicants and renewals, creating an opt-in for anyone who wants a card that is compliant with Real ID. Those options should also be explained in clear detail so that consumers understand the advantages of both the non-compliant card and the compliant card. The explanation cannot be as shallow as, “You will not be able to board a plane with the non-compliant card.” PennDOT’s explanation should include the privacy risks associated with Real ID-compliant cards.

A significant source of concern about the privacy risks of Real ID has been the statute’s requirement that departments of motor vehicles store source documents that establish a person’s identity. These can include birth certificates, Social Security cards, and other sensitive information. If DMVs choose to store copies of source documents in paper form, those documents must be retained for seven years. If copies of the documents are stored electronically, they must be retained for ten years. This storage creates a treasure trove of information for identity thieves, and DMVs around the country have dealt with security breaches, including at PennDOT.

An option for an identification card that is not compliant with Real ID should also prohibit the storage of source documents for those who choose the non-compliant option, and that information should be clear to applicants when they are choosing between a compliant or non-compliant ID.

In addition, the Real ID regulations allow states the option to not scan and store birth certificates, including for Real ID-compliant card holders. Legislators need to inquire with PennDOT on whether or not it is currently doing so, and, if necessary, end that practice by force of law.

Finally, the fee for the non-compliant card should be lower than the fee for the compliant card. PennDOT has and will spend millions of dollars complying with Real ID, and that cost should not be repaid by those who choose not to participate in the program.

Non-participation in the nationwide database of license holders

The Real ID statute requires the creation of a massive, nationwide database of license and ID holders. While a person who currently possesses an ID in Pennsylvania could be vulnerable to a security breach within the commonwealth, this national database leaves Pennsylvanians vulnerable to a security breach anywhere in the country.

In a nod to the states’ rebellion against Real ID, the final regulations from DHS do not include implementation of the database. Nevertheless, a pilot program has begun called the State to State Verification Service, or S2S.¹ This program is administered by the American Association of Motor Vehicle Administrators with grants from the federal government.

¹ More information is available at <http://www.aamva.org/State-to-State/>.

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AAMVA is a private organization and, thus, is not subject to open records laws or the Freedom of Information Act, throwing a veil of secrecy over the operation of S2S.

Today, states are voluntarily participating in S2S, and according to information gathered by the ACLU, 13 states have committed to participation. Pennsylvania is not one of them.

The supporters of Real ID originally envisioned a database known as a “pointer” system, in which existing databases from DMVs would connect to each other and would then create a query system. However, according to our source, states participating in S2S have sent the entirety of their data files for use in the program.

The ACLU has also learned that S2S is storing the last five digits of Social Security numbers (SSN). The first three digits of a Social Security number- the area number- can be determined by when and where a person is born.² If a person has the last five digits of someone’s SSN and they know where and when the person is born, that person only needs one more digit to determine that SSN. The privacy implications of the data storage in S2S are significant. S2S is storing more than the data points that are visible on a person’s identification card.

Pennsylvania should not voluntarily participate in S2S and should only participate when it is forced to do so by DHS. Even then, the commonwealth will best serve its residents by not sharing the Social Security numbers of identification card holders until DHS mandates it.

Data destruction

When government collects sensitive personal information from people, best practices include a timeline for data destruction. Without it, government creates a public treasure trove of data that, at best, is vulnerable to security breaches and, at worst, can be manipulated for nefarious purposes.

As mentioned earlier in this testimony, Real ID requires the electronic and paper storage of source documents for ten years and seven years, respectively. The General Assembly can create enhanced privacy safeguards by mandating the destruction of that data after the storage windows have expired.

Questions for PennDOT

The information shared here provides legislators with a host of questions for PennDOT, including:

- Is the department currently scanning and storing source documents? If so, in what form are they stored?
- Is the department scanning and storing birth certificates and Social Security cards? If so, is that data shared with any agencies outside the commonwealth?
- Is the department willing to commit to non-participation in S2S until it is forced to do so by DHS?

² More information about how the Social Security Administration determines SSNs is available at <https://www.ssa.gov/history/ssn/geocard.html>.

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- Is the department willing to commit to not sharing Social Security numbers until it is forced to do so by DHS?

The repeal of Act 38

At the ACLU of Pennsylvania, we are certainly conscious of the position you are in with regards to repealing Act 38. The showdown between the states and the federal government on Real ID has always been a high-stakes game of chicken. We implore lawmakers to not simply accept DHS's chaos narrative in which is threatening to create confusion at airports around the commonwealth. Philadelphia International Airport was the 19th-busiest airport in the country in calendar year 2014, according to the Federal Aviation Administration.³ Pittsburgh International Airport was the 46th-busiest. Pennsylvania is a significant player in the business of air travel. That fact gives you leverage to probe deeper and to push harder on the federal government. While we recognize there may be a desire to repeal Act 38 in order to avoid the possibility that DHS will follow through on its threat, we implore you to not simply bend to the will of the federal government on Real ID but to use your leverage to insist on significant privacy protections, be it at the state or federal level.

If the General Assembly is going to repeal Act 38, that action must include erecting additional safeguards to protect the privacy of all Pennsylvanians.

Finally, I will note that the ACLU of Pennsylvania is not alone in our concerns with Real ID. On January 24, the state House Republican caucus sent a letter to President Trump raising their "continuing objections to the Real ID Act."⁴ The letter was co-authored by Speaker Turzai and Representative Metcalfe, signed by 114 additional House members, and included concerns about states' rights, cost, burden on citizens, and privacy. The House members have asked the president for assistance "in resolving the constitutional and cost issues associated with the Real ID Act" and have encouraged Congress to amend the act.

Thank you to the chairmen and the committee members for your time today and for considering our views.

³ Available at https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy14-commercial-service-enplanements.pdf.

⁴ Available at http://www.pahousegop.com/Display/SiteFiles/109/OtherDocuments/REAL%20ID%20letter%20to%20President_1-24-17.pdf.