



Testimony of Allen Gilbert

Executive Director

American Civil Liberties Union of Vermont

On the topic of

Will REAL ID Actually Make Us Safer?

An Examination of Privacy and Civil Liberties Concerns

U.S. Senate Committee on the Judiciary

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American Civil Liberties Union of Vermont, 137 Elm St., Montpelier, VT 05602



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Submitted to the U.S. Senate Committee on the Judiciary, May 8, 2007

1. Oral testimony given before the Committee

2. Appendices

Appendix A – ACLU Real ID Scorecard

Appendix B – Status of Anti-Real ID Legislation in the States (map)

Appendix C – Vermont news articles about Real ID

C.1. “National ID System Expensive, Complicated,” editorial from *Burlington (Vt.) Free Press*, Aug. 27, 2006

C.2. “Federal Legislation – Real ID Act of 2005,” from *Vermont Privacy News*, Summer 2005

C.3. “National ID Law Could Mean Problems for State,” from *Rutland (Vt.) Herald* and Barre-Montpelier (Vt.) *Times Argus*, Jan. 14, 2006

C.4. “Identity Guidelines Could Cost State \$8 Million,” from *Rutland (Vt.) Herald* and Barre-Montpelier (Vt.) *Times Argus*, May 3, 2007

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My name is Allen Gilbert. I live in Worcester, Vermont. I've been a journalist, a teacher, and I ran a small business for 15 years. I'm currently the executive director of the American Civil Liberties Union of Vermont.

Thank you, Chairman Leahy, and Committee Members for this invitation to testify.

People in Vermont have a lot of unanswered questions about Real ID. Seldom have I encountered an issue that raises concerns among such a wide range of people.

I can talk with a legislator about Real ID, and she'll point out that the National Conference of State Legislatures expresses misgivings about the program.

I can talk with a member of the National Gun Owners, and he'll worry about government intrusion.

A member of an advocacy group for victims of domestic and sexual violence worries that Real ID threatens protection programs for women and children.

The Ancient Order of Hibernians doesn't like Real ID, and neither does the American Friends Service Committee.

Earlier this year, the Government Operations Committee of the Vermont House of Representatives passed, unanimously, a resolution opposing Real ID. The resolution was subsequently approved, also unanimously, by the full House. The longest-serving member in the Vermont House sits on the Government Operations committee. Rep. Cola Hudson was born when a fellow Vermont Republican, Calvin Coolidge, was president. Rep. Hudson just shook his head "no" when Real ID was described.

Our Motor Vehicles commissioner testified in another committee about the “re-enrollment process” required by Real ID. Everyone will have to visit a DMV office with proper documents. For some people in Vermont, that means a long trip. And when they get to the DMV office, our commissioner said, “The jokes about waiting in line at DMV are no longer going to be jokes but reality.”

Long-time residents will feel like suspects when they’re required to report and show their papers. Our commissioner noted that her father is 82 years old. He’s had a driver’s license for years. It’s going to be hard to tell him, she said, that he has to prove his identity before he can get his license renewed. People in Vermont pride themselves on being part of tightly knit communities. Questioning who someone is, is seen as a sign of unfriendliness.

Birth records are kept by town clerks in Vermont. The clerks – some of whom work part-time -- are already in a frenzy over the thought of complying with the myriad requests for records that they’ll get because of Real ID.

A state senator who in his other life runs a construction company and races stock cars, said, “I’m not sure if it’s the budgetary concern or the privacy concern or the nightmare it’s going to create that concerns me most about this.”

A series of data breaches this winter in Vermont led people to wonder about the security of stored data anywhere. DMV officials acknowledge that there are hundreds of unauthorized attempts daily to get at the department’s information database.

Increasingly, Vermonters are worried that too much data is being collected about too many things. It’s not just a sense that privacy is eroding. Vermonters are worried that their identities will be stolen by identity thieves.

Vermonters are pretty responsible people. They generally step up to the plate when asked to do the right thing. But many people aren’t so sure that Real ID is the right thing. It seems too big, too expensive, and too centralized. Real ID has hit a nerve with people.

Mr. Bruce Schneier will testify later this morning. I’ve heard him lecture, and one thing that he’s said has really stuck with me. He has said that security is an equation, with one side being what you’re giving up and the other side what you’re getting in return. I’m afraid that with Real ID, we’re giving up too much and not getting much, if anything, in return.

Real ID is also going to cost the states a lot of money. The cost in Vermont is now estimated at around \$8 million. That is a substantial expenditure for us. Some of our state senators want to raise license fees and call the increase a congressional Real ID tax.

The cost, the implementation, the risk of identity theft – these things worry Vermonters. Vermonters are not convinced that Real ID is a program that will make Americans safer. It is a caution that I hope Congress will heed.

People are saying that we need minimum licensing standards, and we agree. That's why the ACLU participated in the negotiated rulemaking created by the Intelligence Reform and Terrorism Prevention Act of 2004. If Rep. Sensenbrenner hadn't interfered, we would have had those standards by September 2005 and they would have been created in a cooperative fashion. But, what Janice Kephart and Jim Carafano are proposing is to push forward with a system that the states are rejecting en masse and that - because of its impracticality, extraordinary costs, and constitutional infirmities -- will be delayed years and years, if it's ever built at all.

There's a better way. On behalf of the ACLU, its 53 affiliates and hundreds of thousands of members nationwide, I urge you to mark up and move S. 717, the Akaka-Sununu-Leahy-Tester bill. That bill would replace Real ID with sensible, cost-effective driver's license standards. The problems with Real ID would be fixed, and the standards could be achieved in a cooperative fashion with state officials, federal government agencies, and privacy and civil liberties experts. S. 717 paves the way for a better system, one that complies with the 9/11 Commission's minimal statement.

And S. 717 will not threaten to change the quality of life of Vermonters, in all the ways that Real ID will.

The written testimony I am submitting includes the ACLU's comments on the rules proposed by Homeland Security to implement Real ID, a map showing state-by-state actions regarding Real ID, and Vermont news articles on Real ID.

Again, thank you for this opportunity to testify before you.

Appendix A

ACLU Real ID Scorecard



New Federal Regulations Get an ‘F’ in Addressing Issues with the Real ID Act

DHS Rules Score Only 9 Percent On ACLU Scorecard

On March 1st, the Department of Homeland Security issued proposed Federal regulations for implementing the Real ID Act, the law that would federalize state driver’s licenses and the motor vehicles departments that issue them and create the nation’s first-ever de facto national identity card system.

In preparation for the issuance of the regulations, the ACLU prepared this Real ID Scorecard to assist in the systematic analysis of this complex legislation. It attempts to list all the issues that have been identified as concerns with Real ID by a variety of parties, including privacy activists, domestic violence victims, anti-government conservatives, religious leaders, and DMV administrators.

The Scorecard shows that the regulations utterly fail to remedy the problems with Real ID. Of the 56 issues listed, the regulations passed 5 (9 percent), scored an incomplete on 9 (16 percent), and failed the rest.

Indeed, the government was often strikingly forthright in admitting that the regulations do not solve deep problems with this statute. The regulations acknowledge that wait times at the DMV will increase substantially; that many applicants will not have source documents they need to obtain a Real ID card; that “there is no single way for States to comply” with Real ID’s verification requirements by the statute’s deadline “or in the reasonably foreseeable future”; and that the regulations will be extremely costly. (The most authoritative prior estimate of Real ID’s costs was \$11 billion. The regulations, however, concede that the price tag for Real ID will come to a whopping \$23 billion.)

DHS cannot be blamed for such problems when they arise out of what is, at its core, simply an ill-conceived and impossible law. In other cases, however, the government fails to set forth rules that could have solved or ameliorated problems with the act. On Real

ID's onerous verification requirements, for example, DHS did not ease burdens on states and individuals, but in fact increased them (by requiring verification of all identity documents not just to obtain a Real ID, but even to renew one; requiring not one, but two documents showing proof of address). Similarly, the agency acknowledges the danger of license data being scanned by third parties, but fails to take action to stop the problem, and merely encourages the states to come up with a solution. DHS says it "leans toward" requiring that data to be encrypted but opts not to due to "practical concerns."

Aside from failing to solve the problems with Real ID, the regulations add up to a striking federal takeover of state DMV offices. The regulations put the federal government in the position of dictating the minutiae of DMV operations, from the colors that can be used on a license to the computer format in which image files (.JPG) and scanned documents (.TIF) are stored, to the details of how a DMV office secures its plant, to many other details.

Initial media coverage of the new regulations focused on the additional time that states were being given to comply with Real ID. But what this scorecard makes clear is that Real ID is a fundamentally misguided policy that will waste large amounts of money and other limited resources, and impose significant inconveniences, without improving our safety. We don't need to delay Real ID, we need to throw it away and start fresh.

The grades

The following grades indicate whether the federal regulations succeed in fixing each problem. In cases where DHS addressed the problem but could not or did not fix it, we list a grade of "incomplete."

Problems with the act have been grouped into four categories: 1) impact on individuals, 2) impact on privacy, 3) impact on states and 4) impact on Constitutional rights. Page numbers refer to pages in the Federal Register notice.

Impact on Individuals		
PASS ☐	FAIL ☒	INC ☐
Increased wait time at the Department of Motor Vehicles (“DMV”). Many state DMVs predict extensive increases in customer wait times resulting from the many new requirements imposed by Real ID. In a survey by the American Association of Motor Vehicle Administrators (AAMVA), states predict that Real ID will bring increased “customer traffic flow and customer wait/visit time in all field offices” and will have a “significant influence on customer service.” (<i>“The Motor Vehicle Administrators Survey on Real ID: An ACLU White Paper”</i>) The regulations impose significant new burdens on individuals that, as DHS acknowledges (p. 10,843, Federal Register, Volume 72, Number 46), will increase wait times and service times at DMVs, as well as the time necessary to obtain new source documents. Partly this would be caused by the fact that initial applications for all Real IDs (as well as many renewals) must be done in person (p. 10,854), and many applicants will not have source documents when they need them (p. 10,845). DHS estimates opportunity costs to individuals from waiting at the DMV at \$1.7 billion (p. 10,845).		

PASS ☐	FAIL ☒	INC ☐	“Full Legal Name” requirement. Wide inconsistency often exists between names even on federal documents, such as a social security card and a passport belonging to the same individual. All these records must be verified and harmonized under REAL ID prior to the issuance of a license. Recently in Alabama tens of thousands of older drivers had difficulty renewing licenses because the names in their DMV records were not consistent with other records such as the Social Security database. Many Americans have records that reflect not only their “legal name”, but also the everyday names they use. James Joseph Johnson Jr. may have documents in the name of Jim Johnson, JJ Johnson, Jim Johnson Jr., Joe Johnson, etc. (<i>ACLU analysis, “The Alabama Mess: One State Tries to Begin Tackling Real ID”</i>). The regulations do not address or solve the problem of individuals who are recorded under different names on different documents or in different databases. The regulations simply state that all license holders must use their legal name in applications and that the identity documents they submit must contain that name (p. 10,853).
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PASS FAIL INC ☐ ☒ ☐	Individuals with changed names. Individuals whose name on one source document does not match the name on another will find themselves in a bureaucratic bind under Real ID. This is a substantial portion of the population including women who have taken their spouses' last names and a large percentage of the Asian-American community (whose first and last name may be switched on their source documents). (<i>National Governors Association ("NGA")</i>, <i>National Conference of State Legislators ("NCSL")</i>, & AAMVA, "<i>The Real ID Act: National Impact Analysis</i>") According to the regulations, in order to prove a name change an applicant must present a certified copy of a record from "US or state-level Court or government agency" (pp. 10,835 & 10,851). This does not address the issue of individuals whose name is recorded differently in different databases or records. It also requires individuals to take the formal step of changing their name; currently in many states it is lawful to simply use a different name as long as an individual has no fraudulent intent. Finally, many marriage certificates are issued by county (not state) officials, making it unclear how individuals could comply.
PASS FAIL INC ☐ ☐ ☒	Principal address requirement. The act requires, without exception, that compliant IDs contain one's "principal address." It is unclear how people without such an address or who live in different places – such as students, those who live in RVs and other mobile homes, and the homeless – will solve this issue. (<i>See ACLU, "Real Costs: Assessing the Financial Impact of the Real ID Act on the States"</i>) The regulations attempt to address this issue by defining principal address as the place where an individual has his "true, fixed and principal home" (p. 10,851), and stating that DMVs can make exemptions for the homeless (pp. 10,803 & 10,836). There is still some concern regarding whether all states will be able and willing to create workable methods for utilizing these exemptions.

PASS FAIL INC ☐ ☒ ☐	Threat to safety from principal address requirement. A number of states have laws that allow judges, police officers, domestic violence victims, or others at risk of retaliatory criminal violence to use agency addresses or P.O. boxes in lieu of their actual residence address. Yet states cannot keep those laws on the books if they are to comply with Real ID. (<i>“Motor Vehicle Administrators Survey”</i>) Under the regulations, the vulnerability of domestic violent victims and others will be increased. The regulations do create a partial exemption to the principal address requirement, but it is inadequate. It covers “individuals who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or by a court order” and some individuals protected by immigration law (p. 10,836). However, only 24 states currently have such confidentiality programs, according to the National Network to End Domestic Violence. In the other jurisdictions, victims are now protected instead by the fact that they are not required to put their principal address on their license – as are federal judges, who are not shielded by state laws at all (DHS solicits comments on how to fix the problem with regard to the judges). The regulations seem to maintain the same status that police officers, state and local judges, and protected witnesses currently enjoy under state law. However, by removing the option of not listing an address and relying solely on state laws that don’t cover many vulnerable individuals, the regulations fail badly.
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PASS FAIL INC ☐ ☒ ☐	Disproportionate burden on low-income individuals. It is feared poorer people will find it harder not only to absorb higher license-issuance or renewal fees, but also to skip what will sometimes be multiple days of work in order to stand in long queues to prove their identities in order to obtain a Real ID. (<i>ACLU, “Real Answers: FAQ on Real ID”</i>) Real ID is expected to cost \$23.1 billion nationally (p. 10,845), including \$7.8 billion in costs to individuals, and will require increased time waiting at the DMV and seeking source documents. The regulations estimate that visits to the DMV alone will cost Americans \$1.7 billion.
PASS FAIL INC ☒ ☐ ☐	Individuals who lack birth certificates. Over time, many records are lost through natural disasters, such as flood or fire, and by human error. And the births of many, especially older citizens from rural areas, simply were not recorded. Because the birth certificate is likely to be one of the core documents that must be verified (especially to prove citizenship) it is not clear how these problems will be addressed. (<i>“FAQ”</i>) The regulations seem to address this issue by allowing states to create an exemption process for individuals who do not have a birth certificate (p. 10,830 and 10,852). (Ironically, this exemption would seem to undercut the entire security rationale for Real ID: that identity can only be proved by presenting other “breeder documents” like birth certificates).
PASS FAIL INC ☐ ☒ ☐	Foreign-born lawful residents who lack passports. The only foreign document that is acceptable to DMVs under Real ID is an official passport. But that doesn’t meet the needs of many legal immigrants, including refugees and dissidents or others who may face hostility or a lack of cooperation from their home governments in obtaining the required documents. (<i>“FAQ”</i>) DHS attempts to address this problem by allowing for the acceptance of some foreign documents other than passports. But there are some categories of immigrants who, while legal, will still not possess any of the documents listed by DHS (for example, asylum seekers).

PASS FAIL INC ☐ ☒ ☐	Same-day licenses. State DMV officials report that Real ID could largely prevent over-the-counter issuance of some or all IDs, resulting in shifts from relatively instant issuance to having to mail documents to applicants, and an overall process that could range from 2 to 6 weeks pending approval of verified documents. (<i>“Motor Vehicle Administrators Survey”</i>) While in theory, if every verification database existed and was fully operational, applicants could have their documents verified instantly and walk away with a Real ID, the regulations make it clear that that simply is not going to happen, at least in the foreseeable future. There are too many burdens in the regulations, too many documents to be verified, and too few existing systems through which to do that, for there to be any realistic chance that same-day licenses will continue to be possible.
PASS FAIL INC ☐ ☒ ☐	Fewer offices. DMV officials in some states also report that the cost increases driven by the act’s requirement may force them to close some itinerant field stations and eliminate mobile offices, which can impose considerable burdens on citizens of rural, low-density states. (<i>“Motor Vehicle Administrators Survey”</i>) The regulations fail this test because they create extensive security requirements for DMV offices (p. 10,855), making it unlikely that many small DMV offices will be able to remain open at a cost the states can afford. This would inconvenience consumers by forcing smaller offices to close their doors and have a disproportionate impact on Americans who live in rural communities.

PASS FAIL INC ☐ ☒ ☐	Internet or mail transactions. Because of the verification requirements, DMV officials report that Real ID could reduce or end mail and Internet address changes and renewals, further straining the resources of DMVs and imposing burdens on drivers and other applicants. (“<i>Motor Vehicle Administrators Survey</i>”) Issuing of licenses through the Internet and mail will not be possible for at least the first 5 years under Real ID because every individual will be required to register in person to get a Real ID. Remote renewals of a Real ID (after initial issuance) will only be possible for every other renewal, and only if none of the licensing information (such as address) has changed (p. 146). Also, it is unclear whether the regulations will allow the mailing of licenses or whether license holders will have to return to the DMV to receive a license.
PASS FAIL INC ☒ ☐ ☐	Change of address. Currently individuals simply notify their DMV when they move. However, the principal address requirement of Real ID (see above) may require people to re-register with the DMV in person every time they change addresses so that their new address can be verified and they can be issued a new ID card. This will not only impose substantial inconveniences on individuals, but also raise costs for DMVs. (NCSL <i>et al</i>, “<i>Impact Analysis</i>”) The regulations seem to address this issue by implying (though not stating directly) that an individual will only have to change their address information when renewing their license (p. 10,845).

PASS FAIL INC ☐ ☒ ☐	Disruption in driving caused by verification procedures. Will states be able to issue an interim driver's license for individuals whose source documents cannot be immediately verified or will these individuals be prevented from driving? Will such a temporary ID be acceptable for air travel? The regulations make no provision for this type of temporary license and fail to take into account the fact that delays in verification (due to such inevitabilities as computer problems or verification delays) will make it increasingly difficult to perform same-day licensing.
Impact on Privacy	
PASS FAIL INC ☐ ☒ ☐	National ID. Privacy advocates fear the Real ID and its national database will become a national identity registry. The act states that Real IDs shall be required not only for activities like boarding aircraft, but also for "any other purposes that the Secretary [of Homeland Security] shall determine." This provision allows the Department of Homeland Security to expand unilaterally the scope of identity requirements creating the real possibility of mission creep. Some groups have already suggested that Real ID should become a voter registration card and a border crossing document. (<i>"FAQ"</i>) The regulations do nothing to prevent Real ID from becoming a de facto National ID card. They create a vast infrastructure for such a system, including a common machine readable element (with no protection against private-sector exploitation) and the construction of a national interlinked database. The regulations already require the card in order to fly or enter a federal facility, and explicitly state that Real ID will be considered for a number of other functions including receiving a passport, military common access card, and transportation worker identification card (p. 10,823).

PASS FAIL INC ☐ ☒ ☐	Private-sector piggybacking. The “common machine-readable technology” on Real IDs would allow for easy, computerized transfer of the data on the cards not only to the government but also to private parties. Already, many bars and clubs collect all their customers’ information by swiping driver’s licenses handed over to prove legal drinking age. There is concern that even if the states and federal government successfully protect the data, machine readability will result in a parallel, for-profit database on Americans, free from the limited privacy rules in effect for the government. (“FAQ”) The regulations do not protect individuals from private sector piggybacking. They state that protecting machine readable technology from private sector access is outside the scope of DHS responsibility and leave such regulation to individual states (p. 10,837). They decline to require that data on the card be encrypted, leaving it open to reading by a private-sector entity.
PASS FAIL INC ☐ ☒ ☐	A single interlinked database. Will the national database be secure from identity thieves and criminals? Advocates argue that the government’s poor record at information security and at preventing insider fraud and abuse may mean Americans are less secure as a single national database makes their information more vulnerable and available from more sources. (<i>Center for Democracy and Technology, “Unlicensed Fraud”</i>) The regulations fail on this issue because they require creation of a national database of interlinked state systems (p. 10,855). DHS denies there will be a national database, but having one central database in Washington or 50 state databases in the individual states, all linked together with identical comments and an identical form, are effectively the same thing. Moreover the regulations explicitly provide that the Department is “committed to the expedited development and deployment of a common [federated] querying service” (p. 10,825).

PASS FAIL INC ☐ ☒ ☐	Insider fraud. Advocates have also argued that linking databases will give more and more parties “legitimate” access to the data and that information that can be accessed by multiple disparate parties is a recipe for fraud. Fraud by DMV officials is a major cause of identity theft. Insider fraud is one of the core problems with Real ID. It is not solved in the regulations nor is it clear that there is a solution to the problem as the act is written. The regulations attempt to address this issue by requiring criminal background and credit checks for employees (p. 10,856), but it is unclear whether or how much such checks would reduce fraud by the many insiders who do not have a troubled record. Such fraud is almost certain to continue, especially in light of the fact that the perceived authenticity of a Real ID license is likely to make it even more valuable on the black market and create a new wave of insider fraud. (For more information on identity theft and Real ID please see comments by the Privacy Rights Clearinghouse available here: http://www.privacyrights.org/ar/real_id_act.htm)
PASS FAIL INC ☐ ☒ ☐	Accountability vacuum. Security experts note that a system is only as secure as its weakest point. There is no mechanism to guarantee that every DMV follows adequate procedures and the linked distributed system makes accountability extremely difficult to enforce. Further, a single breach at a single DMV could compromise the entire system and expose the data of every American who drives. A state that finds its citizens’ data threatened or stolen due to the negligent practices of another state will have no remedy or recourse under the regulations. While securing private information is vital, the regulations provide no guidance as to how states should do so, or what a state can do if other states’ efforts fall short. (p. 10,855). The regulations state that information sharing between states will be a state function with only limited oversight from DHS (pp. 10,825).

PASS FAIL INC ☐ ☐ ☒	Protecting source documents. Real ID requires all source documents for licenses to be retained either electronically or in storage at the DMV. Protecting these valuable document troves from security breaches will require the devotion of significant resources to new computer hardware and software, systems redesign, security consulting, and staff expansions. It is expected that identity thieves will quickly recognize that the DMV's records are a central location for obtaining all the documents they need to commit fraud. (<i>"Real Costs"</i>) The regulations state that securing private databases must be part of state physical security measures, but provide no guidance as to how states will secure this information (p. 10,855).
PASS FAIL INC ☐ ☒ ☐	Effect on state privacy laws. States have varied privacy and safety laws governing everything from what information can be collected for the purpose of driver's licensing, to what information can be contained on the machine-readable component of an ID card. It is expected that Real ID will force state legislatures to alter or repeal many of these laws – potentially creating new privacy and security problems. (<i>See "The Impact of Real ID on Current State Laws," and accompanying chart prepared by Stanford University Law School</i>) The regulations allow states to impose greater privacy protections than required by regulation and allow some flexibility to protect the confidentiality of address information (p. 10,854). But they are silent on how state laws that are directly in conflict with the Real ID regulations will be affected (p. 10,849). For example, in order to protect against identity theft, California law allows the DMV to destroy all records that are no longer necessary to issue a license. In New Hampshire, the wholesale sharing of motor vehicle information with other states is prohibited and sharing shall only be "on a case to case basis." Such state laws would have to be changed in order to secure Real ID compliance (p. 10,857).

Impact on the States		
PASS ☐	FAIL ☒	INC ☐
Unfunded mandate. Real ID requires sweeping changes to state driver's licenses and the systems by which those licenses are administered. A partial cost estimate issued jointly by AAMVA, NGA, and the NCSL estimated the cost of Real ID on the states at \$11 billion. Congress has currently appropriated \$40 million to offset Real ID costs. (<i>NCSL et al, "Impact Analysis"</i>) The regulations acknowledge that the AAMVA-NGA-NCSL estimate is inadequate and that the actual cost of Real ID will be \$23.1 billion (p. 10,845).		
PASS ☐	FAIL ☒	INC ☐
Effect on DMVs of standardizing data elements. Real ID imposes a requirement for uniform data elements on state IDs. Standardizing these elements will vary in difficulty from state to state, but in many cases will require the reprogramming of multiple interlocking state databases, computer entry screens, communications protocols, and paper forms. (<i>ACLU analysis, "Real Burdens: the Administrative Problems REAL ID Imposes On The States"</i>) The regulations require states to share all their driver's license information. This will force states to make costly changes to their Information Technology (IT) systems. The regulations provide no guidance on how such changes are to be effected, and place the entire burden of constructing a data-sharing system on the states (pp. 10,825 & 10,855). The regulations also impose additional onerous IT requirements, such as requiring states to retain the photographs of all applicants (not just license holders) (p. 10,851) and retaining all name information on applicants even if they subsequently change their name (pp. 10,835 & 10,851).		

PASS ☐ FAIL ☐ INC ☒	Effect on recent improvements to state IT systems. The NCSL reports that 21 states have invested \$289 million over the last five year to modernize their DMV information systems. Real ID may force much of this work to be thrown out. (<i>NCSL et al, "Impact Analysis"</i>) Because the regulations do not provide guidance regarding how data sharing will be implemented, it is unclear to what degree states will be able to rely on their previous (costly) IT system overhauls (pp. 10,825 & 10,855).
PASS ☒ FAIL ☐ INC ☐	Cost of processing new applicants. Real ID's requirement that it be used for a host of federal purposes may force millions of Americans to sign up for driver's licenses or ID cards. This would result in an unplanned wave of new applicants swamping DMVs. The regulations assume that there are 240 million licensees. This number seems to encompass most of the ID holders in the US.
PASS ☐ FAIL ☒ INC ☐	DMVs will have to reprocess existing licensees. The document verification process will also have to be completed for the entire population of people (approximately 200 million) who already have current licenses and IDs. Motor vehicle administrators have complained that this will significantly strain DMV resources. (<i>"Real Burdens"</i>) Because the regulations state that all license holders will have to reply in person to receive a Real ID-compliant license (p. 10,854), DMVs will not be able to take advantage of the ease of processing licenses over the Internet or through the mail. This change will substantially increase the number of people coming to DMVs and significant strain existing resources.

PASS FAIL INC ☐ ☒ ☐	Diversity in licensing systems. States have chosen a variety of methods for issuing licenses. In Kentucky, for example, licenses are handled by court clerk offices, in Alabama by probate judges, in Nebraska by county treasurers, and in Oklahoma by third party vendors. It is unclear whether Real ID regulations will continue to allow states to operate under these different licensing models. (<i>“Motor Vehicle Administrators Survey”</i>) The regulations do not address these issues, and taken as a whole the regulations make it clear that many states will have to drastically alter their licensing schemes.
PASS FAIL INC ☐ ☒ ☐	Appeal process. Mistakes in existing DMV and other databases may result in delays or even inability to get a drivers’ license. In light of this high penalty some type of appeal process will have to be created to deal with mistakes and document errors. The regulations contain no appeals process for individuals who are the victims of errors in the information used to verify their identity. Instead, individuals will have to correct errors with the database owners (pp. 10,833 & 10,852). (States, however, can appeal determinations made by DHS that their systems are not Real ID compliant [p. 10,857].)

PASS FAIL INC ☐ ☒ ☐	Expertise in immigration law. The act bars states from issuing compliant IDs to any non-citizen who cannot prove their identity and present verified documentary evidence that they are covered by one of an enumerated number of lawful immigration statuses. But the complexity of our immigration laws make it likely that identifying and processing a variety of different immigration documents will be a difficult task. (“FAQ”) The regulations require intimate familiarity with multiple immigration documents in order to issue a Real ID in two contexts. First, DMV employees have to be trained to recognize a number of types of fraudulent documents for proof of citizenship (visa, permanent resident card, EAD, Certificate of Citizenship, or Certificate of Naturalization). Second, DMV employees will have recognize the very obscure immigration documents that prove that an individual is not eligible for a Social Security number (those that prove an alien “is currently in a non-work authorized non-immigrant status”) (pg. 10,829).
PASS FAIL INC ☐ ☒ ☐	Lawful status not described in the Act. Immigration advocates have complained that there are a number of ways that an immigrant can be in the country lawfully that are not described in the act. It is not clear if these individuals can qualify for a Real ID. Because the regulations do not expand the description of lawful status for purposes of obtaining a Real ID beyond statutory guidelines, numerous individuals, such as asylum seekers, cannot get any type of Real ID, even though they are in the country lawfully.

PASS FAIL INC ☐ ☒ ☐	“Full Legal Name” particularly onerous. The Act requires that compliant identity papers contain individuals’ full legal names. However because a portion of the population possesses extremely long names, the name for licenses is recommended to be at least 100 (some say 126) characters long. For many states this would mean redesign of their entire database structures and program interfaces to standardize how information is entered in each field office and how it is stored centrally. They will also have to revise information and application forms, and train staff to verify legal name. (<i>“Real Costs”</i>) The regulations require states to retain 39 characters of an individual’s legal name for the front of a license and 125 characters for the machine readable zone (MRZ) of the license, placing a new burden on the states by requiring them to modify their systems to collect this information in two different ways in order to secure it in their databases and place it in the MRZ (pp. 10,835, 10,853 & 10,854).
PASS FAIL INC ☐ ☒ ☐	“Full legal name” requirement reaches beyond DMVs. Legal name changes in DMV systems will impact other, linked systems such as CDLIS (a commercial license database) and PDPS (a problem driver database) as well as serving as the access point for other systems, including law enforcement, insurance companies, and the election registry. (<i>“Real Costs”</i>) The regulations provide no guidance on how states are to reconstruct their information systems (p. 10,855).
PASS FAIL INC ☐ ☒ ☐	Limited real estate on physical cards. Many states may have to redesign the face of their ID cards – where space is already limited – to include longer names and new data elements such as principal address. (<i>“Real Costs”</i>) The regulations do not provide any flexibility regarding the information to be placed on the front of the card (p. 10,853).

PASS FAIL INC ☒ ☐ ☐	License holders with multiple addresses. If mailing address and principal address differ, states will have to retain both – one for printing on the license and one for correspondence. Some individuals – such as students and those who own multiple homes – reside in more than one state. Regulations address this issue by assuming individuals will choose one principal address, which will be the place where they maintain their “true, fixed and permanent home” (p. 10,851).
PASS FAIL INC ☐ ☒ ☐	Creation of interconnected database. Real ID requires that each state provide all other states with electronic access to the information contained in its motor vehicle database. Because state DMVs each have their own IT systems with different level of capability and interoperability DMV officials believe this will be an extraordinarily difficult task. (“<i>Motor Vehicle Administrators Survey</i>”) The regulations require a national database of interlinked state systems both for ascertaining whether an individual has a license in another state and for sharing motor vehicle information (p. 149). The regulations provide no guidance on how states are to share information, and place the entire burden constructing a data sharing system on the states (pp. 27 & 149). Nor do they mitigate any of the requirements that states standardize information in their IT systems.

PASS FAIL INC ☐ ☒ ☐	Cost of data sharing. A system similar to that mandated by Real ID, the commercial driver's license pointer system (CDLIS), which covers truck drivers and other commercial drivers, costs roughly \$0.08 per month/per record, according to the AAMVA. At the same cost, the price for covering the roughly 200 million current US license holders under Real ID would be \$192 million per year. However, since the Real ID database will include significantly more information than CDLIS, this figure would likely be much higher and it is unclear how this cost burden would be met (and by whom). (<i>Real Costs</i>) The regulations indicate that data sharing is likely to be costly. DHS estimates the total for information sharing and IT services to be \$1.4 billion. The regulations note that states already use information systems like CDLIS and indicate that it may provide a model for information sharing (p. 10,825), but provide no guidance for implementing Real ID's much more substantial information-sharing requirements (p. 10,855).
PASS FAIL INC ☐ ☐ ☒	Document verification. The Real ID Act includes a requirement that states "shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented" to get a Real ID card. No electronic system or systems currently exist which is capable of performing this task. Particular concerns exists regarding birth certificates because they are issued by over 6,000 separate jurisdictions within the United States and there is no central database of certificates (<i>Motor Vehicle Administrators Survey</i>) It is impossible to evaluate whether the regulations solve the problem of document verification because most of the verification databases are in their infancy, and because databases will never exist for verifying address (pp. 10,831). The states are required to find their own methods for verifying documents until electronic databases exist (p. 10,831).

PASS FAIL INC ☐ ☒ ☐	Inadequacies in existing verification systems. An additional verification problem is that DMVs report that existing database such as SAVE (for verifying immigration status) would be inadequate for Real ID purposes either because they are expensive, inaccurate, or do not provide a timely response. (<i>“Motor Vehicle Administrators Survey”</i>) The regulations fail to address this issue except in a cursory fashion. The fact is that many verification databases that do exist (such as SAVE and SSOLV) are incomplete, inaccurate and so far unable to perform the functions required by Real ID (pg 10,832).
PASS FAIL INC ☐ ☐ ☒	Verification cannot be compelled. The act requires DMVs to authenticate source documents with issuing entities (such as address checks from public utility companies). Because that process will impose substantial burdens on verifying entities it may be met with resistance. However state DMVS have no power to compel or reward compliance. The regulations circumvent this problem by stating that, in direct contradiction to the statute, DMVs won’t have to verify addresses with the issuing agency. (“The proposed regulation would require States to establish a written policy identifying acceptable documents and how, or if, they will be independently validated or verified.” [p. 10,831]). However, they still require documents like birth certificates to be verified even though there is no existing database of birth certificates from all 50 states.

PASS FAIL INC ☐ ☒ ☐	Investigations into Social Security Numbers. States are required to verify that an individual has a valid social security number – and requires that "[i]n the event that a social security account number is already registered to or associated with another person . . . the State shall resolve the discrepancy and take appropriate action." However it is not clear what "appropriate action" entails nor do state officials have the authority to change the Social Security database. (<i>"Real Burdens," "Motor Vehicle Administrators Survey"</i>) The regulations do not provide any guidance for states on this issue, simply stating, "In the event of a non-match with SSA, a DMV must not issue a driver's license or identification card to an applicant until the information verifies with SSA's database." (p. 10,852)
PASS FAIL INC ☐ ☒ ☐	Document storage. The act requires storage of electronic copies of source documents for 10 years or paper copies for seven years. DMVs lack the equipment and storage space for document retention. DMVs report that this will have a major impact on their operations – requiring additional staff, new equipment, policy changes, training, the remodeling or redesign of offices, and computer software, development, and storage costs. (<i>"Real Costs," "Motor Vehicle Administrators Survey"</i>) The regulations affirm this requirement and estimate the cost of data systems and information technology at \$1.4 billion.

PASS FAIL INC ☐ ☐ ☒	Standardizing the machine-readable element. Many states have already deployed a variety of machine-readable technologies – such as bar codes and magnetic stripes – on the licenses they issue. Real ID’s standardization mandates will impose substantial costs on the large number of states that will have to replace their existing machine-readable components. (<i>“Real Costs”</i>) The regulations require states to use a 2-D barcode compliant with PDF417 standard (p. 10,854). The regulations state that 45 states have 2-D barcodes, plus the District of Columbia (p. 10,837). It appears that all or most of those barcodes comply with the PDF417 standard. However, if a significant number of DMVs report that they will need to make expensive changes to the format of their bar codes, this may change to a “fail.”
PASS FAIL INC ☐ ☒ ☐	Additional costs for standardization. Police departments will have to be equipped with new readers, at significant cost to taxpayers. During the five-year changeover to full 50-state Real ID compliance, numerous data storage systems and sets of readers will have to be maintained simultaneously. (<i>“Real Costs”</i>) The regulations provide no additional funding to offset this concern. They state that the AAMVA-approved barcode can be read by a standard 2-D barcode reader (p. 10,837), but do not address costs for states that must convert to new machine readable standards.

PASS FAIL INC ☐ ☒ ☐	Facial image capture. The act appears to mandate that image capture must apply not to all license recipients, but to all <i>applicants</i>. This will require a new database for pending and failed applications, alterations to the licensing process to change the stage at which an image is captured, and increased personnel and equipment for additional image capture. (<i>“Real Costs”</i>) The regulations confirm that DMVs will face an increased IT burden because they have to save photo images for at least one year for all applicants (not just those that receive licenses), and for ten years for those denied licenses because they are suspected of fraud (pp. 10,835 & 10,851).
PASS FAIL INC ☐ ☐ ☒	Facial recognition technology. The act’s requirements for “facial image capture” may require states to purchase facial recognition technology and begin strictly regulating how photos are taken to correct for variations in lighting, expression, camera type, background, and the exposure of facial characteristics, such as facial hair, glasses, headscarves, etc. Facial recognition technology is often costly, inaccurate and difficult to implement. (<i>“Real Costs”</i>) The regulations do not fully address the issue of face recognition. While they take some steps consistent with the technology, such as prescribing the physical appearance of individuals in photos (p. 10,853-10,854), they are silent on whether photos will be used as part of a facial recognition system.

PASS FAIL INC ☒ ☐ ☐	Security clearance. Real ID requires that state employees who are authorized to manufacture ID cards must be subject to “appropriate security clearance requirements.” It is not clear what standards states should set in disqualifying employees or hiring new employees. The fact that some states contract with private entities for ID production further complicates this issue. (<i>“Real Burdens”</i>) The regulations do set down clear standards for state employees who should be checked: those who “have the ability to affect the recording of any information required to be verified, or who are involved in the manufacture or production of REAL ID driver’s licenses and identification cards, or who have the ability to affect the identity information that appears on the driver’s license or identification card” (p. 10,856). They also make clear what the standards of those checks should be: those set forth in TSA’s Hazardous Materials Endorsement program (HAZMAT program) and Transportation Workers Identification Credential (TWIC) program (p. 10,840).
PASS FAIL INC ☐ ☐ ☒	Security clearance and labor contracts. Security clearance requirements may run afoul of contract stipulations and union rules. States may need to provide employees disqualified under new regulations with alternative employment or severance. (<i>NCSL et al, “Impact Analysis”</i>) The regulations are incomplete because they do not address how workers’ collective bargaining agreements will affect whether they can be asked to undergo background checks.

PASS ☐ FAIL ☐ INC ☒	New training requirements. Under Real ID state employees must undergo “fraudulent document recognition training programs.” It is not clear what these programs entail or the impact on the cost of issuing licenses. (<i>“Real Burdens”</i>) The regulations do saddle DMVs with the increased cost and burden of training employees in fraudulent document recognition without providing any funding. They do not elaborate on this training requirement except to affirm that it must be part of every DMV security program (p. 10,855). It is expected to take approximately 2 hours and cost \$44 per person in lost man hours (p. 10,846).
Constitutional Impact	
A. Burdens on constitutional rights of the states.	

PASS ☐ FAIL ☒ INC ☐	Federalism and the Tenth Amendment. States have always been the exclusive regulator of driver licensing. Each state has developed an extensive statutory and regulatory framework in this area, and each state employs workers to carry out that statutory and regulatory scheme. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively” The REAL ID Act seizes the power reserved for the states by federalizing drivers licensing. Real ID was vigorously opposed by the organizations representing the states and seems to violate the Tenth Amendment. (See <i>ACLU analysis, “Constitutional Problems with the REAL ID Act of 2005”</i>) The regulations violate the Tenth Amendment by seizing state authority over licensing and by forcing states to engaged in regulation on behalf of the federal government. The regulations argue that Real ID does not violate the Tenth Amendment because the burden will fall on citizens rather than on “the State as a sovereign.” This is an incorrect reading of the law. The test under existing law is whether a state (as sovereign) has been compelled to adopt a federal program, not whether the program acts directly on the state. The regulations do not address the states’ traditional authority in the field of drivers licensing.
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PASS ☐ FAIL ☒ INC ☐	The Anti-Commandeering Doctrine and the Tenth Amendment. The REAL ID Act requires states driver’s licensing officials to perform two exclusively Federal functions: enforcing immigration laws and creating a federal ID card. Constitutional and statutory schemes governing immigration law make clear that immigration enforcement is entirely a Federal function. Additionally the Real ID Act turns state drivers’ licenses into Federal identity documents, necessary for official purposes like entering a Federal facility. According to the Supreme Court’s anti-commandeering doctrine, if the Federal government wants to conduct interior immigration enforcement or create Federal identity cards it must hire and pay Federal government employees to do so, rather than forcing states’ licensing employees to carry out this activity. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations do not address the main constitutional issue: whether imposing penalties on citizens when states don’t act amounts to a violation of the Anti-Commandeering doctrine. The regulations claim that “the proposed rule would not formally compel any State to issue driver’s licenses or identification cards that will be acceptable for federal purposes” and instead that it is pressure on individual citizens that will force compliance with Real ID (p. 10,849). But this doesn’t answer the main question: if a state can only reject federal law at the expense of denying its citizens access to basic aspects of American life like entering a federal facility or traveling on a plane, does this rise to the level of coercion necessary to trigger constitutional scrutiny?
B. Burdens on constitutional rights of individuals.	

PASS FAIL INC ☐ ☒ ☐	Free exercise of religion and the photo requirement. Real ID requires, without exemption, that a digital photograph appear on each ID. This requirement violates the religious beliefs of Amish Christians, Muslim women and others and impacts the free exercise of their religion. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations affirm that in order to receive a Real ID, every applicant must have a photo taken. It acknowledges individual religious objections but states that security requirements override those objections (p. 10,835).
PASS FAIL INC ☐ ☒ ☐	Free exercise of religion and Social Security numbers. Some Christian sects believe that “the enumeration” of individuals is tantamount to stamping them with the Mark of the Beast referred to in the Biblical Book of Revelations. Therefore due to these religious beliefs, certain citizens may not have the Social Security Number or Social Security Card necessary to gain a Real ID. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations do not provide for a religious exemption in this context. They require that every applicant for a license have a Social Security number. The only way under to establish ineligibility for an SSN is for an alien to “present evidence that he or she is currently in a non-work authorized nonimmigrant status” (p. 10,852).

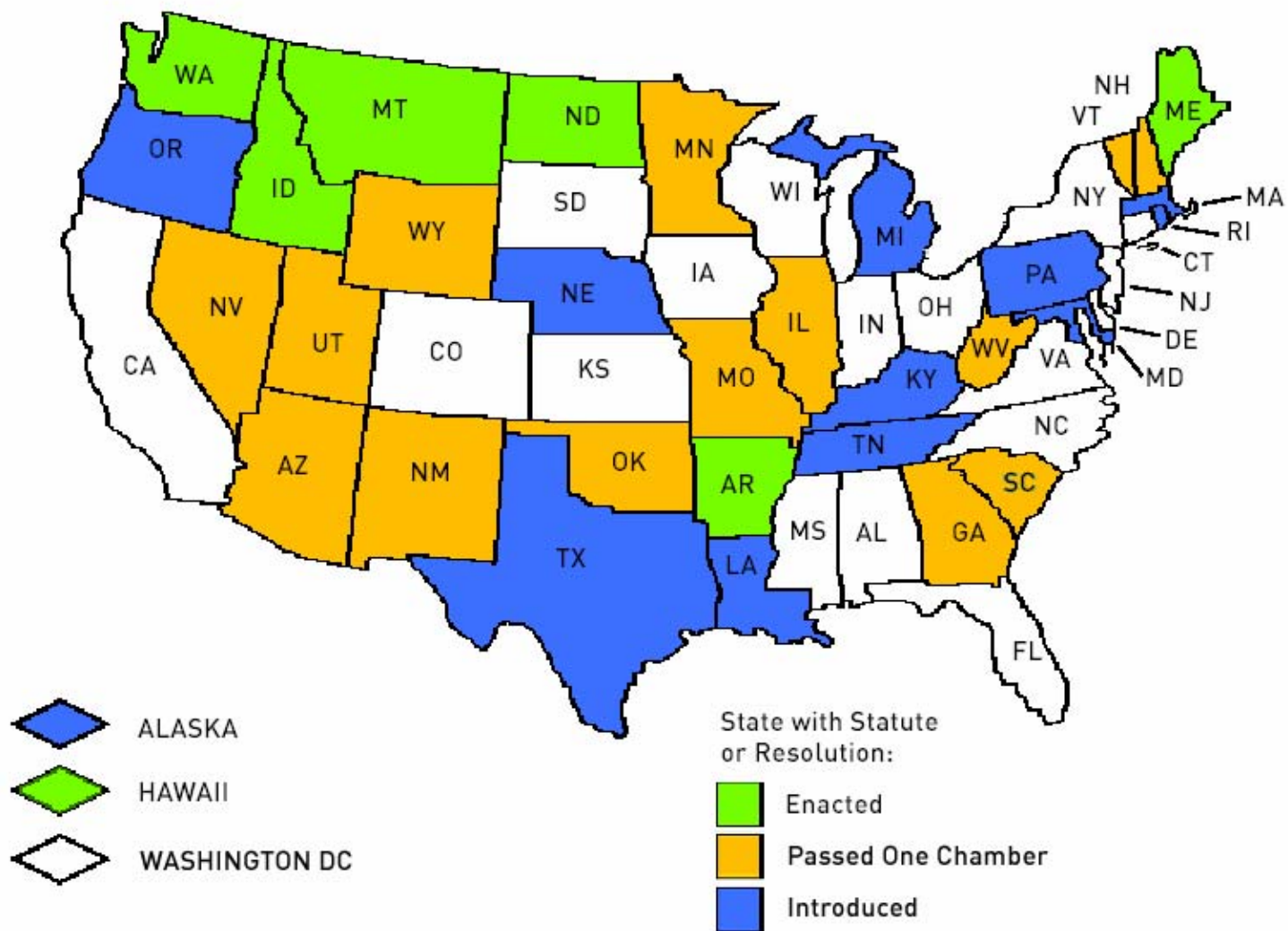
PASS FAIL INC ☐ ☒ ☐	Gender designation requirement. Real ID requires inclusion of each person’s gender on his or her license. Many states and municipalities recognize the unique difficulties faced by issuing identity licenses to transgender people, and, accordingly, provide for exceptions to gender-listing requirements. The act would preempt those exceptions and may violate of the Constitution’s Equal Protection Clause for transgender individuals. The gender classification will also lead to data inconsistencies within the databases that will “red flag” transgender people when their licenses are scanned by government officials. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations do not address this issue because they fail to ensure the security of personal data, which is of particular concern to transgender individuals given that the disclosure of such data may subject them to harassment and other forms of discrimination.
PASS FAIL INC ☐ ☒ ☐	Burdens on right to travel. The U.S. Supreme Court has repeatedly recognized a constitutionally protected right to travel. By ruling a state out of compliance the federal government may keep a state’s residents from boarding a plane and possibly other modes of transportation, which would likely burden their First Amendment-protected right to travel. The situation is particularly acute for residents of Hawaii or Alaska who often have no choice but to fly or travel via federally regulated modes of travel such as plane or ship. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations affirm that after the effective date of the act, a Real ID will be required to board a plane (p. 10,851). They do not address the constitutional issue.

PASS FAIL INC ☐ ☒ ☐	Burdens on right of assembly. The First Amendment protects “the right of the people to peaceably assemble.” Blocking individuals from non-compliant states from using their licenses to enter federal buildings seems to burden that right. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations affirm that after the effective date of the act, a Real ID will be required to enter a federal facility (p. 10,851). They do not address the constitutional issue.
PASS FAIL INC ☐ ☒ ☐	Burdens on right of petition. The First Amendment also guarantees the right to “petition the government for a redress of their grievances.” Lack of a Real ID compliant license would bar a citizen from a face-to-face meeting with his or her elected or appointed government representatives. In fact, many statutory and regulatory schemes <i>require</i> individuals to at times present themselves before elected or appointed officials to raise their grievances. Blocking individuals from entering their representatives’ offices, Federal agencies or courthouses would be burden on the right to petition the government for redress. (<i>“Constitutional Problems with the REAL ID Act”</i>) The regulations affirm that after the effective date of the act, a Real ID will be required to enter a federal facility (p. 10,851). They do not address this constitutional issue or the related question of whether barring access to a courthouse, the ability to bring or defend a lawsuit or witness a court proceeding would also be prohibited under the Constitution.

PASS ☐ FAIL ☒ INC ☐	Lack of procedural or substantive due process. The Real ID Act fails to provide for a system for individuals to access government records about them, challenge inconsistencies and correct data errors concerning their files. The Real ID Act’s failure to include a procedure whereby individuals can quickly, efficiently and permanently reverse data errors is likely to impact a number of substantive rights – such as receiving government benefits or boarding a plane – and violates the Constitution’s guarantees of both procedural and substantive Due Process found in the Fifth and Fourteenth Amendments. (“<i>Constitutional Problems with the REAL ID Act</i>”) The regulations contain no appeal process for individuals who are confronted with errors in the information used to verify their identity. Instead individuals will have to correct errors with the database owners (pp. 10,833 & 10,852). The regulations do not address the constitutional issue.
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Appendix B

Status of Anti-Real ID Legislation in the States



Appendix C

**Vermont news articles about
Real ID**

Appendix C.1.

“National ID System Expensive, Complicated,” editorial from *Burlington (Vt.) Free Press*, Aug. 27, 2006

Burlington Free Press

burlingtonfreepress.com

A LOCAL CUSTOM

National ID system expensive, complicated

States including Vermont, saddled with a 2008 deadline to implement a national identification system known as Real ID, are sending a clear message to Washington: Real ID is not well designed, cannot be implemented by 2008, and carries a crippling price tag for taxpayers.

The Bush administration fought successfully for the program to create uniform driver's license standards to improve identification at the borders and make it harder for terrorists to travel freely.

Under Real ID, drivers would appear at their state motor vehicle offices and present specific documents, such as birth certificates, to prove identity. The states would authenticate those documents, which might require new technology and personnel.

The driver's license system needs improvements. Federal officials should work with states to ensure those changes make sense, can be done in a realistic time frame, truly improve national security, and come with appropriate funding.

States aren't taking this mandate sitting down.

The National Governors Association and other groups are seeking flexibility and federal funding. Members of the National Conference of State Legislatures meeting in Nashville passed a resolution insisting Congress either fund the changes or repeal the requirements.

Last week, about 600 people from across the United States, Canada, Mexico and the United Kingdom attended the American Association of Motor Vehicle Administrators conference in Vermont to discuss Real ID, among other topics.

Vermont Motor Vehicles Commissioner Bonnie Rutledge told the Free Press on Thursday that this state cannot possibly meet a 2008 deadline. The new system would cost Vermont taxpayers more than \$2 million to implement, at a time when the state's transportation budget is too strapped to adequately pave roads or fix crumbling bridges.

Motor vehicle officials have suggested reasonable changes to Real ID. Among those, that states should be allowed to choose the material used for their licenses; requiring all states to use the same material would be expensive and make forgery that much easier, Rutledge argued.

In addition, officials recommended that drivers who have had licenses for at least 10 years should not be required to jump through all the hoops for a renewal. There are other changes suggested, as well.

Rutledge does agree with Homeland Security that all states should require licenses to include a photo. Some Vermonters might resist that, but the commissioner is probably right.

Improvements to the driver's license system are needed if these cards are going to continue to serve as identification for traveling Americans. However, Homeland Security needs to give states the flexibility and funding to design a system that truly works.

Appendix C.2.

“Federal Legislation – Real ID Act of 2005,” from *Vermont Privacy News*, Summer 2005

Federal Legislation -- Real ID Act of 2005

A new federal law known as the REAL ID Act of 2005 contains several provisions potentially harmful to the privacy interests of individuals, especially victims of domestic violence, who are in hiding or fleeing from abuse. REAL ID requires states to include the applicant's home address on every motor vehicle driver's license or identification card in order for that card to be accepted as valid by any Federal agency. Pub. L. No. 109-13 (H.R.1268 Sec.201, et seq.) No exception is provided for individuals who would be in danger as a result.

If a domestic violence victim does not have a valid license or identification card, she may not be able to access services essential to her safety, for example, commercial airlines or AMTRAK trains she may need to use to flee. She also could not obtain a US passport, enter a federal courthouse, or rent a US post office box.

Additionally, the law requires states to maintain a motor vehicle database that contains all data field printed on the license (including the home address) and to provide electronic access to all other States to information contained in the motor vehicle database. This provision could allow abusers who hack into the system to locate a victim anywhere in the country.

Vermont is currently one of 20 states that either do not require an address on a license or permit the applicant to use a post office box number or an address designated by the State's Secretary of State. Domestic violence victims have found this practice to be helpful as part of their safety planning. In addition, the Vermont Secretary of State's Office administers the Safe at Home program in which domestic or sexual violence victims can apply to use a post office box administered by the Secretary of State's Office as their official address. Approximately 100 Vermonters have been enrolled in the program.

Deputy Secretary of State, William Dalton, has expressed his commitment to continue the Safe at Home program "in accordance with State law" and to work with the legislature, the Governor and the congressional delegation to do whatever is necessary to address any problem that arose for victims using the program as a result of passage of the REAL ID act.

Appendix C.3.

“National ID Law Could Mean Problems for State,” from *Rutland (Vt.) Herald* and *Barre-Montpelier (Vt.) Times Argus*, Jan. 14, 2006

National ID law could mean problems for state

By Louis Porter

MONTPELIER — A Homeland Security law setting national standards for driver's licenses could cause serious problems for Vermont's Department of Motor Vehicles and Vermont drivers seeking licenses.

A survey of motor vehicle officials nationwide about the Real ID Act found that the law could cost millions and hamper states' licensing efforts.

The same could be true in Vermont, said Howard Deal, the state DMV's deputy commissioner.

"It's not unique to Vermont," he said. "It is a nationwide problem."

Privacy advocates have long objected to the law, which would establish a national database of drivers.

"Vermont officials are right to be concerned," said Allen Gilbert, executive director of the American Civil Liberties Union of Vermont.

"Real ID not only means a national ID, but will likely mean higher taxes and fees, longer lines, repeat visits to the Vermont DMV, bureaucratic snafus, and, for a lot of people, the inability to obtain a license," he said. "To top it off, it will do little if anything to prevent terrorism."

Proponents of the Real ID program have said it is essential to stop terrorist attacks and to ensure that people are who they claim to be — when they visit federal buildings, for example.

Rep. James Sensenbrenner, R-Wisconsin, chairman of the House Judiciary Committee, has been a lead proponent of the measure.

"This sensible legislation is aimed at preventing another 9/11-type attack by disrupting terrorist travel and bolstering our border security," he said in May when the measure was passed as an attachment to a bill funding the war in Iraq.

The responses by Vermont's DMV in the fall survey, conducted by the American Association of Motor Vehicles, show that the Green Mountain State could have many of the same problems anticipated by officials in states around the country.

For starters, the databases of documents required to implement the program's requirements do not in many cases exist yet, Deal said. And, although the law was passed last spring, the rules governing specifically how it will be implemented may not be completed for some time, he said.

"We are still waiting for the rules," Deal said.

Those rules, needed to craft the databases, procedures and communication links to enact the program, may not be completed until 2007, even though the program is supposed to go into effect in May 2008.

"There is just so much to this act and any one aspect of it could be a significant job for a state the size of Vermont," Deal said.

While Vermont has fewer drivers than larger states, he said, it also has fewer DMV employees to do the work of setting up the new systems to verify and corroborate identification of those seeking to obtain or renew licenses and identity cards.

Another concern is that although the act mentions federal funding for the program, no specific pot of money has yet been set aside to pay for it, Deal said.

So far, states' estimates have far surpassed the federal government's estimated \$100 million reimbursement to the states.

Pennsylvania, for example, estimates the cost of the program will be \$85 million in that state alone.

Although Vermont's cost will be far less — about \$3 million by rough estimates — it will still be significant, Deal said.

He said that in addition to privacy concerns and cost, the Real ID law could affect how long it takes to be approved for and receive a driver's license. Every document, such as a birth certificate, will have to be verified.

"It's not going to be instantaneous response," he said.

Those requirements may also undo DMV's efforts in recent years to shorten wait times and lines at service counters, Deal said.

"We have significantly cut down wait lines at counters," he said.

If the program goes into effect as it is now set up, he said, "when an individual comes into our office to get their license or ID card, they aren't going to leave with it the same day."

The Real ID program may also conflict with a provision passed a few years ago when Vermont began requiring a picture driver's license, according to Sen. Richard Sears, D-Bennington. At that time a clause allowed drivers who did not want such a license to be grandfathered in, a measure that will likely conflict with federal requirements, Sears said.

Still, the day of a national identity card is probably coming, Sears said, like it or not.

"The feds have some great ideas, but they don't want to pay for them," said the chairman of the state's Senate Judiciary Committee. "It is kind of frustrating."

Gilbert sees Departments of Motor Vehicles from around the country adding to a coalition of groups opposing the Real ID law.

"Civil liberties groups, conservative groups, immigration groups — we've all been saying that Real ID will be a real disaster and needs to be revisited by Congress," Gilbert said.

Appendix C.4.

“Identity Guidelines Could Cost State \$8 Million,” from *Rutland (Vt.) Herald* and *Barre-Montpelier (Vt.) Times Argus*, May 3, 2007

Identity guidelines could cost state \$8 million

By Louis Porter

MONTPELIER — Implementing new federal requirements concerning how driver's licenses and identity cards are issued could cost Vermont \$8.5 million, not the roughly \$2 million originally estimated, a state official said.

States are now commenting on the proposed federal rules based on the 2005 Real ID Act. The specifics in those rules make it clear the cost of compliance with the act will be significantly more than the state had expected, said Bonnie Rutledge, commissioner of the Vermont Department of Motor Vehicles. Although the program could cost as much as \$23 billion nationally, states will have to pick up virtually all of that cost since there is very little federal funding for the program, Rutledge said.

Rutledge, who has been a leader of the American Association of Motor Vehicle Administrators on the issue, met with Homeland Security officials recently to talk about Real ID.

"I did come away with a much better feeling about homeland security listening to the concerns of the states," she said.

There is also a possibility that Vermont could follow Washington state's lead and eventually offer "enhanced" driver's licenses with a chip in them that could make crossing the Canadian border easier, she said.

Meanwhile, U.S. Sen. Patrick Leahy, D-Vt, is a co-sponsor of a bill that would repeal the Real ID Act and replace it with a previous system under which federal and state officials would gather to devise improvements in how driver's licenses are issued.

"He is concerned about the process that is leading to a costly mandate on states with too little input from states about the real world factors they will have to cope with in devising this system," said David Carle, spokesman for Leahy.

On May 8, the same day the comment period on the proposed rules ends, Leahy will hold hearings on the Real ID program, Carle said.

"He wants the committee to look squarely at the privacy implications for what amounts to

a national ID database," Carle said.

One concern about the program is that since databases of driver's licenses in each state would likely be linked, the security of the information in those registries could be compromised.

"Real ID is a dream of identity thieves and a nightmare for Americans," said Allen Gilbert of the American Civil Liberties Union of Vermont. "Because these systems are connected they are at risk of being taken by burglars or rogue officials."

Secretary of Homeland Security Michael Chertoff said in early March that the Real ID program is an important part of national security efforts. For applicants for driver's licenses to bring in documents verifying their Social Security numbers, date of birth and legal status is simply a matter of "common sense," Chertoff said, according to a news release.

"None of this stuff is top-secret stuff," he said. "We can't have a truly secure identification system based on driver's licenses unless we make sure that the states are protecting the information they are collecting as well as the places where the licenses are being produced and issued."

As for the cost of the program, the federal government has appropriated \$30 million and may provide more.

"I can't predict future budgets, but obviously we're mindful of the expense," Chertoff said.

But there are other problems in the Real ID rules as proposed, which Rutledge hopes will be fixed before they become final, she said.

For one thing, they require re-licensing all drivers and those drivers must bring in documents like birth certificates before they can get new licenses.

That is just silly in some cases, Rutledge said. For example, there is no reason for her father, who is 82 years old and lives in Duxbury, to track down his birth certificate after having a Vermont driver's license for most of his life.

"He lives across the street from the house he was born in," she said. "It makes no sense to ask someone like that to bring in identity documents again."

Another problem is the deadline for states to implement the changes, Rutledge said.

Although the Department of Homeland Security has offered states a chance to extend the deadline for their programs to be up and running, it is probably not long enough, especially for states with larger populations, Rutledge said.

"Even though they are allowing states to request an extension ... the extension will probably not meet the needs of the states," she said.

Rutledge said a driver's license with a chip that could be read electronically at the border could help Vermonters whose residency and history has been vetted cross into Quebec. Washington state and British Columbia are considering such a system now.

"We are a border state and do a lot with Quebec," Rutledge said. "You could pass freely across the border without a passport."

Such a driver's license could not be used for identification when flying, which requires a passport, she said.

Vermont lawmakers had been working on a bill to prepare for the implementation of the Real ID program in the state. But given the changes proposed for the program in Congress and the additional cost of the program, that measure has been put on hold for this year at least.

"There were too many problems with Real ID," Sen. Richard Mazza, D-Grand Isle, chairman of the Senate Transportation Committee, said. "I would rather see what happens in Washington (D.C.) before we take any action."

Rep. Richard Westman, R-Cambridge, chairman of the House Transportation Committee, said a driver's license with a chip could be a good idea.

"It would make it a lot easier for Vermont citizens to get across the border," he said. It also could greatly benefit Vermont ski areas if residents of Quebec could continue to cross the border easily, Westman said.