

Testimony of  
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STATEMENT OF  
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BEFORE THE SENATE COMMITTEE ON THE JUDICIARY  
"Making REAL ID A Reality--Concerns, Challenges, Choices, Solutions"

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Mr. Chairman and other distinguished Members, I am honored to testify before you today.<sup>1</sup> In my testimony, I want to make the case that national standards for identity credentials that are presented for a federal purpose make sense as a 21st century measure to help keep America safe, free, and prosperous.<sup>2</sup> These standards can be implemented in a manner that respects constitutionally guaranteed liberties and the principle of federalism; makes economic sense; better protects the individual liberties and privacies of US persons; and contributes to national security and public safety.

First, I would like to talk about what we should and should not do. We should not institute anything like a universal national identity card. Such a program would be unnecessary, extraordinarily expensive, and inefficient. A national ID card would provide little real additional security and would be found, rightfully, troubling to most Americans. On the other hand, an absence of national standards in the face of the current onslaught of efforts to obtain or falsify identity documents for criminal and other malicious purposes makes no sense in the 21st century.

Second, I would like to address the concerns and challenges facing the implementation of national standards.

Third, I would like to outline a strategy for implementing national standards in a manner that is both efficient and effective, enhancing protection of both the freedom and the safety of all Americans.

In short, Congress should insist that the Administration fully implement the requirements for national standards in the Intelligence Reform and Terrorism Prevention Act of 2004 and the REAL ID Act of 2005. These laws do not create a national identification card, but establish that when key identification materials, such as drivers' licenses (and the documents used to obtain them, such as birth certificates), are issued at any level of government and used for a federal purpose (such as security checks before boarding commercial passenger planes), these documents must meet national standards of authenticity. Such documents should only be issued

to persons lawfully living in the United States. To prevent tampering, counterfeiting, or fraud, and to enhance privacy protections the laws also establish standards security features concerning identification cards. Congress should not back-off the requirement for national standards and appropriate reasonable funds to help states establish systems to meet requirements under the REAL ID Act.

## Winning the Long War

My principle concern with the implementation of REAL ID is in regard to the implications for national security and public safety. The security dangers of the 21st century are enduring challenges that requiring enduring solutions. Typically, in long wars, as states become desperate to win, they pull power to the center, centralize decision-making, increase taxation, and limit liberties. Ironically, as they became garrison states the effort to mobilize power made them less powerful. Less innovative, less productive, and less free, their wars became wars of attrition in which the states found themselves weakened at the end of the struggle--even if they were the winners. One of the notable exceptions to this historical trend was the United States and its allies during the Cold War, in which they emerged from the conflict stronger, more independent, and more free than when the contest started. <sup>3</sup> The reason America weathered the Cold War so well was that it followed the tenets of good long war strategy.<sup>4</sup> The Cold War was won by:

? Providing Security. It was important to take the initiative away from the enemy and to protect American citizens--therefore, the nation needed a strong mix of both offensive and defensive means. Nothing was to be gained by seeming weak and vulnerable in the eyes of the enemy.

? Building a Strong Economy. Americans realized early on that economic power would be the taproot of strength--the source of power that would enable the

nation to compete over the long term and would better the lives of its citizens. Maintaining a robust economy was a priority.

? Protecting Civil Liberties. Preserving a vibrant civil society and avoiding "the greatest danger"--the threat of sacrificing civil liberties in the name of security--was critical as well. Only a strong civil society gives the nation the will to persevere during the difficult days of a long war.

? Winning the Struggle of Ideas. From the beginning, Americans believed that in the end, victory is achieved because the enemy would abandon a corrupt, vacuous ideology that was destined to fail its people. In contrast, the West had a legitimate and credible alternative to offer. All America needed to do was face its detractors with courage and self-confidence.

The key to success was doing all four of these tasks with equal vigor, resisting the temptation to trade freedom for security or truth for prosperity. The United States could do worse than following the four principles of good protracted war strategy it practiced in the decades-long stand-off with the Soviet Union.

## Identity, Freedom, and Security

The employment of identity cards as a security measure has implications for all four pillars of good long war strategy. A sound and principled program should help keep America safe, free, and prosperous.

Identity is one of the cornerstones of a free society. Verification of identity precludes more invasive intrusions into the lives and pursuits of average Americans. In a free society, many transactions, from cashing a check to boarding a plane, are predicated on an assumption that free citizens should be free to act as they choose under the rule of law. That is why criminals and terrorists work so assiduously to obtain identity instruments or the "breeder documents" (such as birth certificates) that are used to obtain identification cards.

Billions of dollars are lost each year due to identity theft, the fraudulent obtaining of government benefits, and other criminal activities. The exact amount is not known, but a typical example of the types of crimes perpetrated were the arrests made in New Jersey and Pennsylvania in 2003, breaking up a ring that withdrew \$10 million from individual bank accounts using phony driver's licenses.<sup>5</sup>

There are security concerns as well. The September 11 hijackers, for example, obtained 17 driver's licenses and 13 state-issued identifications. Some had duplicate driver's licenses. This is unacceptable. Americans should neither have to sacrifice their ability to freely travel and openly conduct commerce, nor give up reasonable protections from malicious exploitation.

The 9/11 Commission concluded that "the federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses." Congress acted. Both the Intelligence Reform and Terrorism Prevention Act of 2004 and the REAL ID Act of 2005 required national standards including:

- ? Requiring individuals obtaining driver's licenses or personal identification cards to present documentation to establish identity, including U.S. nationality or lawful immigration status, and then verifying the validity of the documents;
- ? Establishing physical security features for ID cards to prevent tampering, counterfeiting, or fraud;
- ? Requiring standardized information on identity credentials, such as a full and complete name;
- ? Implementing security plans for state ID card issuance and computer systems, including employee background checks; and
- ? Ensuring that states share information to combat fraud and other criminal activity.

These are imminently practical and reasonable measures. In addition, they establish no new requirement for the federal government to obtain or maintain additional information on individual citizens, nor will the federal government issue, control, or manage the systems for issuing identity documents. Thus, requiring national standards cannot be construed as creating a national identity card. Finally, the requirement that states exchange data with each other and the

federal government is neither unreasonable nor unprecedented. Forty-five states already have data-sharing agreements with each other.

National standards are not a silver bullet that will eliminate identity theft, fraud, counterfeiting or terrorism. On the other hand, implementing more secure documents and a more reliable issuance and management process will have tangible benefits. According to the American Association of Motor Vehicle Administrators, there are a number of distinct advantages to instituting national standards for security. These include:

- ? A reduction in driver's license and identity fraud;

- ? A reduction in crime resulting from fraudulently obtained identification documents;

- ? Enhanced security and privacy of driver's license information within and between motor vehicle agencies;

- ? Consistent minimum standards, policies, and procedures among motor vehicles agencies; and

- ? A climate of innovation, encouraging both technological and procedural advances in driver licensing.<sup>6</sup>

In contrast, I would argue that other proposals put before the Congress offer examples that far overstep the bounds of what is reasonable and practical. One of the most notable was the recommendation last year in both the Senate and House immigration reform bills that would have required a universal system to verify workplace eligibility for anyone wanting to get a job in the United States. Such a system would not only be extraordinarily expensive, impractical, and unnecessary, but would represent a major new intrusion into the lives of Americans, establishing an unprecedented centralized federal database of information on average citizens. There are far more cost-effective and practical means to enforce U.S. immigration and workplace laws.<sup>7</sup> Indeed, centralized, federal programs that usurp the rights and responsibilities of states, local communities, the private sector, and individuals to look after themselves will not make us more safe, secure, and successful.

We are now faced with distinct choices. Developing intrusive, bureaucratic, and expensive national systems, such as national mandatory electronic workplace verification is overkill. On the other hand, abandoning national standards and returning to the pre-9/11 world in which criminals and terrorists can obtain or counterfeit identity documents with abandon makes no sense. They both represent courses we should not take. The requirements of REAL ID, in contrast, represent something sensible.

### Concerns and Challenges

In the time since Congress acted, concerted efforts have been made to undermine REAL ID. These have included calling for further deferral of its implementation, demanding that the federal government spend tens of billions of dollars to upgrade state issuance facilities, trying to eliminate the requirement that citizenship or legal immigration status be validated, or even killing the whole program because of privacy concerns. None of these criticisms is warranted.

? Further postponing implementation will only encourage states to avoid making the investments needed to implement the law. Implementation has already been delayed until the end of 2009. This provides more than enough time to establish regulations to implement REAL ID and for states to undertake and fund the programs needed for them to do their part. In addition, this allows time to ensure that systems will be in place to allow states access to national databases in order to electronically verify the validity of required identification documents.

? Expecting the federal government to foot the bill for states that continually fail to provide their citizens with secure IDs, states that rely on antiquated systems, inadequately trained and supervised personnel, procedures that compromise security and fail to safeguard the privacy of individuals is wrong. REAL ID is less about adding new federal mandates than it is about encouraging states to properly shoulder their existing responsibilities. In addition, it should be noted that any costs involved in implementing reasonably secure standard identification cards will be more than recouped by the contribution that secure IDs make to facilitating travel and commerce while combating criminal exploitation of the freedoms of a free society.

? Eliminating the requirement for states to certify citizenship or lawful residence status undermines the central purpose of REAL ID--the presumption that the holder of the identity is acting lawfully.

? Raising the specter of privacy concerns is disingenuous. The law does not give the government more access to personal information, nor does it create a national data base. In fact, the law adds privacy protections such as requiring more security and background checks for government employees who handle personal data. In addition, the argument that identity theft will become more pervasive and serious because states have greater capacity to exchange data and thus identity thieves could potentially have more access to data to steal is not persuasive. Existing technology, including firewalls and intrusion detection software, can be employed to address these concerns. It is true that REAL ID is not a panacea for addressing privacy concerns. Even states that comply with national standards will not close every security loophole. For example, some states may issue cards that are vulnerable to "skimming" of digital information recorded on the card or they may have "open records" laws that provide greater opportunities for individual data to be obtained for malicious purposes. These vulnerabilities, however, should be addressed by state governments and legislators. Indeed, federal rules should not be overly prescriptive, allowing states to adopt best practices and business and technological innovations.

## The Way Ahead

Congress and the Administration need a strategy to jump-start REAL ID. Specifically, they should:

? Not expect states to use funds from homeland security grants to implement REAL ID: That is just "robbing Peter to pay Paul." Homeland security grants are meant to help build a national preparedness and response system. Congress should therefore appropriate specific funds for REAL ID, with the federal government paying its fair share of the costs of implementation.

? Focus federal dollars on the states closest to implementing REAL ID. This will show that the initiative can work and demonstrate the benefits of the program.

? Work with states that want to ensure that their driver's licenses meet federal standards under the Western Hemisphere Travel Initiative so that they can be used instead of passports for travel between the U.S., Canada, and Mexico. This will make REAL ID even more beneficial for states whose citizens frequently drive across the border.

## Right for America

The 9/11 Commission made the case that state driver's licenses need to become a more secure credential. Congress acted--twice, passing laws to establish national standards. Now this common-sense initiative is under attack and may never be implemented. Congress and the Administration must act decisively to make the REAL ID program a reality. They need a strategy that encourages states with the capacity to implement REAL ID to do so quickly, demonstrating its viability and value. Once REAL ID is underway, momentum will build for other states to join; their citizens will not want to be left out of a program that materially contributes to their safety, their prosperity, and the protection of individual freedoms.

REAL ID is the right answer at the right time. The alternatives are stark. One is to continue to live in the "wild West," where documents are counterfeited or exploited at will, costing the economy billions of dollar, disrupting the lives of millions, and putting all citizens at greater risk. The other is a national identity card that will cost many times the expense of implementing REAL ID and that really will be an additional intrusion into the lives of all Americans. Compared to the options of doing nothing or putting "Big Brother" in charge, REAL ID offers a sensible and sound program for creating the secure identity documents that are needed to help keep American safe, free, and prosperous.

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2 These recommendations were first made in a Heritage Foundation Task Force report in January 2002. See chapter 3 in L. Paul Bremmer III and Edwin Meese III *Defending the American Homeland* (January 2002) at [www.heritage.org/Research/HomelandDefense/upload/9709\\_1.pdf](http://www.heritage.org/Research/HomelandDefense/upload/9709_1.pdf). c.

3 See, for example, Aaron L. Friedberg, *In the Shadow of the Garrison State: Americas Anti-Statism and Its Cold War Strategy* (Princeton, N.J.: Princeton University Press, 2000). '

4 Described in James Jay Carafano and Paul Rosenzweig, *Winning the Long War: Lessons for the Cold War for Defeating Terrorism and Preserving Freedom* (Washington, DC: The Heritage Foundation, 2005).

5 "Identity Thefts and Arrests," Privacy & American Business, 10/5 (June/July 2003), p. 29.

6 American Association of Motor Vehicle Administrators, DL/ID Security Framework (February 2004), p. 7 at [www.aamva.org/aamva/DocumentDisplay.aspx?id=%7B25BBD457-FC4F-4852-A392-B91046252194%7D](http://www.aamva.org/aamva/DocumentDisplay.aspx?id=%7B25BBD457-FC4F-4852-A392-B91046252194%7D).

7 James Jay Carafano, "Workplace Enforcement to Combat Illegal Migration: Sensible Strategy and Practical Options," Heritage Lecture 957 at [www.heritage.org/Research/NationalSecurity/hl957.cfm](http://www.heritage.org/Research/NationalSecurity/hl957.cfm).