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**TESTIMONY SUBMITTED BY**  
**ANDY HOOVER, LEGISLATIVE ASSISTANT**  
**AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA**  
**TO**  
**HOUSE INTERGOVERNMENTAL AFFAIRS COMMITTEE**  
**MAY 8, 2008**  
**UNIVERSITY OF SCRANTON**

Good morning, Chairman Thomas and members of the committee. My name is Andy Hoover, and I am a Community Organizer and Legislative Assistant for the American Civil Liberties Union of Pennsylvania. Thank you for the opportunity to testify today on the federal Real ID Act. I am here today on behalf of the 19,000 members of the ACLU of Pennsylvania. The ACLU was founded in 1920, and ACLU activity in Pennsylvania dates back to the 1930s. The ACLU has 53 state affiliates and half a million members around the country. Our membership both nationally and in Pennsylvania has doubled since 2001.

The hearings the committee has held on this important issue have been informative and have been well worth the time and effort that they required. The committee staff members should be commended for the hard work they have put into making these hearings happen.

From talking with committee staff, it is my understanding that the purpose of these hearings is to give members of the public and representatives in different regions of the state the opportunity to learn more about the Real ID Act. With that in mind, my

testimony today will summarize the ACLU's opposition to Real ID. Then I will update you on some of the developments since your last hearing in Pittsburgh.

The Real ID Act is fundamentally flawed, and the ACLU opposes it because it is a massive invasion of the privacy of all Americans. Real ID will essentially turn our state drivers' licenses into national identification cards. It will build a giant database that will store personal information on all Americans and will be an irresistible target for identity thieves. The federal government has attempted to address some of the privacy concerns with its final regulations that were released earlier this year, but the Department of Homeland Security has still fallen well short of protecting a license holder's personal information. For example, DHS has failed to adequately protect an individual's personal information on the machine readable zone of the license. The machine readable zone could be exploited for commercial business purposes.

In addition, the final regulations fail to deal with the nationwide database of drivers' information. This national database will leave more Pennsylvanians vulnerable to data breaches in other states, which will almost surely lead to identity theft. The Real ID Act also requires states to use personal documents such as a birth certificate, Social Security card, passport, and utility bills for verification of a person's identification, and it requires states to keep copies of these documents on file, again leaving Pennsylvanians at risk of identity theft.

Even after the final regulations from DHS, Real ID still raises significant constitutional questions. Identification compliant with the program will be required to enter a federal building. This puts at serious risk a person's right to due process and a trial by a jury of one's peers. DHS also has not adequately addressed First Amendment

religious liberty issues, as it relates to requiring a photo on the license. People of faith who object to having their photo taken, such as the Amish, as one example, could be put into the unenviable position of choosing between their free exercise rights and their due process rights when the need arises to enter a federal building or conduct other federal business.

And for the privilege of having our privacy invaded and our constitutional rights violated by the federal government, Pennsylvanians will be forced to spend potentially hundreds of millions of dollars on this real nightmare of a program. At one point, DHS had estimated that Real ID would cost a total of \$23 billion. Upon the release of the final regulations in January, however, DHS claimed the program would cost \$9.9 billion, but this estimate is problematic. It assumes that 25 percent of eligible persons will opt not to get a license. In addition, the final price tag from DHS ignores additional costs such as the nationwide database, license renewals, and the document verification system required by Real ID. The DHS estimate also expects \$3.9 billion to be paid by the states and \$5.8 billion to come from “individuals.” This means that taxpayers of Pennsylvania will get two bills for Real ID, one in the form of their state tax bill as the state budget pays for additional costs and the other in the form of an increase in the cost of getting and renewing their driver’s licenses. (More information about the costs of Real ID is available at <http://www.aclu.org/safefree/general/33690res20080116.htm>.)

Proponents of Real ID will claim the problems cited above are worth the benefits, particularly increased security. However, in DHS’s current scheme, Real ID will not be fully implemented until 2017. Ironically, we could be well on our way toward a licensing system that balances both security and privacy were it not for the Real ID Act.. The

Intelligence Reform and Terrorism Prevention Act of 2004 created a negotiated rulemaking process on drivers' licenses. This process would have allowed the federal government, the states, and the public the opportunity to have greater input into creating a new standard for licensing – and was well on its way to accomplishing this important goal. Unfortunately, six months after its passage, this process was scrapped in favor of Real ID.

The committee has previously heard most of the information I've presented to this point. I've presented it for the purpose of informing the people of the Scranton region about problems with the Real ID Act. More information about the ACLU's opposition to Real ID is available at our website on this issue, [www.realnightmare.org](http://www.realnightmare.org).

So what's new? Much has occurred since the committee's hearing in Pittsburgh on March 13, and I will pick up where I left off, at the costs of Real ID. At a sub-committee hearing in Congress on April 29, an official from the Department of Homeland Security testified that DHS does not know how much Real ID will cost the states. According to testimony, DHS used what it called "speculative" data to estimate that Real ID will cost the states \$4 billion, but the department claims the cost could be as low as \$500 million. Meanwhile, analysis by the American Association of Motor Vehicle Administrators and by the National Conference of State Legislatures states that Real ID will cost the states \$11 billion.

Reaction from Senators during and after the hearing was swift and critical, and news coverage reported that critiques by sub-committee members came from both Democrats and Republicans. Senator Susan Collins, Republican from Maine, stated, "(T)he department has not resolved long-standing privacy and funding concerns." Senator

Daniel Akaka, a Democrat from Hawaii, said that Real ID poses “significant threats to Americans' privacy and civil liberties.”<sup>1</sup> And Senator Jon Tester (D-Montana) called Real ID “the worst kind of Washington, D.C., boondoggle.”<sup>2</sup>

The states continue to rebel against Real ID. In April, Idaho became the eighth state to opt out of the program when Governor Butch Otter signed legislation that was passed last year.<sup>3</sup> Idaho’s opt-out bill passed its Senate and House without a single vote in opposition. Idaho is not the only state to address Real ID opt-out legislation since the committee’s last hearing. The Alaska legislature recently sent a bill to Governor Sarah Palin’s desk that would bar the state from spending any money to implement Real ID. Last week the Arizona Senate gave initial approval, via voice vote, to a bill to remove that state from participating in the program. A formal vote on the legislation is expected this week. The bill passed the Arizona House by a vote of 51-8 in March.<sup>4</sup>

It is not just legislatures that have inveighed against Real ID. Governors from across the country have criticized it vocally. Gov. Mark Sanford, Republican of South Carolina, sent a letter to his fellow governors and all members of Congress last month, calling Real ID “the worst piece of legislation I have seen during the 15 years I have been engaged in the political process,”<sup>6</sup> and urging its repeal. When asked whether Montana

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<sup>1</sup> Strohm. (2008) Official: DHS doesn’t know what Real ID will cost states. Retrieved May 4, 2008, from [http://www.nationaljournal.com/congressdaily/cdp\\_20080429\\_9586.php?related=true&story1=tp\\_20070412\\_7&story2=ta\\_20070628\\_1&story3=tp\\_20070607\\_1](http://www.nationaljournal.com/congressdaily/cdp_20080429_9586.php?related=true&story1=tp_20070412_7&story2=ta_20070628_1&story3=tp_20070607_1).

<sup>2</sup> Straub. (2008) Tester: Real ID Act a “boondoggle.” *Helena Independent Record*, April 30, 2008.

<sup>3</sup> ACLU. (2008) *Idaho joins the ranks of Anti-Real ID states*. Retrieved May 4, 2008, from <http://www.aclu.org/privacy/gen/34898prs20080411.html>.

<sup>4</sup> Pitzl. (2008) Bill barring state from new U.S. ID plan gets initial OK. *The Arizona Republic*, May 2, 2008.

<sup>6</sup> Gov. Mark Sanford to Members of Congress, April 3, 2008.

would participate in Real ID, Governor Brian Schweitzer, Democrat of Montana, exclaimed “No. Nope. No Way. Hell No.”<sup>7</sup>

Since the committee’s last hearing, two significant advocates have also weighed in with major concerns with the implementation of Real ID. The National Conference of State Legislatures has voiced hesitancy about Real ID throughout this process. Last month, NCSL called for the repeal of Real ID for the first time and a return to the negotiated rulemaking process passed in 2004 with the intelligence reform package. NCSL took this step in a letter dated April 4 and addressed to senators Daniel Akaka, a Democrat from Hawaii, and John Sununu, a Republican from New Hampshire, the cosponsors of legislation that would restore the negotiated rulemaking process. The letter states, “This approach will achieve our shared goals for security in a manner that respects states’ rights, privacy protections, and fiscal responsibility.”

Also in April, AARP Pennsylvania circulated a letter to Pennsylvania Representatives noting its concerns about Real ID, stating that the program “could impose undue hardships on many Pennsylvanians and possibly expose more citizens to identity theft crimes.” AARP Pennsylvania called on the state and federal governments to work together to address privacy and access issues related to Real ID and stated that House Bill 1351 is “a good place for Pennsylvania to start as these negotiations take place.” HB 1351 would opt Pennsylvania out of Real ID until privacy and funding concerns are addressed. HB 1351 has 85 co-sponsors with support from both Republicans and Democrats. The ACLU supports the approach to Real ID represented by HB 1351, and urges members of this committee to make Pennsylvania the ninth state – along with Georgia, Idaho, Maine,

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<sup>7</sup> Associated Press, “Gov. signs law rejecting Real ID act,” *Billings Gazette*, April 17, 2007.

Montana, New Hampshire, Oklahoma, South Carolina and Washington – to officially reject Real ID.

Chairman Thomas, thank you for the opportunity to testify today about the ACLU's opposition to the Real ID Act. This testimony is available on the "Legislation" page of our website, [aclupa.org](http://aclupa.org), under "Current Session." I am willing to take questions at this time.