



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

Post Office Box 12267
COLUMBIA 29211

April 8, 2008

The Honorable Michael Chertoff
Secretary
United States Department of Homeland Security
Mail Stop: 3000
245 Murray Lane, SW
Washington, DC 20528

Dear Secretary Chertoff,

Thank you for your response on March 31, 2008, regarding the REAL ID Act and acknowledging the strength of South Carolina's driver's license program. I have as well appreciated our conversations in and around this letter.

In your letter, you stated that you were treating my letter as a basis for extension, and while I appreciate the mechanics of what this does for people in our state inasmuch as our respective letters to a degree talk past each other, I think it is important I be clear: we did not request an extension under the REAL ID Act. Instead, I believe, and you agree, that penalizing citizens carrying secure South Carolina driver's licenses would neither be fair nor sensible when citizens from other states carrying far less secure driver's licenses would be free to travel without restriction.

Further, I hope that other states will look at our model and adopt safety and security provisions similar to what we have implemented and will implement in the near future. However, I still fundamentally believe that the underlying premise of REAL ID, which is that Washington knows best, conflicts with the 10th Amendment because it compels states to adopt security measures out of fear that the federal government will not allow their citizens to travel freely if they do not comply with REAL ID's requirements. The states have as much interest in promoting national security as the federal government does, and we do not need the federal government to tell us how to protect our own citizens.

I also would like to address some of the points that you made in your letter in advocating the merits of REAL ID. In so doing, I am not attempting to make a futile gesture of defiance or engage in political grandstanding, but rather to initiate the debate over REAL ID that the American public never had. I sincerely hope that by beginning this debate, Congress, DHS and the states can resolve the issues that stand in the way of achieving greater national security though the use of secure driver's licenses across the country.

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First, your statement that states' law enforcement officials currently share motor vehicle data does not ease my concerns about REAL ID's threats to our citizens' privacy interests. While it is true that such data sharing currently goes on between the states, REAL ID expands the information that would be subject to sharing and does not contain any limitations on the circumstances when data sharing is appropriate. If REAL ID forces the states to allow their DMV databases to be accessed by other states, then DHS should set regulations or guidelines establishing some limits on when and what type of information must be shared. The access allowed under REAL ID should be no greater than what is minimally necessary to verify someone's identity. Allowing access that provides more than this information clearly exceeds the asserted purpose of REAL ID.

Although you argue that data sharing between states has not produced large-scale data compromises in the past, this is hardly an assurance that data compromises won't occur in the future. Instead of relying on our past good luck, DHS needs to establish security guidelines to protect data breaches and to limit, monitor and penalize unnecessary data sharing. Without these protections, I fear that our citizens' personal information will be exposed to theft.

Beyond the sharing of information between states, REAL ID presents further privacy concerns because it requires the states to maintain copies or images of source documents, such as birth certificates and social security numbers, for periods of 7 to 10 years. This is completely unnecessary. Once these documents have been verified, the states have no interest in keeping them. Requiring the states to store these documents for several years will only invite hackers and identity thieves to break into the databases that store these documents. I, therefore, believe that this requirement should be eliminated from the current law.

Second, although you argue that the requirement for a REAL ID is limited to only federal purposes, this ignores the fact that the law currently gives the DHS Secretary unlimited discretion to define what is a federal purpose. Therefore, any alleged limitation on DHS's power to expand REAL ID is illusory. I make this point not to disregard the restraint you have shown in limiting the scope of the Act in the present rule, but rather to point out that your successors may not exercise similar restraint in the future. Accordingly, I think it is imperative that Congress limit the scope of the Act. As DHS Secretary, you have a lot of credibility on this issue, and I hope you will join me in requesting Congress make this change.

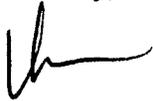
Third, I am grateful that you understand our reservations about having to implement REAL ID with little federal funding, and I appreciate your efforts to obtain more grant funds dedicated to REAL ID. I realize that it is often difficult to obtain all the funding you need for DHS's many functions. This realization brings me to my final point that rather than imposing burdensome requirements on the states through REAL ID, Congress should provide states with discretion and flexibility in improving their driver's licenses. This would reduce the financial burden on the states and, consequently, on the federal government and DHS.

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I think a good starting point in increasing the states' flexibility and authorizing more funding would be to enact legislation like S. 717, which is a bill sponsored by Senators Akaka, Sununu, Leahy and Tester. S. 717 would repeal Title 2 of REAL ID and replace it with provisions for negotiated rulemaking that allows all stakeholders, including the states and civil liberties and privacy protection groups, to participate in developing the minimum standards for secure driver's licenses. S. 717 also authorizes \$300,000,000 to be appropriated each year through 2013 for improving the security of driver's licenses. I believe that DHS would be sympathetic to S. 717 because it will eliminate many of the current objections that states have regarding REAL ID while also providing more funding for DHS in its quest to encourage the use of reliable driver's licenses. I, therefore, ask that you join me in urging Congress to repeal REAL ID and to adopt S. 717.

I hope you find my comments helpful, and I look forward to continuing our dialogue on this issue. Thanks again.

Sincerely,



Mark Sanford

MS/bg

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

Post Office Box 12267
COLUMBIA 29211

April 7, 2008

The Honorable
Governor of

Dear

In as much as the first deadline for REAL ID extension is behind us, and there are but eighteen months until the next one, I write to both share my concerns and ask for your help in urging Congress to revisit and reevaluate the REAL ID Act.

This unfunded federal mandate is not only what I believe to be poor policy, but in this case would needlessly burden our states' citizens. To the credit of Governors, considerable time and energy has already been spent on just this issue – but I'd ask that you join me and others in continuing to raise REAL ID nationally and locally because if change is not made in Washington, I fear states will ultimately be forced to accept the terms of REAL ID in its present form.

I would respectfully ask for your support in insisting it is, in fact, debated in Congress before it is forced upon the people you represent. Along with being a most egregious example of federal unfunded mandates, it brings with it a host of privacy and civil liberties concerns that I think should matter whether one's political bias is to the left or right.

So that you might learn more about the issue, I have attached a copy of the letter I sent last week to Secretary Chertoff laying out my administration's position on REAL ID. I suspect you will share many of the same concerns I detail in this letter, and I hope you will join with allies from across the political spectrum to convince Congress to improve, or ultimately discard, this legislation.

I appreciate you taking the time to read this letter, and I hope our paths cross soon.

Sincerely,



Mark Sanford

MS:bf

Attachment

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

April 3, 2008

The Honorable [REDACTED]
Washington, DC 20515

Dear Representative [REDACTED],

Having to a degree stood in your shoes as a former member of Congress, I write to both bring something to your attention and to ask for your help. I realize at the first read I am addressing a member of staff, and I would respectfully ask you to forward this note and its concerns to your boss.

I believe the so called REAL ID legislation is the worst piece of legislation I have seen during the 15 years I have been engaged in the political process - in large part because it was never debated in Washington. I would respectfully ask for your voice in insisting it, in fact, is debated in Congress before it is jammed on the people you represent. Along with being a most egregious example of federal unfunded mandates, it brings with it a host of privacy and civil liberty concerns that I think should matter whether one's political bias is to the left or right.

So that you might learn more about the ways in which it makes our country less secure, I have attached a copy of the letter I sent to Secretary Chertoff at the Department of Homeland Security. You may want to skip over the first page and a half as it is particular to our state, but from that point on, the letter outlines ways in which REAL ID undermines the greatest of all homeland securities, liberty, and why it so desperately needs to be debated in Washington.

Thank you for taking the time to read this, and I hope our paths cross when I am next at the Capital.

Sincerely,



Mark Sanford

Attachment



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

March 31, 2008

The Honorable Michael Chertoff
Secretary
United States Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Dear Mr. Secretary:

Let me begin by saying that I write with the greatest of personal respect for you, given our interactions over the last few years, and for the significance of what your office does through the Department of Homeland Security.

Given your efforts to implement REAL ID, I am sure you can appreciate that South Carolina has proactively taken steps, without prompting from the federal government, to establish one of the most secure driver's licenses in the country. South Carolina is already in compliance with nearly all of the REAL ID requirements. In fact, the Department of Homeland Security (DHS) has recognized that South Carolina has coincidentally met more than 90 percent of REAL ID's requirements — well ahead of the projected implementation deadlines and far in advance of many other states. As a result of this work, we now electronically verify social security numbers of license applicants with the Social Security Administration; we require applicants to provide documents to verify citizenship or show authorized presence in this country; we tie the validity of licenses to the length of authorized stay in the U.S.; we provide our employees with AAMVA-approved fraudulent document training; we have a documented exceptions process; and we have now enhanced the physical security of our field offices. As you know, we require a criminal background check for every employee at our Department of Motor Vehicles (DMV) that includes screening through state and federal law enforcement agencies. We also have an internal affairs operation that guards against and monitors potentially fraudulent documents issued by our employees. We also recently established a consumer hotline to provide fraud reporting 24 hours a day, seven days a week. In addition, we have a written security plan that has established defined benchmarks in moving our state towards more secure operations in the issuance of driver's licenses.

Also, as a result of a major systems upgrade in 2002, our DMV now uses a state of the art computer system that employs a "one customer, one record" relational database. Data security is achieved through various levels of network, application, and database security features, and it contains controls to easily provide and monitor access of authorized users. Given that security is constantly

evolving, the new system allows our DMV to continue to enhance the security of our license processes as new threats arise.

In detailing what this state has done in strengthening the security of our licenses, it is worth noting that we are now finalizing all necessary agreements with DHS to use the SAVE system. We have secured the necessary funding to purchase a facial recognition system that will assist our DMV and state law enforcement officials in easily identifying and preventing fraud. As part of this upgrade, our DMV will also be transitioning to a photo up-front process. Finally, we are working with our current vendor to enhance the physical security of state credentials by incorporating three levels of physical security features in our licenses and identification cards. In short, we are making the very security upgrades that REAL ID calls for and are ahead of many states in doing so.

Despite South Carolina's proactive steps to improve the security of our driver's licenses, I cannot authorize the implementation of REAL ID or confirm our state's compliance with its requirements in the future. As you know, South Carolina has enacted legislation that prevents the state from complying with REAL ID, and I am duty bound to comply with the laws of our state.

In this regard, South Carolina is no different than several other states that have laws preventing them from complying with REAL ID. I am encouraged by the fact that DHS has decided to treat the citizens of these states, including Montana, the same as the citizens of other states that have agreed to comply with REAL ID. I, therefore, respectfully ask DHS to treat South Carolina's citizens the same as it treats the citizens of all other states, including those that cannot legally comply with REAL ID and those that have not requested an extension for federal identification purposes. Given the way DHS has agreed to accept Montana's driver licenses after May 11th, one would reasonably expect – and I would respectfully ask – that DHS will be consistent and not needlessly penalize the citizens of South Carolina and allow them to travel and enter federal buildings like the citizens of all other states.

Your efforts to work with states as REAL ID issues are being resolved at both state and federal levels, I think, shows great leadership, and in some ways forbearance from your end that I appreciate. The good news is that during the next 18 months I believe it is near certain that REAL ID issues will be settled, or, alternatively, the law will be discarded.

As you know, I fall into the camp with serious reservations about REAL ID, and I would like to express them now with the hope that either Congress or DHS can address what I consider the more troubling parts of this legislation. I do not blame you or the Department for what I believe is wrong with this law. In many ways you have been put in the somewhat untenable position of being required to implement a law that Congress enacted, but never vetted – and as a consequence I believe it is very important we as a country indeed debate the merits of REAL ID and its requirements. Although I speak for the State of South Carolina which has enacted a law prohibiting the implementation of REAL ID, as you know there are many other states across this country whose citizens share our apprehension about REAL ID. So for these reasons, I am compelled to lay out the arguments against REAL ID and hope you will take them in the constructive spirit in which they are given – and see their intent in generating a long needed debate in Congress before REAL ID is fully implemented.

First, I join with millions of Americans in believing that national policy changes should be debated, not dictated - and REAL ID was never fully debated in Congress. As we both know, REAL ID was included as a rider to the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief in 2005, and it never underwent committee debate in the Senate or House. Since this bill provided aid to tsunami victims in Southeast Asia and military personnel

fighting in the Middle East, essentially no member of Congress voted against it and it passed overwhelmingly. Does it make any sense to begin a *de facto* national ID system without debate? As a practical matter, this sensitive subject received far less debate than steroid use in baseball. Rather than compelling states to comply with REAL ID with the threat of longer wait times for their citizens in airports across the country, I think the American people deserve a full and robust debate on whether REAL ID will provide greater national security and, if so, whether the increased security outweighs the risks to our privacy interests and other costs that arise from creating a national ID system.

Second, at some point someone has got to draw a line in the sand with regard to unfunded federal mandates. Based on the broad array of groups from across the political spectrum that oppose REAL ID, if there was ever a federal mandate on which to draw that line in the sand, this seems to be it. In fact, the bipartisan National Conference of State Legislatures classified Real ID as "the most egregious example" of unfunded federal mandates.

In our conference call last week, you heard complete agreement between the governors against federal unfunded mandates. As you know, Arizona Governor Janet Napolitano and I share very different political philosophies, but I completely agree with her that if the federal government wants something, then the federal government should pay for it. The original estimate for REAL ID was \$23 billion. DHS currently estimates that REAL ID will cost \$9.9 billion. Over the last 15 years that I have had reason to closely watch things in Washington, three-fold decreases in cost have never been the order of things. Nonetheless, if one leaves aside for a moment what we believe to be implausible assumptions that go with this downward revision, the revised costs are as follows: \$3.9 billion cost to the states, \$5.8 billion cost to individuals, and \$0.2 billion (\$200 million) to the federal government and private sector. It seems to me there is something wrong when the federal government imposes the burdens of creating a national ID system on the states - but only pays for two percent of the cost.

Additionally, REAL ID also does not address the cost to verify information across databases. We have seen this verification process with things like commercial drivers licenses grow more costly with increased demand. Before legislation like this goes into effect, I believe transaction costs should be clearly and specifically enumerated.

Unfunded mandates and unspecified costs are relevant to a national security debate and REAL ID because of the larger spending problems in Washington. The former Comptroller General of the United States, David Walker, has been traveling the country in what he calls "The Fiscal Wakeup Tour" detailing the threats to this country's existence, given \$50 trillion of national indebtedness. It amounts to about \$450,000 in federal indebtedness per family. He argues it will have far-reaching consequences if not dealt with in the near future, and the point here is that homeland security has to be provided within the context of national security - and that sustainable spending, especially given what is happening to the dollar, is a big part of this. In short, if the federal government thinks a national ID card is necessary, then, after debating its merits, they should pay for it - after determining they *can* pay for it.

Alternatively, if the federal government wants a certain standard in security, they should quantify it -- and leave it to the states to determine the best way of getting there. Unfortunately, REAL ID does neither, and in present form, South Carolina will be left with a \$116 million unfunded bill to implement REAL ID. I believe it is wrong to do this to our state and many others, all of which face

the prospect of lean budget years ahead. In effect, the federal government will be forcing states to either cut other governmental programs or raise taxes and fees.

Equally troubling from our end is that DHS now takes money from existing Homeland Security Grants to make funds available for grants to help in implementing REAL ID. This not only signals tepid support for something the department holds as a priority of the administration, but in hurricane-prone states like ours this is a recipe for disaster. I do not know if our state will ever be struck by an act of terrorism, but I do know we will be hit by another hurricane. The interoperability necessary in our radio system for emergency management is the same whether we are responding to an act of God or an act of man, and so we use Homeland Security Grants for things like this. Cutting these grants to make money "available" for REAL ID represents taking money out of one pocket to fund the other in our view, and accordingly sets us back in our emergency preparedness.

Third, REAL ID will substantially raise wait times at DMV offices across our state, and this will also result in productivity losses that have not been quantified in any DHS estimates. Given your agency's desire for national identification, would you not just make a passport, or something similar, a national ID because of the federal nexus - and have the federal government attend to the accompanying costs, wait times and labor requirements? Not doing this leads some to suggest that this legislation represents a backdoor way of implementing a national ID card without the federal government bearing the financial or political cost of doing so. In all cases, increasing wait times in our state from the current 15 minutes, which our DMV employees worked so hard to achieve, up to one or two hours is a real problem.

Fourth, REAL ID represents another step against a limited federal government. Our greatest homeland security is liberty and, yet, based on the history of civilizations, its biggest threat is found in a central government that is too powerful. Our founding fathers were explicit in reserving first to individuals, then to states, all powers that were not expressly delegated to the federal government. As mentioned, they did this because they considered the biggest threat to liberty a large federal government and, as a consequence, they put in place checks on its prerogative — one of the greatest of which is the power of individual states. REAL ID upsets the balance of power between the federal government and the states by coercing the states into creating a national ID system for federal purposes. Given its requirement to board a plane or enter a federal building, it would also change the balance of power in something as seemingly insignificant as a visit to a member of Congress. As a former member of the U.S. Congress, I had countless meetings with constituents whose personal details I knew nothing about — and this was a good thing. Their background was not the issue, my stand on a given matter was. The First Amendment guarantees Americans the right to assemble and petition their government, and in it there has never been a qualification that said, "Only if you have a REAL ID card." On this, I think it would be best to let the Founding Fathers original work stand.

I am also concerned that the present law clearly provides the Secretary of DHS substantial discretion to expand the scope of REAL ID. It strikes me that you understand the dangers that could come with too great a reach to expand the scope of this law, but I don't know that this will be the same with whoever follows you. In fact, DHS noted in its comments to the final rule that it "will continue to consider additional ways in which a REAL ID license can or should be used and will implement any changes to the definition of 'official purpose' or determinations regarding additional uses for REAL ID." This means while current federal rules limit the required places we would need a REAL ID, we have no assurances that at some point we won't need a REAL ID to open a bank account or purchase a gun.

Fifth, REAL ID requires the creation of a national computer network of driver's license databases that can be accessed by all states and the federal government. This will be, in effect, a central depository for citizens' personal information, and central depositories have never proven to be great bulwarks in the world of security. Over the past three years, security breaches, misplaced or stolen equipment, or simple carelessness at the federal government level have exposed the personal information of as many as 40 million Americans to falling into the wrong hands. More specifically, in May 2006, roughly 27 million veterans had personal information compromised when a Department of Veterans Affairs laptop was stolen from an employee. It was later determined that the employee violated agency policies both for storing the information and taking the laptop.

To err really is human. Sometimes it is for nefarious purposes, sometimes it is out of boredom — as was the case of the last teenager hacking into Pentagon databases — and still other times it's borne out of nothing more than curiosity such as when federal employees recently opened the passport files of this country's three Presidential candidates. But if you accept the reality that mistakes do happen and that bad people do hack into spots they are not supposed to access — does it really make sense to put all this information into a central database rather than have this information housed independently across fifty states? I find it difficult to believe that our privacy will be more protected by housing the fifty states licensing information in Washington.

Sixth, REAL ID provides no guarantees that it will make us any safer, because, despite its good intentions, it has no standing in foreign countries. This means that even if DHS forces states to spend billions and establishes a national database, it would have no impact for those who travel on foreign passports. A terrorist could get a passport from a third world country and travel on it instead. Before we spend these monies, I think we should carefully look at ways to close this and other REAL ID loopholes. In the same vein, in a recent U.S Court of Appeals for the Ninth Circuit case, it was conceded that a person doesn't need any identification to fly, as long as they are subject to alternative screening. If a traveler with sinister intent is determined to fly on a commercial aircraft, I find it implausible they would go through the steps detailed in the REAL ID, when they could get on the same plane with nothing more than a pat-down screening.

I have been all too detailed in chronicling my concerns with REAL ID, so I will mercifully end this letter. As I stated at the letter's start, I have written as I have not to condemn or criticize you or the Department, but to honestly lay out what I consider to be grave consequences to the taxpayer, privacy interests, and civil liberties in our country if we continue with REAL ID in its present form.

I hope Congress and DHS will seriously consider addressing the problems with REAL ID, and I would love to work with you and others in this process. In contemplating its framework, I ask that we remember the asymmetrical nature of guerilla warfare — and, therefore, the continually changing tactics of those who would do our nation harm. Consequently, it is important that we stay mindful not to fight yesterday's battle and to always remember that America's greatest homeland security rests in liberty.

I appreciate you taking the time to read this letter, and I look forward to discussing it with you.

Sincerely,



Mark Sanford