

State of South Carolina

Office of the Governor

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GOVERNOR

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January 28, 2009

The Honorable Janet Napolitano
Secretary
United States Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528

Dear Janet,

Congratulations to you on your nomination and confirmation to be none other than the third Secretary of the Department of Homeland Security (DHS). I can now indeed say I knew you when!

With the many challenges that face the United States today, there are few positions in government as significant as the one you now hold, and your capable leadership in this post will be important for the way it sets the tone for a nation that indeed values and protects its freedom.

It is also encouraging that a former governor is being given the opportunity to lead DHS. I believe governors bring a unique perspective to the table in that our positions require us to not only defend our constituents from physical harm on the one hand, but also guard these same citizens' wallets and liberties on the other.

As we both know given our shared efforts over the last few years, one recently proposed DHS program that makes these dual tasks that much more difficult for states and their taxpayers is the REAL ID Act.

The enormous cost this program will have on state budgets, during difficult economic times when every dollar is particularly valuable, is of great concern. However, of equal concern is the price that each citizen will be asked to pay in terms of individual liberties should REAL ID be implemented. Given our shared concerns on REAL ID, I'd ask that as one of the first acts as the new Secretary you reevaluate the REAL ID program. I offer my services and that of other governors to help in at a minimum making major modifications to the program - or better yet in ending it altogether.

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There are several reasons why I believe it is wrong to continue down the path of implementing REAL ID. Some of these concerns have already prompted nearly half of the states to pass legislation opposing REAL ID, while the majority of the remaining states currently have legislation pending. It goes without saying that you signed such a law during your time in Arizona. Obviously, what is flawed with this law is not of your making, but I offer these reservations with the hope that either DHS or Congress can address the troubling parts of this legislation.

First, I come from the belief that national policy changes should be debated, not dictated – and, as you know, REAL ID was never fully debated in Congress. For over 200 years the citizens of this nation have not been required to be a part of a national ID system. Before being asked to give up some of the privacy rights that implementation of this law will require, Congress owes it to the American people to fully and robustly debate whether REAL ID will truly provide greater national security. If so, whether the potentially increased security outweighs the risks to our privacy interests and other costs that arise from creating a national ID system. REAL ID fell well short of this standard as a rider attached to the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief in 2005.

Second, given your wonderfully vocal opposition over our years together working on this, I know you understand the impact that federal unfunded mandates have on state budgets. The bipartisan National Conference of State Legislatures classified REAL ID as “the most egregious example” of unfunded mandates. The original estimate for REAL ID was \$23 billion; however, DHS currently estimates that REAL ID will cost \$9.9 billion – with Washington only picking up two percent of the cost. While it has not been my experience in dealing with Washington over the last 15 years that costs associated with a government program decrease three-fold, \$9.9 billion is still a very significant figure when considering the strain that state budgets across the nation are currently experiencing, with 44 states experiencing shortfalls in 2009. You’re also familiar with the common sense but often very difficult task that governors and states have in balancing their budgets on a yearly basis, which means that the \$9.7 billion states will be forced to cover must be taken from other service areas, such as public safety, education and healthcare.

If the federal government thinks a national ID system is necessary, then, after debating its merits, they should pay for it – after determining they *can* pay for it. This would be a high bar indeed, especially given the fiscal hole we’re now in. When taking into account the unfunded liabilities associated with Social Security and Medicare, the total debt of the United States of America is over \$56 trillion – or \$184,000 per citizen. In FY 2009 alone, the federal deficit is projected to be over \$1.2 trillion – before factoring in the costs of further stimulus packages and the ongoing wars in Iraq and Afghanistan. It seems that these very tough indeed economic times would signal that perhaps it’s not the right time to be spending billions on REAL ID.

There is an alternative. If the federal government desires a certain standard in security they should quantify it – and leave it to the states to reach these benchmarks. Unfortunately, REAL ID does neither, and in its present form, leaves the taxpayers of South Carolina with a \$116 million unfunded bill to implement REAL ID. Additionally, wait times at our Department of Motor Vehicles (DMV) offices will increase from the current average of 15 minutes, which our DMV employees worked hard to achieve in the last five years, up to possibly one or two hours. This is particularly frustrating given the fact that, by DHS's own admission, our state's identification system is already more than 90 percent compliant with REAL ID's requirements – and we are in the process of implementing upgrades that would leave us compliant with the remaining REAL ID requirements, but at a fraction of the costs associated with full implementation of the REAL ID program.

Third, REAL ID represents a step in the opposite direction on the notion of limited government. As I communicated to Secretary Chertoff in March of last year, 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. The Founding Fathers considered the biggest threat to liberty a large federal government and, as a consequence, put in place checks and balances – 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 that a citizen would need a REAL ID to board a plane or enter a federal building, it would also change something as seemingly insignificant, and yet vital to our democracy and guaranteed by the First Amendment, as a visit to a Member of Congress. As a former Member, 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.

Fourth, 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 "hub" will, in effect, be a central depository for Americans' personal information. As we have seen over the past few years, security breaches, misplaced or stolen equipment, or simply carelessness by some of those in government have led to the personal information of as many as 40 million Americans falling into the wrong hands. If you accept the reality that mistakes do happen and that those of ill intent will focus their efforts on areas promising the most reward, it does not seem to make sense to put all of this information into a central database – when states could continue as they do now and house it independently.

Fifth, REAL ID provides no guarantee of safety because, despite its good intentions, it has no standing with foreign countries. This means that even if states spend billions to establish a national database, it would have no impact for those that travel on foreign passports. A terrorist could get a passport in any number of countries around the world and travel in and out of the

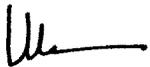
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United States unencumbered. Before we spend these monies, I think we should carefully look at ways to close these and other loopholes.

With another implementation deadline looming at the end of this year, I would welcome the opportunity to work with you and other governors to find a more “state-friendly” solution that will address many of the goals of the REAL ID program.

I appreciate your time and consideration, and I’d again offer you my congratulations and best wishes as you begin what by all accounts will be an important and challenging post.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Sanford', with a horizontal line extending to the right.

Mark Sanford

MS/bf

cc: All Governors
Members of the United States Senate
Members of the United States House of Representatives