



# State of South Carolina

## Office of the Governor

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July 21, 2009

The Honorable Joseph I. Lieberman  
Chairman, Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Susan M. Collins  
Ranking Member, Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Lieberman and Ranking Member Collins,

Let me begin by saying that I appreciate the Committee's willingness to work with the states and governors to reduce some of the burdens imposed by REAL ID. I believe this discussion is long overdue, and I'm encouraged that you are willing to give the issues surrounding REAL ID the debate that it deserves.

I would also give real credit to the Department of Homeland Security (DHS), led by Secretary Napolitano, and the National Governors Association (NGA) who worked on the proposal to revise REAL ID. They have made a good attempt at correcting many of the flaws with REAL ID and indeed have succeeded to some degree. However, there still remain some legitimate concerns that from our perspective the PASS ID legislation does not address.

While costs related to REAL ID's unfunded federal mandate on the states are significant, I believe equally as troubling are the law's potential infringements on liberty and privacy rights – since the greatest consideration concerning America's national security is indeed its liberty. It is with these very real threats to liberty and privacy weighing on my mind that I write to ask that you fully consider and take steps to protect these interests as you work to revise PASS ID. Specifically, I have four primary concerns.

First, I believe it is essential that any replacement legislation ensures that the federal government does not require citizens to use an ID in a manner that would interfere with their rights to travel and petition their government as guaranteed by the United States Constitution. While I'm encouraged that the proposed legislation more narrowly prescribes the uses for which a federally compliant ID will be required, I maintain concerns that it will burden the rights of citizens who do not have a federally compliant ID by making them go through potentially invasive and demeaning secondary screening measures that, in effect, render them second-class citizens.

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As DHS has recognized, South Carolina's driver's licenses are achieving more than 90 percent compliance with PASS ID; nevertheless, our citizens would be denied the right to use these state IDs to board a plane or enter some federal buildings. This, I believe, is unwise and inappropriate, and as such it should be remedied. At the very least, any new legislation should tightly describe secondary screening measures that ensure citizens will not be subjected to intrusive and demeaning inspections by their government. This would give the American public a chance to react to that which might be prescribed by government officials.

Second, replacement legislation should not create any national database or national identity hub for verifying a citizen's identity. Although I'm aware of and encouraged by the fact that the proposed PASS ID legislation eliminates the creation of a national identity verification hub as required by REAL ID, I'm concerned that it nevertheless allows for a pilot program that states can voluntarily participate in. Although the program is voluntary now, we have no assurances that it will not be mandatory in the future. History itself indeed leads one to believe that the federal government may eventually look to consolidate its oversight and control in this area, and therefore I'd strongly ask for the removal of this pilot program in any replacement legislation.

Third, PASS ID should expressly prohibit DHS from requiring states to place RFID in PASS ID-compliant driver's licenses. Some states are issuing "enhanced driver's licenses" that include RFID to comply with REAL ID. Although DHS chose not to require this technology in REAL ID, there is no prohibition that would keep DHS from requiring RFID in the future under PASS ID. RFID can easily result in a privacy loss, as scanning cards could become commonplace in doorways and other bottlenecks throughout the country - your whereabouts recorded regularly, by public and private entities.

Fourth, PASS ID maintains the requirement from REAL ID that victims of domestic violence store all previous names that they have gone by with all other personal information with their DMV. For individuals who have changed their name to avoid contact with previous attackers, this requirement could jeopardize their well-being. PASS ID legislation should include an exemption for victims of domestic violence that would not force them to give all previous names.

I thank you for your attention and consideration of my concerns about liberty and privacy rights that arise from the REAL ID law and any replacement legislation. Take care.

Sincerely,



Mark Sanford

MS/jms

cc: Members of the United States Senate Committee on Homeland Security and Governmental Affairs  
Members of the South Carolina Congressional Delegation  
The Honorable Janet Napolitano