



State of South Carolina

Office of the Governor

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May 5, 2009

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

Dear Janet,

I am writing in response to your letter of March 13, 2009, in which you informed me that your staff was working with the National Governors Association (NGA) to revise REAL ID, and in response to media reports that you are working with the nation's governors to repeal REAL ID.

Let me begin by saying that I appreciate your willingness to work with the states and governors to reduce some of the burdens imposed by REAL ID. I believe this discussion is long over due, and I'm encouraged that you are willing to give REAL ID the debate that it deserves. For that, you deserve real credit. As you know, I have always been your fan on this front given our work together as governors, and I look forward to working with you on this in your new role.

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 with the governors to revise REAL ID. Specifically, I have three 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.

The Honorable Janet Napolitano

Page 2

May 5, 2009

As you noted in your March 13th letter to me, South Carolina's driver's licenses are achieving more than 90 percent compliance with REAL 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, new legislation should tightly prescribe reasonable and unburdensome secondary screening measures that ensure citizens will not be subjected to intrusive and demeaning inspections by their government.

Second, any new legislation should not require the states to maintain a centrally located database of source documents needed to validate a citizens' identity because of the tremendous privacy risks associated with this central warehousing of such vital documents. While the proposed legislation would no longer require states to scan and electronically store these documents, this only reduces the administrative burden on the states without addressing the larger privacy concerns. As I've expressed before, the states have no interest in keeping these documents once a citizen's identity is validated, and therefore I think we should err on the side of protecting privacy on this front.

Third, 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 replacement legislation eliminates the creation of the 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 encourage the removal of this pilot program in any replacement legislation.

I thank you for your attention and consideration of my concerns about liberty and privacy rights that arise from the REAL ID law. I know these are concerns we share. I am hopeful that your efforts, combined with those of the NGA and nation's governors, will go a considerable way toward reducing the potential burdens on the states and their people. Take care and talk soon.

Sincerely,



Mark Sanford

MS/bg

cc: All Governors