



Governor Jim Gibbons
State Capitol
101 N. Carson Street
Carson City, NV 89701
Sent via fax to (775) 684-5683

December 7, 2009

Dear Governor Gibbons:

The ACLU of Nevada has recently learned that emergency regulations attempting to bring Nevada into compliance with the federal REAL ID Act may have been enacted¹ or may be under consideration for enactment.² The ACLU has a number of concerns about the possibility of either scenario, and urges you to protect Nevadans' privacy and tax dollars by refusing to enact REAL ID regulations.

Originally passed in 2005, REAL ID is an unfunded federal mandate that puts the privacy rights of all Nevadans at risk. It creates a national identification card that every American will be required to carry in order to fly inter-state on commercial airlines, enter government buildings such as courthouses, open a bank account, and more. These requirements do little to address critical public safety issues³ while putting us at greater risk for invasions of privacy and identity theft. REAL ID also creates huge administrative burdens for state governments, with only minimal federal funds for implementing its onerous requirements. As of today, the federal government has still not allocated adequate funds for REAL ID,⁴ or any of the other competing measures currently circulating in Washington DC that seek to enact similar national identification measures

In light of these problems, as of October 2009, 24 states had approved either resolutions or binding legislation *not* to participate in REAL ID. Of those, thirteen states have passed legislation that actually prohibits their participation in the program.

Nevadans do not support REAL ID and their elected legislators have refused to adopt it. Here in Nevada, the 2007 Legislature passed a near-unanimous joint resolution, AJR6, urging Congress to repeal REAL ID. Reasons for passing this legislation ranged from its overwhelming cost to the failure of the Department of Homeland Security to promulgate rules for the implementation of the Act itself. In 2009, the Legislature again declined to adopt REAL ID.

Since Nevada's rejection of REAL ID in 2007, the privacy and cost problems have not been resolved. Representatives from the Nevada DMV have intimated that the projected costs of implementing REAL ID have been reduced. Unfortunately, any possible "cost cuts" would come

¹ <http://www.lasvegassun.com/news/2009/nov/30/governor-oks-emergency-regulation-drivers-licenses/>

² <http://www.lvrj.com/news/real-id-laws-regulations-yet-to-be-adopted-in-state-74533172.html>

³ "DHS did not provide timely and specific guidance on how REAL ID-compliant driver's licenses and identification cards must be marked, best practices for the physical security of facilities, or information on the systems that will be used for verifying applicant documentation." See DHS' Office of Inspector General March 2009 report at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-36_Mar09.pdf

⁴ In FY 2009, the President's budget request contained only \$150 million for REAL ID, *which is less than two tenths of one percent of DHS's estimated cost of \$9.9 billion.* See the appropriation forecast for REAL ID in the DHS' budget appendix at <http://www.whitehouse.gov/omb/budget/fy2009/pdf/appendix/dhs.pdf>

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at the expense of privacy. As reported by the Department of Homeland Security in the final regulations on REAL ID in 2008, one cost-saving measure that was taken was “not to encrypt the data that will be stored on the card.”⁵ Regardless of whether REAL ID can be made less expensive than originally projected, if implemented, it will cost Nevadan taxpayer significant monies⁶ because, while the federal government is attempting to impose the program on states, it is not providing states with enough funding to cover the costs.⁷

Not only is REAL ID a bad idea that will violate the civil rights of Nevadans and impose very significant burdens on Nevada taxpayers, but the propriety of emergency regulation is questionable at best. At the end of last month, the Nevada Legislative Committee to Review Regulations declined to approve the DMV’s proposed regulation that would have attempted to bring Nevada into compliance with this federal mandate. In any case, given the extensive and failed history of REAL ID at the Nevada Legislature, it is difficult to imagine how compliance with this unwise federal mandate has become an “emergency.” Indeed, according to our understanding of the Nevada Revised Statutes 223.210, your office may be given the authority to deal with federal mandates, only “with the approval of the Legislative Commission.”

The standing Nevada Legislature’s 2007 Joint Resolution urging Congress to repeal REAL ID and reasons outlined therein; the position taken by 24 states to entirely opt out of enacting REAL ID; the 2009 Legislature’s inability to pass any meaningful legislation considering the federal government’s waiving on the issue as a result of continued pressure from states around the country; and the recent refusal of the Nevada Legislative Committee to Review Regulations to approve the DMV’s proposed regulation, should be reasons enough for you to not rush through any such sweeping REAL ID-related regulation.

We ask that you refuse to unilaterally enact any emergency regulation that would attempt to bring Nevada into compliance with any provisions of REAL ID. Nevadans deserve more than last minute decisions that threaten fundamental privacy rights and burden them as taxpayers.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Lichtenstein".

Allen Lichtenstein
General Counsel

A handwritten signature in black ink, appearing to read "Rebecca S. Gasca".

Rebecca S. Gasca
Public Advocate

⁵ Electronic Privacy Information Center (<http://epic.org/privacy/id-cards/>)

⁶ Nevada would likely be in the same position as other states that reported needing to “hire additional employees; increase service hours; expand facilities; purchase additional equipment; implement public education campaigns; and handle increased calls, complaints, and return visits” in order to re-enroll every registered driver within the state before implementation. *See* DHS’ Office of Inspector General March 2009 report at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_09-36_Mar09.pdf

⁷ The limited funds that have been made available to states through the form of minimal federal grants are certainly not enough to cover requirements of new technology, training and implementation; instead, these will be expenditures that Nevada would have to finance on its own. Furthermore, no new regulations that would ensure privacy protections have been released for this revised version of REAL ID.