



## **ACLU Scorecard On Final Real ID Regulations**

**January 17, 2008**

On January 11, 2008, the Department of Homeland Security (DHS) issued its final regulations implementing the Real ID Act of 2005, the law that would federalize state driver's licenses and the motor vehicles departments that issue them and create the nation's first-ever de facto national identity card system.

To assist in the systematic evaluation of this complex issue, the ACLU has prepared this scorecard listing all the potential problems that have been commonly identified with the Real ID law by a variety of parties, including privacy advocates, domestic violence victims, anti-government conservatives, religious leaders, civil libertarians and DMV administrators. Many of these problems were identified prior to, or soon after the enactment of the Real ID Act of 2005. Others were raised in numerous meeting between interested parties and DHS beginning in the summer of 2005 and culminating in the more than 21,000 public comments received by DHS in response to the proposed regulations published by DHS in March 2007. The ACLU reviewed those proposed regulations and introduced a Scorecard shortly after their publication. Thus, it is fair to note that DHS had many months or years of advance notice of the potential problems that could be raised by poorly written Real ID regulations.

Close analysis reveals shocking results; for the most part, DHS failed to respond to the legitimate concerns of interested parties. The result is regulations that are likely impossible to implement.

The scorecard shows that in the final regulations DHS has failed to fix the preponderance of problems that Real ID presents for individuals and the states. Of the 56 issues listed, the regulations passed 6 (11 percent), scored an incomplete on 13 (23 percent), and failed the rest (66 percent).

This is barely an improvement over the proposed regulations that were submitted for public comment in March 2007. According to our scorecard analysis at the time, those regulations passed 5 (9 percent), scored an incomplete on 9 (16 percent), and failed to resolve the remainder of the 56 issues.

**The grades**

The following grades indicate whether the federal regulations succeed in fixing each problem. In cases where DHS addressed the problem but could not or did not fix it, we list a grade of “incomplete.”

Problems with the act have been grouped into four categories: 1) impact on individuals, 2) impact on privacy, 3) impact on states and 4) impact on Constitutional rights.

<b>Impact on Individuals</b>		
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Increased wait time at the Department of Motor Vehicles (“DMV”).</b> Many state DMVs predict extensive increases in customer wait times resulting from the many new requirements imposed by Real ID. In a survey by the American Association of Motor Vehicle Administrators (AAMVA), states predict that Real ID will bring increased “customer traffic flow and customer wait/visit time in all field offices” and will have a “significant influence on customer service.” (<i>“The Motor Vehicle Administrators Survey on Real ID: An ACLU White Paper”</i>) <b>The regulations impose significant burdens on individuals that, as DHS acknowledges, will increase wait times and service times at DMVs, as well as the time necessary to obtain new source documents (p. 223). Partly this would be caused by the fact that applicants for a Real ID “will need to complete an application process similar to those of a first time driver” and reduce the number of Internet and remote renewals. DHS estimates that Americans will collectively spend 49.8 million hours visiting the DMV, and that opportunity costs to individuals from these visits will be \$1.3 billion (p. 221).</b></p>	
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>“Full Legal Name” requirement.</b> Wide inconsistency often exists between names even on federal documents, such as a social security card and a passport belonging to the same individual. All these records must be verified and harmonized under REAL ID prior to the issuance of a license. Recently in Alabama tens of thousands of older drivers had difficulty renewing licenses because the names in their DMV records were not consistent with other records such as the Social Security database. Many Americans have records that reflect not only their “legal name”, but also the everyday names they use. James Joseph Johnson Jr. may have documents in the name of Jim Johnson, JJ Johnson, Jim Johnson Jr., Joe Johnson, etc. (<i>ACLU analysis, “The Alabama Mess: One State Tries to Begin Tackling Real ID”</i>). <b>While the regulations make some effort to allow flexibility in what name appears on a license by following procedures under state law for proving legal name changes, the regulations do not address or solve the problem of individuals who are recorded under different names on different documents or in different databases. Individuals must reconcile different names in different databases unless they have undergone a formal name change procedure.</b></p>	

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Individuals with changed names.</b> Individuals whose name on one source document does not match the name on another will find themselves in a bureaucratic bind under Real ID. This is a substantial portion of the population including women who have taken their spouses' last names and a large percentage of the Asian-American community (whose first and last name may be switched on their source documents). (<i>National Governors Association ("NGA"), National Conference of State Legislators ("NCSL"), &amp; AAMVA, "The Real ID Act: National Impact Analysis"</i>) <b>While the regulations allow states to set standards for the documents they accept proving name changes, they do not address the issue of individuals whose names are recorded differently in different databases or records (p. 255). They also require individuals to take some formal step toward changing their name; currently in many states it is lawful to simply use a different name as long as an individual has no fraudulent intent.</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Principal address requirement.</b> The act requires, without exception, that compliant IDs contain one's "principal address." It is unclear how people without such an address or who live in different places – such as students, those who live in RVs and other mobile homes, and the homeless – will solve this issue. (<i>See ACLU, "Real Costs: Assessing the Financial Impact of the Real ID Act on the States"</i>) <b>The regulations attempt to address this issue by defining principal address as the place where a "person currently resides" (p. 250), and stating that DMVs can make exemptions for the homeless and military personnel. There is still some concern over whether all states will be able and willing to create workable methods for utilizing these exemptions. The large potential scope of these exemptions also seems to undercut the security rationale for the act. The regulations are silent on how, if at all, states will verify the principal address presented by an applicant.</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Threat to safety from principal address requirement.</b> A number of states have laws that allow judges, police officers, domestic violence victims, or others at risk of retaliatory criminal violence to use agency addresses or P.O. boxes in lieu of their actual residence address. Yet states cannot keep those laws on the books if they are to comply with Real ID. (<i>“Motor Vehicle Administrators Survey”</i>) <b>The regulations address some, but not all of the concerns of domestic violence victims and vagueness in the regulatory language may lead to further problems. The regulations do create an exemption from the principal address requirement, which covers individuals who are part of address confidentiality programs or for whom “law, regulations or DMV procedure permits display of an alternative address” (p. 262). However, because some states have never had to create exemption procedures in the past, there may still be problems when victims attempt to keep their residential address off their license. The regulations also fail to address systemic problems that particularly impact victims of domestic violence including the vulnerability of information within DMV databases and the failure to disqualify employees guilty of offenses related to domestic violence (found at 49 CFR 1572.103) from working in DMVs.</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Disproportionate burden on low-income individuals.</b> It is feared poorer people will find it harder not only to absorb higher license-issuance or renewal fees, but also to skip what will sometimes be multiple days of work in order to stand in long queues to prove their identities in order to obtain a Real ID. (<i>ACLU, “Real Answers: FAQ on Real ID”</i>) <b>While the regulations deny that Real ID disproportionately impacts low-income individuals, the fact is that, even under DHS’s questionable assumptions about cost, Real ID is expected to cost \$9.9 billion nationally (p. 221). This includes \$5.8 billion in costs to individuals, and will require increased time waiting at the DMV and seeking source documents. The regulations estimate that visits to the DMV alone will cost Americans \$1.3 billion.</b></p>
<p>PASS FAIL INC</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Individuals who lack birth certificates.</b> Over time, many records are lost through natural disasters, such as flood or fire, and by human error. And the births of many, especially older citizens from rural areas, simply were not recorded. Because the birth certificate is likely to be one of the core documents that must be verified (especially to prove citizenship) it is not clear how these problems will be addressed. (<i>“FAQ”</i>) <b>The regulations seem to address this issue by allowing states to create an exemption process for individuals who do not have a birth certificate (p. 256). (Ironically, this exemption would seem to undercut the entire security rationale for Real ID: that identity can only be proved by presenting other “breeder documents” like birth certificates).</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Foreign-born lawful residents who lack passports.</b> The only foreign document that is acceptable to DMVs under Real ID is an official passport. But that doesn't meet the needs of many legal immigrants, including refugees and dissidents or others who may face hostility or a lack of cooperation from their home governments in obtaining the required documents. (<i>"FAQ"</i>) <b>DHS states that it solves this problem by allowing for the use of employment authorization documents (EADs) for verifying identity (p. 254). However not all categories of legal immigrants will possess EADs (for example, not all asylum seekers qualify).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Same-day licenses.</b> State DMV officials report that Real ID could largely prevent over-the-counter issuance of some or all IDs, resulting in shifts from relatively instant issuance to having to mail documents to applicants, and an overall process that could range from 2 to 6 weeks pending approval of verified documents. (<i>"Motor Vehicle Administrators Survey"</i>) <b>While in theory if every verification database existed and was fully operational, applicants could have their documents verified instantly and walk away with a Real ID, the regulations make it clear that that is not going to happen, at least in the foreseeable future. The systems for verifying documents and communicating with states simply do not exist, making same-day licensing impossible.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Fewer offices.</b> DMV officials in some states also report that the cost increases driven by the act's requirement may force them to close some itinerant field stations and eliminate mobile offices, which can impose considerable burdens on citizens of rural, low-density states. (<i>"Motor Vehicle Administrators Survey"</i>) <b>DHS describes these offices as a "security vulnerability" and believes steps should be made to close them (p. 154). This would inconvenience consumers by forcing smaller offices to close their doors and have a disproportionate impact on Americans who live in rural communities.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Internet or mail transactions.</b> Because of the verification requirements, DMV officials report that Real ID could reduce or end mail and Internet address changes and renewals, further straining the resources of DMVs and imposing burdens on drivers and other applicants. (<i>"Motor Vehicle Administrators Survey"</i>) <b>While the regulations make clear that in theory Internet and remote renewal of licenses is possible (pg 266), it is difficult to see how such remote renewal would be possible in practice. License holders must still present a host of documents (such as birth certificates), verify identity and pose for a digital photo that meets very specific criteria. All of these would seem to require an in-person application. However, the regulations do allow Internet and mail renewals for every other renewal, and have trimmed back the definition of what constitutes a "material change," which would require an in-person renewal.</b></p>

<p>PASS FAIL INC  <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Change of address.</b> Currently individuals simply notify their DMV when they move. However, the principal address requirement of Real ID (see above) may require people to re-register with the DMV in person every time they change addresses so that their new address can be verified and they can be issued a new ID card. This will not only impose substantial inconveniences on individuals, but also raise costs for DMVs. (<i>NCSL et al, "Impact Analysis"</i>) <b>The regulations address this issue by allowing address changes remotely and not requiring the issuance of a new license every time an individual moves within a state (the regulations do not clarify, however, whether an individual will need to obtain a new Real ID license when moving to a new state).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Disruption in driving caused by verification procedures.</b> Will states be able to issue an interim driver's license for individuals whose source documents cannot be immediately verified or will these individuals be prevented from driving? Will such a temporary ID be acceptable for air travel? <b>The regulations allow for the issuance of an interim license – however it will not be acceptable for official purposes such as air travel (p. 259).</b> They also raise the question of how holders of these temporary licenses will be treated by third parties such as police officers and insurance companies. Finally, the regulations acknowledge that disruptions could occur at nuclear facilities if workers are unable to obtain a Real ID compliant license, which could pose a serious safety risk. DHS concedes that this is a problem with the definition of "official purpose" in the underlying act, and asks that the Nuclear Regulatory Commission develop an alternative access authorization program (p. 66).</p>

Impact on Privacy		
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>National ID.</b> Privacy advocates fear the Real ID and its national database will become a national identity registry. The act states that Real IDs shall be required not only for activities like boarding aircraft, but also for “any other purposes that the Secretary [of Homeland Security] shall determine.” This provision allows the Department of Homeland Security to expand unilaterally the scope of identity requirements creating the real possibility of mission creep. Some groups have already suggested that Real ID should become a voter registration card and a border crossing document. (“FAQ”)</p> <p><b>The regulations do nothing to prevent Real ID from becoming a de facto National ID card. They create a vast infrastructure for such a system, including a common machine-readable element (with no protection against private-sector exploitation) and assume (without providing any detail) the creation of some type of state information-sharing database. The regulations already require the card in order to fly or enter a federal facility. Recent Congressional proposals have contemplated an expanded series of required uses of Real ID to include pre-clearance for employment, access to federal government subsidized housing, and obtaining government-backed loans. The regulations acknowledge that the use of Real ID may become more widespread, and may become a requirement for access to public subsidies and benefits, employment, voting, and owning a firearm (p. 197). In short, far from preventing Real ID from becoming the ubiquitous, National ID card, DHS fully contemplates such a result and acknowledges this as the likely outcome of the ID system springing from its regulations.</b></p>	
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Private-sector piggybacking.</b> The “common machine-readable technology” on Real IDs would allow for easy, computerized transfer of the data on the cards not only to the government but also to private parties. Already, many bars and clubs collect all their customers’ information by swiping driver’s licenses handed over to prove legal drinking age. There is concern that even if the states and federal government successfully protect the data, machine readability will result in a parallel, for-profit database on Americans, free from the limited privacy rules in effect for the government. (“FAQ”)</p> <p><b>The regulations do not protect individuals from private-sector piggybacking. They state that protecting machine-readable technology from private-sector access is outside the scope of DHS’s responsibility and leave such regulation to individual states (p. 137). They decline to require that data on the card be encrypted, leaving it open to reading by a private-sector entity.</b></p>	

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>A single interlinked database.</b> Will the national database be secure from identity thieves and criminals? Advocates argue that the government’s poor record at information security and at preventing insider fraud and abuse may mean Americans are less secure as a single national database makes their information more vulnerable and available from more sources. (<i>Center for Democracy and Technology, “Unlicensed Fraud”</i>) <b>In spite of a clear statutory mandate, the regulations do not describe how states will create the interlinked database necessary to share driver information. This is the single most glaring omission in the regulations.</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Insider fraud.</b> Advocates have also argued that linking databases will give more and more parties “legitimate” access to the data and that information that can be accessed by multiple disparate parties is a recipe for fraud. Fraud by DMV officials is a major cause of identity theft. <b>Insider fraud is one of the core problems with Real ID. It is not solved in the regulations, nor is it clear that there is a solution to the problem as the act is written. The regulations attempt to address this issue by requiring criminal background checks for employees (p. 274) but it is unclear whether or how much such checks would reduce fraud by the many insiders who do not have a troubled record. Such fraud is almost certain to continue, especially in light of the fact that the perceived authenticity of a Real ID license is likely to make it even more valuable on the black market and create a new wave of insider fraud. (For more information on identity theft and Real ID please see comments by the Privacy Rights Clearinghouse available here: <a href="http://www.privacyrights.org/ar/real_id_act.htm">http://www.privacyrights.org/ar/real_id_act.htm</a>)</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Accountability vacuum.</b> Security experts note that a system is only as secure as its weakest point. There is no mechanism to guarantee that every DMV follows adequate procedures and the linked distributed system makes accountability extremely difficult to enforce. Further, a single breach at a single DMV could compromise the entire system and expose the data of every American who drives. <b>Because the regulations do not provide any guidance for the creation of an interlinked database, it is impossible to evaluate how states could create accountability or what a state could do if other states’ efforts to secure personal information fall short.</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Protecting source documents.</b> Real ID requires all source documents for licenses to be retained either electronically or in storage at the DMV. Protecting these valuable document troves from security breaches will require the devotion of significant resources to new computer hardware and software, systems redesign, security consulting, and staff expansions. It is expected that identity thieves will quickly recognize that the DMV’s records are a central location for obtaining all the documents they need to commit fraud. (“<i>Real Costs</i>”) <b>While the regulations do require safeguards for securing personal information, they do not address the inherent security danger of aggregating large amounts of personal information in a single place and the creation of a “honey pot” of data for identity thieves. (p. 272).</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Effect on state privacy laws.</b> States have varied privacy and safety laws governing everything from what information can be collected for the purpose of driver’s licensing, to what information can be contained on the machine-readable component of an ID card. It is expected that Real ID will force state legislatures to alter or repeal many of these laws – potentially creating new privacy and security problems. (See “<i>The Impact of Real ID on Current State Laws,</i>” and accompanying chart prepared by Stanford University Law School) <b>The regulations allow states to impose greater privacy protections than required by regulation and allow some flexibility to protect the confidentiality of address information (p. 272). But they are silent on how state laws that are directly in conflict with the Real ID regulations will be affected. For example, in order to protect against identity theft, California law allows the DMV to destroy all records that are no longer necessary to issue a license. In New Hampshire, the wholesale sharing of motor vehicle information with other states is prohibited and sharing shall only be “on a case to case basis.” Such state laws would presumably have to be changed in order to secure Real ID compliance.</b></p>

<b>Impact on the States</b>		
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Unfunded mandate.</b> Real ID requires sweeping changes to state driver’s licenses and the systems by which those licenses are administered. A partial cost estimate issued jointly by AAMVA, NGA, and the NCSL estimated the cost of Real ID on the states at \$11 billion. Congress has currently appropriated \$40 million to offset Real ID costs. (<i>NCSL et al, “Impact Analysis”</i>) <b>The regulations acknowledge that compliance with the rule “carries with it significant cost and logistical burdens, for which Federal funds are generally not available” (p. 241). Even using a cost estimate that minimizes the true costs of the regulations, DHS admits they will cost at least \$9.9 billion (p. 221). To date Congress has appropriated only \$90 million to pay for the program - less than 1% of that DHS estimate. For further discussion of the likely true cost of Real ID, see <a href="#">Fuzzy Math and the Cost of Real ID</a>.</b></p>	
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Effect on DMVs of standardizing data elements.</b> Real ID imposes a requirement for uniform data elements on state IDs. Standardizing these elements will vary in difficulty from state to state, but in many cases will require the reprogramming of multiple interlocking state databases, computer entry screens, communications protocols, and paper forms. (<i>ACLU analysis, “Real Burdens: the Administrative Problems REAL ID Imposes On The States”</i>) <b>While the regulations are silent on how states will engage in the information sharing required by the act, they will still force states to make costly changes to their Information Technology (IT) systems – for example, requiring states to retain the photographs of all applicants (not just license holders) (p. 253) and retaining all name information on applicants even if they subsequently change their name (p. 120).</b></p>	
PASS FAIL INC <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	<p><b>Effect on recent improvements to state IT systems.</b> The NCSL reports that 21 states have invested \$289 million over the last five year to modernize their DMV information systems. Real ID may force much of this work to be thrown out. (<i>NCSL et al, “Impact Analysis”</i>) <b>Because the regulations do not provide guidance on how data sharing will be implemented, it is unclear to what degree states will be able to rely on their previous (costly) IT system overhauls. However, requirements like the retention of full legal name history are certain to impose some costs.</b></p>	

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Cost of processing new applicants.</b> Real ID’s requirement that it be used for a host of federal purposes may force millions of Americans to sign up for driver’s licenses or ID cards. This would result in an unplanned wave of new applicants swamping DMVs. <b>The regulations assume that only 75% of Americans will apply for a Real ID. Given the necessity of identification for full participation in American life (including Real ID’s own requirements such as boarding an airplane) this assumption seems misplaced and it seems likely that, if fully implemented, total participation in Real ID will have to be closer to 100%, creating significant new costs and burdens for DMVs.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>DMVs will have to reprocess existing licensees.</b> The document verification process will also have to be completed for the entire population of people (approximately 200 million) who already have current licenses and IDs. Motor vehicle administrators have complained that this will significantly strain DMV resources. (<i>“Real Burdens”</i>) <b>Because many of the Real ID requirements (such as presenting source documents, verifying identity and taking a digital photo) will require an in-person application, DMVs will not be able to take advantage of the ease of processing licenses over the Internet or through the mail. The regulations acknowledge that all applicants will need to complete “an application process similar to those of a first time driver” (p. 223). This will substantially increase the number of people coming to DMVs and significantly strain existing resources. To reduce the impact on states, DHS did extend the compliance deadlines well into the next decade. In short, rather than resolve the problem, DHS simply pushed it out to another set of officials to resolve.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Diversity in licensing systems.</b> States have chosen a variety of methods for issuing licenses. In Kentucky, for example, licenses are handled by court clerk offices, in Alabama by probate judges, in Nebraska by county treasurers, and in Oklahoma by third party vendors. It is unclear whether Real ID regulations will continue to allow states to operate under these different licensing models. (<i>“Motor Vehicle Administrators Survey”</i>) <b>While the regulations state that they attempt to respect the state’s “autonomy to govern an inherently State function” (p. 189), taken as a whole the regulations make it clear that many states will have to drastically alter their licensing schemes. Most importantly, they propose to punish the drivers in the 7 states that have chosen to opt out of Real ID by burdening their residents’ right to travel and enter federal facilities such as courts.</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Appeal process.</b> Mistakes in existing DMV and other databases may result in delays or even inability to get a drivers' license. In light of this high penalty some type of appeal process will have to be created to deal with mistakes and document errors. <b>The regulations contain no appeals process for individuals who are the victims of errors in the information used to verify their identity and instead assert that state appeals systems are sufficient. This is in spite of the fact that states have little or no control over the databases that will be used as part of the verification process (p. 56). It thus appears likely that tens of thousands of eligible drivers may be delayed in obtaining a license or denied a license altogether without due process.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Expertise in immigration law.</b> The act bars states from issuing compliant IDs to any non-citizen who cannot prove their identity and present verified documentary evidence that they are covered by one of an enumerated number of lawful immigration statuses. But the complexity of our immigration laws make it likely that identifying and processing a variety of different immigration documents will be a difficult task. (“FAQ”) <b>While the regulations say that states will be able to use the SAVE database to prove lawful status for all applicants, they still require intimate familiarity with multiple immigration documents in order to issue a Real ID in two contexts. First, DMV employees have to be trained to recognize fraudulent versions of a number of types of documents for proof of identity (foreign passports and visas, permanent resident cards, EADs, Certificates of Citizenship, or Certificates of Naturalization). The regulations also allow for the use of other, even more obscure immigration documents for accessing the SAVE database (p. 95). Worst of all, the regulations put the entire burden of verification on the SAVE database, a system that states have criticized as inaccurate and inadequate.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Lawful status not described in the Act.</b> Immigration advocates have complained that there are a number of ways that an immigrant can be in the country lawfully that are not described in the act. It is not clear if these individuals can qualify for a Real ID. <b>Because the regulations do not expand the description of lawful status for purposes of obtaining a Real ID beyond statutory guidelines, numerous individuals, such as asylum seekers, cannot get any type of Real ID, even though they are in the country lawfully.</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>“Full Legal Name” particularly onerous.</b> The Act requires that compliant identity papers contain individuals’ full legal names. However because a portion of the population possesses extremely long names, the name for licenses is recommended to be at least 100 (some say 126) characters long. For many states this would mean redesign of their entire database structures and program interfaces to standardize how information is entered in each field office and how it is stored centrally. They will also have to revise information and application forms, and train staff to verify legal name. (<i>“Real Costs”</i>) <b>The regulations require states to retain 39 characters of an individual’s legal name for the front of a license and 125 characters for the machine-readable zone (MRZ), placing a new burden on the states by requiring them to modify their systems to collect this information in two different ways in order to secure it in their databases and place it in the MRZ (p. 263).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>“Full legal name” requirement reaches beyond DMVs.</b> Legal name changes in DMV systems will impact other, linked systems such as CDLIS (a commercial license database) and PDPS (a problem driver database) as well as serving as the access point for other systems, including law enforcement, insurance companies, and the election registry. (<i>“Real Costs”</i>) <b>The regulations provide no guidance on how states are to reconstruct these outside systems.</b></p>
<p>PASS FAIL INC  <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Limited real estate on physical cards.</b> Many states may have to redesign the face of their ID cards – where space is already limited – to include longer names and new data elements such as principal address. (<i>“Real Costs”</i>) <b>The regulations allow states to limit full legal name to 39 characters on the front of the license (p. 264).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>License holders with multiple addresses.</b> If mailing address and principal address differ, states will have to retain both – one for printing on the license and one for correspondence. Some individuals – such as students and those who own multiple homes – reside in more than one state. <b>The regulations assume that principal address is the place “where a person currently resides” without making allowances for individuals with multiple residences (p. 250).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Creation of interconnected database.</b> Real ID requires that each state provide all other states with electronic access to the information contained in its motor vehicle database. Because state DMVs each have their own IT systems with different level of capability and interoperability DMV officials believe this will be an extraordinarily difficult task. (<i>“Motor Vehicle Administrators Survey”</i>) <b>The regulations provide no guidance as to how such a database is to be created. By remaining silent on the issue, the regulations increase the uncertainty and likely the cost surrounding this statutory requirement.</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Cost of data sharing.</b> A system similar to that mandated by Real ID, the commercial driver's license pointer system (CDLIS), which covers truck drivers and other commercial drivers, costs roughly \$0.08 per month/per record, according to the AAMVA. At the same cost, the price for covering the roughly 200 million current US license holders under Real ID would be \$192 million per year. However, since the Real ID database will include significantly more information than CDLIS, this figure would likely be much higher and it is unclear how this cost burden would be met (and by whom). (<i>“Real Costs”</i>) <b>The regulations indicate that data-sharing is likely to be costly. DHS estimates the total for information sharing and IT services to be \$1.52 billion. However, because the regulations provide no guidance as to how states will create an interlocking state databases, it seems likely that once this system is created those costs will increase substantially. DHS also anticipates that the states’ use of federal verification databases will be fee-based, driving up ongoing costs (p. 106).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Document verification.</b> The Real ID Act includes a requirement that states “shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented” to get a Real ID card. No electronic system or systems currently exist which is capable of performing this task. Particular concerns exists regarding birth certificates because they are issued by over 6,000 separate jurisdictions within the United States and there is no central database of certificates (<i>“Motor Vehicle Administrators Survey”</i>) <b>While the regulations state that systems exist to verify social security numbers and lawful presence, they acknowledge that other systems do not exist (p. 104). It is impossible to evaluate whether the regulations solve the problem of document verification because most of the verification databases are in their infancy or do not exist. The regulations abandon any effort to verify address information and leave that task to the states (p. 107).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Inadequacies in existing verification systems.</b> An additional verification problem is that DMVs report that existing database such as SAVE (for verifying immigration status) would be inadequate for Real ID purposes either because they are expensive, inaccurate, or do not provide a timely response. (<i>“Motor Vehicle Administrators Survey”</i>) <b>The regulations state that verification databases such as SAVE and SSOLV (used for verifying social security information) will be sufficient to meet the needs of the Real ID system while failing to acknowledge the problems with that system. The regulations themselves note that DHS is still trying to improve the “usability, accuracy, and reliability” of the systems. They do not address state complaints with the systems, including delays in responses from DHS, significant staff time spent in follow up and the fact that the database is frequently unreliable and months behind.</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Verification cannot be compelled.</b> The act requires DMVs to authenticate source documents with issuing entities (such as address checks from public utility companies). Because that process will impose substantial burdens on verifying entities it may be met with resistance. However state DMVS have no power to compel or reward compliance. <b>The regulations circumvent this problem by stating that, in direct contradiction to the statute, DMVs won't have to verify addresses with the issuing agency and, in cases where an electronic database does not exist, for birth certificates (p. 258).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Investigations into Social Security Numbers.</b> States are required to verify that an individual has a valid social security number – and requires that "[i]n the event that a social security account number is already registered to or associated with another person . . . the State shall resolve the discrepancy and take appropriate action." However it is not clear what "appropriate action" entails nor do state officials have the authority to change the Social Security database. (<i>"Real Burdens," "Motor Vehicle Administrators Survey"</i>) <b>The regulations do not provide any guidance for states on this issue, simply stating that a state should use "existing procedures to resolve a non-match" (p. 258). In the event of a non-match with SSA, a "DMV must not issue a driver's license or identification card to an applicant until the information verifies with SSA's database" (p. 258).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Document storage.</b> The act requires storage of electronic copies of source documents for 10 years or paper copies for seven years. DMVs lack the equipment and storage space for document retention. DMVs report that this will have a major impact on their operations – requiring additional staff, new equipment, policy changes, training, the remodeling or redesign of offices, and computer software, development, and storage costs. (<i>"Real Costs," "Motor Vehicle Administrators Survey"</i>) <b>The regulations affirm this requirement and estimate the cost of data systems and information technology at \$1.53 billion.</b></p>
<p>PASS FAIL INC  <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Standardizing the machine-readable element.</b> Many states have already deployed a variety of machine-readable technologies – such as bar codes and magnetic stripes – on the licenses they issue. Real ID's standardization mandates will impose substantial costs on the large number of states that will have to replace their existing machine-readable components. (<i>"Real Costs"</i>) <b>The regulations require states to use a 2-D barcode compliant with the PDF417 standard (p. 264). The regulations state that 45 states and the District of Columbia have 2-D barcodes (p. 75). It appears that all or most of those barcodes comply with the PDF417 standard. However, a number of states may have to revamp the way in which they store information in the machine-readable zone in order to comply with the regulations.</b></p>

<p>PASS FAIL INC  <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Additional costs for standardization.</b> Police departments will have to be equipped with new readers, at significant cost to taxpayers. During the changeover to full 50-state Real ID compliance, numerous data storage systems and sets of readers will have to be maintained simultaneously. (“<i>Real Costs</i>”) <b>Because most states use a 2-D bar code, states can continue to use existing readers and storage systems.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Facial image capture.</b> The act appears to mandate that image capture must apply not to all license recipients, but to all <i>applicants</i>. This will require a new database for pending and failed applications, alterations to the licensing process to change the stage at which an image is captured, and increased personnel and equipment for additional image capture. (“<i>Real Costs</i>”) <b>The regulations confirm that DMVs will face an increased IT burden because they have to save photo images for all applicants (not just those that receive licenses) for at least five years or 2 years longer than the validity of a license (p. 253).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Facial recognition technology.</b> The act’s requirements for “facial image capture” may require states to purchase facial recognition technology and begin strictly regulating how photos are taken to correct for variations in lighting, expression, camera type, background, and the exposure of facial characteristics, such as facial hair, glasses, headscarves, etc. Facial recognition technology is often costly, inaccurate and difficult to implement. (“<i>Real Costs</i>”) <b>While the regulations are silent on whether photos will be used as part of a facial recognition system, they take substantial steps in preparing digital photos to be used in that way by closely defining exactly how photos must be taken (p. 261).</b></p>
<p>PASS FAIL INC  <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	<p><b>Security clearance.</b> Real ID requires that state employees who are authorized to manufacture ID cards must be subject to “appropriate security clearance requirements.” It is not clear what standards states should set in disqualifying employees or hiring new employees. The fact that some states contract with private entities for ID production further complicates this issue. (“<i>Real Burdens</i>”) <b>The regulations do set down clear standards for which state employees should be checked: those who “are involved in the manufacture or production of REAL ID drivers’ licenses and identification cards, or who have the ability to affect the identity information that appears on the driver’s license or identification card, or current employees who will be assigned to such positions” (p. 274). They also set down standards for when individuals should be disqualified from holding sensitive DMV positions.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Security clearance and labor contracts.</b> Security clearance requirements may run afoul of contract stipulations and union rules. States may need to provide employees disqualified under new regulations with alternative employment or severance. (<i>NCSL et al, “Impact Analysis”</i>) <b>The regulations state that DHS is not willing to modify the regulations to address this concern (p. 53).</b></p>

PASS FAIL INC

**New training requirements.** Under Real ID state employees must undergo “fraudulent document recognition training programs.” It is not clear what these programs entail or the impact on the cost of issuing licenses. (*Real Burdens*) **The regulations do saddle DMVs with the increased cost and burden of training employees in fraudulent document recognition without providing any funding. The regulations state that training approved by AAMVA or DHS will fulfill this requirement (p. 273).**

**Constitutional Impact**

**A. Burdens on constitutional rights of the states.**

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**Federalism and the Tenth Amendment.** States have always been the exclusive regulator of driver licensing. Each state has developed an extensive statutory and regulatory framework in this area, and each state employs workers to carry out that statutory and regulatory scheme. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively . . . .” The REAL ID Act seizes the power reserved for the states by federalizing drivers licensing. Real ID was vigorously opposed by the organizations representing the states and seems to violate the Tenth Amendment. (See *ACLU analysis, “Constitutional Problems with the REAL ID Act of 2005”*) **The regulations violate the Tenth Amendment by seizing state authority over licensing and by forcing states to engage in regulation on behalf of the federal government. The regulations argue that Real ID does not violate the Tenth Amendment because “the law is binding on Federal agencies – not on the states” (p. 234) but acknowledges that “many States may find noncompliance an unattractive option.” (p. 235) However, the test under existing law is whether a state (as sovereign) has been compelled to adopt a federal program, not whether the program acts directly on the state. The regulations do not address the states’ traditional authority in the field of driver’s licensing.**

PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>The Anti-Commandeering Doctrine and the Tenth Amendment.</b> The REAL ID Act requires states driver’s licensing officials to perform two exclusively Federal functions: enforcing immigration laws and creating a federal ID card. Constitutional and statutory schemes governing immigration law make clear that immigration enforcement is entirely a Federal function. Additionally the Real ID Act turns state drivers’ licenses into Federal identity documents, necessary for official purposes like entering a Federal facility. According to the Supreme Court’s anti-commandeering doctrine, if the Federal government wants to conduct interior immigration enforcement or create Federal identity cards it must hire and pay Federal government employees to do so, rather than forcing states’ licensing employees to carry out this activity. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>The regulations do not address the main constitutional issue: whether imposing penalties on citizens when states don’t act amounts to a violation of the Anti-Commandeering doctrine. The regulations claim that Real ID is voluntary and instead that it is pressure on individual citizens that will force compliance with Real ID (p. 234). But this doesn’t answer the main question: if a state can only reject federal law at the expense of denying its citizens access to basic aspects of American life such as entering a federal facility or traveling on a plane, does this rise to the level of coercion necessary to trigger constitutional scrutiny?</b></p>
<p><b>B. Burdens on constitutional rights of individuals.</b></p>	
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Free exercise of religion and the photo requirement.</b> Real ID requires, without exemption, that a digital photograph appear on each ID. This requirement violates the religious beliefs of Amish Christians, Muslim women and others and impacts the free exercise of their religion. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>The regulations affirm that in order to receive a Real ID, every applicant must have a photo taken. They acknowledge individual religious objections and assert that states can provide members of these religious groups with non-Real ID compliant licenses. (p. 125)</b></p>
PASS FAIL INC <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<p><b>Free exercise of religion and Social Security numbers.</b> Some Christian sects believe that “the enumeration” of individuals is tantamount to stamping them with the Mark of the Beast referred to in the Biblical Book of Revelations. Therefore due to these religious beliefs, certain citizens may not have the Social Security Number or Social Security Card necessary to gain a Real ID. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>The regulations do not provide for a religious exemption in this context. They require that every applicant for a license have a Social Security number. The only way to establish ineligibility for an SSN under these regulations is for an alien to “demonstrate non-work authorized status” under immigration law (p. 255)</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>Gender designation requirement.</b> Real ID requires inclusion of each person’s gender on his or her license. Many states and municipalities recognize the unique difficulties faced by issuing identity licenses to transgender people, and, accordingly, provide for exceptions to gender-listing requirements. The act would preempt those exceptions and may violate of the Constitution’s Equal Protection Clause for transgender individuals. The gender classification will also lead to data inconsistencies within the databases that will “red flag” transgender people when their licenses are scanned by government officials. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>Although the regulations’ requirement that identity documents include a gender designation remains problematic, the regulations do not interfere with the purview of states to issue gender identity-appropriate documents to transgender individuals. However, the final regulations fail to ensure the security of personal data, which is of particular concern to transgender individuals given that the disclosure of such data may subject them to harassment and other forms of discrimination.</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Burdens on right to travel.</b> The U.S. Supreme Court has repeatedly recognized a constitutionally protected right to travel. By ruling a state out of compliance the federal government may keep a state’s residents from boarding a plane and possibly other modes of transportation, which would likely burden their First Amendment-protected right to travel. The situation is particularly acute for residents of Hawaii or Alaska who often have no choice but to fly or travel via federally regulated modes of travel such as plane or ship. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>The regulations affirm that after the effective date of the act, a Real ID will be required to board a plane (p. 250). The regulations state that the right to travel is not affected because other modes of transportation are available to individuals without a Real ID license (p. 55).</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Burdens on right of assembly.</b> The First Amendment protects “the right of the people to peaceably assemble.” Blocking individuals from non-compliant states from using their licenses to enter federal buildings seems to burden that right. (<i>“Constitutional Problems with the REAL ID Act”</i>) <b>The regulations affirm that after the effective date of the act, a Real ID will be required to enter a federal facility (p. 250). They do not address the constitutional issue.</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Burdens on right of petition.</b> The First Amendment also guarantees the right to “petition the government for a redress of their grievances.” Lack of a Real ID compliant license would bar a citizen from a face-to-face meeting with his or her elected or appointed government representatives. In fact, many statutory and regulatory schemes <i>require</i> individuals to at times present themselves before elected or appointed officials to raise their grievances. Blocking individuals from entering their representatives’ offices, Federal agencies or courthouses would be burden on the right to petition the government for redress. (“<i>Constitutional Problems with the REAL ID Act</i>”) <b>The regulations affirm that after the effective date of the act, a Real ID will be required to enter a federal facility (p. 250). They do not address the broad constitutional issue but state that other means of identification (or no identification at all) will be sufficient for entering a federal courthouse (p. 54).</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Lack of procedural or substantive due process.</b> The Real ID Act fails to provide for a system for individuals to access government records about them, challenge inconsistencies and correct data errors concerning their files. The Real ID Act’s failure to include a procedure whereby individuals can quickly, efficiently and permanently reverse data errors is likely to impact a number of substantive rights – such as receiving government benefits or boarding a plane – and violates the Constitution’s guarantees of both procedural and substantive Due Process found in the Fifth and Fourteenth Amendments. (“<i>Constitutional Problems with the REAL ID Act</i>”) <b>The regulations contain no appeal process for individuals who are confronted with errors in the information used to verify their identity. Instead individuals will have to correct errors with the database owners and rely on state-based appeals processes.</b></p>