



## **New Federal Regulations Get an ‘F’ in Addressing Issues with the Real ID Act**

### **DHS Rules Score Only 9 Percent On ACLU Scorecard**

On March 1<sup>st</sup>, the Department of Homeland Security issued proposed Federal regulations for implementing the Real ID Act, 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.

In preparation for the issuance of the regulations, the ACLU prepared this Real ID Scorecard to assist in the systematic analysis of this complex legislation. It attempts to list all the issues that have been identified as concerns with Real ID by a variety of parties, including privacy activists, domestic violence victims, anti-government conservatives, religious leaders, and DMV administrators.

The Scorecard shows that the regulations utterly fail to remedy the problems with Real ID. Of the 56 issues listed, the regulations passed 5 (9 percent), scored an incomplete on 9 (16 percent), and failed the rest.

Indeed, the government was often strikingly forthright in admitting that the regulations do not solve deep problems with this statute. The regulations acknowledge that wait times at the DMV will increase substantially; that many applicants will not have source documents they need to obtain a Real ID card; that “there is no single way for States to comply” with Real ID’s verification requirements by the statute’s deadline “or in the reasonably foreseeable future”; and that the regulations will be extremely costly. (The most authoritative prior estimate of Real ID’s costs was \$11 billion. The regulations, however, concede that the price tag for Real ID will come to a whopping \$23 billion.)

DHS cannot be blamed for such problems when they arise out of what is, at its core, simply an ill-conceived and impossible law. In other cases, however, the government fails to set forth rules that could have solved or ameliorated problems with the act. On Real ID’s onerous verification requirements, for example, DHS did not ease burdens on states and individuals, but in fact increased them (by requiring verification of all identity documents not just to obtain a Real ID, but even to renew one; requiring not one, but two documents showing proof of address). Similarly, the agency acknowledges the danger of license data being scanned by third parties, but fails to take action to stop the problem, and merely encourages the states to come up with a solution. DHS says it “leans toward” requiring that data to be encrypted but opts not to due to “practical concerns.”

Aside from failing to solve the problems with Real ID, the regulations add up to a striking federal takeover of state DMV offices. The regulations put the federal government in the position of dictating the minutiae of DMV operations, from the colors that can be used on a license to the computer format in which image files (.JPG) and scanned documents (.TIF) are stored, to the details of how a DMV office secures its plant, to many other details.

Initial media coverage of the new regulations focused on the additional time that states were being given to comply with Real ID. But what this scorecard makes clear is that Real ID is a fundamentally misguided policy that will waste large amounts of money and other limited resources, and impose significant inconveniences, without improving our safety. We don't need to delay Real ID, we need to throw it away and start fresh.

### **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 new burdens on individuals that, as DHS acknowledges (p. 98), will increase wait times and service times at DMVs, as well as the time necessary to obtain new source documents. Partly this would be caused by the fact that initial applications for all Real IDs (as well as many renewals) must be done in person (p. 146), and many applicants will not have source documents when they need them (p. 107). DHS estimates opportunity costs to individuals from waiting at the DMV at \$1.7 billion (p. 106).</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>The regulations do not address or solve the problem of individuals who are recorded under different names on different documents or in different databases. The regulations simply state that all license holders must use their legal name in applications and that the identity documents they submit must contain that name (p. 142).</b></p>	

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input 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>According to the regulations, in order to prove a name change an applicant must present a certified copy of a record from "US or state-level Court or government agency" (pp. 65 &amp; 133). This does not address the issue of individuals whose name is recorded differently in different databases or records. It also requires individuals to take the formal step of 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. Finally, many marriage certificates are issued by county (not state) officials, making it unclear how individuals could comply.</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 an individual has his "true, fixed and principal home" (p. 129), and stating that DMVs can make exemptions for the homeless (pp. 44 &amp; 70). There is still some concern regarding whether all states will be able and willing to create workable methods for utilizing these exemptions.</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input 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>Under the regulations, the vulnerability of domestic violent victims and others will be increased. The regulations do create a partial exemption to the principal address requirement, but it is inadequate. It covers “individuals who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or by a court order” and some individuals protected by immigration law (p. 69). However, only 24 states currently have such confidentiality programs, according to the National Network to End Domestic Violence. In the other jurisdictions, victims are now protected instead by the fact that they are not required to put their principal address on their license – as are federal judges, who are not shielded by state laws at all (DHS solicits comments on how to fix the problem with regard to the judges). The regulations seem to maintain the same status that police officers, state and local judges, and protected witnesses currently enjoy under state law. However, by removing the option of not listing an address and relying solely on state laws that don’t cover many vulnerable individuals, the regulations fail badly.</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>Real ID is expected to cost \$23.1 billion nationally (p. 106), including \$7.8 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 \$1.7 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. 44 and 135). (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 attempts to address this problem by allowing for the acceptance of some foreign documents other than passports. But there are some categories of immigrants who, while legal, will still not possess any of the documents listed by DHS (for example, asylum seekers).</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 simply is not going to happen, at least in the foreseeable future. There are too many burdens in the regulations, too many documents to be verified, and too few existing systems through which to do that, for there to be any realistic chance that same-day licenses will continue to be possible.</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>The regulations fail this test because they create extensive security requirements for DMV offices (p. 150), making it unlikely that many small DMV offices will be able to remain open at a cost the states can afford. 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 checked="" type="checkbox"/> <input 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>Issuing of licenses through the Internet and mail will not be possible for at least the first 5 years under Real ID because every individual will be required to register in person to get a Real ID. Remote renewals of a Real ID (after initial issuance) will only be possible for every other renewal, and only if none of the licensing information (such as address) has changed (p. 146). Also, it is unclear whether the regulations will allow the mailing of licenses or whether license holders will have to return to the DMV to receive a license.</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 seem to address this issue by implying (though not stating directly) that an individual will only have to change their address information when renewing their license (p. 146).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input 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 make no provision for this type of temporary license and fail to take into account the fact that delays in verification (due to such inevitabilities as computer problems or verification delays) will make it increasingly difficult to perform same-day licensing.</b></p>
<p><b>Impact on Privacy</b></p>	
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<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. ("<i>FAQ</i>") <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 the construction of a national interlinked database. The regulations already require the card in order to fly or enter a federal facility, and explicitly state that Real ID will be considered for a number of other functions including receiving a passport, military common access card, and transportation worker identification card (p. 17).</b></p>

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<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”) <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 responsibility and leave such regulation to individual states (p. 73). 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 checked="" type="checkbox"/> <input 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>The regulations fail on this issue because they require creation of a national database of interlinked state systems (p. 149). DHS denies there will be a national database, but having one central database in Washington or 50 state databases in the individual states, all linked together with identical comments and an identical form, are effectively the same thing. Moreover the regulations explicitly provide that the Department is “committed to the expedited development and deployment of a common [federated] querying service” (p. 26).</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 and credit checks for employees (p. 153), 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  <input type="checkbox"/> <input checked="" type="checkbox"/> <input 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>A state that finds its citizens’ data threatened or stolen due to the negligent practices of another state will have no remedy or recourse under the regulations. While securing private information is vital, the regulations provide no guidance as to how states should do so, or what a state can do if other states’ efforts fall short. (p. 150). The regulations state that information sharing between states will be a state function with only limited oversight from DHS (pp. 25-26).</b></p>
<p>PASS FAIL INC  <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>The regulations state that securing private databases must be part of state physical security measures, but provide no guidance as to how states will secure this information (p. 150).</b></p>
<p>PASS FAIL INC  <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. (<i>See “The Impact of Real ID on Current State Laws,” and accompanying chart prepared by Stanford University Law School</i>) <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. 143). But they are silent on how state laws that are directly in conflict with the Real ID regulations will be affected (p. 120). 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 share sharing shall only be “on a case to case basis.” Such state laws would have to be changed in order to secure Real ID compliance (p. 159).</b></p>

Impact on the States		
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 the AAMVA-NGA-NCSL estimate is inadequate and that the actual cost of Real ID will be \$23.1 billion (p. 106).</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>The regulations require states to share all their driver's license information. This will force states to make costly changes to their Information Technology (IT) systems. The regulations provide no guidance on how such changes are to be effected, and place the entire burden of constructing a data-sharing system on the states (pp. 27 &amp; 149). The regulations also impose additional onerous IT requirements, such as requiring states to retain the photographs of all applicants (not just license holders) (p. 131) and retaining all name information on applicants even if they subsequently change their name (pp. 66 &amp; 131).</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 regarding 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 (pp. 27 &amp; 149).</b></p>	
PASS FAIL INC <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<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 there are 240 million licensees. This number seems to encompass most of the ID holders in the US.</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 the regulations state that all license holders will have to reply in person to receive a Real ID-compliant license (p. 146), DMVs will not be able to take advantage of the ease of processing licenses over the Internet or through the mail. This change will substantially increase the number of people coming to DMVs and significant strain existing resources.</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>The regulations do not address these issues, and taken as a whole the regulations make it clear that many states will have to drastically alter their licensing schemes.</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. Instead, individuals will have to correct errors with the database owners (pp. 56 &amp; 136). (States, however, can appeal determinations made by DHS that their systems are not Real ID compliant [p. 158].)</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. (<i>“FAQ”</i>) <b>The regulations 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 a number of types of fraudulent documents for proof of citizenship (visa, permanent resident card, EAD, Certificate of Citizenship, or Certificate of Naturalization). Second, DMV employees will have recognize the very obscure immigration documents that prove that an individual is not eligible for a Social Security number (those that prove an alien “is currently in a non-work authorized non-immigrant status”) (pg. 43).</b></p>

<p>PASS FAIL INC</p> <p><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</p> <p><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) of the license, 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 (pp. 66, 142 &amp; 144).</b></p>
<p>PASS FAIL INC</p> <p><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 their information systems (p. 149).</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" 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 do not provide any flexibility regarding the information to be placed on the front of the card (p. 142).</b></p>
<p>PASS FAIL INC</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> <input 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>Regulations address this issue by assuming individuals will choose one principal address, which will be the place where they maintain their “true, fixed and permanent home” (p. 129).</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 require a national database of interlinked state systems both for ascertaining whether an individual has a license in another state and for sharing motor vehicle information (p. 149). The regulations provide no guidance on how states are to share information, and place the entire burden constructing a data sharing system on the states (pp. 27 &amp; 149). Nor do they mitigate any of the requirements that states standardize information in their IT systems.</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 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 \$1.4 billion. The regulations note that states already use information systems like CDLIS and indicate that it may provide a model for information sharing (p. 27), but provide no guidance for implementing Real ID’s much more substantial information-sharing requirements (p. 149).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" 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>It is impossible to evaluate whether the regulations solve the problem of document verification because most of the verification databases are in their infancy, and because databases will never exist for verifying address (pp. 48-49). The states are required to find their own methods for verifying documents until electronic databases exist (p. 51).</b></p>

<p>PASS FAIL INC</p> <p><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 fail to address this issue except in a cursory fashion. The fact is that many verification databases that do exist (such as SAVE and SSOLV) are incomplete, inaccurate and so far unable to perform the functions required by Real ID (pg 55).</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input type="checkbox"/> <input checked="" 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. (“The proposed regulation would require States to establish a written policy identifying acceptable documents and how, or if, they will be independently validated or verified.” [p. 50]). However, they still require documents like birth certificates to be verified even though there is no existing database of birth certificates from all 50 states.</b></p>
<p>PASS FAIL INC</p> <p><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, “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. 137)</b></p>
<p>PASS FAIL INC</p> <p><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 \$1.4 billion.</b></p>

<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" 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 PDF417 standard (p. 144). The regulations state that 45 states have 2-D barcodes, plus the District of Columbia (p. 75). It appears that all or most of those barcodes comply with the PDF417 standard. However, if a significant number of DMVs report that they will need to make expensive changes to the format of their bar codes, this may change to a “fail.”</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input checked="" 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 five-year 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>The regulations provide no additional funding to offset this concern. They state that the AAMVA-approved barcode can be read by a standard 2-D barcode reader (p. 76), but do not address costs for states that must convert to new machine readable standards.</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 at least one year for all applicants (not just those that receive licenses), and for ten years for those denied licenses because they are suspected of fraud (pp. 67 &amp; 131).</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>The regulations do not fully address the issue of face recognition. While they take some steps consistent with the technology, such as prescribing the physical appearance of individuals in photos (p. 142), they are silent on whether photos will be used as part of a facial recognition system.</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 state employees who should be checked: those who “have the ability to affect the recording of any information required to be verified, or who are involved in the manufacture or production of REAL ID driver’s licenses and identification cards, or who have the ability to affect the identity information that appears on the driver’s license or identification card” (p. 153). They also make clear what the standards of those checks should be: those set forth in TSA’s Hazardous Materials Endorsement program (HAZMAT program) and Transportation Workers Identification Credential (TWIC) program (p. 85).</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" 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 are incomplete because they do not address how workers’ collective bargaining agreements will affect whether they can be asked to undergo background checks.</b></p>
<p>PASS FAIL INC  <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p><b>New training requirements.</b> 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. (<i>“Real Burdens”</i>) <b>The regulations do saddle DMVs with the increased cost and burden of training employees in fraudulent document recognition without providing any funding. They do not elaborate on this training requirement except to affirm that it must be part of every DMV security program (p. 151). It is expected to take approximately 2 hours and cost \$44 per person in lost man hours (p. 112).</b></p>
<p><b>Constitutional Impact</b></p>	
<p><b>A. Burdens on constitutional rights of the states.</b></p>	

<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p><b>Federalism and the Tenth Amendment.</b> 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. (<i>See ACLU analysis, “Constitutional Problems with the REAL ID Act of 2005”</i>) <b>The regulations violate the Tenth Amendment by seizing state authority over licensing and by forcing states to engaged in regulation on behalf of the federal government. The regulations argue that Real ID does not violate the Tenth Amendment because the burden will fall on citizens rather than on “the State as a sovereign.” This is an incorrect reading of the law. 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 drivers licensing.</b></p>
<p>PASS FAIL INC</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/></p>	<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 “the proposed rule would not formally compel any State to issue driver’s licenses or identification cards that will be acceptable for federal purposes” and instead that it is pressure on individual citizens that will force compliance with Real ID (p. 120). 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 like entering a federal facility or traveling on a plane, does this rise to the level of coercion necessary to trigger constitutional scrutiny?</b></p>

<b>B. Burdens on constitutional rights of individuals.</b>		
PASS <input type="checkbox"/> FAIL <input checked="" type="checkbox"/> INC <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. It acknowledges individual religious objections but states that security requirements override those objections (pp. 67-68).</b></p>	
PASS <input type="checkbox"/> FAIL <input checked="" type="checkbox"/> INC <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 under to establish ineligibility for an SSN is for an alien to “present evidence that he or she is currently in a non-work authorized nonimmigrant status” (p. 134).</b></p>	
PASS <input type="checkbox"/> FAIL <input checked="" type="checkbox"/> INC <input type="checkbox"/>	<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>The regulations do not address this issue.</b></p>	
PASS <input type="checkbox"/> FAIL <input checked="" type="checkbox"/> INC <input type="checkbox"/>	<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. 129). They do not address the constitutional issue.</b></p>	

<p>PASS FAIL INC  <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. 129). They do not address the constitutional issue.</b></p>
<p>PASS FAIL INC  <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. 129). They do not address this constitutional issue or the related question of whether barring access to a courthouse, the ability to bring or defend a lawsuit or witness a court proceeding would also be prohibited under the Constitution.</b></p>
<p>PASS FAIL INC  <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 (pp. 56 &amp; 136). The regulations do not address the constitutional issue.</b></p>