



November 17, 2005

Free Congress
Foundation

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Ms. Toby Milgrom Levin
Senior Advisor
Privacy Office
Department of
Homeland Security
Arlington, VA 22202

Dear Ms. Levin:

The Free Congress Foundation appreciates the invitation extended by the Department of Homeland Security, acting through the American Civil Liberties Union and the Center for Democracy & Technology, to obtain the thoughts of privacy groups about REAL ID. The reservations the Free Congress Foundation expressed about REAL ID this spring when it was a bill under consideration by the United States Senate still hold true.

Concerns included the cost of the system, specifically the unfunded mandates that would be pushed on the states by REAL ID; the difficulty that would be experienced by individuals as they sought to comply with the demands by their state DMVs for specific documents; and the adverse impact on privacy that was likely to result from the system's implementation.

Passage of the REAL ID forced the suspension of the negotiated rulemaking process for driver's license standards as mandated by the 9/11 Intelligence Reform legislation that Congress had passed in December 2004. The negotiated rulemaking commission established by that legislation enabled state DMVs and elected officials, advocates of privacy and the DHS, to aid the Transportation Department in shaping driver license standards. REAL ID places more power with DHS in shaping standards and there is no formal role for the states or privacy advocates or the Transportation Department in helping to develop those standards.

The foremost concern of privacy groups now is that the DHS Secretary will one day order RFID chips to be placed on driver's licenses. This would be a significant step toward the creation of a national ID, subverting a state document whose primary purpose has long been to certify proficiency at driving. RFID readers would put the privacy of the holders of national ID-driver's licenses at risk. The readers could be used, not just by government employees, but unscrupulous merchants and identity thieves to glean information, including names and addresses, without the knowledge of the holders of the national ID-licenses.

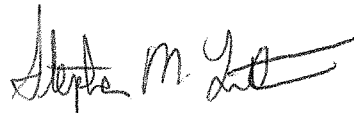
Americans prided themselves during the Cold War that we, unlike Eastern Europeans, did not live in a checkpoint society. American citizens should not lose our freedom to come and go as we please, instead constantly having to produce (or have read by RFID readers) our official documentation in the intrusive manner that Eastern European governments forced their citizens to endure. Worse, the driver's license that we may one day have to hand over to the authorities upon request could contain a great deal of personal, even sensitive, information about ourselves.

Fortunately, the specter of that Brave New World has yet to come true even though REAL ID takes us a few steps closer to it. Regulations ordering RFID, biometric pictures, and the inclusion of federal education, health and employment records are the leaps forward that would usher us to that Orwellian state.

Given that, for the foreseeable future, REAL ID is a reality, Secretary Chertoff can demonstrate respect for federalism by ensuring the states have a real voice in the process of designing and implementing REAL ID. A formal process for soliciting input from state DMV and elected officials on a regular basis should be established. The Secretary should also make it a point to hear the concerns of privacy advocates on a regular basis and he should have the DHS conduct biannual privacy audits to ascertain how REAL ID is being implemented, whether privacy is being respected and protected in the implementation and use of REAL ID, and what, if any, abuses of privacy have occurred and how they might be fixed. Secretary Chertoff would earn the respect of privacy advocates by calling upon Congress to place strictures on his ability and that of his successors to order design changes to driver's licenses unless the proposed revisions have received the consent of Congress.

Your consideration of these comments would certainly be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Lilienthal". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen M. Lilienthal
Director / Center for
Privacy & Technology
Policy