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MICHIGAN HOUSE OF REPRESENTATIVES

**PAUL E. OPSOMMER**

STATE REPRESENTATIVE

**Written Statement of Paul Opsommer  
Chair, Michigan House Transportation Committee**

**to the**

**Committee on the Judiciary  
Subcommittee on Crime, Terrorism, and Homeland Security**

**U.S. House of Representatives**

**"Secure Identification: The REAL ID Act's Minimum  
Standards for Driver's Licenses and Identification Cards"**

**March 21, 2012**

**Chairman Sensenbrenner, Ranking Member Gohmert, distinguished members of the committee; my name is Paul Opsommer, Chair of the Michigan House Transportation Committee. During the past 5 years I have been heavily involved in REAL ID, passing state level resolutions and bills within Michigan, as well as drafting adopted related policy with the National Conference of State Legislators. I appreciate the opportunity to present to you my personal written testimony regarding state implementation of Title II of the REAL ID Act.**

## **OVERVIEW:**

Michigan is one of many states that has not passed legislation to comply with the REAL ID Act, and our laws contain statutory language that nothing in its driver's license code authorizes compliance with Title II of REAL ID. While some of the intent and requirements of Title II are well intended, it is my opinion that there are better ways to obtain the core objectives of the most basic best practices called for under the first round of final rules. Please note that while Michigan is in some cases technically compliant with some aspects of REAL ID, these have been accomplished on our own initiative, independent of REAL ID, and should not be construed as a willingness or desire to continually have our driver's license standards set by the federal government. Indeed, our experience with another DHS program, known as Enhanced Driver's Licenses (EDLs), has proven that many of the concerns about giving ongoing power to federal bureaucratic processes are not hypothetical and are indeed a real danger and concern to the states and its citizens. While I sincerely appreciate the work of the many people who, like me, seek the best public policy that balances the safety of our citizens with the tenets of freedom, federalism, and state powers, I believe that Title II of REAL ID needs to be repealed and replaced.

## **BACKGROUND:**

As you are no doubt aware, when the REAL ID Act was passed it replaced a negotiated rulemaking process that was already taking place with the states in this area. This was controversial for several reasons, primarily because early versions of the REAL ID law would have required states to join the AAMVA compact known as the Driver's License Agreement (DLA). Such a requirement would have not only put an international 501c3 with foreign voting members in charge of driver's license provisions in regards to technology and biometrics, it would have also mandated international data sharing. While this provision is not in the current set of rules, because DHS control under REAL ID is permanent and ongoing there is little solace to the states in this area knowing the direction some would like to take future rulemaking. Likewise, although advanced biometric collection and RFID were not called for in the current rulemaking process, the current rules expressly state that DHS can change these requirements at any time and would not need to go back to Congress in order to do so.

As an example:

**Page 86, "Moreover, in the future, DHS, in consultation with the States and DOT, may consider technology alternatives to the PDF417 2D bar code that provide greater privacy protections after providing for public comment"**

The "final rules" are therefore not really final, and it is unacceptable that such technological decisions could be made by requiring only non-binding consultation with States, especially when there is debate between the States and the federal government as to what really constitutes optimal privacy and security options for their driver's licenses.

Contrary to other reports or testimony you may receive, after talking to my colleagues both here in Michigan and across the country I strenuously assert that the states do not see tremendous value in keeping Title II of REAL ID in its current form that abrogates all state powers. Michigan, on its own accord and through its own initiatives, has denied drivers licenses to illegal immigrants. We have other strong security measures in place that we fully support and are proud of. These are state policy positions we are pursuing on our own, irrespective of REAL ID. Any reports that show states like Michigan as somehow being supportive of the REAL ID law itself because it has made similar decisions only shows the initiative the states have in this area. In fact, many of these same states ironically have laws on the books expressly prohibiting them from complying with REAL ID.

In fact, no state could currently reach all REAL ID benchmarks today even if they wanted to, because some database requirements have not been finalized. Even for those states that are currently receiving a gold star for "technical compliance", not all benchmarks are being met. In the future, DHS may very well ask them to remove the gold stars from their licenses, a bureaucratic nightmare in of itself. What will constitute earning a gold star will continue to be a moving target, and once states start to issue these there will be tremendous pressure to go along with all future requirements considering the cost to reissue new noncompliant licenses. Because this is not taking place as a finite rulemaking process with the states, I do view this as a federal takeover and as an outsourcing of a defacto national ID card onto the states. In my opinion, while each license will continue to have a unique state look and design, it will be a national ID card that would come in over 50 assorted flavors with nothing more than a prominent state designation data field. There does not need to be a federal database to have a national ID card.

As final background, I would like to share my experience of the past several years dealing with the Department of Homeland Security regarding what are known as Enhanced Driver's Licenses (EDLs). While Michigan has entered into this program, one that was initially presented to us as a non-cookiecutter partnership with the federal government, we currently have significant buyer's remorse. As an example, DHS is mandating that we issue EDLs that include unencrypted, long range (20-30 feet) RFID chips in our EDLs despite the fact they acknowledge this was not a requirement of Congress. While a debate on the ramifications of such technology and unmanned automated checkpoints is not appropriate here, it shows how quickly bureaucratic

rules, both official and unofficial, creep into seemingly innocuous programs. Michigan's Secretary of State has presented to DHS a new EDL agreement that would allow for the continuance of an EDL program in every secure manner, that verifies and denotes citizenship, but does not contain a wireless chip. This is what Congress intended. Such attempts have been repeatedly and firmly denied however, and I would advise other states not to adopt EDLs until this is resolved.

I also unfortunately believe this to be indicative of how DHS will treat the states in a similar manner under both current and future REAL ID rules and rulemaking processes. These will be decisions on collecting advanced biometrics / use of facial recognition, use of wireless technology, the sharing of data with foreign governments, and additional potential federal uses such as medical care or firearm purchases.

## **SOLUTIONS AND CONCLUSIONS:**

Title II of the REAL ID Act as currently written is unworkable and needs to be repealed and replaced. Most states have already adopted what I consider to be the "low hanging" security standards we should implement. A negotiated and finite rulemaking process with the states would not undo any of the good work that has already been done, and would allow the states to go forward with federal partnerships knowing they are not being forced to give a virtual blank check to the federal government or its agents.

I also believe that beyond these basic minimum standards that Congress should keep state and federal documents separate. Indeed, the federal government would be well served by focusing on its own federal passport standards, some of which I believe are weaker than what they are requiring of the states. An emphasis should also be made to keep full-fledged federal passport costs down, a goal that numerous GAO reports have shown to be routinely ignored. "Passport-lite" cards are not the answer. Fully functional federal passports at under \$50 should be a goal of Congress if it wishes to pursue laws such as the Western Hemisphere Travel Initiative. The use of behavioral economics to create demand for REAL ID and EDLs creates friction with the states, which should be viewed as equal sovereign partners.

Continued games of bluff and public relations campaigns between the federal government and the states over REAL ID deadlines are counterproductive and have become distractions hindering government from reaching real solutions for the people we seek to serve. While the REAL ID debate has become sometimes contentious, I again do thank all stakeholders for their hard work and dedication as we seek public policy that balances the safety of our citizens with the tenets of freedom, federalism, and state powers.