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Sorting Fact from Fiction:

National Conference of State Legislatures Uses Faulty Information to Oppose the REAL ID Act

The text in the left column below is from an interview by Steve Lillienthal for the Coalition for Constitutional Liberties (COCL) UPDATE with Cheye Calvo, who represents the National Conference of State Legislatures on transportation issues. The subject of the interview was H.R. 418, the REAL ID Act, which was attached to the Iraq Supplemental by the House on March 16, 2005, and then transmitted to the Senate for consideration.

The text in the right column notes the erroneous conclusions drawn by the National Conference of State Legislatures and provides the facts about the REAL ID Act, along with references to additional information about the bill. (All underlining and other emphases in the left column were added by NumbersUSA.)

COCL UPDATE: *Right now the REAL ID Act as part of the Tsunami Relief/Iraq Appropriations bill appears to be headed for the Senate, the body of Congress that our Founding Fathers envisioned to be more reflective of the long-term consequences legislation and more immune from the pressures of the day. Does it appear a debate will take place over REAL ID?*

CALVO: It looks like both the House and Senate will take the unprecedented step of taking these bills right to the floor and skip committee hearings where members can come to understand what they'll be voting on. There will be debate, but it will not receive the more thorough deliberation that it would receive in committee.

Fact: The language in H.R. 418 was debated and marked up by both the House Government Reform Committee and the House Judiciary Committee last fall as part of the National Intelligence Reform Act of 2004. Following the committee mark ups, the provisions were debated and passed on the floor of the House. These same provisions were debated again and passed by the House on a vote of 261 to 161 on February 10.

COCL UPDATE: *Congress passed the Intelligence Reform Act in December. It contained a provision for standardizing driver's licenses. Why go back and do it over?*

CALVO: That's a good question and only Rep. Jim Sensenbrenner, Chairman of the House Judiciary Committee, can explain why he is forcing this issue. Why should the Senate have to go back and do over an issue they decided late last year by a 98-2 vote.

The major thing that this does is dismantle the Intelligence Reform bill, which allowed the States a seat at the table with negotiated rulemaking with federal officials and others to create effective standards to make driver's licenses more secure, and instead imposes upon them rigid, prescriptive, unworkable federal requirements. Remember the driver's license is a State document whose primary purpose is to certify an individual to operate an automobile. Over time, it's also become a widely used identity document.

Now, under REAL ID, the Federal Government will alone have the authority to set the standards for this State document, usurping the authority of the States to control how their documents are to be used and how they are to be designed. It's a 10th Amendment issue.

Fact: Last year's National Intelligence Reform Act did not set standards for driver's licenses. Instead, Section 7212 of that Act established an 18-month process by which the Administration is to come up with standards, which States may then opt out of if they choose. Since the standards are set by regulation, they are subject to change by each new Administration, with no input from the public.

Fact: The standards in REAL ID were recommended by the American Association of Motor Vehicle Administrators, which is comprised of representatives from the States' motor vehicle departments. Far from being unworkable, these standards already have been implemented in most States: All but 10 States, either by law or regulation, require applicants to prove legal presence in the United States; 22 States and the District of Columbia require licenses to expire with temporary visas; and all but 14 States verify at least one of the documents applicants are required to produce. (For more information, see www.securelicense.org.)

Fact: The Federal Government's primary responsibility is to protect the citizens of the United States. In FY 2004, the Border Patrol apprehended 75,389 non-Mexicans who had entered the United States illegally across our land borders, both north and south. These illegal aliens, representing a two-fold increase from 2002, came from more than 150 nations, including every major State sponsor of terrorism. The Federal Government has a compelling duty to prevent these aliens from following in the footsteps of the 19 9/11 terrorists who murdered 3,000 Americans, with 18 of them using State-issued ID.

Fact: States would retain full control over how their documents are to be used; in fact, they may choose not to comply with the standards in REAL ID. If they choose to comply, they must only meet the minimum standards, and then can modify the documents as they see fit.

Congress should let work the process that it enacted last year in which the States have a seat at the table. It's important to note that NCSL stands by the approach to driver's license security that was recommended by the 9/11 Commission and which was reflected in the Intelligence Reform bill of last year.

COCL UPDATE: *The National Conference of State Legislatures is a bipartisan body whose members span the ideological spectrum. Why is NCSL concerned about this legislation?*

CALVO: One important reason is the cost. Most Americans do not realize that the cost of standardizing driver's licenses will cost money. Even more, the cost of having the States comply with the rigid requirements of checking out birth certificates electronically and visas is unlikely to be picked up by the Federal Government. The States in which your readers live collectively will be required to absorb a bill we estimate to total between \$500 to \$750 million dollars over the next five years. Plus \$50 to \$75 million annually after that to administer. That cost could rise too if the Secretary of the Department of Homeland Security exercises his authority to order further design changes in terms of information or new technologies to be added to driver's licenses.

REAL ID is a huge unfunded mandate. We were pleased that Sen. Lamar Alexander recently remarked to the National League of Cities on the issue of unfunded mandates and gave prominent mention to REAL ID as another costly program whose bill Washington is passing on to the States. What he said is "The U.S. House of Representatives recently passed legislation that would turn 190 million State drivers' licenses into national ID

Fact: On page 390 of its final report, the 9/11 Commission recommended that "the federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." The driver's license provisions in the REAL ID Act do precisely what the 9/11 Commission recommended.

Fact: As mentioned above, 36 States and the District of Columbia already verify some documents prior to issuing licenses. DHS's Systematic Alien Verification for Entitlements (SAVE) system is already available to States to verify immigration documents. The SAVE system has an average response time of 3-5 seconds and requires a computer terminal for access.

Fact: The Congressional Budget Office's February 7, 2005, cost estimate of REAL ID found that the Act would impose on State and local governments a total cost of \$20 million above current law between 2006 and 2010. So, "the additional costs that would be imposed by H.R. 418 would not exceed the annual threshold established in UMRA." Moreover, REAL ID authorizes appropriations for grants to States to cover their costs. The CBO cost estimate of REAL ID may be found at: www.cbo.gov/showdoc.cfm?index=6072&sequence=0

Fact: Nothing in REAL ID authorizes the Secretary of Homeland Security, or any other Federal official, to order design changes or new or additional information or technologies to driver's licenses.

Fact: National ID cards provide an answer only when other forms of identification documents are found to be unreliable – whether because they can be easily counterfeited or because they are issued to people who should not get them. By addressing these deficiencies in driver's licenses, the REAL ID Act makes it *less* likely that there will be any legitimate need for a national ID card.

cards with the States paying most of the cost." I predict that you will be hearing more from Senator Alexander and other former governors and State legislators in the Senate on this topic.

COCL UPDATE: *Well, the House passed REAL ID by a large margin. They must feel this legislation will better enable States to prevent illegal immigrants from obtaining driver's licenses.*

CALVO: What Congress would be doing by passing this legislation is making the States assume a federal responsibility. It's the Federal Government's responsibility to control immigration. The REAL ID Act does nothing to provide States with the links to necessary information to obtain timely, verifiable and accurate information on immigration status. They're making the States responsible for navigating the 100-plus type visa system of the Federal Government. That puts a huge burden on the staffs of the Department of Motor Vehicles as they turn into immigration enforcement centers.

The REAL ID Act's requirement that the States obtain birth certificates in an electronic form is another burdensome mandate. The overwhelming majority of birth certificates are in a paper form, and we estimate bring birth certificates into the electronic age will take at least a decade. This bill gives us three years. It's simply unworkable.

Passing the REAL ID Act means that the lines at the DMV are going to be longer than those at the voting booth last November. DMVs are not known for their speed now. It may soon be absolutely miserable. It's not just immigrants who are going to have their driver's licenses held up by this bill. It's everyone.

Fact: The REAL ID Act asks only one thing of States—that they issue official identification documents and driver's licenses only to people who can prove who they are and that they either have a right to be here or have undergone Federal security checks and been approved for admission. This bill is not an immigration control bill. The REAL ID Act is a border and homeland security bill designed to prevent terrorists from entering the United States in the first place, and, if they do get in, from hiding in plain sight in American communities by obtaining State-issued documents that allow them to blend in.

Fact: As noted above, DHS has already made available to the States an electronic verification system, the SAVE system, which verifies immigration documents in an average of 3-5 seconds. Any DMV employee who can type can use the system without any specialized knowledge of immigration law.

Fact: There is no requirement in the REAL ID Act that States obtain birth certificates at all, let alone in electronic format. REAL ID requires verification of birth certificates if, and only if, an applicant presents one as proof of identity and/or citizenship. It also requires States to store an electronic copy of whichever documents an applicant presents, just as the photograph of the applicant is stored electronically, so documents will simply need to be scanned into a DMV computer.

Fact: It may take a few seconds longer to verify and scan the documents presented by each applicant. According to public opinion polls, three-quarters of Americans are happy to stand in line a bit longer if it means that terrorists are less likely to get licenses. (See, e.g., www.numbersusa.com/PDFs/DriversLicense%20Survey%2008-04.pdf.) The vast majority of Americans will have no trouble satisfying the new standards. Terrorists, criminals, and illegal aliens, on the other hand, will face greater obstacles, which is the point.

COCL UPDATE: *Perhaps. But national security is at stake.*

CALVO: Placing faith in a State document to fight terrorism is absolutely misplaced. Every one of the 19 terrorists responsible for 9/11 were in this country legally and could obtain a drivers' license under the REAL ID Act. In many ways, it's an admission on the part of the federal government that it's unable to keep tabs on the people it lets into the country legally; so it's trying to shift that responsibility to the States, which are ill-equipped to do the job.

If the Congress wants to show it's truly serious about immigration, then why not have real debate over the issue. There are measures such as beefing up the Border Patrol, making the visa system less complex, that are legitimate points of debate in how the Federal Government can better control immigration. The REAL ID Act does nothing in the areas of substance that would be most pertinent to getting a handle on immigration.

However, if State officials and law enforcement are going to enforce federal immigration laws, will communities be able to count on them to enforce State and local laws and keep your roads and neighborhoods safe. For every mandate States get from the federal government, State and local priorities are diminished. And when the federal government forces States to raises taxes and fees to administer federal priorities, it diminishes the ability of taxpayers to hold elected officials accountable for their actions. Anthony Scalia has called such commands "fundamentally incompatible with our constitutional

Fact: There is a difference between placing faith in a State document to fight terrorism and insisting that State governments stop facilitating terrorism. The House did the latter when it passed the REAL ID Act, and Americans are depending on the Senate to follow suit.

Fact: At least two of the 19 9/11 terrorists had violated the terms of their visas and so were unlawfully present at the time they obtained state-issued licenses and ID cards, according to the 9/11 Commission staff's report, "9/11 and Terrorist Travel." Nawaf al Hazmi—one of the four hijackers of Flight 77, which flew into the Pentagon—had overstayed his visa by six months when he obtained a Florida driver's license and by eight months when he obtained the first of two Virginia ID cards. Hani Hanjour—the pilot of Flight 77 who is believed to have murdered the real pilot by slitting his throat with a box cutter—violated his student visa by not registering for school, but that did not stop him from obtaining both a Virginia and a Maryland ID card to go with the Arizona driver's license he had picked up in the late-1990s when he was taking flying lessons in Scottsdale. The REAL ID Act may have prevented both these terrorists from having valid U.S. ID on 9/11.

Fact: The REAL ID Act does not address immigration control because it is a national security bill, not an immigration bill.

Fact: Since the REAL ID Act is neither an unfunded mandate, nor an onerous burden on state employees, its direct impact on other services and on taxes should be minimal. On the other hand, it should have a positive impact on state and local services by reducing the population of potential applicants.

system of dual sovereignty."

COCL UPDATE: *Then, there is the issue of the driver's license compact that the REAL ID Act requires all the States to enter into.*

CALVO: It's revealing that the sponsor of that compact, the American Association of Motor Vehicle Administrators, is balking at the REAL ID Act because it removes the States from the rulemaking process established over driver's licenses by the Intelligence Reform Act.

The linking of State databases and, quite possibly, those of Mexico and Canada, should be cause for concern. We've seen with ChoicePoint the danger of centralizing information. It makes it more vulnerable to misuse. Setting up an interlinked database makes it very likely that fraud and tampering will be done to driver's licenses. This would give too many people access to information.

The driver's license compact has not been enacted by a single State. State legislatures are just starting to look at it and may demand changes to better address privacy and civil liberty concerns as well as the issue of participation by foreign governments. Having Congress mandate it before it's been vetted by elected officials is dangerous and premature.

COCL UPATE: *Has Congress really heard from the people about this issue?*

CALVO: Right now, State legislators and governors are only starting to catch on to what this bill's provisions really mean. Many State legislators are absorbed by the issues now pending before their own legislatures. They are only starting to catch on as to what the REAL ID Act really means. There is not

Fact: Forty-five States and the District of Columbia have signed the Driver License Compact. In fact, all but two states—Michigan and Wisconsin—already share information from their databases because they are signatories of the Driver License Compact, the Non-Resident Violators Compact, or both. The Driver License Agreement, which the REAL ID Act would require States to sign *only* if they want Federal grants, has not yet been signed by most States because it is new. This new agreement, formed following a near-unanimous vote by representatives of all the States, was designed to combine the existing agreements into one comprehensive agreement that recognized the post-9/11 need for increased security in the issuance of licenses and the information contained in each state's DMV database.

(For more about the compacts and agreements, see: www.numbersusa.com/PDFs/Sensenbrenner%20licenses%20-%20brief.pdf.)

Fact: All the information in State DMV databases is protected under the Federal Driver's Privacy Protection Act (DPPA), as well as by each State's privacy laws. None of these protections would change under REAL ID.

Fact: While State legislators and governors may be slow to catch on to the REAL ID Act, the public has made its support for the bill clear in public opinion polls and in communications with Congress. In the public opinion poll cited on page 4 above, 70 percent of adults said they would be less likely to vote for elected officials who make it easier to get licenses. The public is not only ready for REAL ID, it is clamoring for it.

much coverage of the REAL ID Act in the press, and what has been there is confusing and misleading.

Unfortunately, if the REAL ID passes, citizens won't take notice until they experience long lines and bureaucratic complications at State DMV office. If there is no uproar now over REAL ID, there will be one or two years from now when citizens discover its costs in terms of money and time and discover it does nothing to really solve immigration problems. Hopefully, with Congress moving this measure directly to the floor without any committee hearings or substantive debate, State legislators will have time to communicate these problems with their federal counterparts before they make a terrible mistake.

COCL UPDATE: *Thank you.*