

**Testimony of Lori L. Waters  
Executive Director, Eagle Forum**

**Before the  
Subcommittee on Highways and Transit  
Of the Committee on Transportation and Infrastructure  
U.S. House of Representatives**

**Thursday, September 5, 2002**

**Introduction**

Since 1954, all states have required drivers to be licensed in order to operate a motor vehicle, and there is significant diversity in state laws governing driver's licenses. Under the Tenth Amendment to the Constitution, the states control the rules of driver's license issuance, content, and format. This is as it should be.

No longer does your driver's license just prove that you know the rules of the road. The private and public sectors are using it as an identity verification document, and because of this, we are reaching a crossroads. The real question is not about a person getting a driver's license fraudulently to drive around town but rather about what else he could do with it – open a bank account, cash a check, get a library card, board a plane, etc.

There is no question that appropriate measures should be implemented to minimize the potential for driver's license fraud, and states can and are meeting this challenge. However, some people are advocating significant federal intervention in this state domain.

In the name of security and “anti-terrorism,” proposals such as driver's license standardization and linkage of databases to tag and track Americans are on the table for discussion. However, these were bad ideas before 9/11, and they are still bad ideas today. The answer to our security problems is control of our borders and better intelligence. Federal driver's

license standardization is a dangerous path that should not be taken. It is nothing more than a nice-sounding label for a national identification system.

### **What makes a National ID?**

The keys to a national ID are a uniform unique identifier, such as a number or biometric, together with linking information contained in databases. Technology has made it possible to store my life's entire records in a computer file. Medical information, tax records, financial data, education records, Social Security contributions, and driver records are all available to someone by merely a few key strokes on a computer. Each classification of information has its own set of rules for now, but that could quickly change if the driver's license is morphed into a national identification card connecting all the dots of life.

### **Driver's license standardization is the national ID wolf in sheep's clothing.**

No Member of Congress has introduced legislation entitled, "The National ID Card Act of 2002." You are smart enough to know that sponsorship of such an obvious bill would be devastating to your re-election. But the idea is certainly present in debate since 9/11. The House did the right thing by including specific language in the Homeland Security Act of 2002 (H.R. 5005) to ensure that nothing in the bill could be construed to authorize a national identification system or card. However, the fact is that a national ID system will more likely happen through a bureaucratic backdoor, an appropriations rider, conference report language, or a bill with a supposedly different but noble cause. Such a bill is already lurking in this Congress and referred to this subcommittee.

In May, Reps. Jim Moran (D-VA) and Tom Davis (R-VA) introduced the Driver's License Modernization Act of 2002 (H.R. 4633). The bill essentially turns the driver's license

into a “smart card” connecting the dots of your life. It has the framework for a national ID: a unique identifier through biometrics and database linkage. The bill requires driver’s licenses to contain a computer chip capable of containing all the text written on the card, encoded biometric data, and data from non-governmental sources. While it also calls for encryption and security software, government at all levels is supposed to have the keys to access the information without the express consent of the holder. Such an exception is an enormous loophole that will inevitably be exploited.

H.R. 4633 also requires states to maintain a database of biometric data on every driver who applies for or renews a license. These state biometric databases and other motor vehicle databases would then be linked. The question remains as to who would have access to such sensitive and valuable information.

Within six months of enactment, H.R. 4633 requires the Secretary of Transportation to issue guidelines for “standards to ensure interoperability and the ability to store multiple applications created by government agencies and private entities.” An interoperable card with a computer chip basically turns the license to drive into a smart card national ID.

### **Unlimited access and expansion.**

Once government and private industry databases are interoperable through a unique identifier (as required under H.R. 4633), access to and uses of sensitive personal information would expand. Law enforcement, tax collectors, and other government agencies would want use of the data.

Section 5 of the bill facilitates this very outcome, providing state grants for the development of new uses of the smart card national ID including voter registration, food stamps and commercial applications. Employers, landlords, insurers, credit agencies, mortgage brokers,

direct mailers, private investigators, civil litigants, and a long list of other private parties would inevitably begin requiring the new smart card ID, further eroding the privacy that Americans rightly expect in their personal lives.

While the Drivers Privacy Protection Act prevents DMVs from selling personal information to commercial entities, a standardized driver's license will become the identity card of choice required by private and public sectors. Private companies won't even have to buy the information; they would create their own databases based on encoded data on the driver's license. Just as we were promised by Congress that the SSN would never be used for anything else, the driver's license will soon be as misused as the SSN.

Furthermore, Congress has already broken its promises not to expand access to the New Hires Directory, also known as the Deadbeat Dads Database, which was created under Welfare Reform in 1996. Will this database and the one maintained by the IRS be the next in line to connect to motor vehicle databases? With a uniform unique identifier, it is possible and likely. We do not want government owning, sharing, displaying, and trafficking our personal information without our consent, which is a foreseeable result of H.R. 4633.

### **Who are you? Prove it!**

Federal driver's license standardization is not the answer to security problems because the information on a driver's license is only as good as the information provided to obtain a license in the first place. No government-issued ID is 100 percent secure. An extensive black market of fraudulent and stolen birth certificates and Social Security cards exists. These two "breeder" documents are relied upon to obtain a driver's license in most states. Therefore, even through basic fraud and theft, people could still obtain the newly standardized high-tech smart card driver's licenses.

Identity theft is already a nightmare to straighten out. What would happen if your smart card driver's license were stolen? Your life would come to a screeching halt. How do you get your name and life back? Today, identity theft cases mostly involve breeder documents and credit cards, but increasing the importance of the driver's license will soon put it at the same level of criminal activity.

Biometric technology is not 100 percent accurate. What happens when a computer glitch makes your biometric fail to match the one on file? It's doubtful that DMVs are ready to handle such situations.

At what end will the DMV and government be satisfied that you have proven your identity? How much information is enough to verify who you say you are? Over time, you will see that there will be no limits.

Through proposing driver's license standardization, the federal government will drastically change the core mission of state DMVs from licensing qualified drivers to guaranteeing identity, security, and safety. Such an awesome responsibility is well beyond the DMV's current limited role.

### **State Solutions**

Federal intervention into driver's licenses is unnecessary. Within the past two years, many states have already passed legislation to upgrade their driver's license laws. (*See Attachment A*) For instance, several of the 9/11 hijackers obtained driver's licenses in Virginia by submitting notarized residency and identity statements. This loophole is now closed thanks to House Bill 638 signed into law by Governor Mark Warner on April 7, 2002. No longer will written statements or immigration visas be accepted at Virginia DMVs as proof of residency.

In a related bill also signed into law in April, the Virginia State police and Department of Motor Vehicles are required to enter into agreements with the U.S. State Department, INS, and other federal law enforcement agencies to permit exchange of information regarding aliens residing in the U.S. who hold or apply for a Virginia driver's license.

Another common-sense action enacted by several states, such as Iowa, Kentucky, Louisiana, New Jersey, and Ohio, is linking driver's license expiration to the date in which an alien's legal presence in the U.S. ends.

Other states, such as Hawaii and Michigan, have enacted laws increasing penalties for fraudulently manufacturing or duplicating a driver's license.

Some states are trending in the wrong direction by allowing illegal aliens to obtain driver's licenses, but since the terrorist attacks, state legislators, such as in Tennessee, are working for repeal.

States are certainly cognizant of the need to make the driver's licenses more secure. More state action is expected in the coming year based on the heightened debate and sheer number of driver's license bills introduced in nearly every state legislature.

Congress should leave the administration of drivers' licenses to the states. Driver's license standardization, whether through H.R. 4633 or similar legislation, establishes an unparalleled system of personal information sharing and should be taken off the table for discussion, especially as an anti-terrorism measure. Better intelligence, more thorough background checks, and enforcement of immigration laws are federal solutions to the security question. State creativity and intervention is the answer to driver's license fraud.

## **Remember when it was tried before?**

Attempts at driver's license standardization are not new. States may require people to submit their SSNs to apply for a driver's license, but many states give drivers the option of having a random number as their driver's license number. When Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a provision was included requiring driver's licenses to contain a Social Security Number that could be read visually or electronically. By simply requiring the use of the SSN, the federal government was instituting the Social Security Number as a national identification number. After much outrage, the SSN/National ID provision was repealed in 1999.

## **Conclusion**

Because of the heightened discussion in the last year about security, document fraud, and driver's license standardization, we have joined a broad coalition opposing the creation of a national ID card or system. This coalition reaches across party and ideological lines. While we disagree on many issues, including security solutions, opposing National ID unites us. In June, we sent a letter to Chairman Young and Ranking Member Oberstar detailing our concerns about the Moran-Davis bill. (*See Attachment B*)

From coaxing states to adopt federally suggested standards to outright demanding state enactment of federal standards by a date certain, both are frameworks for a national ID system. We must not allow the 9/11 terrorists to morph America into a place where everyone is treated as a terrorist, deadbeat dad, money launderer, drug trafficker, or criminal. America is not a police state. Monitoring the everyday actions of law-abiding citizens is inconsistent with freedom, liberty, and American values. Making driver's licenses more tamper resistant is a noble goal, but

it does not require creating a National ID system that tags and tracks law-abiding American citizens.

The job of the Federal Government is to stop suspicious people at the borders, not at the states' department of motor vehicles. I commend Congress for starting to address this need by amending the federal code through the Enhanced Border Security and Visa Entry Reform Act of 2002 (H.R. 3525). Terrorist attacks are best prevented by never letting dangerous aliens cross our borders in the first place.

Standardization morphs the driver's license into a license to live, not just drive. So unless you are ready to swipe your driver's license and submit to fingerprint or retina scan every time you go to the grocery store, make a bank withdrawal, board a plane, see a doctor, enter a government building, or simply rent a video, I urge you to oppose federal standardization of driver's licenses.

*Attachment A*

## **State Legislative Action on Driver's Licenses**

### **Laws enacted by the states:**

**Colorado:** On April 2, 2002, Gov. Bill Owens signed SB112 requiring individuals to present additional documentation proving lawful presence if in proving age the licensee is using an out of state driver's license from a state that does not require licensee to be present in the U.S. lawfully.

**Connecticut:** On June 3, 2002, Gov. John Rowland signed HB 5759 allowing the Commissioner of Motor Vehicles to fingerprint applicants for drivers' licenses.

**Florida:** On April 22, 2002, Gov. Jeb Bush signed SB 306/HB 899 adding provisions to fraudulent driver's license or identification card manufacture or sale. It further allows investigation by law enforcement.

On April 30, 2002, Gov. Jeb Bush signed SB 520 revising application requirements for driver's licenses and identification cards including use of out of state licenses from states that require submission of documentation of legal presence in the United States. Applicants may include submission of fingerprints. If nonimmigrant status is documented, expiration of the license is the date of expiration of those documents with a maximum of two years duration. If green card is used for identification, the license shall expire on the fourth birthday after the issue and the individual is exempted from renewal in person. If identity is established by employment authorization card or any document showing nonimmigrant classification, expiration is 4 years (or the expiration date on the document if sooner) after issue and requires renewal in person (change of name or address must also be made in person). The bill also amends statutes related to fraudulent manufacture and sale of driver's licenses and identification cards.

**Hawaii:** On June 13, 2001, Gov. Ben Cayetano signed HB 986 creating a felony charge for the sale or manufacture of deceptive identification documents.

**Iowa:** On April 4, 2002, Gov. Tom Vilsack signed SB 2192 allowing the Department to waive the Social Security Number requirement for foreign nationals temporarily present in the state. The bill also requires that licenses and identification cards issued to foreign nationals expire with their legally present status, with duration not exceeding two years. The Act requires a driver's license or nonoperator's identification card applicant, who is not a foreign national applying for a nonresident commercial driver's license, to certify that the applicant is a resident of Iowa.

On April 26, 2001, Gov. Tom Vilsack signed HB 647 permitting the release of a person's picture or digital image to state and federal agencies in performance of their duties. The Act also assigns a distinguishing driver's license number other than the Social Security Number, unless the applicant requests the assignment of the SSN as his driver's license number.

**Kansas:** On April 24, 2002, Gov. Bill Graves signed SB 210 amending the procedures for disclosure of motor vehicle records for law enforcement.

**Kentucky:** On April 9, 2002, Gov. Paul Patton signed HB 188 requiring verification of a person's driving status in the National Drivers Register before issuing the person a Kentucky license. The Act also requires applicants for a license to provide proof of residency. It further prohibits the issuance of a nondriver's identification card to any person who has a driver's license or instruction permit. Under the Act, licenses expire after one year or when the visa expires, whichever is shorter.

On April 5, 2002, Gov. Paul Patton signed HB 189 requiring all new applicants and persons initially renewing a commercial driver's license to undergo a state and national criminal background check. Non-residents may be issued a CDL instruction permit and CDL if the person is enrolled in a truck driving program.

**Louisiana:** On April 18, 2002, Gov. Mike Foster signed SB 89A to tie visa expiration with driver's license expiration. The Act further prohibits nonresident aliens from providing false information regarding lawful presence.

**Michigan:** On April 9, 2002, Gov. John Engler signed HB 4037 increasing the penalty for fraudulent duplication of driver's license and establishing a penalty for possession of a fraudulent license.

On April 9, 2002, Gov. John Engler signed SB 943 establishing penalties for transporting hazardous materials requiring labeling under federal regulations and prohibits hazardous materials transport without proper endorsement.

On May 2, 2002, Gov. John Engler signed HB 5504 requiring HAZMAT applicants to provide fingerprints. No license will be granted if there is a violation under the "Terrorism" section of Michigan criminal law.

**Nebraska:** On March 28, 2001, Gov. Mike Johanns signed LB 574 providing for the implementation of a digital system for signatures and photos for the issuance of motor vehicle licenses and identification cards.

**New Hampshire:** On May 17, 2002, Gov. Jeanne Shaheen signed HB 1456 creating a misdemeanor for any person who knowingly scan, record, retain, or store electronically personal information obtained from any driver's license, unless authorized by the department of safety.

**New Jersey:** On January 8, 2002, SB 2708 was approved linking driver's license and identification card expiration to the date in which legal presence in the U.S ends. The Act also permits the director to refuse granting of a license if there is reason to suspect that any identification documents are false (until they are verified). Further, use of digital pictures on licenses was authorized. The Act also allows motor vehicle information, digital photo, and digital signature to be stored on a magnetic strip on the license.

**New Mexico:** On February 28, 2002, Gov. Gary Johnson signed HB 135 authorizing the Secretary to establish other documents to be submitted as a substitute for the Social Security Number.

**Ohio:** On May 15, 2002, Gov. Bob Taft signed SB 184 making all licenses issued to temporary residents nonrenewable and may not be relied upon to obtain a license in another state. Nonrenewable licenses shall expire on the same date on legal presence document.

**Oklahoma:** On June 4, 2001, Gov. Frank Keating signed HB 1308 authorizing the use of fingerprints to prove identity for license or identification card and adds fingerprint image to personal information exception for state open records act. Licenses bearing the Social Security Number shall be replaced with a computer-generated number.

**Tennessee:** On May 3, 2001, Gov. Don Sundquist signed SB 1266 authorizing a person without a social security number to receive a driver's license if the person submits an affidavit affirming that they have never been issued a social security number. The act further allows noncitizens to be given a driver's license if they provide proper documents demonstrating identification.

**Utah:** On March 18, 2002, Gov. Mike Leavitt signed HB 187 making it class C misdemeanor to alter the date on a driver's license or to use a false or modified identification card.

**Virginia:** On April 2, 2002, Gov. Mark Warner signed HB 637 requiring the State Police and Dept. of Motor Vehicles to enter into agreements with the U.S. Dept. of State, INS, and other federal law enforcement agencies to bring about the interchange of information concerning those aliens residing in the U.S. who hold or apply for a Virginia driver's license.

On April 7, 2002, Gov. Mark Warner sign HB 638 making it a class 6 felony to use false identification for any purpose other than engaging in age limiting activity. The Act further prohibits the use of immigration visas and written statements for proof of Virginia residency. The Act also includes HB 415 requiring applicants for driver's licenses, commercial licenses, temporary permits, and special identification cards to submit documentary proof of their name, date of birth and Virginia residency.

**As of July 2002**

## **Attachment B**

Chairman Don Young  
Committee on Transportation and Infrastructure  
United States House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515

Representative James Oberstar, Ranking Minority Member  
Committee on Transportation and Infrastructure  
United States House of Representatives  
2163 Rayburn House Office Building  
Washington, DC 20515

June 27, 2002

Dear Chairman Young and Representative Oberstar:

We, representing a broad and diverse coalition of national organizations, urge you to oppose H.R. 4633, the "Driver's License Modernization Act of 2002." This legislation establishes a nationwide identification system (national ID) through the bureaucratic back door of state drivers' licenses.

One reaction to the terrible events of September 11 last year was renewed discussion about instituting a national ID card as a counter-terrorism measure. The creation of a national ID card or system is a misplaced, superficial "quick fix" to terrorist threat. H.R. 4633 would not effectively deter terrorists, but it would pose a serious threat to the freedom of everyone in the United States.

Although national ID proposals received fierce debate in the fall, the Administration and Congress wisely rejected them. Direct passage of a national ID card, however, is only one possible path to such a system. H.R. 4633 would establish a national ID bureaucratically by mandating the standardization of state drivers' licenses.

H.R. 4633 requires each state to standardize state drivers' licenses and identification cards within five years. Section 2 of the bill establishes uniform standards for licenses and identification cards (a.k.a. "smart" cards), including standards for the biometric identifiers embedded in the card and interoperability requirements that would enable multiple government and private industry applications of the card. The bill would also require states to adopt uniform procedures for establishing the identity and residence of applicants and to link state motor vehicle databases. H.R. 4633 is essentially the same as the American Association of Motor

Vehicle Administrators' (AAMVA) standardization proposal that the National Research Council has called a "nationwide identity system."<sup>1</sup>

H.R. 4633 would establish a national ID and establish the infrastructure for an unparalleled system of personal information sharing. We urge you to reject the Moran-Davis national ID because:

**The Moran-Davis national ID would not prevent terrorism.** An identity card is only as good as the information that establishes identity in the first place. Terrorists and criminals will continue to be able to obtain -- by legal and illegal means -- the documents needed to get a government ID, such as birth certificates and social security numbers.<sup>2</sup> H.R. 4633 builds a hi-tech card system on a faulty foundation of potentially false "breeder" documents. As a result, a national ID would create a false sense of security because it would enable individuals with an ID -- who may in fact be terrorists -- to move through society undetected, and even avoid certain heightened security measures.

**The Moran-Davis national ID would both contribute to identity fraud and make it more difficult to remedy.** Americans have consistently rejected the idea of a national ID and limited the uses of data collected by the government. In the 1970s, both the Nixon and Carter Administrations rejected the use of Social Security Numbers as a uniform identifier because of privacy concerns. A national ID would be "one stop shopping" for perpetrators of identity theft who usually use Social Security Numbers and birth certificates for false IDs (not drivers' licenses).

Even with a biometric identifier, such as a fingerprint, on each and every ID, there is no guarantee that individuals won't be identified -- or misidentified -- in error. The accuracy of biometric technology varies depending on the type and implementation. Recently, a Japanese researcher used gelatin (the same substance found in Gummi bears) and other easily available tools to create a fake finger that fooled fingerprint biometric devices 80% of the time.<sup>3</sup> Other researchers have shown how easy and inexpensive it is to outsmart "smart" cards.<sup>4</sup> H.R. 4633's technological quick fixes would make it even more difficult to remedy identity fraud when a thief has a national ID card with your name on it, but his biometric identifier.

**The Moran-Davis national ID could require all Americans to carry an internal passport at all times, compromising our privacy, limiting our freedom, and exposing us to unfair discrimination based on national origin or religion.** Once government and private industry databases are interoperable through a unique identifier (as required under H.R. 4633), access to and uses of sensitive personal information would inevitably expand. Law enforcement, tax collectors, and other government agencies would want use of the data. Section 5 of the bill facilitates this very outcome, providing state grants for the development of new uses

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<sup>1</sup> Stephen T. Kent & Lynette Millett, eds., *IDs—Not That Easy, Questions About Nationwide Identity Systems*, National Research Council, 2002.

<sup>2</sup> See e.g., Dan Luzadder, *Birth, death certificates stolen, 2,306 blanks could be used to forge identities*, DENVER POST, April 19, 2002.

<sup>3</sup> John Leyden, *Gummi bears defeat fingerprint sensors*, THE REGISTER, May 16, 2002.

<sup>4</sup> John Markoff, *Vulnerability is Discovered in Security for Smart Cards*, N.Y. TIMES, May 12, 2002.

of the national ID card including voter registration, food stamps and commercial applications. Employers, landlords, insurers, credit agencies, mortgage brokers, direct mailers, private investigators, civil litigants, and a long list of other private parties would also begin requiring the ID, further eroding the privacy that Americans rightly expect in their personal lives. H.R. 4633 would take us even further toward a surveillance society that would significantly diminish the freedom and privacy of law-abiding people in the United States. A national ID would foster new forms of discrimination and harassment. The ID could be used to stop, question, or challenge anyone perceived as looking or sounding "foreign" or individuals of a certain religious affiliation.

**The Moran-Davis national ID would depend on a massive bureaucracy that would limit our basic freedoms.** A national ID system would depend on both the issuance of an ID card and the integration of huge amounts of personal information included in state and federal government databases. H.R. 4633 requires States to issue a standardized card with a biometric and requires the "smart card" to be interoperable with other government and private industry databases. As the card is used for more and more government and private applications, individuals would become more dependent on the bureaucracy of states' Departments of Motor Vehicles' (DMV) to get it right. One employee mistake, an underlying database error rate, or common fraud could take away an individual's ability to move freely from place to place or even make them unemployable until a government agency fixed their "file." Anyone who has attempted to fix errors in their credit report can imagine the difficulty of causing an over-extended government agency such as the DMV to correct a mistake that precludes a person from getting a valid ID.

We urge you to reject H.R. 4633 as a national ID proposal. There are more effective methods to prevent terrorism that would not impact the liberty interests of Americans. Congress should leave the administration of states drivers' licenses to the states.

We would appreciate the opportunity to meet with you to discuss these issues in more detail. Please contact Lori Waters at the Eagle Forum, (202) 544-0353; Katie Corrigan at the American Civil Liberties Union, (202) 675-2322; J. Bradley Jansen at the Free Congress Foundation, (202) 546-3000.

Sincerely,

American-Arab Anti-Discrimination Committee  
American Association of Christian Schools  
American Civil Liberties Union  
American Conservative Union  
American Land Rights Association  
American Legislative Exchange Council  
American Policy Center  
Americans for Tax Reform

Arab American Institute  
Center for Democracy and Technology  
Citizens Committee for the Right to Keep and Bear Arms  
Citizens' Council on Health Care  
Common Ground  
Concerned Women for America  
Consumer Action  
Consumers Against Supermarket Privacy Invasion and Numbering  
Council on American-Islamic Relations  
Eagle Forum  
Electronic Frontier Foundation  
Electronic Privacy Information Center  
Free Congress Foundation  
Gays and Lesbians for Individual Liberty  
Global Strategic Management  
God Bless America  
Home School Legal Defense Association  
Identity Theft Resource Center  
Indian American Center for Political Awareness  
Japanese American Citizens League  
Leadership Conference on Civil Rights  
Libertarian National Committee, Inc.  
Life Coalition International  
Mennonite Central Committee US Washington Office  
Mexican American Legal Defense and Educational Fund  
Multiracial Activist  
National Asian Pacific American Legal Consortium  
National Conference of State Legislatures  
National Consumers League  
National Council of La Raza  
Organization of Chinese Americans  
Parents Requesting Open Vaccine Education (PROVE)  
People for the American Way  
Privacy Rights Clearinghouse

cc. United States House of Representatives