Real ID Decisions

Whoever wins the presidential election is going to face big choices regarding the national Real ID law.

Jim Harper

October 17, 2016

Do presidential nominees Donald Trump and Hillary Clinton support having a U.S. national ID card? By quirk of fate, that question may be one of the first issues to land on the new president's desk after inauguration day, when U.S. Department of Homeland Security efforts to implement a national ID kick into high gear.

DHS announced recently that it will refuse Americans' access to federal facilities beginning on Jan. 30, 2017, if they carry drivers' licenses or IDs from states that don't comply with the Real ID Act. This hardball tactic will be carried out in the new president's name.

Congress passed Real ID in 2005. It seeks to coerce states into issuing ID cards and licenses with nationally standardized data elements. It also requires states to share their databases of driver information across a national data network. This national ID system would be run by the states for the federal government. The law calls on federal agencies led by DHS to refuse IDs and drivers' licenses from non-compliant states.

Many states have resisted these federal dictates, so starting in January military families from those states will be turned away from their sons' and daughters' boot camp graduations if they can't find suitable alternative identification. Other elements of DHS's enforcement plan include turning travelers from non-compliant states away at airports starting in 2018. By 2020, DHS expects every domestic air traveler to present a Real ID-compliant license or some other federal or federally-approved identification. This will make the next president the national-ID president.

Though more than 10 years old, the Real ID law has not been fully implemented because of the original, firm refusal of many states. Congress passed Real ID in haste, in the process repealing identity security legislation that responded to a brief mention of the topic in the 9/11 Commission report. Soon after, in the "Real ID Rebellion," states across the country, of all political stripes, passed bills refusing to implement the law and asking their congressional delegations to revisit Real ID. Congress has done nothing to address this state-federal pain point.

DHS has recently begun ramping up efforts to force state leaders' hands. Last spring, for example, spooked by threats from DHS bureaucrats, the Minnesota legislature created a special

"Legislative Working Group on Real ID." A few weeks ago, a Kentucky legislative committee called in the commissioner of the Department of Vehicle Regulation for an update because of the threat that DHS would disrupt life for Kentuckians. The governor there rightly vetoed compliance legislation earlier this year, drawing the ire of the DHS and pro-national ID advocates.

Resistance to Real ID is well-founded because it is a national ID that threatens Americans' privacy and data security. Though issued by states, the data printed on Real ID licenses and IDs would be nationally standardized, and all cards could be scanned using the same readers and software. Though no law currently requires people to carry ID cards, it is a practical requirement for most people to have their drivers' licenses with them.

If Real ID is implemented, Americans will be more commonly asked to show ID, and ID scans will collect more personal data, a significant blow to privacy. Scanned copies of basic documents like birth certificates and social security cards, which Real ID requires states to warehouse, could be accessed by hackers and identity thieves. The nationwide data-sharing system that Real ID requires creates additional risks. The DHS's own estimate when it finalized its Real ID regulations in 2008 was that it would cost $17 billion dollars to implement – the vast majority of the costs to be borne by states and individuals.

The national security benefits of a national ID card are widely assumed but scant. Had Real ID been a fully implemented law prior to the terror attacks of Sept. 11, 2001, it might have presented only minor inconveniences to the terrorists. The current challenge of lone wolf (or stray dog) terrorists would be unaffected by a national ID.

In the current presidential race, there is deep distrust on each side for the other party's candidate. Republicans can imagine a national ID being used for gun control, financial surveillance and increased federal government control over health care. Democrats can easily envision a national ID system used in religious checks and round-ups of illegal immigrants.

All presidential candidates should reassure the public they stand by America's true ideals. They should disavow the national ID project and join the many states and people that have called for Congress to repeal the Real ID Act.

Jim Harper is a senior fellow at the Cato Institute.