Defund REAL ID

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When the House Appropriations Committee meets tomorrow to mark up fiscal year 2017 spending legislation for the Department of Homeland Security (DHS), among many nominal security measures the committee will fund is the REAL ID Act, our U.S. national ID law. A national ID has no proximate role in securing the nation from terrorism, but Congress is better at controlling political risks than controlling spending. In the wake of the terror-connected killings in Orlando, Florida, appropriators will feel under pressure to continue the flow of money to the national ID program. They should resist that pressure and defund the REAL ID Act.

The national security issues matter and they are easily dispensed with. Implementation of the REAL ID Act would not prevent attacks on our country, from outsiders or home-grown stray dogs. No analyst or advocate for a national ID has ever articulated how a national ID provides cost-effective security.

But the security mania ahold of Congress was still strong in 2005 when it passed national ID legislation without a hearing or an up-or-down vote in the Senate. The REAL ID Act repealed ID- and document-security legislation passed in response to the 9/11 Commission report, which gave the topic a brief mention. REAL ID replaced those reforms with a top-down, Washington-centric mandate seeking to force states to submit to federal control over issuance of IDs and drivers' licenses.

Along with uniform ID card standards, documentation and data retention requirements in REAL ID mean that digital "facial image capture" and copies of people's birth certificates, Social Security cards, and the like are retained in DMV databases for years under the law. The REAL ID Act also requires states to share their drivers' data and documents with every motor vehicle agency across the country through a nationwide network of databases. In its effort to cajole state participation and show progress with implementation, DHS obfuscates this clear statutory requirement. REAL ID creates a national ID system that happens to be run by the states, and it exposes Americans to hacking and identity fraud risks.

Following the law's 2005 passage, many state legislators and officials recognized REAL ID for what it was: a massive federal power-grab at the expense of states and their citizens. State legislatures across the country passed legislation blocking their governments from complying with the federal mandate, and even more passed resolutions denouncing the federal legislation. As of today, twenty-seven states remain non-compliant with REAL ID.

But DHS has stepped up efforts to enforce REAL ID on non-compliant states. The efforts include threating to turn back travelers at the airport or blocking entry to federal buildings if a U.S. citizen's license doesn't display REAL ID's signature gold star. By October 2020, the federal government expects every license held by an American to comply with REAL ID. DHS has bluffed about deadlines, and it always falls back, as it did again early this year. But fear of federal action moves states toward submitting to the national ID mandate year over year over year.

As a matter of routine, appropriators have funded the effort to turn state motor vehicle bureaus into arms of the DHS. The Cato Institute has found that, on average, Congress appropriated and DHS spent about $50 million per year on REAL ID from 2008 to 2011. Starting in 2011, REAL ID was folded into the "State Homeland Security Grant Program," reducing public oversight of federal spending on the national ID.

The draft version of 2017 DHS spending legislation slated for debate next week continues this tradition. The State Homeland Security Grant Program is set to receive a direct $467 million, while an additional $237 million has been set aside for "training, exercises, technical assistance, and other programs." Congress will not say it and DHS does not want it said, but at least some of this roughly $700 million will be used to fund REAL ID and the national ID system.

REAL ID trades Americans' privacy and money for essentially no additional security. The Appropriations Committee and all members of Congress should follow the lead of the broad cross-section of Americans who oppose a national ID and all that it represents. Members of Congress who allow funds to flow to REAL ID are not securing the country. They are spending to insulate themselves from the risk that they will be called soft on security.

Jim Harper is a senior fellow at the Cato Institute, working to adapt law and policy to the information age in areas such as privacy, cybersecurity, telecommunications, intellectual property, counterterrorism, government transparency, and digital currency. A former counsel to committees in both the U.S. House and the U.S. Senate, he went on to represent companies such as PayPal, ICO-Teledesic, DigitalGlobe, and Verisign, and in 2014 he served as Global Policy Counsel for the Bitcoin Foundation.