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Relax, Minnesota: REAL ID deadline isn't for real

Jim Harper
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In the Old West, American Indian hunters had a clever but gruesome way of hunting bison. Stamping the animals over a cliff would injure them in large numbers, allowing a second team of hunters to easily slaughter them below. The U.S. Department of Homeland Security is currently running a “buffalo jump” on state legislators, seeking to stampede states into the U.S. national ID program.

For the sake of privacy and liberty, balanced budgets and preservation of their authority, state leaders should turn and face down the DHS by declining to implement the REAL ID Act.

REAL ID is a federal law passed in 2005 that sought to convert the state-based driver licensing system into a U.S. national ID program. The federal government can't commandeer state governments, so the leverage in the law is that the Transportation Security Administration might refuse the licenses and IDs of travelers from states — including Minnesota, at this point — that don't follow the mandate.

Right now, the Department of Homeland Security is sending out emissaries to tell state leaders that their residents might soon feel the TSA's wrath. State motor vehicle bureaucrats and pro-national ID groups are joining them in the effort to herd state leaders over the national ID cliff.

But the threat of TSA enforcement is an empty one. REAL ID “deadlines” have come and gone many times. No state has ever come into compliance with REAL ID. No state will be in compliance in 2016. And the TSA will not begin a program to prevent Americans from traveling by air.

The original, statutory deadline for REAL ID compliance passed more than seven years ago. No state was in compliance, and nobody was turned away at an airport.

The DHS improvised, making Dec. 31, 2009, a new deadline for any state that asked for an extension by Oct. 1, 2007. Meanwhile, states began to consider the costs and privacy consequences of putting their residents into a national ID system. Many passed laws and resolutions objecting to the program or barring their states from complying. Nobody was turned away at an airport.

The DHS has come up with new deadlines and extensions time and again, all the way up to the present year, and they all passed without consequence. States largely refused to comply, and nobody was ever turned away at an airport. The latest invented deadline is sometime in 2016. But because they don't know this history, legislators in a few states are nervous, and some are turning toward the cliff.

Part of the department's bluff is an entirely improvised “material compliance” concept, in which agency bureaucrats use pared-back measures of states' willingness to implement a national ID as

though that is compliance with the law. On its website, the department says that every state and territory save five are “Compliant/Extension States/Territories.” In truth, not one of them is in actual compliance with the law, and some of them are still statutorily barred from complying. None of them will be in actual compliance with the U.S. national ID law in 2016.

But by leaving their states off the list, the DHS is bluffing legislators in New York, Minnesota, New Hampshire, Louisiana, and the territory of American Samoa that they will see their residents barred from travel next year. The department apparently sees these as the dumbest animals.

If these states hold their ground, the TSA will not institute a policy of turning their people away at airports. This is certain because of the politics involved. If the TSA — perhaps the most despised U.S. federal agency in history — refuses people the right to travel because they do not carry a national ID, the uproar will be intense and lasting. The lawsuits that follow such an action will make their heads spin. And it will all be focused on the federal government: the TSA, the DHS and the U.S. Congress, with its flaccid oversight of the security bureaucracy.

DHS officials can do basic political calculations, and there is no chance that they will actually bring a storm like this down upon themselves. State officials who do similar calculations from their end realize that they don’t have to follow federal national ID mandates this time, or ever. Their states and their people will be worse off if they do.

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