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**TESTIMONY SUBMITTED BY
ANDY HOOVER, LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO
SENATE COMMUNICATIONS AND TECHNOLOGY COMMITTEE
RE: SENATE BILL 621, REAL ID OPT-OUT
SENATE BILL 623, BIOMETRIC DATA COLLECTION
MAY 13, 2009
STATE CAPITOL, HARRISBURG**

Good morning, Chairman Folmer and members of the committee. My name is Andy Hoover. I am the legislative director of the American Civil Liberties Union of Pennsylvania. Thank you for the opportunity to testify today about the federal Real ID Act and related issues on biometric data collection. I am here today on behalf of the 15,000 members of the ACLU of Pennsylvania. The ACLU was founded in 1920, and the organization's activity in Pennsylvania dates back to the 1930s. Nationwide, the ACLU has 53 state affiliates and half a million members.

Passed in 2005, the federal Real ID Act is a massive invasion of privacy for all Americans. The ACLU opposed Real ID when it passed and has urged states to refuse to participate in the program. To date, 12 states have passed statutes to block the implementation of Real ID, and many more have passed resolutions protesting it. In the 2007-08 legislative session, the Pennsylvania House of Representatives unanimously passed House Bill 2537, a bill that would have blocked Real ID in the commonwealth. Senate Bill 621, which is currently before you, would end Pennsylvania's participation in the program. The ACLU of Pennsylvania supports SB 621.

The Real ID Act is an unprecedented invasion of the privacy of all Americans and provides numerous constitutional entanglements. The Real ID Act essentially turns our state drivers' licenses into a national identification card.

Our licenses will still have the seal and name of the Commonwealth of Pennsylvania, but Real ID's federal mandate disempowers the states from controlling their own departments of motor vehicles.

By mandating the linking of the states' DMV databases to each other, Real ID creates a new nationwide database with an unprecedented quantity of information available in one place. The information of license holders has been stolen from DMVs in the past, including here in Pennsylvania. A security breach at any DMV anywhere in the country will leave Pennsylvania's license holders susceptible to identity theft.

Proponents of Real ID claim that since the states will continue to maintain their own databases, that there will not be a single, interlinked database of driver information. But this reflects a misunderstanding of how databases work. A group of separate databases that are linked to one another by a query system *is exactly the same* as one giant database. Think of how Google works: Google queries multiple servers for bits of information and returns them to a central site. It does not maintain its own server with all the information available on the internet – it does not need to. The Real ID database would work the same way, allowing a DMV employee, federal official, or identity thief to pull up information on a Pennsylvania driver in Alabama, California or New York, even though that information is technically housed in Pennsylvania. 50 interlinked databases are functionally equivalent to one giant database.

Under Real ID, the most valuable documents of the commonwealth's license holders will be in the hands of PennDOT. The law requires verification of identification through numerous means, including a birth certificate, Social

Security card, a utility bill, and another form of photo identification. In addition, DMVs must store that information on site.

Security experts do not believe that Real ID will make our licenses more secure and fraud less likely. Privacy Rights Clearinghouse, the nation's leading group on identity theft, said in a February 2007 statement ¹ that Real ID will not only make current methods of identity theft easier for criminals, but "will also create new opportunities for ID thieves to commit their crime." Renowned cryptographer and security expert Bruce Schneier has said "...There are security benefits in having a variety of different ID documents. A single national ID is an exceedingly valuable document, and accordingly there's greater incentive to forge it... when someone asks me to rate the security of a national ID card on a scale of one to 10, I can't give an answer. It doesn't even belong on a scale." The Department of Homeland Security's (DHS) own Data Privacy and Integrity Committee refused to endorse the Department's regulations for implementation of the Real ID Act.

Real ID raises numerous constitutional concerns. For example, the photo requirement puts people of several faiths in an awkward position. People of the Amish faith who object to having their picture taken and Sikh men and Muslim women who wear head coverings will be forced to make the unenviable decision between upholding their religious tenets or obtaining a Real ID-compliant card in order to access federal buildings and participate in other federal business. At risk in this choice are basic rights to freedom of religious expression and the right to due process and equal protection. In its final regulations, DHS ignored this problem.

¹ Givens, B. (2007) *Real ID Act will increase exposure to ID theft*. Retrieved May 19, 2008, from http://www.privacyrights.org/ar/real_id_act.htm.

And for the privilege of having our privacy invaded and our constitutional rights violated by the federal government, Pennsylvanians will be forced to spend potentially hundreds of millions of dollars on this real nightmare of a program. Governor Rendell stated in 2005 that implementing Real ID will cost the commonwealth “\$100 million-plus,”² and it is expected to cost \$50 million annually to maintain Real ID.

At one point, DHS had estimated that Real ID would cost a total of \$23 billion. Upon the release of the final regulations last year, however, DHS claimed the program would cost \$9.9 billion, but this estimate is problematic. It assumes that 25 percent of eligible persons will opt not to get a license. In addition, the final price tag from DHS ignores additional costs such as the nationwide database, license renewals, and the document verification system required by Real ID. The DHS estimate also expects \$3.9 billion to be paid by the states and \$5.8 billion to come from “individuals.” This means that taxpayers of Pennsylvania will get two bills for Real ID, one in the form of their state tax bill as the state budget pays for additional costs and the other in the form of an increase in the cost of getting and renewing their driver’s licenses.

In DHS’s current scheme, Real ID will not be fully implemented until 2017. Ironically, we could be well on our way toward a licensing system that balances both security and privacy were it not for the Real ID Act. The Intelligence Reform and Terrorism Prevention Act of 2004 created a negotiated rulemaking process on drivers’ licenses. This process would have allowed the federal government, the states, and the public the opportunity to have greater input into creating a new standard for licensing – and was well on its way to accomplishing

² Tanner, R. (2005) Governors balk at new US license rules. Retrieved May 11, 2009, from http://www.boston.com/news/nation/articles/2005/07/19/governors_balk_at_new_us_license_rules/.

this important goal. Unfortunately, six months after its passage, this process was scrapped in favor of Real ID.

The clock is ticking on the implementation of Real ID. Beginning January 1, states will be obligated to follow the mandates of Real ID unless they have passed statutes blocking their participation. The federal government is paying attention to this issue. Last year, then-candidate Barack Obama told CNET News, "I do not support the Real ID program because it is an unfunded mandate, and not enough work has been done with the states to help them implement the program."³ Secretary of Homeland Security Janet Napolitano signed a bill to block Real ID in Arizona last year when she was the governor there, and she has stated publicly that Real ID needs to be repealed and reworked.⁴ The ACLU supports repealing Real ID and returning to the negotiated rulemaking process Congress implemented in late 2004.

Ending the nightmare of Real ID is a major priority of the ACLU, but I would be remiss if I did not mention Senate Bill 623, Senator Kitchen's bill to block the collection of biometric data from innocent Pennsylvanians. The ACLU of Pennsylvania supports SB 623.

We are living in times in which new technology comes with exciting possibilities and fraught with pitfalls. As one example, DNA evidence can be used to ensure guilty people are convicted of crimes and that innocent people are not. The availability of DNA evidence can also be abused through mass collection. For example, legislation has been introduced in the House to collect a DNA sample

³ Broache, A. and McCullagh, D. (2008) Technology Voters' Guide: Barack Obama. Retrieved May 7, 2009, from http://news.cnet.com/Technology-Voters-Guide-Barack-Obama---page-2/2100-1028_3-6224109-2.html

⁴ N.A. (2009) Homeland Security chief seeks to repeal Real ID Act. Retrieved May 10, 2009, from <http://www.cnn.com/2009/POLITICS/04/22/real.ID.debate/>.

from persons arrested for certain offenses, despite the fact that a person is innocent-until-proven-guilty and has a right to a trial by a jury of his peers.

Perhaps one of the most appalling recent examples of the abuse of biometric data occurred in Truro, Massachusetts, in 2005. The town's police conducted a mass collection of DNA samples from male residents in order to solve a 2002 murder case. Residents had the option to decline the sample, but the police chief commented publicly that he would take note of those who refused. The town's residents were being intimidated into giving up their biometric data.⁵ Similar mass DNA collections were previously undertaken in Nebraska, Virginia, and Louisiana. Ironically, these sweeps produce little results. As of 2005, 18 mass DNA collection efforts had been conducted nationwide, and only one led to an arrest.⁶

SB 623 addresses this kind of abuse by government agencies while protecting the ability of law enforcement to investigate crimes. Mass DNA collections like the one described above could not occur in Pennsylvania if SB 623 becomes law, but the bill allows for a law enforcement exception, upon a finding of probable cause.

In summary, Real ID presents a major threat to the privacy of all Americans. The outcry against it from the states and from privacy advocates has been substantial. It's possible Real ID will be repealed, but that can only happen if the federal government is pushed into doing so. Pennsylvania can play a role in the toppling of Real ID by passing SB 621. You can further protect the privacy of

⁵ de Vries, L. (2005) ACLU slams mass DNA collection. Retrieved May 10, 2009, from <http://www.cbsnews.com/stories/2005/01/10/national/main665938.shtml>.

⁶ Bersett, K. (2005) DNA 'dragnet' resumed in Cape Cod murder case. Retrieved May 10, 2009, from <http://newstandardnews.net/content/index.cfm/items/1381>.

innocent Pennsylvanians by passing SB 623. The ACLU of Pennsylvania supports both bills, and we appreciate the committee's interest in these issues. I am willing to take questions at this time.