

Senator Jon Tester  
REAL ID Speech as prepared for delivery  
Cato Institute  
May 7, 2008  
Washington, D.C.

Thank you, Jim [Harper], for that very kind introduction.

I was born and raised on a family farm in north-central Montana. It's the same piece of land my grandparents homesteaded nearly 100 years ago. My wife and I still farm that land.

When you live and work on a farm in that part of the country, it builds character. Because of challenges from Mother Nature, equipment and now energy - you have to rely on a few things to get you through. You rely on your neighbors and your family. You rely on values like hard work. Honesty. Common sense and patience.

I want to make it very clear. Taking the needed steps to ensure this country is safe from terrorism is very important.

But it has to be done without trampling our rights. When that happens, the terrorists win.

That's why I'm proud of the fact that Montana has been a leader in the REAL ID rebellion.

It's no surprise. It's often said that Montana is so contrary because the state is full of folks whose ancestors couldn't get along with the people back East. In other words, it's in our heritage.

Montana's politics features a mix of prairie populism, tax-hating conservatism and leave-me-alone Libertarianism. Some folks even manage to be all three of those things at once.

So getting a unanimous vote in the state legislature is a pretty rare thing. But that's what happened last year. Both chambers joined the Governor in opposing REAL ID.

And, when you think about it, it makes sense. REAL ID is invasive, expensive and an affront to those of us who cherish privacy rights.

You all know the story well.

This was a law written with no public input. No hearings, no debate, no amendments. The system of checks and balances that the Founding Fathers created was missing in action.

The first Senate hearing held on REAL ID finally occurred last year – more than 2 years after REAL ID became law.

In the three years since REAL ID was enacted, it has had all kinds of unintended consequences. And no benefit whatsoever when it comes to making America more secure.

It is incredibly expensive and complicated. It is burdensome to states and individuals alike.

And it is being implemented in a way that makes even ordinary folks cringe.

The most recent charade only proves the point. States were forced to get around an arbitrary May 11 deadline to comply with REAL ID.

Many states were deemed to be in compliance with REAL ID, even though they said they had no plans to comply. But some states resisted. Interestingly enough, many of these were states that have already taken steps to improve drivers' license security – Montana and South Carolina among them. Still, they were threatened with retaliation for resisting DHS coercion.

The federal government set up a system that was designed with one thing in mind – using federal resources to bully states into going along with the program.

For example, it took more than a month of legal wrangling with the federal government for the State of Montana to finally be able to send DHS a letter to DHS. The State simply said it was not asking for an extension. DHS responded by saying it had no choice but to treat the letter like a request for an extension.

This legal bobbing and weaving did nothing to improve our homeland security. And it will not.

By the time REAL ID is fully implemented, it will be 2017. Sixteen years will have passed since that awful day when our nation was attacked.

That is a long time to wait for action on something that will not deliver any real security benefit.

In the meantime, this law already is causing massive headaches for the states. These troubles are a sign of things to come if we continue down the REAL ID road.

The states have no idea whether to go forward with building databases, redesigning drivers' licenses and training of new DMV workers that REAL ID requires. If they do in fact undertake these costly efforts, they do so with no guarantee that the federal government will compensate them.

Worse still, more expensive drivers' licenses and more time waiting at the DMV may be the least of our worries. **Creating a national ID card – [pause] and make no mistake, that is precisely what REAL ID will do – will open up countless opportunities for our personal information to be stolen or used in a way that we have not agreed to.**

Most of the opposition to the cost of REAL ID has centered on the massive new unfunded mandate that it has placed on the states. That makes sense when you are talking about sticking individuals and the states with a bill for 10 billion dollars.

But far more is at stake than dollars and cents. And this, I think, is key to understanding why more and more state legislatures are responding to their constituents' calls to reject REAL ID.

The REAL ID Act was yet another in a series of sweeping laws and programs that represent an invasion of privacy by the government that far exceeds anything else we've seen in a generation.

Since 9/11 there has been a steady erosion of the privacy of ordinary citizens. First came the Patriot Act, which gave the FBI extraordinary new powers to snoop on the private lives of all Americans. Then came the REAL ID Act, followed by revelations of the president's secret domestic wiretapping program.

At their core, these efforts share a common origin – the arrogant and wrong belief that the federal government knows best.

Ultimately, the failure of the Congress and the Administration to address the concerns that many states have – or the failure to respond to the common sense objections of civil libertarians – result in far more than just a lasting philosophical disagreement.

**In my view, these executive powers do long-term harm to our national security.**

**Just as the warrantless wiretapping issue has prevented Congress from enacting permanent legislation that allows the federal government to listen-in on communications of interest outside the U.S. – so too has the REAL ID debate distracted us. It has distracted us from the obvious need for states to continue to improve the security of their driver's licenses. It has distracted us from the real mission of preventing terrorism on American soil.**

The threat of an attack is real, and we cannot ignore it. But make no mistake – the longer that REAL ID hangs around, the more of our homeland security resources it will consume. The price tag today is 10 billion dollars – that’s assuming that the six databases that will have to be built are done so without delay, which is an “iffy” proposition at best.

**I live 80 miles from the Canadian border, and I can tell you that we still have major holes in our border security efforts on both borders. I’d rather have the federal government spend money on closing those gaps than looking over the shoulder of the Montana DMV or creating a national database of American citizens.**

I know this paints a pretty bleak picture of what we’re up against at the moment.

But there is a little bit of good news here. A growing number of folks – liberals, conservatives and everyone in between – are finding their voice against these massive privacy violations. While this administration may turn a deaf ear to this growing chorus of concern, I think that the Congress is increasingly receptive to our message – just in time, too.

As state governors make more and more noise about the unfunded mandate, and as folks who care about civil liberties realize what's happening – the next president will finally have to address whether it makes sense to keep limping along from REAL ID deadline to REAL ID deadline as we did this year.

A number of us have proposed returning to the 2004 law that requires a negotiated rulemaking process between the states and the feds to strengthen the security of drivers' licenses.

This process, which was already underway when REAL ID came along, will pay real security dividends a lot sooner than REAL ID. And it will eliminate the law's federal mandates on the states and on individual rights.

It is long past time to restore some balance between security and privacy, and to begin undoing some of the worst parts of the federal power grab that we have seen in the last few years. It is an uphill climb, but Governor Sanford and I, along with a growing number of our colleagues in the states and in the Senate are committed to making the fight.

Unfortunately, REAL ID is only a symptom of bigger problem of too much power in the executive branch. I was struck last week to read a report in the newspaper that the Secretary of Homeland Security told the Heritage Foundation, “Once laws are written, the public should not second-guess government actions and claim that federal officials are overstepping their authority.”

I don't know what is more astonishing – that a department that has tried to pull off everything from REAL ID to laughable programs like duct tape and plastic wrap and useless color coded warnings – could articulate such a view.

...Or that it barely attracted any attention.

It seems folks in this town have grown numb from the repeated and rampant expansion of executive power.

I come from the Rural America. Americans, particularly those of us from the west, know to our bones that this country was founded as a refuge from power-mad executive authority.

We need to restore our system of checks-and-balances. We need to roll back the executive power grab that has allowed this Administration to conduct public business in extreme secrecy, to violate treaties it deems inconvenient and to ignore laws it doesn't want to follow.

I will give you a good example. Last year, I worked with my good friend Senator Jim Webb, to pass legislation to create a modern-day Truman Commission.

With so much tax money flowing out the door for the wars in Iraq and Afghanistan, we thought it would make a lot of sense to establish a nonpartisan expert review panel to ferret out waste, fraud and abuse in defense contracting. A pretty good project to watch over the people's money.

We passed this measure as an amendment to the defense authorization bill that passed both the Senate and the House by wide, bipartisan margins.

But a funny thing happened on the way to the bill-signing ceremony. The White House decided it didn't like the provision and through something called a "signing statement" insisted it did not have to follow the law the President just enacted with his signature. On what planet?

I guess it's what we've come to expect from a President who's issued HUNDREDS of signing statements—more than all other presidents combined. It's his way of interpreting OUR laws however he wants. That's not good government.

Before I came to this town, I served as president of the Montana Senate. Let me tell you, that's not how we do business in Montana. It's "Government 101" that we all took in school. The legislature passes laws, the governor or president signs the laws if they like them or veto them if they don't. Pretty simple. Apparently, not in this town.

The reach and grasp of the Imperial Presidency has gotten way, way out of control.

**And I'm not making a personal, political attack on the President or Vice President. In fact, many aspects of the imperial presidency came from both Democrats and Republicans long before the current administration. I'm just saying, we need to restore some sanity to our system of government.**

The sovereign people of this nation deserve a government—especially the executive branch—that is limited in power, open to scrutiny and accountable to the public. That's not too much to ask. I know those are principles that the Cato Institute works to advance, and I'm pleased to do my part to uphold those principles through my work in the United States Senate.

I know I don't have all the answers. I'm just a dirt farmer from 12 miles west of Big Sandy, Montana. Population 703 in the last census.

But I come to you today with an important message. It's high time we introduced some common sense to the power corridors of the nation's capital.

With that, I will stop and gladly take your questions.

**###**