



Cato Handbook for Policymakers

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29. National ID Systems

Congress and state leaders should

- resist the establishment of a national identification card and national identification system,
- defund and repeal the REAL ID Act,
- abandon the E-Verify national immigration background system, and
- encourage the development and acceptance of private identification systems.

A national ID has long been regarded as contrary to the American character, and it has been opposed by leading American political figures whenever it has been proposed. For example, when President Ronald Reagan’s attorney general William French Smith advocated in a cabinet meeting for support of a national ID card for illegal immigration control, the president reportedly scoffed, “Maybe we should just brand all the babies.”

In the same context, Democratic presidential candidate Walter Mondale said: “We’ve never had citizenship tests in our country before. And I don’t think we should have a citizenship card today. That is counterproductive.” Democratic Speaker of the House Thomas P. “Tip” O’Neill Jr. (D-MA) called out the ills of national ID systems in a 1987 debate over immigration reform, saying: “Hitler did this to the Jews, you know. He made them wear a dog tag.”

A decade before that, Sen. Barry Goldwater (R-AZ) recognized and objected to the surveillance consequences and power shifts caused by national ID systems. In a debate on the Privacy Act of 1974, he said:

Once the social security number is set as a universal identifier, each person would leave a trail of personal data behind him for all his life which could be immediately reassembled to confront him. Once we can be identified to the administration in government or in business by an exclusive number,

we can be pinpointed wherever we are, we can be more easily manipulated, we can be more easily conditioned and we can be more easily coerced.

One of the first groups to formally consider national ID issues was the Secretary's Advisory Committee on Automated Personal Data Systems within the Department of Health, Education, and Welfare. In 1973, it did an important study of record-keeping practices in the computer age. On national ID systems, the "HEW Report" said: "This Committee believes that fear of a standard universal identifier is justified. . . . Therefore, we take the position that a standard universal identifier should not be established in the United States now or in the foreseeable future."

Members of Congress and state legislators should carry on the American tradition and resist creating or implementing any national identification system. Yet what Senator Goldwater warned of a quarter century ago is now a real threat.

The REAL ID National ID Program

In the wake of the terrorist attacks of September 11, 2001, the idea of a national ID system gained some currency. Among many interests and organizations poring over the problem of terrorism was a group called the Markle Foundation Task Force on National Security in the Information Age. This group of security and technology experts was convened by a New York nonprofit foundation headed by former attorney general nominee Zoë Baird. One of the Markle Task Force's reports contained an appendix titled "Reliable Identification for Homeland Protection and Collateral Gains," which endorsed a national ID system.

The Markle recommendation was cited in a short section of the 9/11 Commission's final report to support the assertion that the federal government should take steps to secure the country's identity systems. Rushing to implement the 9/11 Commission's proposals, Congress adopted a provision of the Intelligence Reform and Terrorism Prevention Act establishing a negotiated rulemaking process and convening a variety of stakeholders to consider how the state driver licensing and identity card systems could be better secured. This group had met twice when a law called the REAL ID Act was passed, repealing this section of IRTPA, disbanding this group, and ending its work.

Passed attached to a military spending bill and without a hearing in either the House or the Senate, the REAL ID Act attempted to create a national ID system. The REAL ID Act sought to coerce states into

issuing their driver's licenses and identification cards consistent with national standards and requirements, including distinguishing among citizens and noncitizens. (This combination—nationally uniform standards and indication of citizenship—disposes of the question whether REAL ID is a national identification system. It is.)

The statutory deadline for state compliance with the REAL ID Act was three years from the bill's May 11, 2005, passage. The act threatened states by barring federal agencies from accepting state licenses and IDs for any official purpose unless the state was meeting the requirements of the act. If a state was not complying, its citizens and residents would be inconvenienced and perhaps debarred from certain activities controlled by the federal government, like traveling on commercial aircraft. This risk was intended to cow state officials into turning over their driver-licensing apparatus to the control of the federal government. But on May 11, 2008, not a single state was in compliance with the REAL ID Act.

One of the primary reasons that states refused to implement the law was the massive unfunded mandate it represented. The Department of Homeland Security's own estimates placed the price tag for implementing REAL ID at \$17 billion, \$11 billion of which would be direct costs to states. Yet the federal government offered piddling financial support, and only to a few states.

The privacy concerns with REAL ID were a second significant motivator of state recalcitrance. State legislators knew that they would be responsible for a sprawling, insecure system of databases housing their constituents' sensitive information—including copies of basic identity documents like birth certificates. The REAL ID card was also supposed to include a "common machine-readable technology," meaning that cards could be scanned and used for data collection and tracking of all citizens—treating even the most law-abiding citizen as a criminal.

These concerns may have been overcome if there were genuine security benefits from a national ID system like REAL ID. But identity-based security against threats like terrorism and illegal immigration is extremely porous. It is subject to both physical and logical avoidance.

Take illegal immigration. Identity-based security against illegal immigration fails when someone can circumvent identity checks, such as at uncontrolled parts of the U.S. border. Once in the country, illegal immigrants can navigate the country relatively easily without ID, and the only solution for this is to check the immigration status of everyone

at multiple times and places throughout the nation. Americans reject the idea of living in a “papers please” society.

Logical avoidance of identity-based security is when attackers get the identification cards they need to access ID-controlled infrastructure. This is the technique used on 9/11: the hijackers had the identification they needed to get on planes. REAL ID would not prevent future terrorists from obtaining the identification necessary to access planes or other infrastructure. Foreign terrorists with no known history of terror activity would simply have to keep their visas current to get driver’s licenses and state-issued ID cards.

Given all the defects of the REAL ID Act, state legislatures across the country passed resolutions and legislation objecting to the law or outright barring their own implementation of the REAL ID Act. With the May 2008 compliance deadline approaching, the Department of Homeland Security gave deadline extensions to states just for the asking. It even gave extensions to states that didn’t ask for them, and whose leaders went out of their way to thumb their noses at the DHS.

With states from all parts of the country dead set against implementing REAL ID, it is almost certain not to be implemented, and it should not be. Congress should spend no funds on implementing REAL ID, and it should repeal the REAL ID Act.

The E-Verify Federal Immigration Background Check System

A closely related program with many of the same flaws as REAL ID is the E-Verify federal immigration background check system. In the beginning of the 110th Congress, a national verification system for electronic employment eligibility was treated as a matter of near consensus. Intended to strengthen “internal enforcement” of the immigration laws, the idea was to have an Internet-based employee-vetting system that the federal government would have required every employer to use.

But as the debate on verification for electronic employment eligibility continued, the defects of such a system came to light. A mandatory federal background check system would have substantial costs yet would still fail to prevent illegal immigration.

E-Verify would deny a sizable percentage of law-abiding American citizens the ability to work legally. Deemed ineligible by a database with a high percentage of errors, millions each year would go pleading to the Department of Homeland Security and the Social Security Administration for the right to work. The overtaxed bureaucrats in these government

offices would hold the livelihoods of law-abiding citizens in their hands, and they would often deny law-abiding citizens the right to earn a living.

Avoidance and attacks on the system would cause more problems. Under-the-table work would increase, and all the illegality associated with it. By increasing the value of identity fraud, a nationally mandated E-Verify system would cause that crime's rates to rise. Illegal immigrants would deepen the minor identity frauds they may commit under the current system.

Creating an accurate and reliable system for verifying employment eligibility under the current immigration laws would require a national identification system, costing about \$20 billion to create and hundreds of millions more per year to operate. In fact, the major immigration reform legislation considered in summer 2007 would have required all Americans to have a REAL ID card to get work. This demonstrates the tight link between internal enforcement of immigration law and national ID proposals.

Even if such a system were free and easy to implement, the United States should reject a national ID and background check system like E-Verify. It would cause law-abiding American citizens to lose more of their privacy as government records about them expanded and were converted to untold new purposes. "Mission creep" all but guarantees that the federal government would use a national E-Verify system to extend federal regulatory control over Americans' lives even further, using it to control access to housing, health care, guns, communications, financial services, and whatever else federal authorities wanted to regulate.

Instead of constructing an invasive national immigration background check contraption like E-Verify, Congress should release the immigration law's current tight limits on low-skilled immigration. There is no good alternative to aligning immigration rates with our economic demand for labor and the principle of free trade in labor.

Diverse and Competitive Private Identification and Credentialing

Rather than focus on government-issued ID cards, federal and state policy should encourage and foster the variety of identification and credentialing systems in the private marketplace today, and those that can be developed. People carry many types of privately issued identification cards and credentials that provide as good or greater security and identity assurance than government-issued cards. For example, many people carry

credit cards that allow them to pay for goods or services securely. A variety of privately issued access cards allow people entry to buildings or access to automobiles, health care, and so on.

State and federal governments should not insist on particular issuers' cards (i.e., their own "government-issued ID"). Instead, they should accept (and allow acceptance of) any card or device that provides sufficient proof of the information necessary for a given transaction.

For example, many state laws require people buying alcohol to be at least 21 years old. But they don't allow any sufficient proof of age; they require presentment of government-issued ID, including all the data that are extraneous to proving a person's age, like address, weight, eye color, and so on. As cards are scanned more and more often, these policies will needlessly cause tracking of law-abiding citizens and will degrade their privacy.

In a marketplace for identification services, consumers would be able to choose which methods they use to identify themselves or prove relevant credentials like age, how much information they share for this purpose, and whether records are kept of their activities. National ID systems would deprive Americans of such choices.

Suggested Readings

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