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To: Department of Motor Vehicles of Nevada
Date: March 23, 2010
Re: **Opposition to making permanent any regulations related to REAL ID**

The ACLU of Nevada opposes REAL ID in its entirety due to the substantial privacy intrusions and fiscal burdens it would impose on our state. Our organization has done extensive research and advocacy on this issue. We do not believe that the REAL ID Act can be fixed. Nevada should not be forced to enact a program – at a massive cost – that fails to serve Nevada's interests.

The *Final Rule* released by the Department of Homeland Security (DHS) in January of 2008 made it clear that REAL ID was not in any shape to actually be implemented. Many of the privacy concerns were still not addressed in the *Final Rule*, including lack of encryption of the information stored on the back of the ID and possible use of a national database as cheaper alternative to the "hub" that REAL ID advocates like to reference. Despite a lower estimated cost with these changes, all of this obviously comes at the price of privacy.

Nationally, REAL ID is still in flux. Now, fifteen states have laws on their books that *prohibit them from complying with REAL ID*. Nevada is one of only three states moving forward with implementation. Given that no further guidance has been issued since the *Final Rule*, the ACLU of Nevada believes that it is premature to make any of these regulations permanent.

Sincerely,

Rebecca S. Gasca
Public Advocate, ACLU of Nevada

Nevadans Will Not be Put at Risk if REAL ID is Not Implemented

Twenty-five states have enacted anti-Real ID bills or resolutions. Fifteen states – Georgia, Louisiana, South Carolina, Virginia, Maine, Montana, New Hampshire, Oklahoma, Washington, Alaska, Arizona, Oregon, Minnesota, Montana and Idaho– will never issue a Real ID license because they have enacted binding legislation prohibiting participation in the Real ID program. Ten other states, including Nevada, have passed resolutions opposing the implementation or urging repeal of REAL ID.

The "emergency" referenced by the Governor when signing these regulations was that people would have trouble flying without a REAL ID compliant ID. That is clearly not the case as Secretary Napolitano has stated, even before the January 1, 2010 implementation day in Nevada, that no one will be prohibited in the foreseeable future from flying or accessing federal buildings if they don't have a REAL ID compliant card.

"The strength of the Constitution lies entirely in the determination of each citizen to defend it."

- Albert Einstein



Finally, different versions of bills that would totally alter REAL ID are still being considered at the federal level. Indeed, Secretary Napolitano has even stated that Congress should change REAL ID. This is reason enough to wait until next legislative session when the Nevada Legislature will be able to assess the current status of federal law and decide whether to give statutory direction to the DMV.

Real ID is a de facto national identity system

The Nevada DMV has stated that REAL ID is not driven by a database and instead uses a “hub” whereby states can “ping” for data. In fact, in the *Final Rule*, DHS noted that instead of just the “hub,”¹ DHS was also “exploring the alternative of using the Commercial Drivers Licensing Information System (CDLIS) as the platform for supporting the State-to-State data exchange requirements” despite the fact that “privacy groups urged DHS not to build upon CDLIS since it is a centralized database.”

What was the reason DHS gave for taking this shortcut? Money. Even in its *Final Rule*, DHS states that “it is more technically and economically difficult to design a State-to-State data exchange system that avoids using a central repository (an index or pointer system) to direct the checks to the appropriate State.” So despite opposition from privacy advocates, DHS is still pursuing this option. No other documents have been released by DHS affirming that they will not use this method.

DHS also admitted in its *Final Rule* that although it “does not intend that REAL ID documents become a de facto national ID...DHS can only define those ‘official purposes’ for which a REAL ID credential must be used in lieu of other State-issued driver’s licenses” and “[i]t is unclear at this early stage whether REAL ID cards in fact will be used differently from current State driver’s licenses and identification cards; but if cardholders experience specific abuses regarding third-party misuse of these cards, Congress and the States can determine whether and how to address such abuses. ” So far, no suggested regulation or statute has been proposed by the Nevada DMV that would set forward any prohibitions to keep this from happening.

REAL ID violates Nevada’s privacy rights.

One of the biggest privacy/security “red flags” is that the data stored on the back of REAL IDs will not be encrypted. From the *Final Rule*: “DHS is not requiring encryption of the MRZ at this time.” REAL ID regulations contain no security plan for stored personal information; instead the federal government presumes that states will figure it out and that the American Association of Motor Vehicle Administrators will operate the database. This private association has no accountability to Nevada; it is not bound by either the Privacy Act, which

¹ From DHS’ *Final Rule* - “REAL ID implementation, however, will require a messaging system (generally known as a “hub”) to serve as the backbone to support the verification checks REAL ID requires.”

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applies to federal agencies, or the Drivers' Privacy Protection Act, which applies to state DMVs.

Most shockingly, Governor Gibbons took away the right of Nevadans to decide for themselves if they want a compliant ID when he mandated that the Nevada DMV would only issue REAL ID-compliant IDs (the *Final Rule* allows states to issue both compliant and non-compliant IDs). If REAL ID is going to be foisted upon Nevadans, this important privacy decision should be left up to individual Nevadans and DHS' stipulations in its *Final Rule* should remain in place.

Real ID is an unfunded mandate.

In the *Final Rule*, DHS scaled back its cost estimate from \$23 billion to \$9.9 billion². Even with that reduced amount, DHS acknowledges the states will have to pay \$3.9 billion toward the cost of REAL ID and individual taxpayers will pay \$5.8 billion. Only \$ 0.2 billion is to be covered by the federal government. The federal government has appropriated far less than will be required, leaving cash-strapped states like Nevada to shoulder the entire financial burden for a program with no true benefit for the American people.

While Nevada has secured a few million dollars in federal grant funds to implement REAL ID; DMV has also already spent about \$750K of Nevada taxpayer funds to get the program up and running. Undoubtedly, more taxpayer funds will be required for continued implementation. With shrinking budgets and furloughs, it is obvious that now is not the time to make these regulations permanent.

REAL ID Puts Nevadan's Due Process Rights at Risk

If REAL ID is every fully implemented, a REAL ID-compliant identification card will be required to enter a federal building, including a courthouse, there are significant implications for due process, the right to trial before a jury of one's peers, and the right to petition government officials. There will be times in which Nevadans without a REAL ID-compliant identification card may be denied access to federal courthouse³ (for example, if they are in the process of appealing a DMV decision for any number of reasons and have not yet received their card).

² These cost reductions come at the cost of diminished privacy. Lower cost estimations were because the *Final Rule* says that the data would no longer have to be encrypted, which would otherwise be very expensive, and because states were given the option of issuing compliant and non-compliant IDs. This, however, will not apply in Nevada since the Governor's regulations also mandate that the DMV only issue compliant cards.

³ From DHS' "Privacy Impact Assessment" for the *Final Rule* at http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_realidfr.pdf - "The final rule has limited "official purposes" to those set forth in the Act--accessing Federal facilities, boarding Federally-regulated commercial aircraft, and entering nuclear power plants."

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