Chapter 4.22
Out of Control?
The Real ID Act of 2005

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ABSTRACT

The tragic events of September 11, 2001, created an environment that was conducive to the expansion of surveillance operations. Furthermore, the Bush Administration's belief that the power of the presidency allows for any action, in the name of national security, led to the gathering of information about both terrorists and ordinary citizens. The Real ID Act of 2005 is a piece of legislation that requires, among other things, that state licensing agencies verify, collect, store, and share an increased amount of personal information. Opponents of this legislation are concerned about the financial, technological, privacy, and security implications of a law that was enacted with little to no due diligence. Currently, the requirements of the Real ID Act have been forced into an immigration bill in the Senate. Fortunately for those opposed to the Real ID Act, the Democratic majority currently in Congress appear to be more concerned with protecting the freedoms and liberties of American citizens than the Republican majority was when they originally passed the Real ID Act legislation in 2005. Ultimately, this chapter seeks to provide the reader with a thorough discussion into the many concerns associated with the Real ID Act.

INTRODUCTION

Daniel Webster once said "that good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions." In a day and age when a majority of Americans seem willing to trade personal liberties for the prospect of security, it is important to remember the words of Webster. Certainly, the terrible events of 9/11 contributed to the willingness of a nation to turn a deaf ear to Webster and other protectors of personal liberty. This is a logical reaction to a very tragic sequence of events as we all tend to become more conservative and seek safety when we are threatened (Maslow, 1943). Unfortunately, a major problem in America today is that some would have us believe that our personal safety

is at risk around every corner and in every facet of our daily life. In fact, security concerns fuel a multibillion dollar industry for everything from car alarms to home protection systems to Internet virus protection. Some might say that, as a society, we are more scared and less free than our rhetoric might suggest.

This growing culture of fear has provided ample opportunity for those determined to engineer safety through increased control. Examples of new age controls for safety are everywhere. Red light cameras, parking lot cameras, employee badges and background checks, antivirus software, and biometric scanners are a few of the ways we have created to protect our safety. To be clear, these measures are not the problem. In fact, they can do a lot of good. The problem lies in the way in which the information collected by these devices is so easily mismanaged.

In February 2007, 1,400 members of the California National Guard found this out the hard way. A computer hard drive containing Social Security numbers, home addresses, birth dates, and other identifying information of these troops deployed to the U.S.-Mexico border was stolen on February 23, 2007. Considering the sensitive nature of the work performed by these troops, a breach in the safety of their personal information is unacceptable. Furthermore, it casts a very dark cloud over any attempts to collect and store personal information. This is especially true considering this breach came on the heels of another security infraction in the military community in California. In January 2006, a report containing the names and Social Security numbers of more than 1,000 high-ranking California National Guard officers was in a briefcase stolen from a car in Sacramento. Unfortunately, the issues surrounding mismanaged data and the security of personal information are not contained to the military community in California. In fact, the issues are propagating throughout our society at an alarming rate despite the increasing awareness about the importance of information security. For this reason, we must heed the sage advice given to us by Webster over 200 years ago and carefully consider the impacts associated with any attempt to collect and store personal information in the name of security.

One such effort, intended to engineer safety from threat of terrorism, is the Real ID Act of 2005. The Real ID Act began as H.R. 418. One of the key objectives of H.R. 418 was to create a National ID Card by establishing and implementing regulations for state driver's license and identification cards that would, in theory, prevent terrorists and illegal immigrants from entering the United States. This piece of legislation, written by policy entrepreneur James Sensenbrenner (WI-R), received solid support in the republican controlled House and was passed by a margin of 261-161 with 11 representatives choosing to not vote. The bill then moved to the Senate, where it stalled in the Judiciary Committee. Approximately 1 month later, Sensenbrenner pressed forward and attached his pet solution to another piece of legislation, H.R. 1268.

The primary purposes of H.R. 1268 were to make emergency supplemental appropriations for the war in Iraq and for the devastating Tsunami in the Indian Ocean. Knowing that it was highly unlikely that anyone would vote against making more money available for these causes, the sponsors found a way to ensure that this legislation became law. By using this opportunity to stuff an increasingly unpopular plan into an appropriations bill, the process to pass an unfunded mandate down to the states started with little or no understanding about the impacts on states and citizens. The reality here is that financial considerations are but one of the issues that should have been evaluated in regard to this piece of legislation. In fact, the collision of privacy, security, and technology concerns that is manifested in the Real ID Act has sparked an ongoing debate on a wide range of controversial topics and set into motion a coalition of powerful forces opposed to this legislation. This chapter will proceed by identify-