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CENTER
FOR JUSTICE

Committee on Homeland Security & Government Affairs

**Subcommittee on Oversight of Government Management,
the Federal Workforce and the District of Columbia**

United States Senate

Statement Concerning the REAL ID Act of 2005

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The Brennan Center for Justice appreciates the opportunity made possible by the Subcommittee to provide testimony with respect to the REAL ID Act of 2005. This hearing is entitled, “Understanding the Realities of Real ID”; the reality that we would like Subcommittee members to understand is that millions of Americans do not, and will not, have access to the documents required to obtain a REAL ID. Consequently, important rights and privileges of millions of Americans will be affected, like access to essential federal services and federal buildings, and, for residents of many states, the ability to drive a car or travel by airplane. And that is just the beginning. The pernicious effects of REAL ID will be even greater if its use is expanded and its possession is required to vote or to receive state and local government or non-government services and benefits.

The Brennan Center for Justice is a nonpartisan think tank, public interest law firm, and advocacy organization that focuses on democracy and justice. We have researched extensively the subject of identification and proof of citizenship requirements, especially in the voting context.

There is widespread objection to the REAL ID Act from a broad range of sources. State governments are concerned that the REAL ID Act will be costly and cumbersome to implement. The National Governors Association, National Conference of State Legislatures, and American Association of Motor Vehicle Administrators have estimated that it will cost more than \$11 billion dollars to execute the REAL ID Act over the first five years.² Civil libertarians are concerned that the REAL ID Act will be discriminatorily applied because it empowers and requires DMV workers to make sensitive and difficult decisions with high-stakes consequences for individuals. Privacy advocates are concerned that the REAL ID Act exposes individuals to greater risks of identity theft. Advocates of

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² Nat’l Governors Ass’n, Nat’l Conference of State Legislatures & Am. Ass’n of Motor Vehicle Admin., *The Real ID Act: National Impact Analysis 3* (2006), available at <http://www.nga.org/Files/pdf/0609REALID.pdf>.

states' rights are concerned that the REAL ID Act strips state governments of the ability to determine the appearances and purposes of their driver's licenses. All of these concerns are valid. To this list, the Brennan Center adds an important objection: a large number of Americans are not currently in possession of the documents required to obtain a REAL ID, and many are not likely to obtain those underlying documents because they are difficult and costly to obtain.

Under the REAL ID Act, to obtain a state-issued driver's license or non-driver's identification that is acceptable for federal purposes, an individual must present: (1) a photo identity document, or a non-photo identity document that includes both her full legal name and date of birth; (2) documentation showing her date of birth; (3) proof of her Social Security number or that she is not eligible for one; (4) documentation showing her name and the address of her principal residence; and (5) documentation proving her citizenship or her lawful immigration status in the United States.³ If an individual does not possess or present any *one* of these documents, a state cannot issue her a REAL ID. According to the U.S. Department of State Bureau of Consular Affairs, only about 25% of eligible Americans hold valid passports.⁴ As set forth below, a significant number of Americans do not have *any* form of proof of citizenship.

In November 2006, the Brennan Center sponsored a national telephone survey of randomly selected voting-age American citizens conducted by the independent Opinion Research Corporation. The survey found that as many as 7% of United States citizens—which translates into about 13 million individuals—do not have ready access to citizenship documents.⁵ These numbers are likely an understatement of the total percentage of Americans who do not have readily available documentation because the survey did not include people under 18 and underrepresented low-income and minority households.⁶

Of those who do have access to citizenship documents, many do not have citizenship documents that reflect their current name.⁷ For example, the survey results showed that only 48% of voting-age women with ready access to their U.S. birth certificates have a birth certificate with their current legal name—as opposed to a name they had before marriage, divorce, or other name change—and only 66% have ready access to *any* type of citizenship document with their current legal name.⁸ That translates into as many as 32 million voting-age women whose citizenship documents do not show their current legal names.⁹

Citizens with comparatively low incomes are less likely to possess documentation

³ Making Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat 231 (codified in relevant part in 49 USCS § 30301 note (2005)).

⁴ U.S. State Dep't, Frequently Asked Questions about the New Travel Document Requirements, http://www.travel.state.gov/travel/cbpmc/cbpmc_2225.html#8 (last visited Mar. 26, 2007).

⁵ Brennan Ctr. for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification 2* (2006), available at http://www.brennancenter.org/dynamic/subpages/download_file_39242.pdf.

⁶ *See id.* at 1 n.1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

proving their citizenship. According to the Brennan Center study, at least 12% of voting-age American citizens earning less than \$25,000 per year do not have a readily available U.S. passport, naturalization document, or birth certificate.¹⁰ These citizens are more than twice as likely to lack ready documentation of their citizenship as those earning more than \$25,000.¹¹

The impact that proof of citizenship requirements have on lower income individuals is not surprising considering the costs of citizenship documents. A certified copy of a birth certificate costs from \$10.00 to \$45.00, depending on the state.¹² A passport costs \$97.00.¹³ Replacement naturalization papers cost up to \$220 and can take up to a year to obtain.¹⁴ If these expenses do not appear onerous, keep in mind that the \$1.50 poll tax that the United States Supreme Court found unconstitutional in 1966 has a modern-day value of about \$8.79.

Additionally, many elderly persons do not have ready access to documents proving citizenship.¹⁵ According to a survey sponsored by the Center on Budget and Policy Priorities, individuals over the age of 65 are much more likely to lack citizenship documents than those under 65.¹⁶ There are many reasons why a large portion of elderly citizens do not have ready access to proof of citizenship, ranging from documents having been lost because they were not needed in the recent past, to documents having never been issued because a person was born on a reservation or at home, to lost or destroyed documents that cannot be easily replaced because the hospital of birth no longer exists.¹⁷

The evidence also suggests that people of color will be disproportionately harmed by proof of citizenship requirements.¹⁸ The Center on Budget and Policy Priorities survey found that African Americans were much more likely to lack proof of citizenship

¹⁰ *Id.*

¹¹ *Id.*, accord, Robert Greenstein, Leighton Ku, and Stacey Dean, *Survey Indicates House Bill Could Deny Voting to Millions of U.S. Citizens: Low-Income, African American, and Rural Voters at Special Risk 1* (2006), available at <http://www.cbpp.org/9-22-06id.htm>.

¹² Wendy R Weiser et al., Brennan Ctr. for Justice & Spencer Overton, George Washington Univ. Sch. of Law, *Response to the Report of the 2005 Commission on Federal Election Reform 4* (2005), available at <http://www.federalelectionreform.com/pdf/Carter-Baker%20Response.pdf>.

¹³ U.S. Dep't of State Bureau of Consular Affairs, Passport Fees, http://travel.state.gov/passport/get/fees/fees_837.html (last visited Mar. 26, 2007).

¹⁴ U.S. Citizenship and Immigration Servs., Application for Replacement Naturalization/Citizenship Document, <http://www.uscis.gov/n-565> (last visited Mar. 26, 2007); U.S. Immigration Assistance Ctr., Naturalization Frequently Asked Questions, https://www.immigration-bureau.org/c_faq.htm (last visited Mar. 26, 2007).

¹⁵ Families USA, *Citizens Update: Administration Creates Additional Barriers to Medicaid Enrollment 6* (2006), available at <http://www.familiesusa.org/assets/pdfs/DRA-Citizenship-Update.pdf>.

¹⁶ Greenstein, *supra* note 11 at 3.

¹⁷ See, e.g., Nat'l Network for Election Reform, *Proof of Citizenship Requirements 2*, available at <http://www.electiondefensealliance.org/files/PROOF%20OF%20CITIZENSHIP.pdf>; Eunice Moscoso, *Medicaid Proof of Citizenship Requirement Could Hurt Poor, Critics Say*, Cox Newspapers, Jan. 21, 2006, available at http://www.coxwashington.com/reporters/content/reporters/stories/2006/01/21/BC_MEDICAID_IMMIGRANTS19_COX.html.

¹⁸ While there are other studies finding a disproportionate impact, the Brennan Center survey did not yield statistically significant results for differential rates of possession of citizenship by race, age, or other identified demographic factors.

documents than whites.¹⁹ One explanation for this is that a large number of older African Americans were not issued birth certificates because they were born at home on account of poverty or racial discrimination precluding a hospital birth.²⁰

The fact that many Americans do not have documentary proof of citizenship is evident from other contexts in which proof of citizenship requirements have been imposed. For example, Arizona passed a law requiring proof of citizenship in order to register to vote, effective January 1, 2005. In early 2005, election officials in the state's largest county reported that they rejected 75% of applicants for voter registration for lack of proof of citizenship. In the 2006 elections, state officials reported rejecting approximately 21,000 new applications for voter registration.²¹

Similarly, the *New York Times* and the Center on Budget and Policy Priorities reported that U.S. citizens are being adversely affected by new proof of citizenship requirements in the health care context.²² The Center on Budget and Policy Priorities reported that over a period of seven months, approximately 20,000 Medicaid-eligible individuals were denied Medicaid or lost coverage as a result of proof of citizenship requirements *in the state of Wisconsin alone*.²³ Even when the consequences are as grave as delaying needed surgery or going without needed medication, many individuals do not have and seem to be unable to obtain citizenship documentation.²⁴

Any valuation of the benefits of the REAL ID Act must be weighed against its many costs. One of its most significant costs is that it will preclude many eligible individuals from obtaining REAL IDs and hence from enjoying rights, privileges, and benefits dependent on those IDs. The evidence shows that many Americans simply do not have ready access to proof of citizenship documents which are required to obtain REAL IDs.²⁵ The evidence further shows that the proof of citizenship requirements of the REAL ID Act will disproportionately and adversely affect women, elderly and poor persons, and people of color. Those individuals who cannot obtain REAL IDs will suffer real deprivations; indeed, there are real world examples of American citizens forgoing needed rights and services like registering to vote and receiving medical care because they were unable to provide documentation of citizenship. In contrast to the high costs of the REAL ID Act, the additional security benefits provided by the REAL ID Act will be negligible.

We therefore respectfully urge this Subcommittee to support the repeal of the REAL ID Act.

¹⁹ Greenstein, *supra* note 11 at 1, 3 (finding that 8.9% of African Americans lacked a passport or birth certificate, as compared to 5.5% of whites).

²⁰ *Id.*

²¹ Emergency Motion for Injunction of Plaintiff-Appellant at 10, *Gonzalez v. Arizona*, No. 06-16706, (9th Cir. Sept. 9, 2006). The overall number is likely much larger since a number of counties did not report their figures.

²² Robert Pear, *Lacking Papers, Citizens Are Cut From Medicaid*, N.Y. Times, Mar. 12, 2007, at A6.

²³ Donna Cohen Ross, *New Medicaid Citizenship Documentation Requirement Is Taking a Toll: States Enrollment Is Down and Administrative Costs Are Up* 4 (2007), available at <http://www.cbpp.org/2-2-07health.pdf>.

²⁴ Pear, *supra* note 22.

²⁵ Ross, *supra* note 23, at 1.