

HJR

19



25-LS0844E  
Luckhaupt  
2/21/08

**CS FOR HOUSE JOINT RESOLUTION NO. 19( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Kawasaki, Gruenberg, Gardner, Seaton, Meyer, Holmes,  
Guttenberg, Doll

**A RESOLUTION**

1 Encouraging repeal of the Real ID Act of 2005.

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** the federal government has failed to show any measurable evidence that  
4 the implementation of the Real ID Act of 2005 will make our borders more secure and better  
5 protect our citizens from terrorism; and

6 **WHEREAS** the state, under the Tenth Amendment to the Constitution of the United  
7 States, has always exercised its exclusive power to establish standards and regulations for the  
8 issuance of Alaska state driver's licenses and Alaska state identification cards; and

9 **WHEREAS** the federal government imposes a huge fiscal burden on the Division of  
10 Motor Vehicles to implement the Real ID Act of 2005; and

11 **WHEREAS** noncompliance with the Real ID Act of 2005 will result in the federal  
12 government punishing individual Alaskans for the actions of the state by placing limitations  
13 on Alaska residents' freedom of travel and access to federal facilities;

14 **BE IT RESOLVED** that the Alaska State Legislature does not believe government  
15 should wage the war on terrorism at the expense of states' rights and liberties of citizens  
16 protected by the United States Constitution and the Bill of Rights; and be it

1           **FURTHER RESOLVED** that the Alaska State Legislature does not believe the Real  
2 ID Act of 2005 will make the United States measurably safer and encourages the United  
3 States Congress to repeal the Real ID Act of 2005.

4           **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President  
5 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States  
6 and President of the U.S. Senate; the Honorable Nancy Pelosi, Speaker of the U.S. House of  
7 Representatives; the Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S.  
8 Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska  
9 delegation in Congress; and all other members of the 110th United States Congress.

# ALASKA STATE HOUSE OF REPRESENTATIVES



**Contact:**

Interim Address:

**3340 Badger Road**  
**North Pole, AK 99705**  
(907)-488-5725  
Fax# (907)-488-4271

**Session**

(907)-465-3719  
FAX# (907)-465-3258  
**State Capitol**  
**Room 214**

## REPRESENTATIVE JOHN COGHILL

### SPONSOR STATEMENT

#### HJR 19 Opposing REAL ID Act

Real ID is an attempt to protect our country from terrorism that is full of unintended consequences. First of all, this federal law is in direct conflict with the Tenth Amendment to the U.S. Constitution. Secondly, the federal government is holding individual Alaskans accountable for the actions of state government. Thirdly, the Real ID Act threatens personal liberties without any evidence of making our citizens and our borders any more protected from terrorism.

The State of Alaska is one of 45 states that obtained the first extension of implementation, but this is only a temporary reprieve from the problem. Without the repeal of the REAL ID Act or a further extension, federal agencies will not accept Alaskan driver's licenses or identification cards for official purposes as of December 31, 2009.

The Department of Administration recently estimated front end costs for interfacing the REAL ID database with DMV would cost at least \$2 million. Additional funds would be required to interface with the Bureau of Vital Statistics and the Department of Public Safety. Annual operating costs would also have to be funded and the Administration has no estimate of that cost.

HJR 19 is a message to Congress that the Alaska Legislature objects to the federal government taking away states rights and individual rights as a method of imposing a system that will ultimately not make the United States any safer. The resolution asks Congress to repeal the Real ID Act of 2005.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HJR 19  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HJR 19 Dept. Affected: \_\_\_\_\_  
 Title: Oppose Federal ID Requirements RDU: \_\_\_\_\_  
 Component: \_\_\_\_\_  
 Sponsor: Representative Coghill  
 Requester: House State Affairs Committee Component Number: \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
-----------------------------	--	--	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>								
-------------------------------	--	--	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Nancy Manly, Committee Aide  
 Division: House State Affairs Committee  
 Approved by: Representative Bob Lynn  
 Chair: \_\_\_\_\_

Phone: 465-2794  
 Date/Time: 3/11/08 12:00 AM  
 Date: 3/11/2008

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION  
DIVISION OF MOTOR VEHICLES

SARAH PALIN, GOVERNOR  
*Annette Kreitzer, Commissioner*

Whitney Brewster, Director  
1300 W. Benson Blvd.  
Anchorage, AK 99503  
(907) 269-5559

February 12, 2008

Darrell Williams, Director  
REAL ID  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Mr. Williams:

Pursuant to Section 205(b) of the REAL ID Act of 2005, states may request an extension of time to comply with the requirements of this Act.

Considering the number of unknown variables surrounding the REAL ID Act and presently facing states nationwide, Alaska requests an extension to the May 11, 2008 implementation date. Based on the final rules recently issued by the Department of Homeland Security, it is understood that this extension will allow Alaska to use its current system for issuing identification and driver licenses through December 31, 2009. This extension will provide Alaska additional time to review and project the impact of the final REAL ID Act regulations.

Alaska continues to strive to improve its processes and is committed to implementing best practices.

Thank you for consideration of this extension request. Please do not hesitate to contact me if you have any questions concerning this matter.

Sincerely,



Whitney Brewster  
Director

cc: Sarah Palin, Governor  
Annette Kreitzer, Commissioner of Administration  
Karleen Jackson, Commissioner of Health and Social Services  
Craig Campbell, Commissioner of Military and Veterans Affairs  
John Katz, Director of Federal and State Relations, Office of Governor Sarah Palin

**Rynniva Moss**

---

**From:** Kreitzer, Annette E (DOA) [annette.kreitzer@alaska.gov]  
**Sent:** Tuesday, February 12, 2008 12:18 PM  
**To:** Rynniva Moss  
**Subject:** FW: REAL ID Extension Request - Alaska  
**Attachments:** REAL ID Extension Alaska.pdf

FYI.  
ak

---

**From:** Brewster, Whitney H (DOA)  
**Sent:** Tuesday, February 12, 2008 10:20 AM  
**To:** darrell.williams1@dhs.gov  
**Cc:** Katz, John W (GOV); Persily, Larry A (GOV); Tibbles, Michael A (GOV); Jackson, Karleen K (HSS); Campbell, Craig (MVA); Brooks, Kevin A (DOA); Kreitzer, Annette E (DOA)  
**Subject:** REAL ID Extension Request - Alaska

Dear Mr. Williams:

Attached you will find a letter requesting that Alaska be granted an extension of time to comply with the requirements of the REAL ID Act of 2005. It is my understanding that submissions sent via email are preferred by the U.S. Department of Homeland Security.

If you have any questions concerning this matter, please feel free to contact me either by email or phone at (907) 269-5574.

Sincerely,

Whitney Brewster, Director  
Division of Motor Vehicles  
State of Alaska

2/12/2008



Anchorage Daily News

Print Page

Close Window

## REAL ID, real problem

*(Published: March 8, 2007)*

The federal Department of Homeland Security wants states to adopt a uniform driver's license and identification card that would require stricter documentation, cost billions of dollars, take us a long way to a national ID card, and do little to make the homeland more secure.

It's called REAL ID.

Alaska's Division of Motor Vehicles already has adopted new regulations requiring stricter documentation for newly arrived residents applying for driver's licenses. No longer does another state's license stand for proof of identification and legal status. New Alaskans must have documents proving their legal name, birth date, address and Social Security number, and a secondary proof of identification.

Privacy advocates have sued the state, arguing it has no authority to implement the regulations without legislative approval. Lawmakers could get that chance with House Bill 3, working its way through the process.

We hope the suit succeeds. Even better, we hope the Legislature makes the suit moot by turning down REAL ID and its stricter license requirements, a bad idea that caught a ride into law on a 2005 appropriations bill for the war in Iraq and tsunami relief. Rejected by Congress in 2004, REAL ID passed in the budget bill without a single hearing. That's probably the only way it could have passed.

What's wrong with the legislation? Where do we start?

- Americans are leery of a national ID card. You don't have to suffer paranoia about unmarked helicopters to oppose a national ID or its like, especially one that could carry vital information about any of us without privacy protections, a card that could subject us to increasing government control of travel, business and freedom. REAL ID provisions allow Homeland Security to add more elements to the card later -- such as fingerprints and retinal scans.
  - Estimates for program costs -- an unfunded federal mandate -- begin at about \$10.7 billion and range to \$22.4 billion, according to the American Civil Liberties Union and Department of Homeland Security. The states would pick up the tab. That means Alaskans would pick up their share.
  - States would be required to verify the authenticity of documents presented as proof of identification, adding to delays and costs.
  - No privacy provisions are included. For example, one of the requirements that Homeland Security could add to new driver's licenses is a radio frequency identification chip embedded in the license. The State Department already has these in passports, but has adopted privacy protections -- the chip can't be scanned when the passport is closed. REAL ID requires no such safeguards, nor reimbursement for states that try to provide them.
- It is not clear how much safer from terrorism REAL ID would make us. It is clear that it would be expensive, add to bureaucracy, increase the danger of identify theft from an easily accessible database and invite government abuse.

Maine's legislature voted overwhelmingly in January to reject REAL ID, and there's a lively debate under way in other states. Even the Department of Homeland Security has admitted the measure is flawed and has delayed implementation from May 2008 to the end of 2009.

That should be time enough to either fix it or kill it.

Meanwhile, there's no need for Alaska to take any steps toward compliance with REAL ID. Increased need for documentation will put a burden on thousands of law-abiding citizens, while giving no guarantee of catching either terrorists or illegal immigrants.

**BOTTOM LINE:** Until REAL ID enhances security and privacy and liberty, Alaska should say no.

---

### Long interim

Two years to select permanent UAA chancellor is too much

University of Alaska President Mark Hamilton made a smart choice last week when he picked Fran Ulmer as interim chancellor for the Anchorage campus. Not so smart was his decision to let her interim appointment drag on for two years. There's plenty of time before the start of the 2008 school year to pick a permanent chancellor for UAA -- and good reason to move more quickly than President Hamilton intends.

President Hamilton's timeline leaves a critically important post unsettled for too long. The prolonged uncertainty is not healthy for Chancellor Ulmer, the university she is supposed to lead, or the community.

It will be difficult for her to build the relationships and alliances UAA needs, both inside the university and in the outside world, when no one is sure how long she'll be around. Those inclined to resist her initiatives can wait for a permanent chancellor.

Two years is simply too long to leave the state's largest campus in caretaker status.

In addition, Chancellor Ulmer's two-year appointment will end within a few months of when President Hamilton's current contract expires. If he were to leave then, the University of Alaska would be picking a president and a chancellor for its largest campus at the same time. That much turnover in leadership at the same time isn't a good thing.

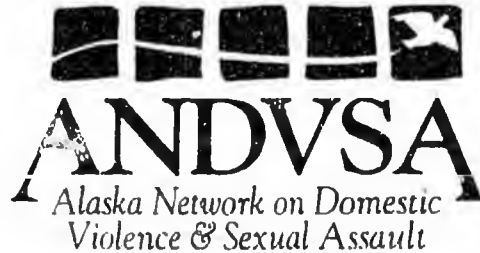
We expect Chancellor Ulmer will do an excellent job and be a front-runner for permanent appointment. One full academic year is enough time to see how well she does, and enough time to see if there are others who might do better.

**BOTTOM LINE:** One year should be plenty to pick a permanent UAA chancellor.

[Print Page](#)

[Close Window](#)

Juneau Office  
130 Seward St #209  
Juneau, Alaska 99801  
Phone: (907) 586-3650  
Fax: (907) 463-4493  
www.andvsa.org



Sitka Office  
PO Box 6631  
Sitka, Alaska 99835  
Phone: (907) 747-7545  
Fax: (907) 747-7547

April 25, 2007

The Honorable Representative Coghill  
Alaska State Capitol Room 214  
Alaska House of Representatives

**RE:** Relating to opposition to the Real ID Act of 2005, Support of **HJR 19 Repeal of REAL ID Act**

The Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) strongly supports the repeal of REAL ID. The proposed REAL ID regulations will severely impact thousands of women and children facing threats from domestic violence and stalking. On behalf of the thousands of women and children in our state who flee violent homes each year, ANDVSA supports the Alaska Legislature and HJR 19 urging Congress to repeal REAL ID.

Victims of Domestic Violence encounter a whole range of barriers and obstacles when fleeing for their lives. A nationally standardized drivers licensing system will create a vast national database linking all of the ID records together. Many victims are trying desperately to remain safe, therefore their confidentiality is paramount. Any possible breach or cross-referencing capability in a database allows a perpetrator to find the victims' address. If a victim of domestic abuse or stalking is forced to disclose her residence in order to get a federally approved driver's license, she risks the possibility that she and her children will be tracked down by their abuser. However, if she decides not to disclose her residential address, she will be denied a REAL ID. Without government issued identification, she will not be able to board an airplane, obtain a U.S. passport, or use a post office box. For domestic violence victims and their children, who may be forced to flee an abusive situation with short notice, such restrictions can be the difference between the freedom to start a new life and continued danger in a violent home.

REAL ID poses a danger for victims of violence in the following ways:

1. Requires that a residential address appear on the REAL ID
2. Exposes confidential victim addresses in easily accessible Department of Motor Vehicles (DMV) databases
3. Gives away confidential addresses in each card's unencrypted barcode
4. Discloses a person's full name history (including all name changes) in both the DMV database and each card's barcode
5. Forces victims with sealed court documents to violate that confidentiality to receive a REAL ID

Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE  
Fairbanks IAC Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC  
Kotzebue MFCC Nome BSWG Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV

Instead, the regulations say that states *must* add the changed name to the database and *cannot* delete previous names.

This means that a woman who legally changes her name to escape an abuser can be traced across the country by her previous name through any state's Department of Motor Vehicles database or by anyone who has access to the barcode on the physical card. This exposure of confidential information will allow abusers to get around all court ordered and government protections for victims of domestic violence and stalking.

Domestic violence victims change their names for their safety and the safety of their children. A court seals records when it decides that this protection is essential to a victim's security. Doing so completely separates their previous names from their new legal names, making it more difficult for their abusers to hunt them down.

**6. Document standards do not take into account the destruction or confiscation of documents by abusers.**

Abusers will often destroy or withhold access to their victims' important documents such as birth certificates, driver's licenses, and immigration papers in order to force victims to stay with them or to prevent victims from taking action regarding the abuse.

The limited list of documents in the Proposed Rule will reduce many victims' abilities to obtain REAL ID because their abusers have withheld or destroyed the documents. As a result, victims will be denied the chance to travel, get a driver's license, or even enter federal buildings to seek aid or prosecute their abusers. Without alternatives for victims fleeing domestic violence, these regulations force victims to remain in abusive environments and reinforce the ability of abusers to control their victims through possession of vital documents.

**7. The Proposed Rule places an additional burden on abused immigrant women and children who must renew their REAL ID every year, increasing abuser control.**

In the Proposed Rule for the implementation of REAL ID, many abused immigrant women and children would be required to renew their REAL ID every year. In addition to all of the difficulties encountered in producing documents from this narrow list to acquire a REAL ID the first time, abusers will have additional leverage to use against their victims if they must produce these documents every year to keep their REAL ID valid. The documents become even more valuable and abusers then hold even more power over their victims by threatening to destroy or withhold documents each year.

**8. REAL ID will be denied to immigrant women who are here legally on their spouses' or parents' visas.**

The narrow list of documents permitted to verify identity in applying for a REAL ID card would deny spouses and children, here legally on the main workers' visas, the ability to drive a car, travel, or enter federal buildings. Family members granted derivative visas are included under the main visa holder's documents, but do not hold any documents of their own appearing on the REAL ID document list.

This requirement would make spouses and children virtual prisoners in their own homes, unable to do anything requiring federal identification. This problem is compounded if a derivative family member tries

# STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER, COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 110200  
JUNEAU, ALASKA 99811-0200

PHONE: (907) 465-2200  
FAX: (907) 465-2135

## REAL ID White Paper 2/21/2008

### History/Background

Congress passed REAL ID in 2005, requiring people boarding airplanes and entering federal buildings to use an ID that meets specific security and authentication standards. For states, that means issuing REAL ID-compliant drivers' licenses and ID cards -- or residents will need a passport to board planes. Homeland Security last month released its final regulations.

### Current Situation

Federal agencies cannot accept non-REAL ID drivers' licenses or ID cards for official purposes as of May 11, 2008, unless a state has obtained an extension. Alaska is one of 45 states that have obtained the extension; there were no prerequisites to receiving this first extension. That first extension will expire Dec. 31, 2009, unless a state, by Oct. 11, 2009, asks Homeland Security for a second extension, certifying it has achieved 18 specific benchmarks. This extension would give the state until May 10, 2011, to comply with all of REAL ID. Allowing for a phase-in of REAL ID, states have until Dec. 1, 2014, to issue new licenses for everyone 50 years old and younger, and until Dec. 1, 2017, for residents over 50 years old.

### Challenges

Before issuing or renewing a license or ID card, DMV will be required to electronically verify each applicant's documents. The law requires verification of Social Security numbers with the Social Security Administration, birth certificates through the Electronic Verification of Vital Events system, immigration documents through another system, and so on. Applicants for new licenses and ID cards will need to provide the same proof of identity and legal residency as is currently required at DMV, such as a U.S. passport or certified copy of a birth certificate. The change under REAL ID -- in addition to the electronic verification -- is that the verification requirement also will be imposed on Alaskans renewing their licenses for the first time under REAL ID. In addition to the paperwork hassles and expense, opponents of REAL ID say it is an invasion of privacy and the start of a national identity card with the linking of so many databases.

**What are the estimated costs and effects in Alaska?**

The Department of Administration estimates upfront costs for REAL ID database interfaces at DMV could total at least \$2 million, with additional costs at other agencies such as the Bureau of Vital Statistics and Department of Public Safety. Annual operating costs are unknown at this time.

**Is there any federal funding?**

There is \$80 million available for REAL ID grants nationwide. Homeland Security estimates it will cost states \$3.9 billion over the next 10 years to comply with REAL ID. North Carolina is submitting a grant application to operate a data hub for other states; Alaska is still considering whether to join the North Carolina effort.



## Coming Soon: National ID Cards?

Recently passed Real ID Act undermines civil rights, critics charge.

Erik Larkin, Medill News Service

Tuesday, May 31, 2005 11:00 AM GMT-08:00

WASHINGTON -- Driver's licenses will become national ID cards--and Americans will be at greater risk of identity theft--under a new federal law that passed without significant congressional debate, critics charge.

The Real ID Act will require that states verify every license applicant's identity and residency status, and that they store addresses, names, and driving records in a database that every other state can access. It also mandates anticounterfeiting features for the licenses and a "common machine readable technology." In three years, licenses that don't meet the standards won't be accepted as identification for boarding an airplane, opening a bank account, or satisfying any other federally regulated use.

The law's sponsor, Rep. James Sensenbrenner (R-Wisconsin) said that the law "seeks to prevent another 9/11-type terrorist attack by disrupting terrorist travel." Opponents contend that the act is primarily meant to prevent people who illegally immigrate to the United States from getting licenses.

When he introduced the bill at a press conference earlier this year, Sensenbrenner referred to a part of the report from the September Commission that read, "Members of al-Qaida clearly valued freedom of movement as critical to their ability to plan and carry out the attacks prior to September 11th."

He said that his proposed legislation would curtail such movement and would tighten the rules for political asylum. In response to questions from reporters, he also suggested that the law was intended to "get a handle on illegal aliens in the United States."

### How It Passed

The controversy surrounding the new law relates to the way it was passed as much as to what it does. Because it passed as an amendment to an emergency spending bill providing funding for American troops in Afghanistan and Iraq, the Real ID Act did not come up for a vote on its own--or for full debate--in Congress.

"This really is a national identification card for the United States of America for the first time in our history," said Sen. Lamar Alexander (R-Tennessee) in the Senate the day before the spending bill passed. "We have never done this before, and we should not be doing it without a full debate."

According to critics, what makes this a national ID--as opposed to another form of classification such as a Social Security card--is the fact that driver's licenses already serve as standard forms of identification for everything from entering a bar to boarding an airplane. Though the Real ID Act doesn't obligate states to follow the new national standards, their licenses and state IDs won't satisfy ID requirements for any purpose under federal jurisdiction unless the states comply.

Alexander and 11 other senators, evenly split between Democrats and Republicans, sent a letter to Senate Majority Leader Bill Frist (R-Tennessee) last month asking him to block the amendment.

Though Alexander strongly opposed passing the Real ID Act without debate, he said he was "reluctantly" in favor of a national ID in the

wake of September 11. Other observers remain deeply concerned by the prospect.

### **Risk of ID Theft**

"This is serious business," says Bill Scannell, a privacy advocate. If you want to board a plane, "you have to show your papers."

Scannell's Web site, [UnrealID.com](http://UnrealID.com), gathered more than 10,000 comments in 28 hours from people asking their senators to block the amendment the day before the Senate vote. Scannell faxed all those comments to the appropriate senators, but he says that his failed last-minute attempt was "like the charge of the light brigade."

The new law, which takes effect in three years, establishes general requirements, but the Department of Homeland Security will decide how to implement the broad-brush mandates. Anyone with a license from a state that doesn't meet Real ID's standards will have to get a new license before then.

One mandate provides that every state must have a database accessible by all other states and including all of the information printed on a license as well as the person's driving record. The original proposal would have created a single national database, but this provision was changed before the Senate vote.

Nevertheless, "if you link all the databases and you mandate the sharing of the information, you have created one network," says Tim Sparapani, legislative counsel for the [American Civil Liberties Union](http://American Civil Liberties Union).

Sparapani says that having 51 different databases (one for each state plus Washington, D.C.) could actually be worse than having a single big one. Any computer or network is only as secure as its weakest point—the weakest link in the chain. So if 51 databases are tied together, and 50 of them have great security but one is easy to break into, the entire conglomeration is vulnerable.

"We know that any kind of sophisticated hacker, ID thief, organized criminal, or terrorist will be able to hack into this system," Sparapani says. "There are so many points of entry."

### **Lack of Privacy Protections**

Sparapani says that the network of databases may also eventually hold electronic copies of sensitive personal documents. The law requires that states verify and store electronic copies of a driver's photo ID, birth certificate, and Social Security card, along with documents showing name and address.

The ACLU wants those documents to be stored separately from the network of driver's license databases, Sparapani says, but "it's not administratively efficient."

"States will do whatever is easiest and cheapest," he says.

The new law neither requires nor forbids that the documents be part of the same database.

"There were ample opportunities for the sponsors of the bill to build in privacy protections, and they chose not to," Sparapani says.

### **Machine Readable = RFID?**

The requirement that licenses incorporate a "machine-readable technology" is similarly vague. Already, 47 states—all but Alaska, Montana, and Wyoming—have a bar code or a magnetic stripe. Either one would satisfy the law's mandate, as would radio frequency (RFID), a broadcast technology planned for upcoming electronic U.S. passports.

The broad language of the new law "really allows for many possibilities," says Neville Pattinson, director of technology and government

affairs at the U.S. headquarters in Austin, Texas, of the European company Axalto, which makes smart cards. A small computer chip in a card stores information and may include features such as encryption. Axalto makes both contactless chips, which use RFID, and contact chips, which must be touched to be read. The company is bidding to supply the contactless chips for the new passports.

Many privacy and travel groups have strongly protested against using chips with RFID in passports because they can be read from a distance. Broadcasting such passport data could make targets of American travelers, they say.

The Smart Card Alliance, an industry group that includes Axalto, is pushing to use smart-card technology in driver's licenses. Pattinson says contact chips would be more appropriate, but contactless chips with RFID would also satisfy the law's requirements.

A Department of Homeland Security spokesperson, Jared Eagan, says he is not aware of any discussions regarding the technology that might be used.

### Privacy Concerns Overblown?

The American Association of Motor Vehicle Administrators is "eager to work with DHS to fashion those provisions," says spokesperson Jason King. The 72-year-old organization represents state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws, according to its Web site. King says that the department has not yet contacted the association.

"The driver's license framework is broken and in dire need of repair," King says. The Real ID Act "represents the first time in the history of driver's licenses that we will have consistency from state to state in how the driver's license is administered." The AAMVA favors that standardization, according to King.

"State motor vehicle administrators are very concerned about privacy," King says, but he sees the privacy concerns of the ACLU and other critics as overblown. For instance, he points out that driving records are already available online. In King's view, a provision in the law requiring security clearance for anyone who produces driver's licenses will help protect privacy.

Fear of government abuse or misuse of privacy under the new laws is misplaced, King believes. "Quite frankly, today, corporate America knows much more than [the] DMV does or ever will," he says. "We have no idea where you shop, nor do we care."

### The States Weigh In

Deciding whether and how privacy concerns should be addressed is now up to DHS, with consultation from the Department of Transportation. The task of implementing those decisions, though, will fall squarely on the states.

"States are going to make their best effort with this," says Cheye Calvo, transportation committee director for the National Conference of State Legislatures. "They're not happy about it, but they're going to try to do it."

Calvo says that the new law could cost the states as much as \$1 billion. In addition to purchasing new machines and technology, state DMVs will have to hire new people to scan and verify documents, he says. Virginia alone estimates that it will have to spend \$237 million, according to Calvo.

The additional time required for verification could mean the end of being able to go to a DMV and get a license in the same day, Calvo says. States must verify the "issuance, validity, and completeness of each document" under the new law. Even if states streamline contacts with utility companies, hospitals, and other organizations that might supply documents, adding even 10 minutes to the time required for each of the millions of licenses involved would translate into a huge new time and manpower burden.

### State Protections Removed

Calvo sees the privacy and civil liberty concerns about the new law as serious. Aside from issues involving linked databases and stored

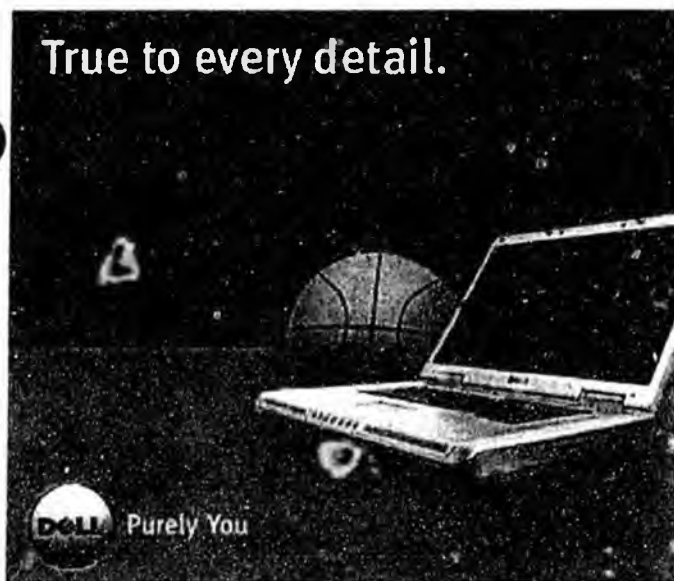
documents, he notes that the new federal law will invalidate existing state laws meant to protect judges, police, and victims of domestic violence.

For instance, some states currently allow battered women to use the address of the state attorney general's office instead of their real address on their license. But there are no exceptions to the Real ID Act's requirement that people's home address appear on their licenses.

There is a legitimate need to revise driver's license laws to prevent situations such as having licenses in two states at the same time, Calvo says. But he thinks that the issue of securing driver's licenses was taken care of in December when Congress passed the Intelligence Reform Act, which called for the Department of Transportation to revise laws in consultation with the states. Now, however, those provisions have been superseded by the Real ID Act, which was written without input from the states.

Calvo says that the flaws in the new law stem largely from its having skipped the normal process of debate in Congress. "This is why you have a deliberative process; this is why you have hearings," he says.

Adding a controversial bill like the Real ID Act to a "must-pass" bill like the emergency military spending authorization doesn't happen very often, Calvo says. "In this case it was passed for political reasons."



# ALASKA STATE HOUSE OF REPRESENTATIVES



**Contact:**

Interim Address:

**3340 Badger Road  
North Pole, AK 99705  
(907)-488-5725  
Fax# (907)-488-4271**

**Session**

**(907)-465-3719  
FAX# (907)-465-3258  
State Capitol  
Room 204**

## REPRESENTATIVE JOHN COGHILL

### MEMORANDUM

Date: March 3, 2009

To: Representative Bob Lynn, Chairman  
House State Affairs Committee

From: Representative John Coghill

*Request for JBL*

Re: HJR 19

---

I am requesting a hearing for HJR 19, "Relating to opposition to the Real ID Act of 2005" at your earliest convenience. Attached is the resolution and backup for committee members.

Thank you for your consideration.

# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Vice-Chairman**  
Economic Development, Trade & Tourism  
Committee

**Member**  
Judiciary Committee  
Joint Armed Services Committee

**Finance Subcommittees**  
Corrections  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety

*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail: Representative\_Bob\_Lynn@legis.state.ak.us**  
**"Bob Lynn's Alaska Blog" RepBobLynnBlog.com**

**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

## FAX

To: Legal Services/Luckhaupt

Fax #: 2029

From: Nancy Manly x2794  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 1

Phone: 907-465-4931

Fax: 907-465-4316

Re: HJR 19 Oppose Federal ID Requirements

3-13-08

CS for HJR 19 Version E passed out of the House State Affairs Committee this morning with no changes. Please draft a final CS. Is this possible to get done before Session this morning?  
Thanks.

Version 25-LS0844E

```
*****
*
*                               TRANSACTION REPORT                               *
*
*                               MAR-12-2008 08:27 PM                               *
*   FOR: REP LYNN                               4654316                               *
* _____ *
*   SEND *
*
*   DATE   START   RECEIVER   PAGES   TIME   NOTE *
* _____ *
*   MAR-12 08:26 PM 2029           1     26"  OK *
* _____ *
*****
```

Court case  
HJR 19

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

SARAH HUNTLEY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF ALASKA, DEPARTMENT OF )  
 ADMINISTRATION, DUANE BANNOCK, )  
 DIRECTOR OF DIVISION OF MOTOR )  
 VEHICLES, )  
 )  
 Defendants. )

Filed in Chambers  
 STATE OF ALASKA  
 FIRST JUDICIAL DISTRICT  
 AT JUNEAU  
 By 1-29-08 KJK

Case No. 1JU-07-481 CI

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

At issue in this case is the validity of a regulation setting forth the documents an applicant must present in order to receive an Alaska driver's license.<sup>1</sup> Specifically, plaintiff Sarah Huntley challenges 2 AAC 90.420(d), which requires an applicant for an original license to present a valid social security card to verify the applicant's social security number or, if the applicant has no social security number, an approved waiver from the Social Security Administration or Internal Revenue Service.<sup>2</sup>

Plaintiff claims that 2 AAC 90.420(d) is, in effect, a requirement that applicants prove they are legally present in the United States.<sup>3</sup> Plaintiff claims this regulation was adopted by the Division of Motor Vehicles ("DMV") and the Department of Administration

<sup>1</sup> 2 AAC 90.420.

<sup>2</sup> "An applicant must present the applicant's valid social security card for verification of the applicant's social security number or an approved waiver from the United States Social Security Administration or the United States Department of Treasury, Internal Revenue Service."

<sup>3</sup> Plaintiff's Motion for Partial Summary Judgment 7.

("Department") in an effort to comply with the federal "REAL ID Act of 2005."<sup>4</sup> Plaintiff asserts that the Department has no statutory authority to impose such a requirement.<sup>5</sup> Plaintiff also asserts that the Department promulgated 2 AAC 90.420 without proper notice in violation of the Alaska Administrative Procedures Act ("APA").<sup>6</sup> Plaintiff therefore seeks a declaratory judgment that 2 AAC 90.420 is invalid, and an injunction against enforcement of the regulation.<sup>7</sup>

Defendants move for summary judgment on the ground that plaintiff lacks standing or in the alternative that the Department acted properly in adopting the regulation.<sup>8</sup> Plaintiff, in turn, moves for partial summary judgment. She asks the court to find that the regulation exceeds the Department's statutory authority.<sup>9</sup> Having reviewed the parties' arguments, as set out both in their briefs and at oral argument, the court finds that plaintiff lacks standing and therefore grants the defendants' motion for summary judgment.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law.<sup>10</sup> Once the movant has established a prima facie case for summary judgment, the non-movant must set forth specific facts showing that it could produce admissible evidence reasonably tending to dispute or contradict the

<sup>4</sup> *Id.* at 14-15.

<sup>5</sup> *Id.* at 6-12.

<sup>6</sup> Complaint at p. 5, ¶ 18 (alleging violation of AS 44.62.030, AS 44.62.190(d), and AS 44.62.195).

<sup>7</sup> *Id.* at p. 5, ¶ 3.

<sup>8</sup> See, Defendants' Motion for Summary Judgment.

<sup>9</sup> See, Plaintiff's Motion for Partial Summary Judgment.

<sup>10</sup> Alaska Rule of Civil Procedure 56.

movant's evidence, and thus demonstrate that a material issue of fact exists.<sup>11</sup> In considering a motion for summary judgment, the court construes all facts in a light most favorable to the nonmoving party.<sup>12</sup>

### III. DISCUSSION

Alaska Statute 44.62.300 grants an "interested person" standing to obtain judicial review of administrative regulations.<sup>13</sup> Alaska Statute 22.10.020(g) provides that the superior court may, in the case of "an actual controversy," declare the rights of "an interested party."<sup>14</sup> Defendants assert that plaintiff lacks standing to challenge 2 AAC 90.420 under the above-mentioned statutes and under general principles of judicial restraint. Plaintiff, on the other hand, contends that she has standing under either of two theories: "interest-injury" standing, and "taxpayer-citizen" standing.

#### A. Interest-Injury Standing

"Under the interest injury approach, a party asserting standing [must demonstrate] a sufficient personal stake in the outcome of the controversy to ensure the requisite adversity."<sup>15</sup> Generally, a plaintiff can meet this requirement by showing an "injury-in-fact" (i.e., that he or she has an interest adversely affected by the conduct complained of).<sup>16</sup> The personal

<sup>11</sup> *McGlothlin v. Mun. of Anchorage*, 991 P.2d 1273, 1277 (Alaska 1999).

<sup>12</sup> *Beilgard v. State*, 896 P.2d 230, 233 (Alaska 1995).

<sup>13</sup> *See, Rutter v. State*, 668 P.2d 1343, 1346 (Alaska 1983).

<sup>14</sup> *See, Ruckle v. Anchorage School District*, 85 P.3d 1030, 1034 (Alaska 2004) (holding that "the 'actual case or controversy' language encompasses a number of more specific reasons for not deciding cases, including lack of standing, mootness, and lack of ripeness"); *see also, Bowers Office Prods., Inc. v. Univ. of Alaska*, 755 P.2d 1095, 1096 (Alaska 1988).

<sup>15</sup> *Kleven v. Yukon-Koyukuk School Dist.*, 853 P.2d 518, 525 (Alaska 1993) (quoting *Hoblit v. Commissioner of Natural Resources*, 678 P.2d 1337, 1340 (Alaska 1984)).

<sup>16</sup> *See, Bowers Office Prods., Inc.*, 755 P.2d at 1097 (citing *Wagstaff v. Superior Court, Family Div.*, 535 P.2d 1220, 1225 (Alaska 1975)); *see also, Trustees for Alaska*, 736 P.2d at 327

Cont'd

stake/injury-in-fact requirement "serves to distinguish a person with a direct stake in the outcome of litigation—even though small—from a person with a mere interest in the problem."<sup>17</sup>

To have interest-injury standing, plaintiff need not prove that the regulation has caused her injury, or even that it necessarily will do so in the future.<sup>18</sup> Plaintiff need not show that her interest is economic—she may rely on an intangible, aesthetic, or even environmental interest. Finally, the degree of injury to plaintiff need not be great—an "identifiable trifle" is sufficient.<sup>19</sup> However, while the injury-in-fact requirement has been relaxed in Alaska, it has not been abandoned.<sup>20</sup> Plaintiff must point the court to some personally suffered injury in order to have standing.

~~Plaintiff alleges in her complaint~~ only that she is a resident of Alaska and that she maintains an Alaska driver's license.<sup>21</sup> The complaint provides no further information about plaintiff or any injury to her caused by the challenged regulation. Because she already has a license, the requirement to present a social security card when one applies for a license does not apply to her.<sup>22</sup>

("Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of").

<sup>17</sup> *Wagstaff*, 535 P.2d at 1225 (quoting *United States v. SCRAP*, 412 U.S. 669, 689 n.14 (1973)).

<sup>18</sup> See *City of St. Mary's v. St. Mary's Native Corp.*, 9 P.3d 1002, 1009 (Alaska 2000); see also, *Johns v. Commercial Fisheries Entry Comm'n*, 699 P.2d 334, 338 (Alaska 1985).

<sup>19</sup> *Trustees for Alaska*, 736 P.2d at 327.

<sup>20</sup> *Wagstaff*, 535 P.2d at 1225.

<sup>21</sup> Complaint, p. 4 ¶ 12.

<sup>22</sup> There is no requirement to present a social security card when one renews an existing license.

Plaintiff argues that the regulation would apply to her if, at some time in the future, her license were revoked and she had to apply for a new license.<sup>23</sup> But the court is aware of no case in which a court has found that this sort of remote possibility of a hypothetical future injury constitutes an injury-in-fact sufficient to give a plaintiff standing.

As noted above, threatened harm may be the basis of standing.<sup>24</sup> In other words, a party need not wait for an anticipated harm to materialize before bringing suit to protect his or her rights.<sup>25</sup> Furthermore, a plaintiff need not show that the future harm with which he or she is threatened is inevitable. It is sufficient if the threatened harm is merely possible.

While the Alaska Supreme Court has found standing on the basis of threatened harm, this has never involved a remote and speculative threat of future harm. In *Johns v. CFEC*, plaintiffs were seine fishermen who were challenging a proposed herring roe limited entry system. Their permit applications were pending, and it was not yet certain whether the new regulation would exclude them from the fishery. The court held that the plaintiffs had an interest in the issue because even if they received permits, their interests were directly affected by the number of fishermen allowed to participate in the fishery.<sup>26</sup>

A similar conclusion was reached in *Sisters of Providence v. Dept. of Health and Soc. Serv.*<sup>27</sup> In that case, Providence Hospital challenged the issuance of a certificate of need allowing construction of a rival hospital in Anchorage. Although it was possible that the competing hospital might never be built, or its certificate might be revoked in other

<sup>23</sup> Plaintiff's Opposition to Defendants' Motion for Summary Judgment 6.

<sup>24</sup> *Johns*, 699 P.2d at 337.

<sup>25</sup> *Id.* at 338.

<sup>26</sup> *Id.*; see also *Rutter v. CFEC*, 668 P.2d 1343 (Alaska 1983).

<sup>27</sup> 648 P.2d 970 (Alaska 1982).

proceedings, the court found that the threat of harm to Providence was sufficiently clear that Providence had a "personal stake" in the proceedings.<sup>28</sup>

In each of these cases, the threat of harm to the plaintiff was substantial and immediate, such that the plaintiff had a personal stake in the outcome of the case.

Here, by contrast, plaintiff's alleged injury is that 2 AAC 90.420 may require her to present a social security card if, at some future time, she has her driver's license revoked and then later seeks to have it reinstated.<sup>29</sup> When the Supreme Court in *Johns* referred to the possibility of future harm, this court believes it intended to require more than <sup>a</sup> remote theoretical possibility of future harm. PMP

To be sure, it is possible that 2 AAC 90.420 will apply to plaintiff in the future. But there are at least three levels of uncertainty involved in this theory of injury. First, it is uncertain whether plaintiff will, at some point in the future, engage in some act of misconduct which will result in the revocation of her license. Second, if this occurs, it is uncertain whether the plaintiff will elect to apply for another license. And third, if she reaches this point, there are no facts either established or alleged showing that, if she is required to present a social security card upon reapplication, plaintiff will suffer any injury from having to do so.

Nowhere in the record does plaintiff allege or establish that she would suffer any injury by having to present a social security card or approved waiver <sup>at</sup> ~~of~~ some future date. For example, plaintiff does not allege that she is an undocumented alien or for some other reason that she does not have a social security card. If she does not have a social security card, she does not claim that she would be unable to obtain a waiver from the appropriate agencies. Nor PMP

<sup>28</sup> 648 P.2d at 975.

<sup>29</sup> *Id.*

does not allege any moral, religious, or other objection to presenting a social security card. She does not claim that, if she is ever in the future required to present a social security card, it would be objectionable, burdensome or even inconvenient for her to so. She simply asks the court to assume that, if this set of uncertain contingencies comes to pass, she would suffer an injury as a result. But the court is not convinced that the set of assumptions and uncertain future contingencies posited by the plaintiff constitutes an injury-in-fact sufficient to give her standing under an interest-injury theory.

The court does not mean to say that a plaintiff could not show that he or she would be harmed by this requirement. But there has been no showing that this plaintiff has been harmed by or faces any reasonable threat of being harmed by this requirement in the future.

It is well established that the burden of establishing standing is on the plaintiff.<sup>30</sup> Because plaintiff has not made any factual showing that she has suffered or will suffer some injury-in-fact from the challenged regulation, the court must find that plaintiff lacks interest-injury standing.

#### B. Taxpayer-Citizen Standing

For citizen-taxpayer standing to exist, the case must be one of "public importance" and the plaintiff must be "appropriate in several respects."<sup>31</sup> The term "appropriate" here has three main facets. First, the plaintiff must not be a "sham plaintiff" with no true adversity of interest. Second, the plaintiff must be capable of competently advocating his or her position. Finally, even if the plaintiff is "appropriate" in the first two respects, he or she may still be denied

<sup>30</sup> See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

<sup>31</sup> *Trustees for Alaska*, 736 P.2d at 327.

standing if there is a plaintiff more directly affected by the challenged conduct who has or is likely to bring suit.<sup>32</sup>

i. **Issue of Public Importance**

The Alaska Supreme Court has recognized that issues concerning specific constitutional limitations should generally be considered sufficiently important to satisfy this requirement.<sup>33</sup> However, the Court has held that statutory and common law questions may also be important.<sup>34</sup> Thus, while plaintiff has asserted no constitutionally-based objection to the promulgation of 2 AAC 90.420, this is not determinative. The court must still inquire as to whether plaintiff's claim raises some non-constitutional issue of public importance.

There is little in the record on the issue of whether requiring a driver's license applicant to present a valid social security card or approved waiver is one of "public importance."<sup>35</sup> Nevertheless, plaintiff has alleged that 2 AAC 90.420 is essentially a legal presence requirement. Plaintiff has also alleged that the regulation brings the State of Alaska one step closer to full participation with the REAL ID Act of 2005. The court finds that these issues, which are implicit in plaintiff's cause of action, are ones of "public importance."

ii. **Proper Plaintiff**

Defendants argue that, even if plaintiff raises a question of public importance, she is not a "proper plaintiff" and therefore lacks taxpayer-citizen standing to pursue this suit.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 329 (citing *Carpenter v. Hammond*, 667 P.2d 1204, 1210 (Alaska 1983); *Gilman v. Martin*, 662 P.2d 120, 123 (Alaska 1983); *State v. Lewis*, 559 P.2d 630, 635 (Alaska 1977))

<sup>34</sup> *Id.* (citing *Coghill v. Boucher*, 511 P.2d 1297 (Alaska 1973)).

<sup>35</sup> Plaintiff notes the fact that no one appeared at the public hearing on these regulations. Plaintiff's Opposition to Motion for Summary Judgment at 4, n.7. Though plaintiff argues that this shows the state's notice was inadequate, it may also indicate a lack of public interest in the issue. The court can reach no conclusion on this question.

Defendants note that, in order to be affected by the regulation, plaintiff would first have to have her current license revoked and then apply for a new license. Of course, as noted earlier, this is possible. However, as discussed above, plaintiff has failed to show that, in the event the regulation does apply to her in the future, it would do her any harm to have to present a social security card.

The requirement of adversity applies not only to interest-injury standing, but to taxpayer-citizen standing as well.<sup>36</sup> Indeed, when standing is predicated on issues of general public importance, the adversity requirement is crucial to insuring "that the issues are well presented" to the court.<sup>37</sup> A plaintiff has the burden of proving that he or she meets the requirements for citizen-taxpayer standing, including adversity. This burden is not a high one.

The plaintiff in this case alleges two facts personal to herself in her complaint: she is a resident of Alaska, and she is a licensed driver.<sup>38</sup> Nowhere in her complaint or in any of her pleadings on the summary judgment motions are any other facts personal to the defendant alleged or established. While one may speculate, from the tenor of her counsel's arguments, that she has personal feelings about the regulation or about the REAL-ID Act, the court is not enlightened about the nature of those feelings. In deciding a motion for summary judgment, the question is whether the plaintiff has established facts sufficient to meet her burden of showing standing. That question cannot be resolved based on speculation derived from the

<sup>36</sup> See, *Trustees for Alaska*, 736 P.2d at 330 n.9.

<sup>37</sup> *Id.* (quoting *Jenkins v. Swan*, 675 P.2d 1145, 1150-51 (Utah 1983)) ("When standing is predicated on the assertion that the issues involve 'great public interest and societal impact,' we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions").

<sup>38</sup> Complaint at ¶12.

tenor of counsel's arguments. Rather, it must be assessed based on the facts. And, as noted, the only facts the court has about the plaintiff are that she is an Alaskan with a driver's license.<sup>39</sup>

One might ask whether there are classes of individuals more directly affected by this regulation than a generic Alaskan with a driver's license. Undocumented aliens who do not have social security card, people without licenses (or with revoked licenses), people who have lost their social security cards, people who have chosen not to obtain social security cards and who would be burdened by the process of obtaining the required waivers, and people with religious, moral, or personal objections to having to produce their social security cards, would all be affected more directly by this regulation than a generic Alaskan with a driver's license. The court simply has no facts before it indicating that the plaintiff has a dog in this fight.

One can speculate that the plaintiff may fall within one of these classes - perhaps the last. But she has not established this or even alleged it. Indeed, she has told the court nothing whatsoever about herself which would enable the court to determine that she has the requisite adversity, or whether she is a sham plaintiff. Again, the court cannot base a finding that the plaintiff has met her burden of showing standing on speculation.

Any of the classes of individuals referred to above would be a more appropriate plaintiff. And there is no reason to believe any such person would not be likely to file suit if such a person objected to this regulation. Accordingly, this court cannot conclude that this plaintiff has taxpayer-citizen standing.

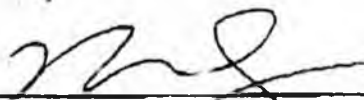
---

<sup>39</sup> Actually the court does not even know that, since there are only allegations in the complaint not established by affidavit.

**IV. CONCLUSION**

For the reasons stated above, defendants' Motion for Summary Judgment is granted.<sup>40</sup>

Entered at Juneau, Alaska this 29 day of January, 2008.

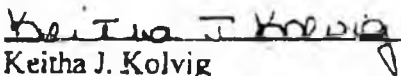
  
\_\_\_\_\_  
Philip M. Pallenberg  
Superior Court Judge

**CERTIFICATION OF SERVICE**

I certify that I served the following parties on the 29th day of January, 2008.

Mark Choate

Krista Stearns

  
\_\_\_\_\_  
Keitha J. Kolvig  
Professional Assistant to  
Judge Pallenberg

<sup>40</sup> This conclusion makes it unnecessary for the court to reach any of the remaining points raised in the Defendants' Motion for Summary Judgment or in the Plaintiff's Motion for Partial Summary Judgment.

# Alaska State Legislature

**Chairman**

State Affairs Committee

**Member**

Judiciary Committee  
Economic Development, Trade & Tourism  
Committee  
Education Committee  
Joint Armed Services Committee

**Finance Subcommittees**

Labor & Workforce Development  
Community & Economic Development  
Military & Veterans' Affairs



*A Communication From*

**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** [Representative\\_Bob\\_Lynn@legis.state.ak.us](mailto:Representative_Bob_Lynn@legis.state.ak.us)  
**"Bob Lynn's Alaska Blog"** [AlaskaDistrict31.blogspot.com](http://AlaskaDistrict31.blogspot.com)

**Session:**  
Alaska State Capitol  
Juneau, AK 99801-1182

Phone: (907) 465-4931  
Fax: (907) 465-4316  
Toll Free: (800) 870-4391

**Interim:**  
716 W. 4<sup>th</sup> Ave., #650  
Anchorage, AK 99501-2133

Phone: (907) 269-0205  
Fax: (907) 269-0207

March 13, 2008

To: State Affairs Committee Members

Fr: Representative Bob Lynn

Re: HJR 19 Oppose Federal Real ID Requirements

---

Rynniva brought in the attached Court Case that was mentioned by Representative Gruenberg in the committee hearing on HJR 19 today.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

SARAH HUNTLEY, )

Plaintiff, )

v. )

STATE OF ALASKA, DEPARTMENT OF )  
ADMINISTRATION, DUANE BANNOCK, )  
DIRECTOR OF DIVISION OF MOTOR )  
VEHICLES, )

Defendants. )

Filed in Chambers  
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT  
AT JUNEAU  
By 1-29-08 KJK

Case No. 1JU-07-481 CI

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

At issue in this case is the validity of a regulation setting forth the documents an applicant must present in order to receive an Alaska driver's license.<sup>1</sup> Specifically, plaintiff Sarah Huntley challenges 2 AAC 90.420(d), which requires an applicant for an original license to present a valid social security card to verify the applicant's social security number or, if the applicant has no social security number, an approved waiver from the Social Security Administration or Internal Revenue Service.<sup>2</sup>

Plaintiff claims that 2 AAC 90.420(d) is, in effect, a requirement that applicants prove they are legally present in the United States.<sup>3</sup> Plaintiff claims this regulation was adopted by the Division of Motor Vehicles ("DMV") and the Department of Administration

<sup>1</sup> 2 AAC 90.420.

<sup>2</sup> "An applicant must present the applicant's valid social security card for verification of the applicant's social security number or an approved waiver from the United States Social Security Administration or the United States Department of Treasury, Internal Revenue Service."

<sup>3</sup> Plaintiff's Motion for Partial Summary Judgment 7.

("Department") in an effort to comply with the federal "REAL ID Act of 2005."<sup>4</sup> Plaintiff asserts that the Department has no statutory authority to impose such a requirement.<sup>5</sup> Plaintiff also asserts that the Department promulgated 2 AAC 90.420 without proper notice in violation of the Alaska Administrative Procedures Act ("APA").<sup>6</sup> Plaintiff therefore seeks a declaratory judgment that 2 AAC 90.420 is invalid, and an injunction against enforcement of the regulation.<sup>7</sup>

Defendants move for summary judgment on the ground that plaintiff lacks standing or in the alternative that the Department acted properly in adopting the regulation.<sup>8</sup> Plaintiff, in turn, moves for partial summary judgment. She asks the court to find that the regulation exceeds the Department's statutory authority.<sup>9</sup> Having reviewed the parties' arguments, as set out both in their briefs and at oral argument, the court finds that plaintiff lacks standing and therefore grants the defendants' motion for summary judgment.

## II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law.<sup>10</sup> Once the movant has established a *prima facie* case for summary judgment, the non-movant must set forth specific facts showing that it could produce admissible evidence reasonably tending to dispute or contradict the

<sup>4</sup> *Id.* at 14-15.

<sup>5</sup> *Id.* at 6-12.

<sup>6</sup> Complaint at p. 5, ¶ 18 (alleging violation of AS 44.62.030, AS 44.62.190(d), and AS 44.62.195).

<sup>7</sup> *Id.* at p. 5, ¶ 3.

<sup>8</sup> See, Defendants' Motion for Summary Judgment.

<sup>9</sup> See, Plaintiff's Motion for Partial Summary Judgment.

<sup>10</sup> Alaska Rule of Civil Procedure 56.

movant's evidence, and thus demonstrate that a material issue of fact exists.<sup>11</sup> In considering a motion for summary judgment, the court construes all facts in a light most favorable to the nonmoving party.<sup>12</sup>

### III. DISCUSSION

Alaska Statute 44.62.300 grants an "interested person" standing to obtain judicial review of administrative regulations.<sup>13</sup> Alaska Statute 22.10.020(g) provides that the superior court may, in the case of "an actual controversy," declare the rights of "an interested party."<sup>14</sup> Defendants assert that plaintiff lacks standing to challenge 2 AAC 90.420 under the above-mentioned statutes and under general principles of judicial restraint. Plaintiff, on the other hand, contends that she has standing under either of two theories: "interest-injury" standing, and "taxpayer-citizen" standing.

#### A. Interest-Injury Standing

"Under the interest injury approach, a party asserting standing [must demonstrate] a sufficient personal stake in the outcome of the controversy to ensure the requisite adversity."<sup>15</sup> Generally, a plaintiff can meet this requirement by showing an "injury-in-fact" (i.e., that he or she has an interest adversely affected by the conduct complained of).<sup>16</sup> The personal

<sup>11</sup> *McGlothlin v. Mun. of Anchorage*, 991 P.2d 1273, 1277 (Alaska 1999).

<sup>12</sup> *Beilgard v. State*, 896 P.2d 230, 233 (Alaska 1995).

<sup>13</sup> *See, Rutter v. State*, 668 P.2d 1343, 1346 (Alaska 1983).

<sup>14</sup> *See, Ruckle v. Anchorage School District*, 85 P.3d 1030, 1034 (Alaska 2004) (holding that "the 'actual case or controversy' language encompasses a number of more specific reasons for not deciding cases, including lack of standing, mootness, and lack of ripeness"); *see also, Bowers Office Prods., Inc. v. Univ. of Alaska*, 755 P.2d 1095, 1096 (Alaska 1988).

<sup>15</sup> *Kleven v. Yukon-Koyukuk School Dist.*, 853 P.2d 518, 525 (Alaska 1993) (quoting *Hoblit v. Commissioner of Natural Resources*, 678 P.2d 1337, 1340 (Alaska 1984)).

<sup>16</sup> *See, Bowers Office Prods., Inc.*, 755 P.2d at 1097 (citing *Wagstaff v. Superior Court, Family Div.*, 535 P.2d 1220, 1225 (Alaska 1975)); *see also, Trustees for Alaska*, 736 P.2d at 327

Cont'd

stake/injury-in-fact requirement "serves to distinguish a person with a direct stake in the outcome of litigation—even though small—from a person with a mere interest in the problem."<sup>17</sup>

To have interest-injury standing, plaintiff need not prove that the regulation has caused her injury, or even that it necessarily will do so in the future.<sup>18</sup> Plaintiff need not show that her interest is economic—she may rely on an intangible, aesthetic, or even environmental interest. Finally, the degree of injury to plaintiff need not be great—an "identifiable trifle" is sufficient.<sup>19</sup> However, while the injury-in-fact requirement has been relaxed in Alaska, it has not been abandoned.<sup>20</sup> Plaintiff must point the court to some personally suffered injury in order to have standing.

~~Plaintiff alleges in her complaint only that she is a resident of Alaska and that she~~ maintains an Alaska driver's license.<sup>21</sup> The complaint provides no further information about plaintiff or any injury to her caused by the challenged regulation. Because she already has a license, the requirement to present a social security card when one applies for a license does not apply to her.<sup>22</sup>

("Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of").

<sup>17</sup> *Wagstaff*, 535 P.2d at 1225 (quoting *United States v. SCRAP*, 412 U.S. 669, 689 n.14 (1973)).

<sup>18</sup> See *City of St. Mary's v. St. Mary's Native Corp.*, 9 P3d 1002, 1009 (Alaska 2000); see also *Johns v. Commercial Fisheries Entry Comm'n.*, 699 P.2d 334, 338 (Alaska 1985).

<sup>19</sup> *Trustees for Alaska*, 736 P.2d at 327.

<sup>20</sup> *Wagstaff*, 535 P.2d at 1225.

<sup>21</sup> Complaint, p. 4 ¶ 12.

<sup>22</sup> There is no requirement to present a social security card when one renews an existing license.

Plaintiff argues that the regulation would apply to her if, at some time in the future, her license were revoked and she had to apply for a new license.<sup>23</sup> But the court is aware of no case in which a court has found that this sort of remote possibility of a hypothetical future injury constitutes an injury-in-fact sufficient to give a plaintiff standing.

As noted above, threatened harm may be the basis of standing.<sup>24</sup> In other words, a party need not wait for an anticipated harm to materialize before bringing suit to protect his or her rights.<sup>25</sup> Furthermore, a plaintiff need not show that the future harm with which he or she is threatened is inevitable. It is sufficient if the threatened harm is merely possible.

While the Alaska Supreme Court has found standing on the basis of threatened harm, this has never involved a remote and speculative threat of future harm. In *Johns v. CFEC*, plaintiffs were seine fishermen who were challenging a proposed herring roe limited entry system. Their permit applications were pending, and it was not yet certain whether the new regulation would exclude them from the fishery. The court held that the plaintiffs had an interest in the issue because even if they received permits, their interests were directly affected by the number of fishermen allowed to participate in the fishery.<sup>26</sup>

A similar conclusion was reached in *Sisters of Providence v. Dept. of Health and Soc. Serv.*<sup>27</sup> In that case, Providence Hospital challenged the issuance of a certificate of need allowing construction of a rival hospital in Anchorage. Although it was possible that the competing hospital might never be built, or its certificate might be revoked in other

<sup>23</sup> Plaintiff's Opposition to Defendants' Motion for Summary Judgment 6.

<sup>24</sup> *Johns*, 699 P.2d at 337.

<sup>25</sup> *Id.* at 338.

<sup>26</sup> *Id.*; see also *Rutter v. CFEC*, 668 P.2d 1343 (Alaska 1983).

<sup>27</sup> 648 P.2d 970 (Alaska 1982).

proceedings, the court found that the threat of harm to Providence was sufficiently clear that Providence had a "personal stake" in the proceedings.<sup>28</sup>

In each of these cases, the threat of harm to the plaintiff was substantial and immediate, such that the plaintiff had a personal stake in the outcome of the case.

Here, by contrast, plaintiff's alleged injury is that 2 AAC 90.420 may require her to present a social security card if, at some future time, she has her driver's license revoked and then later seeks to have it reinstated.<sup>29</sup> When the Supreme Court in *Johns* referred to the possibility of future harm, this court believes it intended to require more than <sup>a</sup> remote theoretical possibility of future harm. PMP

To be sure, it is possible that 2 AAC 90.420 will apply to plaintiff in the future. But there are at least three levels of uncertainty involved in this theory of injury. First, it is uncertain whether plaintiff will, at some point in the future, engage in some act of misconduct which will result in the revocation of her license. Second, if this occurs, it is uncertain whether the plaintiff will elect to apply for another license. And third, if she reaches this point, there are no facts either established or alleged showing that, if she is required to present a social security card upon reapplication, plaintiff will suffer any injury from having to do so.

Nowhere in the record does plaintiff allege or establish that she would suffer any injury by having to present a social security card or approved waiver <sup>at</sup> ~~of~~ some future date. For example, plaintiff does not allege that she is an undocumented alien or for some other reason that she does not have a social security card. If she does not have a social security card, she does not claim that she would be unable to obtain a waiver from the appropriate agencies. Nor PMP

<sup>28</sup> 648 P.2d at 975.

<sup>29</sup> *Id.*

does she allege any moral, religious, or other objection to presenting a social security card. She does not claim that, if she is ever in the future required to present a social security card, it would be objectionable, burdensome or even inconvenient for her to so. She simply asks the court to assume that, if this set of uncertain contingencies comes to pass, she would suffer an injury as a result. But the court is not convinced that the set of assumptions and uncertain future contingencies posited by the plaintiff constitutes an injury-in-fact sufficient to give her standing under an interest-injury theory.

The court does not mean to say that a plaintiff could not show that he or she would be harmed by this requirement. But there has been no showing that this plaintiff has been harmed by or faces any reasonable threat of being harmed by this requirement in the future.

It is well established that the burden of establishing standing is on the plaintiff.<sup>30</sup> Because plaintiff has not made any factual showing that she has suffered or will suffer some injury-in-fact from the challenged regulation, the court must find that plaintiff lacks interest-injury standing.

#### B. Taxpayer-Citizen Standing

For citizen-taxpayer standing to exist, the case must be one of "public importance" and the plaintiff must be "appropriate in several respects."<sup>31</sup> The term "appropriate" here has three main facets. First, the plaintiff must not be a "sham plaintiff" with no true adversity of interest. Second, the plaintiff must be capable of competently advocating his or her position. Finally, even if the plaintiff is "appropriate" in the first two respects, he or she may still be denied

<sup>30</sup> See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

<sup>31</sup> *Trustees for Alaska*, 736 P.2d at 327.

standing if there is a plaintiff more directly affected by the challenged conduct who has or is likely to bring suit.<sup>32</sup>

**i. Issue of Public Importance**

The Alaska Supreme Court has recognized that issues concerning specific constitutional limitations should generally be considered sufficiently important to satisfy this requirement.<sup>33</sup> However, the Court has held that statutory and common law questions may also be important.<sup>34</sup> Thus, while plaintiff has asserted no constitutionally-based objection to the promulgation of 2 AAC 90.420, this is not determinative. The court must still inquire as to whether plaintiff's claim raises some non-constitutional issue of public importance.

There is little in the record on the issue of whether requiring a driver's license applicant to present a valid social security card or approved waiver is one of "public importance."<sup>35</sup> Nevertheless, plaintiff has alleged that 2 AAC 90.420 is essentially a legal presence requirement. Plaintiff has also alleged that the regulation brings the State of Alaska one step closer to full participation with the REAL ID Act of 2005. The court finds that these issues, which are implicit in plaintiff's cause of action, are ones of "public importance."

**ii. Proper Plaintiff**

Defendants argue that, even if plaintiff raises a question of public importance, she is not a "proper plaintiff" and therefore lacks taxpayer-citizen standing to pursue this suit.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 329 (citing *Carpenter v. Hammond*, 667 P.2d 1204, 1210 (Alaska 1983), *Gilman v. Marim*, 662 P.2d 120, 123 (Alaska 1983); *State v. Lewis*, 559 P.2d 630, 635 (Alaska 1977)).

<sup>34</sup> *Id.* (citing *Coghill v. Boucher*, 511 P.2d 1297 (Alaska 1973)).

<sup>35</sup> Plaintiff notes the fact that no one appeared at the public hearing on these regulations. Plaintiff's Opposition to Motion for Summary Judgment at 4, n.7. Though plaintiff argues that this shows the state's notice was inadequate, it may also indicate a lack of public interest in the issue. The court can reach no conclusion on this question.

Defendants note that, in order to be affected by the regulation, plaintiff would first have to have her current license revoked and then apply for a new license. Of course, as noted earlier, this is possible. However, as discussed above, plaintiff has failed to show that, in the event the regulation does apply to her in the future, it would do her any harm to have to present a social security card.

The requirement of adversity applies not only to interest-injury standing, but to taxpayer-citizen standing as well.<sup>36</sup> Indeed, when standing is predicated on issues of general public importance, the adversity requirement is crucial to insuring "that the issues are well presented" to the court.<sup>37</sup> A plaintiff has the burden of proving that he or she meets the requirements for citizen-taxpayer standing, including adversity. This burden is not a high one.

The plaintiff in this case alleges two facts personal to herself in her complaint: she is a resident of Alaska, and she is a licensed driver.<sup>38</sup> Nowhere in her complaint or in any of her pleadings on the summary judgment motions are any other facts personal to the defendant alleged or established. While one may speculate, from the tenor of her counsel's arguments, that she has personal feelings about the regulation or about the REAL-ID Act, the court is not enlightened about the nature of those feelings. In deciding a motion for summary judgment, the question is whether the plaintiff has established facts sufficient to meet her burden of showing standing. That question cannot be resolved based on speculation derived from the

<sup>36</sup> See, *Trustees for Alaska*, 736 P.2d at 330 n.9.

<sup>37</sup> *Id.* (quoting *Jenkins v. Swan*, 675 P.2d 1145, 1150-51 (Utah 1983) ("When standing is predicated on the assertion that the issues involve 'great public interest and societal impact,' we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions").

<sup>38</sup> Complaint at ¶12.

tenor of counsel's arguments. Rather, it must be assessed based on the facts. And, as noted, the only facts the court has about the plaintiff are that she is an Alaskan with a driver's license.<sup>39</sup>

One might ask whether there are classes of individuals more directly affected by this regulation than a generic Alaskan with a driver's license. Undocumented aliens who do not have a social security card, people without licenses (or with revoked licenses), people who have lost their social security cards, people who have chosen not to obtain social security cards and who would be burdened by the process of obtaining the required waivers, and people with religious, moral, or personal objections to having to produce their social security cards, would all be affected more directly by this regulation than a generic Alaskan with a driver's license. The court simply has no facts before it indicating that the plaintiff has a dog in this fight.

One can speculate that the plaintiff may fall within one of these classes – perhaps the last. But she has not established this or even alleged it. Indeed, she has told the court nothing whatsoever about herself which would enable the court to determine that she has the requisite adversity, or whether she is a sham plaintiff. Again, the court cannot base a finding that the plaintiff has met her burden of showing standing on speculation.

Any of the classes of individuals referred to above would be a more appropriate plaintiff. And there is no reason to believe any such person would not be likely to file suit if such a person objected to this regulation. Accordingly, this court cannot conclude that this plaintiff has taxpayer-citizen standing.


---

<sup>39</sup> Actually the court does not even know that, since there are only allegations in the complaint not established by affidavit.

**IV. CONCLUSION**

For the reasons stated above, defendants' Motion for Summary Judgment is granted.<sup>40</sup>

Entered at Juneau, Alaska this 29 day of January, 2008.

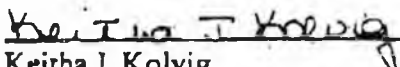
  
\_\_\_\_\_  
Philip M. Pallenberg  
Superior Court Judge

**CERTIFICATION OF SERVICE**

I certify that I served the following parties on the 29th day of January, 2008.

Mark Choate

Krista Stearns

  
\_\_\_\_\_  
Keitha J. Kolvig  
Professional Assistant to  
Judge Pallenberg

<sup>40</sup> This conclusion makes it unnecessary for the court to reach any of the remaining points raised in the Defendants' Motion for Summary Judgment or in the Plaintiff's Motion for Partial Summary Judgment.