

The Identity Project

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Testimony of Edward Hasbrouck for the Identity Project LD 160 – Ought to Pass

“An Act to Eliminate REAL ID Requirements in Maine”
Maine Joint Standing Committee on Transportation, April 15, 2025

Senator Nangle, Representative Crafts, and members of the Joint Standing Committee on Transportation:

My name is Edward Hasbrouck. I represent the Identity Project, a nonpartisan, nonprofit project focused on ID requirements and their impact on human rights.

The Identity Project has been active in research, Federal FOIA and state public records act requests, and investigative reporting on the implementation of the REAL-ID Act, including the national drivers license and ID database (SPEXS) which has been created to enable states to comply with the REAL-ID Act. Since the enactment of the REAL-ID Act in 2005, we have testified concerning REAL-ID Act legislation in California, Alaska, Montana, Minnesota, New Hampshire, and other states.

We urge that LD 160 ought to pass. This would end the attempt by the state of Maine to comply with the REAL-ID Act, and would enable the expungement of information about holders of Maine license and IDs from the SPEXS national database, where this data is vulnerable to abuse by both Federal and private entities with little or no transparency and without even the most basic data privacy rights for individuals.

Most Mainers would be surprised to learn that on December 15, 2024, the Maine Bureau of Motor Vehicles uploaded information about every holder of a Maine driver’s license or state ID to the SPEXS national ID database.¹ They would be more disturbed if they knew that the SPEXS national database is operated by a nominally “private” entity,

1. “Maine To Join State-to-State Verification Service and Driver History Record”, press release, American Association of Motor Vehicle Administrators (AAMVA), December 9, 2024, <<https://aamva.org/publications-news/aamva-news/maine-to-join-state-to-state-verification-service-and-driver-history-record-de0f08e3c5617d2f9fda693c6967e34a>>.

AAMVA, that is not subject to any Federal or state public records, public meetings, or privacy laws and that has no procedures for individuals to access, correct, or find out with what other Federal or private entities SPEXS records about them have been shared.

Driver licensing is a state, not a Federal, function. Compliance with the REAL-ID Act by the state of Maine or any other state is entirely optional.

The most important element of compliance with the REAL-ID Act, for a state that chooses to comply, is *not* the document requirements or the procedures for issuance of driver's licenses. The key element of compliance is the Federal statutory requirement that, "To meet the requirements of this section, a State shall ... Provide electronic access to all other States to information contained in the motor vehicle database of the State."²

The only available means by which a state can comply with this data sharing requirement is the State Pointer Exchange System (SPEXS) database. SPEXS was created by the American Association of Motor Vehicle Administrators (AAMVA) to enable states to comply with the REAL-ID Act, and contains an aggregation of driver's license and ID data uploaded by states that choose to participate.³ Not all states have chosen to participate in SPEXS. States that have not uploaded their residents' driver's license and state ID data to SPEXS, and which are therefore unable to comply with the REAL-ID Act, include California, Illinois, Connecticut, and Vermont, among others.⁴

Neither Maine nor any other state can comply with the REAL-ID Act unless it uploads data about all its licenses and IDs to SPEXS. The vulnerability to abuse of the SPEXS database, and AAMVA's lack of transparency and accountability in SPEXS governance and operation, should be central to debates on whether Maine or any other state should participate in SPEXS or comply with the REAL-ID Act.

Despite being composed of directors of state motor vehicle agencies as its members, AAMVA is considered a private, nongovernmental entity. As such, it's not subject to any Federal or state FOIA, public records, open meetings, or privacy laws.

AAMVA has actively sought to suppress our reporting about SPEXS, including threatening us with a lawsuit for copyright infringement after we posted a copy of the

2. REAL ID Act of 2005, Section 202(d)(12), <<https://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf>>.
3. "How the REAL-ID Act is creating a national ID database", The Identity Project, February 11, 2016, <<https://papersplease.org/wp/2016/02/11/how-the-real-id-act-is-creating-a-national-id-database/>>.
4. "IT Systems Participation Map, State to State (S2S) Verification Service", AAMVA, last visited April 13, 2025, <<https://www.aamva.org/it-systems-participation-map?id=576>>. The SPEXS database is a component of AAMVA's "S2S" system.

SPEXS specifications which AAMVA itself had posted on its own public website, but removed after we reported on what it revealed about the risks posed by this database.⁵

So far as we have been able to determine through many years of public records requests to participating state agencies and inquiries directly to AAMVA, including requests for AAMVA policies and for records about ourselves, AAMVA has *no* procedure in place through which an individual can request a copy of the record about themselves in the SPEXS database or request correction by AAMVA of errors in records.⁶

AAMVA's policy is to refer any request from an individual for access to, or correction of, errors in SPEXS records to the state to which AAMVA attributes the data. But that leaves individuals in a "Catch 22" situation if the error is AAMVA's own, or if AAMVA has mis-attributed the source of the data. AAMVA has established *no* procedure by which an individual can identify or correct AAMVA's own errors in SPEXS records.⁷

State agencies don't necessarily know what third parties, including Federal agencies, have obtained access to SPEXS records about their residents. Only AAMVA would be able to provide an individual with an accounting of disclosures of their records (as would be required by the Privacy Act if AAMVA were a Federal agency). But AAMVA categorically refuses to provide individuals with this information.

Neither individuals nor state officials in Maine or any other state know for sure to what third parties AAMVA has disclosed SPEXS data, including whether Federal agencies have obtained this data and ordered AAMVA not to disclose this fact to states.

SPEXS data about Mainers and residents of other participating states is thus a time bomb vulnerable to being weaponized by any current or future administration.

To give just one example of the ways SPEXS data might be misused, Mainers have since 2019 been able, on request, to have their gender identity (M, F, or X) recorded in Maine BMV records and on their Maine drivers license or ID.⁸

5. "What AAMVA doesn't want you to know about the national REAL-ID database", The Identity Project, October 10, 2018, <<https://papersplease.org/wp/2018/10/10/what-aamva-doesnt-want-you-to-know-about-the-national-real-id-database/>>.
6. "REAL-ID database still lacks basic protections", The Identity Project, November 21, 2018, <<https://papersplease.org/wp/2018/11/21/real-id-database-still-lacks-basic-protections/>>
7. "National REAL-ID database replicates problems with FBI rap sheets", The Identity Project, June 30, 2016, <<https://papersplease.org/wp/2016/06/30/real-id-national-id-database-replicates-problems-with-fbi-rap-sheets/>>.
8. "Gender Designation Form", Maine Bureau of Motor Vehicles, Form MVL-20, revised 11/04/2019, <<https://www.maine.gov/sos/sites/maine.gov.sos/files/content/assets/GENDER-20DESIGNATION-20FORM.pdf>>.

Now that Federal policy is for Federal records to indicate only sex as assigned at birth, regardless of current gender identity,⁹ there will be a discrepancy for many Mainers between the gender markers in Maine BMV records, including those uploaded to the SPEXS national ID database, and those in Federal records.¹⁰

This will affect all transgender and non-binary Mainers, as well as those Mainers who requested non-gendered “X” licenses or state IDs because they believe – rightly, we think – that sex or gender, regardless of how these terms are defined, are irrelevant to their ability to operate motor vehicles safely, which is the purpose of driver licensing.

If a Federal agency wants to identify all transgender or non-binary individuals and all those who have elected to have non-gendered state licenses or IDs, in order to punish or discriminate against these individuals and/or the states that have issued these ID documents, the easiest way to do so would be to get a copy of the SPEXS database and try to match it against Federal records to identify discrepancies in gender markers.

The only way to prevent this abuse of state license and ID records is not to upload them to SPEXS – which would preclude state compliance with the REAL-ID Act.

LD 1360 appears to be intended to partially mitigate this risk by creating the possibility for issuance of Maine licenses and IDs that do not comply with the REAL-ID Act. The problem with this is that the REAL-ID Act requires that in order to be compliant as a state or issue *any* compliant licenses or IDs, data about *all* licenses and IDs, including noncompliant ones, must be shared with all other states.

If LD 1360 is enacted, someone who requests a noncompliant Maine license or ID will probably think that they have “opted out” of having their information sent to the national REAL-ID database, but that won't be true. The “choice” seemingly offered by a “noncompliant” license is a misleading illusion. The only way to avoid uploading *all* Maine licenses and IDs to SPEXS is to opt out of REAL-ID compliance entirely.

LD 160 has bipartisan sponsorship for good reason. Privacy, civil liberties, and human rights should, by definition, be universals, not partisan issues. Mainers from different sides of the aisle may have different concerns about how AAMVA as an unaccountable and non-transparent organization, or the current or a future administration in Washington, might misuse or weaponize SPEXS data. But all Mainers should recognize that once license and ID information is uploaded to SPEXS, how it is used and

9. “State Department puts ‘X’ passport applicants in limbo”, The Identity Project, March 12, 2025, <<https://papersplease.org/wp/2025/03/12/state-department-puts-x-passport-applicants-in-limbo/>>.
10. “Guidance about Gender Designations on Maine Driver’s Licenses”, Maine Bureau of Motor Vehicles, Guidance as of March 3, 2025, <https://www.maine.gov/sos/sites/maine.gov.sos/files/inline-files/Guidance%20about%20Gender%20Designations%20on%20Maine%20Drivers%20Licenses_0.pdf>.

with whom it is shared will be out of the hands of either individuals or state officials.

Since the enactment of the REAL-ID Act in 20025, the main driver of REAL-ID compliance by states has been the threat that the Transportation Security Administration will someday “real soon now” (or maybe not for twenty years, or maybe never) try to deny passage through TSA checkpoints at airports to individuals without REAL-IDs.

The TSA is currently threatening to begin “full enforcement” of the REAL-ID Act on May 7, 2025. But does this mean that Mainers or others without REAL-ID will be, or legally can be, turned back at TSA checkpoint after that date? No, it does not.

The TSA itself has stated repeatedly, under oath, in litigation in which the Identity Project and individuals we support have been involved, that *no* Federal law or regulation requires airline passengers to have, carry, or show, *any* ID.¹¹

Nothing in the REAL-ID Act changes this. The REAL-ID Act specifies *which* IDs Federal agencies may accept, in circumstances in which the law requires individuals to show ID. Air travel by common carrier within the U.S. is not such a circumstance.

The TSA has twice, under different administrations, given notice of plans to seek approval of a form for individuals flying without ID to complete. These notices have been premised on the false assumption that ID is required by law to fly. Each time, the TSA has abandoned the request for approval of the form after the Identity Project and others objected that the proposals were contrary to existing laws and Constitutional rights.¹²

The TSA doesn’t have to “accept” non-compliant ID, but it can’t legally stop you from flying just because you don’t have ID. People legally fly without ID every day, for a variety of reasons, including that they don’t have ID, they’ve had difficulty getting ID, their ID is in the process of being renewed, or their ID was lost, stolen, or forgotten.

Years-delayed responses to our FOIA requests to the TSA show that, as of 2016, almost 2,000 people a day were allowed through TSA checkpoints at airports nationwide

11. See e.g. *State of New Mexico v. Phillip Mocek*, <<https://papersplease.org/wp/mocek/>>, in which a TSA witness testified that, “It [flying without ID] happens all the time. We have a procedure for that”, and *Gilmore v. Gonzales*, in which the 9th Circuit Court of Appeals found, based on the TSA’s own submissions, that, “Gilmore had a meaningful choice. He could have presented identification, submitted to a search, or left the airport. That he chose the latter does not detract from the fact that he could have boarded the airplane had he chosen one of the other two options.” <<https://papersplease.org/gilmore/dl/GilmoreDecision.pdf>>.
12. “IDP comments on TSA proposal to require ID to fly”, The Identity Project, January 9, 2017, <<https://papersplease.org/wp/2017/01/09/idp-comments-on-tsa-proposal-to-require-id-to-fly>>; “TSA tries again to impose an ID requirement to fly”, May 19, 2020, <<https://papersplease.org/wp/2020/05/19/tsa-tries-again-to-impose-an-id-requirement-to-fly>>.

with no ID or with ID that was deemed “unacceptable”.¹³ TSA incident logs released in response to our FOIA requests show that 98% of travelers who showed up at airports without ID or with “unacceptable” ID were allowed to fly after undergoing additional questioning and/or searches (“screening”).

The REAL-ID Act doesn’t change this. According to the latest TSA statement:¹⁴

“Passengers who present a state-issued identification that is not REAL ID compliant and who do not have another acceptable alternative (e.g., passport) can expect to face delays, additional screening and the possibility of not being permitted into the security checkpoint.... TSA ... will continue with additional screening measures for those without a REAL ID until it is no longer considered a security vulnerability.”

This doesn’t say that individuals without REAL-ID, or without any ID, will be prevented from flying. All it says is that these individuals will be subjected to “additional screening” (which of course may occasion delay) and the “possibility” of not being permitted into the checkpoint (i.e. if they don’t agree to submit to additional searches).

If individuals without ID or with “noncompliant” ID – including Mainers if Maine opts out of compliance with the REAL-ID Act – are prevented from exercising their right to travel on Federally licensed common carriers, both these individuals and the state of Maine would have cause to challenge the infringement of their rights.

Don’t be intimidated by legally baseless Federal threats to punish Maine and Mainers. All Mainers have, and will continue to have, the right to fly with any or no ID.

We urge you to support LD 160, withdrawal by Maine from AAMVA’s S2S system, and expungement of Mainers’ personal information from the SPEXS database.

I’m sorry that I’m unable to be with you in person and will testify remotely at your hearing on April 15th. I would be happy to speak with members of the Committee and other members of the legislature, and/or to come to Augusta in person for your work session on these bills (LD 160 and LD 1360) if that would be helpful.

Respectfully submitted,

Edward Hasbrouck

13. “How many people fly without REAL-ID?”, The Identity Project, March 15, 2022, <https://papersplease.org/wp/2022/03/15/how-many-people-fly-without-real-id/>.

14. “TSA Begins REAL ID Full Enforcement on May 7”, press release, Transportation Security Administration (TSA), April 11, 2025, <https://www.tsa.gov/news/press/releases/2025/04/11/tsa-begins-real-id-full-enforcement-may-7>.