



Written by [Joe Wolverton, II, J.D.](#) on January 10, 2014

Ohio Refuses to Enforce REAL ID Standards

“Your papers, please.”



This is a phrase that Americans should get used to hearing.

In April, the Department of Homeland Security (DHS) reportedly will begin enforcing the REAL ID Act, a measure requiring Americans to produce federal government-approved identification upon demand.

In order to ensure that all Americans carry the national ID card, the REAL ID Act establishes standards for driver's licenses that must be met by states. DHS reports that to date 21 state governments have complied with the federal mandates.

One of those states, however, has now backed out of the REAL ID program.

Ohio's [Columbus Dispatch](#) reports:

Privacy concerns have scuttled state plans to meet all federal “Real ID” standards, which could result in Ohio driver's licenses not being accepted as sufficient identification to board airplanes and enter federal buildings.

The Ohio Bureau of Motor Vehicles decided about five months ago to back off the Real ID compliance plan approved by the federal Department of Homeland Security, but it never made a public announcement about the change.

Ohio state officials take issue with Homeland Security's demand that all relevant personal data, including birth certificates and medical records, be stored and shared with the federal agency.

The Buckeye State also rejected the federal government's offer of facial recognition software that will scan license photos making it possible to track people forever, even if they change names or addresses. Of course, as this “one-person one license” standard is a federal program, every individual who carries a state-issued ID will be able to be tracked no matter where they go in the United States.

“The objection is that it's not acceptable in many circles in Ohio to do facial recognition on everyone who comes in to get a license,” said Joe Andrews, spokesman for the Ohio Department of Public Safety, as reported by the *Dispatch*. “People have concerns we are trampling their rights if we do this,” Andrews added.

Remarkably, similar concerns have been expressed by lawmakers on Capitol Hill, as well.

In an [op-ed published in the Washington Times](#) last May, Senator Rand Paul (R-Ky.) evoked the images of dictatorships of the past and their citizen registration policies:

Forcing Americans to carry around an identification card to affirmatively prove citizenship offends our basic concept of freedom. Wanting to avoid a “papers please” culture in our country is also why conservatives oppose federal universal gun background checks. We oppose such measures not because we don't believe in common-sense rules or regulation — but because we are wary of giving the federal government this kind of centralized power over our daily lives.

These draconian ideas would simply give government too much power.

Consolidating immense power is the true purpose of the REAL ID Act, and Ohio is right to refuse to cooperate in the scheme. In fact, other states should follow suit and force the federal beast to stay inside its constitutional cage.



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It is this refusal to go along with unconstitutional federal programs that James Madison recommended as a way to maintain state sovereignty.

States, Madison said in *The Federalist*, No. 46, possess a “means of opposition” to federal overreach: “refusal to cooperate with the officers of the Union.”

About 10 years later, Madison said that states have not only the right to resist encroachments of the federal government, but also an obligation to do so. “In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them,” Madison wrote in the Virginia Resolution of 1798.

Article VI of the Constitution places state legislators under an oath “to support this Constitution.”

We, the people, must demand that our representatives in the state assemblies abide by their oath of office by refusing to enforce all unconstitutional acts of the federal government within the borders of the several states. This is the foolproof, fail-safe means of resistance known as nullification.

The first step in keeping the federal government from consolidating all power in Washington is to remember that any act of Congress, bureaucratic regulation, or executive order that exceeds the constitutional limits on federal power has no legal effect. States can — must — courageously refuse to enforce those acts using the historically, legally, and constitutionally sound principle of nullification.

Simply stated, nullification recognizes the right of states to invalidate any federal measure that a state deems unconstitutional. The right to nullify federal usurpations comes from the fact that the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the federal government to enact laws that are applicable to states and their citizens.

Although DHS refused to comment directly on Ohio’s decision (or that of the two dozen additional states that have enacted some degree of REAL ID-nullifying bill), a spokeswoman told the *Dispatch* that the Obama administration is “committed to working with each jurisdiction to support their efforts to meet its secure driver’s license requirements.”

Undoubtedly, there will be a rude awakening for citizens of states that fail to comply with the REAL ID standards. DHS will surely order its minions patrolling the country’s airports to forbid anyone without federally approved identification to board planes. This, in turn, will put additional pressure on state governments to give in to federal pressure to participate with the national ID program. This acquiescence will then lead to the mass uploading of personal information to federal databases.

The idea that somehow federal law trumps state law is very popular, even among self-described “conservatives.” The media and public schools have been very successful in perpetrating this incorrect interpretation of one clause of Article VI.

The “Supremacy Clause” (as some wrongly call it) of Article VI does not declare that federal laws are the supreme law of the land without qualification. What it says is that the Constitution “and laws of the United States made in pursuance thereof” are the supreme law of the land.

Read that again: “in pursuance thereof,” not in violation thereof. If an act of Congress is not permissible under any enumerated power given to it in the Constitution, it was not made in pursuance of the Constitution and therefore not only is not the supreme law of the land, it is not the law at all.

Constitutionally speaking, then, whenever the federal government passes any measure not provided for



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in the limited roster of its enumerated powers, those acts are not the final word. Instead, they are “merely acts of usurpation” and do not qualify as the supreme law of the land. In fact, acts of Congress are the supreme law of the land only if they are made in pursuance of its constitutional powers, not in defiance thereof.

Alexander Hamilton put an even finer point on the issue when he wrote in *The Federalist*, No. 78, “There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid.”

State efforts to fight the federal “your papers please” agenda are praiseworthy, but more needs to be done. Americans should wage this battle on many fronts, including demanding that their representatives in Washington, D.C. repeal the REAL ID Act in advance of its full implementation (scheduled for sometime in 2015).

There isn’t a single syllable in the Constitution giving Congress (or any executive branch department) the authority to create a national ID card or develop facial recognition software that will make it possible to follow people from state to state, and so the REAL ID Act is ripe for repeal.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, the Second Amendment, and the surveillance state. He is the co-founder of Liberty Rising, an educational endeavor aimed at promoting and preserving the Constitution. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com



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