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**COMMENT:** ARE YOU READY FOR A NATIONAL ID CARD? PERHAPS WE DON'T HAVE TO CHOOSE BETWEEN FEAR OF TERRORISM AND NEED FOR PRIVACY

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**SUMMARY:**

... Scenario One: Assume an individual's health, wealth, education, criminal record, and location are all linked to one established national identification card. ... At the same time, a national identification card may also significantly invade the privacy of Americans, as well as visitors. ... Privacy is the strongest and most prevalent argument against implementing a national identification card. ... A national identification card can both facilitate database matching and provide reliable identification cards. ... Database matching is maximized when all the information is fed into one centralized database and then one national identifier is used to store the information or to access the information. ... A national identification card implemented without safeguards or an awareness for its potential abuse will likely lead to the erosion of what is left of our privacy. ... Germany maintains a national identification card and long-standing privacy laws. ... South Africa, which maintains a national identification card, also provides its citizens with substantive privacy rights. ... Implementing a national identification card with rigorous safeguards can provide the means to attain greater national security without costing individuals privacy. ... There are two components necessary to national security that must exist for effective implementation of a national identification card: database matching and reliable identification. ... Since a driver's license falls within that description, its use as a national identification card will not likely violate the Fourth Amendment. ...

**HIGHLIGHT:** [\*287]

We're likely to experience more restrictions on our personal freedom than has ever been the case in our country.

Supreme Court Justice Sandra Day O'Connor,

September 28, 2001 referring to the aftermath of the terrorist attacks n1

**TEXT:**

Scenario One: Assume an individual's health, wealth, education, criminal record, and location are all linked to one established national identification card. An airline attendant who requests a traveler's ID card for verification may potentially access his Federal Bureau of Investigations (FBI) record, perhaps the last drug prescription he filled, and how much interest his Money Market account earned last month within a few seconds. A manager of an apartment complex who requests an applicant's ID card for credit verification may know the applicant's entire criminal record, including how long he was detained for drinking alcohol when he was sixteen years old, and whether he has ever donated to the NRA. The manager may also be able to access his exact earnings over the past ten years, his cell phone bill last month, and how much he spent during the holiday season on his credit card. Even if the manager or attendant does not have access to this information, the government does. In fact, the government knows much more, including every purchase he has made and every email he has sent. However, when and how the government is watching him and his activities is unknown to him.

**[\*288]**

Scenario Two: Assume a national identification card has not been implemented. Consider that with the use of a national identification card, the FBI would be able to synthesize effectively information using one common identifier and use the card as a highly reliable form of identification. This tool facilitates the FBI's ability to fulfill its searches effectively and efficiently. Through the use of the card, it is able to track the whereabouts of a potential terrorist and listen to his telephone conversations. It has the capacity to tap into his financial profile and receive notification if he purchases weaponry, bomb-making tools, anthrax, crop-dusting planes, or flight manuals. However, since a national identification card was not implemented, the means by which to monitor such suspicious behavior is absent, and that individual may be linked to the next terrorist attack. Perhaps the next attack will be a plane that crashes into the Centers for Disease Control and Prevention (CDC), the contamination of the water system, or the reintroduction of smallpox.

Americans may soon have to decide which of the above scenarios makes them more uncomfortable. The possibility of introducing a national identification card into the United States was debated before Congress on November 18, 2001, n2 only two months after the World Trade Center attacks ("WTC attacks"). At the conclusion of the debate, Representative Horn stated the debate concerning implementation of national identification cards would be **[\*289]** the first of on-going discussions, and that "ultimately we can trust the American people and their representatives to make the right decision." n3

The issue of introducing a national identifier in the form of a card has been debated before. In 1998, Congress held a hearing to discuss the issues involved in implementing a national identification card but chose not to adopt it at that time. n4 The issue has resurfaced with vigor and has been a hot topic since the attacks on September 11, 2001. n5 The current debate has been described as "jolting" because Americans have resisted a national identification card through World War I, World War II, and the Cold War, during which enemies within the country were feared as much as enemies outside of the country. n6 Nevertheless, following the WTC attacks, many sources have returned to the issue, and it is now more likely than ever that it will be implemented. n7

**[\*290]** Since the hearing in November 2001, further debates and discussions have developed both domestically

and internationally. Congress has held hearings on biometric identifiers and other aspects of the card. n8 The Department of Motor Vehicles, in conjunction with the fifty states, have agreed to "upgrade" current driver's licenses in some way until a decision is made about the issue. n9 The United Kingdom, the Philippines, and the Netherlands have all begun to consider seriously adopting national identification cards. n10

Implementation of the card raises two fundamental issues: security and privacy. The identification card can significantly improve national security by providing reliable verification, as well as a common denominator through which agencies can cross-reference their information. The hijackers involved in the WTC attacks boarded the planes using driver's licenses. n11 The ease with which the hijackers fraudulently obtained them unnerved government officials and the American people. n12 If driver's license bureaus had more rigorous means of ensuring accurate identification and had such identification been cross-referenced with watch-lists, the terrorists would likely have not been able to [\*291] board the planes. n13 Such verification in the future may prevent further terrorist attacks in the United States. n14 A standardized tamper-proof identification card used by citizens, residents, and visitors n15 containing personal information about the cardholder would facilitate this verification and the ability to create watch-lists.

At the same time, a national identification card may also significantly invade the privacy of Americans, as well as visitors. If every individual's biometric features (picture, fingerprint, retinal scan, etc.), criminal records, financial records, health records, and travel patterns were recorded in one massive centralized database, our level of privacy would be significantly diminished. A centralized database would make it exceedingly easy for the federal government to monitor and potentially to control our activities, and it would likely violate constitutionally protected privacy rights.

Despite this seeming conflict, this Comment seeks to show that implementing a national identification card in the United States for the purpose of meeting our security goals need not cost us our privacy. A delicate balance must be struck between security and privacy interests. This balance takes the form of a decentralized, nationally standardized, biometrically encoded driver's license, with which safeguards are implemented to protect privacy.

To show why such a card is needed and how it should be implemented, this Comment leads the reader through general background regarding identification cards, arguments for and against implementing a national identification card, and finally proposes a solution that balances security and privacy issues. Part I includes an [\*292] explanation of the different forms the card may take, an analysis of the current uses of similar cards around the world, and the history of identification cards and the previous attempts to nationalize them in the United States. Part II examines the arguments against implementing a national identification card. This includes a detailed look at civil liberty issues and the constitutional implications of a national identification card. It also incorporates an examination of other prevailing issues. Part III discusses arguments in favor of implementing the card, which includes security and enforcement benefits. Finally, the Conclusion proposes a solution to the diverging interests of opponents and proponents of the card, namely a balance between security and privacy. To support this solution, the Comment first explains rejoinders to the arguments against implementing a national identification card. Second, the elements of the solution will be delineated and examples from other countries will be offered to support each element.

## I. Background and History of ID Cards

### A. National Identification: Types and Security Benefits

National identification can take many forms, such as booklets, papers, certificates, and cards. n16 The most common type of identification is a plastic card, which is approximately the size of a credit card and can delineate a range of information. n17 Some contain magnetic strips, bar codes, or computer chips, and all can potentially contain a vast amount of information about the cardholder. n18

[\*293] An identification card can have tremendous security benefits as a result of combining and encoding information about the cardholder onto the card. Digital technology makes the combining or encoding of necessary information on the card possible and simple. n19 Credit card information, bank information, airline activity, Internet

activity and ISP computers are all built on digital technology, thus combining their data is relatively easy. n20 Data-combining facilitates massive surveillance efforts and provides law enforcement agencies with comprehensive information about a cardholder. n21 Using the card, the FBI could potentially detect suspicious patterns of conduct, such as the purchase of dangerous chemicals days after visiting a crop-dusting Web site or consistent purchase of bomb-making materials. n22

Information that may be encoded onto the card includes biometric data. n23 Biometric data is a type of password that is connected to one's biological features, such as fingerprints, palm prints, optical scans, facial recognition scans, or voice recognition scans. n24 Biometric features [\*294] replace the written or numerical password. n25 Unlike simple passwords, for which an individual must physically or orally enter a password, biometric identification can work passively, so that an individual's biometric features may be screened without her knowledge and information may be accessed through those features without her ever knowing or approving of the access. n26 This was demonstrated at a previous Super Bowl, during which the entire crowd was scanned in search for particular faces without the targets' knowledge. n27

## B. Current Uses Around the World

In an effort to understand the potential benefits and problems a national identification card may pose in the United States, it is crucial to examine the use of national identifiers in other countries. Determining which other countries use national identifiers, the forms which those identifiers take, the reasons for establishing those identifiers and whether these countries have attained their goals will aid in determining whether the United States should establish a national identification card.

### 1. Identification Card Systems in Various Countries

Approximately one hundred countries in the world currently have a national identification card. n28 The use of national identification cards is not exclusive to any particular region of the world, but rather is used on virtually every continent. n29 European countries, n30 such as [\*295] Germany and France; Asian countries, such as Singapore and Thailand; African countries, such as South Africa; and South American countries, such as Argentina and Nicaragua n31 all make use of national identification cards. n32

Of the countries that have not yet implemented national identification cards, many have been taking steps to begin the process. n33 Many of those countries are concentrated in Africa, such as Ethiopia and Namibia, and others in Latin America, such as Ecuador and Mexico. n34 The prevalent movement towards national identification cards indicates that few countries in the new millennium will not have them. n35

It is interesting to note that virtually no common law country has a national identification card. n36 However, almost all of them have either health cards, social security cards, or some type of required paper identification. n37 Conversely, the vast majority of developing countries n38 have a formal national identification system, whether in the form of a card or a document system. n39

[\*296]

### 2. Reasons Justifying Identification Card Systems

Countries have established national identifiers for a variety of reasons. The primary purpose for using national identifiers has been to increase the internal police power of that country's government. n40 To effectuate this purpose, some countries, such as China and Pakistan, have used the identifiers to profile race, political views, and religions. n41 In other countries, such as Denmark, it is used to fight crime, fight tax evasion, and establish social welfare. n42 Others, such as Finland, have implemented the cards for the sake of improving overall government efficiency, streamlining expenses, and facilitating travel. n43 Another major reason which has led many countries to introduce a national

identifier is to maximize state security and demonstrate to the United States and other Western countries that steps are being taken to control terrorism, in order to facilitate the supply of foreign aid to these countries. n44

### 3. Information Typically Included on Identification Cards

As the uses for the identifiers vary by country, so does the information they contain. The key element of most cards is usually an assigned number. n45 Information on cards of almost all developed countries include: name, sex, date of birth, national number, and a signature. n46 Most of those cards also include a photograph and a finger print. n47 In Brazil, the card contains the full name, parents' names, national status, photograph and serial number of the card [\*297] holder. n48 In Pakistan, a similar card contains much more information, including the father's name, government official's signature, and physical marks of identification. n49

### 4. Changes Since WTC Attacks

Several countries that do not have national identification cards have considered implementing them since the WTC attacks. n50 In particular, the United Kingdom has introduced a limited mandatory identification card used only for schools, hospitals, and other public services as of September 30, 2001. n51

The United Kingdom's decision about implementing a card is particularly significant to the decision in the United States because of the similar history and issues facing the two countries. Like the United States, the United Kingdom is a common law country with a history of receiving immigrants from all over the world. Additionally, the United Kingdom has had a similar history of rejecting the use of a national identification card. After World War II, the United Kingdom established a national identification card to facilitate identification of aliens. n52 However, shortly after it was established, it was abandoned. n53 Though [\*298] several subsequent attempts to reestablish the card have failed, n54 the Home Office has been secretly creating a prototype for a national identification card since 1999. n55 The project had progressed to the point that the technology was ready for use, and the Home Office simply awaited the right opportunity to recommend it to the Britons. n56 The events of September 11th created an ideal opportunity. n57

## C. History of National Identification Cards in the United States

### 1. History of Attempts to Implement a National Identification Card

Like the United Kingdom, the United States has also had a history of suggesting and rejecting national identification cards. Though the United States has never had a national identification card, the closest form to one is the Social Security number (SSN). In 1935, the Social Security card system was created for the sole purpose of assigning numbers to employees such that the Treasury Department could properly account for the contributions made to the Social Security Fund. n58 To appease civil libertarians, [\*299] Congress insisted the number would not be used for identification purposes. n59 Despite Congress' promise, many have made attempts to extend the use of the Social Security card into a national identifier. n60 All such attempts have failed thus far. The Carter, Reagan, and Clinton administration have all stressed their opposition to turning the SSN into an identifier. n61 Nevertheless, the events of September 11th may finally prompt Congress to break its original promise.

### 2. Current Forms of Identification: Social Security Cards and State Driver's Licenses

Many believe that the Social Security Card and the State Driver's License already function as national identification cards in the United States. Tracking the progressive use of the SSN shows that it has been used as a pseudo-identifier. n62 Since 1935, the SSN has been placed on many State drivers' licenses and used as the means by which to access numerous government services, such as attending public universities or filing taxes. n63 Moreover, an astounding number of federal agencies, unrelated to the [\*300] Social Security Administration, currently use the SSN to identify individuals. n64

Another form of identification that closely resembles the national identification card is the current State driver's license. n65 A license, issued for the purpose of identifying those individuals who are permitted to drive legally, is routinely used to verify identity. n66 It is used for general verification purposes in airports, banks, nightclubs, n67 and secured buildings, as well as for the purposes of buying liquor, buying cigarettes, or registering to vote. n68

### 3. Recent Proposals for National Identification Cards

As of a year following the WTC attacks, three forms of national identification cards have been proposed in Congressional hearings and to the Office of Homeland Security: n69 the "smart card", a traveler identification card, and a standardized driver's license. n70 The "smart card" is an identification card which allows government officials to store and access detailed personal data. n71 Information from [\*301] numerous federal agencies, such as the CIA, FBI, and IRS, as well as information from some state agencies, such as police departments, would be collected and stored on a centralized database. With this card, the government would also be able to track those holding visiting and student visas and to alert officials when someone is residing illegally. n72 It would also be able to track closely the activities of those citizens and legal residents who enter highly sensitive facilities, such as nuclear power plants, or the CDC. n73 The smart card would initially be created with the intention of tracking foreign visitors and would later be imposed on all residents and citizens. n74

The second card recommended is the traveler identification card, focusing on tracking passengers. All individuals boarding planes would be required to carry the card. n75 It would contain a picture, fingerprint, flight history, phone number, and address of the traveler. n76 It would also be linked to government databases, which include arrest and criminal records, intelligence information, immigration files, and financial data. n77 Those who undergo extensive personal background checks to attain the card would experience fewer delays while traveling. n78

The third form of identification suggested is a nationally standardized driver's license. n79 Every license and non-[\*302] driver identification card would contain the same basic information and a similar set of tamper-proof security features. n80 The head of the Motor Vehicle Administrators task force on security has recommended that instead of the 200 forms of valid driver's licenses currently available, driver's licenses should have only one form. n81 Such a card would include standard driver's license information, and may include security features, such as magnetic strips, computer chips, and biometric information. n82 The card would also link all Department of Motor Vehicles (DMV) databases and transfer such information in real time. n83

This form of identification has several benefits. Most importantly, the card would remedy the current difficulty of verifying out-of-state licenses. n84 It would also prevent license shopping n85 and duplicate driver's licenses. n86 Additionally, the card would prevent criminals from traveling from one state to the other committing crimes without being caught, because state information would be shared. n87

In each of these forms of the card, information from a variety of databases would be linked together to ensure the individual is properly identified and information suggesting danger, such as belonging to extremist or violent groups, is made available to appropriate individuals. n88 Moreover, [\*303] biometric data may potentially be encoded easily into anyone of the above-mentioned forms. n89

## II. Arguments Against Implementing a National Identification Card

### A. The Privacy Argument

Privacy is the strongest and most prevalent argument against implementing a national identification card. Privacy is the ability to choose how and to what extent one will expose herself, her attitude, and her behavior towards others. n90 It encompasses the ability to prevent others from acquiring, using, storing, and sharing personal information about oneself. n91 Privacy is always an element of debate for implementing national identification cards, because the more bits of information about a person consolidated in one card and accessed by others, the more privacy is threatened, and

therefore, the more likely that constitutionally protected privacy rights will be abused or violated. n92

[\*304]

### 1. The Importance of Privacy

Understanding the importance of privacy to our person and to the preservation of democracy is a crucial part of deciding whether and how much of our privacy we are willing to give up as Americans. This section will explain why privacy is inherently important, how the value of privacy has been recognized globally, and why it is particularly important in a democracy.

"Privacy is one of the personal attributes that most people [innately] cherish." n93 We have an instinctive desire to protect ourselves from being overly exposed. We naturally seek to control who knows us personally, who may get to know us well, and who has personal/private information about us. n94 "From a philosophical perspective, privacy is necessary for the mental, physical, and spiritual well-being of all individuals... . It is essential for all forms of creativity. It enables the individual to achieve his self-imposed goals. It is required for love, friendship, and trust to grow." n95

Privacy has been recognized globally as a fundamental right. n96 The law of privacy has can be traced back as far as the 1300's, n97 during which the English legislature passed laws protecting the privacy of individuals. n98 Centuries later, the United Nations formally set the standard for international privacy stating, "no one should be subjected to arbitrary interference with his privacy ... . Everyone has the right to the protection of the law against such [\*305] interferences." n99 Moreover, the European Commission of Human Rights and the European Court of Human Rights have led an active role in the enforcement of privacy laws. n100 Numerous international treaties have also incorporated privacy protections. n101

Privacy is a particularly vital element of a democracy. The framers of the United States Constitution recognized privacy as an essential element of an enduring democratic society. n102 They explicitly gave citizens the right to be free from government intrusion in the Fourth Amendment and implicitly protected privacy rights in other parts of the Constitution. n103 The courts of the United States have likewise recognized the importance of protecting privacy and have referred to it as one of the highest orders in our democracy. n104

[\*306]

### 2. Constitutional Implications

Potential privacy intrusions associated with establishing a national identification card have strong constitutional implications. Though the Constitution does not directly refer to the right to privacy, the Supreme Court of the United States held that it is protected in the substantive due process of the Fourteenth Amendment n105 and in the Fourth Amendment. n106 Moreover, the concerns of privacy of individuals and freedom from government intrusions are reflected in the Declaration of Independence, as well as colonial debates and writings. n107

In *Griswold v. Connecticut*, n108 the United States Supreme Court first recognized the right to individual privacy as a fundamental right through the Substantive Due Process Clause of the Fourteenth Amendment of the Constitution. n109 The court held the guarantees of the Bill of Rights and its penumbras create a zone of privacy, which must be protected. n110 In 1997, the case of *Washington v. Glucksberg* n111 reinforced this reasoning. The Supreme Court again examined whether the Constitution protected a right to privacy based on whether it was deeply rooted in the nation's history and traditions. n112

In *Lawrence v. Texas*, decided this past session, Justice Kennedy, writing for the majority of the Court wrote:

[\*307]

Liberty protects the person from unwarranted government intrusions into the dwelling or other private places. In our tradition the State is not omnipresent in the home. And, there are other spheres of our lives and existence, outside the home, where the State should not be a dominant presence. Freedom extends beyond spatial bounds. Liberty presumes our autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. n113

A centralized n114 national identification card will likely have serious Fourteenth Amendment implications. It is deeply rooted in our history to protect private and detailed information about our person from being easily accessed by the government and especially by private corporations, such as airlines. Combining government databases, such as the US Census, the Social Security Administration, the DMV, and the Department of Treasury would provide an almost unfathomable amount of explicit information about almost every activity of one's life. If this information is collected in one centralized federal database, access to this information will become dangerously easy, thus violating Fourteenth Amendment rights. Opponents of the national identification card argue the mere potential of the government's ability to track and control the activities of citizens and lawful residents threatens our deeply rooted notion of freedom, thereby implicating the Fourteenth Amendment. n115

The Fourth Amendment also protects personal privacy by ensuring law enforcement and other government officials do [\*308] not subject individuals to improper invasion. n116 It essentially protects the privacy of individuals "in their daily routine." n117 To evaluate the extent to which government agents may search, watch, monitor, and record individuals in their activities, the Supreme Court has been compelled to weigh the value of privacy and the need for security of citizens. n118 In particular, the courts have struggled with the extent to which law enforcement agents may use sophisticated technology in their investigations. n119 The trend of the courts has been to test/evaluate the legality of law enforcement activities based on the technicalities of their searches. n120 In other words, the location of the search and the means by which information was acquired has determined whether the search was legal. n121 The concern of the intrusive means by which information is attained is balanced against the extent to which those activities invade well-defined privacy interests. n122 Those privacy interests are the "right of an individual to be left alone to live his daily life secure against arbitrary invasions by government officials." n123

[\*309] If the Supreme Court uses the test which evaluates privacy interests, n124 as it should, then the argument against the introduction of the card would be as follows: the Fourth Amendment requires the court to control extensive invasion of privacy. n125 Sophisticated technology, such as centralized national identification cards, will enable law enforcement to monitor every facet of an individual's life. Law enforcement's use of such technology is a severe invasion of privacy. n126 Thus, the introduction of such a card is not constitutionally permissible, unless strict limitations on law enforcement's use of the card's information are implemented in conjunction with it.

If the Supreme Court continues to use the test that evaluates the means by which law enforcement gathers information, n127 then significant changes will have to be made in U.S. law in order to provide individuals with sufficient privacy protection. Otherwise, as the test currently stands, a massive void exists in privacy protection. Gathering any type of information and even constant monitoring of an individual can be executed without ever approaching the individual, his dwelling, or even tapping his lines. It is so passive that it would easily pass a test based on the level of intrusion/invasion which the means of gathering information imposes. If permitted, such surveillance "makes the police omniscient, and police omniscience is one of the most effective tools of tyranny." n128 Such power is unacceptable in our form of democracy and does not comport with the purpose of the Fourth Amendment to prevent invasion of law enforcement.

[\*310]

#### B. Related Arguments

While privacy and constitutional implications are the major concern of those who oppose the national identification card, other relevant and closely related issues have been discussed in Congressional hearings and among lawmakers. n129



First, history has shown us government officials have abused identification systems and databases in times of crisis. n130 The government has a track record of using its authority to misuse the information with which it is provided in times of crisis. n131 During such times, acts of illegal immigration, imminent threats of terrorism, and drug trafficking have trumped the importance of our basic civil liberties and privacy rights. n132 In World War II, the highly confidential information of the Census Bureau was used to help locate Japanese-Americans and forcibly move them to camps. n133 During the Vietnam War, the FBI used the confidential information in the National Crime Information Center to monitor those who were opposed to the war. n134 Likewise, a common identifier provides a tremendous temptation for government agencies to use the linked data for uses for which the identifier was not intended, thereby imposing a major threat to privacy. n135

[\*311] Secondly, one's privacy is put at extraordinary risk if the card is stolen. When someone's SSN is stolen, a thief can destroy a victim's credit-rating for life. n136 With only a SSN, a thief can open credit card and bank accounts in their name, access their current accounts, and retrieve their private information over the Internet. n137 A national identification card, through which much more information is available, will augment this form of intrusion significantly. n138

Thirdly, if authorities come to depend heavily on the card and the card is fraudulently duplicated, significant damage could be done. n139 For example, if a "traveler card" allows travelers to endure far less scrutiny on trains and planes, then a terrorist who obtains a duplicate will enjoy the same benefits. n140 If a "smart card" permits easier access to heavily secured areas, a terrorist who duplicates that card will attain the same access. This could potentially nullify the benefits of the card. n141

Fourthly, discrimination and racial profiling are potentially dangerous side effects of implementing national [\*312] identification cards. A card which identifies an individual's ethnicity, race or religion could make it particularly easy and tempting for the government to profile, detain, or abuse suspects who belong to a targeted group. n142 In France, the police have been severely criticized for using their identification card to discriminate against Blacks and Algerians. n143 Identification cards played a significant role in facilitating the expulsions of tens of thousands of persons of particular ethnicity from Bhutan in 1991 and Ethiopia in 1998. n144 Similarly, a card that identifies an individual's employment status, health status, or level of education may be used to give privileges to some and deny opportunities to others.

Finally, the card may threaten a defining and important aspect of American culture. The United States has been given a reputation of being the land of freedom and opportunity. This is rooted in the American ideology that those who want a chance to start over, work hard, seek opportunity, and answer only to their own community should be able to do so. n145 If one national database is created, then Americans will be under the constant watchful eye of the government. n146 The ability to "make a fresh start" in life is lost, along with any sense of anonymity in society and the ability to define one's own place and role in society. Such an outcome undermines the American [\*313] culture of opportunity and freedom for which its people have much pride. n147

Invasion of privacy, constitutional implications, historical examples of abuse, risk of theft, duplication, and discrimination, and the threat to particular American ideologies all pose significant problems that must be addressed in the debates of implementing a national identification card.

### III. Arguments for Implementing a National Identification Card

Privacy interests must be balanced against security needs. Prior to the WTC attacks, accurate identification was sought to prevent illegal immigration because such immigration threatened to increase our unemployment rate, decrease available governmental benefits, and deplete our educational resources. n148 However, as of September 11, 2001, using secure identification may also mean preventing national crises. n149 Our need to identify those who enter the United States, manage those who overstay their welcome, and be alerted to terrorist-like patterns of activity has taken on a new level of urgency. These security goals can be met with the use of a national identification card. The greatest security

benefits of the card are facilitation to monitor suspicious activity, creation of accurate watch-lists, and formation of a reliable method of identification.

There are two essential components of national security in the context of preventing terrorism: database matching and reliable identification. n150 Database matching is [\*314] necessary because if the government has the information necessary to pinpoint dangerous individuals, but does not have reliable identification with which to track those individuals, then the information is useless. Reliable identification is also necessary, because if trustworthy identification exists but the sharing of information between agencies to alert the government of who is dangerous is lacking, then the identification is also useless. A national identification card can both facilitate database matching and provide reliable identification cards.

Database matching is the sharing of information between agencies, such as the CIA, the FBI, and state police departments in a centralized or decentralized form. n151 Database matching is maximized when all the information is fed into one centralized database and then one national identifier is used to store the information or to access the information. It is similarly maximized when several decentralized databases are cross-referenced using a national identifier as the common denominator. n152 The Selective Service, n153 CIA, FBI, and Immigration and Naturalization Service (INS) already engage in data-base matching; n154 however, these systems currently use the SSN as the common identifier. n155 The use of biometric features as identifiers is far more reliable and accurate than using SSNs, thus a national identification card serves as a better common identifier. Moreover, the SSN was never intended to be used a national identifier and such use is a violation of its original purpose. n156

A national identification card will be more fraud-resistant than any form of identification currently available. n157 A [\*315] birth certificate contains no fraud-resistant features and can be easily forged. n158 A white collar criminal can find a dead person's certificate with characteristics that roughly match someone who wants a new identity and simply fill out an application requesting a copy of that certificate. n159 Using that birth certificate, one could also obtain a U.S. passport. n160 In a matter of months, an illegal alien can enjoy traveling and even voting as an American citizen. n161 Social Security cards can also be forged easily. n162 They are issued on regular card stock with minimal verification requirements. n163 While driver's licenses are more difficult to forge than Social Security cards, assessing their validity can be challenging, because 200 different forms of licenses exist in fifty-two different states. n164 Criminals need only shop to find the most lax driver's license offices in the most lax jurisdictions to successfully attain one. n165 In fact, one person could obtain several different drivers' licenses from different states since information is not currently cross-referenced between states. n166

In contrast, a national identification card which includes biometric identification, such as retinal eye patterns, fingerprints, or voice recognition, will be substantially more difficult to replicate. n167 If the card takes the form of a standardized driver's license, then at least obtaining licenses from several states will be prevented. n168 Because [\*316] only one form of the card will exist, it will also aid individuals who verify the card to determine if it is a fraudulent or valid. n169

Use of a national identification card to reduce or eliminate occurrences of illegal activity such as false identification, n170 burglary, n171 illegal possession of weapons, smuggling, fraudulent acquisition of federal funding, n172 and illegal immigration can increase law enforcement efficiency and accuracy. n173 Due to greater efficacy and efficiency of law enforcement, the FBI and other law enforcement agencies may better allocate their resources to locating and monitoring individuals that pose a threat to national security. n174

The distribution of watch-lists is also a crucial element of meeting national security needs. These lists can potentially prevent terrorists from obtaining access to targeted [\*317] industries. With the combination of accurate database matching and trustworthy identification of individuals, reliable watch-lists may be created and distributed to all security-sensitive industries, such as suppliers of weaponry, nuclear power plants, manufacturers and suppliers of material that may be used to make biological weapons, bomb manufacturers, and water supply facilities. n175 No individual would be permitted to enter, use, or buy from these industries without a national identification card which is

subsequently cross-referenced with watch-lists. The system has great potential for deterring terrorist activity.

The national identification card is a valuable tool for meeting national security needs. The card facilitates database matching, provides reliable identification, aids in the creation of effective watch-lists and augments overall efficiency of law enforcement. The use of the card can remedy the inadequacies in the current security system and prevent future terrorist activities.

#### IV. Finding a Balance Between Security and Privacy

Security and privacy are both essential elements of American life. We place considerably high value on both, which makes deciding whether to implement a national identification an inherently difficult issue. n176 A national [\*318] identification card implemented without safeguards or an awareness for its potential abuse will likely lead to the erosion of what is left of our privacy.

There was of course no way of knowing whether you were being watched at any given moment ... . It was even conceivable that they watched everybody all the time ... . You had to live - did live, from habit that became instinct - in the assumption that every sound you made was overheard, and ... every movement scrutinized. n177

On the other hand, the immediate and urgent need for national security must be met. In light of the terrorist attacks of September 11, 2001, the exigency for security is real. The possibility of another terrorist attack is unacceptable. n178

What we cannot live with is knowing that next year we may break bread with a guy who is planning to poison our water supply, but who remains in this country because our tough-talking politicians are too addicted to the rhetoric of rights to require citizens to carry around a three-inch piece of plastic. n179

[\*319] The solution to this dilemma is to strike a careful balance between the two. Such a balance is the implementation of a national identification card in the form of a decentralized but uniform State driver's license. To fully explain the proposed solution, the arguments against implementing a national identification card will be addressed, and then the elements of the solution will be explicated in detail.

#### A. Rejoinders for Arguments Against Implementing a National Identification Card

This Part illustrates that a national identification card will not significantly affect the status quo, because we have already given up much of our privacy in order to efficiently function in society. It also examines the privacy laws of other countries to demonstrate that privacy interests and national identification cards are not mutually exclusive concepts. Finally, it will consider how the danger of theft and the facilitation of discrimination may actually be reduced with the use of a national card.

##### 1. Privacy in America

To better understand the level of invasion of privacy the national identification card threatens, it is important to examine the level of privacy which Americans currently enjoy. A tremendous amount of information about Americans is currently readily available. Anyone can get a detailed report on her neighbors' credit report, how much they earn, their criminal records, and so much more. n180 One [\*320] method of attaining such information is using "www.peoplefind.com." It provides an online and telephone service which can be used to locate people who are difficult to find and to uncover a plethora of information about them. n181 Such information includes: past addresses and current residence, military location, detailed background check, professional licenses, any warrants that are out in

name, bankruptcy, liens, property ownership, marriage and divorce index, civil judgments, corporations or partnerships to which a person belongs, companies in which a person is a stockholder, and more. n182 The information needed to conduct the search is a first name, last name, and either a date of birth or SSN of the individual. n183 The information is available in every state, takes five business days to process, and costs from \$ 24.95 to \$ 79.95. n184 Moreover, the website highlights in bright red that, "all searches are CONFIDENTIAL! The subject will not know you are ordering this report." n185 At least a dozen similar sites exist. n186 A quick view of the information available on an individual suggests that privacy has already been sacrificed in many ways.

[\*321] Secondly, the use of de facto identifiers has already significantly eroded our level of anonymity. Arguably, the SSN and the driver's license currently serve as such identifiers. The SSN is used for everything from filing taxes to checking into a hospital. It has become a vital form of identification for the average U.S. citizen or resident.

Many have also suggested that the state driver's license is a de facto national identification card. n187 It is the most commonly requested form of verification in industries ranging from banks, to nightclubs and liquor stores, to trains, planes, and rental cars. n188 In fact, it would be difficult to cash checks, enter secured areas, or even purchase alcohol without a driver's license. n189 In this way, it has become the form of identification upon which Americans most often depend.

## 2. Other Democracies Have Strong Privacy Laws and National Identification Cards

The laws of other countries support this solution of balancing privacy with security through the implementation of a restricted national identification card. After all, the majority of countries in the world, many of whom place a high value on privacy and have enacted rigorous privacy laws, have also implemented national identification cards.

The European Union considers privacy a "basic human right," n190 and thus has enacted highly restrictive data protection laws that not only restrict the collection of personal data, but also restrict the use and dissemination of the information. n191 The personal information of individuals [\*322] is protected within Europe, as well as throughout the world, if the protected information originated in any of the E.U. member states. n192 The privacy of information laws of the European Union is so much more restrictive overall than those of the United States that the European Union has "even threatened to suspend information flow to the United States." n193 Nevertheless, many members of the European Union, including France, Germany, Spain, and Luxembourg have national identification cards. n194 In fact, "most of the Western European countries that have strict controls protecting the privacy of personal information ... have compulsory national ID systems." n195

France, a country with a long history of democratic government and frequent immigration, has implemented a national identification card while subsequently protecting individual privacy. n196 Privacy violations have been recognized as a tort in France since 1858, and were added to its Civil Code in 1970. n197 A Data Protection Act has been enforced since 1978, n198 which provides for strict rules against the misuse of personal information. n199 Those who wish to process personal data must register and obtain permission, after which the individual must be informed of the reasons for collecting objectionable information. n200 Moreover, the individual has the "right to access and demand corrections." n201 To ensure the protection of personal information, the Commission Nationale de L'informatique et des Libertes was established to enforce data protection laws. n202

[\*323] Germany maintains a national identification card and long-standing privacy laws. Germany passed the first data protection law in the world, n203 which specifically protected individuals' privacy in the context of "collection, processing, and use of personal data collected by public federal and state authorities." n204 In 1983, Germany's Federal Constitutional Court formally declared that Germany's constitution protects an individual's right to privacy of information. n205 Moreover, nearly all German laws that refer to the collection or handling of personal information include a provision that reflects the right to personal privacy. n206

The Kingdom of Belgium, a democracy whose citizens are sensitive to civil liberty issues, also has a national

identification card. n207 The Belgian Constitution recognizes the right of privacy of individuals. n208 Their courts have applied sections of the European Convention as well, which prohibit "government infringement on the private life of individuals." n209 To ensure these laws are upheld, the Commission de la Protection de la Vie Privée proactively oversees privacy laws. n210

Non-western countries have also implemented national identification cards. South Africa, which maintains a national identification card, n211 also provides its citizens with [\*324] substantive privacy rights. n212 Individual rights of "privacy, freedom of information, and data protection," are explicitly recognized in its 1996 Constitution, n213 and are specifically delineated in the Open Democracy Bill. Their laws allow individuals to access and correct their personal information, and provide limitations on the disclosure of such information. n214

### 3. Reducing Danger of Theft and Reducing Discrimination

Beyond the issue of privacy, those opposed to the national identification card also contest it poses great danger to those whose cards are stolen and to individuals who may be the target of discrimination, genocide, or racial profiling. However, a national identification card with biometric identifiers can arguably reduce and possibly eliminate these dangers.

The access restrictions, which can be programmed into national identification cards, reduce the motivation to steal a card and the dangers associated with losing one. If a birth certificate, passport, driver's license or Social Security card falls into unauthorized hands, the thief can make use of the information without the owner's presence. n215 A SSN or driver's license number may be used even without the thief's physical presence, such as over the phone or through the Internet. On the other hand, a card with a microchip can be programmed to limit the access of information to particular systems and persons upon verification of a cardholder's biometric features. n216 In other words, to verify someone's identification, that individual's fingerprint, eye, [\*325] face, or voice must be scanned. n217 Without the cardholder's presence, information cannot be obtained. n218 Consequently, a thief has little use for the card and virtually no motivation to steal it.

The anonymity of a national card may prevent discrimination, genocide, and racial profiling. n219 If biometric features are used, information regarding individuals can be handled without reference to the cardholder's name, background, or picture. n220 Patterns of behavior can be checked and cross-checked with other databases without the use of a name or photograph such that those working with the information cannot identify people based on their race or ethnicity. n221 The primary facilitator of racial profiling is group classification that is visibly placed on the card. n222 Cards containing no group classifying data and displaying only name and address are far less likely to be used to target racial groups. n223

[\*326]

#### B. Elements of the Balanced Solution

The following section will describe what the balance between privacy and security interests specifically entails, reasons for each recommended element of the solution, and the effect of the proposed system.

##### 1. The Elements of the National Identification Card

Implementing a national identification card with rigorous safeguards can provide the means to attain greater national security without costing individuals privacy. This balance can be achieved with the implementation of a decentralized but uniform state driver's license encoded with biometric features, but not with additional personal information. Law enforcement agencies should generate watch-lists and distribute them to appropriate industries. Safeguards should be implemented with the card, including the ability to access one's own information and the placement of limitations on others who may access cardholders' information. Finally, enforcement of privacy rights should be upgraded such that

proactive measures are taken to protect privacy.

## 2. Explanation Of and Reasoning Behind the Recommended Card

The goal of the recommended national identification card is to meet the security needs of the country with the least invasion of privacy, and thereby the least Fourth and Fourteenth Amendment implications. The following Part describes how each element of the proposed card mitigates privacy intrusions while meeting national security needs.

There are two components necessary to national security that must exist for effective implementation of a national identification card: database matching and reliable [\*327] identification. n224 Database matching is necessary to determine which individuals are dangerous. Reliable identification is necessary to identify the dangerous individuals. The extent and way in which the two components of security are used determines to what extent privacy is preserved and the Constitution is implicated.

The extent to which information is shared through database matching exists on a spectrum. On the one hand, databases of all federal agencies, state agencies, and large industries, such as airlines, banks, health insurers, credit card companies, and Internet servers could be connected to one massive database. This would pose a tremendous imposition on personal privacy, since the government could keep tabs on every facet of our lives at all times. On the other side of the spectrum, there could be no sharing of information at all, in which case no significant security measures could be taken.

To meet security goals at minimal cost to individual privacy, the best option is to keep database matching decentralized, and use the card to improve the communication between agencies. A centralized database system will likely intrude on the privacy of one's activities, and increases Fourteenth Amendment implications. Government agents would potentially be able to track one's tax history, medical history, credit changes, frequency of relocation, spending patterns, and web searches with minimal effort, all of which creates suspicion of "Big Brother" watching. In the Congressional debate on national identification cards two months after the WTC attacks, it was stated that, "the centralized facility allows a single point of attack, a single point of destruction, a single [\*328] point of violation, and, therefore, the magnitude of the [privacy] violation is greater." n225 During the same hearing, Senator Bill McCollum referred to this system as one that conjures up images of Big Brother watching. n226 This scenario will likely fall within the parameters of "deeply rooted traditions" of privacy, which the Supreme Court held must be protected under the Fourteenth Amendment. n227

On the other hand, a decentralized database matching system affords more privacy protections, thereby diminishing Fourteenth Amendment violations. The decentralized system creates barriers to the easy access of information. Agencies may be required to attain permission or provide justification to obtain information, or else, different information may be shared with industries depending on their level of security clearance. Through these barriers, the decentralized system reduces the privacy intrusions and the possibility of the big brother scenario. And since "deeply rooted traditions" of privacy are less likely sacrificed, the Fourteenth Amendment is less likely implicated.

At the same time, a decentralized system still aids in meeting national security goals by facilitating database matching between agencies and industries.

Six weeks before September 11th, the Central Intelligence Agency told the Federal Bureau of Investigation two terrorist had entered the United States. Six weeks later ... two of the terrorists on [\*329] September 11th in Boston boarded the airplane under their own names, 42 days after the U.S. government officially knew they were in the United States and they were very dangerous. n228

This suggests the principal security problem is communication between these agencies and accessibility to relevant

industries, rather than the need to monitor every facet of a card holder's life. These security problems can be remedied if law enforcement agencies, such as the CIA, FBI, and secret service access enough information, are able to detect suspicious individuals, and alert susceptible industries. Similar incidents should not recur if federal law enforcement agencies use a reliable common denominator, namely a national identification card, to (1) improve inter-agency communication, (2) access state law enforcement databases, and (3) generate reliable watch-lists, which can be efficiently provided to appropriate industries. The watch-lists should be distributed to industries ranging from flight schools to water supply facilities. This avoids excessive sharing of information, but sufficiently prevents suspicious individuals from going unnoticed.

Providing reliable identification is the second crucial element of national security. Similar to database matching, it also presents a range of choices. Three forms of national identification cards have been recommended in Congressional hearings and to the Office of Homeland Security since the WTC attacks. The first is a centralized, federally-run, standardized card. The second is a federally-run travel card. The third is a decentralized, state-run, nationally-standardized card.

To meet security goals at the minimal intrusion to privacy, a decentralized, state-run, nationally-standardized card is the best option. This form of the card provides [\*330] reduced privacy intrusions both psychologically and practically, and diminishes Fourth Amendment implications. In the first place, a state-run card is intuitively less intrusive than a federally-controlled card, which is linked to one central database that continuously gathers comprehensive personal information. n229 In agreement with this, Former House Speaker Newt Gingrich opined during the November Congressional hearing that the advantage of the state-run card is it would be less alarming to the average citizen and would raise fewer civil liberty concerns. n230 It is practically less intrusive in that individuals are used to going to their DMV to attain identification and are comfortable with this process. n231 Moreover, the Fourth Amendment is not implicated when individuals divulge personal information voluntarily in order to access a privilege. n232 Since a driver's license falls within that description, its use as a national identification card will not likely violate the Fourth Amendment.

At the same time, a standardized driver's license can still meet national security needs. To provide the most reliable form of identification possible, the card should be tamper-proof, fraud-proof, and standardized, so that anyone in the nation can decipher what the card should look like. A nationally-standardized state driver's license encoded with biometric information, and on which security standards are imposed, accomplishes that goal. In this way, states may [\*331] share criminal information more readily and may provide information to relevant federal law enforcement agencies at minimal cost to individual privacy.

The next aspect of the card important to consider is whether to encode information on the card, or use it to simply access necessary information. This is analogous to using the card as a lock or a key. As a lock, the card is encoded with a high volume of information and anyone with sophisticated equipment can potentially access the information. In other words, equipped individuals can unlock this information stored on the card. As a key, the card is not encoded with any information outside of biometric features. Only those given sophisticated equipment and a particular level of clearance may access the information. In that sense, the card is the key with which to access protected information.

To meet security goals at the minimal intrusion to privacy and minimal constitutional implications, the card should not be encoded with anything outside of biometric features and should be used as a key, instead of a lock. When unauthorized access can be limited, privacy is more easily protected. When used as a key, an individual who has another's card must not only have access to a particular system, but also have clearance to access the information. When used as a lock, an individual need only have access to any system which can decode the card. Thus, privacy is more easily protected when the card is used as key. n233 At the same time, using the card as a key provides the same level of security, since the necessary information is still available to authorized individuals.

Other nations' practices give us reason to believe national security needs can be met while limiting the card's use and protecting individual privacy. South Africa's smart card is used [\*332] primarily to verify identity and personal

information. n234 Government and corporate groups have separate databases containing various information. n235 This information is synchronized and the government may only access it for identity verification. n236 Another example is Belgium's national identification card, which is also only used for verification purposes. n237 The card has extremely limited information on it; it includes only name, date, place of birth, address, and nationality. n238 Only qualified persons with security clearance, such as police officers, can access the database. n239 Using cards for unintended purposes is a highly sensitive civil liberty issue in Belgium. n240 This sensitivity prevented the government from using the Social Security cards or driver's licenses as means of verification. n241 In their view, information is contained on a driver's license, such as vision level or handicaps, to which a bank employee, for example, should not be privy. n242 They believe this overlap of uses would lead the government to abuse other cards, n243 because it would set a precedent of creating cards for one purpose, but then using it for another. n244

[\*333]

### 3. Safeguards

Along with implementing a minimally intrusive form of the card, safeguards should be adopted in order to prevent the potential for abuse of privacy and thereby prevent the constitutional implications of the Fourth and Fourteenth Amendments. The additional safeguards include providing individuals with access to all information accessible through the card, allowing individuals to add or remove information unrelated to the purpose of the card, taking measures to limit access to the information which the card can access, and upgrading privacy enforcement.

An imperative feature of the card should be the ability to access all information others may attain through the card and to know who is viewing the information. This is particularly important if historical information is accessible through the card, such as criminal history, credit information, or insurances held. This feature may take the form of annual mailing or web-site access to the information. It should provide individuals with awareness of how much privacy they indeed have and how much information others can access with the card. n245 Moreover, if individuals know who is accessing information from their cards, they will have a sense of control over what information is disseminated and for what purposes. n246

An example of this feature at work exists in the South African smart card. n247 Citizens are permitted to access information stored about them from public or private organizations. n248 They may access all information held in databases, as long as the data does not infringe on another's right to privacy or confidentiality. n249 Moreover, [\*334] citizens are able to correct errors made in their personal data. n250 This level of awareness gives South Africans a sense of control over their personal information.

Despite the preference that the card is used as a key and not a lock, if in the development of the card some information is encoded, individuals should also be able to add and remove information unrelated to the purpose of the card. If no information is encoded, an individual should likewise be able to adjust the level of accessibility of others to such information. For example, if the individual chooses to include financial information because it facilitates filing taxes, then they should be required to give explicit permission to include information and be able to remove such information at will. To mitigate the effect of such a choice, perhaps the ability to remove information should be tailored to the status of individuals, such as whether they are aliens, felons, or deal with dangerous material. This would reverse abusive uses of the card, and would avoid the same fate as the Social Security card, which is currently used for purposes far beyond what was initially intended.

Belgium's identification card provides an example of the success of this feature. The Belgium card has very limited data placed on it. n251 This limitation is mandated by law. n252 The card carrier must explicitly authorize any additional information. n253 This process involves signing documents approving this additional information and is required even to place the name of one's spouse or the number of the national identifier on the card. n254 The additional information can be removed at will. n255



**[\*335]** Measures should be taken to limit the number of individuals who may access the information. n256 The most personal information on the card may be linked to one's biometric information, such that only sophisticated equipment may access the information with the individual's presence. This would prevent the scenario in which an individual need only provide her name and appropriate number to access the information, which is the case with the SSN.

Denmark's Citizen Card demonstrates that such security measures are effective and realistic. The card was initially implemented primarily for the purpose of ensuring citizen's records are kept private. n257 Through the card, private government records are accessible only to citizens which they concern, and may not be accessed anonymously without the citizen's knowledge. n258

One of the most effective means to preserve and protect privacy is for the government to take an active role in ensuring privacy protections are employed. n259 A system of proactive privacy enforcement would best serve this purpose. n260 Instead of the current system, in which the burden of protecting privacy rests with individuals who sue the government or, in some cases, with the Federal Trade Commission, one department or agency should be responsible for ensuring citizens may access and correct their information, finding out who is accessing their own information, and ensuring information is not being misused. n261 It should also be responsible for proactively seeking privacy invasions.

**[\*336]** Such a position successfully exists in numerous countries. Examples include: United Kingdom's Office of the Information Commissioner, n262 South Africa's Director-General of the Department of Home Affairs, n263 Australia's Office of Privacy Commissioner, n264 France's Commission Nationale de L'informatique et des Libertes, n265 and Belgium's Protection de la Vie Privee. n266 The United Kingdom's Commissioner maintains "a list of organizations that collect and use personal data." n267 South Africa's Director-General retains control over personal information stored about individuals and makes efforts to ensure information is accessible to individuals and the privacy of the information is protected. n268 Australia's Commissioner has a vast range of responsibilities, n269 including addressing incoming complaints, auditing industries to ensure compliance, implementing programs to promote community awareness, and acting as an advisor on privacy issues. n270 Belgium's commission mainly investigates complaints. n271 It investigated 397 such complaints in 1998 alone. n272

With the above safeguards in place, the dangers of invasion of privacy are mitigated, constitutional violations prevented, and the benefits of a standardized card realized. **[\*337]** It is less likely Americans' civil liberties and privacy rights will be sacrificed in times of crisis and thus less likely the historical governmental abuses of information will be repeated. n273 Moreover, it is also less likely that the American ideology, which encompasses a sense of anonymity in society, will be threatened.

#### 4. Effect

Though the recommended card takes the form of a decentralized driver's license, it is still a form of a national identification card. Some have claimed that creating a uniform state driver's license to enable states to communicate is not creating a national identification card. n274 Perhaps such comments are made to avoid alarming citizens, but such a card is indeed a national identifier. n275 The great advantage of the system is that one centralized database is unnecessary. n276 Nevertheless, the card will be nationally uniform, require uniform licensing procedures, link state databases nationally, and contain the same information across the board. n277 The effect of the identification card will be to facilitate the accurate and reliable identification of individuals and enable efficient cross-matching of their identity with watch-lists provided to industries that may be susceptible to terrorist activities.

This Comment achieves this effect by balancing security interests with privacy interests. Each element of the card **[\*338]** is a means by which to achieve security goals while minimizing privacy intrusions and preventing constitutional violations. The proposed balance is not free from problems, nor is it exhaustive in scope. It is not wholly free from potential abuse, nor will it resolve all our security issues. However, the balance is a starting point that will bring the United States closer to meeting its security goals, while preserving privacy through the use of safeguards. At minimum,

it is better than choosing between privacy and security.

#### Conclusion

In the next several years, congressional debates concerning whether and how to implement a national identification card will continue. The decision Americans and our legislature must make concerning the adoption of national identification cards should be one that does not sacrifice either security or privacy, but instead provides Americans with a balance. Two scenarios were introduced at the beginning of this Comment: One in which an individual is constantly monitored, and another in which terrorists enjoy anonymity. Instead of choosing between these scenarios, perhaps the following scenario is more practical and one with which Americans are most comfortable.

Scenario Three: Assume a decentralized national driver's license is implemented. When an airline attendant requests an individual's highly sophisticated identification card, she may also request the traveler place his thumb on a scanner or his face on a small screen. Within a few seconds, the attendant knows whether the traveler is on any watch-lists, and whether to give him permission to board the plane. While waiting to board, the same traveler may use a Business Center to log on to his state's database and look up the information agencies and secured [\*339] industries have requested about him. Despite the inconvenience and intrusion of having his features verified several times before boarding the plane and being scanned with hidden cameras, the traveler is comforted with the notion that it is far less likely anyone whom federal law enforcement agents believe may be a terrorist will be boarding the plane with him.

#### Legal Topics:

For related research and practice materials, see the following legal topics:

Constitutional Law Substantive Due Process Privacy Personal Information Criminal Law & Procedure Criminal Offenses Fraud Credit Card Fraud Elements Governments Federal Government Domestic Security

#### FOOTNOTES:

n1. Amity Shlaes, *America Must Battle Against Terrorism at Home*, *Fin. Times* (London), Oct. 9, 2001, at A25.

n2. *Does America Need a National Identifier?: Hearing Before the Subcomm. on Gov't Efficiency, Fin. Mgmt. & Intergovernmental Relations, of the House Comm. Gov't Reform, 107th Cong. (2001)* [hereinafter *National Identifier*], available at *2001 WL 1469942* (F.D.C.H.). Only two months after the WTC attacks, Congress held a hearing regarding the advantages and disadvantages of national identification cards, and the different forms the card could take. Congressmen Newt Gingrich, Alan Simpson, and Bill McCollum spoke at the debate. Representatives from various organizations and industries also shared their ideas, including: a professor of law, chairman of the investigations committee, ACLU Counsel, Counselor and Consul of the Embassy of Belgium, Vice President of Oracle, and others. See *id.*

n3. *Id.* at 166 (statement of Rep. Stephen Horn, Member, House Committee on Government Reform).

n4. A National ID Card: Big Government at its Worst or Technological Efficiency?: Hearing Before the Subcomm. on Nat'l Econ. Growth, Natural Resources, & Regulatory Affairs of the House Comm. on Gov't Reform & Oversight, 105th Cong. (1998) [hereinafter Big Government at its Worst]. A hearing was held with various speakers discussing the pros and cons of a national identification card. Members of Congress and spokespersons from organizations ranging from the ACLU to the Department of Motor Vehicles presented their views on the issue. See *id.*

n5. On September 11, 2001, three planes were hijacked from Boston Logan Airport and one from Newark Airport. Two of the planes crashed into the World Trade Center in New York City, one crashed into the Pentagon in the District of Columbia, and one crashed in a field in Pennsylvania, though evidence suggests that the hijackers intended to crash it into the White House in Washington, DC. See Serge Schmemmann, President Vows to Exact Punishment for "Evil," N.Y. Times, Sept. 12, 2001, at A1 (describing the coordinated plan of the terrorists referring which airports were used and the reason particular planes were picked, such as their large fuel capacity. See generally N. R. Kleinfield, A Creeping Horror, N.Y. Times, Sept. 12, 2001, at A1 (describing the horrid experience of witnesses of the event, as well as the experience of many that were in the World Trade Center during the attacks).

n6. Heather Green, Databases and Security vs. Privacy, BusinessWeek Online, (Oct. 8, 2001), at <http://www.businessweek.com/technology/content/oct2001/tc2001108<uscore>3550.htm>.

n7. *Id.*

n8. Congress Holds Hearings on Biometric Identifiers, National ID Cards, 78 No. 48 Interpreter Releases 1906 (Dec. 17, 2001), available at <http://www.westlaw.com> (WL, Periodicals, Interpreter Releases) [hereinafter Biometric Identifiers].

n9. Linda Cashdan, Debate Over US National ID Card (Jan. 20, 2002), VOANews.com, at <http://www.voanews.com/article.cfm?objectID=18CB6384-78A7-436E-A33F65FB0D4D6566> (last visited Mar. 28, 2003).

n10. National ID Cards, Privacy International, at <http://www.privacyinternational.org/issues/idcard> (last visited Mar. 18, 2003) [hereinafter National ID Cards].

n11. See Robert O'Harrow, Jr., Rights Groups Oppose National ID Card, Wash. Post, Feb. 13, 2002, at A15.

n12. See Toby Eckert, Could National Identification Cards Be in Our Future?, Peoria J. Star, Oct. 11, 2001, at A5. Seven of the nineteen hijackers obtained driver's licenses from Virginia. A total of thirteen used driver's licenses to board the planes. The remaining four obtained licenses from Michigan and New Jersey. See id.

n13. See William H. Johnson, Editorial, A National ID System, Wash. Post, Oct. 8, 2001, at A22.

n14. Biometric Identifiers, supra note 8, at 1907. Rep. Stephen Horn, chairman of the House Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations specifically supported this hypothesis. Id.

n15. This would include both legal and non-legal residents.

n16. See Simon Davies, Identity Cards: Frequently Asked Questions, Privacy International, at <http://www.privacy.org/pi/activities/idcard/idcard%20faq.html> (last visited February 24, 2003). Davies is the Director General of Privacy International.

n17. Id.

n18. Id. In Finland, a voluntary identification card, called FINEID, features a photograph and sixteen kilobytes of memory. The National ID Movement, ID World, September/October 1999, at <http://www.imagingautomation.com/art05.htm> (copy on file with author). Sixteen kilobytes (16KB) can hold up to approximately 215 single-spaced typed pages worth of information on each individual. A bit is equivalent to one computer letter. A byte is made up of eight bits. A kilobyte is made up of 1000 bytes. whatis.com: Part of the TechTarget Network of Enterprise IT Web Sites, at <http://www.whatis.techtarget.com> (last visited Mar. 19, 2003) (defining various technical computer terms). Thus, 16KB is equivalent to:  $16 \times 1000 = 16,000$  bytes. Since there are approximately 600 words in a page of a single-spaced typed document, 16KB contains approximately 215 such pages. Id.

n19. Mike France, Privacy in an Age of Terror, Bus. Wk., Nov. 5, 2001, at 82, 85, available at <http://www.businessweek.com/@@UED1A4YQuzydtBAA/magazine/content/01<uscore>45/b3756004.htm>.

n20. See id.

n21. Davies, supra note 16.

n22. Id.

n23. See id.

n24. Fred McClimans, The Details of Biometrics, Network World Fusion, Nov. 5, 2001, at <http://www.nwfusion.com/columnists/2001/1105current.html> (last visited Mar. 19, 2003).

n25. Id.

n26. Id.

n27. Id.

n28. Davies, supra note 16.

n29. See id.

n30. Other countries not mentioned in the text include Greece, Hong Kong, and Spain. Id.

n31. Id. Other countries that use national identification cards include: Belgium, Luxembourg, Malaysia, and Portugal. Id.

n32. Id.

n33. The National ID Movement, *supra* note 18. The process of implementing a card in those countries began in 1999. Id.

n34. Id. Other countries taking similar steps include: Chile, El Salvador, and Nigeria.

n35. Id. Other countries that have either successfully implemented or have taken steps to implement a national identification card since 1999 include: Argentina, Barbados, Bolivia, Cambodia, Cameroon, China, Colombia, Costa Rica, Dominican Republic, Estonia, Finland, Guatemala, Indonesia, Ivory Coast, Jamaica, Madagascar, Malaysia, Mauritius, Mozambique, Pakistan, Republic of Korea, Sudan, Syria, Thailand, Uruguay, Venezuela, and Yemen.

n36. Davies, *supra* note 16.

n37. Id. Among the common law countries that do not yet have national identification cards are: Australia, Canada, Finland, Ireland, New Zealand, Norway, Sweden, and the United States, .

n38. Developing countries were formerly referred to as second or third-world countries. The National ID Movement, *supra* note 18.

n39. Davies, *supra* note 16.

n40. Id.

n41. Id.

n42. The National ID Movement, *supra* note 18.

n43. Id. In the European Union, it may be used as a passport, as well as means by which to file tax returns and register for employment. Id.

n44. Id.

n45. Davies, *supra* note 16.

n46. Id.

n47. Id.

n48. Id. All residents are obligated to carry the national identification card at all times. Id.

n49. Id. It also includes permanent and temporary addresses of the individual. Id.

n50. National ID Cards, *supra* note 10. This includes the Philippines, The Netherlands, and the United Kingdom. Id.

n51. UK National ID Card, Privacy International, at <http://www.privacyinternational.org/issues/idcard/uk/> (last visited Mar. 20, 2003).

n52. Davies, *supra* note 16. Persons were required to carry the card at all times and to show it to law enforcement upon demand. *Id.*

n53. *Id.* The Lord Chief Justice ruled that

although the police may have powers, it does not follow that they should exercise them on all occasions ... it is obvious that the police now, as a matter of routine, demand the production of national registration identity cards whenever they stop or interrogate a motorist for any cause ... . This Act was passed for security purposes and not for the purposes for which, apparently it is now sought to be used ... . In this country we have always prided ourselves on the good feeling that exists between the police and the public, and such action tends to make the public resentful of the acts of police and inclines them to obstruct them rather than assist them, after which the High Court decided that their use was not appropriate.

*Id.*

n54. *Id.* Failed attempts were made to re-establish the card by the tax administration, immigration services, and the issuers of the driver's license. All these attempts failed, the last of which was made in 1995. *Id.*

n55. Melissa Kite, National ID Card Ready After Secret Trial, *Times* (London), Nov. 1, 2001, at 2. This has included discussions about including digital biometrics and security features. *Id.*

n56. See *id.*

n57. The attacks killed more British citizens than any other terrorist attack. Prime Minister Tony Blair, Press Conference with German Chancellor Gerhard Schröder in Berlin, Germany, (Sept. 19, 2001), at <http://www.patriotresource.com/wtc/intl/0919/uk2.html> (last visited Mar. 24, 2003).



n58. Stephen Moore, *The National ID Card: It's Baaack!*, Sept. 23, 1997, at <http://www.cato.org/dailys/9-23-97.html> (last visited Mar. 24, 2003).

n59. *Id.*

n60. See National ID Cards, Electronic Privacy Information Center, at <http://www.epic.org/privacy/id<uscore>cards/> (last visited Mar. 24, 2003). In 1971, suggestions to initiate a national identifier to the Health, Education, and Welfare Secretary's Advisory Committee on Automated Personal Data System were rejected. In 1976, the Federal Advisory Committee on false identification rejected the idea of an identifier. *Id.*

n61. *Id.* In 1996, a provision of The Immigration Act gave authorization to turn driver's licenses into national ID cards. In 1999, President Clinton passed a bill which in part repealed that provision of the Immigration Act. It also prohibited the selling of personal information by state and motor vehicle departments. *Official National ID Card is History!*, Center for Technology Policy, Oct. 15, 1999, at <http://www.freecongress.org/centers/technology> (copy on file with author).

n62. See *infra* Parts II.B, III, & IV.

n63. Davies, *supra* note 16.

n64. *Id.* The following are examples of federal agencies that use the SSN card for identification purposes: Civil Service Commission, Internal Revenue Service, Department of Defense, Department of Interior, Department of Justice, Department of Labor, Department of State, Department of Treasury, along with other federal agencies that keep records about individuals.

n65. See Rob Torte, *DC BUREAU: Officials Ponder National ID Card*, U. Wire, Feb. 5, 2002, at 1, available at 2002 WL 12483955; Mona Charen, *It is Time for National ID Card*, Augusta Chron., Jan. 28, 2002, at A5.

n66. Torte, *supra* note 65, at 1.

n67. Id.

n68. Charen, *supra* note 65.

n69. President George W. Bush created the Office of Home Security less than a month after the WTC attacks. Larry Lipman, Graham at Center of Intelligence Storm, Palm Beach Post, Sept. 23, 2001, at 17A.

n70. See e.g., National Identifier, *supra* note 2.

n71. *May Wong, Associated Press, Bush Adviser Frowns on U.S. ID Card (Nov. 8, 2001), at 2001 WL 29792070* (last visited Mar. 28, 2003). This card was introduced and recommended by Larry Ellison, Chief Executive of Oracle Corporation, who also offered to donate the software. *Id.* It has since been supported by the director of the Federation for American Immigration Reform. See Audrey Hudson, Proposal for Identification Cards Praised, Wash. Times, Oct. 8, 2001, at A4.

n72. Hudson, *supra* note 71.

n73. See *Wong, supra* note 71.

n74. Id.

n75. Doug Bedell & Paula Felps, Card-Carrying Americans, Dallas Morning News, Oct. 4, 2001, at 1, available at <http://www.dougbedell.com/smartcards.html> (last visited March 29, 2003).

n76. Id.

n77. Id.

n78. Ricardo Alonso-Zaldivar & Richard Simon, Screening, Travel IDs Sought for Air Safety, L.A. Times, Nov. 9, 2001, at A1.

n79. See Cashdan, *supra* note 9. Thus far, fifty states have already agreed to include more information on the driver's license and use greater protection against fraud. These new features are referred to as "upgrades." Editorial, Questions About National ID; Congress Must Safeguard American's Privacy, Liberty, Harrisburg Patriot, Jan. 16, 2002, at A10.

n80. C-Span: Washington Journal (C-Span television broadcast, Jan. 15, 2002) (on file with author, transcribed by author). The speaker is Linda Lewis, CEO and President of the American Association of Motor Vehicle Administration. Id.

n81. Id.

n82. Id. This would most probably include fingerprints. Id.

n83. Id. Real-time means the information is immediate and updated regularly. Id.

n84. Id.

n85. Id. License shopping is the practice of seeking out states and specific bureaus in which it is easiest to fraudulently obtain driver's licenses. Id.

n86. C-Span: Washington Journal (C-Span television broadcast, Jan. 15, 2002) (on file with author,

transcribed by author).

n87. Id.

n88. Torte, *supra* note 65.

n89. See *id.*

n90. David Banisar & Simon Davies, *Global Trends in Privacy Protection: An International Survey of Privacy, Data Protection, and Surveillance Laws and Developments*, 18 *J. Marshall J. Computer & Info. L.* 1, 7 (1999). Privacy can also be defined in a number of different ways. "Privacy is an interest of the human personality. It protects the inviolate personality, the individual's independence, dignity and integrity." *Id.* Another commentator states, "there are three elements make up privacy: secrecy, anonymity and solitude. It is a state which can be lost, whether through the choice of the person in that state or through the action of another person." *Id.* A legislative committee of the United Kingdom adopted the following definition of privacy: "[It is] the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information. *Id.* at 7-8.

n91. Kent Walker, *Where Everybody Knows Your Name: A Pragmatic Look at the Costs of Privacy and the Benefits of Information Exchange*, 2 *Stan. Tech. L. Rev.* 1, 5 (2000), available at <http://stlr.stanford.edu/STLR/Articles/00<uscore>STLR<uscore>2/index.htm> (last visited March 29, 2003).

n92. See Davies, *supra* note 16. See generally *Katz v. United States*, 389 *U.S.* 347 (1967).

n93. Joseph Eaton, *Card-Carrying Americans: Privacy, Security, and the National ID Card Debate* 107 (1986).

n94. See *id.*

n95. Melvin Gutterman, A Formulation of the Value and Means Models of the Fourth Amendment in the Age of Technologically Enhanced Surveillance, 39 *Syracuse L. Rev.* 647, 681 (1988).

n96. See Banisar & Davies, *supra* note 90, at 8-9.

n97. *Id.* at 8. It can be traced back to the year 1361. *Id.*

n98. *Id.*

n99. *Id.* (quoting Universal Declaration of Human Rights, art. 12, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948)). The European Commission on Human Rights stated the following in their first decision on privacy:

For numerous Anglo-Saxon and French authors, the right to respect 'private life' is the right to privacy, the right to live, as far as one wishes, protected from publicity ... . In the opinion of the Commission, however, the right to respect for private life does not end there. It comprises also, to a certain degree, the right to establish and develop relationships with other human beings, especially in the emotional field for the development and fulfillment of one's own personality.

Banisar & Davies, *supra* note 90, at 9 (quoting *X v. Iceland*, 5 Eur. Comm'n Hum. Rts. Dec. & Rep. 86, 87 (1976)).

n100. *Id.* See also European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 8, 213 U.N.T.S. 221, 222.

n101. Banisar & Davies, *supra* note 90, at 10. This includes the American Convention on Human Rights, the Organization for American States, and the Inter-American Court of Human Rights. *Id.*

n102. See Fred Cate, The Changing Face of Privacy Protection in the European Union and the United States, 33 *Ind. L. Rev.* 173, 199 (1999).

n103. See *id.* Implicit protection is found in the Fourteenth Amendment and First Amendment.

n104. See *id.* at 197.

n105. See *Griswold v. Connecticut*, 381 U.S. 479 (1965).

n106. U.S. Const. amend. IV.

n107. See *Cate*, *supra* note 102, at 198.

n108. 381 U.S. at 479.

n109. *Id.* at 486-88.

n110. *Id.* at 482-85.

n111. 521 U.S. 702 (1997).

n112. *Id.* at 702-04.

n113. 123 S. Ct. 2472, 2475 (2003).

n114. A centralized card is one that is used to access information from one central database which houses private information about citizens, residents, and visitors. Robert O'Harrow, Jr. & Jonathan Krim, National ID Card Gaining Support, Wash. Post, Dec. 17, 2001, at A1.

n115. See Eaton, *supra* note 93, at 108.

n116. Gutterman, *supra* note 95, at 649, 722.

n117. *Id.* at 725.

n118. See generally *id.* at 649-722.

n119. See generally *id.* at 677-735. *Boyd v. United States*, 116 U.S. 616 (1886), established a "value-dominated doctrine that would provide maximum protection of individual privacy consistent with traditional historical precedents." Gutterman, *supra* note 95, at 654. *Goulded v. United States*, 255 U.S. 298 (1921), reinforced this form of analysis. Later, in *Olmstead v. United States*, 277 U.S. 438 (1928) and *Hester v. United States*, 265 U.S. 57 (1924), the scope of the privacy protections of the Fourth Amendment were considerably limited.

n120. Gutterman, *supra* note 95, at 723. In *Olmstead v. United States*, 277 U.S. at 464 (1928), *Goldman v. United States*, 316 U.S. 129, 135 (1942), and *Hester v. United States*, 265 U.S. 57 (1924), the Supreme Court held that the Fourth Amendment was not implicated based on an analysis of the means by which the government obtained information. *Id.*

n121. Gutterman, *supra* note 95, at 723.

n122. *Id.* at 650. In *Boyd v. United States*, 116 U.S. 616, 630 (1886) and *Katz v. United States*, 389 U.S. 347, 351-52 (1967), the Supreme Court held that the Fourth Amendment was implicated based on an analysis of the extent of privacy invasion by the government. *Id.* at 666.

n123. Gutterman, *supra* note 95. at 663. This was established in *Katz v. United States*, 389 U.S. 347 (1967).

n124. Gutterman, *supra* note 95, at 682.

n125. *Id.*

n126. See *id.* at 735.

n127. See *id.* at 723.

n128. *Id.* at 707.

n129. See e.g., *Big Government at its Worst?*, *supra* note 4; see also *National Identifier*, *supra* note 2.

n130. Moore, *supra* note 58.

n131. See *Big Government at its Worst?*, *supra* note 4, at 23.

n132. Moore, *supra* note 58.

n133. *Big Government at its Worst?*, *supra* note 4, at 23.

n134. *Id.* Furthermore, the Social Security Administration has regularly disclosed information to private



credit reporting companies, including over three million verifications for Citibank and other firms, and other areas of the private sector. This activity stopped only after significant public opposition. Even more invasive was the "Social Search" created by a private consumer credit information company, which advertised that it could help locate "hard-to-find individuals" with the use of a social security number. *Id.* at 24.

n135. *Id.*

n136. *Id.* at 20. There is much reason to take such a threat seriously, for it can truly devastate someone's life. Celene Cross from Illinois explained that since someone had stolen her social security number, three forms of credit have been taken out in her name, and \$ 17,000 worth of credit has been used in her name. It took a year and a half to prosecute the thief. This was primarily due to the fact that the police did not believe her story, but believed she just ran up some bills that she could not pay. Even years after the prosecution, she was still denied credit and needed her father to help her secure a house. Approximately 40,000 people face similar struggles each year. *Id.* at 24-26.

n137. *Id.* at 20.

n138. See *id.* at 2-3. The Honorable David McIntosh, chairman of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, explained on September 17, 1998 that invasion of privacy is likely to become more prevalent if a national ID card is established. *Id.* at 3.

n139. See Alonso-Zaldivar & Simon, *supra* note 78. The more sophisticated a card is, the more authorities will rely on it, and thus the more valuable it is to criminals. *Id.*

n140. See *id.*

n141. The highest integrity bank cards are available as blanks in Singapore. The new Commonwealth Bank high security hologram cards had been successfully forged in Australia within two months of the card's implementation. Davies, *supra* note 16.

n142. Jimmy Fussell, Group Classification on National ID Cards as a Factor in Genocide and Ethnic

Cleansing, Speech to the Seminar Series of the Yale University Genocide Studies Program (Nov. 15, 2001), at <http://www.preventgenocide.org/prevent/removing-facilitating-factors/IDcards> (last visited March 29, 2003). This tendency for abuse prompted Lebanon, Russia, and Rwanda to eliminate group classification from ID cards in 1996. *Id.*

n143. *Id.*

n144. *Id.* Acts of "ethnic cleaning" have been facilitated in various nations where clear methods of identification of selected groups existed. *Id.*

n145. See Eaton, *supra* note 93, at 108.

n146. The representative for the ACLU vehemently argued this point during the 1998 Congressional hearing regarding national identification cards. *Big Government at its Worst?*, *supra* note 4, at 21.

n147. See *id.*

n148. *Id.* at 33-35.

n149. *The National ID Movement*, *supra* note 18.

n150. But see Green, *supra* note 6. Green suggests increasing "collection and sharing of data" among agencies and industries is the real key; however, she fails to consider that such measures are useless if the dangerous person is walking around with fraudulent identification or multiple identifications.

n151. Eaton, *supra* note 93, at 83-84.

n152. Id.

n153. See id. at 83-85.

n154. The U.S. Census, IRS, and SSA have some of the most comprehensive data banks of information about individuals. See id.

n155. See id.

n156. Moore, *supra* note 58.

n157. Eaton, *supra* note 93, at 71.

n158. See id. at 77-79.

n159. See id.

n160. See id.

n161. Id. at 73-77.

n162. See id. at 77-79.

n163. See *id.*

n164. Cashdan, *supra* note 9 (quoting Betty Serian, CEO and President of the Motor Vehicle Administrators task force on security).

n165. Cashdan, *supra* note 9.

n166. *Id.*

n167. *Congress Holds Hearings on Biometric Identifiers, National ID Cards*, *supra* note 8, at 1906. According to Senator Hatch, biometric features "can thwart the most sophisticated criminal mind." *Id.*

n168. C-Span: Washington Journal, *supra* note 80.

n169. See Cashdan, *supra* note 9. The article quotes Betty Serian, the head of the Motor Vehicle Administrators task force on security asking, "so how can a bank teller in Maine be expected to know what a California license really looks like?" Serian believes using a uniform driver's license will allow authorities across the nation to verify out-of-state licenses more accurately. See *id.*

n170. If someone is detained for suspicion of impersonation or false-identification, their identification can be verified in minutes with a signature or biometric reader. Eaton, *supra* note 93, at 88-89.

n171. Without a national identification card, burglars of precious materials or illegal weapons are able to sell their merchandise with little verification in most states. If residing in a state where strict reporting laws are enforced, the burglar need only shop for a lenient jurisdiction and sell the merchandise there. *Id.* at 97. However, with a national identification card that cross-references shared state information, the burglar will not be able to shop for more lenient jurisdictions.<sup>[su']</sup>*Id.* at 96-99. Moreover, if she intended to sell the merchandise to a legitimate buyer, she would likely be deterred since a tamper-proof card with encoded biometric features would be necessary to fulfill the sale. *Id.*

n172. This has cost the government considerable money. Between 1978 and 1980, \$ 51 million U.S. dollars worth of federal funding was obtained fraudulently. This includes benefits from Aid for Dependent Children, Food Stamps, Medicare, and Disability Insurance. *Id.* at 87-90. With highly reliable identification and the facilitation of database matching, individuals will be far less able to obtain such funding illegally.

n173. See *id.* at 97-98.

n174. See *id.* at 87-90.

n175. See Alonso-Zaldivar & Simon, *supra* note 78, at A1.

n176. Compare, however, Judge Learned Hand's statement: "Liberty lies in the hearts of men and women; when it dies there, no Constitution, no court, can even do much to help it." Learned Hand, *The Spirit of Liberty*, Address Given at "I Am an American Day" Ceremony in Central Park, New York City (May 21, 1994), reprinted in *The Spirit of Liberty: Papers and Addresses of Learned Hand 189-90* (Irving Dillard ed., 3d ed. 1960). However, it is certain that Judge Hand did not anticipate that a private citizen could log on to "www.usafind.com" to uncover his criminal or credit history, nor did he anticipate people around the world would watch the World Trade Center collapse on September 11, 2001. Nevertheless, a few days after the attacks, Gregory Nojeim still insisted that, "We are a free people who cherish our right to be individuals, to be left alone, and to start over, free from the prying eyes (and grasping hands) of both Big Brother bureaucrats and snooping commercial interests." *Big Government at its Worst?*, *supra* note 4, at 21 (statement by Mr. Gregory Nojeim, legislative counsel for the American Civil Liberties Union).

n177. Gutterman, *supra* note 95, at 649 (quoting George Orwell, 1984 (1949)).

n178. One of the most salient ways to begin to meet these security needs is to establish a national identification card. The security advantages of implementing a national card are dramatic. These advantages can only be realized if identification of individuals is reliable and these advantages are most effective if the identification includes biometric data. Moreover, industries that may be used for terrorist activity, such as nuclear power plants, airlines, providers of bomb-making material should be given watch-lists with which to cross-reference a reliable national identification card.

n179. Nicholas G. Jenkins & Amit Rind, *National ID cards Would be the Dragnet We Need*, *Seattle Times*

(Oct. 4, 2001), available at <http://seattletimes.nwsourc.com/html/editorialsopinion/134349377<uscore>fence04.html> (last visited Mar. 28, 2003).

n180. Using "US Search" the following information about individuals can be accessed: location of someone who is difficult to find, their current nicknames, current address, listed phone number, property ownership, value of property, all residents of their property, relatives residing on their property, their neighbors, their address history up to ten years past, bankruptcies, tax liens, and civil judgments, drug enforcement agency information, and their marriage and divorce index. You can also use other searches to find out: criminal history, detailed information about their property, and a credit report. All this information may be obtained using only an individual's first and last name. Using their date of birth and address would be helpful in narrowing down the individual. US.Search, at <http://www.ussearch.com> (last visited Mar. 28, 2003).

n181. People Find, at <http://www.peoplefind.com> (last visited Mar. 28, 2003).

n182. Id.

n183. Id.

n184. Id.

n185. People Find, at <http://www.peoplefind.com/federalcivil.htm> (last visited Feb. 19, 2003).

n186. See also, e.g., <http://www.usafind.com> (last visited Feb. 10, 2003), <http://www.usafaq.com> (last visited Feb. 10, 2003); <http://www.peoplesearch.com> (last visited Feb. 10, 2003), <http://www.publicdata.com> (last visited Feb. 10, 2003); <http://www.findsomeone.com> (last visited Feb. 10, 2003); <http://www.usfind.com> (last visited Feb. 10, 2003); <http://www.daddezio.com/records/> (last visited Feb. 10, 2003); and <http://www.peoplespot.com> (last visited Feb. 10, 2003). The list of available sites could not possibly be exhausted in this Comment. Each offers a variety of services. In addition, [www.peoplespot.com](http://www.peoplespot.com) even permits individuals to order a copy of someone's birth certificate.

n187. See Torte, *supra* note 65; see Charen, *supra* note 65.

n188. Torte, *supra* note 65.

n189. Charen, *supra* note 65.

n190. Cate, *supra* note 102, at 179.

n191. *Id.*

n192. *Id.*

n193. *Id.*

n194. Davies, *supra* note 16.

n195. Green, *supra* note 6.

n196. See generally Banisar & Davies, *supra* note 90, at 41-42.

n197. *Id.* at 43.

n198. *Id.* at 41.

n199. Id.

n200. Id.

n201. Id.

n202. See Banisar & Davies, *supra* note 90, at 42.

n203. Id. at 44. It was passed in 1970. Id.

n204. Id. This data is specifically protected as long as it is being processed and used for commercial or professional aims. Id.

n205. Id. at 43-44. This right of privacy is limited by the predominant public interest. Id.

n206. Id. at 45.

n207. National Identifier, *supra* note 2, at 126 (statement of Mr. Rudi Veestraeten, Counselor and Consul at the Embassy of Belgium).

n208. Banisar & Davies, *supra* note 90, at 22.

n209. Id.



n210. Id. In 1998 alone, they investigated over three-hundred complaints. Id.

n211. The card is intended in the long term to function as a passport, driver's license, form of identification, as well as a bank card. Id. at 93.

n212. See id. at 92.

n213. Id. at 92.

n214. Id.

n215. Eaton, *supra* note 93, at 71.

n216. Id.

n217. Id.

n218. Id.

n219. Alan Dershowitz, *Why Fear National ID Cards?*, N.Y. Times, Oct. 13, 2001, at A23. The article is a commentary by a civil libertarian who favors national identification cards and concedes to the probability that national identification cards may reduce racial and ethnic profiling. See id.

n220. Eaton, *supra* note 93, at 96-97.

n221. Likewise, they would not be able to identify individuals they personally know, celebrities, or public officials. People would be targeted based on suspicious patterns of activity, instead of on their ethnicity. *Id.* For example, if every individual must show their secured identification for travel, work, buying dangerous material, and selling precious metals, then usual targets, such as Blacks, Chicanos, and un-manecured youth will presumably not be victims of discriminated. The theory is that the highly trustworthy identification card would alert authorities if individuals are dangerous. See *id.* at 104-06.

n222. Fussell, *supra* note 142.

n223. See Davies, *supra* note 16. Of those who have no other form of identification, the card will be a distinct asset. It will also protect them against false detainment or arrest. At the same time, illegal aliens will find it almost impossible to find work, conduct business, travel, or interact with government agencies. See Eaton, *supra* note 93, at 105.

n224. But see Green, *supra* note 6. As noted before, see *supra* note 150, Green suggests that increasing "collection and sharing of data" among agencies and industries is the real key to national security and that focusing on the card itself is a red herring. *Id.* However, she fails to consider that such measures are useless if the dangerous person is walking around with fraudulent identification or multiple identifications.

n225. National Identifier, *supra* note 2, at 165 (statement of Mr. Shneiderman, Computer Science professor at the University of Maryland, joined by Ms. Corrigan, counsel for the American Civil Liberties Union). Similarly, in the 1998 congressional hearings, State Representative Brian Flaherty urged that a decentralized identification system is superior to a centralized one. *Big Government at its Worst?*, *supra* note 4, at 54.

n226. National Identifier, *supra* note 2, at 36. Senator Bill McCollum has worked on privacy issues for many years. *Id.* at 35.

n227. See *United States v. Brown*, 52 F.3d 415, 428-429 (1995) (Kearse, J., dissenting); see generally *Washington v. Glucksberg*, 521 U.S. 702 (1997).

n228. National Identifier, *supra* note 2, at 21 (quoting the opening speech by Mr. Newt Gingrich, Former Speaker of the House of Representatives, discussing the country's main security issues).

n229. See *id.* at 36. Senator Bill McCollum, former chairman, House of Representatives Permanent Select Committee on Intelligence, Subcommittee on Human Intelligence, Analysis and Counterintelligence and Former Chairman, House of Representatives Judiciary Committee, Subcommittee on Crime, explains why after many years of research and experience in this area of law, he is adamant we do not need one centralized database that holds information about every individual. He refers to this concept as the "Big Brother" scenario.

n230. *Brian Krebs, Congress Reopens Debate on National ID Card, News Bytes, Nov. 16, 2001, at 2001 WL 23420353.*

n231. *A National ID Card: Big Government at its Worst or Technology Efficiency?*, *supra* note 4, at 17.

n232. *Id.* at 21-22 (statement of Mr. Nojeim, representing the American Civil Liberties Union).

n233. This feature is yet another way to minimize or eliminate constitutional violations. The increased privacy protections further prevent violations of the Fourth and Fourteenth Amendments.

n234. R. Brian Black, Comment, *Legislating U.S. Data Privacy in the Context of National Identification Numbers: Models from South Africa and the United Kingdom*, *34 Cornell Int'l L.J.* 397, 443 (2001).

n235. *Id.*

n236. *Id.*

n237. *National Identifier*, *supra* note 2, at 62-63 (statement by Mr. Jonathan Turley, Professor of Public Interest Law, George Washington University Law School).

n238. Id. at 130.

n239. Id. at 132-33.

n240. Id. at 133.

n241. Id. at 127.

n242. Id.

n243. National Identifier, *supra* note 2, at 127.

n244. See *id.* at 128.

n245. See *id.* at 154 (statement by Dr. Ben Shniederman, Computer Science professor at the University of Maryland).

n246. See *id.*

n247. Black, *supra* note 234, at 443.

n248. Id. at 433.

n249. Id.

n250. Id. at 434.

n251. National Identifier, *supra* note 2, at 130 (statement by Mr. Rudi Veestaeten, Counselor and Consul at the Embassy of Belgium).

n252. Id.

n253. Id.

n254. Id.

n255. Id.

n256. Black, *supra* note 234, at 445.

n257. Wolf Shipon, National Identification Cards, Unbound, Spring 1996, at <http://www.tcnj.edu/~macdona5/unbound/government/old/idcards.html> (last visited Mar. 30, 2003). Unbound is an internet journal of the College of New Jersey.

n258. Id.

n259. Black, *supra* note 234, at 447.

n260. See id.

n261. See generally id.

n262. Id. at 425.

n263. Id. at 430.

n264. The Office of the Federal Privacy Commissioner, About the Office, at <http://www.privacy.gov.au/about/index.html> (last visited Mar. 28, 2003).

n265. The CNIL, About the CNIL, at <http://www.cnil.fr/uk/cnil/thecnil<uscore>uk.htm> (last visited Mar. 28, 2003).

n266. Banisar & Davies, *supra* note 90, at 22.

n267. Black, *supra* note 234, at 427.

n268. Id. at 431.

n269. Banisar & Davies, *supra* note 90, at 18.

n270. Id. Between 1998 and 1999, the Commissioner handled 128 complaints, closed ninety complaints, and conducted twenty audits. Id. The Office of the Federal Privacy Commissioner has a comprehensive website available to citizens and non-citizens alike. The Office of the Federal Privacy Commission, at <http://www.privacy.gov.au> (last visited March 30, 2003). Id.

n271. *Id.* at 22. The Commission oversees the Data Protection Act of 1992, which secures the right to privacy and private communications. *Id.*

n272. *Id.*

n273. See *supra* Part II.B (referring to the abuse of information in World War II, Vietnam, etc.).

n274. C-Span: Washington Journal, *supra* note 80.

n275. In the 1998 Congressional hearing about national identification cards, a representative from the American Civil Liberty Union argued standardized driver's licenses create a national ID system, particularly if the system links individuals' records. *A National ID Card: Big Government at its Worst or Technology Efficiency?*, *supra* note 4, at 20 (statement by Mr. Gregory Nojeim, legislative counsel for the American Civil Liberties Union).

n276. *Krebs*, *supra* note 230.

n277. Cashdan, *supra* note 9.