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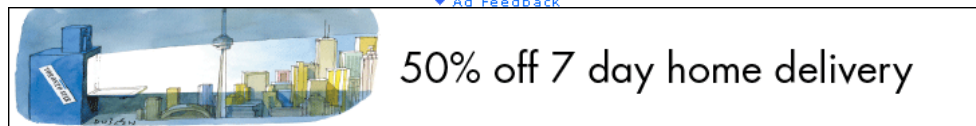


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Religious minorities face Real ID crackdown

By [Anne Broache](#)
Staff Writer, CNET News.com
February 6, 2008 4:00 AM PST

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Editor's note: A May deadline looms as just one flash point in a political showdown between Homeland Security and states that oppose Real ID demands. This is the third in a four-part series examining the confrontation.

No television, no wedding or family photographs, and definitely no image of herself on her driver's license: That was the devout Christian life that Nebraska resident Frances Quaring was trying to lead.

Which is why, after the state of Nebraska rejected her request for a license-without-a-photograph in the mid-1980s, Quaring sued the state in a [landmark case](#) that ended up at the U.S. Supreme Court. She won, with the justices agreeing that preserving her freedom of religion outweighed the state's interest in requiring an ID photograph.

More than two decades after the Quaring case, approximately a dozen states now offer religious exceptions when issuing driver's licenses. But because of a federal law called the [Real ID Act](#) that takes effect on May 11, residents of those states who have pictureless licenses could expect problems flying on commercial airliners and entering federal buildings, including some Social Security and Veterans Affairs offices.

The new rules could affect thousands of Americans in states including Nebraska, Pennsylvania, Oregon, Minnesota, Kansas, Arkansas, and Indiana. Religious groups including some Amish, Old Order Mennonites, Muslims, members of Native American faiths, and fundamentalist Christians object to identification cards bearing their photographs--or, in some cases, even showing their unshrouded faces in public.

The American Civil Liberties Union, which has criticized Real ID on numerous grounds, says it has received complaints about the law's rigidity toward religious groups and is "exploring all options," including a legal challenge to the law.

No photo ID, no admittance?

Starting May 11, the Real ID Act is expected to cause hassles for anyone with a pictureless license. Also affected are residents of a separate list of states--shown on this map--who may have trouble when flying on commercial airliners or entering federal buildings. Click a state below to see what it has told us about whether its driver's licenses will meet Real ID requirements.

beliefs."

"We are deeply concerned that Real ID and the associated regulations intrude on the religious liberty of many Americans who for reasons of faith wear head coverings or object entirely to having their photo taken," said Daniel Mach, director of litigation for the ACLU Program on Freedom of Religion and Belief. "The faithful shouldn't have to choose between a driver's license and their religious

Under Real ID, there's no obvious wiggle room for Americans who object to facial photograph requirements on religious grounds. The [lengthy new regulations](#) released by the U.S. Department of Homeland Security last month set minimum standards for state-issued driver's licenses and IDs, among which is a "full facial digital photograph" that adheres to specific federal requirements.

This could pose real problems for some residents of states with a history of allowing the devout to obtain valid driver's licenses without photographs in an attempt to accommodate religious beliefs. Still more states have enacted laws known as "religious freedom restoration acts."

What is Real ID?

[Federal regulations](#) creating a uniform national ID card--called Real ID--take effect on May 11. If your state hasn't agreed in principle to upgrade its driver's licenses to be Real ID-compliant, you could have trouble traveling by air and taking advantage of some government services.

A CNET News.com survey shows that just over half of the states have signed up, while some have flatly refused to participate, typically citing costs or sovereignty worries. Privacy is another concern, with a mandatory barcode on Real ID cards lacking encryption or legal prohibitions against misuse, and mandatory linking of states' motor vehicle databases.

Stories in this series

Monday: [Real ID could mean real travel headaches](#)

In just over four months, millions of law-abiding Americans could face new hassles when traveling on commercial flights if they hold driver's licenses or ID cards issued by states that haven't agreed to comply with Real ID. Homeland Security is already predicting "delays" and "enhanced security screening" procedures for those Americans in the non-Real ID line at the airport.

Tuesday: [Federal buildings become Real ID zones](#)

Everyone from visitors to the U.S. Capitol building to jurors being called to duty in federal courthouses could be affected by Real ID's requirement that noncompliant driver's licenses may not be used to access "federal facilities." Homeland Security says it "cannot predict" how many Americans in non-Real ID states will be inconvenienced.

Wednesday: [Religious minorities face Real ID crackdown](#)

Some U.S. states have long allowed citizens with religious objections to avoid having their photograph on driver's licenses. The Amish, Old Order Mennonites, and some Muslim women fall into this category. But licenses without photographs don't comply with Real ID, a rule that could invite a legal challenge.

Thursday: [FAQ: How will Real ID affect you?](#)

What are the privacy implications? What happens next? This list of frequently asked questions tries to clear up some of the confusion surrounding the controversial law.

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regulations.

"My understanding is that the Real ID legislation takes that option away from states," said Steve Nolt, a history professor at Goshen College who has studied Amish interaction with government regulations in recent decades.

For some Christians, Quaring included, one source of religious objections to Real ID comes from the Christian Bible's [Second Commandment](#), which in one translation says: "You shall not make for yourself an idol in the form of anything in heaven above or on the earth beneath or in the waters below."

Homeland Security justifies its mandates by saying a facial photograph "serves important security purposes." Its stated goal through Real ID--approved [unanimously](#) by the Senate and [overwhelmingly](#) by the House of Representatives as part of a "Global War on Terror" bill--is to improve driver's license security and thereby handicap terrorists, identity thieves, and illegal immigrants.

"Given these security concerns and the clear statutory mandate, DHS believes that a driver's license or identification card issued without a photograph could not be issued as a Real ID-compliant driver's license or identification card," the agency says.

Translated, that means in just over three months, federal agencies may no longer accept those "noncompliant driver's licenses" for Americans who are boarding a commercial airplane or entering a federal building. In addition, Homeland Security can add other requirements--one Homeland Security official recently suggested Real ID could be required to buy certain cold medicines--without consulting Congress first.

The lack of flexibility is troubling to Herman Bontrager, the secretary-treasurer of the [National Committee for Amish Religious Freedom](#). His all-volunteer group has met at least twice with Homeland Security officials to try to seek a compromise, and it's also talking with some members of Congress, as the Amish don't generally file lawsuits. They've had "congenial" conversations that discussed alternative possibilities for verifying identity--the Amish are amenable to fingerprints instead of photographs, he said--but no actual progress has been made so far.

"You shall not make for yourself an idol in the form of anything in heaven above or on the earth beneath or in the waters below."

--Bible

The photo ID requirement has already raised practical concerns in recent years, particularly because of the newly instated passport requirement for crossing into Mexico and Canada, where the Amish often travel to visit family or seek medical treatment, Bontrager said. Because the Amish don't fly on airplanes, most do not have passports, he said, adding that he worried the Real ID requirements could make it less convenient for them to access federal buildings. Without a photo-equipped license, they won't be able to [visit some Social Security offices](#), for instance.

"I think the Amish appreciate the conversations and the access to Homeland Security people, but we're now getting down to the implementation phase," said Bontrager, a Lancaster County, Penn., resident who runs an [insurance company](#) inspired by Biblical principles. "Each step in the rulemaking progress, we provide comment, and so on and never get any response. We have not yet seen any evidence that they're willing to make accommodations or provide options."

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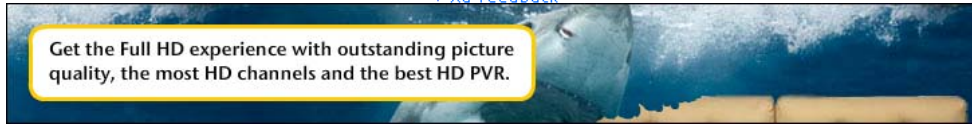


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Real ID could be the latest skirmish in years of legal battles between states and the federal government over religious freedom laws. Until 1990, U.S. law said that the government has to show a "compelling interest" in order to succeed in limiting a person's free exercise of religion, as evidenced in the Quaring case. But then came a U.S. Supreme Court case called [Employment Division v. Smith](#), which concluded that if a rule is neutral and isn't designed to target a particular religion, then it may pass constitutional muster.

In a response to critics of that decision, Congress enacted a law called the [Religious Freedom Restoration Act](#), which attempted to shift more of the burden back to the government in winning such cases. It said: "Government shall not substantially burden a person's exercise of religion" except in limited circumstances. That law, however, was partially gutted by the Supreme Court, which ruled Congress had overstepped its boundaries by applying that rule to the states, prompting many states to enact their own versions of the law.

What's relevant to the new Real ID rules, however, is that the Religious Freedom Restoration Act does still appear to apply to federal laws and rules, said the ACLU's Mach. If the ACLU does challenge Real ID, it plans to make its case using that law.

Whether such a challenge would be successful is another question.

Because Homeland Security appears to have a fairly narrow requirement--that is, that a driver's license applicant's face be uncovered--the government would likely be able to argue that it's pursuing its security-related goals in the narrowest possible way, said Seval Yildirim, director of the Center for International and Comparative Law at Whittier Law School in California.

"In other words, this is not an outright prohibition on all religious clothing or covering, but only those that prevent the state from identifying the individual," said Yildirim, who is defending a [Muslim police officer in Philadelphia](#) who was prohibited from wearing her head scarf while in uniform and on the job.

A few years ago, the ACLU of Florida lost a case in which the state revoked a devout Muslim woman's license because, after a later review, the state decided she may not wear a veil that covered most of her face. The ACLU argued that such a practice violated Florida's version of the Religious Freedom Restoration Act, but state courts ruled that the government's security concerns outweighed Freeman's religious freedom. Critics said the decision reflected a post-9/11 mentality that's less permissive of religious liberties.

Even though only some Muslims could be affected by the Real ID rules, it's a "significant minority," said Ibrahim Ramey, director of the human and civil rights division of the Muslim American Society Freedom Foundation. Ramey estimated that about 80 percent of Muslim women wear headscarves and about 10 percent also don a niqab, or face veil.

Organizations like his would "certainly be willing" to sign onto legal action with other civil liberties groups against the rules, Ramey said. (The Muslim American Society also has broader concerns about Real ID's implications for undocumented immigrants.)

"I would argue again that the benefit of religious accommodation far outweighs what some people might perceive as the drawback or the problematic nature of doing it," Ramey said in a telephone interview. "I don't think it's something...that will involve anything close to a large plurality of Muslim women, but for any woman that chooses to wear the covering, it ought to be something that's respected and accommodated by the larger society, particularly if there's no evidence of criminal intent."

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CNET News.com's Declan McCullagh contributed to this report.

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