

## The Need to Implement WHTI to Protect U.S. Homeland Security

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"The Need to Implement WHTI to Protect U.S. Homeland Security."

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Mr. Chairman and Ranking Member Jackson-Lee, I commend the Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims for holding an oversight hearing on the Western Hemisphere Travel Initiative (WHTI). WHTI is of critical concern to the district I represent, and is quickly surpassing softwood lumber as the top issue in US - Canada relations.

WHTI should not be viewed in a vacuum; it is essential that Congress understand the long-standing ties between the US and Canada. The two countries are bound by shared values, culture, history, and geography. My constituents do not think of Canada as another country, but as one community closely intertwined. A constituent of mine likened it to crossing the Potomac River from D.C. into Northern Virginia.

More than a relationship of shared proximity and principles, the northern border represents a major component of our global economy. US - Canada trade supports 5.2 million jobs and generates tens of billions of dollars in annual revenue. Western New York includes five bi-national bridges, including the Peace Bridge in Buffalo, which is the nation's second busiest border crossing. \$160 million in trade and 20,000 vehicles cross the Peace Bridge each day.

In addition to its importance to international trade, the Niagara frontier is a gateway for millions of tourists every year. Tourism is the fastest growing industry in Buffalo-Niagara. Our economy is heavily dependent on Canadian visits to our sporting events, cultural institutions, and local wineries. A loss of just a fraction of Canadian visitors to Buffalo-Niagara would cripple an already fragile Western New York economy.

Therefore, our border security policies must take into account that the northern border is a vital conduit for travel and trade. Let me make it clear that I support the intent of WHTI. In the post 9-11 world, it is imperative that we know that those entering our country are who they say they are, mean us no harm, and have the secure documents to prove it. But there are ways to implement WHTI that are smart and secure, and make certain that our border remains open for business.

Regrettably, I am convinced that the Department of Homeland Security (DHS) and the Department of State's (State) proposed plans for WHTI will unintentionally close our borders and be economically disastrous for the U.S. economy.

While we still have more questions than answers at this point, it is clear that DHS and State's proposed WHTI regulations fail to appreciate the close cultural and economic ties between the US and Canada. Further, the Bush administration's vision for WHTI ignores recommendations of the 9/11 Commission and key provisions of the Intelligence Reform and Terrorism Prevention Act of 2004. Consequently, WHTI does not effectively improve our border security and will severely curb legitimate trade and travel. The reasons are twofold: first, the documents DHS and State want to require cross-border travelers to carry are prohibitively expensive, take weeks to obtain, and do nothing to help Canadian visitors travel to the US. Secondly, DHS and State are failing to improve programs that expedite low-risk travelers through the inspections process - a cornerstone of the 9/11 Commission's border security recommendations.

I first will address the problems with the documents that DHS and State want travelers to carry. DHS and State continue to insist that US travelers will need to show a passport or an alternative yet-to-be-defined travel card - dubbed the People Access Security and Service (PASS) card - to re-enter the country from Canada. I understand from DHS and State that the development of the PASS card is an attempt to give travelers a low-cost alternative to a passport. However, the agencies expect that the card will still cost around \$55 dollars and take 4-6 weeks to obtain.

My constituents have made it clear that \$55 is too high a cost for travel into Canada. We cannot expect a family of four on a tight budget to spend over \$200 to cross into Canada for a day-trip. In addition, we know that families decide to visit Niagara Falls, on average, 14 days before a trip. Yet the PASS card will still take 4-6 weeks to obtain, meaning that tourists and spontaneous travelers will stay home or vacation elsewhere.

But do not take my word on it. According to a Zogby International poll commissioned by the Business for Economic Security, Tourism & Trade Coalition, only 30 percent of Americans are willing to pay more than \$25 dollars for a card that will only be good for travel to Canada or Mexico. Put another way, 80 percent of U.S. northern border residents have signaled that they will not buy a new \$55 dollar card to simply travel into Canada.

The PASS card is an unrealistic option for border residents and tourists because of its costs, limited utility, and long application process. While DHS continues to insist that the US is working with Canada in unison to develop the PASS card, the Canadian government has publicly stated that they have no plans to reciprocate the card for their residents.

I was in Ottawa yesterday to testify on WHTI before the Standing Senate Committee on Banking, Trade and Commerce. I met with Public Safety Minister Stockwell Day, Canadian Ambassador to the US, Michael Wilson, and a group of Canadian Senators and Members of Parliament. In each of these meetings, officials made it clear that they have no intention of creating a PASS card for their residents. In fact, Prime Minister Harper publicly declared last week that Canada will not reciprocate with a PASS card at this time.

I cannot blame Canada for its reluctance to join us in this endeavor because DHS and State continue to disagree on the technical specifications of the PASS card. DHS prefers that the PASS card be embedded with one type of radio-frequency technology (RFID), while State is pushing for the technology currently included in e-passports. Complicating matters is the fact that a subcommittee within DHS' Privacy Office just released a draft report critical of DHS' push to put RFID technology in the PASS card. The subcommittee writes, "RFID appears to offer little benefit when compared to the consequences it brings for privacy and data integrity. Instead, it increases risks to personal privacy and security, with no

commensurate benefit for performance or national security." The subcommittee concludes, "...we recommend that RFID be disfavored for identifying and tracking human beings." These interagency disputes on the PASS card must be reconciled before we can credibly expect Canada to follow our lead by creating their own card.

In sum, DHS and State are moving forward with two documentary options - a passport and the PASS card - that American and Canadian residents have made clear they will not purchase or cannot obtain. This should be a wake-up call to DHS, State and to Congress.

The 9/11 Commission and Congress certainly did not intend for new documentary requirements to bring international travel and commerce to a halt. In fact, their report noted that, "[o]ur border screening system should check people efficiently and welcome friends. Admitting large numbers of students, scholars, businesspeople, and tourists fuels our economy, cultural vitality, and political reach."

The 9/11 Commission understood the importance of border policies that improve both our homeland security and economic security. DHS and State need to follow suit by developing alternative documents that are low-cost, easily obtainable, and do so in formal consultation with the Canadian government.

However, documentation concerns are not the only problems with WHTI. DHS and State are also ignoring key provisions in the Intelligence Reform and Terrorism Prevention Act of 2004 that were designed to expedite the border inspections process for low-risk and frequent travelers.

The 9/11 Commission urged Congress to improve programs for frequent travelers. They noted, "[p]rograms to speed known travelers should be a higher priority, permitting inspectors to focus on greater risks. The daily commuter should not be subject to the same measures as first-time travelers. An individual shall be able to preenroll, with his or her identity verified in passage."

Accordingly, Congress included a number of provisions in the Intelligence Reform bill that stressed the importance of frequent traveler programs. Section 7208 (k) of the bill reads, in part, "the process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United State."

Expansion of existing frequent traveler programs should be an easy and important step forward in ensuring that we have a smart and secure northern border. For example, the NEXUS and FAST programs are joint ventures between the US and Canadian governments, and are designed to simplify border crossings for pre-approved, low-risk travelers and commercial truck drivers. Applicants undergo a federal background check more stringent than the checks for a passport, and must complete an in-person interview with a Customs and Border Patrol (CBP) officer. Accepted travelers get access to expedited border crossing lanes, and do not have to stop to be inspected. The NEXUS and FAST programs help frequent travelers and truckers get across the border quickly, while allowing our border inspectors to use their limited resources to better inspect high-risk travelers.

While DHS continues to insist that the expansion of NEXUS and FAST is a priority, the fact remains that a number of problems have kept the programs from being effective.

First, NEXUS and FAST are only available at a small number of border crossings; 11 for the NEXUS program and 10 for the FAST program.

Secondly, NEXUS and FAST have a cumbersome application process. Applicants must travel to an enrollment center for an in-person interview with a CBP officer, but there are only a handful of enrollment centers spread out across the northern border. In Buffalo, an applicant must travel to Canada just to apply. The Niagara Falls Bridge Commission has offered space for a center, but CBP continues to resist opening more facilities. The application fee of \$50, like the

proposed PASS card fee, is prohibitively expensive for many applicants, and has been credited by my local Chambers of Commerce with keeping enrollment in the NEXUS and FAST programs unacceptably low.

DHS has also been reluctant to market NEXUS in the U.S., and efforts by the private sector to market NEXUS have been met with resistance. For instance, the Buffalo and Fort Erie Public Bridge Authority installed signs advising drivers to ask for a NEXUS application at the inspection booth, but the CBP agents would not hand them out.

Finally, the timeframe that NEXUS and FAST lanes are open needs to be extended. NEXUS lanes are not open 24 hours and in some instances are not available until 11 AM, making the NEXUS card all but useless for daily commuters.

DHS has yet to address any of these issues, and has not requested adequate funding in the FY 2007 budget to expand the programs. Further, DHS refuses to even acknowledge that NEXUS and FAST will be acceptable under WHTI. Not only has DHS declined my requests to confirm that these programs will be acceptable alternatives, they have also refused to give Canadian officials any assurances that NEXUS and FAST will continue to be viable options for their citizens as well.

According to the State Department, 48 percent of the annual northern border crossings are made by just 400,000 people. These are the frequent travelers that DHS and State need to get enrolled in frequent traveler programs. Yet NEXUS enrollment currently stands at just 75,000. Even worse, CBP expects to only enroll 50,000 more individuals in the NEXUS program through 2011.

Congress must insist that DHS follow through with the Intelligence Reform bill's mandate to expand the NEXUS and FAST programs. The barriers for entry must be reduced so that NEXUS and FAST are as synonymous with cross-border travel as E-ZPass is with thruway travel.

Last year, the House accepted an amendment I offered to H.R. 1817, the Fiscal Year 2006 Homeland Security Authorization bill, that streamlined the NEXUS and FAST application process, merged the NEXUS highway and NEXUS Air programs, and encouraged greater public outreach for the programs. But more must be done if NEXUS and FAST are to reach their full potential imagined by the 9/11 Commission. For these reasons, I have introduced H.R. 5286, the Secure Traveler Improvement Act of 2006. My legislation breaks down the barriers of enrollment for frequent traveler programs, and expands NEXUS and FAST across the northern border. Key provisions include:

- Ø Sets the price of a NEXUS/FAST card at \$20 and waives the first-time renewal fee.
- Ø Requires that NEXUS/FAST be acceptable documents under the Western Hemisphere Travel Initiative, as well as acceptable for re-entry into the U.S. at any border crossing.
- Ø Requires NEXUS/FAST technology to be installed at additional crossings in North Dakota, Michigan, New York, Montana and Minnesota.
- Ø Establishes a minimum of six new enrollment centers across the northern border, and creates new mobile enrollment centers that will sign up applicants in low-participation areas.
- Ø Harmonizes the enrollment and security requirements for NEXUS and FAST.
- Ø Creates an online-application process and requires DHS to carry out a public awareness campaign.

I hope that members of this Committee will support H.R. 5286. The bill was developed in close consultation with the CAN/AM Border Trade Alliance and has been endorsed by the American Society of Travel Agents and the Binational Tourism Alliance.

We are not alone in our calls for comprehensive changes to WHTI. Former 9/11 Commissioner, Senator Slade Gorton, denounced DHS and State's WHTI plans last week. In his testimony in front of the Senate International Relations' Subcommittee on International Operations and Terrorism, Senator Gorton concluded that, "[u]ltimately both sides of the border stand to lose by current plans to implement the Western Hemisphere Travel Initiative."

Senator Gorton also confirmed that DHS and State are not properly implementing the Intelligence bill's provisions and calls into question the security benefits of WHTI. He recommends that "[g]reater emphasis [must] be placed on securing the Western Hemisphere perimeter and weeding out troublemakers....we cannot afford to inconvenience and deter innocent visitors to our country because we suffer from a case of mono-vision."

A 9/11 Commissioner is not the only authoritative voice troubled with WHTI. At my request, the Government Accountability Office (GAO) has been tracking implementation of WHTI since January 2006. On 25 May they established in a letter to me that DHS and State face significant problems in developing a workable WHTI plan.

GAO wrote, "[a]chieving the intended security benefits of the Travel Initiative by the statutory milestone date, without simply requiring all travelers to carry a passport, appears in jeopardy, given the volume of work that remains." GAO observes that DHS and State have made very few programmatic decisions and did not request WHTI-related funds in the FY 2007 budget. More alarming is that GAO believes DHS has yet to reach a common understanding of how WHTI links to the overall strategy of securing our borders.

It should be of great concern to all of my colleagues that DHS and State are pursuing a deeply flawed WHTI plan. Congress must step-in and insist that DHS and State change course, otherwise our border security will remain weak and the U.S. economy will suffer the consequences.

The challenge becomes how best to secure our northern border while appreciating the important cultural and economic ties between the US and Canada.

I have a few ideas that I think answer this challenge and improves WHTI. They are wrapped into legislation I introduced this week with Congressman John McHugh called the Protecting American Commerce and Travel Act (PACT Act).

The PACT Act has two parts. The first extends the WHTI deadline from January 2008 to September 2009. An extension will give the US government the time necessary to implement smart and secure border policies. GAO has made clear that the 2008 deadline will not likely be met; it is now up to Congress to send DHS and State back to the drawing board with specific instructions. In that regard, the second part of the PACT Act is designed to ensure that any alternatives to a passport are secure, low-cost and easily obtainable, and that these alternatives are worked on together by the US and Canadian governments.

First, the extension. As you are likely aware, the Senate adopted an amendment to their immigration bill that extends the deadline until June 2009. My bill echo's this extension but moves the deadline until September 2009. While the Senate agreed on June 2009, I do not think it makes a whole lot of sense to implement new crossing requirements in the middle of the summer tourist season.

Just as importantly as an extension, I believe it is imperative that Congress gives DHS and State concrete expectations for the implementation of WHTI. An extended deadline does little on its own to get WHTI "right." It could just be more time for the agencies to drag their feet as communities on both sides of the border guess about when and if WHTI will go into effect.

For these reasons, the PACT Act lays out a series of qualifications and benchmarks that DHS and State must meet in implementing WHTI. It also requires that DHS formally work with the Canadian government to develop alternatives suitable for residents of both countries.

First, the PACT Act requires DHS to evaluate existing documents - such as driver's licenses - and determine the feasibility of improving these documents so that they might work under WHTI. My bill conditions implementation of WHTI on DHS developing standards for securing driver's licenses with the necessary security features to be adequate to cross the border. We should not waste taxpayers money and create new cards if small fixes to a document most folks in the U.S. already have - a driver's license - will work just fine.

If DHS and State are serious about the PASS card, then they must understand that the card will only be an attractive option if it is inexpensive and easy to obtain. My legislation sets the cost of the PASS card at no more than \$20 and requires that an applicant receive the card within 10 business days of mailing in their application.

This legislation also encompasses the provisions in my Secure Traveler Improvement Act. More broadly, NEXUS and FAST provide a model for how the US and Canada can work together to achieve stronger security while facilitating low-risk trade and travel. With all that is at stake for our border economies, both governments should use the NEXUS and FAST programs as a blueprint for formally working together on WHTI.

In addition, the PACT Act requires DHS and State to develop a plan to re-admit into the country US travelers who do not possess a passport or an acceptable alternative document. This provision will allow a spontaneous traveler - such as Aunt Tilly from Kansas - the ability to drive over to Niagara Falls, Ontario for a couple of hours before heading back to Kansas, without having to go to the expense of purchasing a new document.

Finally, the PACT Act requires DHS and State to complete a cost-benefit analysis of their final WHTI plan before implementation. A cost-benefit analysis will help DHS evaluate secure and cost-effective options for implementing WHTI, while avoiding adverse effects on legitimate travel and trade with Canada. This analysis will have to prove that the benefits of WHTI outweigh the costs to commerce and travel. This is a high threshold for DHS and State to meet, but is an analysis that is required by Executive Order 12866.

These are just a few key features of the PACT Act. It is a bipartisan effort to bring common-sense solutions to this critical problem. I hope my legislation will be useful to this Committee in its evaluation of WHTI.

In closing, Congress faces a critical decision. We cannot allow the current WHTI proposal to unnecessarily destroy the economic and cultural ties between the US and Canada. If we do not move to fix it, DHS and State will continue down this course that will be disastrous for both countries. We can simultaneously achieve both strong border security and economic security with Canada, but only if Congress acts soon.

Again, thank you Mr. Chairman and Ranking Member Jackson-Lee for holding this hearing. I look forward to working with you on this important issue.

