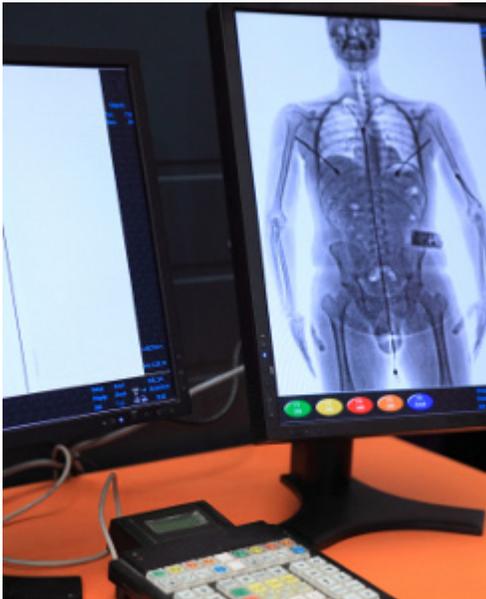


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Pro-Passenger STRIP Act Tells TSA “Don’t Touch My Junk”

January 6, 2012 By [Keith Ecker](#)



In December of last year, [Rep. Marsha Blackburn](#) of Tennessee introduced to Congress the [Stop TSA’s Reach in Policy Act](#), or the STRIP Act. The proposed legislation would prohibit any Transportation Security Administration employee not trained as a federal law enforcement officer or eligible for federal law enforcement benefits from wearing law enforcement uniforms or wearing police-like metal badges.

“It is outrageous that in a post-9/11 world that the American people should have to live in fear of those whose job it is to keep us safe,” Blackburn said in a statement. “Congress has sat idly by as the TSA strip searches 85-year-old grandmothers in New York, pats down 3 year olds in Chattanooga and checks colostomy bags for explosives in Orlando. Enough is enough. The least we can do is end this impersonation, which is an insult to real cops.”

The STRIP Act is part of a growing rally against the TSA and its security protocols. Critics have particularly taken issue with [the agency’s use of full-body scans](#), which many find invasive and potentially harmful. Also, there have been a number of reports of travelers alleging assault against TSA workers during pat-downs. Yet, legal experts say that because TSA employees are working on behalf of a federal agency, there is little recourse for citizens.

Don’t Touch My Junk

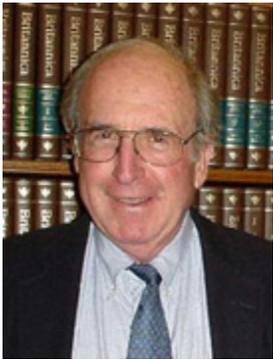
Reports of TSA abuses began to regularly circulate throughout the media after an infamous 2010 incident that spawned a now popular phrase.

[John Tyner](#) of Oceanside, Calif. was passing through the security checkpoint at San Diego International Airport when officials told him he’d have to enter a full-body scanner. Tyner refused, and the TSA declined to allow him to pass through. Tyner ended up opting not to travel that day and to get a refund on his ticket; however, TSA officers still demanded to subject him to a pat-down. As officials approached Tyler, the persistent traveler uttered his plea, “Don’t touch my junk.” The entire incident was filmed on Tyner’s cameraphone and uploaded to YouTube, where it went viral immediately.

Even with all the scrutiny, the TSA still gets accused of egregious misconduct. Just last month, three elderly women claimed that TSA officials forced them to submit to a strip search at New York’s JFK International Airport. Aviation attorney [Gerald Sterns](#) of [Sterns & Walker](#) says that he regularly fields complaints from travelers who feel they’ve been violated.

“Most of the complaints I get are over intrusive pat-downs,” Sterns says. “In theory, you have an option. You go through the full-body scanner, and, if you refuse, you get a pat-down. But if the scanner is not operating or they don’t have one, then you have no choice.”

Although a full-body scanner does provide an alternative to the pat-down, it may be far from harmless.



Gerald C. Sterns

“Most people are scared of full-body scanners because they don’t understand them,” Sterns says. “And then there is the fear of intrusion because of what it shows. But the real problem in my opinion are the long-term health effects, which nobody knows.” In fact, the European Union was so concerned about the health implications of full-body scanners that in November of last year [it banned the use of certain X-ray scanners](#) for airport security screenings.

“Who is making sure these devices are set properly? Who is monitoring exposure?” Sterns says. “They say it’s minor. But nobody knows because radiation overexposure is generally a long-term deal. For people that go through those a lot, there’s a big question in their mind.”

Taking the Teeth Out of the TSA

One of the staunchest advocates against the TSA’s tactics is [Rep. Jason Chaffetz](#) of Utah. In 2009, Chaffetz [added an amendment](#) to a TSA authorization bill that would have banned airports from using full-body scanners as a first-line screening option. It would also have allowed travelers to opt for a pat-down instead and would have banned the storing and copying of scanner images, which are revealing enough to show a naked body.

The amendment passed in the House but failed in the Senate. Oddly enough, Blackburn—the politician who introduced the STRIP Act—voted against Chaffetz’s amendment. Chaffetz has since introduced new legislation. In April 2011, the congressman proposed the [TSA Screening of Minors Act](#), a law that would prohibit pat-down searches of minors without the consent and presence of a parent of the minor. Yet, for now, the bill seems to have stalled.

Marc Rotenberg



In addition to legislative efforts to curb the TSA’s intrusive pat-downs and use of full-body scanners, there are efforts being made within the courts to strip the agency of some of its power. At the forefront of this effort is [Marc Rotenberg](#), the executive director of the [Electronic Privacy Information Center \(EPIC\)](#).

“We’ve had a lot of progress in this area,” Rotenberg says. “We were the organization that called attention to the capturing of detailed images of the naked human body. They are now using filters. We raised questions about the use of backscatter X-rays. The EU is now prohibiting them.”

[EPIC’s biggest win](#) so far was in July 2011 when a U.S. Court of Appeals held in a case between the organization and the Department of Homeland Security that travelers have the right to choose a thorough pat-down instead of submitting to a full-body scan. However, the case also established that the TSA’s use of full-body scanners is constitutional.”

“Would I say we have gotten everything we wanted?” Rotenberg says. “I would say we haven’t. The devices still violate the [Fourth Amendment](#) and several privacy laws.”

Resistance Is Futile

But fighting the TSA on the grounds of privacy invasion may be a losing battle, according to Sterns. That’s because, as a federal agency, the TSA largely has immunity from civil law under a legal doctrine known as [sovereign immunity](#).

“You start with the premise that the U.S. is immune from lawsuits of civil claims unless it has consented to be sued,” Sterns says. “Only when immunity is waived can it be sued.”

Technically, the U.S. government has partially waived immunity through a law called the [Federal Tort Claims Act](#), which allows citizens to sue the federal government for most torts committed by people acting on behalf of the U.S. However, there is an exception that likely applies to TSA workers performing pat-downs.

“There is a huge exception called *discretionary function* that provides immunity in any situation where there is an exercise of discretion involved,” Sterns says. “So the TSA’s position is that they are performing an executive function and the decision to pat or not to pat, to screen or not to screen, and how to screen are strictly discretionary calls. And they are probably right about that.”

However, Sterns does believe that the potential health implications of the full-body scanners may in fact be a viable claim against the government.

“The setting of a radiation machine is probably not a discretionary act at all,” he says.

Sterns recommends that if a traveler feel he or she has been subjected to harassment or abuse at the hands of a TSA worker to contact the [TSA contact center](#) and to complain to your members of Congress.

“Over the long haul, I think eventually we may get some changes, but it is going to be painful,” Sterns says.

[Keith Ecker](#) is a news reporter for Lawyers.com.

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