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UPDATE – Ralph Nader Endorses EPIC Body Scanner Lawsuit

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EPIC FILES OPENING BRIEF IN
AIRPORT BODY SCANNER CASE

EPIC Says TSA's
Program Violates Travelers' Rights

WASHINGTON, DC – On November 1, 2010 the Electronic Privacy Information Center (EPIC) filed the opening brief in the case against the controversial full body scanner program administered by the Department of Homeland Security.

EPIC was joined in the lawsuit by three frequent travelers: security expert Bruce Schneier, human rights activist Chip Pitts, and Legal Counsel for the Center for American-Islamic Relations (CAIR) Nadhira Al-Khalili.

The Petitioners argue that the airport security program violates several federal laws and the Constitutional right to privacy. They have asked the federal court of appeals in Washington, DC to suspend the program.

According to the EPIC filing, the TSA program violates the federal Privacy Act, the Religious Freedom Restoration Act, the Video Voyeurism Prevention Act, and the Administrative Procedures Act.

EPIC also asserts that the program violates the Fourth Amendment, as the body scanners are highly invasive and are applied to all air travelers without any particular suspicion.

Marc Rotenberg, President of EPIC and lead counsel in the case, said the TSA program is “unlawful, invasive, and ineffective.”

EPIC argues that the Department of Homeland Security "has initiated the most sweeping, the most invasive, and the most unaccountable suspicionless search of American travelers in history."

EPIC further states that the Transportation Security Administration "must comply with relevant law, and it must not be permitted to engage in such a fundamental change in agency practice without providing the public the opportunity to express its views."

Consumer advocate Ralph Nader said, “The EPIC lawsuit challenging the TSA full body scanner program should sound alarms for Airlines.”

Nader cautioned Airline CEOs “to pay more attention to the growing passenger complaints regarding the ineffectiveness, privacy-invading and safety risks of these machines.” Nader added, “the airlines are sure to lose passengers on trips under 500 miles if the use of these devices continues.”

“The TSA has disregarded virtually every law and Constitutional principle that applies to the operation of the body scanner program. This lawsuit is critical to uphold the rule of law,” said Chip Pitts, Former President of the Bill of Rights Defense Committee, and a plaintiff in the lawsuit.

The EPIC court papers point out that the agency has made no meaningful effort to allow travelers an alternative to these invasive searches.

Bruce Schneier, a leading transportation security expert, described his experience at Boston Logan airport.

“I was not verbally notified by any TSA official that the Full Body scan was optional ... I did not observe any written notice or signage that indicated the Full Body scan was optional, said Schneier.

“I have no reason to believe that any traveler who went through security screening at Logan Airport at that time would have been told that the Full Body Scan was optional or that there was an alternative security screening procedure,” Schneier stated in the EPIC brief.

The petitioners also say that the program violates the rights of many religious travelers.

“CAIR strongly supports the suspension of TSA’s body scanner program, which was an unconstitutional implementation of a federal policy.” said Nadhira Al-Khalili, Legal Counsel for CAIR.

According to Al-Khalili, “Not only were TSA’s actions illegal, the effect of the unilateral decision has severe and far-reaching consequences. The body scanner machines are invasive and humiliating, and shock the conscience.”

EPIC succeeded in an earlier lawsuit against the Homeland Security program concerning the body scanner program.

In a Freedom of Information Act lawsuit, EPIC obtained government records that revealed that the TSA required that the devices be able to store and record images of naked air travelers.

In a related suit against the US Marshall Service, EPIC also obtained 35,000 stored images from a single body scanner operated in a courthouse.

ABOUT EPIC

EPIC is a public interest research center in Washington, DC, established in 1994. EPIC focuses public attention on emerging privacy and civil liberties issues. EPIC routinely files amicus briefs in federal courts and pursues open government litigation against federal agencies. EPIC’s earlier success in obtaining the technical specification for the TSA body scanner documents was widely reported in the national and international media.

PRESS CONFERENCE-TUESDAY NOVEMBER 2, 2010, 3:00pm EST

EPIC will conduct a press conference and answer questions concerning the airport body scanner lawsuit. For more information, contact Ginger McCall at (202) 483-1140 x 102.

RESOURCES:

EPIC v. DHS, No. 10-1157. D.C. Circuit Court of Appeals, filed November 1, 2010
http://epic.org/privacy/litigation/EPIC_Body_Scanner_OB_Final.pdf

EPIC: EPIC v. DHS
http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html

EPIC: Whole Body Imaging Technology
<http://epic.org/privacy/airtravel/backscatter/>

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