

# WH Website Takes Down Anti-TSA Petition

Written by Raven Clabough

A petition about the screening procedures used by the Transportation Security Administration at airports was removed from the White House “We the People” website just before it reached the necessary 25,000 signatures to compel the Obama administration to issue a public response. The site holding the petition also went down for “maintenance” after an article on Wired.com called attention to the petition.

Jim Harper, director of information policy studies at the Cato Institute, instituted the petition, noting:

The public deserves to know where the administration stands on freedom to travel, and the rule of law.

While TSA agents bark orders at American travelers, should the agency itself be allowed to flout one of the highest courts in the land?

When clicking on the link to access Harper’s petition, however, you are taken to a page that reads:

Thanks for your interest in We the People, a new tool on WhiteHouse.gov that allows all Americans to ask the Obama Administration to take action on a range of important issues facing our country.

The petition you are trying to access has expired, because it failed to meet the signature threshold.

But according to the Electronic Privacy Information Center (EPIC), the assertion that the petition “failed to meet the signature threshold” is false, as there was still time remaining on the petition when it was removed.

The petition was an attempt to draw attention to the TSA's disregard for a circuit court order that resulted from a lawsuit brought by EPIC.

On July 15, 2011, the court ordered the TSA to "act promptly" and hold public hearings and publicly adopt rules and regulations about the use of its naked-body scanners. The three-judge appellate court said that the TSA breached federal law in 2009 by adopting the Advanced Imaging Technology scanners without having a 90-day public comment period, a violation of the Administrative Procedures Act. The Act requires agencies to launch a "notice and comment" period when they propose new rules that could impact the rights of the public. Since critics have argued that the scanners are a violation of Americans' privacy and health because they use radiation to see through travelers' clothing, a public comment period is necessitated. Both the public comments and the agency's response to them are reviewable by a court.

Judge Douglas Ginsburg found that there was "no justification for [the TSA] having failed to conduct a notice-and-comment rulemaking," and declared that "few if any regulatory procedures impose directly and significantly upon so many members of the public."

On its part, the TSA had argued that it "should not have to stop every five minutes for comment and rulemaking," and that it did not have the resources to do so.

But the Competitive Enterprise Institute, which has supported EPIC in its actions against the TSA, issued a brief that argues that the TSA's claim that it does not have the resources is false. The brief reads:

If the TSA is unable to manage its tremendous budget of nearly \$8 billion in a manner that enables the agency to follow well-established laws, this Court is obligated to exercise its authority to compel the agency to follow duly enacted laws.

Curiously, the obstacles responsible for the TSA's delayed rule-making here do not appear to have forestalled the agency's aggressive deployment of AIT scanners in airports nationwide.

This course of conduct is hardly indicative of an agency so starved for resources that it cannot comply with a straightforward judicial mandate within one year. Moreover, the TSA's purchase of hundreds of new scanners after this Court's July 2011 decision in EPIC suggests the agency intends to continue doing as it pleases without regard to public input or duly enacted laws.

The TSA has not been penalized for failing to launch a period for comment, as the agency argued that such a period would hurt the federal government's ability

to protect the public from “ever-evolving threat”; however, the court ordered the TSA to institute a 90-day public comment period.

Marc Rotenberg, EPIC’s executive director, noted in an e-mail that the “court’s order indicates that we have meritorious arguments.”

On two separate occasions, EPIC filed motions to order the TSA to begin the comment periods, but the appellate court denied the motions.

EPIC filed a mandamus petition with the court in Washington demanding the beginning of the public comment period. In the petition, EPIC contends that the TSA’s delay in initiating the process is unlawful, and that it is posing a risk to travelers and defying the court’s authority. The petition asks the court to require that the TSA either receive public comments within 60 days or suspend the body-scanner program completely.

On Wednesday, the three-judge circuit panel ordered the TSA to respond by August 30. But TSA spokeswoman Lorie Dankers stated that the hearings, as well as the agency’s response to those hearings, were not expected until “next year.”

Concern over the use of the naked-body scanners rests on two primary issues: the content of the pictures taken by the machines, and the use of radiation in taking the photos.

A poll conducted by the media group ProPublica in December 2011 showed that 46 percent of Americans did not believe that the risks associated with the machines outweighed their purported benefits.

The question posed to the respondents stated, “If a security scanner existed which would significantly help in preventing terrorists from boarding a plane with powder, plastic, or liquid explosives, do you think the TSA should still use it even if it could cause perhaps six of the 100 million passengers who fly each year to eventually develop cancer?”

ProPublica felt compelled to conduct this recent poll following assertions by the TSA that most Americans were in favor of the scanners. The TSA cited a number of polls which show that Americans favored the scanners; however, those polls weighed privacy issues versus the benefits of the machines, not health concerns. ProPublica explained,

Only one of these polls — by CBS News — asked specifically about X-ray body scanners, finding that 81 percent of Americans thought that such X-ray scanners should be used in airports. But that poll — like all others — did not mention the risk of cancer.

But a recent Gallup poll reveals that 54 percent of those polled think the TSA is doing a “good” or “excellent” job, while another 30 percent believe the TSA is doing a “fair” job. In fact, the TSA has a significantly higher approval rating than the U.S. Congress, which received only a 16 percent approval rating in a Gallup poll taken last month.

“This positive report reaffirms TSA’s commitment to carrying out these responsibilities with efficiency, integrity and in a customer friendly manner,” TSA executive administrator John Pistole responded.

The recent Gallup poll, however, did not pose specific questions regarding either the use of the naked-body scanners, the privacy violations, or potential risks of cancer from the machines.