The Great TSA Pat-Down Smackdown

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Cementing his image as a friend of the traveling public, TSA Director John Pistole recently proclaimed, “If they don’t like it, they don’t have to fly.”

The “it,” of course, is TSA’s new explosively controversial policy of subjecting any air traveler refusing to undergo an electronic body scan to a mandatory pat-down. In case anyone missed his point, Mr. Pistole added in a later Commerce Committee hearing, "If you’re asking, am I going to change the policies, no, I’m not going to change those policies.”

Someone who makes decisions he certainly is; someone who makes good decisions, maybe not!

Certainly no issue has so galvanized the traveling public since 9/11. Travelers, especially those who have undergone the body searches, are hopping mad. Many forswear flying again, others are suing, and some are sponsoring protests of various kinds. The horror stories from those searched seem endless, harrowing, and infuriating.

The debate about pat-downs seems to converge on three more or less separate arguments.

1. **Pat-downs are inherently demeaning:** Some argue that pat-downs are inherently demeaning, perhaps even a form of sexual battery. Many subjected to the searches have made this case. But defenders of the practice say they are no more intrusive than a routine police pat-down. The critics of the policy are merely offering exaggerated if not outright hysterical accounts of their experience.

2. **Scanners used in place of pat-downs pose health risks:** A second criticism focuses on the potential health risk of the scanners. Many of those complaining often experience higher-than-normal exposure to background radiation or have certain health conditions. But defenders of scanners maintain that such concerns are unwarranted, concluding that scanners are safe and pose no health risk to travelers.

3. **Neither pat-downs nor scanners are effective against terrorists:** The third major criticism argues that no solid evidence exists that either the scanners or the body searches are really effective in protecting us from terrorists. They point out that neither would have detected explosives concealed in body cavities. Defenders counter that these measures are the most effective tools available to detect those who would carry weapons and explosives onto airplanes. Perfect or not, they should be used to maximize safety and save lives.

These arguments are unquestionably important. But their importance is secondary to a far more transcendent question facing the American people: who in a democracy rules—the people or unelected bureaucrats? So far it is clearly the unelected bureaucrats.

Clearly then we need a meaningful debate, not just about health risks or policy effectiveness, but far more importantly about why a single unelected bureaucrat in a federal agency gets to make such far-reaching decisions. Indeed, the new security measures were implemented by fiat to be sprung on an
unaware Congress and a hapless American populace.

The TSA pat-down controversy has produced a defining moment in American democracy. It is a point in the age of Obama in which we find out if a single federal agency has become so powerful and so unaccountable that the clear voice of millions of Americans goes unheard and unheeded.

Meanwhile, Mr. Pistole, who insisted before Congress that he would never “change the policy,” has conceded to at least refining it. Children now won’t be subjected to enhanced pat-downs, and beginning in January, pilots will be exempted and likely air attendants too. Such exemptions could be expanded to include Muslim women.

Pennsylvania’s Benjamin Franklin lived and died well before the world confronted the pervasive terrorism of the 21st century. But the prescient Franklin understood well the danger in trading liberty for safety. Long ago he warned us that people “who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.”

To which Franklin could have added history’s clear lesson: those who do give up liberty for safety usually end up with neither.

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