



In bill text the following have special meaning:

green underline denotes added text

~~dark red struck out text~~ denotes deleted text

red text denotes vetoed text

The symbol, [↗](#), indicates a link to an affected code section

**2009 MI HR 368**

**AUTHOR:** Kowall

**VERSION:** Introduced

**VERSION DATE:** 12/01/2010

Rep. Kowall offered the following resolution:

**House Resolution No. 368.**

A resolution to memorialize the Congress of the United States to enact legislation prohibiting the use of full body scanners and enhanced physical pat-down checks.

Whereas, The Fourth Amendment of the United States Constitution provides the following guarantee: The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. Transportation Security Administration (TSA) procedures such as full body scans and personal, invasive pat-downs are in direct violation of the Fourth Amendment and are thus unconstitutional; and

Whereas, The concept of the presumption of innocence is one of the most basic in our system of justice, even though it is not explicitly enumerated in the text of the U.S. Constitution. This basic right comes to us, like many things, from English jurisprudence and has been a part of that system for so long that it is considered common law. Furthermore, this concept is embodied in several provisions of the U.S. Constitution, such as the right to remain silent and the right to a jury. The practices of full body scans and enhanced physical pat-down checks assume guilt before innocence and are therefore in direct violation of common law and concepts embodied in the U.S. Constitution; and

Whereas, While the U.S. Constitution does not specifically mention a right to privacy, many Supreme Court decisions over the years have established that the right to privacy is a basic human right, and as such is protected by virtue of the Ninth Amendment. In addition, right to privacy is inherent in many of the amendments in the Bill of Rights, such as the Fourth Amendment's search and seizure limits, and the Fifth Amendment's self-incrimination limit. Full body scanning and enhanced physical pat-down checks violate American citizens' right to privacy and are an assault on our human dignity, as well as our physical, emotional, and mental well-being; and

Whereas, While the U.S. Constitution does not specifically mention "travel" or an explicit right to travel, this right is firmly established in U.S. law and precedent. In *United States v Guest*, 383 U.S. 745 (1966), the Supreme Court noted, "It is a right that has been firmly established and repeatedly recognized." In *Shapiro v Thompson*, 394 U.S. 618 (1969), Justice Stewart noted in his concurring opinion that . . . it is a right broadly asportable against private interference as well as government action. Like the right of association, . . . it is a

virtually unconditional personal right, guaranteed by the Constitution to us all. Furthermore, although the Articles of Confederation had an explicit right to travel, it is thought that the right is so fundamental that the framers may have thought it unnecessary to include it in the Constitution or the Bill of Rights. Thus, being denied access to any mode of travel due to an individual's refusal to submit to full body scanning or enhanced physical pat-down checks is a violation of American citizens' right to travel; and

Whereas, Full body scanning and enhanced pat-down procedures have not been proven to be effective in preventing terrorist attacks on airlines. In fact, they may have little impact on security and merely give travelers a false sense of security, as opposed to adopting real security measures to ensure that travelers are actually safe. The Department of Homeland Security and the TSA should adopt the much more effective security procedures of the Israelis, such as profiling and the interviewing of travelers by highly trained and experienced agents before they are even allowed to check in. Not a single terrorist has been successful in managing to get through the security at Ben Gurion International Airport; and

Whereas, The use of full body scanning and enhanced pat-down procedures actually embolden our enemies and further their goals by eroding the very freedoms Americans hold dear and which Al Qaeda and other Islamic radicals want to destroy; now, therefore, be it

Resolved by the House of Representatives, That we hereby memorialize the Congress of the United States and the Department of Homeland Security to remember that this is, in fact, the United States of America and to ban the invasive, demoralizing, illegal and unconstitutional practices of full body scanning and enhanced physical pat downs; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the Administrator of the TSA.

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