



U.S. Department of Justice

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Mr. Joe Straus
Speaker of the House
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P.O. Box 2910
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David Dewhurst
President of the Senate
Capitol Station
P.O. Box 12068
Austin, TX 78711

Patsy Spaw
Secretary of the Senate
The Senate of Texas
P.O. Box 12068
Austin, TX 78711

Dear Leaders:

I write with regard to HB 1937, which I understand will imminently be presented to the Texas Senate for a vote. This office, as well as the Southern, Northern and Eastern District of Texas United States Attorneys, would like to advise you of the significant legal and practical problems that will be created if the bill becomes law. As you no doubt are aware, the bill makes it a crime for a federal Transportation Security Official ("TSO") to perform the security screening that he or she is authorized and required by federal law to perform. The proposed legislation would make it unlawful for a federal agent such as a TSO to perform certain specified searches for the purpose of granting access to a publicly accessible building or form of transportation. That provision would thus criminalize searches that are required under federal regulations in order to ensure the safety of the American public. The legislation also makes it a crime for a public servant, as defined in the bill, to deny or impede another person in the

exercise or enjoyment of any right or privilege, knowing that the public servant's conduct is unlawful. As a result, it appears that the intent of the bill is to preclude a TSO from turning away from the secure area of an airport someone who otherwise would have been subjected to a pat down as a condition of entry.

The effect of this bill, if enacted, would be to interfere directly with the Transportation Security Administration's ("TSA") responsibility for civil aviation security. 49 U.S.C. § 114 (d); 6 U.S.C. § 202 (1). Congress has directed the Administrator of TSA to take "necessary actions to improve domestic air transportation security," 49 U.S.C. § 44904(e), and directed him to "prescribe regulations to protect passengers and property on an aircraft . . . against an act of criminal violence or aircraft piracy." *Id.* § 44903(b). Congress has directed TSA to provide for "the screening of all passengers and property . . . before boarding," in order to ensure that no passenger is unlawfully carrying a dangerous weapon, explosive, or other destructive substance. *Id.* §§ 44901(a), 44902(a), 114(e). If the Administrator determines that "a particular threat cannot be addressed in a way adequate to ensure . . . the safety of passengers and crew of a particular flight," he "shall cancel the flight or series of flights." *Id.* § 44905(b).

HB 1937 would conflict directly with federal law. The practical import of the bill is that it would threaten criminal prosecution of Transportation Security Administration personnel who carry out the security procedures required under federal statutes and TSA regulations passed to implement those statutes. Those officials cannot be put to the choice of risking criminal prosecution or carrying out their federal duties. Under the Supremacy Clause of the United States Constitution, Texas has no authority to regulate federal agents and employees in the performance of their federal duties or to pass a statute that conflicts with federal law.

If HR 1937 were enacted, the federal government would likely seek an emergency stay of the statute. Unless or until such a stay were granted, TSA would likely be required to cancel any flight or series of flights for which it could not ensure the safety of passengers and crew.

We urge that you consider the ramifications of this bill before casting your vote.

Very truly yours,



John E. Murphy
United States Attorney