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January 5, 2017

Mark Langer, Clerk of Court  
Clerk's Office – Room 5205  
U.S. Court of Appeals for the D.C. Circuit  
E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: Fed. R. App. P. 28(j) Letter in Support of Brief of *Amici Curiae*  
*Competitive Enterprise Institute, et al. v. U.S. Department of Homeland*  
*Security, et al.*, No. 16-1135 (D.C. Cir.) (consolidated with No. 16-1139)

Dear Mr. Langer,

Amici Freedom to Travel USA, et al. respectfully seek to inform the Court about two high-profile TSA passenger screening incidents occurring after the Amici filed their final brief on October 3, 2016.

First, on December 4, 2016, breast cancer survivor Denise Albert reported the following experience with a TSA screening at Los Angeles International Airport, garnering nationwide attention.<sup>1</sup> Albert told TSA agents in advance about a port in her chest for chemotherapy.<sup>2</sup> Nevertheless, "TSA agents aggressively attempted to do a body cavity search [of Albert] in public."<sup>3</sup> Albert corroborated this account with a cellphone video in which a TSA agent may be seen "grabb[ing] [Albert's] left thigh and [running] her hands up to Albert's crotch."<sup>4</sup> After the pat-down, Albert spoke with TSA official Kimberly Walton who "promised that all 3,000 agents at LAX would be retrained in handling patients with medical conditions immediately."<sup>5</sup>

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<sup>1</sup> Travis Andrews, 'You Cannot Touch Me There,': Breast Cancer Patient Claims TSA 'Humiliated' and 'Violated' Her, WASH. POST, Dec. 8, 2016, <http://wpo.st/ieQP2>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Lindsay Kimble, TV Host With Breast Cancer Hopes 'Horrific' TSA Body Search Won't Happen to Anyone Else, PEOPLE, Dec. 8, 2016, <http://bit.ly/2iwdMth>.

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Page 2 of 2

Second, on December 22, 2016, CNN commentator Angela Rye reported the following experience with a TSA pat-down at Detroit Metropolitan Airport after a body scan false-alarmed on her dress: “[The TSA agent] went down my leg, up my dress, and her hand sideways hit[] me right in the crack of my labia. Startled, I jump[ed] and fe[lt] a lump in my throat trying to hold back tears.”<sup>6</sup> Rye posted a cellphone video of this pat-down taken by a police officer who later told Rye that he intended “to write up an incident report” based on the TSA agent’s conduct.<sup>7</sup>

These incidents lend fresh support to many of the TSA abuses identified in the Amici’s brief and the “hard questions” they raise. (Amici Br. 7-23, 28.) The Amici thus ask the Court to consider these new incidents in deciding this case.

Respectfully submitted,

/s/Mahesha P. Subbaraman

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*Freedom to Travel USA, National Association  
of Airline Passengers, Bill of Rights Defense  
Committee/Defending Dissent Foundation, &  
Consumer Watchdog*

cc: Counsel of Record for All Parties via ECF

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<sup>6</sup> Angela Rye, *Dear TSA: The Country Is Not Safer Because You Grab Vaginas*, CNN, Dec. 22, 2016, <http://cnn.it/2hFEq4W>.

<sup>7</sup> *Id.*