

MAR 14 2011

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598



Transportation
Security
Administration

The Honorable Jason Chaffetz
Chairman
Subcommittee on National Security, Homeland Defense
and Foreign Operations
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Chaffetz:

I am writing to follow up on our telephone conversation today regarding the Subcommittee's forthcoming hearing, titled "TSA Oversight Part 1: Whole Body Imaging," which is scheduled to be held at 9:30 a.m. on Wednesday, March 16, 2011. The Subcommittee has invited two witnesses from the Transportation Security Administration (TSA) to appear at the hearing: Mr. Robin Kane, Assistant Administrator for Security Technology and Mr. Lee Kair, Assistant Administrator for Security Operations. I respectfully wish to reiterate my request that the TSA witnesses not be placed on the same panel as an opposing litigant.

I am committed to working with Members of Congress and Committee members in their efforts to conduct oversight and enhance the ability of TSA to fulfill its mission – and this hearing is no exception. I am willing to provide the requested witnesses at the requested time. However, I have strong concerns over the Subcommittee's intention to seat Mr. Kane and Mr. Kair alongside a non-governmental witness who represents the Electronic Privacy Information Center (EPIC), an organization that has multiple lawsuits pending against the agency. To date, EPIC has five (5) lawsuits pending against the agency – four Freedom of Information Act lawsuits in addition to the litigation pending in the United States Court of Appeals for the D.C. Circuit that seeks to halt Advanced Imaging Technology (AIT) in its entirety. Thus, it would be inappropriate to place both sides of a lawsuit on the same panel at a public hearing to discuss matters subject to litigation.

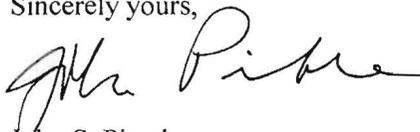
I do not believe the public interest is advanced by placing contestants in civil litigation side-by-side at a Congressional hearing to discuss their respective positions on the use of AIT in primary screening. To best enable the sides to put forth their respective positions, I recommend two separate panels, one composed of Government witnesses and the other composed of public witnesses. Moreover, it is customary for Federal Government witnesses to appear on Government-only panels in order to allow for a thoughtful, direct and frank conversation between the witness and the Committee Members.

As mentioned above, I am committed to working with you on this and other important matters of mutual concern. However, in the interest of promoting a frank and open discussion, and ensuring that both litigants' rights are protected, I must respectfully request that the Subcommittee agree to creating two separate panels. I am not aware of any reason why this normal accommodation would be unavailable in this instance. However, in the event that this option is not available, I would be pleased to have the agency officials testify as the sole witnesses before the Subcommittee next week at a hearing on the identical subject.

Because of the shortness of time before the hearing, please let my office know at your earliest convenience whether either of the two options that TSA can offer -- a Government-only panel at the hearing in question, or the TSA officials testifying as the only witnesses at a separate hearing on the identical subject -- is acceptable to you. If these options are not acceptable, please be advised that I will decline TSA participation until an appropriate agreement can be reached.

I look forward to speaking with you in the near future.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John S. Pistle". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John S. Pistle
Administrator

cc: Rep. John F. Tierney, Ranking Member
Subcommittee on National Security, Homeland Defense
and Foreign Operations