EXHIBIT A

(Amicus Brief of the Chamber of Commerce of the United States and the National Association of Manufacturers)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRANSCANADA KEYSTONE XL PIPELINE, LP and TC OIL PIPELINE OPERATIONS INC., Plaintiffs, v. JOHN F. KERRY, Secretary of the Department of State; LORETTA E. LYNCH, Attorney General of the United States; JEH CHARLES JOHNSON, Secretary of the Department of Homeland Security; and SALLY JEWELL, Secretary of the Department of the Interior, Defendants.	NO. 4:16-CV-00036

[PROPOSED] AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AND THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PLAINTIFFS

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INTEREST OF AMICUS CURIAE

Founded in 1912, the Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of more than three million business and professional organizations of every size, in every industry sector, and from every geographic region of the country. The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and every state. A principal function of both the Chamber and NAM is to represent the interests of its members before Congress, the Executive Branch, and the courts. Amici regularly file briefs in cases raising issues of concern to America's business community.

Amici and their members have a substantial interest in the maintenance of a coherent trade policy and, in particular, a policy that promotes commerce with our neighbors and allies. Here, the State Department has blocked an American corporation from building a pipeline that would import crude oil from Canada for refining in the United States, which would create jobs, spur economic growth, and promote America's energy security. Although the Constitution grants Congress the power to regulate foreign commerce, and although Congress has repeatedly expressed its support for the pipeline, the State Department claims that the President has inherent foreign affairs power to override Congress because the construction of this pipeline might affect how the international community views the United States' commitment to fighting climate change. The Department's assertion of authority in the face of Congress's express disagreement undermines the separation of powers and upsets the development of sound trade policy.

INTRODUCTION

The structure of our Constitution, and its separation of powers between the Executive and Legislative branches, prohibits the Executive's sweeping assertion of power over cross-border trade that it has asserted regarding the Keystone XL Pipeline. Article I of the Constitution vests Congress with plenary authority over foreign and domestic commerce, while the Executive holds distinct, implied powers over foreign relations. At times, the same controversy may directly implicate both powers, leading to close questions of authority. But this is not such a case.

In this case, the construction of a pipeline to transport crude oil to American refineries lies at the core of Congress's power "[t]o regulate commerce with foreign nations." By contrast, while the Executive in this case repeatedly notes that the pipeline crosses an international border, the justification offered by the President for regulating the pipeline has nothing to do with the border crossing, relations with Canada, or national security. Rather, the President wishes to regulate foreign commerce in this case because he believes it is a helpful bargaining chip in an unrelated foreign relations project. That theory of Presidential power proves far too much.

Moreover, Congress has clearly and unmistakably expressed support for the pipeline's construction. The State Department argues that Congress has acquiesced to the Executive's asserted plenary power to unilaterally regulate cross-border pipelines. But Congress's repeated expressions of support for the Keystone XL Pipeline definitively refute any suggestion or inference that Congress acquiesced to that power's application here. Where, as here, the President claims the authority to regulate commerce based on a highly attenuated connection to a foreign affairs goal, and where such regulation is contrary to the wishes of Congress, that claim clearly violates the Constitution's separation of powers.

The Government's approach not only violates the Constitution's separation of powers, but also would create severe uncertainty over trade policy, destabilizing the American economy and hurting American businesses. Instead, the Executive and Legislative Branches must work in tandem when their respective foreign affairs and foreign commerce powers intersect. Indeed, a long history of collaboration between Congress and the Executive demonstrates the stability and certainty required to spur the investment and create the jobs that are the catalyst of the American economy.

ARGUMENT

I. The Executive May Not Use Its Foreign Affairs Power to Usurp Congress's Authority over Foreign Commerce, Particularly in the Face of Express Opposition

The Constitution outlines a careful separation of powers granting Congress plenary power over both domestic and foreign commerce and granting the Executive certain implied powers over foreign affairs. These implied powers might be used in a manner that affects commerce, and such cases might present close questions of Presidential authority. But this is not such a close case. Here, the President is directly regulating commerce *qua* commerce in order to indirectly enhance his ability to negotiate with foreign powers. This exercise of power is doubly problematic where, as here, Congress has clearly expressed its disagreement with the Executive.

A. Congress's and the Executive's Respective Roles

The Constitution vests Congress with the power "[t]o regulate Commerce with foreign Nations, and among the several states." U.S. Const. Art. I, § 8, cl. 3. The foreign commerce power "extends to every species of commercial intercourse between the United States and foreign nations" (*Gibbons v. Ogden*, 22 U.S. 1, 3 (1824)), and sweeps even more broadly than the interstate commerce clause (*see Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 448 ("Although the Constitution, Art. I, § 8, cl. 3 grants Congress power to regulate commerce 'with foreign Nations' and 'among the several states' in parallel phrases, there is evidence that the Founders intended the scope of the foreign commerce power to be the greater. Cases of this Court, stressing the need for uniformity in treating with other nations, echo this distinction.")).

Congress's power over foreign commerce is not merely broad; it is "exclusive and plenary," and "may not be limited, qualified, or impeded." *Bd. of Trustees of the Univ. of Illinois v. United States*, 289 U.S. 48, 56–57 (1933). In the words of Chief Justice John Marshall, "[t]he power to regulate commerce, so far as it extends, is exclusively vested in Congress." *Gibbons*, 22 U.S. at 3 (emphasis added). Accordingly, "[i]mports from a foreign country are foreign commerce subject to regulation … *by Congress alone*." *United States v. Guy W. Capps, Inc.*, 204 F.2d 655, 660 (4th Cir. 1953) (emphasis added).

The Founders clearly contemplated that Congress would retain power over foreign commerce in areas that would also affect foreign affairs. For example, a proposal at the Constitutional Convention that would have required a supermajority vote by Congress in order to regulate foreign commerce was defeated when James Madison urged that it would undermine Congress's ability to retaliate against discriminatory tariffs imposed by a foreign country, signaling a clear expectation that the Legislature might employ its foreign commerce power to achieve foreign policy objectives. *Journal of the Federal Convention Kept by James Madison* 629 (E.H. Scott ed., The Lawbook Exchange 2003). Similarly, President Washington "respected Congress's significant foreign affairs prerogatives" and "never declared war, regulated foreign commerce, or appropriated funds." Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 Yale L. J. 231, 296 (2001).

The Executive, by contrast, has no independent authority to regulate foreign commerce *qua* commerce. The President has discrete authority to act as Commander in Chief and an implied power to engage in foreign affairs. See *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414 (2003) ("[T]he historical gloss on the 'executive Power' vested in Article II of the Constitution has recognized the President's vast share of responsibility for the conduct of our foreign relations."). This implied "foreign affairs" power does not give the President authority over anything that might loosely be labelled "international" or "foreign"; rather, it reflects the "delicate, plenary and exclusive power … as the sole organ of the federal government in the field of *international relations*." *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936) (emphasis added).

This implied power is not unbounded. It is given content in part by those powers that the Constitution expressly allocates to the Executive, all of which are far afield from the power to regulate foreign commerce. For example, the Executive is empowered with such tasks as making treaties, though only subject to Senate approval (Art. II, § 2, cl. 2), appointing ambassadors (*id.*), receiving ambassadors (Art. II, § 3), and serving as Commander in Chief of the Army and Navy (Art. II, § 2, cl. 1). Moreover, the powers that the Constitution grants other branches also help to delineate the outer reaches of the President's foreign affairs power. As *Curtiss-Wright* acknowledged, the President's powers "must be exercised in subordination to the applicable provisions of the Constitution" (299 U.S. at 320), a sentiment echoed by the Court's observation in *Garamendi* that "Congress holds express authority to regulate public and private dealings with other nations in its war and foreign commerce powers" (539 U.S. at 414).

In other words, although the President possesses power over foreign relations, that authority is distinct from Congress's separate authority to regulate foreign commerce. Some "areas in which the executive might have been thought to have had some regulatory power—most notably foreign commerce—were specifically assigned to Congress in the Constitution's text," such that they are "not part of the President's residual power, . . . assur[ing] that the President must often look to Congress as a partner in foreign affairs endeavors." Prakash & Ramsey, *supra*, at 263. Accordingly, Congress does not lose its exclusive authority over foreign commerce simply because the President may also wish to regulate foreign commerce in connection with foreign relations.

B. The Executive's Foreign Affairs Power Does Not Permit It to Directly Regulate Foreign Commerce on the Basis of Attenuated Foreign Affairs Concerns When Congress Has Voiced Its Opposition

Where a controversy implicates powers held by both the President and Congress, Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides the familiar analytic framework for reconciling those overlapping authorities. In that context, "Presidential powers are not fixed, but fluctuate, depending upon their disjunction or conjunction with those of Congress." *Id.* at 634. When the President acts pursuant to the express or implied authorization of Congress, that power is at its maximum, as "it includes all that he possesses in his own right plus all that Congress can delegate." *Id.* at 635. When the President acts in the absence of congressional approval or disapproval, "he can rely only on his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* at 637. Finally, when the President acts contrary to congressional will, the President "can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.*

Importantly, however, each category of the Youngstown framework assumes that the President may act only within constitutionally conferred authority, either to execute laws enacted by Congress or to exercise inherent Executive authority. When the President acts outside this scope, then no amount of congressional acquiescence will suffice to uphold the challenged action. *See Medellin v. Texas*, 552 U.S. 491, 528 (2008). This is true even if the acquiescence persists for a time. As the Supreme Court has emphasized, "[p]ast practice does not, by itself, create power." *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981). Instead, a "'systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned'" may provide a "gloss" on the President's constitutional power when the scope of the power is otherwise unclear based on the document itself. *Id.* (quoting *Youngstown*, 343 U.S. at 610–11 (Frankfurter, J., concurring)).

This scheme of separation of powers relies on the premise that the President may not exercise Congress's authority based on only an attenuated connection to his own. Thus, the President may not regulate foreign commerce simply because it will be indirectly helpful in the conduct of foreign relations any more than he could impose and collect taxes because it would support his role as Commander in Chief. To be sure, there are situations of overlap, in which the President's conduct of foreign relations directly impacts foreign commerce. For example, the negotiation of a bilateral tax treaty entails the President's expressly conferred authority to negotiate treaties, while the underlying object of the treaty falls squarely within Congress's power to lay and collect taxes and to regulate foreign commerce. But it is equally clear that the President does not have authority to unilaterally exercise any power that may indirectly have foreign relations ramifications. If this were the case, then other express delegations of foreign affairs powers to Congress, including the power to ratify treaties, impose tariffs, and declare war, could be exercised by the President as well.

C. The State Department's Prohibition of the Keystone XL Pipeline Violated the Separation of Powers

Energy commodities, namely oil and coal, are one of the largest items of U.S. foreign commerce, accounting for more than 7% of U.S. merchandise exports and more than 12% of imports. International Trade Administration, *U.S. Trade Overview, 2013*, 5 (Department of Commerce Oct. 2014). And Canada has long been the United States' top trading partner, accounting for 40% of our petroleum imports—more than our imports from all OPEC countries combined. U.S. Energy Information Administration, *Frequently Asked Questions*, *available at* http://www.eia.gov/tools/faqs/faq.cfm?id=727&t=6 (visited May 4, 2016). Indeed, the United States imports approximately 500,000 barrels per day from the Alberta oil sands by way of the Keystone I Pipeline, and an additional 450,000 barrels per day through the Alberta Clipper Pipeline. Scott Haggett, *Update 3 – Enbridge Pipeline Joins Keystone XL in Wait for U.S. Permit* (Reuters Feb. 14, 2014). The Keystone XL Pipeline would increase that capacity by up to 830,000 barrels per day. Dept. of State, *Record of Decision and National Interest Determination* 2 (Nov. 3, 2015) ("ROD").

There is no question that the pipeline is an important channel for a key object of America's foreign commerce. The Keystone XL Pipeline would be built and operated by private companies for the purpose of transporting oil extracted by private companies in Canada for refining and sale by private companies in the United States. *ROD* at 2. Indeed, the Record of Decision issued by the Department of State acknowledged that the Keystone XL Pipeline "pertains to trade," and would directly affect our trade balance and relations with other nations. *Id.* at 24–25. By prohibiting the construction of the Keystone XL Pipeline, the State Department thus engaged in a quintessential exercise of Congress's power to regulate foreign commerce.

The State Department's reasons for directly blocking foreign commerce were highly attenuated from any direct exercise of its foreign relations power. The Department did not suggest that the pipeline imperiled national security or the nation's relationship with Canada. To the contrary, the Department acknowledged that importing oil from Canada is "beneficial for energy security," and further conceded that "[a] negative permit decision may lead to a cooling of U.S.-Canadian relations and could affect Canadian cooperation on Western Hemisphere issues and international security cooperation." *ROD* at 24, 25; *see also* David H. Petraeus, *et al.*, *North America: Time for a New Focus* 26–27, Council on Foreign Relations (2014) (observing that "repeated[] delay[s]" to a decision on the Keystone XL Pipeline notwithstanding the fact that "there are already seventy existing cross-border pipelines" "have damaged U.S.-Canada relations").

Instead, the Department refused to issue a permit for the pipeline, reasoning that the project was not in the "national interest" because "the general understanding of the international community" about the project's potential environmental impact would "undercut the credibility and influence of the United States" at the December 2015 Paris Climate Change Conference. *ROD* at 31. In other words, the President has asserted direct control over foreign commerce based on the claim that this will provide a useful bargaining chip in the course of entirely separate foreign negotiations. That remarkable assertion is all the more troubling given that the pipeline's value as a bargaining chip was not premised on its physical or economic impact on other countries, but the fact that the pipeline was politically unpopular with some nations participating in the Paris Climate Change Conference. Allowing the President to block foreign commerce simply because he believes other nations would view the prohibition favorably would justify the President's exercise of virtually any Article I power whenever the President finds it to be a useful bargaining chip in the course of foreign relations. The President's position in this case is particularly unfounded given that Congress has never acquiesced in the State Department's novel assertion of presidential power and, to the contrary, has explicitly repudiated the power now claimed by the Executive.

Contrary to the State Department's assertions, there is no established practice of the President regulating international pipelines in the manner he did here. Not only has the scope of facilities subject to the President's asserted permitting power expanded (*see* Gov't Br. at 4–6 (reviewing the expansion of the President's claimed authority, from submarine telegraph cables to, most recently, "border crossings for land transportation, including motor and rail vehicles")), but the President's review criteria have shifted as well, from a protective assurance that foreign nations grant reciprocal rights to the United States to the instant Record of Decision's assessment of the project's potential impact on Native American cultural sites, the dust and noise from construction equipment, and "visual resources." *ROD* at 19–20. Such fluid assertions of power foreclose any unbroken practice acquiesced to by Congress.

This is all the more so where the President has exercised the claimed power to bar foreign commerce on only one previous occasion, such that it is impossible to identify which factors are truly weighing on the national interest determination—which, it must be emphasized, the President has never attempted to define. Indeed, under the novel construction of the President's foreign affairs power that the State Department advances in this case, it could deny a permit to build a cross-border pipeline if it determined that the petitioning company failed to provide labor protections that the President was lobbying for as part of a trade deal in Asia, or failed to respect the cultural interests of indigenous peoples in a manner that the President deemed important to his position in negotiating an arms treaty in the Middle East. Of course, having never faced such a broad and counterintuitive assertion of the President's foreign affairs power, it is improper to infer that Congress thereby assented to it.

The Executive's past statements about prior pipelines foreclose any inference of congressional approval of the State Department's action here. For example, in the Record of Decision approving the Keystone I Pipeline, the State Department expressly limited the scope of its review, specifying that it only "takes into account the impact the proposed cross-border facility (i.e., pipeline, bridge, road, etc.) will have upon the U.S. relations with the country in question, whether Canada or Mexico." Dept. of State, *Record of Decision and National Interest Determination* 23 (Feb. 8, 2008).

A claim of congressional acquiescence is especially incredible here, given Congress's repeated declarations expressing approval of the pipeline. When the State Department initially delayed in issuing a decision on TransCanada's permit application, Congress passed a law demanding the President issue a permit within 60 days or else explain his reason for denying the application. The President took the latter route, declaring this was not enough time to evaluate the competing interests. When TransCanada reapplied, Congress again voiced its overwhelming support for the project. According to the Congressional Research Service, more than fifteen bills and amendments were introduced in the 112th–114th Congresses to facilitate the pipeline's construction, ranging in approach from transferring permitting authority to the Department of Commerce or the Federal Energy Regulatory Commission, to directly approving the pipeline. See Paul W. Parfomak, *et al.*, *Keystone XL Pipeline: Overview and Recent Developments* 7–8 (Congressional Research Service 2015). In early 2015, Congress passed the Keystone XL Pipeline Approval Act by a vote of 62-36 in the Senate and 270-152 in the House. Although the President vetoed the legislation (*id.* at 9–10), that is immaterial: Whether these forceful expressions carry the force of law is beside the point, as the will of Congress is unambiguous, and therefore no inference of congressional consent or acquiescence is permissible. See *Dames & Moore*, 453 U.S. at 687 (observing that "Congress has not disapproved of the action taken" by, for example, "enact[ing] legislation, or even pass[ing] a resolution, indicating its displeasure with the Agreement").

* * *

The President's power over foreign affairs cannot override the clear allocation of powers outlined in the Constitution. The State Department's actions here clearly overstepped the Executive's authority by acting without any explicit or implicit congressional approval—indeed, in the face of express congressional disapproval—based on attenuated and unrelated foreign policy concerns. Indulging the State Department's theory of presidential power would contradict the Constitution and undermine the sound policy objectives that our founding charter sought to advance.

II. Interbranch Collaboration on Matters of Foreign Commerce Promotes Stability, Predictability, and the Development of Sound Policy

The State Department rightly observes that it is important for the nation to speak with one voice on issues touching upon foreign affairs, but this interest does not support the Department's expansive view of Executive authority. As shown above, the President's prohibition of the Keystone XL Pipeline is not a valid exercise of the foreign affairs power, so this argument is a non sequitur. Moreover, the broad authority claimed by the President fosters uncertainty, hampering domestic economic growth and risking embarrassment to the nation on the world stage. In contrast, a long practice of collaboration between the President and Congress illustrates that the political branches can work together to achieve a sound and efficient approach to foreign trade policy.

The President's claimed ability to act unilaterally to regulate foreign commerce in the face of congressional opposition would have a destabilizing effect on trade policy that would seriously impair American business interests. This case is a shining example: TransCanada submitted its permit application in 2008. The President spent years equivocating until Congress forced his hand and he denied the application. When TransCanada filed a new application, the President equivocated further, until Congress passed legislation authorizing the Keystone XL Pipeline. The fight was not over, however: The President vetoed the legislation, and then went a step further and denied the second application outright. Of course, while all this was happening, the Executive was in court defending the issuance of permits allowing the construction of two other oil pipelines from the Alberta oil sands into the United States, including the Keystone I Pipeline. Now, the President concedes that Congress could pass new legislation authorizing the Pipeline and, if Congress overrode any veto, construction of the Pipeline could proceed.

All of this whipsawing has serious implications for American business. The Keystone XL Pipeline has an estimated cost of $5.4 billion, with the cost rising "into the high single digits to a 10 number" as time progresses. Amy Harder, *Keystone Pipeline Cost Expected to Double, TransCanada CEO Says* (Wall St. J. Sept. 18, 2014). The Pipeline's capacity was fully subscribed at the time the Record of Decision was issued, leaving oil producers in Canada and refiners in the United States scrambling for an alternative way to transport nearly one million barrels of crude oil per day. And the feasibility of numerous pipeline extensions in both the United States and Canada hinged on the increased cross-border capacity that the Keystone XL Pipeline would allow.

Sanctioning the President's conduct in this case would impose massive costs on the businesses that have already invested in America's energy security, and it would provide a strong disincentive for businesses across sectors to invest in America's economic growth. With the specter of unilateral presidential action squelching years of work and billions of dollars of investment based on some attenuated connection to foreign affairs—a connection that could always be drawn when dealing with foreign commerce—rational businesses will back away from projects that might prove to be a political flashpoint. And foreign businesses seeking stability and predictability will invest in the growth of other economies, hurting American competitiveness.

Contrary to the State Department's insinuations, the alternative is not a regulatory vacuum with respect to cross-border oil pipelines. Instead, as we have seen time and again in response to changes in the social, political, and economic landscape, the political branches have shown an impressive aptitude for working together in order to achieve an efficient allocation of decisionmaking power. See John O. McGinnis, *Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers*, 56 J. L. & Contemp. Probs. 293, 295–99 (Autumn 1993) (reviewing cases where the branches have engaged in Coasean bargaining to obtain an efficient allocation of power).

A particularly relevant analog is Trade Promotion Authority (formerly called "fast-track" authority), which has its provenance in the Reciprocal Trade Agreements Act of 1934 (RTAA). Ian F. Fergusson, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy* 3 (Congressional Research Service June 15, 2015). The RTAA delegated tariff-cutting authority to the President, and was renewed 11 times, culminating in the Trade Expansion Act of 1962. *Id.* at 3–4. President Johnson negotiated the Kennedy Round of the General Agreement on Tariffs and

Trade (GATT) under this iteration of the RTAA, but when he reached beyond tariffs and attempted to negotiate nontariff commitments on behalf of the United States, Congress passed a resolution expressing its disapproval. *Id.* at 4. President Johnson ignored Congress and reached an agreement on these issues unilaterally, leading Congress to both decline to implement this aspect of the Kennedy Round and also to allow the RTAA to expire in 1967. *Id.* (A year after Congress rebuffed his attempt to seize authority over a broader swath of trade, President Johnson issued Executive Order 11,423, the predecessor to Executive Order 13,337, which asserted unilateral authority to permit or deny cross-border pipelines, and which serves as the main legal authority upon which the State Department relies here.)

Several years later, "concerned with the extent of unchecked presidential authority in U.S. foreign economic relations" but also seeking to "bolster previously tarnished presidential negotiating credibility in international trade talks," Congress enacted the Trade Act of 1974—a "procedural watershed [] widely acknowledged to be the foundation for the modern interbranch structure of American trade negotiations." Lawrence M. Reich, *Foreign Policy or Foreign Commerce?: WTO Accessions and the U.S. Separation of Powers*, 86 Georgetown L. J. 751, 755–56 (1998). Most significantly, the statute established the "fast track" procedure, promising the President an up-or-down vote on a trade agreement within a specified period of time in exchange for the President consulting Congress and private-sector stakeholders during the pendency of trade negotiations. *Id.* at 756. The compromise struck between Congress and the Executive has continued for more than four decades, with only brief interruptions. Fergusson, *Trade Promotion Authority* at 9.

The President and private industry alike have praised Trade Promotion Authority's ability to mediate interests in commerce with other foreign affairs concerns, resulting in a sound and coherent foreign policy. When Congress heeded the President's call last summer and granted President Obama Trade Promotion Authority, the White House stated, "thanks to the new rules of the road laid out by Congress, our latest trade deal … can put in place high, enforceable standards that reflect our values on the environment, on workers' rights, on transparency, and more." Greg Nelson, *On Trade, Here's What the President Signed into Law* (White House Blog June 29, 2015). And as the President and CEO of the U.S. Chamber of Commerce stated in testimony before the Senate Finance Committee, "TPA is premised on the commonsense notions that the executive and legislative branches of the federal government should work together on trade. The Constitution gives Congress authority to regulate international commerce, but it gives the president authority to negotiate with foreign governments." Statement of the U.S. Chamber of Congress (Thomas J. Donahue) (Senate Finance Committee April 21, 2015).

In short, collaboration between the political branches to negotiate the overlap that may sometimes exist between foreign commerce and foreign policy is both normal and accepted. And as the statements above demonstrate, this collaboration has redounded to the benefit of both the President and the private sector, bringing stability and certainty to the regulation of foreign commerce.

CONCLUSION

Amici respectfully request that the Court deny Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, and grant Plaintiffs' Cross-Motion for Summary Judgment.

DATE: May 9, 2016

Respectfully submitted,

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