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Molly Dwyer, Clerk of Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

**Re: Citation of Supplemental Authority  
Axon Enterprise, Inc. v. FTC et al Appeal No. 20-15662  
Submitted July 17, 2020 (Lee, Bumatay, Siler)**

Appellant Axon hereby notifies the Court that on October 30, 2020, the Fifth Circuit granted en banc rehearing in *Cochran v. SEC*, No. 19-10396, vacating the panel's 2-1 opinion filed August 11, 2020 (as revised Aug. 12, 2020) and reported at 969 F.3d 507 (Order attached). This decision was the subject of prior Rule 28(j) letters by the FTC (Dkt.34) and Axon (Dkt.35). *See also* citation at OB52 n.22 (Dkt.18).

As acknowledged by the FTC in its prior submission, the constitutional separation-of-powers claim raised in *Cochran* is "substantively similar to the claims Axon raises here," and the SEC's review scheme "mirrors the FTC's review scheme." (Dkt.34 at 1). The issue presented is whether Congress has implicitly stripped federal district courts of jurisdiction to adjudicate separation-of-powers challenges to the authority of SEC ALJs to preside over enforcement proceedings.

Also pending with the U.S. Supreme Court is a certiorari petition in *Gibson v. SEC*, No. 20-276, regarding an Eleventh Circuit case No. 19-11969 (Dec. 30, 2019) raising same dual-level ALJ removal protection challenge presented here:

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-276.html>



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Dated: November 2, 2020

Respectfully submitted,

*/s/ Pam Petersen*

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### **CERTIFICATE OF COMPLIANCE**

I certify that this letter complies with the word limits of Fed. R. App. P. 28(j) because it contains 174 words.

*/s/ Pam Petersen*  
Pamela B. Petersen