LANKLER SIFFERT & WOHL LLP
ATTORNEYS AT LAW

500 FIFTH AVENUE
NEW YORK, N.Y. 10110-3398
WWW.LSWLAW.COM

TELEPHONE (212) 921-8399
TELEFAX (212) 764-3701

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VIA ECF

The Honorable Joanna Seybert
United States District Court
100 Federal Plaza
Central Islip, New York 11722

Re: *Friends of the East Hampton Airport, et al. v. The Town of East Hampton*, 15 Civ. 2246 (JS) (ARL)

Dear Judge Seybert:

On behalf of Plaintiffs, we respectfully oppose the 11th hour attempt by the Committee to Stop Airport Expansion, Pat Trunzo, Jr., and Pat Trunzo, III (collectively, the "Committee") to: (i) file an *amicus* brief on issues that the parties have already extensively briefed and argued before the Court; and (ii) seek expedited briefing on its application and "proposed" *amicus* brief, which the Committee filed yesterday without leave of the Court or consent of the parties.

The Committee's proposed *amicus* filing is neither timely nor useful, and its application to appear as *amicus* should be denied. *See United States v. Ahmed,* 788 F. Supp. 196, 198 n.1 (S.D.N.Y.1992) ("District courts have broad discretion to permit or deny the appearance of *amici curiae* in a given case."); *United States v. Gotti*, 755 F. Supp. 1157, 1158-59 (E.D.N.Y. 1991) (rejecting *amicus* submission where the parties were well represented, the parties' counsel did not need assistance and did not consent to the *amicus* filing, and the brief did not raise new issues).

The briefing schedule on Plaintiffs' TRO motion has been a matter of public record since April 27, 2015 (*See* Dkt. Nos. 13, 17). Briefing was commenced on April 29, 2015, completed on May 12, 2015, and oral argument was held on May 18, 2015. Yet, the Committee waited until yesterday – a mere week before the scheduled date of the Court's decision – to make this application.

The Committee's suggestion that it was unable to bring its application sooner due to its "extremely limited resources" (Committee's 6/1/15 Letter at 1) should be rejected. As a matter of public record, the Committee is a highly litigious group that has pursued myriad lawsuits relating to East Hampton Airport for more than two decades. *See Comm. to Stop Airport Expansion v. Wilkinson*, 126 A.D.3d 788, 789 (N.Y. App. Div. 2015) (denying Committee's appeal from its most recent, unsuccessful action); *Comm. to Stop Airport Expansion v. F.A.A.,* 320 F.3d 285, 286-87 (2d Cir. 2003) (discussing Committee's litigation history stretching back to 1994). The Committee is

currently represented by two sets of attorneys and has not only been closely following the proceedings in this action and the related *FAA Action*, but has also aggressively been seeking to intervene in the *FAA Action* for months. *See* FAA Action Dkt. Nos. 9, 10, 13, 18, 22, 24-25.

Far from being unable to approach this Court earlier with its *amicus* application, the Committee appears to have waited until now for tactical reasons, which alone justifies rejection of its application. Moreover, the Committee filed its *amicus* application and brief without conferring with the parties or seeking their consent. *Cf.* Fed. R. App. P. 29(a) (providing that *amicus* brief may be filed only if accompanied by written consent of all parties, or by leave of court); *Sierra Club v. FEMA*, 2007 WL 3472851 (S.D. Tx. Nov. 14, 2007) (noting that district courts commonly seek guidance from appellate standard for *amicus* filings, and rejecting *amicus* application filed without party consent, among other reasons).

In addition, as its very name makes clear, the Committee to Stop Airport Expansion is anything but "an objective, neutral, dispassionate 'friend of the court.'" *S.E.C. v. Bear, Stearns & Co., Inc.*, 2003 WL 22000340, at *6 (S.D.N.Y. Aug. 25, 2003) (quoting *Gotti*, 755 F. Supp. at 1159). Instead, the Committee is a partisan group that seeks to shut down East Hampton Airport, or at the very least severely curtail its operations and public accessibility.

"Conferring *amicus* status on such partisan interests is inappropriate." *Bear, Stearns*, 2003 WL 22000340, at *6 (declining *amicus* application by investors who sought to advance narrow agenda); *Hartford Fire Ins. Co. v. Expeditors Int'l of Washington, Inc.*, 2012 WL 6200958, at *1 n.1 (S.D.N.Y. Dec. 11, 2012) (denying *amicus* application by nonparty that was more a "friend of the plaintiff rather than a 'friend of the court'"); *Soundkeeper Fund, Inc. v. New York Athletic Club*, 1995 WL 358777, at *1 (S.D.N.Y. Jun. 14, 1995) (denying leave to appear as *amicus* where "applicant appears to have its own particular interests in the outcome of the litigation").

Nor, in any event, is the Committee's proposed *amicus* brief useful. Instead, it merely rehashes legal arguments relating to ANCA as to which the Committee possesses no unique insight and which have been extensively briefed and argued by the parties. *See Ahmed*, 788 F. Supp. at 198 n.1 (denying leave to appear as amicus where defendant's interests were adequately represented by counsel).

The Committee's contention that the parties have ignored some critical aspect of the Second Circuit's decision in *National Helicopter Corp. v. City of New York*, 137 F.3d 81 (2d Cir. 1998), is inaccurate. *National Helicopter* was briefed extensively by both sides in their motion papers and discussed at length during the May 18 hearing. Although the Committee would have it otherwise, *National Helicopter* did not interpret ANCA and did not include even a single complete sentence about ANCA. Rather, the Second Circuit merely included mention of ANCA as one of a string of "*Cf.*" authorities lending indirect support to the Court's observation that Congress alone had the

authority to regulate price, routes, and services for air carriers under the law. *Id.* at 88. Why the Second Circuit did not address ANCA more substantively in *National Helicopter* may invite speculation, but ultimately is irrelevant. At bottom, *National Helicopter* does not address ANCA (as the Town's counsel have previously acknowledged, *see* Brief by Palm Beach County, *Trump v. Palm Beach County*, 2011 WL 10068524, at *4 (Fl. Cir. Ct. Mar. 4, 2011)), and in no way constrains this Court from ruling that ANCA's plain and mandatory provisions federally preempt the Town's recently enacted airport restrictions.

Equally flawed is the Committee's argument that ANCA's application is somehow limited by the Airline Deregulation Act – a 1978 statute in which Congress recognized the existence of "proprietary rights" but neither defined nor addressed the scope of such rights. *See* 49 U.S.C. § 41713(b). Unlike the Airline Deregulation Act, which was not specifically geared to noise regulation, ANCA was enacted for the express purpose of establishing a national, mandatory aviation noise policy based on express findings that such a national policy had become necessary to safeguard a national aviation transportation system. Moreover, in ANCA, Congress expressly diminished a proprietor's rights by: (i) enacting Section 47524, which forbids proprietors from imposing any restrictions on Stage 2 and Stage 3 aircraft unless ANCA's rigorous requirements have first been met, *see* 49 U.S.C. § 47524; (ii) stating that laws in effect prior to ANCA's enactment (such as the Airline Deregulation Action) remain unaffected ***"[e]xcept as provided by [S]ection 47524***[,]" *see id.* § 47533 (emphasis added); and (iii) assuming federal liability for lawsuits against proprietors stemming from the FAA's disapproval of restrictions proposed by a proprietor under Section 47524, *see id.* § 47527. The Committee's disregard of those plain statutory terms further demonstrates why its *amicus* application serves no useful purpose and should be denied.

Respectfully submitted,

Lisa Zornberg

Lisa R. Zornberg

Copy to:

Eric Bregman, Esq.
Peter Kirsch, Esq.
W. Eric Pilsk, Esq.
AUSA Robert Schumacher