

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRUCK TRAILER)
 MANUFACTURERS)
 ASSOCIATION, INC., *et al.*,)
)
 Petitioners,)
)
 v.)
)
 UNITED STATES)
 ENVIRONMENTAL PROTECTION)
 AGENCY, *et al.*)
)
 Respondents.

Consolidated Case
Nos. 16-1430, 16-1447

**AMENDED MOTION TO INTERVENE
IN SUPPORT OF RESPONDENTS**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27, and Rule 15(b) of this Court, the Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Center for Biological Diversity, and the Union of Concerned Scientists (collectively, “Movants”) hereby move for leave to intervene in support of Respondents Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) (collectively, “the agencies”) in case Nos. 16-1372, 16-1447, and in all cases challenging the agency actions challenged in those cases. Counsel for all parties have been contacted for their position on this motion. Counsel for Petitioner Truck Trailer Manufacturers Association indicated

it will wait to see the motion before taking a position. At the time of filing, counsel for Petitioner Racing Enthusiasts and Suppliers Coalition had not provided its position. Counsel for the Federal Respondents stated that they do not oppose this motion for intervention. In support of its motion, Movants state as follows, and also rely on the declarations that accompany this motion.

INTRODUCTION

Petitioners seek review of the final rule promulgated by EPA under the Clean Air Act and by NHTSA under the Energy Independence and Security Act, entitled “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles— Phase 2,” published at 81 Fed. Reg. 73,478 (Oct. 25, 2016) (“Phase 2 Rule”). The Phase 2 Rule for the nation’s fleet of large trucks and buses establishes standards to reduce greenhouse gas emissions and improve fuel economy for model year 2018–2027 vehicles. *Id.* at 73,481. These standards build upon the current Phase 1 Rule, which covers model year 2014-2018 vehicles. *Id.* at 73,480.

The Phase 2 Rule provides crucial health and environmental safeguards, and results in fuel savings that will benefit truckers and consumers alike. *Id.* at 73,902 (noting that commenters on the proposed rule estimated per-household fuel savings ranging from \$150 a year in 2030 to \$400 a year in 2035). These health, environmental, and economic benefits will accrue to Movants’ members, and

Movants have a demonstrable interest in defending the Phase 2 Rule against challenges brought by industry groups seeking to nullify, weaken, or delay it. This Court has granted Movants' requests to intervene in similar litigation aimed at reducing emissions of greenhouse gases and other dangerous air pollutants. *See, e.g., West Virginia v. EPA*, No. 15-1363 (D.C. Cir.) (case challenging EPA's Emissions Guidelines for power plants); *North Dakota v. EPA*, No. 16-1242 (D.C. Cir.) (case challenging EPA's New Source Performance Standards for the oil and gas sector); *Coal. For Responsible Regulation, Inc. v. EPA*, No. 09-1322 (D.C. Cir.) (case challenging EPA's Endangerment Finding). Comparable circumstances warrant granting this motion.

BACKGROUND

I. Movant Environmental and Public Health Organizations

Movant Environmental Defense Fund ("EDF") is a national non-profit environmental group that is committed to protecting its members and the public from the effects of dangerous air pollution, including climate change. Declaration of John Stith ¶¶ 3-6. With a long-standing interest in protecting human health and the environment, EDF has long been involved in advocating and working for the reduction of dangerous air emissions from vehicles. *Id.* ¶¶ 5-6. EDF has members who live and work in close proximity to, and commute on, highways and other roads where medium- and heavy-duty vehicles are in use, and are harmed and

threatened by emissions of hazardous air pollutants and volatile organic compounds (“VOCs”), which form ozone and particulate matter pollution, from medium- and heavy-duty vehicles. *Id.* ¶ 8; Declaration of James Fine ¶¶ 12-13. EDF also has members throughout the United States who are harmed by greenhouse emissions from medium- and heavy-duty vehicles, and associated climate change. Stith Decl. ¶¶ 8-9; Fine Decl. ¶¶ 8-10; Declaration of Denise Fort ¶¶ 8-11.

Movant Natural Resources Defense Council (“NRDC”) is a national nonprofit environmental organization with more than 290,000 members. Declaration of Gina Trujillo ¶¶ 3-7. NRDC uses law, science, and the support of its members to ensure a safe and healthy environment for all living things. One of NRDC’s top priorities is to reduce emissions of the air pollutants that are causing global warming. *Id.* ¶¶ 3-7. NRDC has members throughout the United States who are harmed by the greenhouse gas emissions from medium and heavy duty vehicles and associated climate change. Declaration of Gerald Winegrad ¶ 16. NRDC also has members who live and work near roadways used by trucks and buses and who are harmed by the soot, smog, and hazardous air pollutants emitted by these vehicles. Declaration of Elizabeth Coplon ¶ 5.

Movant the Center for Biological Diversity (the “Center”) is a non-profit corporation with offices throughout the United States and approximately 48,500

members. The Center believes that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked. Combining conservation biology with litigation, policy advocacy, and strategic vision, the Center is working to secure a future for animals and plants hovering on the brink of extinction, for the wilderness they need to survive, and by extension, for the welfare of generations to come. The Center's Climate Law Institute's primary mission is to curb global warming and other air pollution, and sharply limit their damaging effects on endangered species, their habitats, and human health for all of us who depend on clean air, a safe climate, and a healthy web of life. Declaration of Kassie Siegel ¶¶ 2-10. The Center has members throughout the United States who are harmed by the greenhouse gas emissions from medium and heavy duty vehicles and the climate change those emissions cause. Declaration of Jenny Ross ¶¶ 7, 34, and *passim*.

Movant Sierra Club, founded in 1892, is a national nonprofit environmental organization with more than 695,000 members nationwide. *See* Declaration of Huda Fashho ¶ 5. Sierra Club's purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to carry out these objectives. *See* Declaration of Gina Coplon-

Newfield ¶ 4. Sierra Club members are greatly concerned about climate change, and the impact of burning fossil fuels for transportation on climate; as a result, the Sierra Club has undertaken a wide range of activities concerning fossil fuels in our nation's transportation fleet, including commenting on the current Rule and engaging in court to defend the Phase 1 version of the Rule. *Id.* ¶¶ 5-7.

Movant Union of Concerned Scientists (“UCS”) is a non-profit that was founded in 1969 to put rigorous, independent science to work to solve our planet's most pressing problems. Declaration of Kenneth Kimmell ¶ 1. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future. *Id.* ¶ 1. One of UCS's top priorities is reducing oil emissions by one half by 2035 and reducing the emission of heat trapping gases that cause global warming. UCS has over 100,000 members and an additional 400,000 supporters who are harmed by the global warming causing emissions from medium- and heavy-duty trucks and has a long history of advocating for strong standards to protect our members and the rest of American citizens. *Id.* ¶¶ 2-4.

II. Statutory and Regulatory Background

The Clean Air Act aims “to protect and enhance the quality of the Nation's air resources.” 42 U.S.C. § 7401(b)(1). To help meet this goal, Title II of the Act requires EPA to establish standards for emissions of air pollutants from mobile

source categories. *Id.* § 7521 *et seq.* Section 202(a)(1) of the Clean Air Act requires EPA to “prescribe (and from time to time revise) . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles . . . , which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” *Id.* § 7521(a)(1). In 2009, EPA concluded that greenhouse gases endanger public health and welfare and that emissions from mobile sources cause or contribute to that endangerment. Consequently, EPA is required under section 202(a) to issue standards for new motor vehicles. 74 Fed. Reg. 66,496 (Dec. 15, 2009).

The Energy Policy and Conservation Act of 1975 (“EPCA”) seeks to meet energy conservation goals by requiring fuel economy standards for motor vehicles. 42 U.S.C. § 6201(5). The EPCA was amended in 2007 by the Energy Independence and Security Act to require the creation of a medium- and heavy-duty fuel efficiency program. 49 U.S.C. § 32902(k). Under Section 103 of the EISA, NHTSA is responsible for conducting a rulemaking proceeding to issue regulations for the “commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program [that are] designed to achieve the maximum feasible improvement.” *Id.*

Under these respective statutory authorities, the agencies have previously issued fuel economy and greenhouse gas standards for both light-duty vehicles and

medium- and heavy-duty vehicles. In 2010, EPA and NHTSA promulgated a joint Phase 1 rule for light-duty vehicles, establishing greenhouse gas emissions and fuel economy standards for model year 2012-2016 cars and small trucks. 75 Fed. Reg. 25,324 (May 7, 2010). The agencies then finalized the Phase 2 light-duty program in 2012, setting emissions and fuel economy standards for model year 2017-2025 vehicles. 77 Fed. Reg. 62,624 (Oct. 15, 2012). Collectively, EPA projected that these requirements would “result in MY 2025 light-duty vehicles with nearly double the fuel economy, and approximately one half of the GHG emissions compared to MY 2010 vehicles.” *Id.* at 62,631.

In 2011, EPA and NHTSA issued Phase 1 greenhouse gas and fuel economy standards for model year 2014-2018 medium- and heavy-duty vehicles, covering heavy-duty pickup trucks and vans, combination tractors, and vocational vehicles. 76 Fed. Reg. 57,106 (Sep. 15, 2011). At the time, the agencies recognized the need to “develop a second phase of regulations to reinforce these initial rules and achieve further reductions in GHG emissions and fuel consumption reduction for the mid- and longer-term time frame (beyond 2018).” *Id.* at 57,108.

III. The Phase 2 Rule

On October 25, 2016, EPA and NHTSA promulgated the Phase 2 Rule for medium- and heavy-duty trucks, setting greenhouse gas emissions and fuel economy standards for model year 2018-2027 large trucks and buses. 81 Fed. Reg.

73,478. The final Phase 2 Rule is the result of a collaborative process among the agencies and stakeholders, with the agencies incorporating extensive feedback from public hearings, meetings with stakeholders, and over 200,000 public comments regarding the standards. *Id.* at 73,481. The Phase 2 Rule builds upon the underlying regulatory structure of the Phase 1 standards, strengthening the standards in response to ongoing improvements in technology, and for the first time sets standards for trailers. *Id.*

The Phase 2 Rule will result in reductions of over a billion metric tons of carbon dioxide equivalent greenhouse gas emissions over the lifetime of model year 2018-2029 vehicles. *Id.* at 73,482. At the same time, the Phase 2 Rule will save medium- and heavy-duty vehicle users up to 82 billion gallons of fuel over the lifetime of these vehicles. *Id.* The fuel savings and climate benefits of the Rule substantially outweigh the Rule's costs, delivering net benefits of up to \$229 billion over the lifetime of these vehicles. *Id.*

ARGUMENT

Movants meet the requirements for intervention because they have demonstrated interests in protecting the benefits conferred by the Phase 2 Rule. Their members will benefit from reduced exposure to dangerous air pollution and greenhouse gas emissions from medium- and heavy-duty vehicles if the Phase 2 Rule is implemented as adopted, and will likewise benefit economically due to the

more efficient and less-costly transport of goods and services the Phase 2 Rule will enable. Further, they have independent organizational interests in assuring the Phase 2 Rule remains rigorous and is not nullified, weakened, or delayed. These interests may be impaired by the disposition of this case. *See* Fed. R. App. P. 15(d).¹

I. Movants have interests in protecting their members and others from dangerous air pollution from medium- and heavy-duty vehicles.

Movants have a strong interest in ensuring that the requirements for medium- and heavy-duty vehicles established in the Phase 2 Rule deliver health, environmental, and economic benefits for their members, many of whom live and work in close proximity to, and commute on, highways and roads where medium- and heavy-duty vehicles are likely to be used. These members are therefore particularly exposed to the pollutants emitted by medium- and heavy-duty vehicles, including VOCs and hazardous air pollutants, as well as to the particulate matter and ozone pollution created by those emissions. Movants also have members who are particularly susceptible to harms posed by climate change, to which greenhouse gas emissions from medium- and heavy-duty vehicles significantly contribute.

¹ Under Federal Rule of Appellate Procedure 15(d), a motion to intervene need only make “a concise statement of the interest of the moving party and the grounds for intervention.” This Court has noted that “in the intervention area the ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (reversing denial of intervention under Fed. R. Civ. P. 24(a)).

The health and welfare of Movants' members are threatened by air emissions generated by medium- and heavy-duty vehicles. Many of Movants' members live, work, commute, and engage in recreation and other activities near highways and roads where medium- and heavy-duty vehicles that are covered by the Phase 2 Rule travel or in other areas where medium- and heavy-duty vehicles are likely to be used, such as transportation centers or ports. *See, e.g.*, Fine Decl. ¶¶ 12-13; Declaration of Barbara Campbell ¶¶ 9-10; Coplon Decl. ¶ 5. They are thus exposed to or are at high risk for exposure to emissions from nearby medium- and heavy-duty vehicles. As a result, Movants' members experience harm from medium- and heavy-duty vehicles, including exposure or likely future exposure to air pollution and an attendant greater risk of harm to their health. Nitrogen oxides and VOCs react in the atmosphere with other pollutants to form ground-level ozone and likewise form fine particulates. 81 Fed. Reg. at 73,837.

Exposure to ozone and fine particulates is associated with significant public health and environmental effects, including premature deaths, cardiovascular problems such as heart attacks, respiratory problems such as asthma attacks and bronchitis, and injury to vegetation. *See id.* at 73,882-83. Medium- and heavy-duty vehicles also emit significant quantities of hazardous air pollutants (such as benzene), which are associated with further serious health concerns—for example, several of these pollutants are carcinogens. *Id.* at 73,885. Movants' members who

live near highways or other areas where medium- and heavy-duty vehicles are used thus face elevated risks of all of these harms. *See, e.g.*, Fine Decl. ¶¶ 12-13; Campbell Decl. ¶¶ 9-10.

Because of this air pollution, and because of their concern about additional health impacts and risks due to this pollution, Movants' members do or will refrain from or curtail recreational, aesthetic, and associational activities that they have enjoyed in the past, and emissions from medium- and heavy-duty vehicles thus diminish their enjoyment or potential enjoyment of these activities. *See, e.g.*, Fine Decl. ¶ 11. Movants' members are also harmed as a result of their increased concern about their health and the health of their family members, and decreased enjoyment of other activities during which they are exposed to dangerous air pollution, including while they work, on visits to friends and family, and during their daily commutes. *See id.*

Additionally, emissions of greenhouse gases from medium- and heavy-duty vehicles threaten public health and welfare by contributing to climate change. *See* 74 Fed. Reg. 66,496, 66,497-98 (Dec. 15, 2009) (EPA's Endangerment Finding); *see also Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 117-26 (D.C. Cir. 2012) (upholding Endangerment Finding), *cert. denied in relevant part sub nom. Virginia v. EPA*, 134 S. Ct. 418 (2013); 81 Fed. Reg. at 73,486-87 (concluding that more recent scientific assessments confirm and strengthen the

science that supported the Endangerment Finding). Movants' members use, own, and enjoy property and natural resources that are harmed and threatened by climate change. *See, e.g.*, Fine Decl. ¶¶ 8-10; Fort Decl. ¶¶ 8-11; Winegrad Decl. ¶ 16; Campbell Decl. ¶¶ 5-8. These members are affected by elevated temperatures, greater risk of forest fires, extreme weather events, reduced snowfall, and exacerbated air pollution problems and other health risks in the areas where they live, work, and recreate. *See* 81 Fed. Reg. at 73,486-87 (describing the adverse health and welfare impacts of climate change); Fine Decl. ¶¶ 8-10; Fort Decl. ¶¶ 8-11; Campbell Decl. ¶¶ 5-8. The damage done by climate change directly affects some members' ability to pursue their professions and livelihoods. Ross Decl. ¶¶ 7, 34, and *passim*.

The Phase 2 Rule will help redress the occurrence of these future harms to Movants' members, as recognized by the agencies. The Phase 2 Rule's emissions reductions will lead to health protection benefits from reduced exposure to ozone, fine particulate matter, and hazardous air pollutants. 81 Fed. Reg. at 73,836-46. The agencies further estimate that the Phase 2 Rule will prevent greenhouse gas emissions of over a billion metric tons of carbon dioxide equivalent over the lifetime of model year 2018-2029 vehicles, while saving vehicle operators up to \$169 billion in pre-tax fuel savings. 81 Fed. Reg. 73,482.

Recognizing the important health and environmental benefits provided in the Phase 2 Rule, Movants were active participants in the rulemaking that led to the Phase 2 Rule. Movants submitted written comments supporting aspects of the proposed Phase 2 Rule, and urged EPA to strengthen the final standards to ensure that they reflected the full range of cost-effective technologies available for reducing emissions and fuel consumption for medium- and heavy-duty vehicles. Comments of Environmental Defense Fund at 2 (Oct. 1, 2015) (Docket Nos. EPA–HQ–OAR–2014–0827 & NHTSA–2014–0132); Comments of Natural Resources Defense Council at 2 (Oct. 1, 2015) (Docket Nos. EPA–HQ–OAR–2014–0827 & NHTSA-2014-0132); Comments of Center for Biological Diversity at 2 (Oct. 1, 2015) (Docket Nos. EPA-HQ-OAR-2014-0927 & NHTSA-2014-0132); Comments of Sierra Club et al. at 2-3 (Oct. 1, 2015) (Docket Nos. EPA-HQ-OAR-2014-0827 & NHTSA-2014-0132); Comments of Union of Concerned Scientists at 2-3 (Oct. 1, 2015) (Docket Nos. EPA-HQ-OAR-2014-0827 & NHTSA-2014-0132).

After EPA issued its Notice of Data Availability, Movants again submitted comments further highlighting the need for rigorous standards. Comments of Environmental Defense Fund at 2 (Apr. 1, 2016) (Docket Nos. EPA-HQ-OAR-2014-0827 & NHTSA-2014-0132) Comments of Clean Air Task Force, Sierra Club, et. al. (Apr. 1, 2016) (Docket Nos. EPA-HQ-OAR-2014-0827 & NHTSA-2014-0132). These comments included detailed technical and economic analysis

concerning the agencies' proposed engines standards and likewise underscored the agencies' legal authority to address trailers and the importance of including those sources in the final Phase 2 Rule.

II. Movants' interests in protecting their members and others are threatened by these petitions for review.

Movants' interests described above are threatened by Petitioners' challenges to the Phase 2 Rule. Industry Petitioners seeking review of the Phase 2 Rule will likely seek to weaken or vacate the Phase 2 Rule's requirements, given that their comments during the rulemaking attacked protective measures contained in the proposed rule. For example, during the rulemaking, Petitioner Truck Trailer Manufacturers Association questioned the agencies' authority to establish fuel economy and emissions standards encompassing trailers. *See* Comments of Truck Trailer Manufacturers Association at 2 (Sep. 30, 2015) (Docket Nos. EPA-HQ-OAR-2014-0827 & NHTSA-2014-0132).

Movants have a strong interest in intervening to prevent Petitioners' attempts to nullify, weaken, or delay the Phase 2 Rule, which would harm their legally protected interests and those of their members. Fort Decl. ¶ 15; Stith Decl. ¶ 9; Ross Decl. ¶¶ 7, 34; Campbell Decl. ¶¶ 8, 11, 13. Because Movants' members would be deprived of these health and environmental benefits were Petitioners to succeed in their challenges, Movants have both a clear "interest" under Rule 15(d)

and standing to intervene under Article III of the Constitution. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).²

Further, Movants have independent organizational interests in defending against Petitioners' attempts to nullify, weaken or delay the Phase 2 Rule in any way. As discussed above, Movants' advocacy has helped contribute to the development of the Phase 2 Rule. Movants also have an organizational interest in having access to full and prompt information regarding emissions by medium- and heavy-duty vehicles. *See, e.g.* 40 C.F.R. § 86.1920 (requiring reporting of in-use testing information). The access to this information, which the Phase 2 Rule will help to further, is central to Movants' fulfillment of their organizational mission, because disseminating such information is a core function for Movants. *See Siegel Dec.* ¶¶ 3, 16, 17; *Coplon-Newfield Decl.* ¶ 5; *Stith Decl.* ¶ 2; *Fort Decl.* ¶ 2. The possibility that the petitions may weaken or nullify the Phase 2 Rule establishes Movants' organizational interests under Rule 15(d) and their standing to intervene under Article III of the Constitution. *See D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep't of Ins., Sec., & Banking*, 54 A.3d 1188, 1209 (D.C. 2012) (holding that an organization has an injury in fact when a challenge to an agency's

² This Court has held repeatedly that organizations such as Movants have standing to sue to protect their members from pollution that threatens and concerns those members. *See, e.g., Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1016-17 (D.C. Cir. 2014); *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672-73 (D.C. Cir. 2013).

interpretation of a law that furthered the organization's mission sought to weaken the law and thus impair the organization's ability to carry out its mission, and the organization had been an active participant in the development of the law); *see also Am. Soc. for Prevention of Cruelty to Animals v. Feld Entm't, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (similar) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

Movants' participation as intervenors in support of the agencies will not delay the proceedings or prejudice any party. This motion to intervene was first timely filed on January 19, 2016 by Movant EDF, and the instant amended motion is timely filed on January 23, 2016, all within the 30-day period allowed under Federal Rule of Appellate Procedure 15(d). *See Ala. Power Co. v. ICC*, 852 F.2d 1361, 1367 (D.C. Cir. 1988). The Court has not yet scheduled oral argument or established a briefing schedule. Movants' participation will not undermine the efficient and timely adjudication of this case. Indeed, as nonprofit, environmental citizens' groups with members living near areas where medium- and heavy-duty vehicles are used, Movants are likely to offer a distinct perspective as the Court considers challenges to the Phase 2 Rule.

This Court has previously allowed Movants to intervene in industry petitions challenging EPA actions under the Clean Air Act. *See supra* at 3. Comparable circumstances warrant a grant of intervention here.

CONCLUSION

For the foregoing reasons, Movants respectfully request leave to intervene in Case Nos. 16-1430 and 16-1447 under D.C. Circuit Rule 15(b), and in all other petitions for review of the challenged EPA and NHTSA action.

DATED: January 23, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Amended **Motion to Intervene in Support of Respondent** on all parties through the Court's electronic case filing (ECF) system.

/s/ Susannah L. Weaver
Susannah L. Weaver

DATED: January 23, 2017