ORAL ARGUMENT NOT SCHEDULED

No. 19-1230

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNION OF CONCERNED SCIENTISTS, et al.,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,

Respondent,

THE COALITION FOR SUSTAINABLE AUTOMOTIVE REGULATION AND THE ASSOCIATION OF GLOBAL AUTOMAKERS, INC.,

Movant-Intervenors.

REPLY IN SUPPORT OF THE MOTION FOR LEAVE TO INTERVENE BY THE COALITION FOR SUSTAINABLE AUTOMOTIVE

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REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

Petitioners have opposed the motion to intervene filed in this matter by the Coalition for Sustainable Automotive Regulation (the "Coalition") on the grounds that the Coalition failed to comply with this Court's disclosure requirements. Specifically, Petitioners claim that because the Coalition failed to list its members in its Circuit Rule 26.1 corporate disclosure statement, the Coalition's motion to intervene in these proceedings should be denied "unless and until the violation is cured." Dkt. No. 1815259, at 7 (Nov. 12, 2019).

Contrary to Petitioners' assertions, the Coalition's disclosure statement was compliant with Circuit Rule 26.1. Perhaps just as importantly, the Coalition transparently listed each of its members—not only some, as Petitioners suggest—in the first few paragraphs of its motion to intervene. The Coalition has made no attempt to conceal this information from the Court or the public, and not least from Petitioners themselves, whose counsel were made fully aware of the Coalition's membership during the meet-and-confer process in connection with the parallel district court proceedings, *see Envtl. Def. Fund v. Chao*, No. 19-cv-2907 (D.D.C. filed Sept. 27, 2019); *California v. Chao*, No. 19-cv-2826 (D.D.C. filed Sept. 20, 2019), which preceded the filing of the Coalition's motion in this Court.

In any event, concurrently with this reply, the Coalition is filing an amended corporate disclosure statement to underscore its ongoing commitment to the Court's

disclosure rules and the openness they promote, and to avoid distracting from the key issue under dispute in this matter. Accordingly, to the extent denial of the Coalition's intervention motion was ever appropriate—and the Coalition maintains that it was not—that harsh sanction is no longer warranted, as even Petitioners acknowledge.

ARGUMENT

I. The Coalition's original corporate disclosure statement complied with Circuit Rule 26.1.

The Coalition's corporate disclosure statement, filed concurrently with its motion to intervene in this matter, complied with Circuit Rule 26.1. Consistent with the requirement that an "association" appearing before the Court "identify[] all parent companies and any publicly-held company that has a 10% or greater ownership interest (such as stock or partnership shares) in the entity," D.C. Cir. R. 26.1(a), the Coalition affirmed in its statement that it is "an unincorporated nonprofit association operating under the laws of the District of Columbia," and that it "is not a publicly held corporation, has no parent companies, and no companies have a 10% or greater ownership interest in the Coalition," Dkt. No. 1813676, at 30 (Oct. 31, 2019).

Circuit Rule 26.1(b) goes on to require that "[i]f the entity is an unincorporated entity whose members have no ownership interests, the statement must include the names of any members of the entity that have issued shares or debt securities to the

public," but clarifies that "[n]o such listing need be made … of the names of members of a trade association." D.C. Cir. R. 26.1(b). The Coalition complied with this requirement, as well.

Contrary to Petitioners' claims, the Coalition satisfies the characteristics of an unincorporated trade association under this Rule, and therefore was not required to list the names of its members in its corporate disclosure statement. A "trade association" for purposes of Circuit Rule 26.1(b) is defined as "a continuing association of numerous organizations … operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership." D.C. Cir. R. 26.1(b). While this Court has not expressly stated what constitutes a "trade association" consistent with this Rule, common sense and a fair reading of the Coalition's mission statement make clear that it qualifies as such under the plain language of the applicable Rule.

The Coalition is an association of seven automotive manufacturers and industry groups which exists for the continuing "purpose of promoting the … interests of [its] membership," D.C. Cir. R. 26.1(b)—specifically, as articulated in its statement of interest, "to participate in activities, including rulemaking and litigation" as necessary "to protect the rights and interests" of its members, now and in the future. Dkt. No. 1813676, at 9. That the Coalition was formed close in time to its request to join this litigation does not establish that it was created to participate

solely in this case, nor does it foreclose the Coalition from participating in future litigation, rulemakings, or other activities to protect its members' interests—indeed, such participation is expressly contemplated by the Coalition's mission statement.

The Coalition thus complied with the requirements of Circuit Rule 26.1, and denial of its motion to intervene on this basis is unwarranted.

II. The Coalition has been fully transparent with this Court and Petitioners concerning its membership.

In addition to meeting the requirements of the applicable Circuit Rule, the Coalition has been fully transparent in disclosing its membership—to the Court, to Petitioners, and to the public. The Coalition takes seriously the importance of providing adequate corporate information so that federal judges can make informed decisions concerning the need to recuse themselves for financial reasons. *See* 28 U.S.C. § 455(b)(4).

This is why, in its motions to intervene filed before this Court and in the parallel district court proceedings, *see Envtl. Def. Fund v. Chao*, No. 19-cv-2907 (D.D.C. filed Sept. 27, 2019); *California v. Chao*, No. 19-cv-2826 (D.D.C. filed Sept. 20, 2019), the Coalition submitted corporate disclosure statements in compliance with the applicable federal and Court Rules. *See* Section I, *supra*. And it is also why the Coalition included the full list of its membership in the body of its intervention motions, stating within the first few pages that it is "an unincorporated association" representing "automobile manufacturers and industry groups"—

specifically, "FCA USA LLC (FCA), General Motors LLC (GM), Mazda Motor of North America d/b/a Mazda North American Operations (Mazda), Mitsubishi Motors North America (Mitsubishi), Toyota Motor North America, Inc. (TMNA), Global Automakers, and the National Automobile Dealers Association." Dkt. No. 1813676, at 9.[1] This statement—by no means "buried in [the] brief[ ]," as Petitioners claim, Dkt. No. 1815259, at 9—is a full, accurate, and open listing of the Coalition's membership.[2]

Petitioners' professed interests in transparency and integrity should be satisfied by these disclosures. Further, several counsel for Petitioners were made fully aware of the Coalition's membership during a meet-and-confer process which preceded the filing of the Coalition's intervention motion on October 31. At no point during the meet-and-confer or thereafter did Petitioners raise any of the concerns

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[1] In the event its membership were to change, the Coalition would notify the Court accordingly.

[2] In addition to listing its individual members, the Coalition also listed the members of its manufacturer trade association, the Association of Global Automakers, Inc., specifically stating that "Global Automakers' automobile manufacturer members include Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, LLC, Kia Motors America, Inc., Maserati North America, Inc., McLaren Automotive, Ltd., Nissan North America, Inc., Subaru of America, Inc., Suzuki Motor of America, Inc., and Toyota Motor North America, Inc. (TMNA)." Dkt. No. 1813676, at 8–9. Accordingly, the Coalition has been fully transparent by listing not only its own members, but also the members of its OEM trade association. On this point, the Coalition and Global Automakers further note that Petitioners have not opposed the intervention of Global Automakers.

about the nature or membership of the Coalition that they introduce for the first time in their opposition.[3] In any event, these concerns place form over substance and do not warrant the harsh sanction of denial of the Coalition's motion to intervene in these proceedings, particularly in light of the transparent disclosure of the Coalition's members in the body of its motion.

III. The Coalition has filed an amended corporate disclosure statement, eliminating the only grounds for Petitioners' opposition to its motion to intervene.

Notwithstanding the foregoing, to avoid distracting from the important, substantive dispute at the heart of this case and to underscore its ongoing commitment to transparency, the Coalition is filing with this reply a revised corporate disclosure statement listing its individual members. Thus, if denial were ever appropriate—and the Coalition insists that it was not—denial is certainly not justified now. On this last point, even Petitioners agree, arguing that the Coalition's motion should be denied "unless and until" the Coalition files a revised statement. Dkt. No. 1815259, at 5, 7, 8. Because the lone basis for Petitioners' opposition to

[3] Notably, the Coalition moved to intervene in an earlier proceeding to which Petitioner Environmental Defense Fund was a party. *See Envtl. Def. Fund v. NHTSA*, No. 19-1200 (D.C. Cir. filed Sept. 27, 2019). The Coalition filed in that case a disclosure statement identical to the one at issue here. Petitioners thus knew precisely what the Coalition's disclosure statement would look like in the present action, and nevertheless failed to raise any concerns with the adequacy of that statement until the last day on which to file an opposition to the Coalition's instant motion to intervene.

the Coalition's motion has been eliminated, the Coalition's request to intervene is now otherwise unopposed.

CONCLUSION

For the foregoing reasons, leave to intervene should be granted.

Date: November 19, 2019 Respectfully submitted,

/s/ *Raymond B. Ludwiszewski*

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply in Support of the Motion for Leave to Intervene complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 1,511 words. I further certify that this Motion complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

Dated: November 19, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2019, I electronically filed the foregoing Reply in Support of the Motion for Leave to Intervene with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's appellate CM/ECF system.

I further certify that service was accomplished on the parties in this case via the Court's CM/ECF system.

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