

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

TRUCK TRAILER MANUFACTURERS
ASSOCIATION, INC.,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD,
et al.,

Intervenors.

No. 16-1430

**PETITIONER TRUCK TRAILER MANUFACTURERS
ASSOCIATION, INC.'S OPPOSITION TO INTERVENORS' JOINT
MOTION FOR EXTENSION OF TIME**

Petitioner Truck Trailer Manufacturers Association, Inc. (TTMA) respectfully requests that the Court deny Intervenors' motion for an extension of time by which to respond to TTMA's motion to stay NHTSA's trailer rules until a week after the merits argument in this case.

The requested extension would significantly prejudice TTMA. As set forth in TTMA's stay motion and accompanying declarations, TTMA's members must

currently begin taking orders for trailer sales in 2021, and yet EPA is not currently issuing the certificates of conformity that manufacturers need to comply with NHTSA's rules. This is forcing TTMA's members into an irreparably harmful Catch-22: stop taking trailer orders, or risk taking orders for trailers they will be unable to lawfully sell in 2021 because EPA is not issuing certificates. Meanwhile, to prepare to sell trailers in 2021 that could be compliant if EPA were to issue certificates, TTMA's members must begin imminently to incur substantial and unrecoverable compliance costs. Under the briefing schedule that Intervenors propose, TTMA's stay motion will not be fully briefed until September 29, likely causing several additional weeks of costly, irreparable harm and requiring unrecoverable compliance expenditures that a stay would avoid.

The period between initiation of this appeal and TTMA's motion was not a "delay" that undercuts prejudice (Mot. 2, 6-7). Rather, TTMA appropriately waited to seek a stay until it could establish that a stay is necessary to avoid concrete, irreparable harm, as the law requires. *See Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

Moreover, the reason TTMA needs to seek a stay in this matter is because Intervenors (and the government) advised this Court that they were unable to complete their merits briefs within the ordinary time prescribed by the Federal Rules of Appellate Procedure, successfully advocating for an extended briefing

schedule that prevented the Court from hearing argument last spring. TTMA stated at the time that it would need to seek a stay if the schedule were extended. *See* TTMA's Reply Supp. Mot. to Lift Abeyance, Doc. 1820365, at 4-5 (Dec. 16, 2019). The Court should not let Intervenors bootstrap their earlier request for delay into a second delay that prejudices TTMA.

Finally, Intervenors identify nothing justifying their requested extension beyond ordinary personal and professional obligations. Stay motions are time sensitive, and litigants commonly must juggle competing obligations in responding to them. TTMA anticipates that, notwithstanding these obligations, some combination of the thirty-five lawyers representing the intervening entities could find the time and resources necessary to respond to TTMA's motion within the time allotted under the Federal Rules. That is especially so because the merits of this case are already fully briefed and set for argument on September 15. Intervenors' motion should be denied.

Dated: August 31, 2020

Respectfully submitted,

/s/ Elisabeth S. Theodore

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 457 words, excluding the parts of the filing exempted by Fed. R. App. P. 32(f). The filing complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because it was prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: August 31, 2020

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

CERTIFICATE OF SERVICE

I hereby certify that, on August 31, 2020, the foregoing motion and accompanying exhibits were electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

Dated: August 31, 2020

/s/ Elisabeth S. Theodore
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