[ORAL ARGUMENT HELD APRIL 12, 2016]

No. 15-1177

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

PHH CORPORATION, ET AL.,

Petitioners,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,

Respondent.

On Petition for Review of an Order of the Consumer Financial Protection Bureau
(CFPB File 2014-CFPB-0002)

MOTION OF AMERICANS FOR FINANCIAL REFORM, MAEVE BROWN, CENTER FOR RESPONSIBLE LENDING, LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, SELF-HELP CREDIT UNION, AND UNITED STATES PUBLIC INTEREST RESEARCH GROUP, INC. FOR LEAVE TO INTERVENE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION AND BACKGROUND

The Consumer Financial Protection Bureau (CFPB) was created as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), in the wake of the global financial crisis. Alongside its enforcement responsibilities, which have generated billions of dollars in relief for millions of American consumers, the CFPB also plays a leading role in interpreting consumer financial legislation and issuing rules to regulate the marketplace for consumer financial products.

Recognizing that the financial crisis was the result, in substantial part, of regulatory failures in the mortgage lending marketplace, Congress sought to ensure that the CFPB would be able to succeed where prior regulators had failed. Among other things, Congress provided that the agency should have a single Director, appointed to a five-year term, and removable only for cause. This structure, Congress concluded, would make the CFPB more independent, more focused, and more accountable for its performance—and, thus, ultimately more successful in fulfilling its mission.

The movants seeking to intervene in this case are a credit union subject to CFPB regulations, a member of the CFPB's Consumer Advisory Board, and a set of public interest groups that have advocated in favor of steps taken by the CFPB to date, and that represent members who have benefitted—and will continue to

benefit—from those steps and from the independence that makes the CFPB an effective agency.

In its particulars, this case concerns a finding by the CFPB that petitioner PHH Mortgage violated the Real Estate Settlement Procedures Act. PHH (and others) petitioned this Court for review of that agency decision on June 6, 2015, arguing among other things that the CFPB's structure violates separation of powers principles because the Director is not sufficiently accountable to the President. The CFPB opposed the petition in a brief filed November 5, 2015, and at oral argument on April 12, 2016.

On October 11, 2016, a divided panel of this Court held that the structure of the CFPB is unconstitutional and that the proper remedy was to sever the provision specifying that the Director may only be terminated for cause (effectively transforming him into an at-will employee). The panel also held that the CFPB had misinterpreted RESPA, had improperly applied its interpretation of the statute retroactively, and had erroneously sought relief for violations that occurred outside the statute of limitations.

On November 18, 2016, the CFPB filed a petition for rehearing en banc. At this Court's invitation, the United States filed a brief supporting that petition on December 22.

As the foregoing demonstrates, there was little reason for movants to intervene when the petition was filed (in the Summer of 2015): The CFPB retained its independent Director, and the agency was defending the constitutionality of that structure. The presidential election, however, has affected the possible positions of the parties in this case, giving rise to the instant motion. In particular, President Trump has voiced strong opposition to the Dodd-Frank reforms that created the CFPB, and multiple news outlets have reported over time that his team is considering steps that would directly affect the conduct of this litigation.[1]

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[1] For example, Senators in the new Congress are calling on Trump to fire Cordray, and many outlets are reporting that the President will do so presently. *See, e.g.*, Press Release, *Sasse and Lee to Trump: Fire Cordray* (Jan. 9, 2017), https://outreach.senate.gov/iqextranet/view_newsletter.aspx?id=100898&c=SenSasse; Yuka Hayashi, *Critics Look for Opening to Fire Head of the CFPB*, Wall St. J. (Dec. 27, 2016), http://www.wsj.com/articles/fight-over-cfpb-chief-richard-cordray-heats-up-1482836402; Yuka Hayashi, *Trump Versus Cordray: Can New President Fire CFPB Chief on Day One?*, Wall St. J. (Dec. 2, 2016), http://www.wsj.com/articles/trump-versus-cordray-can-new-president-fire-cfpb-chief-on-day-one-1480719515; Aditya Bamzai, *The President's Removal Power and the PHH Litigation*, Notice & Comment Blog (Nov. 22, 2016), http://yalejreg.com/nc/the-presidents-removal-power-and-the-phh-litigation-by-aditya-bamzai/; Cristian Farias, *Consumer Watchdog Runs Against The Clock To Save Itself From Donald Trump*, The Huffington Post (Nov. 18, 2016), http://www.huffingtonpost.com/entry/cfpb-appeal_us_582f7a42e4b058ce7aab2340; Lisa Lambert, *U.S. Consumer Financial Agency Could Be Defanged Under Trump*, Reuters (Nov. 11, 2016), http://www.reuters.com/article/us-usa-election-cfpb-idUSKBN1360DT. News outlets also have noted that a new administration might attempt to force the CFPB to withdraw the petition for rehearing, or to take other action that would prevent the en banc Court (or the Supreme Court) from reaching the merits of the question decided by the panel. *See, e.g.*, Dave Boyer, *Consumer Financial Protection*

Given these positions, there is now a manifest need for movants to intervene and protect their interests in the CFPB structure that Congress created, which may not be adequately represented by any party to the litigation. The independent representation of the movants as intervenors will also be helpful to the Court (whose ability to decide this important question will not be impaired by any potential changes to the parties' positions), and will not prejudice any party.

Counsel for the movants have consulted with counsel for all parties. Petitioners have declined to consent, and the CFPB has indicated that it takes no position.

ARGUMENT

Given recent developments in this case, there is a significant probability that the petition for rehearing on the important issue that now confronts the *en banc* Court will be withdrawn, or the case otherwise rendered moot, in a way that directly prejudices movants' personal, institutional, and financial interests, or those of their members. Allowing movants to intervene would eliminate that risk and ensure that the courts can resolve this important controversy.

I. Leave To Intervene Should Be Granted.

Intervention in this Court "is governed by the same standards as in the district court." *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779

Bureau in Jeopardy Under Donald Trump, Wash. Times (Nov. 29, 2016), http://www.washingtontimes.com/news/2016/nov/29/consumer-financial-protection-bureau-in-jeopardy-u/; Lisa Lambert, *supra*.

(D.C. Cir. 1997) (emphasis omitted); *see also Sierra Club, Inc. v. E.P.A.*, 358 F.3d 516, 517-18 (7th Cir. 2004) ("Rule 15(d) does not provide standards for intervention, so appellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24."). Under those standards, this Court must permit intervention when a proposed intervenor "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Under this Court's precedents, a proposed intervenor must also demonstrate Article III standing. *See City of Cleveland v. Nuclear Regulatory Comm'n*, 17 F.3d 1515, 1517 (D.C. Cir. 1994).[2] But this Court has also held that intervenors have standing to *defend* the status quo whenever they benefit from it, even if further agency action might be necessary before the intervenors are directly harmed by the outcome of the Court's decision. *See Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317-18 (D.C. Cir. 2015).

[2] This issue is the subject of a circuit conflict. Some courts have held that Article III standing is not a prerequisite to intervention, especially when at least one party or intervenor with standing remains in the case, and where the intervenors who lack standing are not pursuing different relief. *See, e.g.*, *Ruiz v. Estelle*, 161 F.3d 814, 830 (5th Cir. 1998). If necessary, the en banc Court should adopt this broader view.

This Court has identified four elements that should be considered before granting intervention under the federal rules:

> (1) the application to intervene must be timely;
>
> (2) the applicant must demonstrate a legally protected interest in the action;
>
> (3) the action must threaten to impair that interest; and
>
> (4) no party to the action can be an adequate representative of the applicant's interests.

Karsner v. Lothian, 532 F.3d 876, 885 (D.C. Cir. 2008) (quoting *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)). As explained below, all of the considerations supporting intervention are present here, including standing for the putative intervenors.[3]

A. This Motion Is Timely.

First, this motion is timely. Movants filed it as soon as practicable after it became apparent that intervention could be necessary to protect their interests. Ordinarily, a motion for leave to intervene in a case seeking review from agency

[3] This motion presents a stronger case for intervention than the motion filed by consumers in *U.S. House of Representatives v. Burwell*, No. 16-5202. The intervenors there sought to defend executive policies that the incoming administration may alter at its discretion, in a case that had been held in abeyance pending further developments; thus, it was unclear whether the policies they sought to defend would even be in effect at the time they sought to defend them, or whether either of the parties in the dispute would remain interested in litigation. Movants here, by contrast, seek to defend the constitutionality of a federal statute, and there has been no indication that the statute will be modified in the near future.

action must be filed 30 days after the petition for review is filed. *See* Fed. R. App. P. 15(d). Federal Rule of Appellate Procedure 26(b), however, grants this Court discretion to extend the time to file a motion for leave to intervene, or to permit the motion to be filed after the ordinary due date. *See* Charles Allen Wright et al., 16AA Fed. Prac. & Proc. Juris. § 3961.4 (4th ed. 2016) ("[I]t would seem that Rule 26(b) empowers the court to extend the time to intervene under Rule 15(d), and that Rule 26(b)(2)'s ban on extensions does not apply to Rule 15(d) intervention motions."). In this instance, there was no reason for movants to seek to intervene 18 months ago (when the petition for review was initially filed) because the CFPB was representing movants' interests in full. The need for intervention arises in this case from the timing and nature of this Court's initial decision and remedial approach, the timing of the petition for rehearing *en banc*, the timing and nature of the presidential election, subsequent revelations about the potential future of the agency, and the unique ways in which that mix of factors could impact the continuing conduct of this litigation by the parties.

Based on these circumstances, there has been no lack of diligence or untimeliness by the movants, and the motion should accordingly be viewed as timely filed. *See Amador Cty. v. U.S. Dep't of Interior*, 772 F.3d 901, 903-04 (D.C. Cir. 2014) (court should assess the timeliness of motion for intervention in light of "all the circumstances," including the time elapsed since the "potential inadequacy

of representation [comes] into existence." (quotation marks omitted)); *Zeigler Coal Co. v. Office of Workers' Comp. Programs*, 490 F.3d 609, 610 n.1 (7th Cir. 2007) (permitting intervention when, based on prior precedent, intervenor "had no reason to believe that intervention was necessary to protect [its] interest" until a later stage in the case); *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001) (holding that district court abused its discretion in deeming post-judgment intervention motion untimely because "the potential inadequacy of representation came into existence only at the appellate stage," and prior to that point, the movants' "interests were fully consonant with those of the Government, and those interests were adequately represented by the Government's litigation of the case").

The timing of the motion also does not prejudice any party to this case. Movants do not intend to file additional briefs in this matter unless the Court orders briefing for the *en banc* proceedings; if that occurs, movants will happily comply with whatever schedule the Court sets. To the extent feasible, movants will also coordinate with any other intervenors to produce briefing that is coordinated and non-repetitive. Consequently, intervention cannot prejudice the CFPB because movants are merely advocating in support of the petition that the agency already filed; and it cannot disadvantage the private petitioners, who will have every opportunity to respond to movants' submissions on the merits in due course. Likewise, if the movants' participation is necessary to file a petition for certiorari,

they would do so under the normal timing and procedural restraints applicable to such a petition, giving the other parties in this case every ordinary opportunity to be heard in response.

B. Movants Have A Legally Protected Interest In This Action.

Second, movants have a legally protected interest in this action, in both the practical and Article III sense. Indeed, the requirement that an intervenor demonstrate a legally protected interest "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) (emphasis added). Accordingly, this Court has held that an intervenor's showing of Article III standing necessarily satisfies this factor. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003); *see also Jones v. Prince George's Cty.*, 348 F.3d 1014, 1018-19 (D.C. Cir. 2003) (same).

Movants have a sufficiently concrete stake in the outcome of this litigation to support intervention.

Self-Help Credit Union ("SHCU") was founded in 1983 and is chartered and supervised by the state of North Carolina Credit Union Division. SHCU has 23 branches, $650 million in assets, and provides financial services to its 60,000 members. These services include residential mortgages, consumer credit cards, personal loans, individual deposit accounts, and other consumer financial services

that are subject to regulation by the CFPB. SHCU and its members are directly impacted by regulations and enforcement that produce a fair, transparent and competitive consumer financial marketplace, and it supports such measures. This is furthered by having a CFPB Director that is removable only for cause. Without this independence, too often regulations and enforcement are weakened by special interests, and harmful practices proliferate.[4]

The Center for Responsible Lending ("CRL") is a nonprofit, nonpartisan research and policy organization affiliated with SHCU. It is dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL's research and policy reports and recommendations have addressed numerous issues within the mission and activities of the CFPB, including auto loans, debt collection, mortgage lending, payday lending, and student loans. CRL also has advocated rules to be issued by the CFPB and commented on the agency's rulemaking. As a result, CFPB has a direct and immediate interest in the independence and agility of the CFPB and its Director.

[4] This Court has already held that banks seeking to challenge the constitutionality of the CFPB have standing to do so merely by virtue of being regulated by the CFPB. *See State Nat'l Bank of Big Spring v. Lew*, 795 F.3d 48, 53 (D.C. Cir. 2015). There is no reason to apply a different rule to regulated banks seeking to defend the constitutionality of the CFPB, as they too have a concrete interest in the nature and identity of their regulator.

The Leadership Conference on Civil and Human Rights (The Leadership Conference) is a coalition of more than 200 organizations committed to the protection of civil and human rights in the United States. Its members include organizations that represent people of color, women, children, older Americans, LGBT people, individuals with disabilities, labor unions, major religious groups, and civil liberties and human rights groups. It has advocated for every major civil rights statute since the Civil Rights Act of 1957, including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Among other issues, the Leadership Conference works to address the continuing problem of housing and financial discrimination in the United States.

Americans for Financial Reform (AFR) is a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups that works through policy analysis, education, advocacy, and outreach to lay the foundation for a strong, stable, and ethical financial system. AFR was formed to advocate for the passage of the legislation that became Dodd-Frank and continues to protect and advance the reforms in that legislation, including a strong and independent CFPB.

Both the Leadership Conference's and AFR's coalitions include organizations that count tens of millions of individual U.S. consumers as members with

sufficient interests in the CFPB's leadership to convey standing. *See N.Y. State Club Ass'n, Inc. v. City of N.Y.*, 487 U.S. 1, 9 (1988).

United States Public Interest Research Group, Inc. (U.S. PIRG) is an independent, citizen-funded, non-partisan, and non-profit organization that advocates for the public interest with tens of thousands of individual members nationwide. U.S. PIRG advocated and worked for the creation of the CFPB, urging Congress to create "a robust, independent federal Consumer Financial Protection Agency to protect consumers from unfair credit, payment, and debt management products."[5] U.S. PIRG now continues to collaborate with the CFPB to ensure that its mission is fulfilled. For example, U.S. PIRG has used the CFPB's Consumer Complaint Database to write in-depth reports (eight, thus far) that uncover patterns in the problems that consumers are experiencing with financial products.[6] The most recent report, published in December 2016, documents the dramatic increase in the amount of overdraft fees that consumers are charged every year—a problem that disproportionately impacts low-income consumers that are a core constituency

[5] *Regulatory Restructuring: Enhancing Consumer Financial Products Regulation*, Before the H. Comm. on Financial Services, 111th Cong. 120 (2009) (Testimony of Travis Plunkett & Edmund Mierzwinksi).
[6] These reports are available at: U.S. PIRG, *Reports: The CFPB Gets Results For Consumers*, http://uspirg.org/page/usp/reports-cfpb-gets-results-consumers (updated Dec. 2016).

for U.S. PIRG and its members.[7] In addition, U.S. PIRG has worked with the CFPB to protect students from unfair financial practices that have occurred when colleges and universities have partnered with financial institutions. For example, in May 2012, U.S. PIRG released a report that analyzed the campus card marketplace and surveyed practices at 120 colleges and universities.[8] Prompted in part by U.S. PIRG's work, the CFPB released in December 2015 the Safe Student Account Scorecard, which is a resource to assist colleges and universities that are seeking to select college-sponsored financial accounts. U.S. PIRG strongly supported the release of the Safe Student Account Scorecard.[9] Because of its investment in the creation of the independent CFPB, and because of its members' ongoing interest in the CFPB's initiatives, U.S. PIRG has a sufficiently concrete interest to create standing to intervene.

In addition, the consumers represented by Leadership Conference, AFR, and U.S. PIRG have a concrete interest in the rulemaking, supervision, and enforcement of the CFPB. Those consumers stand to gain significant rights if the

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[7] *See* U.S. PIRG, *Big Banks, Big Overdraft Fees* (2016), http://uspirg.org/sites/pirg/files/reports/USP%20Overdraft%20Fees%20Report%20Dec16%201.1.pdf.

[8] U.S. PIRG Education Fund, The Campus Debit Card Trap (2012), http://www.uspirg.org/sites/pirg/files/reports/thecampusdebitcardtrap_may2012_uspef.pdf?_ ga=1.113343758.827135679.1483730865

[9] U.S. PIRG, Press Release, *U.S. PIRG Lauds Consumer Guide for Safe Bank Accounts on Campus* (Dec. 16, 2015), http://uspirg.org/news/usp/us-pirg-lauds-consumer-guide-safe-bank-accounts-campus.

CFPB Director finalizes the CFPB's proposed rule barring class action bans in agreements for consumer financial products, such as checking accounts and credit cards. CFPB, Proposed Rule With Request for Public Comment, 81 Fed. Reg. 32830, 32841 (May 24, 2016); Richard Cordray, Prepared Remarks of CFPB Director Richard Cordray at the Field Hearing on Arbitration Clauses (May 5, 2016), http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-cfpb-director-richard-cordray-field-hearing-arbitration-clauses/. Losing the right to proceed in court via an arbitration clause is itself an injury sufficient for standing. *See Ross v. Bank of Am., N.A. (USA)*, 524 F. 3d 217, 224 (2d Cir. 2008). More generally, these consumers have an interest in the independence of the agency which supervises the financial institutions they utilize. *Cf. State Nat'l Bank of Big Spring v. Lew*, 795 F. 3d 48, 53 (D.C. Cir. 2015).

Maeve Brown is the Chairperson of the CFPB's Consumer Advisory Board. The Consumer Advisory Board, created pursuant to Section 1014(a) of the Dodd-Frank Act, is established by the Director of the CFPB "to advise and consult with" the Director and the CFPB "in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry . . . ." 12 U.S.C. § 5494(a). The Board reports directly to the Director of the CFPB, who also appoints (and can terminate) the Board's members, and determines its budget and staffing. CFPB,

Charter of the Consumer Advisory Board, §§ 5, 7, 12 (2014), *available at* http://files.consumerfinance.gov/f/201501_cfpb_charter-of-the-consumer-advisory-board.pdf. Therefore, the Consumer Advisory Board has a direct interest in ensuring that the Director is independent and responsive to the Board's recommendations and analysis.

C. This Action Threatens To Impair Movants' Interest.

Third, the foregoing discussion illustrates that if the parties choose to allow the panel's decision to stand, movants' interests will be impaired because the statute will effectively be rewritten to permit the immediate termination of the Director at will—a course of action that will structurally compromise the independence of the agency, likely derail pending policy initiatives and enforcement actions, and possibly call into question the validity of past initiatives as well. As a result, movants and their members will be directly prejudiced. That satisfies Rule 24(a)(2)'s requirement that an intervenor be "so situated that disposing of the action may as a practical matter impair or impede [its] ability to protect its interest"—a requirement that this Court has construed "as looking to the practical consequences of denying intervention, even where the possibility of future challenge . . . remains available." *Fund for Animals*, 322 F.3d at 735. That is, "it is not enough to deny intervention under 24(a)(2) because applicants may vindicate their interests in some later, albeit more burdensome, litigation." *Natural Res. Def.*

Council v. Costle, 561 F.2d 904, 910 (D.C. Cir. 1977). In this case, it is not even clear that such future litigation would be possible—and it is abundantly clear that it would not be comparable to this case in terms of its ability to preserve the institutional status quo.

D. Movants' Interests Will Not Be Adequately Represented By The Parties.

As explained in the statement of background above, as of Inauguration Day, movants' interests are no longer adequately represented by the executive branch, which is unlikely to persist in its defense of the statute as written. It is possible that Director Cordray will be removed and replaced by somebody with a different policy agenda. It is also possible that even if the Director remains in power, the United States will not seek certiorari if the panel decision stands (that decision would largely lie in the hands of the new administration's Department of Justice, 12 U.S.C. § 1254(e)). This is more than enough to satisfy the fourth prong of the Rule 24(a)(2) test for intervention, which requires only that "the applicant show[] that representation of his interest '*may b*e' inadequate.'" *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added). Moreover, "the burden of making that showing should be treated as minimal," *id.*, and this Court "ha[s] described this requirement as 'not onerous,'" *Fund for Animals*, 322 F.3d at 735 (quoting *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986)). Here, permitting intervention is the only way to ensure that movants' interests are

adequately protected in this litigation, and also to ensure that this Court and, if necessary, the Supreme Court of the United States have the ability to reach the merits of this critically important issue.

CONCLUSION

This Court should grant the motion for leave to intervene.

Respectfully submitted,

/s/Thomas C. Goldstein

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January 26, 2017

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1, movants state as follows:

Americans for Financial Reform is a project of the Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund; it is not separately incorporated.

Center for Responsible Lending (CRL) is a non-profit supported organization under the Internal Revenue Code. CRL's supporting, or parent organization is the Center for Community Self-Help, which is tax-exempt under section 501(c)(3) of the Internal Revenue Code. Neither CRL nor its parent organization has issued shares or securities.

Leadership Conference on Civil and Human Rights is a 501(c)(4) organization that engages in legislative advocacy. It has no parent company and no stock.

Self-Help Credit Union has no parent company and no publicly traded company owns 10% or more of its stock.

United States Public Interest Research Group, Inc. has no parent company and no publicly traded company owns 10% or more of its stock.

The general nature and purpose of these organizations is that they advocate on behalf of American consumers, and were instrumental in shaping the development of the Consumer Financial Protection Bureau. Self-Help Credit Union is also regulated by the Bureau. The nature of each organization and its specific interest in this litigation is discussed in greater detail in the body of the motion.

/s/ Thomas C. Goldstein

January 26, 2017

CERTIFICATE OF PARTIES AND AMICI

Pursuant to D.C. Circuit Rules 27(a)(4), movants certify that except for those parties who have moved for invitation to files briefs as amici curiae in support of Respondent's petition for rehearing en banc (all of whose motions are pending as of the date of this filing), all parties, intervenors, and amici appearing in this Court are listed in the Addendum to Respondent's petition for rehearing en banc.

/s/Thomas C. Goldstein

January 26, 2017

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27, movants certify that this motion complies with the type-volume limitation of Rule 27(d)(2)(A) because it contains 3851 words. Movants further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 14-point Times New Roman font.

/s/Thomas C. Goldstein

January 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on January 26, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/Thomas C. Goldstein

January 26, 2017