

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 BANNOCK STREET DENVER, COLORADO 80202</p> <hr/> <p>Plaintiff:</p> <p>FREEDOM TO DRIVE INC.</p> <p>v.</p> <p>Defendant:</p> <p>THE COLORADO AIR QUALITY CONTROL COMMISSION</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Proposed Intervenor-Defendants Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Southwest Energy Efficiency Project, and Western Resource Advocates:</i></p> <p>Thomas A. Bloomfield (Colo. Bar. No. 35281) Nathaniel H. Hunt (Colo. Bar. No. 49259) Sarah M. Keane (Colo. Bar. No. 51109) Samantha R. Caravello (Colo. Bar. No. 48793) Kaplan Kirsch & Rockwell LLP 1675 Broadway, Suite 2300 Denver, Colorado 80202 303-825-7000 303-825-7005 (fax) Email: tbloomfield@kaplankirsch.com nhunt@kaplankirsch.com skeane@kaplankirsch.com scaravello@kaplankirsch.com</p>	<p>Case No. 2019CV34156</p> <p>Division: 259</p> <p>Courtroom:</p>
<p style="text-align: center;">ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, SOUTHWEST ENERGY EFFICIENCY PROJECT, AND WESTERN RESOURCE ADVOCATES' UNOPPOSED MOTION TO INTERVENE AS DEFENDANTS AND TO EXTEND TIME TO ANSWER COMPLAINT</p>	

Exhibit 1: Proposed Intervenor-Defendants' Response in Support of Defendant's Motion to Hold Case in Abeyance (December 12, 2019)

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<p style="text-align: center;">PROPOSED INTERVENOR-DEFENDANTS ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, SOUTHWEST ENERGY EFFICIENCY PROJECT, AND WESTERN RESOURCE ADVOCATES’ RESPONSE IN SUPPORT OF DEFENDANT’S MOTION TO HOLD CASE IN ABEYANCE</p>	

Proposed Intervenor-Defendants Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Southwest Energy Efficiency Project, and Western Resource Advocates (collectively, “Environmental Coalition” or “Coalition”), file this response in support of the Defendant Colorado Air Quality Control Commission’s (“Commission”) Motion to Hold Case in Abeyance filed on November 22, 2019 (“Abeyance Motion”).

In this action, Plaintiff Freedom to Drive (“FTD”) challenges the Commission’s adoption of the Colorado Low Emission Automobile Regulation, 5 C.C.R. § 1001-24, which establishes a zero emission vehicle (“ZEV”) program in Colorado (“ZEV Rule”). Following the Commission’s adoption of the ZEV Rule, the U.S. Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) issued a final rule withdrawing the federal Clean Air Act preemption waiver granted to California in 2013 (“California waiver”) and declaring California’s vehicle greenhouse gas emission standards and ZEV program preempted by federal law. *See The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, 84 Fed. Reg. 51,310 (Sept. 27, 2019); *see also* Abeyance Motion at 3–4. In this action, FTD claims that EPA’s and NHTSA’s revocation of the California waiver renders Colorado’s ZEV Rule preempted and invalid.

As the Commission detailed in its Abeyance Motion, EPA’s and NHTSA’s new regulations have been challenged in multiple proceedings in the U.S. District Court and the U.S. Court of Appeals for the District of Columbia. *See* Abeyance Motion at 4–5. Since the Commission’s filing of the Abeyance Motion, additional litigation has been initiated challenging the new regulations and EPA’s revocation of the California waiver. *See Sierra Club v. Wheeler*, No. 19-1243 (D.C. Cir. Pet. filed Nov. 22, 2019) (brought by members of the Environmental Coalition

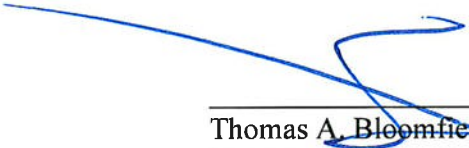
and other organizations); *Advanced Energy Econ. v. EPA*, No. 19-1249 (D.C. Cir. Pet. filed Nov. 25, 2019); *City & Cty. of San Francisco v. Wheeler*, No. 19-1246 (D.C. Cir. Pet. filed Nov. 25, 2019); *Calpine Corp. v. EPA*, No. 19-1245 (D.C. Cir. Pet. filed Nov. 25, 2019). Resolution of the additional legal proceedings directly bears on the outcome of FTD’s challenge to the ZEV Rule in this action. The federal legal challenges to EPA’s action were recently consolidated into a single proceeding before the U.S. Court of Appeals for the D.C. Circuit. *See Union of Concerned Scientists v. Nat’l Highway Traffic Safety Admin.*, No. 19-1230 (D.C. Cir. Order Dec. 2, 2019). Similarly, the U.S. District Court for the District of Columbia plans to consolidate the federal challenges to NHTSA’s action. *See Minute Order, Env’tl. Def. Fund v. Chao*, No. 1:19-cv-02907-KBJ (D.D.C. Dec. 9, 2019) (proposing consolidation with *California v. Chao*, No. 1:19-cv-02826-KBJ (D.D.C. filed Sept. 20, 2019) and *S. Coast Air Quality Mgmt. Dist. v. Chao*, No. 1:19-cv-03436 (D.D.C. filed Nov. 14, 2019)). The Environmental Coalition agrees with the Commission that it is in the interests of the court and the parties to stay this action pending the resolution of the federal litigation.

In addition to the federal litigation, the pendency of a related Colorado Court of Appeals proceeding – which itself may be stayed – further justifies holding this action in abeyance. As explained by the Commission, the Colorado Automobile Dealers Association (“CADA”) has appealed this Court’s dismissal of a challenge to the Commission’s low emission vehicle (“LEV”) regulation based on CADA’s failure to demonstrate standing. *See Abeyance Motion* at 13. Following the Commission’s filing of the Abeyance Motion, on December 11, 2019, the Commission (along with the Colorado Department of Public Health and the Environment and the Air Pollution Control Division) also moved to hold CADA’s appeal in abeyance pending the

federal litigation regarding EPA's and NHTSA's revocation of the California waiver. Defendant-Appellees' Motion to Hold Case in Abeyance and for Additional Time to File Answer Briefs During the Pendency of the Motion, *Colo. Auto. Dealers Ass'n v. Colo. Dep't of Pub. Health & Env't*, No. 2019CA1386 (Colo. App. Dec. 11, 2019). Three of the organizations comprising the Environmental Coalition are parties to that appeal and intend to join in support of the Commission's motion to hold the appeal in abeyance. Even if the Court of Appeals decides not to hold the CADA appeal in abeyance and decides it on the merits, the decision on CADA's standing could directly affect the outcome of FTD's challenge to the ZEV Rule in this action, as the Commission has argued in the alternative that FTD lacks standing to bring this action.

Accordingly, for the reasons set forth by the Commission in the Abeyance Motion, the Court should grant the Commission's request to hold this action in abeyance and stay all deadlines until such time as the federal courts resolve related litigation.

Respectfully submitted on December 12, 2019.



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