

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

CIGAR ASSOCIATION OF AMERICA, *et al.*,

*Plaintiffs,*

v.

UNITED STATES FOOD AND DRUG  
ADMINISTRATION, *et al.*,

*Defendants.*

Civil Action No. 16-1460 (APM)

**SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT AND SEEKING  
EXPEDITED CONSIDERATION OF PROPOSED INTERVENORS’  
MOTION TO INTERVENE**

In light of Plaintiffs’ and Defendants’ recently filed Joint Motion to Amend Scheduling Order (Doc. 40), Proposed Intervenors—American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids and Truth Initiative (“Proposed Intervenors”)—respectfully seek to supplement their Motion to Intervene (Doc. 36) as follows:

1. On July 24, 2017, Proposed Intervenors moved to intervene in this litigation to protect the significant interests that each of the Proposed Intervenors has in defense of the Deeming Rule. *See* Doc. 36 (“Intervention Motion”).

2. On August 1, 2017, Plaintiffs and Defendants filed a Joint Motion asking the Court to amend the existing scheduling order with respect to summary judgment briefing (but leaving other deadlines, including any responses to the Intervention Motion, in place). *See* Doc. 40 ¶ 6 (“Joint Motion to Amend”).

3. In light of the Joint Motion to Amend, Proposed Intervenors respectfully request that the Court expeditiously decide the Intervention Motion. In the Joint Motion to Amend, Defendants announced their intent “to issue guidance ... that would extend until August 2021 the compliance period for submitting applications for newly-regulated noncombustible products such as cigars and pipe tobacco” and thus would permit “manufacturers [to] continue to market the products while those applications are pending.” Doc. 40 ¶ 5. In addition, Plaintiffs and Defendants explained that an amended briefing schedule is necessary for the parties “to consider the consequences of the new comprehensive plan on this litigation, to discuss ways to reduce the need to [litigate] some of the issues presented in this case, and, if necessary, to confer regarding the most efficient path forward for presenting any remaining challenges to the Rules.” *Id.* ¶ 6.

4. For the same reasons that Proposed Intervenors have a substantial interest in this litigation (as explained in their Intervention Motion and accompanying affidavits), Proposed Intervenors have a strong interest in participating *as parties* in ongoing discussions about FDA’s comprehensive plan and its implications for this litigation as well as the most efficient path forward in this case. In order to ensure that Proposed Intervenors’ interests are adequately represented and protected in any such discussions as well as in any further proceedings before this Court, Proposed Intervenors respectfully ask that this Court rule on the Intervention Motion expeditiously. Proposed Intervenors submit that because they readily satisfy the standards for intervention, resolution of the Intervention Motion expeditiously should not unduly burden the Court or the parties. Moreover, resolving the Intervention Motion now will permit the most orderly and efficient handling of this litigation moving forward.

5. Proposed Intervenors do not otherwise oppose the Joint Motion to Amend.

Dated: August 2, 2017

Respectfully submitted,

/s/ Kelly P. Dunbar

Kelly P. Dunbar (D.C. Bar No. 500038)  
Kevin M. Lamb (D.C. Bar No. 1030783)  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
kelly.dunbar@wilmerhale.com  
kevin.lamb@wilmerhale.com  
(202) 663-6000

Javier M. Guzman (D.C. Bar No. 462679)  
DEMOCRACY FORWARD FOUNDATION  
P.O. Box 34553  
Washington, D.C. 20043  
jguzman@democracyforward.org  
(202) 448-9090

Dennis A. Henigan (D.C. Bar No. 951897)  
Mark E. Greenwold (D.C. Bar No. 178186)  
CAMPAIGN FOR TOBACCO-FREE KIDS  
1400 I Street, NW  
Washington, DC 20005  
dhenigan@tobaccofreekids.org  
mgreenwold@tobaccofreekids.org  
(202) 296-5469

*Counsel for proposed Intervenor-Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of August, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system, which will send a notice of filing to all counsel of record.

/s/ Kelly P. Dunbar

KELLY P. DUNBAR