UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

753 EAST 226 LLC, 148 W 142, LLC, and 820 EAST 10TH ST. LLC,

Plaintiffs,

-against-

THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT and ADOLFO CARRIÓN JR. in his official capacity as Commissioner of THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

Defendants.

Case No. 24-cv-4197

MEMORANDUM OF LAW IN SUPPORT OF MAKE THE ROAD NEW YORK & WE ACT'S MOTION TO INTERVENE

Date: October 2, 2024

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PRELIMINARY STATEMENT

Lead is "a highly toxic metal which, when introduced into the human body, produces a wide range of adverse health effects, especially with regard to children." *Williamsburg Around the Bridge Block Ass'n ("WABBA") v. Giuliani*, 223 A.D.2d 64, 66 (1st Dep't 1996). Lead-induced injuries include "nervous ... system disorders, delays in neurological and physical development, cognitive and behavioral changes, and hypertension, [and other brain damage,] most of which are irreversible." *WABBA v. Giuliani*, 167 Misc. 2d 980, 984 (S. Ct. N.Y. Co. 1995), *aff'd*, 223 A.D.2d 64. [1] People can ingest lead through both their indoor and outdoor environments, including water, soil, air, household products, and, most commonly, lead-based paint and dust.[2] Young children's hand-to-mouth behavior increases their exposure.[3] Research indicates that "70% of children's lead exposure is from lead-based paint in the home."[4] As noted on the New York City Department of Health and Mental Hygiene's ("DOHMH") website, "[t]he most common source of lead poisoning for children in New York City is peeling lead paint and its dust."[5] According to the Centers for Disease Control ("CDC"), no safe blood lead level in children has been identified.[6]

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[1] See, also, U.S. Department of Health and Human Services/National Institutes of Health, *NTP Monograph on Health Effects of Low-Level Lead* (2012), (herein "NTP Monograph of Health Effects of Low Level Lead") https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf

[2] U.S. Environmental Protection Agency, *Learn about Lead*, https://www.epa.gov/lead/learn-about-lead

[3] NTP Monograph of Health Effects of Low Level Lead

[4] Abelsohn, A., Sanborn, M. *Lead and Children*, Canadian Family Physician, June 2010 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2902938/#b19-0560531; Levin, R, Brown, M., et al., *Lead Exposures in U.S. Children, 2008: Implications for Prevention,* Environmental Health Perspectives

[5] NYC Health, *Lead Poisoning*,www1.nyc.gov/site/doh/health/health-topics/lead-poisoning-prevention.page

[6] U.S. Dep't of Health, CDC, Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention (2012) at 27 (available at https://stacks.cdc.gov/view/cdc/11859). DOHMH takes the same position: "There is no safe level of lead in your body." DOHMH, Environmental and Health Data Portal, available at https://a816-dohbesp.nyc.gov/IndicatorPublic/data-explorer/lead/?id=2209 - display=summary.

The New York Court of Appeals has declared that "the dangers of exposure to lead-based paint, especially to young children, are well documented and pose a serious public health problem," *New York City Coalition to End Lead Poisoning ("NYCCELP") v. Vallone,* 100 N.Y.2d 337, 342 (2003), and that "'[c]hildhood lead paint poisoning may be the most significant environmental disease in New York City.'" *Juarez v. Wavecrest Management*, 88 N.Y.2d 828, 641 (1996). Between January 2005 and December 2022, there were 169,556 children under the age of 6 in New York City who had a level of 5 micrograms of lead per deciliter of blood ("µg/dL") or greater.[7] Symbolically, that would represent a population of poisoned children larger than Syracuse, NY, or Springfield. MA, or Alexandria, VA, Savannah, GA, or Charleston, SC. The risk for lead exposure is not the same for all children and adults in the city. DOHMH reported that 67% of children under six years of age with elevated blood lead levels live in high poverty neighborhoods. Furthermore, Black, Latino/a/x, and Asian children represent 81% of all newly identified cases of elevated blood lead levels in children under age six.[8]

Notwithstanding the fact that New York City was among the first in the nation to recognize the dangers of lead poisoning in children, it took almost a quarter century to enact any meaningful legislation to address the problem proactively via the passage of Local Law 1 in 1982 ("LL1/82"). And notwithstanding that enactment, property owners refused to comply with its mandates and the City did little to enforce the law. It would be another 22 years before the

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[7] Until December 4, 2022, a report of a child's blood lead level of 5 µg/dL or greater triggered a mandatory DOHMH investigation and intervention of the child's home; that level has now been tightened to 3.5 µg/dL. 24 Rules of the City of New York ("RCNY") § 173(d)(2) (amended City Record Nov. 4, 2022 eff. Dec. 4, 2022). As New York's Appellate Division declared nearly 3 decades ago:

> "Lead exposure as low as two micrograms per deciliter in children under seven years old lowers IQ, stunts growth and causes behavioral disorders."

WABBA v Giuliani, 223 AD2d at 66 (emphasis added, citations omitted).

[8] 2022 Report to the New York City Council on Progress in Preventing Elevated Blood Lead Levels in New York City www.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-22.pdf

City took up the cause again, enacting Local Law 1 of 2004 ("LL1/04") which aimed to end lead poisoning in children by 2010. Instead of recognizing the grave danger that lead exposure poses and doing their part to eradicate it, landlords once again flouted the law and sued to have it overturned. In 2010, the year LL1/04 had targeted for eradication of lead poisoning, almost 14,000 children in the city had dangerous blood lead levels. In 2021, 2,577 children tested positive for elevated blood levels.[9] This latter number, while still unacceptably high, shows that when the City enacts strong laws and enforces them, positive change is possible. But that change has come over incessant complaining, obstruction, and litigation from some property owners who don't seem to care that children are being poisoned in apartments they own. The instant lawsuit is just the latest attempt to block enforcement of the law. Rather than partner with the City and community advocates to eliminate this entirely preventable threat to vulnerable children, Plaintiffs filed this case to obstruct the City's efforts at effective enforcement, prioritizing their financial bottom line over the health of children.

Make The Road New York ("MRNY") and WE ACT For Environmental Justice ("WE ACT") are among the leaders of the environmental justice movement in New York City, especially on the issue of lead exposure and poisoning. For decades, they have fought for the City to enact and enforce strong lead poisoning prevention laws that will benefit their members, who are primarily low-income people of color and immigrants. They serve areas most affected by weak enforcement of the laws[10] and have participated in all significant litigation in this area of the law that has been brought since the mid-90's. Because of their advocacy in this field, and

[9] *Id.*

[10] *New York City Comptroller Scott Stringer's Investigation into Child Lead Exposure: Office of the New York City Comptroller (nyc.gov)* (September 25, 2019) (finding that, of roughly 26,000 children with elevated blood lead levels in DOHMH's database from 2013 to 2018, half lived in just fifteen neighborhoods including many areas served by MRNY and WE ACT).

because of how deeply the communities they serve have been and will be negatively affected by any efforts to undermine the vigorous enforcement of robust lead removal and abatement laws, they are uniquely positioned to provide the Court with a real world understanding of the stakes in this litigation. Their motion to intervene is timely and the Court should grant it.

BACKGROUND

A. The History of the Lead Laws in New York City

Effective January 1, 1960, the New York City Board of Health banned the sale lead-based paint and its application in homes and schools,[11] outpacing the federal government's subsequent ban in 1978.[12] After 1960, New York City passed legislation requiring landlords to abate lead paint after a child living in the apartment had been poisoned by lead.[13] It was not until 1982, however, that the City enacted legislation to prevent lead poisoning by requiring landlords to remove or cover any and all lead-based paint in units inhabited by children six or under, pursuant to Local Law 1 of 1982 .[14] While the intent of the legislation was laudatory, landlords failed to comply with the provisions and the City failed to enforce its own law. Community groups came together to form the New York City Coalition to End Lead Poisoning ("NYCCELP"). The Coalition's purpose was to respond to the landlords' non-compliance with the law and the City's failure to implement and enforce its own laws.

In 1985, the Coalition commenced an action to compel the City to comply with its obligations under LL1/82. See, *NYCCELP v. Koch*, 138 Misc 2d 188 (S. Ct. NY Co. 1987) *affirmed* 139 A.D. 2d 404 (1st Dep't 1988) (denying motions to dismiss because "while the method of enforcement may be discretionary, enforcement is not."). The litigation lasted almost

[11] 24 RCNY § 173.13(a).
[12] 16 CFR § 1303.1(a), 42 FR 44199.
[13] Local Law 50 of 1972, former New York City Administrative Code ("NYCAC") § 27-2126
[14] Former NYCAC § 27-2013(h).

two decades and included orders requiring the City to issue regulations that comported with the requirements of LL1/82, *NYCCELP v. Koch*, 216 A.D. 2d 219 (1st Dep't 1995) (affirming the issuance of a preliminary injunction directing the City's Department of Housing Preservation and Development ("HPD") to comport its regulations with the requirements of the law) and contempt orders when the City failed to comply with the statute and the court orders. *NYCCELP v. Guiliani*, 245 A.D.2d 49 (1st Dep't 1997); *NYCCELP v. Guiliani,* 248 AD2d 120 (1st Dep't 1998).

While *NYCCELP v. Giuliani* was pending, in 1999 the City Council repealed LL1/82 and replaced it with Local Law 38 of 1999 ("LL38/99"). The new law eviscerated the groundbreaking 1982 law, including removing lead dust from the definition of a lead-based paint hazard and lowering the age of protected children from under 7 to under 6. Once again, the Coalition sued the City, this time for failing to comply with the State Environmental Quality Review Act ("SEQRA"). The case made its way up to the Court of Appeals, which invalidated LL38/99 due to the City's failure to comply with SEQRA, and thus revived LL1/82. See, *NYCCELP v. Vallone*, 100 N.Y.2d 337 (2003).

In response to the Court of Appeals' invalidation of LL38/99, the Council enacted Local Law 1 of 2004 ("LL1/04") over the veto of then Mayor Michael Bloomberg, with the express aim of eradicating childhood lead poisoning by 2010.[15] LL1/04 requires the safe remediation of lead paint that is peeling or otherwise presents a hazard. The law prevents child lead poisoning through the "lead safe" approach instead of the "lead free" approach of LL1/82. Under LL1/04, landlords have the responsibility to annually investigate apartments for lead hazards where children under the age of six reside for ten or more hours a week. Additionally, the law requires

[15] LL1/04 "Statement of Findings and Purposes", formerly codified at NYCAC § 27-2056.1.

landlords to permanently abate the lead-based paint on the riskiest surfaces, such as friction surfaces on windows and door frames, at vacancy.

Two lawsuits were filed challenging LL1/04 under SEQRA. The lawsuits were brought by a group of affordable housing providers and by owners of Rent Stabilized buildings. See, *Cmty Pres. Corp. v. Miller* 5 Misc. 3d 388 (S. Ct. NY Co. 2004) *aff'd* 14 A.D. 3d 193 (1st Dep't 2005), *Rent Stabilization Ass'n v. Miller*, *aff'd* 15 A.D. 3d 194 (1st Dep't 2005), *app den* 4 N.Y. 3d 709 (2005).[16] The Coalition and its members, including MRNY, moved to intervene into the lawsuits. Intervention was granted and thereafter, the court dismissed both lawsuits. *Id*.

In 2018, the Coalition and its members, including WE ACT, fought for amendments to LL1/04 that they hoped would lead to better enforcement of the law. That campaign led to a number of amendments enacted in 2019 which included Local Law 66 of 2019 ("LL66/19") which, among other things, redefined "lead-based paint" as having a value of 0.5 milligrams of lead per square centimeter ("mg/cm^2") or greater (down from 1.0 mg/cm^2), to take place no less than 10 months after the federal department of Housing and Urban Development ("HUD") approved a commercially available X-ray fluorescence ("XRF") analyzer capable of being reliably calibrated to test at a 0.5 mg/cm^2 level.[17] LL 66/19 provided that this new 0.5 mg/cm2 standard was to be implemented by amendment of HPD's rules. After noticing such proposed rules for comment and public hearing, 148 NYC Record (121) 3898 (June 24, 2021),[18] HPD adopted such amendments on October 13, 2021, effective December 1, 2021. 148 NYC Record

[16] Because the City's Corporation Counsel refused to defend the two lawsuits, the City Council retained outside counsel instead.

[17] Codified at NYCAC § 27-2056.2(7)(b). The Board of Health adopted this more stringent standard for DOHMH investigations of the homes of lead-poisoned children earlier, on June 11, 2019. 146 NYC Record (118) 3049, 3052 (June 11, 2019).

[18] There are no indications that Plaintiffs submitted comments on these proposed regulations, nor sought to timely challenge them under NY CPLR Article 78 upon promulgation.

(197) 6956 (October 13, 2021). These amended rules included guidance for interpretation of XRF results as follows: positive result if greater than or equal to 0.6 mg/cm^2, negative if less than or equal to 0.4 mg/cm^2, and inconclusive if equal to 0.5 mg/cm^2. 24 RCNY § 11-01(t). HPD further clarified that inconclusive results could be contested by means of a paint chip sample test, and positive results were not subject to challenge by the property owner.

Thereafter, the City enacted additional amendments to LL1/04 in 2020, 2021, and 2023 that created additional notice, testing, remediation, and record-keeping obligations for HPD and property owners.

B. MRNY and WE ACT's prominent role in the development of protections against lead poisoning in New York City.

As noted above, MRNY and WE ACT have been on the forefront of the struggle to protect New Yorkers from the devastating health effects of lead poisoning for decades. Decl. of Peggy Shepard in Supp. of Mot. to Intervene ("Shepard Decl.") ¶¶ 9-10, ; Decl. of Jose Lopez in Supp. Mot. Intervene ("Lopez Decl.") ¶ 7. Both organizations have been intervenors, amici, or plaintiffs in virtually every single lawsuit brought in this area since the mid-90's. Shepard Decl. ¶¶ 2, 9-10, 13; Lopez Decl. ¶¶ 8, 10.They have fought tirelessly to push the City Council to pass strong lead laws and force HPD and DOHMH to enforce them. Shepard Decl. ¶¶ 8-10, 12, 17; Lopez Decl. ¶¶ 7, 9. WE ACT is an active member and coordinator of the New York City Coalition to End Lead Poisoning. Shepard Decl. ¶¶ 8, The two organizations have thousands of members between them, many of whom live in demonstrated lead hotspots, and who will be severely affected by any corrosion of the hard-fought victories they have achieved through legislative advocacy and litigation. Shepard Decl. ¶¶ 6-7, 20, 21; Lopez Decl. ¶¶ 3, 6, 14.

ARGUMENT

A. MRNY and WE ACT Satisfy the Requirements for Permissive Intervention

MRNY and WE ACT meet the standard for permissive intervention under Rule 24(b) of the Federal Rules of Civil Procedure. The rule provides, in relevant part, that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact. Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ R. 24(b)(3). "This rule is 'to be liberally construed' in favor of intervention." *Delaware Tr. Co. v. Wilmington Tr., N.A.*, 534 B.R. 500, 509 (S.D.N.Y. 2015) (quoting *Degrafinreid v. Ricks,* 417 F.Supp.2d 403, 407 (S.D.N.Y. 2006)).

Where, as here, a case is at an "early stage," a motion to intervene is timely. *Eddystone Rail Co., LLC v. Jamex Transfer Servs., LLC*, 289 F. Supp. 3d 582, 592, 595 (S.D.N.Y. 2018).[19] *See also Schaghticoke Tribal Nation v. Norton*, 3:06-cv-81, 2006 WL 1752384, at *8 (D. Conn. June 14, 2006) (finding intervention motion timely even though filed a month after the answer because it was "prior to any significant substantive motions by the parties to the case"), *S.E.C. v. Credit Bancorp, Ltd.*, No. 99-CV-11395, 2000 WL 1170136, at *2 (S.D.N.Y. Aug. 16, 2000) (noting that with respect to a motion to intervene under Rule 24(b), a five-month delay "was not so protracted as to render [the] motion untimely under all the circumstances"), *Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York*, No. 19-CV-11285 (KMK), 2020 WL 5658703, at *7 (S.D.N.Y. Sept. 23, 2020) (finding intervention motion to be timely despite having been filed three months after the complaint because the case was in very early stages of

[19] *Accord Blatch v. Franco*, 97-cv-3918, 1998 WL 265132, at *7 (S.D.N.Y. May 26, 1998); *German ex rel. German v. Fed. Home Loan Mortg. Corp.*, 896 F. Supp. 1385, 1392 (S.D.N.Y. 1995); *Rivera v. New York City Hous. Auth.*, No. 94-cv-4366, 1995 WL 375912, at *3 (S.D.N.Y. June 23, 1995); *Clarkson v. Coughlin*, 145 F.R.D. 339, 344 (S.D.N.Y. 1993).

litigation and intervenors agreed to be bound by the parties' already established briefing schedule)..

In addition to filing a timely motion, MRNY and WE ACT share common questions with the main action, as required by R. 24(b)(1)(B). In essence, Plaintiffs seek to undo two of the most significant outcomes of the amendments enacted in LL66/19—the enhanced methodology for testing for lead in residences using XRF analyzers, and the contestability of positive tests—on the ground that they violate their rights under the 14th Amendment to the Constitution of the United States. MRNY and WE ACT's members have a strong interest in defending the validity of LL 66/19 separate from the fact that they advocated for its passage. XRF testing yields immediate results compared to lead paint chip testing, which requires physical transmission of the sample to a testing facility. Quicker results mean a quicker start of remediation and abatement if the outcome is positive. Furthermore, paint chip testing often requires manually disturbing the potentially contaminated surface which in turn can lead to enhanced danger of exposure not present in an intact surface. For these reasons, HUD guidelines recommend XRF testing over paint chip testing.[20] As the residents in the types of apartments that are implicated by Plaintiffs' lawsuit, MRNY and WE ACT's members and their children will be the ones most affected by a ruling that rolls back the enhanced protection afforded by the law Plaintiffs seek to challenge.

Permitting MRNY and WE ACT to intervene will cause no delay or otherwise prejudice any party's rights. The case is at a very early stage of litigation, with the defendant only having just filed a pre-answer motion to dismiss. If this motion to intervene is granted, the intervenors

[20] *Guidelines For the Evaluation and Control of Lead-Based Paint Hazards in Housing, (2012 Ed..)*, Ch. 7 p. 12, www.hud.gov/sites/documents/LBPH09.PDF.

are ready to file their own motion to dismiss before Plaintiff's opposition to the City's motion is due (currently October 25th, 2024). If the Court denies the City's motion to dismiss, or delays ruling on that motion until a hearing on Plaintiffs' preliminary injunction motion is held, proposed intervenors are ready to submit opposition to the motion for a preliminary injunction on the Court's schedule so that the motion is fully briefed ahead of the November 12 hearing date.

> [Their] additional briefing and argument will only help to facilitate a speedy, fair and accurate resolution of the case. Additional discovery is also not likely to become burdensome or otherwise unduly delay adjudication because this case, at a base level, is a facial constitutional challenge [to a recent amendment to the law].

Assoc. of Conn. Lobbyists LLC v. Garfield, 241 F.R.D. 100, 103 (D. Conn. 2007)

Denying their motion, on the other hand, would prejudice precisely the persons LL66/19 Law 66 is designed to protect—among them MRNY and WE ACT members and their children—and would corrode the very protections that these organizations, among others, fought so hard for. Shepard Decl. ¶ 21; ____ Decl. ¶ 15. While proposed intervenors share with the City defendant the common goal of preserving the mandates of law, if property owners like these Plaintiffs are permitted to return to the old days of contestation of every lead paint test, delayed paint chip testing, and blank refusal to engage in safe remediation, it will be the intervenors, not the City defendants, who will bear the cost. "[C]onsiderations of fairness" therefore "strongly weigh in favor of permissive intervention" to give MRNY and WE ACT's affected members the opportunity to be heard. *Miller*, 832 F. Supp. at 674.[21]

[21] MRNY and WE ACT need not demonstrate Article III standing, because they do not seek relief "that is different from that which is sought by a party with standing." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). They nonetheless have representational standing based on their numerous members whose interests would be directly affected should Plaintiffs succeed; the interests they seek to protect—accurate, speedy, and safe lead testing and abatement—are germane to their purpose in litigating this action; and participation of individual members is not

B. MRNY and CVH's Participation Will Assist in the Just and Equitable Adjudication of this Case

This Court has permitted intervention by "organizations that serve [the interests of children affected by the government program] .... This is a unique perspective and will greatly contribute to the [c]ourt's understanding of this case." (citation and quotation marks omitted) *Christa McAuliffe Intermediate Sch. PTO Inc. v. de Blasio*, 2020 WL 1432213, at *8 n.9 (permitting intervention on the side of the City by organizations dedicated to promoting diversity in City schools in a 14th Amendment challenge to the City's newly enacted admissions policies to eight specialized and prestigious high schools). MRNY and WE ACT's members successfully advocated for the law under challenge here because they sought to protect their children from the ravages of lead poisoning in their homes. Additionally, many of them are tenants in precisely the types of apartments that are implicated in this litigation and the organizations fight for their rights as tenants to live in safe and healthy homes. Shepard Decl. ¶ 7; ____ Decl. ¶ 5. Courts have long recognized the benefits of intervention by tenant groups. In *Miller v. Silbermann*, for example, New York City landlords challenged housing-court procedures, seeking to make it faster and easier to evict their tenants without risking rent abatements for housing-code violations. 832 F. Supp. at 667–68. The court permitted intervention because tenants, "in light of their knowledge and concern," would "greatly contribute" to its understanding of the case. *Id.* at 674.

Intervention remains valuable even where the government will defend the law at issue. Inadequate representation by a party is "clearly a minor factor at most" in considering permissive

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required. *See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 477 U.S. 274, 282 (1986). MRNY and WE ACT likewise have standing in their own right because, if Plaintiffs prevail, they will have to divert resources to assist the thousands of their members and their families whose health will be affected by lessened protections under the law.

intervention. *Id.* at 418. For example, although the *Miller* court denied intervention as a matter of right because the government would "vigorously defend" the tenants' interests, it still *permitted* intervention because the tenants' participation would be fair and helpful. 832 F. Supp. at 673–74. And it is not certain that the government's position will remain static over the course of this litigation—as noted in Section I A. *supra*, every enhanced protection that New Yorkers have won in the battle against lead poisoning has come after a fight, often in court.[22] Given the stakes at play here, and given proposed intervenors' broad and deep understanding of how the lead poisoning prevention laws developed in New York City, they will "offer a unique, personal and highly relevant factual perspective to the law, its development, and its impact," as well as "specialized expertise and substantial familiarity with the legal issues that are presented for review." *Garfield*, 241 F.R.D. at 103.The Court should permit their intervention.

CONCLUSION

For the foregoing reasons, the Court should grant MRNY and WE ACT's motion to intervene and permit them to file the attached proposed Answer. MRNY and WE ACT also ask the Court to grant City Defendant's motion to dismiss and, in the alternative, to permit proposed intervenors to file their own motion to dismiss ahead of the time that Plaintiffs are to file their opposition to the City's motion to dismiss.

[22] *See New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Service, 540 F. App'x 877 (10th Cir. 2013)* (In a case granting permissive intervention to environmental groups in a challenge to the Forest Service's plan to reduce the number of roads in Santa Fe National Forest the Court found, "[T]here is no guarantee the Forest Service's policy will not shift during litigation; it may decide to grant the Plaintiff's goals in full or in part." F. App'x at 881. *See also Kleissler v. U.S. Forest Service, 157 F.3d 964 (3d Cir. 1998)* (In an action seeking to restrict logging activities in the Allegheny National Forest, the Court granted permissive intervention holding that "[a]lthough it is unlikely that the intervenors' economic interest will change, it is not realistic to assume that the agency's programs will remain static or unaffected by unanticipated policy shifts." 157 F.3d at 974.

Dated: New York, NY
October 2, 2024

Respectfully submitted,

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