

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF OHIO et al.,	)	
	)	
<i>Petitioners,</i>	)	
	)	No. 22-1081
v.	)	& consol.
	)	cases
ENVIRONMENTAL PROTECTION AGENCY et al.	)	
	)	
<i>Respondents.</i>	)	

**MOTION OF PUBLIC INTEREST ORGANIZATIONS  
TO INTERVENE IN SUPPORT OF RESPONDENTS**

Center for Biological Diversity, Clean Air Council, Conservation Law Foundation, Environmental Defense Fund, Environmental Law & Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientists move to intervene in support of Respondents in Case No. 22-1081 and all consolidated petitions for review of final action of the U.S. Environmental Protection Agency (EPA) published as *California State Motor Vehicle Pollution Control Standards*, 87 Fed. Reg. 14,332 (Mar. 14, 2022) (Final Action). *See* Cir. R. 15(b).

This Court should grant leave to intervene. First, Movants' request is timely because it is submitted within 30 days of the filing of the above-captioned petition. Fed. R. App. P. 15(d). Second, Movants possess legally protectable interests in the

dispositions of any petitions for review of the Final Rule, which may as a practical matter impair those interests. *Cf.* Fed. R. Civ. P. 24(a)(2). Third, no existing party adequately represents Movants' interests in this litigation. *Cf. ibid.*

Petitioners in No. 22-1081 and Respondents do not oppose this motion.

Petitioners in Nos. 22-1083, 22-1084 and 22-1085 take no position at this time.

## **BACKGROUND**

### **A. Legal Background**

The Clean Air Act generally prohibits States and localities from “adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles.” 42 U.S.C. § 7543(a). But EPA “shall,” subject to limited conditions, “waive application of” that prohibition to California, the only “State which ha[d] adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966.” *Id.* § 7543(b)(1). That provision reflects Congress’s recognition of the “harsh reality” of California’s air-pollution problems, the substantial contributions automobiles make to those problems, and that State’s experience and expertise in regulating vehicular emissions. H.R. Rep. No. 90-728, at 96–97 (1967); *see also* S. Rep. No. 90-403, at 33 (1967). Congress recognized the “benefits for the Nation” from “new control systems” developed in response to California’s technology-forcing standards, as well as the “benefits for the people of

California ... from letting that State improve on its already excellent program of emissions control.” *Motor & Equip. Mfrs. Ass’n v. EPA*, 627 F.2d 1095, 1109–10 (D.C. Cir. 1979) (*MEMA*). EPA in turn “has drawn heavily on the California experience to fashion and improve the national efforts at emissions control.” *Id.* at 1110.

The general prohibition on State emission standards for new vehicles also does not extend to “any State which [1] has plan provisions approved” by EPA for pollutants for which EPA has established National Ambient Air Quality Standards under the Clean Air Act, and [2] chooses to adopt or enforce vehicular emission standards “identical to the California standards for which a waiver has been granted.” 42 U.S.C. § 7507. Several States exercise this option under Section 177 of the Act and are colloquially known as “Section 177 States.” In particular, several States have adopted greenhouse gas and zero-emission-vehicle standards for light-duty vehicles (passenger cars and light trucks) identical to California standards for which a waiver has been granted.

In the 54 years since Congress enacted the waiver provision, California has “expand[ed] its pioneering efforts” to reduce motor vehicle pollution. *MEMA*, 627 F.2d at 1111. Under the deferential review standard the Clean Air Act prescribes, EPA has granted California almost every waiver the State has sought. Only once did EPA outright deny a waiver application—for California’s inaugural greenhouse

gas emission standards for light-duty vehicles—and EPA shortly thereafter granted the waiver. *Compare* 74 Fed. Reg. 32,744 (July 8, 2009), *with* 73 Fed. Reg. 12,156 (Mar. 6, 2008). Similarly, the first time EPA tried to withdraw a waiver that it had already granted, the agency later reversed course and rescinded the withdrawal—in the final action that petitioners now challenge. *Compare* Final Action, 87 Fed. Reg. at 14,378–79, *with* 84 Fed. Reg. 51,310, 51,329–50 (Sept. 27, 2019).

## **B. Final Action**

In 2019, EPA partially withdrew its 2013 grant to California of a waiver for light-duty-vehicle standards for model years 2017-2025, insofar as the waiver had allowed the State to enforce standards for greenhouse gases and zero-emission vehicles. 84 Fed. Reg. at 51,329–50. In the same Federal Register notice, EPA also “finaliz[ed]” a “determination” that “States cannot adopt California’s [greenhouse gas] standards under [Clean Air Act] Section 177.” *Id.* at 51,350 (capitalization altered).<sup>1</sup> Movants and others challenged both of those EPA actions in this Court. In that litigation, which has been held in abeyance since February 2021, *see Union of Concerned Scientists v. NHTSA*, Case No. 19-1230, ECF No. 1884115 (Feb. 8,

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<sup>1</sup> EPA thereafter asserted in this Court that this finalized determination also “applies to” any “zero-emission-vehicle mandate” that California “adopted for the purpose of greenhouse-gas controls.” Resp. Br. 108 n.29, *Union of Concerned Scientists v. NHTSA*, Case No. 19-1230, ECF No. 1868401 (Oct. 27, 2020).

2021), no party or amicus curiae challenged movants' Article III standing to seek vacatur of EPA's waiver withdrawal and Section 177 determination.

Meanwhile, movants and others had timely petitioned EPA to reconsider the waiver withdrawal and Section 177 determination. In part to address "significant issues" raised in movants' petition, EPA proposed in April 2021 to reconsider the waiver withdrawal and Section 177 determination. 86 Fed. Reg. 22,421, 22,423 (Apr. 28, 2021). Movants subsequently submitted public comments urging EPA to reinstate California's withdrawn waiver and rescind the Section 177 determination. Comment of Twelve Public Interest Organizations, EPA-HQ-OAR-2021-0257-0277 (July 6, 2021), [https://downloads.regulations.gov/EPA-HQ-OAR-2021-0257-0277/attachment\\_1.pdf](https://downloads.regulations.gov/EPA-HQ-OAR-2021-0257-0277/attachment_1.pdf).

In March 2022, EPA published in the Federal Register a notice reinstating California's 2013 waiver in full and reversing the Section 177 determination that EPA had made in 2019. Final Action, 87 Fed. Reg. 14,332. This petition followed.

### **STANDARD FOR INTERVENTION**

Federal Rule of Appellate Procedure 15(d) states that a motion to intervene in defense of an agency action "must contain a concise statement of the interest of the moving party and the grounds for intervention." That rule does not specify any standard for intervention, but because "the policies underlying intervention" in district courts "may be applicable in appellate courts," *Int'l Union v. Scofield*, 382

U.S. 205, 216 n.10 (1965), this Court may look to Federal Rule of Civil Procedure 24 for guidance, *cf. Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Rule 24 provides that leave to intervene be granted to a movant that timely “claims an interest relating to the . . . 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).

This Court additionally requires a showing of Article III standing by putative intervenors seeking to defend agency actions against petitions for review. *See Nat. Res. Def. Council v. EPA*, 896 F.3d 459, 462–63 (D.C. Cir. 2018). Standing is regularly shown “where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party’s benefit.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015). An organization may defend agency action on its members’ behalf when: “(1) at least one of its members would have standing to [defend] in his or her own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the [defense] asserted nor the relief

requested requires the participation of individual members in the lawsuit.” *Hearth, Patio & Barbecue Ass’n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021) (cleaned up).

## STATEMENT OF INTEREST AND STANDING

Movants are nonprofit, public-interest organizations committed to protecting their members from the effects of harmful air pollution, including effects traceable to climate change, and to advancing their members’ interest in wider availability of cleaner vehicles.<sup>2</sup> Movants have consistently advocated for reducing emissions of greenhouse gases and other pollutants from the transportation sector<sup>3</sup>—the nation’s largest source of climate-destabilizing pollution, *see* 86 Fed. Reg. at 74,490—and increasing availability of a broader range of cleaner automobiles in the marketplace.<sup>4</sup> Movants have protectable interests in shielding their members from harms that would result if EPA’s Final Action is vacated.

Movants likewise have standing to intervene. As described in more detail below, Movants’ members would be injured if the Final Action is vacated and

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<sup>2</sup> *See* Decl. of Katherine Garcia ¶¶ 2, 4-7 (Sierra Club); Decl. of Gina Trujillo ¶ 6 (Natural Resources Defense Council); Decl. of Sean Mahoney ¶¶ 6-9 (Conservation Law Foundation); Decl. of Robert Weissman ¶ 2 (Public Citizen); Decl. of Joseph Minott ¶¶ 4-6 (Clean Air Council); Decl. of Mark Rose ¶¶ 4-6 (National Parks Conservation Association).

<sup>3</sup> *See* Trujillo Decl. ¶ 6; Mahoney Decl. ¶¶ 6-7; Garcia Decl. ¶¶ 2, 6-7, 14-15; Weissman Decl. ¶ 2; Minott Decl. ¶ 5; Rose Decl. ¶ 6.

<sup>4</sup> *See* Trujillo Decl. ¶ 6; Mahoney Decl. ¶¶ 8, 13-14; Garcia Decl. ¶ 15; Weissman Decl. ¶¶ 5-6; Minott Decl. ¶ 5; Decl. of Kim Floyd ¶¶ 10–11 (Sierra Club); Decl. of Vicente Perez Martinez ¶¶ 11–13 (Sierra Club).

accordingly would have standing to defend the Final Action in their own rights.

Movants' members include people who live, work, recreate, and own property in areas that experience the effects of climate change;<sup>5</sup> people who live, work, and recreate near locations where state vehicular greenhouse-gas emission standards most directly affect local air-pollution levels;<sup>6</sup> people desiring to purchase or lease cleaner vehicles;<sup>7</sup> and people with professions that benefit from the proliferation of vehicles that state standards incent.<sup>8</sup>

If this Court were to vacate the Final Action, Movants' members would suffer economic, health, recreational, and aesthetic injuries from increased air pollution, worsened effects of climate change, and diminished deployment of lower-polluting automobiles. *See* Sections A–C, *infra*. Movants' members therefore satisfy the injury-in-fact, causation, and redressability requirements of

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<sup>5</sup> *See* Floyd Decl. ¶¶ 4-5 (Sierra Club); Perez Martinez Decl. ¶ 6 (Sierra Club); Decl. of Paul Jeffrey ¶¶ 2-6, 12-15 (Natural Resources Defense Council); Decl. of Philip B. Coupe ¶¶ 4-5, 7 (Conservation Law Foundation); Decl. of John Steel ¶ (Union of Concerned Scientists) 6-11; Decl. of Gerald Malczewski ¶ 9 (Union of Concerned Scientists); Minott Decl. ¶¶ 7-10, 17-18 (Clean Air Council); Rose Decl. ¶¶ 7, 10 (National Parks Conservation Association).

<sup>6</sup> *See* Floyd Decl. ¶¶ 6-9; Perez Martinez Decl. ¶¶ 4-5; Decl. of Heather L. Greenwood ¶¶ 9-15 (Conservation Law Foundation); Decl. of Sylvia Arredondo ¶¶ 4-6 (Center for Biological Diversity); Decl. of Janet Dietzkamei ¶¶ 10-11 (Center for Biological Diversity); Minott Decl. ¶¶ 10-12, 19-21; Rose Decl. ¶¶ 7-9.

<sup>7</sup> *See* Martinez Decl. ¶¶ 10, 12-13; Coupe Decl. ¶ 12; Decl. of Stephen Skrovan ¶ 5 (Public Citizen); Malczewski Decl. ¶ 13-14.

<sup>8</sup> *See* Decl. of Robert J. Harrington Jr. ¶¶ 2-5, 7, 12 (Natural Resources Defense Council); Coupe Decl. ¶¶ 9-11; Decl. of Douglas Snower ¶¶ 6-8 (Environmental Law and Policy Center).



Article III standing. *Cf. Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 76–77 (D.C. Cir. 2020) (finding that Movant organization had standing to challenge EPA action based on increased greenhouse-gas emissions and effects of climate change on a member’s property); *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 112–13 (D.C. Cir. 1990) (holding that consumers who experience a reduced opportunity to purchase certain types of vehicles have standing to challenge fuel-economy rule).

Movants also satisfy the remaining requirements of associational standing. The interests they seek to protect by participating in this case are germane to their organizational purposes of advocating for reductions of greenhouse gases and other air pollutants from the transportation sector and increasing the availability of lower-polluting vehicles. *See Nat’l Lime Ass’n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000) (characterizing germaneness requirement as “undemanding; mere pertinence between litigation subject and organizational purpose is sufficient”); *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1323–24 (D.C. Cir. 1986) (finding standing of “non-profit consumer organizations that work to promote energy conservation” to represent members whose “vehicles available for purchase will likely be less fuel efficient” due to challenged fuel-economy regulation). Movants’ defense does not require participation of their members because petitioners will raise questions of law or fact that will be resolved on the administrative record

without consideration of those members' individual circumstances. *See Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 597–98 (D.C. Cir. 2015).

This Court has often held that Movants and similarly situated organizations have standing to protect their members from pollution that adversely affects those members, *see, e.g., Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1016–17 (D.C. Cir. 2014), and to ensure that their members' desired automobiles are not “difficult to obtain,” *Weissman v. Nat’l R.R. Passenger Corp.*, 21 F.4th 854, 860 (Dec. 28, 2021); *see also Ctr. for Auto Safety*, 793 F.2d at 1324. The same reasoning applies here as well.

A. Climate Injuries

Movants' members will suffer a variety of injuries from climate change-related emissions if the Final Action is vacated. Increased greenhouse-gas emissions harm Movants' members by leading to formation of ground-level ozone and other harmful pollution, increasing wildfire frequency and severity, contributing to extreme weather events, impairing agricultural production and other economic activities, threatening property from sea level rise and other

climate change effects, and decreasing opportunities to recreate outdoors and appreciate nature.

Climate change contributes to higher levels of ground-level ozone, or smog, because smog formation is influenced by air temperature and solar radiation level.<sup>9</sup> Exposure to ozone is associated with significant adverse public health effects, including decreased lung function, respiratory-related hospitalizations, cardiac arrest, and premature death, especially for vulnerable populations such as children, the elderly, people who work and recreate outdoors, and people with underlying respiratory conditions.<sup>10</sup>

Movants have members who live or spend significant time in ozone nonattainment areas and other high-ozone areas,<sup>11</sup> and some of these members and their families are members of vulnerable populations.<sup>12</sup> Movants' members already experience ozone-related health impacts, and these impacts will worsen absent

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<sup>9</sup> See Coupe Decl. ¶ 7; Decl. of Elena Craft Decl. ¶ 5 (Environmental Defense Fund); Greenwood Decl. ¶¶ 15; Perez Martinez Decl. ¶ 6; Minott Decl. ¶ 10.

<sup>10</sup> See Craft Decl. ¶¶ 5-16; Greenwood Decl. ¶¶ 14-15; Floyd Decl. ¶ 9; Minott Decl. ¶¶ 11, 19.

<sup>11</sup> See Craft Decl. ¶ 6; Greenwood Decl. ¶¶ 10-11; Floyd Decl. ¶ 7; Perez Martinez Decl. ¶ 4; Minott Decl. ¶¶ 19-20; Rose Decl. ¶¶ 7-8; Declaration of Trisha Dello Iacono ¶ 5 (Environmental Defense Fund).

<sup>12</sup> See Craft Decl. ¶ 16–17 (describing vulnerable populations); Greenwood Decl. ¶¶ 14 (discussing her one-year-old daughter's high risk); Perez Martinez Decl. ¶ 5; Minott Decl. ¶ 19; Rose Decl. ¶ 8; Dello Iacono Decl. ¶¶ 3, 6..

state emission standards.<sup>13</sup> Some members are forced to limit their work, recreation, and other outdoor activities due to their concern about ozone-related health hazards, and these concerns and limitations would likewise increase absent state emission standards.<sup>14</sup>

Climate change also increases the frequency and severity of wildfires near where many members live, by creating hotter, drier conditions more conducive to starting and exacerbating large fires.<sup>15</sup> Those conditions expose Movants' members to health-harming and dangerous fire, smoke, and ash;<sup>16</sup> force them to limit recreation, travel, and other outdoor activities, and to take other costly and burdensome precautions;<sup>17</sup> and increase their risk of fire-related injury, death, or property damage.<sup>18</sup>

Removing state emission standards would contribute to these harms in the future. Climate change heightens the frequency and intensity of extreme weather events, such as heat waves, storms and heavy downpours, floods, and droughts.<sup>19</sup>

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<sup>13</sup> See Greenwood Decl. ¶¶ 15; Coupe Decl. ¶ 7; Floyd Decl. ¶¶ 6, 9; Minott Decl. ¶ 20; Rose Decl. ¶ 8.

<sup>14</sup> See Greenwood Decl. ¶¶ 11-12, 15; Minott Decl. ¶ 20; Rose Decl. ¶ 8-9; Dello Iacono Decl. ¶¶ 7, 11-12.

<sup>15</sup> See Steel Decl. ¶¶ 6-10.

<sup>16</sup> See *id.* at 7.

<sup>17</sup> See *id.* at 10; Rose Decl. ¶ 10.

<sup>18</sup> See Steel Decl. ¶¶ 7-9.

<sup>19</sup> See Floyd Decl. ¶ 5 (describing floods); Martinez Decl. ¶ 6 (discussing heat waves); Jeffrey Decl. ¶¶ 2-6, 12-15 (discussing flooding and Hurricane Sandy);

These events harm Movants' members in many ways: by increasing risk of injury, death, or property damage;<sup>20</sup> decreasing property values;<sup>21</sup> forcing members to take actions and expend resources to prevent and address these impacts in their communities;<sup>22</sup> and limiting members' activities to avoid these and related hazards.<sup>23</sup>

An increase in climate-destabilizing pollution due to vacatur of the Final Action also would impair the ability of Movants' members to recreate outdoors and appreciate and study nature. Climate change limits members' opportunities to travel and recreate outdoors by exacerbating air pollution,<sup>24</sup> wildfires,<sup>25</sup> and extreme weather.<sup>26</sup> Additionally, climate change will limit members' ability to engage in winter recreation activities by reducing winter snowpack.<sup>27</sup> And it is

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Coupe Decl. ¶ 5 (discussing climate change and floods); Minott Decl. ¶ 9 (discussing sea level rise and coastal, river, and tidal flooding).

<sup>20</sup> See Jeffrey Decl. ¶¶ 6-8 (discussing extensive property damage from Hurricane Sandy); Minott Decl. ¶ 18 (discussing flooding of basement, garage and elevator shafts); Dello Iacono Decl. ¶ 9 (discussing impact on vegetable farming business).

<sup>21</sup> See Jeffrey Decl. ¶ 8; Minott Decl. ¶ 18 (discussing decreased property investment due to flooding).

<sup>22</sup> See Jeffrey Decl. ¶ 4; Rose Decl. ¶ 10; Dello Iacono Decl. ¶ 9 (discussing economic and health cost of increased pesticide use in response to climate change).

<sup>23</sup> See Jeffrey Decl. ¶ 14; Rose Decl. ¶ 10; Dello Iacono Decl. ¶ 9

<sup>24</sup> See Floyd Decl. ¶ 8; Perez Martinez Decl. ¶ 5; Coupe Decl. ¶ 7; Greenwood Decl. ¶ 15; Minott Decl. ¶ 20; Rose Decl. ¶ 9.

<sup>25</sup> See Steel Decl. ¶¶ 6-10; Rose Decl. ¶ 10 (describing wildfires that have temporarily closed national parks and resulted in significant ecological damage).

<sup>26</sup> See Jeffrey Decl. ¶¶ 14-15.

<sup>27</sup> See Malczewski Decl. ¶¶ 8-9.

increasingly limiting members' ability to visit, study, and appreciate natural ecosystems, including coastal ecosystems threatened by sea-level rise, as well as threatened and endangered species.<sup>28</sup>

B. Other Air Pollution Injuries

If the Final Action is vacated, Movants' members will suffer from increased exposure to harmful air pollution caused by pollutants such as oxides of nitrogen ("NO<sub>x</sub>"), volatile organic compounds ("VOCs"), fine particulate matter ("PM"), and sulfur oxides ("SO<sub>x</sub>"). These pollutants are emitted by the upstream processes—including production, refining, and distribution of the gasoline needed to power higher-emitting vehicles—that will increase in prevalence absent state vehicular emission standards.<sup>29</sup> Gasoline refining in particular results in significant emissions of NO<sub>x</sub>, fine PM, SO<sub>x</sub>, and benzene.<sup>30</sup>

NO<sub>x</sub> and VOC emissions are precursors to ground-level ozone, which is associated with significant public health effects.<sup>31</sup> Fine PM, often called "soot," is associated with a host of adverse health effects, including decreased lung function, allergic responses, chronic obstructive pulmonary disease, lung cancer, and both

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<sup>28</sup> See Floyd Decl. ¶ 4–5; Rose Decl. ¶ 10.

<sup>29</sup> See Craft Decl. ¶¶ 39–41.

<sup>30</sup> See Craft Decl. ¶¶ 42–45.

<sup>31</sup> See Craft Decl. ¶¶ 5, 7–19.

acute and chronic cardiovascular conditions.<sup>32</sup> Children, whose lungs are still developing, are among those at highest risk from fine PM pollution.<sup>33</sup>

According to EPA, vehicular greenhouse-gas standards decrease the amount of petroleum consumed and, as a result, decrease fuel refining and associated emissions. 86 Fed. Reg. at 74,490–91. Movants have many members—including members with children—who will be impacted by increased levels of fine PM, NO<sub>x</sub>, and other dangerous pollutants due to their proximity to refineries.<sup>34</sup> Many of these members live in areas where refineries contribute to PM and ozone levels that already fail to attain health-based standards under the Clean Air Act.<sup>35</sup> Increased refinery operation in these areas will worsen their already unhealthy conditions, seriously harming some of Movants' most vulnerable members.<sup>36</sup>

Vacating the Final Action will also harm Movants' members by increasing freight transport of refined fuels conducted in large part by diesel vehicles, thereby worsening near-roadway pollution.<sup>37</sup> Pollution levels are typically elevated near major roadways, causing harm to those living, working, and attending school nearby.<sup>38</sup> This is especially true for communities of color and low-income

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<sup>32</sup> See Craft Decl. ¶¶ 20, 24–29.

<sup>33</sup> See Craft Decl. ¶ 20.

<sup>34</sup> See Arredondo Decl. ¶¶ 4–6, 9–10, 15; Perez Martinez Decl. ¶ 9, 14.

<sup>35</sup> See Perez Martinez Decl. ¶ 4.

<sup>36</sup> See Craft Decl. ¶¶ 42–43, 46, 53.

<sup>37</sup> See Craft Decl. ¶¶ 40–42, 46–49.

<sup>38</sup> See Craft Decl. ¶ 47–50.

communities, who are disparately impacted by near-roadway pollution.<sup>39</sup> Increased near-roadway pollution will interfere with members' activities and harm the health of members and their families, especially those in the most vulnerable populations.<sup>40</sup>

### B. Consumer and Business Injuries

Removing state greenhouse gas and zero-emission-vehicle standards would harm Movants' members by limiting their options to purchase, sell, and lease lower-emitting vehicles.<sup>41</sup> Those state standards result in automakers allocating more resources to selling lower-emitting vehicles, increasing the variety and quantity of lower-emission options available to customers.<sup>42</sup>

Movants have members who plan to purchase lower-emitting vehicles of model years affected by the Final Action.<sup>43</sup> Vacating that action will limit these members' choices and opportunities to purchase these vehicles and will cause them to spend more on fuel.<sup>44</sup> Movants also have members who specialize in selling and

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<sup>39</sup> See Craft Decl. ¶ 52.

<sup>40</sup> See Craft Decl. ¶¶ 16, 49-50; Greenwood Decl. ¶¶ 9-10, 13-14; Perez Martinez Decl. ¶ 4.

<sup>41</sup> See Coupe Decl. ¶ 11-12; Malczewski Decl. ¶¶ 12-14; Snower Decl. ¶ 12-13; Skrovan Decl. ¶ 6; Weissman Decl. ¶ 6.

<sup>42</sup> See Martinez Decl. ¶¶ 11-12, 17; Coupe Decl. ¶¶ 11-12; Skrovan Decl. ¶ 6; Malczewski Decl. ¶ 15.

<sup>43</sup> See Martinez Decl. ¶¶ 10, 12-13; Coupe Decl. ¶ 12; Skrovan Decl. ¶ 5; Malczewski Decl. ¶ 13-14; Dello Iacono Decl. ¶¶ 14-20.

<sup>44</sup> See Coupe Decl. ¶ 13; Skrovan Decl. ¶ 6; Weissman Decl. ¶ 6; Dello Iacono Decl. ¶¶ 13, 19, 21.



servicing electric and hybrid vehicles as well as charging equipment, and whose businesses would suffer if the Final Action is vacated.<sup>45</sup>

### GROUNDS FOR INTERVENTION

The Court should permit Movants to intervene in all petitions for review of the Final Action. For the reasons stated above, Movants have interests in upholding that action, and the disposition of these petitions “may as a practical matter impair or impede [Movants’] ability to protect [their] interest[s].” Fed. R. Civ. P. 24(a)(2). Further, Respondents may not “adequately represent” Movants’ interests. *Ibid.*; see also *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (explaining that this “minimal” requirement is “not onerous” (quotations omitted)). Movants can make the requisite “minimal” showing, *In re Brewer*, 863 F.3d 861, 873 (D.C. Cir. 2017), “that the representation of [their] interest may be inadequate,” *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980) (emphasis added). As this Court “often conclude[s],” “governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736; see also *id.* at 736n.9 (collecting cases); *Crossroads*, 788 F.3d at 321.

Whereas Respondents’ “obligation is to represent the interests of the American people,” *Fund for Animals*, 322 F.3d at 736—including the automobile

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<sup>45</sup> See Decl. of Robert J. Harrington Jr. ¶¶ 2-5, 7, 12 (Natural Resources Defense Council); Coupe Decl. ¶¶ 9-11; Snower Decl. ¶¶ 5-6, 13.

and fossil-fuel industries—Movants represent the more specific interests of their members in avoiding dangerous air pollution and increasing the availability and variety of cleaner vehicles. Movants also represent interests different from Movant-Intervenor States and cities. Thus, “examined from the perspective of [governmental parties’] responsibilities,” Movants’ interests are not adequately represented. *Fund for Animals*, 322 F.3d at 737.

This Court has permitted several of the Movants here to intervene in support of respondent agencies in many previous actions seeking to invalidate greenhouse-gas emission standards. *See, e.g.*, Order, *Competitive Enter. Inst. v. NHTSA*, Case No. 20-1145 (D.C. Cir. Oct. 8, 2020), ECF No. 1865427 (petition for review of, *inter alia*, greenhouse-gas standards for passenger vehicles and light trucks); Order, *Truck Trailer Mfrs. Ass’n, Inc. v. EPA*, Case No. 16-1430 (D.C. Cir. Mar. 10, 2017), ECF No. 1665427 (petition for review of, *inter alia*, greenhouse-gas standards for heavy-duty trailers). This motion likewise should be granted.

### CONCLUSION

This Court should grant Movants leave to intervene in support of Respondents in all cases involving EPA’s Final Action.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion to Intervene contains 4,033 words and was composed in Times New Roman font, 14-point. The motion complies with applicable type-volume and typeface requirements.

/s/ Sean H. Donahue

DATED: May 20, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2022, I have served the foregoing Motion to Intervene and attachments on all parties through the Court's electronic case filing (ECF) system.

/s/ Sean H. Donahue