

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AMERICAN FREE ENTERPRISE CHAMBER OF
COMMERCE,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 25-106

**MOTION OF PUBLIC INTEREST ORGANIZATIONS FOR LEAVE TO
INTERVENE IN SUPPORT OF THE CHALLENGED ACTION**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15-1, Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Public Citizen, and Sierra Club (collectively “Movants”) move for leave to intervene in support of the challenged action in the above-captioned case and any consolidated petitions for review of the final action of the U.S. Environmental Protection Agency (EPA) published as *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 642 (Jan. 6, 2025) (“Waiver Decision”).

As explained below, 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 Waiver Decision, 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. id.*

Respondent takes no position on this motion and reserves the right to file a response. Petitioner will evaluate whether to take a position on the motion after the motion is filed and can assess the ground for intervention. Movant-intervenor States do not oppose this motion.

BACKGROUND

A. Legal Background

In the Clean Air Act, Congress constructed a regulatory framework that harnesses two sets of emission standards—federal and California (and States that choose to adopt)—to reduce dangerous pollution from new motor vehicles and drive technological innovation. *See Motor & Equip. Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1109–10 (D.C. Cir. 1979) (*MEMA*). Under this framework, EPA must establish emission standards for air pollutants from new vehicles that it has found “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a)(1). The Act generally preempts States and localities from enforcing their own emission standards for new motor vehicles. *Id.*

§ 7543(a). But EPA “shall,” subject to limited conditions, “waive application of” that prohibition to California, which had regulated vehicle emissions before other States or the federal government. *Id.* § 7543(b)(1). That provision reflects Congress’ recognition of the “harsh reality” of California’s air-pollution problems, the substantial contributions motor vehicles make to those problems, and the 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 standards, as well as the “benefits for the people of California ... from letting that State improve on its already excellent program of emissions control.” *MEMA*, 627 F.2d at 1109–10 (internal quotation marks omitted). EPA, in turn, “has drawn heavily on the California experience to fashion and to improve the national efforts at emissions control.” *Id.* at 1110.

Section 177 of the Clean Air Act grants other States the option to adopt and enforce vehicular emission standards “identical to the California standards for which a waiver has been granted.” 42 U.S.C. § 7507. Seventeen other States have exercised their authority to adopt some or all of California’s vehicular emission standards and are colloquially known as “Section 177 States.” In particular, eleven

States and the District of Columbia have already adopted the Advanced Clean Cars II standards, and numerous other States are actively considering adopting them.¹

In the more than 57 years since Congress enacted the waiver provision, California has “expand[ed] its pioneering efforts” to reduce motor vehicle pollution with standards “different from and in large measure more advanced than the corresponding federal program.” *MEMA*, 627 F.2d at 1111. EPA has granted California more than 75 waiver determinations—almost every waiver determination the State has sought.

B. Waiver Decision

On May 22, 2023, California requested that EPA grant a waiver of preemption for its Advanced Clean Cars II regulations. *See* 88 Fed. Reg. 88,908, 88,908-09 (Dec. 26, 2023). The Advanced Clean Cars II regulations include two sets of requirements beginning with the 2026 model year of new vehicles. First, the regulations extend California’s requirements for increasing shares of new light-duty vehicles sold in California to be zero-emission vehicles (ZEVs) and plug-in hybrid vehicles starting with model year 2026, and reaching all sales of new light-

¹ *See* 5 Colo. Code Regs. § 1001-24; 7 Del. Admin. Code § 1140; Md. Code Regs. § 26.11.34; 310 Mass. Code Regs. § 7.40; N.J. Admin. Code § 7:27-29; N.M. Admin. Code § 20.2.91; N.Y. Comp. Codes R. & Regs. tit. 6, §§ 218-1.1, 218-2.1, 218-4.1(a), 218-4.2; Or. Admin. R. 340-257; R.I. Admin. Code § 250-RICR-120-05-37; Vt. Code R. 12.030-039:40-103(a); Wash. Admin. Code §§ 173-423-075; D.C. Code 20 DCMR §§ 905-913.

duty vehicles by model year 2035. Second, the regulations require new internal combustion engine vehicles to reduce exhaust and evaporative emissions from engines and fuel systems. *See* 88 Fed. Reg. at 88,909.

EPA published notices of opportunity for public hearing and comment on December 26, 2023. *Id.* at 88,908. In response to the notices, Movants provided comments urging EPA to grant the requested waiver.² On January 6, 2025, EPA published in the Federal Register a notice of its final decision granting the requested waiver. Waiver Decision, 90 Fed. Reg. 642.

That same day, January 6, 2025, petitioner filed its petition for review. In this lawsuit, petitioner seeks to vacate the Waiver Decision and to prevent California from enforcing its Advanced Clean Cars II regulations. If petitioner were to succeed in its challenge and the Waiver Decision were vacated, any Section 177 State that has adopted California's Advanced Clean Cars II regulations also would be prevented from enforcing its regulations. Movants seek to ensure that California and other States can enforce these emission standards for new motor vehicles in order to preserve their important health, environmental, and economic benefits and to protect the statutory framework carefully constructed by

² Comments of Environmental and Public Health Organizations (Feb. 27, 2024), Docket ID No. EPA-HQ-OAR-2023-0292-0234.

Congress to preserve California’s authority to reduce dangerous pollution from motor vehicles.

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 courts of appeals consider the “policies underlying” Federal Rule of Civil Procedure 24, which governs intervention in the district courts. *Cameron v. EMW Women’s Surgical Ctr.*, 595 U.S. 267, 277 (2022) (quoting *Auto. Workers v. Scofield*, 382 U.S. 205, 217, n.10 (1965)). Rule 24 provides that leave to intervene be granted to a movant who 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); *see also Perry v. Schwarzenegger*, 630 F.3d 898, 903 (9th Cir. 2011). This Court has indicated that Rule 24(a) should be “generally construe[d] ... broadly in favor of proposed intervenors.” *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (internal citations omitted). A court may also grant leave to intervene to anyone who makes a “timely

motion” and 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).

STATEMENT OF INTEREST

Movants’ clear interest in the disposition of this action supports their request for intervention to defend the Waiver Decision. Movants are nonprofit, public interest organizations committed to protecting their members from the effects of harmful air pollution, and to advancing their members’ interest in wider availability of cleaner vehicles.³ Movants have significant interest in shielding their members from harms that would result if EPA’s Waiver Decision were vacated.

Movants have long advocated for reducing emissions of nitrogen oxides, fine particulate matter, greenhouse gases, and other harmful pollutants from the transportation sector⁴ and for increasing availability of a broader range of cleaner automobiles in the marketplace.⁵ Movants actively participated in the administrative process for the Waiver Decision, as well as California’s state-law

³ See Decl. of Sylvia Arredondo Decl. ¶ 2 (Center for Biological Diversity); Decl. of Kate S. Daly ¶¶ 5–6 (Conservation Law Foundation); Decl. of John Stith ¶¶ 4–5, 10–11 (Environmental Defense Fund); Decl. of Gina Trujillo ¶¶ 3, 6 (Natural Resources Defense Council); Decl. of Ann Leonard ¶¶ 3–4 (Public Citizen); Decl. of Katherine Garcia ¶¶ 3–6 (Sierra Club); Decl. of S. Laurie Williams ¶ 3 (Sierra Club).

⁴ See Daly Decl. ¶¶ 7–8; Stith Decl. ¶¶ 11–12; Trujillo Decl. ¶ 6; Decl. of Robert Weissman ¶ 2 (Public Citizen); Garcia Decl. ¶ 6.

⁵ See, e.g., Weissman Decl. ¶¶ 2–3; Stith Decl. ¶ 10; Trujillo Decl. ¶ 6.

rulemaking and many of the Section 177 States' rulemaking processes to adopt the regulations.⁶

Movants' members include people who live, work, and recreate near locations where California's regulations and identical Section 177 State emission standards will most directly affect air-pollution levels,⁷ as well as people who live, work, recreate, and own property in areas that experience the effects of climate change,⁸ and people desiring to purchase or lease cleaner vehicles.⁹ If this Court were to vacate the Waiver Decision, Movants' members would suffer economic,

⁶ See, e.g., Comments of Environmental and Public Health Organizations (Feb. 27, 2024), Docket ID No. EPA-HQ-OAR-2023-0292-0234; Comments of Environmental Defense Fund to the California Air Resources Board on Advanced Clean Cars II (May 31, 2022); Comments of Natural Resources Defense Council to the California Air Resources Board on Advanced Clean Cars II (May 31, 2022); Prehearing Statement of Environmental Advocates before the Colorado Air Quality Control Commission, Colorado Department of Public Health and Environment, in the matter of Proposed Revisions to Regulation Number 20 [Colorado ACCII adoption] (Sept. 7, 2023).

⁷ See Arredondo Decl. ¶¶ 3–5; Daly Decl. ¶ 12; Decl. of Heather L. Greenwood ¶¶ 2–3, 7–15 (Conservation Law Foundation); Decl. of Eric Knauft ¶¶ 4, 8, 15 (Environmental Defense Fund); Decl. of Veronica Southerland ¶¶ 7–9 (Environmental Defense Fund); Stith Decl. ¶¶ 7–8, 14; Leonard Decl. ¶¶ 2, 9; Trujillo Decl. ¶ 4; Decl. of Kathleen Woodfield ¶¶ 2–5, 9–12 (Natural Resources Defense Council); Garcia Decl. ¶ 4; Decl. of Vicente Perez Martinez ¶¶ 2, 4–5 (Sierra Club); Decl. of Williams ¶¶ 1, 5–9; Decl. of Lucille Zuniga ¶¶ 1, 3–7 (Sierra Club).

⁸ See Arredondo Decl. ¶¶ 8, 15, 17–18; Daly Decl. ¶ 13; Greenwood Decl. ¶ 16; Knauft Decl. ¶¶ 4, 10–12, 17; Stith Decl. ¶¶ 9, 14; Southerland Decl. ¶ 7; Leonard Decl. ¶¶ 2, 10; Garcia Decl. ¶ 4; Perez Martinez Decl. ¶ 6.

⁹ See Daly Decl. ¶¶ 14–15; Greenwood Decl. ¶¶ 18; Leonard Decl. ¶¶ 6–7, 10; Weissman Decl. ¶ 3; Woodfield Decl. ¶ 8; Perez Martinez Decl. ¶ 10; Williams Decl. ¶¶ 10–11.

health, recreational, and aesthetic injuries from increased air pollution, worsened effects of climate change, and the diminished deployment of lower-polluting automobiles. *See infra* Subsections A–C.

Automakers are likely to produce fewer clean vehicles than they would have otherwise if the Waiver decision is vacated. Without the Advanced Clean Cars II regulations, California projected that baseline ZEV sales in the state would be just over 20% in model year 2026 and subsequent model years.¹⁰ In comparison, the Advanced Clean Cars II regulations require an increasing share of new light-duty vehicles sold in California that are ZEVs and plug-in hybrid vehicles, starting with 35% of sales in model year 2026.

A. Air Pollution Injuries

If the Waiver Decision were vacated, Movants’ members would suffer from increased exposure to harmful emissions of air pollutants such as nitrogen oxides and fine particulate matter. The Advanced Clean Cars II regulations, from both the ZEV requirements and the standards on internal combustion engine vehicles, are projected to reduce nitrogen oxides by 30.4 tons per day and particulate matter by 2 tons per day in California by 2040.¹¹ These emissions reductions are estimated to

¹⁰ Cal. Air Resources Bd., Public Hearing to Consider the Proposed Advanced Clean Cars II Regulations, Staff Report: Initial Statement of Reasons 35, 164 (Apr. 12, 2022), Docket ID No. EPA-HQ-OAR-2023-0292-0009.

¹¹ Advanced Clean Cars II Regulations Waiver Support Document 3 (May 22, 2023), Docket ID No. EPA-HQ-OAR-2023-0292-0034.

lead to over 4,000 fewer cardiopulmonary deaths, over 600 fewer cardiovascular-related hospital admissions, over 800 fewer respiratory-related hospital admissions, and almost 2,000 fewer emergency room visits for asthma in California alone.¹² Vacating the Waiver Decision would jeopardize those significant public health benefits, as well as the corresponding health benefits from emission reductions in Section 177 States.

Emissions of nitrogen oxides and volatile organic compounds from motor vehicles are precursors to ground-level ozone pollution, or smog, and fine particulate matter pollution.¹³ Exposure to ground-level ozone is associated with significant harm to public health, including decreased lung function, respiratory-related hospitalizations, cardiac arrest, and premature death, especially for vulnerable populations such as children, older people, people who work and recreate outdoors, and people with underlying respiratory conditions.¹⁴

Fine particulate matter, 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 acute and chronic cardiovascular conditions.¹⁵ Children, whose lungs are still developing, and older

¹² *Id.*

¹³ Advanced Clean Cars II Waiver of Preemption Decision Document 2 (Dec. 18, 2024), Docket ID No. EPA-HQ-OAR-2023-0292-0562.

¹⁴ *See* Southerland Decl. ¶¶ 10–27.

¹⁵ *See id.* ¶¶ 28–40.

people are among those at highest risk from particulate matter pollution.¹⁶ Notably, people of color have higher rates of exposure to harmful particulate matter pollution.¹⁷

Movants have members who live or spend significant time in areas that fail to meet national ambient air quality standards for ozone and fine particulate matter,¹⁸ and some of these members and their families are particularly vulnerable, such as children, people with respiratory diseases or asthma and older adults.¹⁹ Movants' members already experience ozone- and particulate matter-related health and financial impacts, and those impacts will worsen absent enforcement of the Advanced Clean Cars II regulations and Section 177 State emission standards.²⁰ Some members are forced to limit their work, recreation, and other outdoor activities due to their experience of and concern about ozone- and particulate

¹⁶ *See id.* ¶¶ 29, 38.

¹⁷ *See id.* ¶ 32.

¹⁸ *See* Arredondo Decl. ¶¶ 4–5; Southerland Decl. ¶ 33–35; Woodfield Decl. ¶¶ 2–3; Garcia Decl. ¶ 4; Perez Martinez Decl. ¶¶ 2, 4; Zuniga Decl. ¶ 3.

¹⁹ *See* Arredondo Decl. ¶ 11; Greenwood Decl. ¶ 14; Knauft Decl. ¶¶ 4, 16; Woodfield Decl. ¶¶ 6–7; Perez Martinez Decl. ¶¶ 5, 7; Williams Decl. ¶¶ 5, 7; Zuniga Decl. ¶¶ 5, 7.

²⁰ *See* Arredondo Decl. ¶¶ 7–9, 14–15; Daly Decl. ¶¶ 11–12; Greenwood Decl. ¶¶ 13, 17; Knauft Decl. ¶¶ 15–16, 13–14, 16, 18; Stith Decl. ¶¶ 7–8; Woodfield Decl. ¶¶ 6–7, 9–13; Perez Martinez Decl. ¶¶ 11–12; Williams Decl. ¶¶ 12–13; Zuniga Decl. ¶¶ 8–9.

matter-related health hazards, and these concerns and limitations would likewise increase absent enforcement of those state emission standards.²¹

Vacating the Waiver Decision would also harm Movants' members by worsening pollution near roadways in California, compared to levels if the standards remain in place. Harmful emissions from motor vehicles contribute significantly to near-roadway pollution.²² Movants have members who live and work, and whose children attend school, near freeways, warehouses, airports, and other heavily trafficked areas.²³ Levels of nitrogen oxides, particulate matter, volatile organic compounds, sulfur oxides, and hazardous air pollutants are typically elevated in nearby areas, causing harm to those living, working, and attending school nearby.²⁴ This is especially true for people of color and people with low incomes, who are more likely to be living near roadways and who are disparately impacted by near-roadway pollution.²⁵ Absent enforcement of the Advanced Clean Cars II regulations, increased near-roadway pollution would

²¹ See Daly Decl. ¶¶ 11–12; Greenwood Decl. ¶¶ 15, 17; Knauft Decl. ¶¶ 15–16; Zuniga Decl. ¶ 6.

²² See Southerland Decl. ¶¶ 45–52.

²³ See Arredondo Decl. ¶¶ 4–5; Knauft Decl. ¶¶ 6–7; Woodfield Decl. ¶¶ 2–5; Garcia Decl. ¶ 4; Williams Decl. ¶ 9; Zuniga Decl. ¶ 4.

²⁴ See Southerland Decl. ¶¶ 45–48.

²⁵ See Southerland Decl. ¶ 49.

interfere with members' activities and harm the health of members and their families, especially those in the most vulnerable populations.²⁶

B. Climate Change Injuries

Movants' members would also suffer injuries related to climate change if the Waiver Decision were vacated. Mobile sources and their fuel production are responsible for 50% of all climate-destabilizing greenhouse gas emissions in California.²⁷ The Advanced Clean Cars II regulations are projected to reduce 58.4 million metric tons of greenhouse gases in California per year by 2040.²⁸ Vacating the Waiver Decision would imperil those emissions reductions, and unabated greenhouse gas emissions would exacerbate climate change harms.

Climate change 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.²⁹ Those conditions expose Movants' members to health-harming and dangerous fire, smoke, ash, and an untold number of toxic pollutants released when human infrastructure is burned;³⁰ and force them to limit

²⁶ See Knauft Decl. ¶ 15; Woodfield Decl. ¶¶ 6–7, 12–13; Garcia Decl. ¶ 4; Perez Martinez Decl. ¶¶ 4, 11–12; Williams Decl. ¶¶ 9, 12; Zuniga Decl. ¶¶ 4, 8–9.

²⁷ Cal. Air Resources Bd., Public Hearing to Consider the Proposed Advanced Clean Cars II Regulations, Staff Report: Initial Statement of Reasons 4 (Apr. 12, 2022), Docket ID No. EPA-HQ-OAR-2023-0292-0009.

²⁸ Advanced Clean Cars II Regulations Waiver Support Document 3 (May 22, 2023), Docket ID No. EPA-HQ-OAR-2023-0292-0034.

²⁹ See Knauft Decl. ¶ 10; Leonard Decl. ¶ 8.

³⁰ See Knauft Decl. ¶¶ 16–17.

recreation, travel, and other outdoor activities, and to take other costly and burdensome precautions.³¹

In addition, climate change causes sea-level rise and heightens the frequency and intensity of extreme weather events, such as heat waves, storms and heavy downpours, floods, and droughts.³² Those events harm Movants' members in many ways: by increasing risk of injury, death, or property damage; decreasing property values; forcing members to take actions and expend resources to prevent and address these impacts in their communities; and limiting members' activities to avoid these and related hazards.³³

An increase in climate-destabilizing pollution due to vacatur of the Waiver Decision also would impair the ability of Movants' members to recreate outdoors and appreciate and study nature by exacerbating air pollution, wildfires, and extreme weather.³⁴ And it is increasingly limiting members' ability to visit, study, and appreciate natural ecosystems and threatened and endangered species impacted by climate change.³⁵

³¹ *See id.*

³² *See* Arredondo Decl. ¶¶ 16–18; Knauft Decl. ¶ 10.

³³ *See* Daly Decl. ¶¶ 11, 13; Greenwood Decl. ¶¶ 15–16; Knauft Decl. ¶¶ 10–11; Zuniga Decl. ¶ 6.

³⁴ *See* Knauft Decl. ¶ 10.

³⁵ *See* Knauft Decl. ¶ 15; Garcia Decl. ¶ 4.

C. Consumer and Business Injuries

Vacating the Waiver Decisions would harm Movants' members by limiting their options to sell and purchase lower- and zero-emitting vehicles.³⁶ The Advanced Clean Cars II standards require automakers to allocate more resources to selling ZEVs and other lower-emitting vehicles, increasing the variety and quantity of lower-emission options available to customers.³⁷

Movants have members who plan to purchase lower-emitting vehicles or ZEVs of model years affected by the Advanced Clean Cars II regulations.³⁸ Vacating the Waiver Decision will limit these members' choices and opportunities to purchase their desired vehicles and will increase their fuel expenses.³⁹ Movants also have members who specialize in selling and servicing electric and hybrid vehicles as well as charging equipment, and whose businesses would suffer if the Waiver Decision were vacated.⁴⁰

³⁶ See Arredondo Decl. ¶ 14; Daly Decl. ¶¶ 14–15; Greenwood Decl. ¶ 18; Woodfield Decl. ¶ 8; Leonard Decl. ¶¶ 6–7, 10; Weissman Decl. ¶¶ 4–5; Perez Martinez Decl. ¶ 10; Williams Decl. ¶¶ 10–11.

³⁷ See Cal. Air Resources Bd., Public Hearing to Consider the Proposed Advanced Clean Cars II Regulations, Staff Report: Initial Statement of Reasons 7 (Apr. 12, 2022), Docket ID No. EPA-HQ-OAR-2023-0292-0009.

³⁸ See Greenwood Decl. ¶ 18; Williams Decl. ¶¶ 10–11.

³⁹ See Leonard Decl. ¶¶ 7, 10; Weissman Decl. ¶¶ 5–7; Perez Martinez Decl. ¶ 10.

⁴⁰ See Daly Decl. ¶ 14.

GROUNDS FOR INTERVENTION

The Court should permit Movants to intervene in all challenges to the Waiver Decision that are pending or that may yet be filed. If applied, Movants would meet the requirements for both intervention as of right under Federal Rule of Civil Procedure 24(a)(2) and for permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B).

I. Movants Are Entitled to Intervene as of Right.

A movant intervenor must make four showings under Rule 24(a)(2): “(1) [movant] has a ‘significant protectable interest’ relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the [movant]’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the [movant]’s interest.” *Perry*, 630 F.3d at 903 (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). In this Court, “Rule 24 traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). Movants readily satisfy their burden to make all of the required showings.

Regarding the first and second showings, as stated above, Movants have “significantly protectable” interests in shielding their members from harms that would result if EPA’s Waiver Decision were vacated. *Wilderness Soc’y v. U.S.*

Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011); *see also Donnelly*, 159 F.3d at 410. Movants’ interest in protecting the health of their members by reducing harmful pollution from vehicles is protectable under the federal Clean Air Act. *See, e.g.*, 42 U.S.C. § 7401(b)(1) (purpose of Clean Air Act includes protection and enhancement of air quality to promote public health and welfare); *see also Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189–90 (9th Cir. 1998) (permitting union to intervene in preemption challenge to wage laws because members had significant interest in receiving those wages). That Movants actively participated in the administrative process for the Waiver Decision, as well as California’s and Section 177 States’ rulemaking processes, further supports their showing. *See Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (“[A] public interest group that has supported a measure ... has a ‘significant protectable interest’ in defending the legality of the measure.” (quoting *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983))).

Third, 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). This case is still in a very early stage, before any substantive rulings, and no party will be prejudiced by Movants’ intervention.

Finally, existing parties do not “adequately represent” Movants’ interests. Fed. R. Civ. P. 24(a)(2). As this Court has explained, Movants’ burden to show

inadequate representation “is minimal, and would be satisfied if they could demonstrate that representation of their interests ‘may be’ inadequate.” *Arakaki*, 324 F.3d at 1086 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Courts apply three factors to determine whether existing parties adequately represent a proposed intervenor’s interests: (1) whether a present party will “undoubtedly” make all of a proposed intervenor’s arguments; (2) whether a present party is “capable and willing” to make those arguments; and (3) “whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.” *Id.*; see also *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001). All of those factors are satisfied here.

Whereas the federal respondent’s “obligation is to represent the interests of the American people,” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003)—including the motor vehicle industries—Movants represent the more specific interests of their members in avoiding dangerous air pollution and increasing the availability and variety of cleaner cars. Thus, “examined from the perspective of [governmental parties’] responsibilities,” Movants’ interests are not adequately represented. *Id.* at 737. Specifically, the deeply personal health, consumer, and economic interests held by Movants’ members, as stated above, differ markedly from the federal respondent’s broader considerations in the Waiver Decision. “[B]ecause of the difference in interests” between government and the

beneficiaries of federal actions and “range of considerations” at play, “it is likely that [the federal respondent] will not advance the same arguments” as public-interest organizations. *Sw. Ctr.*, 268 F.3d at 823–24. Movants will also provide “necessary elements to the proceeding that other parties would neglect,” a factor that weighs heavily in favor of permitting intervention in this case. *Arakaki*, 324 F.3d at 1086; *see also Sagebrush Rebellion*, 713 F.2d at 528 (granting intervention where “the intervenor offers a perspective which differs materially from that” of existing parties). In particular, Movants can provide vital perspective on how vacatur of the Waiver Decision would impact their members’ health and welfare and local communities in California and Section 177 States. Movants also have deep technical and policy expertise in reducing harmful emissions from transportation, and have long advocated for more protective vehicle standards at both the federal and state levels. This perspective is distinct from that of the federal respondent and from that of the movant-intervenor States seeking to protect their sovereign or proprietary interests.

Courts have found that more focused interests are sufficient to make a “compelling showing” of inadequate representation and to defeat any presumption of adequate representation by government parties. *Arakaki*, 324 F.3d at 1086–88 (citing Ninth Circuit precedent that “permit[s] intervention on the government’s side [when] the intervenors’ interests are narrower than that of the government”);

see also Citizens for Balanced Use v. Montana Wilderness Ass'n, 647 F.3d 893, 899 (9th Cir. 2011). The presumption of adequate representation is overcome when a government entity “is required to represent a broader view than the more narrow, parochial interests” of the proposed intervenor. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d 1173; *see also Sw. Ctr. for Biological Diversity*, 268 F.3d at 823-24 (narrower interests of intervening developers defeated presumption of adequate representation by government defendants).

Further, the showing of inadequate representation is even stronger when divergent interests have previously led to conflicting positions on relevant legal issues between the movant and government. *See, e.g., Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995) (finding inadequate representation prong satisfied where movant’s prior litigation led to challenged decision). That is precisely the case here: Movants have different and narrower interests than the federal respondent, which has caused their legal positions to clash in other cases challenging Clean Air Act waiver decisions. *See, e.g., California v. EPA*, No. 08-1178 (D.C. Cir.) (challenge by some of the Movants here to 2008 EPA action denying a waiver for certain California vehicle emissions standards); *Union of Concerned Scientists v. Nat’l Highway Traffic Safety Admin.*, No. 19-1230 (D.C. Cir.) (challenge by some of the Movants here to 2019 joint action by EPA and the

National Highway Traffic Safety Administration purporting to withdraw a waiver for certain California vehicle emissions standards).

Indeed, in an Executive Order signed on January 20, 2025, President Trump declared it is now “the policy of the United States ... to eliminate the ‘electric vehicle (EV) mandate’ ... by terminating, where appropriate, state emissions waivers that function to limit sales of gasoline-powered automobiles”⁴¹—an apparent reference to EPA actions like the challenged Waiver Decision that waive Clean Air Act preemption for State ZEV sales requirements and promote availability of cleaner vehicles in the marketplace. In light of the new presidential administration’s stated intent to “terminat[e]” the prior administration’s Waiver Decision, there is considerable uncertainty as to whether the federal respondent is “capable and willing” to make all of the same arguments as Movants in defense of the Waiver Decision. *Arakaki*, 324 F.3d at 1086. In such circumstances, there can be no doubt that Movants and their members are not adequately represented.

II. Alternatively, the Court Should Grant Permissive Intervention.

In the alternative, Movants would readily meet the requirements for permissive intervention if they were applied here because: 1) Movants will not bring new claims but rather intend to offer defensive arguments, all of which

⁴¹ Unleashing American Energy, Exec. Order § 2 (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/>.

necessarily share questions of law and fact with the underlying challenges; and 2) these cases are at a preliminary stage, so this timely motion will not unduly delay or prejudice any other party. Movants will coordinate with other respondents to prioritize the just and efficient resolution of this action. *Cf.* Fed. R. Civ. Proc. 24(b)(1)(B). Furthermore, as described above, Movants have a long history of advocating for strong state and federal standards to control pollution from motor vehicles and respectfully submit that the Court will benefit from their participation here.

* * * *

Courts have consistently permitted Movants to intervene in support of respondent agencies in many previous actions seeking to invalidate emission standards. *See, e.g.,* Order, *Western States Trucking Ass’n, Inc. v. EPA*, No. 23-1143 (D.C. Cir. July 24, 2023), ECF No. 2009161 (granting intervention into case challenging preemption waiver for California Advanced Clean Truck standards); Order, *Ohio v. EPA*, No. 22-1081 (D.C. Cir. June 30, 2022), ECF No. 1952922 (granting intervention into case challenging the EPA’s reinstatement of portions of 2013 waiver of preemption for California light-duty vehicle standards); Order, *Texas v. EPA*, No. 22-1031 (D.C. Cir. Apr. 20, 2022), ECF No. 1943675 (granting intervention into case challenging EPA’s greenhouse gas standards for light duty vehicles); Order, *Truck Trailer Mfrs. Ass’n, Inc. v. EPA*, No. 16-1430 (D.C. Cir.

Mar. 10, 2017), ECF No. 1665427 (granting intervention into case challenging EPA's greenhouse-gas standards for heavy-duty trailers). This motion likewise should be granted.

CONCLUSION

This Court should grant Movants leave to intervene in defense of the Decision.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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