

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF
KENTUCKY, et al.,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 24-1087

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

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), Alliance of Nurses for Healthy Environments, American Lung Association, American Public Health Association, Appalachian Mountain Club, 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, and Sierra Club (collectively, Movants) respectfully request leave to intervene in support of Respondents U.S. Environmental Protection Agency et al. (EPA). Petitioners challenge EPA's final action published as *Multi-Pollutant Emissions*

Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842 (Apr. 18, 2024) (Final Rule).

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 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. id.*

Petitioners Commonwealth of Kentucky et al. take no position on this motion. Respondents do not oppose this motion.

BACKGROUND

A. Statutory and Regulatory Background

To attain its “primary goal” of “pollution prevention,” 42 U.S.C. § 7401(c), the Clean Air Act directs EPA to prescribe “standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles . . . , which in [the agency's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare,” *id.* § 7521(a)(1).

EPA has set motor vehicle emissions standards for over fifty years. In 1971, EPA set nitrogen oxides standards for light-duty vehicles for model year 1975 and

later years. 36 Fed. Reg. 12,657 (July 2, 1971). Since then, EPA has promulgated increasingly stringent criteria pollutant emissions standards for motor vehicles. *See, e.g.*, 45 Fed. Reg. 14,496 (Mar. 5, 1980) (setting particulate matter standards for light-duty vehicles); 50 Fed. Reg. 10,606 (Mar. 15, 1985) (setting nitrogen oxides standards for light-duty trucks and heavy-duty engines); 56 Fed. Reg. 25,724 (June 5, 1991) (setting carbon monoxide, nitrogen oxides, particulate matter, and non-methane hydrocarbon standards for light-duty vehicles).

In 2009, EPA found that greenhouse gases endanger public health and welfare and that new motor vehicles and new motor vehicle engines, in particular, cause or contribute to that endangerment. 74 Fed. Reg. 66,496 (Dec. 15, 2009). The endangerment finding directly triggered EPA's duty to establish greenhouse gas emissions standards for new automobiles.

Following the endangerment finding, EPA set greenhouse gas standards for new light- and medium-duty passenger vehicles for model years 2012–2016, 75 Fed. Reg. 25,324 (May 7, 2010), and model years 2017–2025, 77 Fed. Reg. 62,624 (Oct. 15, 2012). In 2017, drawing on a new, extensive, and robust technical record, EPA issued a final determination that its standards for model years 2022–2025 remained appropriate and that automakers could meet them at lower cost than the agency had projected in 2012. *See California v. EPA*, 940 F.3d 1342, 1347–48 (D.C. Cir. 2019).

In 2014, EPA finalized criteria pollutant emissions standards for non-methane organic gases plus nitrogen oxides, and particulate matter for new light-duty, medium duty, and some heavy-duty vehicles (“Tier 3”) for model years 2017–2025. 79 Fed. Reg. 23,414 (Apr. 28, 2014). The standards were designed to be implemented alongside the greenhouse gas standards for light-duty vehicles that EPA had adopted in 2012. *Id.* at 23,418.

In 2020, EPA took action to weaken greenhouse gas emissions standards for light-duty vehicles model years 2021–2025, while setting new standards for model year 2026. 85 Fed. Reg. 24,174 (Apr. 30, 2020). That action “was the most significant weakening of mobile source emissions standards in EPA’s history.” 86 Fed. Reg. 74,434, 74,499 (Dec. 30, 2021). It diminished the rate of annual improvement in fleet average emissions to approximately 1.5%, as compared to approximately 5% under EPA’s earlier standards for model years 2021–2025. Movants petitioned for review of EPA’s 2020 action, as did numerous others, in litigation that this Court is presently holding in abeyance.¹

In 2021, EPA finalized strengthened greenhouse gas emissions standards for model years 2023–2026. 86 Fed. Reg. 74,434 (Dec. 30, 2021). The rates of annual

¹ See Order, *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (Apr. 2, 2021), ECF No. 1892931.

improvement under those standards ranged from 5% to 10%. *Id.* at 74,440.

Petitions for review of the 2021 rule are pending before this Court, *see Texas v. EPA*, No. 22-1031 (oral argument held on September 14, 2023); many of the Movants are respondent-intervenors in that proceeding.

B. The Final Rule

In 2023, EPA proposed to strengthen its emissions standards for non-methane organic gases plus nitrogen oxides, particulate matter, and greenhouse gases, and to change emissions requirements for carbon monoxide and formaldehyde, for light-duty vehicles and Class 2b and 3 (“medium-duty”) vehicles for model years 2027–2032. 88 Fed. Reg. 29,184 (May 5, 2023). Many of the Movants submitted comments to EPA urging the agency to finalize model year 2027–2032 standards that would be protective of public health and welfare as it had proposed.²

In April 2024, EPA finalized emissions standards for non-methane organic gases plus nitrogen oxides, particulate matter, and greenhouse gases, and changes

² Comments of Center for Biological Diversity, Conservation Law Foundation, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0759; Comments of Environmental Defense Fund (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0786; Comments of Nat’l Parks Conservation Ass’n (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0607.

to emissions requirements for carbon monoxide and formaldehyde, for light- and medium-duty vehicles for model years 2027–2032. 89 Fed. Reg. 27,842 (Apr. 18, 2024). For light-duty vehicles, EPA finalized non-methane organic gases plus nitrogen oxides standards that result in a fleet average level of 15 milligrams per mile by model year 2032, representing a 50% reduction compared to the existing Tier 3 standards. *Id.* at 27,857. For medium-duty vehicles, EPA finalized non-methane organic gases plus nitrogen oxides standards that require a fleet average level of 75 milligrams per mile by model year 2031, representing a 58% to 70% reduction from the Tier 3 standards for Class 2b vehicles and for Class 3 vehicles. *Id.* EPA also finalized cold temperature (-7°C) non-methane organic gases plus nitrogen oxides standards for certain vehicles “to ensure robust emissions control over a broad range of operating conditions.” *Id.*

For all light-duty vehicles and gasoline medium-duty vehicles, EPA finalized a particulate matter standard of 0.5 milligrams per mile and a requirement that the standard be met across three test cycles, including a cold temperature (-7°C) test. *Id.* EPA projects the particulate matter standards will reduce tailpipe particulate matter emissions from internal combustion engine vehicles by over 95%. *Id.* In addition, the standards will reduce tailpipe air toxics emissions. *Id.* The agency projected the final standards to result in an industry-wide average target for the light-duty fleet of 85 grams per mile of carbon dioxide in model year

2032, representing a nearly 50% reduction in projected fleet average greenhouse gas emissions levels compared to the existing model year 2026 standards. *Id.* at 27,854. The final medium-duty standards are projected to result in an average target of 274 grams per mile of carbon dioxide by model year 2032, representing a 44% reduction in projected fleet average emissions target levels relative to the existing model year 2026 standards. *Id.* at 27,855.

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, 217 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 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). 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. Proc. 24(b)(1).

STATEMENT OF INTEREST

Movants’ clear interest in the disposition of this action supports their request for intervention to defend the Final Rule. 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.³ Movants have consistently advocated for reducing emissions of greenhouse gases and criteria pollutants from the transportation sector⁴—the nation’s largest source of climate-destabilizing pollution, 89 Fed. Reg. at 27,844—and increasing availability of a

³ See Decl. of Sean Mahoney ¶¶ 3–6 (Conservation Law Foundation); Decl. of John Stith ¶¶ 5, 9–11 (Environmental Defense Fund); Decl. of Gina Trujillo ¶¶ 3–6 (Natural Resources Defense Council); Decl. of Robert Weissman ¶¶ 1–2 (Public Citizen); Decl. of Katherine Garcia ¶¶ 3–5, 15 (Sierra Club); Decl. of Howard A. Learner ¶¶ 5–7, 11 (Environmental Law & Policy Center); Decl. of Harold Wimmer ¶¶ 4–5, 12 (American Lung Association); Decl. of Nicole Zussman ¶¶ 4, 7 (Appalachian Mountain Club); Decl. of Cara Cook ¶¶ 5–6 (Alliance of Nurses for Healthy Environments); Decl. of Mark Rose ¶¶ 4, 6–7 (National Parks Conservation Association); Decl. of Georges C. Benjamin ¶¶ 5–6 (American Public Health Association); Decl. of Annie Fox ¶¶ 4–8 (Clean Air Council); Decl. of Kassia R. Siegel ¶¶ 2–3 (Center for Biological Diversity).

⁴ See, e.g., Garcia Decl. ¶¶ 6–13; Mahoney Decl. ¶¶ 6–8; Trujillo Decl. ¶ 6; Weissman Decl. ¶ 2; Wimmer Decl. ¶ 6; Fox Decl. ¶ 11; Cook Decl. ¶ 7; Rose Decl. ¶ 8; Benjamin Decl. ¶ 7; Learner Decl. ¶¶ 12–15; Siegel Decl. ¶¶ 6–10; Stith Decl. ¶¶ 11.

broader range of cleaner automobiles in the marketplace.⁵ Movants have protectable interests in shielding their members from harms that would result if any of the Final Rule's standards for vehicular greenhouse gas or criteria pollutant emissions were vacated.

Should it be required, Movants likewise have Article III standing.⁶ 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. Fed. Election Comm’n*, 788 F.3d 312, 317 (D.C. Cir. 2015). As described in more detail below, Movants’ members would be injured if the Final Rule is vacated and accordingly would have standing to defend the Final Rule in their own rights. Movants’ members include people who live, work, recreate, and own property in areas that experience the

⁵ See, e.g., Weissman Decl. ¶¶ 2, 4; Stith Decl. ¶ 9.

⁶ The Supreme Court has called into question whether respondent-intervenors need to establish standing. See *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (explaining that “it was not ... incumbent on [a party] to demonstrate its standing” when it participated “as an intervenor in support of the ... Defendants,” or “as an appellee” on appeal, “[b]ecause neither role entailed invoking a court’s jurisdiction”). However, as this Court has continued to require that respondent-intervenors establish standing, see, e.g., *Yocha Dehe v. United States Dep’t of the Interior*, 3 F.4th 427, 430 (D.C. Cir. 2021), Movants explain herein why they have standing to defend the Rule.

effects of climate change;⁷ people who live, work, and recreate near locations where EPA's vehicular greenhouse gas and criteria pollutant emission standards most directly affect local air-pollution levels;⁸ people desiring to purchase or lease cleaner vehicles;⁹ and people with professions that benefit from the proliferation of clean vehicles that conform to EPA's standards.¹⁰

If this Court were to vacate the Final Rule, 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 infra* Sections A–C. Movants' members therefore satisfy the

⁷ Decl. of Paul Jeffrey ¶¶ 2–8, 14–15 (Natural Resources Defense Council); Mahoney Decl. ¶ 12; Decl. of Elizabeth Cobble ¶¶ 2, 7–8, 11 (Environmental Defense Fund); Decl. of Rita Tower ¶¶ 2–6, 9–13 (Natural Resources Defense Council); Decl. of Heather Greenwood ¶¶ 9, 11–12, 14–15 (Conservation Law Foundation); Decl. of Maurena Grossman Decl. ¶¶ 2, 6–9 (Sierra Club); Decl. of Vicente Perez Martinez ¶¶ 4–5, 7–8 (Sierra Club); Decl. of David Hill ¶¶ 8–10 (American Lung Association); Decl. of Julia Khorana ¶¶ 11–13 (Appalachian Mountain Club); Decl. of Gloria Barrera ¶ 9 (Alliance of Nurses for Healthy Environments); Decl. of Katrina Peterson ¶¶ 11–16 (National Parks Conservation Association); Decl. of Nsedu Obot Witherspoon ¶¶ 9–12 (American Public Health Association); Decl. of Eleanor Lustig ¶¶ 8–9 (Clean Air Council); Siegel Decl. ¶ 12; Decl. of Sylvia Arredondo ¶¶ 6–8, 16 (Center for Biological Diversity).

⁸ Perez Martinez Decl. ¶ 4; Cobble Decl. ¶¶ 7–8, 11; Greenwood Decl. ¶ 14; Lustig Decl. ¶ 10; Hill Decl. ¶ 11; Barrera Decl. ¶ 11; Witherspoon Decl. ¶ 15; Rose Decl. ¶¶ 13–14; Arredondo Decl. ¶¶ 4, 10–11; Decl. of Elizabeth Casman ¶¶ 2–3, 9–11 (Natural Resources Defense Council); Grossman Decl. ¶¶ 7–9.

⁹ Perez Martinez Decl. ¶ 10; Cobble Decl. ¶ 12; Greenwood Decl. ¶ 18; Decl. of Kaiba White ¶¶ 3–5 (Public Citizen); Casman Decl. ¶ 15.

¹⁰ Decl. of Douglas Snower ¶¶ 6–8, 10 (Environmental Law & Policy Center).

injury-in-fact, causation, and redressability requirements of Article III standing.

See 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 rule 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 experienced a reduced opportunity to purchase certain types of vehicles had standing to challenge fuel-economy regulation).

Movants also satisfy the remaining requirements of associational standing.

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). The interests Movants seek to protect

by participating in this case are germane to their organizational purposes of

advocating for reductions of greenhouse gases and criteria air pollutants from the

transportation sector and increasing the availability of lower-polluting vehicles. *See*

Chesapeake Climate Action Network v. EPA, 952 F.3d 310, 318 (D.C. Cir. 2020)

(finding members’ interests in reducing their exposure to air pollutant germane to

Movant the Sierra Club’s organizational purposes); *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” (cleaned up)); *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). And 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 (D.C. Cir. 2021); *see also Ctr. for Auto Safety*, 793 F.2d at 1324. The Court should so decide in this instance as well.

A. Air Pollution Injuries

If the Final Rule is vacated, Movants' members will suffer from increased emissions, compared to emissions levels under the Final Rule, of harmful pollutants such as nitrogen oxides, volatile organic compounds, fine particulate matter, sulfur oxides, and benzene. EPA estimates in 2055, compared to without the Rule, the Final Rule will reduce 36,000 tons of nitrogen oxides, a 25% reduction of nitrogen oxides emissions associated with the light- and medium-duty fleet. 89 Fed. Reg. at 27,858. Additionally, EPA projects the rule will reduce 8,700 tons of particulate matter (22% reduction); 2,800 tons of sulfur oxides (16% reduction); 150,000 tons of volatile organic compounds (46% reduction); and 2,300 tons of benzene (51% reduction). *Id.* at 27,858–59.

Vacating the Final Rule would jeopardize these criteria and air toxics reductions. A majority of the nitrogen oxides and particulate matter emissions reductions are a direct result of the reduced tailpipe emissions associated with the Final Rule. *Id.* EPA estimates that the Final Rule will reduce 780 billion gallons of gasoline consumption by 2055. *Id.* at 28,092. Sulfur dioxide tailpipe emissions are a result of the sulfur in gasoline and are therefore directly correlated with the gallons of gasoline combusted. *Id.* at 28,099 Thus, vacating the Final Rule will result in an increase in roadway sulfur oxide levels, compared to levels if the standards remain in place. *Id.*

These pollutants are also emitted by the upstream processes—including production, refining, and distribution of the gasoline needed to power higher-emitting vehicles—that will increase in prevalence if the Final Rule is vacated.¹¹ Gasoline refining in particular results in significant emissions of nitrogen oxides, fine particulate matter, sulfur oxides, and benzene.¹² EPA projected that the Final Rule will reduce overall, long-term emissions of nitrogen oxides, volatile organic compounds, and fine particulate matter. 89 Fed. Reg. at 27,858.

Nitrogen oxides and volatile organic compounds emissions are precursors to ground-level ozone, which is associated with significant public health effects.¹³ 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.¹⁴ Children, whose lungs are still developing, are among those at highest risk from fine particulate matter pollution.¹⁵

Vacating the Final Rule will harm Movants’ members by increasing criteria pollution tailpipe emissions, compared to levels if the standards remain in place,

¹¹ Decl. of Veronica Southerland ¶¶ 61-62 (Environmental Defense Fund).

¹² Southerland Decl. ¶¶ 61-63.

¹³ Southerland Decl. ¶¶ 7, 9–26.

¹⁴ Southerland Decl. ¶¶ 7, 28–32, 35–37; Wimmer Decl. ¶ 10.

¹⁵ Southerland Decl. ¶ 28.

and by increasing freight transport of refined fuels conducted in large part by diesel vehicles, thereby worsening near-roadway pollution.¹⁶ Nitrogen oxides, volatile organic compounds, particulate matter, and sulfur oxide levels are typically elevated near major roadways, causing harm to those living, working, and attending school nearby.¹⁷ This is especially true for communities of color and low-income communities, who are disparately impacted by near-roadway pollution.¹⁸ 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.¹⁹

Vacating the Final Rule will result in more fuel consumed and, as a result, will increase fuel refining and associated emissions. *Cf.* 89 Fed. Reg. at 27,858. Movants have many members—including members with children—who will be impacted by increased levels of fine particulate matter, nitrogen oxides, and other dangerous pollutants due to their proximity to refineries.²⁰ Many of these members live in areas where refineries contribute to particulate matter, sulfur oxide, and

¹⁶ Southerland Decl. ¶¶ 7, 58-62, 66.

¹⁷ Southerland Decl. ¶¶ 47-52; Perez Martinez Decl. ¶ 4; Greenwood Decl. ¶¶ 14-15; Casman Decl. ¶¶ 3, 11; Siegel Decl. ¶ 11; Grossman Decl. ¶¶ 7-9.

¹⁸ Southerland Decl. ¶¶ 21, 51.

¹⁹ Southerland Decl. ¶¶ 21, 52; Barrera Decl. ¶¶ 11, 18.

²⁰ Arredondo Decl. ¶¶ 4-8, 10-11, 16; Perez Martinez Decl. ¶¶ 4-5, 9, 12.

ozone levels that already fail to attain health-based standards under the Clean Air Act.²¹ Increased refinery operation in these areas will worsen their already unhealthy conditions, seriously harming some of Movants' most vulnerable members.²²

B. Climate Injuries

Movants' members will suffer a variety of injuries related to climate change if the Final Rule is vacated. EPA estimates that over the life of the program, through 2055, the Final Rule will reduce carbon dioxide emissions by 7.2 billion metric tons, a 21% reduction of carbon dioxide emissions associated with the light- and medium-duty fleet over that time period. 89 Fed. Reg. at 27,858. The Final Rule will also reduce methane emissions by 120,000 metric tons, a 15% reduction of emissions over that time period; and nitrous oxide emissions by 130,000 metric tons, a 23% reduction of emissions over that time period. *Id.* Vacating the Final Rule would jeopardize these greenhouse gas emissions reductions.

Unabated 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

²¹Arredondo Decl. ¶ 4; Perez Martinez Decl. ¶¶ 4, 9.

²²Southerland Decl. ¶¶ 61–66.

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.²³ 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, older people, people who work and recreate outdoors, and people with underlying respiratory conditions.²⁴

Movants have members who live or spend significant time in ozone nonattainment areas and other high-ozone areas,²⁵ and some of these members and their families are members of vulnerable populations.²⁶ Movants' members already experience ozone-related health impacts, and these impacts will worsen if vehicle

²³ See Perez Martinez Decl. ¶ 6; Hill Decl. ¶ 16. See also Southerland Decl. ¶ 10.

²⁴ Southerland Decl. ¶¶ 10–16; Grossman Decl. ¶¶ 6–9; Hill Decl. ¶ 19; Wimmer Decl. ¶¶ 13–14.

²⁵ Perez Martinez Decl. ¶ 4; Peterson Decl. ¶¶ 7, 10, 17; Grossman Decl. ¶ 6; Arredondo Decl. ¶ 4.

²⁶ See Southerland Decl. ¶¶ 21 (describing vulnerable populations); Perez Martinez Decl. ¶ 5; Cobble Decl. ¶¶ 2–3, 6–7; Greenwood Decl. ¶ 7; Witherspoon Decl. ¶¶ 12–13; Grossman Decl. ¶ 9.

emission standards are vacated.²⁷ 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 if the standards are vacated.²⁸

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.²⁹ Those conditions expose Movants' members to health-harming and dangerous fire, smoke, and ash;³⁰ force them to limit recreation, travel, and other outdoor activities, and to take other costly and burdensome precautions.³¹

Vacating vehicular greenhouse gas emissions 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.³² Those events harm Movants' members in many ways: by

²⁷ See Greenwood Decl. ¶¶ 7, 9, 13–17; Grossman Decl. ¶¶ 7–9; Cobble Decl. ¶¶ 2–3, 6, 11; Hill Decl. ¶¶ 8–10; Siegel Decl. ¶ 12; Arredondo Decl. ¶ 10.

²⁸ Greenwood Decl. ¶¶ 10–12, 15, 17; Grossman Decl. ¶¶ 7–9; Casman Decl. ¶¶ 9–10; Hill Decl. ¶ 8; Peterson Decl. ¶¶ 7, 11, 15, 17, 19; Rose Decl. ¶ 13; Arredondo Decl. ¶¶ 17–18.

²⁹ Peterson Decl. ¶¶ 7, 14–16.

³⁰ Peterson Decl. ¶ 15.

³¹ Peterson Decl. ¶¶ 15, 19.

³² Jeffrey Decl. ¶ 2; Siegel Decl. ¶ 12.

increasing risk of injury, death, or property damage;³³ decreasing property values;³⁴ forcing members to take actions and expend resources to prevent and address these impacts in their communities;³⁵ and limiting members' activities to avoid these and related hazards.³⁶

An increase in climate-destabilizing pollution, compared to pollution levels if the standards remain in place, 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,³⁷ wildfires,³⁸ and extreme weather.³⁹ Additionally, climate change will limit members' ability to engage in winter recreation activities by reducing winter snowpack.⁴⁰ And it is increasingly limiting members' ability to visit, study, and

³³ Jeffrey Decl. ¶¶ 4–8; Tower Decl. ¶¶ 6, 9, 11; Arredondo Decl. ¶¶ 18–19; Peterson Decl. ¶ 12.

³⁴ Jeffrey Decl. ¶ 8.

³⁵ Jeffrey Decl. ¶ 4.

³⁶ Tower Decl. ¶ 4; Jeffrey Decl. ¶ 14; Khorana Decl. ¶¶ 12–13; Siegel Decl. ¶ 12; Arredondo Decl. ¶ 7.

³⁷ Grossman Decl. ¶ 7; Perez Martinez Decl. ¶ 5; Greenwood Decl. ¶ 15.

³⁸ Peterson Decl. ¶¶ 15–16.

³⁹ Jeffrey Decl. ¶¶ 14–15; Arredondo Decl. ¶ 19.

⁴⁰ Khorana Decl. ¶ 11.

appreciate natural ecosystems, including coastal ecosystems threatened by sea-level rise, as well as threatened and endangered species.⁴¹

C. Consumer and Business Injuries

Vacating the Final Rule would harm Movants' members by limiting their options to sell and purchase lower-emitting vehicles.⁴² Under stronger regulations like the Final Rule, automakers allocate more resources to selling lower-emitting vehicles, increasing the variety and quantity of lower-emission options available to customers.⁴³

Movants have members who plan to purchase lower-emitting vehicles of model years affected by EPA's Final Rule.⁴⁴ Vacating the Rule will limit these members' choices and opportunities to purchase these vehicles, and will cause them to spend more on fuel.⁴⁵ 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 Final Rule is vacated.⁴⁶

⁴¹ See Siegel Decl. ¶ 12.

⁴² Snower Decl. ¶¶ 8–10; Cobble Decl. ¶ 12; White Decl. ¶ 5; Weissman Decl. ¶¶ 4–5.

⁴³ Snower Decl. ¶ 6–9.

⁴⁴ See Perez Martinez Decl. ¶ 10; Cobble Decl. ¶ 12; Greenwood Decl. ¶ 18; White Decl. ¶¶ 3–5.

⁴⁵ Cobble Decl. ¶ 12; White Decl. ¶ 5; Weissman Decl. ¶ 5.

⁴⁶ Snower Decl. ¶¶ 5–8, 10.

GROUNDS FOR INTERVENTION

The Court should permit Movants to intervene in all petitions for review of the Final Rule. For the reasons stated above, Movants have an interest in upholding the Final Rule, and the disposition of these cases “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. Fed. R. Civ. P. 24(a)(2); *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 need not “predict now the specific instances,” *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977), in which conflicts may arise; a “potential conflict,” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986), or a “possibility of disparate interests,” *Costle*, 561 F.2d at 912, is sufficient. 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). 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 736 n.9 (collecting cases); *Crossroads*, 788 F.3d at 321.

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

and fossil-fuel industries—Movants represent the more specific and distinct 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. Thus, “examined from the perspective of [governmental parties’] responsibilities,” Movants’ interests are not adequately represented. *Id.* at 737.⁴⁷

This Court has permitted several of the Movants here to intervene in support of respondent agencies in previous challenges to regulations addressing dangerous vehicle emissions, including greenhouse gases. *See, e.g.*, Order, *Texas v. EPA*, No. 22-1031 (D.C. Cir. Apr. 20, 2022), ECF No. 1943675 (granting intervention with respect to petition for review of greenhouse gas standards for light-duty vehicles); Order, *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (D.C. Cir. Oct. 8, 2020), ECF No. 1865427 (granting intervention with respect to petition for review of, *inter alia*, greenhouse gas standards for passenger vehicles and light trucks); Order,

⁴⁷ 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 necessarily share questions of law and fact with the underlying challenges; and 2) these cases are at a preliminary stage and no briefing schedule has been set, so this timely motion will not unduly delay or prejudice any other party. *Cf.* Fed. R. Civ. Proc. 24(b)(1)(B). Furthermore, Movants have a long history of advocating for strong federal standards to control pollution from the transportation sector and respectfully submit that the Court will benefit from their participation here.

Truck Trailer Mfrs. Ass'n, Inc. v. EPA, No. 16-1430 (D.C. Cir. Mar. 10, 2017), ECF No. 1665427 (granting intervention with respect to 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 challenging EPA's Final Rule. *See* Cir. R. 15(b).

Respectfully submitted,

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Movants Alliance of Nurses for Healthy Environments, American Lung Association, American Public Health Association, Appalachian Mountain Club, 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, and Sierra Club, state that they are non-profit environmental and public health organizations. None of the organizations have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

Dated: April 24, 2024

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CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), I certify that the parties to this case are set forth below.

Petitioners: Petitioners are the Commonwealths of Kentucky and Virginia and the States of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming.

Respondents: Respondents are the U.S. Environmental Protection Agency and Michael S. Regan, in his official capacity as Administrator of the EPA.

Intervenors: The States of California, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Mexico, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the City and County of Denver, and the Cities of Chicago, Los Angeles, and New York have moved for leave to intervene in support of Respondents in this case.

Amici Curiae: There are no amici curiae at the time of this filing.

Dated: April 24, 2024

/s/ Andrew P. Su
Andrew P. Su

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion contains 5,106 words and was composed in Times New Roman font, 14-point. The motion complies with all applicable type-volume and typeface requirements.

Dated: April 24, 2024

/s/ Andrew P. Su

Andrew P. Su

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2024, I have served the foregoing motion and its attachments on all parties through the Court's electronic case filing (CM/ECF) system.

/s/ Andrew P. Su
Andrew P. Su