

ORAL ARGUMENT NOT SCHEDULED

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

STATE OF NEBRASKA, et al.,

Petitioners,

No. 24-1129  
(and consolidated cases)

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY AND MICHAEL S.  
REGAN, ADMINISTRATOR, UNITED  
STATES ENVIRONMENTAL PROTECTION  
AGENCY,

Respondents.

**AMENDED UNOPPOSED MOTION BY 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 FOR LEAVE TO INTERVENE  
IN SUPPORT OF RESPONDENTS**

ROB BONTA  
Attorney General of California  
EDWARD H. OCHOA  
TRACY L. WINSOR  
Senior Assistant Attorneys  
General  
DENNIS L. BECK, JR.  
MYUNG J. PARK  
Supervising Deputy Attorneys  
General

MICAELA M. HARMS  
M. ELAINE MECKENSTOCK  
THEODORE A. MCCOMBS  
Deputy Attorneys General  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
Telephone: (619) 738-9003  
Email: Theodore.McCombs@doj.ca.gov  
*Attorneys for the State of California*

(additional counsel on signature pages)

Pursuant to Federal Rule of Appellate Procedure (FRAP) 15(d) and D.C. Circuit Rule 15(b), the States of California (by and through its Attorney General Rob Bonta and the California Air Resources Board), 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 (collectively, Movant-Intervenor States) hereby move the Court for leave to intervene in case number 24-1129 and all consolidated cases in support of Respondents United States Environmental Protection Agency (EPA) and Michael Regan as Administrator of the United States Environmental Protection Agency.

### **STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION**

Petitioners challenge EPA's final rule for federal greenhouse gas standards, "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3" (Final Rule). *See* 89 Fed. Reg. 29,440 (April 22, 2024). Movant-Intervenor States have a compelling interest in these standards because they are a crucial element of urgently needed measures to mitigate the substantial and growing adverse effects of climate change and criteria pollution in their States. As discussed in detail below, Movant-Intervenor States will be injured if the petitioners obtain vacatur of

the Final Rule, as such a decision would contribute to increased short- and long-term emissions of harmful pollution, resulting in direct injuries to state lands, resources, infrastructure, and public programs, not to mention grave injuries to our residents and industries. Indeed, the Supreme Court has recognized that States have significant “stake[s]” in the control of these very emissions from other classes of vehicles. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). Movant-Intervenor States would be similarly injured by a ruling here that compromises EPA’s ability to reduce these harmful vehicle emissions in the future, e.g., by limiting EPA’s consideration of zero-emission technologies like the battery-electric powertrain. These legally protected interests of the States are distinct from Respondents’ interests and not adequately represented by any party. Movant-Intervenor States seek to intervene in the challenges to EPA’s standards to protect those established interests.

Petitioners in Cases Nos. 24-1129 (State of Nebraska et al.) and 24-1133 (Peterson et al.) take no position on this motion. Petitioners in Case No. 24-1157 (Western States Trucking Ass’n et al.) do not oppose this motion. Respondents do not oppose this motion.

### **BACKGROUND**

The Clean Air Act requires EPA to prescribe “standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or

new motor vehicle engines, which in [the Administrator’s] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a)(1). States, including many of the Movant-Intervenor States here, have a long history of intervening in litigation and otherwise urging EPA to rigorously control greenhouse gas emissions from new motor vehicles, *see e.g., Massachusetts*, 549 U.S. at 514, because the transportation sector is the leading source of the Nation’s greenhouse gas emissions.<sup>1</sup> The heavy-duty vehicles regulated by the greenhouse gas emissions standards at issue here constitute one of the Nation’s most significant sources of such emissions, with heavy-duty vehicles accounting for 25% of U.S. transportation sector greenhouse gas emissions.<sup>2</sup>

In 2009, after *Massachusetts* was decided, EPA determined “that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare,” and that new motor vehicles and engines cause or contribute to that endangerment. 74 Fed. Reg. 66,496, 66,496-97 (Dec. 15, 2009) (Endangerment Finding). The Endangerment Finding triggered a duty

---

<sup>1</sup> *See* Comments of States and Cities Supporting EPA’s Proposed Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3 (“Multistate Comment”), at 1 (June 16, 2023) (Docket ID EPA-HQ-OAR-2022-0985-1588); *accord* 89 Fed. Reg. at 29,442.

<sup>2</sup> 89 Fed. Reg. at 29,442 & n.5 (as of April 2023).

for EPA to regulate greenhouse gas emissions from new motor vehicles. *See* 42 U.S.C. § 7521(a); *see Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 126 (D.C. Cir. 2012) (“By employing the verb ‘shall,’ Congress vested a non-discretionary duty in EPA.”).

In 2011, EPA promulgated greenhouse gas emissions standards for medium- and heavy-duty vehicles for model years 2014 through 2018. 76 Fed. Reg. 57,106 (Sept. 15, 2011). In 2016, EPA finalized “Phase 2” greenhouse gas emissions standards for model years 2021 through 2027. 81 Fed. Reg. 73,478 (Oct. 25, 2016). EPA estimated that its Phase 2 standards would result in fuel savings of 71-82 billion gallons and prevent up to 1.1 billion metric tons of greenhouse gas emissions. *Id.* at 73,482.

Following a change in presidential administrations, EPA in June 2017 proposed to repeal a portion of the Phase 2 standards applicable to heavy-duty vehicles consisting of a used or refurbished engine in a new vehicle chassis, called “gliders.” 82 Fed. Reg. 53,442 (June 30, 2017) (Proposed Glider Repeal). Many of the Movant-Intervenor States submitted comments opposing that proposal,<sup>3</sup> and many of the Movant-Intervenor States likewise intervened to defend the Phase 2

---

<sup>3</sup> Comments on Proposed “Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits,” 82 Fed. Reg. 53,442, at 2, 5-6, 19-20 (Jan. 5, 2018) (Docket ID EPA-HQ-OAR-0827-4829). EPA did not ultimately finalize the proposed action.

standards in this Court against petitions for review. Doc. No. 1665427, *Truck Trailer Mfrs. Ass'n, Inc. v. EPA*, No. 16-1430 (D.C. Cir. Mar. 10, 2017) (granting intervention).

In April 2023, EPA proposed “Phase 3” standards for heavy-duty vehicles’ emissions of greenhouse gases, for model years 2027 to 2032. 88 Fed. Reg. 25,926 (April 27, 2023). The Movant-Intervenor States submitted comments generally supporting EPA’s proposal, arguing the proposed standards (and, indeed, standards of greater stringency) were feasible and important to protecting public health and the environment against the climate crisis, helping our States attain and maintain national ambient air quality standards for ozone and particulate matter, and reducing criteria and toxic pollution, including in disadvantaged communities near refineries and major roadways that are disproportionately burdened with pollution and public health impacts from vehicle emissions.<sup>4</sup> Our comments detailed how increased emissions exacerbate the grievous, ongoing health and environmental impacts our residents, agriculture, marine industries, and ecosystems are already experiencing—such as historic drought conditions across California, Arizona, the Pacific Northwest, and Massachusetts,<sup>5</sup> the 2023 wildfire smog that blanketed the

---

<sup>4</sup> Multistate Comment at 8-17, 32-35.

<sup>5</sup> *Id.* at 6-7.

Atlantic seaboard in an orange haze of dangerous particulate matter,<sup>6</sup> and record-setting fire seasons in California, Oregon, and Washington.<sup>7</sup>

On April 22, 2024, EPA published its final rule, adopting standards less stringent than proposed in the early model years but reaching equivalent or greater stringency in the final regulated years, depending on the subcategory of heavy-duty vehicle. 89 Fed. Reg. at 29,450. EPA estimates that, by 2055, its standards will reduce annual emissions of nitrogen oxides by 53,000 tons and achieve cumulative greenhouse gas emissions reductions of over 1 billion metric tons. *Id. Id.* at 29,454-55 (Tables ES-5 & ES-6). Petitioners here seek to vacate these standards and to constrain EPA's ability to set robust vehicular emissions standards in the future based on zero-emission vehicle technologies, the single most effective set of pollution controls for vehicles developed to date.

If Petitioners prevail, harmful emissions that threaten public health and the environment will increase. Those increases will be long-lasting, not only because of the longevity of greenhouse gases in the atmosphere, but also because of the longevity of higher-emitting vehicles sold under any weakened standards. Those increased emissions would exacerbate the climate change harms and public health harms Movant-Intervenor States are experiencing. Movant-Intervenor States

---

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 3-5.

respectfully request that this Court grant their motion to intervene to defend these important standards and EPA's ability to meaningfully control these emissions.

### LEGAL STANDARD

Federal Rule of Appellate Procedure 15(d) states that a motion to intervene “must contain a concise statement of the interest of the moving party and the grounds for intervention” and be filed “within 30 days after the petition for review is filed.” Because “[i]ntervenors become full-blown parties to litigation, . . . all would-be intervenors must demonstrate Article III standing.” *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1232 (D.C. Cir. 2018); see *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015) (“[W]here a party tries to intervene as another defendant, we have required it to demonstrate Article III standing.”). In deciding intervention motions, this Court draws on the standards for intervention in district court under Federal Rule of Civil Procedure (FRCP) 24. *Mass. Sch. of Law at Andover v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997).

For a party requesting intervention as of right, this Court looks to four factors analogous to those under FRCP 24(a):

- (1) timeliness of that application to intervene;
- (2) a legally protected interest;
- (3) that the action, as a practical matter, impairs or impedes that interest; and
- (4) that no party to the action can adequately represent the potential intervenor's interest.



*Crossroads*, 788 F.3d at 320. A court may also grant permissive intervention under FRCP 24(b) when a movant makes a “timely application” and the “applicant’s claim or defense and the main action have a question of law or fact in common.” See *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1045 (D.C. Cir. 1998).

## **ARGUMENT**

### **I. MOVANT-INTERVENOR STATES ARE ENTITLED TO INTERVENTION AS OF RIGHT**

Movant-Intervenor States have Article III standing and readily satisfy all the requirements for intervention as of right under this Court’s precedents and under FRCP 24(a).

#### **A. Movant-Intervenor States Have Article III Standing**

To satisfy the requirements of Article III standing, Movant-Intervenor States must demonstrate: (1) that they “have suffered an injury in fact . . . which is [] concrete and particularized, and [] actual or imminent,” (2) that there is a “causal connection between the injury and the conduct complained of,” and (3) that it is “likely . . . the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). For purposes of intervention to defend an agency’s action, causation and redressability are established if the party seeking intervention demonstrates that injury would result from a decision to grant the petition for review. *Crossroads*, 788 F.3d at 316-319.

Here, Movant-Intervenor States would be injured if Petitioners succeed in obtaining vacatur of EPA's emissions standards promulgated in the Final Rule, because any such decision would increase short- and long-term emissions by vacating or ultimately weakening standards applicable to millions of new vehicles sold in the United States in 2027 and afterwards. Movant-Intervenor States would also be injured by a ruling that compromises EPA's ability to reduce these harmful vehicle emissions in the future, e.g., by limiting EPA's consideration of zero-emission technologies like the battery-electric powertrain.

The administrative record contains abundant evidence of the types of injuries that Movant-Intervenor States would suffer as a result of weakened vehicle emissions standards. *See Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) (“In many if not most cases the petitioner’s standing to seek review of administrative action is self-evident; no evidence outside the administrative record is necessary for the court to be sure of it.”). Movant-Intervenor States are currently experiencing direct and compounding climate harms that are projected to worsen without deep reductions in anthropogenic emissions of greenhouse gases, such as those from heavy-duty vehicles regulated by the Final Rule.<sup>8</sup> For example, rising

---

<sup>8</sup> Multistate Comment at 2-8; 89 Fed. Reg. at 29,474-75; *see* Decl. of E. Scheehle, Cal. Air Resources Bd. (Scheehle Decl.) ¶¶6-11, 16-32; Decl. of A. Brizius, Mass. Office of Coastal Zone Mgmt. (Brizius Decl.) ¶¶6, 8-24; Decl. of F. Kohlasch, Minn. Pollution Control Agency (Kohlasch Decl.) ¶¶5-12; Decl. of M.

temperatures caused by anthropogenic greenhouse gas emissions contribute to the frequency, severity, and duration of extreme heat events, reduced snowpack, increased drought, and warming waters.<sup>9</sup> Rising temperatures and drier conditions increase the frequency and intensity of wildfires.<sup>10</sup> A warmer climate intensifies costly extreme storms and flooding, which damage roads, power lines, sewerage and water treatment systems, and other critical infrastructure.<sup>11</sup> Human-induced climate change also leads to sea level rise that submerges sovereign territory in coastal States and increases saltwater intrusion into state waters and aquifers.<sup>12</sup>

Beyond harming our residents and industries, these climate impacts cause direct injuries to the Movant-Intervenor States: loss of state coastline and coastal

---

Hanna, N.J. Dept. of Env't. Protection (Hanna Decl.) ¶¶7-11, 14; Decl. of C. LaLone, N.Y. Dept. of Env't. Conservation (LaLone Decl.) ¶¶16-34; Decl. of E. Fleishman, Ore. Climate Change Research Inst. (Fleishman Decl.) ¶¶8-27; Decl. of N. Lazor, Penn. Dept. of Env't. Protection (Lazor Decl.) ¶¶9, 14-27.

<sup>9</sup> Multistate Comments at 6-7, 11-12; 89 Fed. Reg. at 29,474-75; Scheehle Decl. ¶¶18-22, 30-31; Kohlasch Decl. ¶8; Hanna Decl. ¶8.i; LaLone Decl. ¶¶16, 17, 19, 31-32; Fleishman Decl. ¶¶9-10, 24; Lazor Decl. ¶¶14, 17.b, 17.c, 17.f.

<sup>10</sup> Multistate Comment at 3-5; Scheehle Decl. ¶¶25-29; Hanna Decl. ¶8.i; Fleishman Decl. ¶¶11-20.

<sup>11</sup> Multistate Comments at 5-7; 89 Fed. Reg. at 29,474-75; Scheehle Decl. ¶¶22-24, 31; Brizius Decl. ¶¶9-11; Kohlasch Decl. ¶¶5-6; Hanna Decl. ¶¶8.c, 8.d, 14.a, 14.d; LaLone Decl. ¶¶20-30; Fleishman Decl. ¶¶8, 10, 25-26; Lazor Decl. ¶¶17.h, 20.

<sup>12</sup> Multistate Comments at 7-8; 89 Fed. Reg. at 29,474-75; Scheehle Decl. ¶¶24; Brizius Decl., ¶¶7, 8, 11-12, 19; Hanna Decl. ¶¶8.b, 8.d, 8.e; LaLone Decl. ¶21; Fleishman Decl. ¶24; Lazor Decl. ¶¶17.f, 17.g.

property; damages to state parks, other public lands, and critical infrastructure; loss of state waters, forests, and other natural resources; and increased expenditure of funds on drought, wildfire, storm, and flood preparation and response, protection of public health, and strengthening and repairing roads, seawalls, ports, power lines, sewers, and waste treatment systems impacted by extreme weather.<sup>13</sup> Weaker emissions standards—which Petitioners seek by way of vacatur of the Final Rule—would result in increased emissions and greater harms to Movant-Intervenor States.<sup>14</sup>

The Supreme Court and this Court have repeatedly found that these types of climate harms establish standing that supports state intervention. In *Massachusetts*, the Supreme Court decided that States, including many of the Movant-Intervenor States here, had standing to intervene to compel EPA to determine that this very type of emissions—greenhouse gas emissions from new motor vehicles—endanger public health and welfare. 549 U.S. at 522-23. The Court noted that “U.S. motor-vehicle emissions make a meaningful contribution to greenhouse gas concentrations and hence . . . to global warming,” and “reducing domestic

---

<sup>13</sup> 89 Fed. Reg. at 29,474-75; *see* Scheehle Decl. ¶¶22-24, 27, 30; Brizius Decl. ¶¶9-12, 17-23; Kohlasch Decl. ¶¶5-6; Hanna Decl. ¶¶8.b-8.e, 8.i, 14.a, 14.c, 14.d; LaLone Decl. ¶¶18-33; Fleishman Decl. ¶¶8, 10, 13-16, 21, 25-26; Lazor Decl. ¶¶9-13, 17.c, 17.f, 17.g, 17.h, 19-20.

<sup>14</sup> Scheehle Decl. ¶17, 32; Brizius Decl. ¶24; Hanna Decl. ¶15; LaLone Decl. ¶10; Fleishman Decl. ¶¶4, 17.h.

automobile emissions . . . would slow the pace of global emissions increases, no matter what happens elsewhere.” *Id.* at 525. Similarly, this Court has permitted many of the Movant-Intervenor States here to intervene to defend past EPA decisions, including EPA’s Endangerment Finding, *see Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 126 (D.C. Cir. 2012), *rev’d in part on unrelated issues, Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014); EPA’s first greenhouse gas emissions standards for passenger cars and light trucks, Doc. No. 1406411, *Plant Oil Powered Diesel Fuel Sys., Inc. v. EPA*, No. 12-1428 (D.C. Cir. Nov. 23, 2012); EPA’s greenhouse gas emissions standards for heavy-duty trailers, Doc. No. 1665427, *Truck Trailer Mfrs. Ass’n, Inc. v. EPA*, No. 16-1430 (D.C. Cir. Mar. 10, 2017); and, most recently, EPA’s revised light-duty greenhouse gas emissions standards, Doc. No. 1943675, *Texas v. EPA*, Case No. 22-1031, (D.C. Cir. Apr. 20, 2022). Here, the Court should likewise find that the States have standing and grant their intervention.

The Final Rule’s greenhouse gas emissions standards would also decrease emissions of criteria pollutants and toxic chemicals.<sup>15</sup> Movant-Intervenor States would be injured by emissions that would result if the Final Rule did not become

---

<sup>15</sup> 89 Fed. Reg. at 29,455; *see* Multistate Comments at 8-10; Kohlasch Decl. ¶18; LaLone Decl. ¶¶1-2; Lazor Decl. ¶9.

effective, which would strain state budgets and make it more difficult for States to attain and maintain National Ambient Air Quality Standards established by EPA to protect public health.<sup>16</sup> In the absence of strong federal standards for vehicular emissions of nitrogen oxides (an ozone precursor) and particulate matter, States have to take additional actions and expend significant resources meeting federal air quality standards.<sup>17</sup> Because States depend on early planning to reduce the costs of compliance, changes in federal regulatory approaches that significantly increase criteria emissions can be costly and disruptive to the States, as well as to regulated industries within those States. Movant-Intervenor States thus satisfy the requirements for Article III standing.

**B. Movant-Intervenor States Also Satisfy the Other Requirements for Intervention as of Right**

As noted above, courts look to FRCP 24 when analyzing motions for leave to intervene in petitions for review. *Supra* at 9. FRCP 24(a) requires a court to grant intervention as of right to anyone who, on a timely motion, “claims an interest relating to the property or transaction that is the subject of the action, and is so

---

<sup>16</sup> Multistate Comment at 8-10; Hanna Decl. ¶¶12-13; LaLone Decl. ¶¶1-2; Lazor ¶¶21-27; *see also* Scheehle Decl. ¶30; Hanna Decl. ¶11; Fleishman ¶16; Lazor ¶¶17.a, 21-23 (average temperature rise, more severe wildfires, and lost rainfall due to climate change worsens ground-level concentrations of ozone and particulate matter).

<sup>17</sup> Multistate Comment at 8-10; Hanna Decl. ¶¶12-13; Lazor ¶25; *see also* LaLone Decl. ¶¶1-2, 8.

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." Under this Court's precedent, a prospective intervenor "need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a)." *See Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998).

As demonstrated above, Movant-Intervenor States have Article III standing. Even if more were required, intervention should still be granted because the disposition of these petition could impair or impede Movant-Intervenor States' ability to protect their interests. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733 (D.C. Cir. 2003) (determining that intervention in administrative review proceedings is appropriate where the movant would be harmed by a successful challenge to a regulatory action and that harm could be avoided by a ruling denying the relief sought by the petitioner).

This Court has made clear that a party need only "show[] that representation of [its] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Id.* at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). "[I]nterests need not be wholly adverse before there is a basis for concluding that existing representation of a different interest may be inadequate." *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967) (quotation marks

omitted). Courts have also recognized that federal and state entities may not share the same interests. *See Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) (finding the interests of the State of Arizona were not necessarily represented by the U.S. Forest Service), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

Movant-Intervenor States have sovereign interests in preventing harm to their natural resources and state-owned parks and other public lands within their boundaries. *See Massachusetts*, 549 U.S. at 519 (citing *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)). Movant-Intervenor States likewise have sovereign interests in protecting their public infrastructure (like state roads and waterfronts), reducing damage-related costs, and limiting emergency response costs. *See Massachusetts*, 549 U.S. at 521-23. The history of EPA's greenhouse gas emissions standards demonstrates that these interests have not always aligned with those of Respondents. EPA promulgated standards in 2012, found that those standards remained appropriate in 2017, reversed its finding of appropriateness in 2018, significantly weakened its standards in 2020, and increased the stringency of its standards in 2021 and 2024. While Movant-Intervenor States currently share EPA's broad aim of opposing the petitions seeking to vacate the Final Rule, EPA's past shifts in positions underscore that the specific interests of EPA and Movant-Intervenor States may diverge as the litigation progresses. More generally, given



our States' and Cities' distinct interests, Movant-Intervenor States may choose to advance different arguments or make different strategic choices than EPA in this litigation. During the comment period, certain opponents of the Final Rule, in arguing against EPA's heavy-duty vehicle standards, also attacked California's separate heavy-duty vehicle standards and other state-law policies and practices related to electric vehicles and charging infrastructure.<sup>18</sup> To the extent any such issues may be presented here—properly or not—California and other States that have adopted its vehicle standards pursuant to 42 U.S.C. § 7507 would have a distinct interest from EPA's in responding to such arguments. Movant-Intervenor States seek to intervene here in order to adequately protect the important and substantial interests described above.

Finally, this motion is timely, because it was filed within 30 days after the petitions for review were filed. *See* Fed. Rule of App. Proc. 15(d). For all the above reasons, Movant-Intervenor States satisfy the requirements for intervention of right.

---

<sup>18</sup> Comments of American Trucking Ass'n at 9-10 (June 16, 2023) (Docket ID EPA-HQ-OAR-2022-0985-1535); Comments of American Fuel & Petrochem. Mfrs., at 19, 21-22 (June 16, 2023) (Docket ID EPA-HQ-OAR-2022-0985-1625).

## **II. ALTERNATIVELY, MOVANT-INTERVENOR STATES SHOULD BE GRANTED PERMISSIVE INTERVENTION**

Movant-Intervenor States also satisfy the less burdensome requirements for permissive intervention. FRCP 24(b) allows a court to grant intervention to anyone who, on timely motion, “has a claim or defense that shares with the main action a common question of law or fact” so long as the intervention would not “unduly delay or prejudice the rights of the original parties.” This Court has “eschewed strict readings of the phrase ‘claim or defense,’” and its body of precedents instead “compels a flexible reading of Rule 24(b).” *EEOC*, 146 F.3d at 1046.

As demonstrated above, Movant-Intervenor States have compelling interests in preventing any weakening of the standards for model years 2027 through 2032 as well as preserving the ability of EPA to adopt robust standards in the future. In recognition of similar interests, this Court has previously permitted Movant-Intervenor States to participate in litigation over other vehicle emission standards. *See supra* at 13-14. This motion is timely and granting it will not cause undue delay or prejudice the rights of any parties. Petitioners filed their earliest petition for review on May 13, 2024, their first initial submissions deadline is June 13, 2024, and Respondents have until June 28, 2024 to file the certified index. Moreover, the Court has not yet set a briefing schedule. Thus, Movant-Intervenor States meet the requirements for permissive intervention.

## CONCLUSION

For the reasons stated herein, Movant-Intervenor States respectfully request that the Court grant them intervention as of right or, in the alternative, permissive intervention, in case number 24-1129 and all consolidated cases.

Dated: May 23, 2024

Respectfully submitted,

ROB BONTA

Attorney General of California

EDWARD H. OCHOA

TRACY L. WINSOR

Senior Assistant Attorneys General

DENNIS L. BECK, JR.

MYUNG J. PARK

Supervising Deputy Attorneys General

MICAELA M. HARMS

M. ELAINE MECKENSTOCK

Deputy Attorneys General

/s/ Theodore A. McCombs

THEODORE A. MCCOMBS

Deputy Attorney General

*Attorneys for the State of California*

FOR THE STATE OF CALIFORNIA

ROB BONTA  
ATTORNEY GENERALDENNIS L. BECK, JR.  
MYUNG J. PARK  
Supervising Deputy Attorneys General

/s/ Theodore A. McCombs  
THEODORE A. MCCOMBS  
MICAELA M. HARMS  
M. ELAINE MECKENSTOCK  
Deputy Attorneys General  
600 W. Broadway, Suite 1800  
San Diego, CA 92101  
[Theodore.McCombs@doj.ca.gov](mailto:Theodore.McCombs@doj.ca.gov)  
(619) 738-9003

FOR THE STATE OF COLORADO

PHILIP J. WEISER  
Attorney General

/s/ Carrie Noteboom  
CARRIE NOTEBOOM  
Assistant Deputy Attorney General  
DAVID A. BECKSTROM  
Senior Assistant Attorney General  
Natural Resources and Environment  
Section  
Ralph C. Carr Colorado Judicial Center  
1300 Broadway, 7th Floor  
Denver, CO 80203  
(720) 508-6285  
[carrie.noteboom@coag.gov](mailto:carrie.noteboom@coag.gov)

FOR THE STATE OF ARIZONA

KRISTIN K. MAYES  
ATTORNEY GENERALCurtis Cox  
Section Chief Counsel

/s/ Paul Phelps  
\*PAUL PHELPS  
Assistant Attorney General  
Environmental Enforcement Section  
Office of the Attorney General for the  
State of Arizona  
2005 N. Central Ave.  
Phoenix, AZ 85004  
(602) 542-8543  
[Paul.Phelps@azag.gov](mailto:Paul.Phelps@azag.gov)  
\*Admission pending

FOR THE STATE OF CONNECTICUT

WILLIAM TONG  
ATTORNEY GENERALMATTHEW I. LEVINE  
Deputy Associate Attorney General

/s/ Scott N. Koschwitz  
SCOTT N. KOSCHWITZ  
Assistant Attorney General  
Connecticut Office of the Attorney  
General  
165 Capitol Avenue  
Hartford, Connecticut 06106  
(860) 808-5250  
[scott.koschwitz@ct.gov](mailto:scott.koschwitz@ct.gov)

FOR THE STATE OF DELAWARE

KATHLEEN JENNINGS  
ATTORNEY GENERAL

*/s/ Vanessa L. Kassab*

CHRISTIAN DOUGLAS WRIGHT  
Director of Impact Litigation  
RALPH K. DURSTEIN III  
VANESSA L. KASSAB  
Deputy Attorneys General  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
(302) 683-8899  
[vanessa.kassab@delaware.gov](mailto:vanessa.kassab@delaware.gov)

FOR THE DISTRICT OF COLUMBIA

BRIAN L. SCHWALB  
ATTORNEY GENERAL

*/s/ Caroline S. Van Zile*

CAROLINE S. VAN ZILE  
Solicitor General  
Office of the Attorney General for the  
District of Columbia  
400 6th Street N.W., Suite 8100  
Washington, D.C. 20001  
(202) 724-6609  
[caroline.vanzile@dc.gov](mailto:caroline.vanzile@dc.gov)

FOR THE STATE OF HAWAII

HOLLY T. SHIKADA  
ATTORNEY GENERAL

*/s/ Lyle T. Leonard*

LYLE T. LEONARD  
Deputy Attorney General  
465 S. King Street, #200  
Honolulu, Hawaii 96813  
(808) 587-3050  
[lyle.t.leonard@hawaii.gov](mailto:lyle.t.leonard@hawaii.gov)

FOR THE STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

*/s/ Jason E. James*

JASON E. JAMES  
Assistant Attorney General  
MATTHEW J. DUNN  
Chief, Environmental  
Enforcement/Asbestos Litigation  
Division  
Office of the Attorney General  
201 W. Pointe Drive, Suite 7  
Belleville, IL 62226  
(872) 276-3583  
[jason.james@ilag.gov](mailto:jason.james@ilag.gov)

FOR THE STATE OF MAINE

AARON M. FREY  
ATTORNEY GENERAL

*/s/ Emma Akrawi*

EMMA AKRAWI  
Assistant Attorney General  
6 State House Station  
Augusta, ME 04333  
(207) 626-8800  
[Emma.Akrawi@maine.gov](mailto:Emma.Akrawi@maine.gov)

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN  
ATTORNEY GENERAL

*/s/ Michael F. Strande*

MICHAEL F. STRANDE  
Assistant Attorney General  
Maryland Department of the  
Environment  
1800 Washington Blvd.  
Baltimore, MD 21230  
(410) 537-3014  
[Michael.Strande@maryland.gov](mailto:Michael.Strande@maryland.gov)

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

TURNER H. SMITH  
Assistant Attorney General,  
Deputy Chief, Energy and Environment  
Bureau

*/s/ Matthew Ireland*

MATTHEW IRELAND  
Assistant Attorney General  
SETH SCHOFIELD  
Senior Appellate Counsel  
Office of the Attorney General  
Energy and Environment Bureau  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
(617) 727-2200  
[matthew.ireland@mass.gov](mailto:matthew.ireland@mass.gov)

FOR THE PEOPLE OF THE STATE  
OF MICHIGAN

*/s/ Elizabeth Morrisseau*

Elizabeth Morrisseau  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
6th Floor G. Mennen Williams Building  
525 W. Ottawa Street  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-7664  
[MorrisseauE@michigan.gov](mailto:MorrisseauE@michigan.gov)

FOR THE STATE OF MINNESOTA

KEITH ELLISON  
ATTORNEY GENERAL*/s/ Peter Surdo*PETER N. SURDO  
Special Assistant Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2127  
(651) 757-1061  
[peter.surdo@ag.state.mn.us](mailto:peter.surdo@ag.state.mn.us)

FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN  
ATTORNEY GENERAL*/s/ Nell Hryshko*NELL HRYSHKO  
Deputy Attorney General  
Division of Law  
25 Market St., P.O. Box 093  
Trenton, NJ 08625  
(609) 376-2735  
[nell.hryshko@law.njoag.gov](mailto:nell.hryshko@law.njoag.gov)

FOR THE STATE OF NEW MEXICO

RAÚL TORREZ  
ATTORNEY GENERAL*/s/ William Grantham*William Grantham  
Assistant Attorney General  
408 Galisteo Street  
Santa Fe, New Mexico 87501  
(505) 717-3520  
[wgrantham@nmdoj.gov](mailto:wgrantham@nmdoj.gov)

FOR THE STATE OF NEW YORK

LETITIA JAMES  
ATTORNEY GENERAL

JUDITH N. VALE

Deputy Solicitor General  
ELIZABETH A. BRODY  
Assistant Solicitor General  
YUEH-RU CHU  
Chief, Affirmative Litigation Section  
Environmental Protection Bureau*/s/ Gavin G. McCabe*GAVIN G. McCABE  
ASHLEY M. GREGOR  
Assistant Attorneys General  
28 Liberty Street, 19<sup>th</sup> Floor  
New York, NY 10005  
(212) 416-8469  
[gavin.mccabe@ag.ny.gov](mailto:gavin.mccabe@ag.ny.gov)

FOR THE STATE OF NORTH  
CAROLINA

JOSHUA H. STEIN  
ATTORNEY GENERAL

/s/ Daniel S. Hirschman  
DANIEL S. HIRSCHMAN  
Senior Deputy Attorney General  
ASHER P. SPILLER  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602  
(919) 716-6400  
[dhirschman@ncdoj.gov](mailto:dhirschman@ncdoj.gov)  
[aspiller@ncdoj.gov](mailto:aspiller@ncdoj.gov)

FOR THE COMMONWEALTH OF  
PENNSYLVANIA

MICHELLE A. HENRY  
Attorney General

/s/ Ann R. Johnston  
ANN R. JOHNSTON  
Assistant Chief Deputy Attorney  
General  
Civil Environmental Enforcement Unit  
Office of Attorney General  
Strawberry Square  
14th Floor  
Harrisburg, PA 17120  
(717) 497-3678  
[ajohnston@attorneygeneral.gov](mailto:ajohnston@attorneygeneral.gov)

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
ATTORNEY GENERAL

/s/ Paul Garrahan  
PAUL GARRAHAN  
Attorney-in-Charge  
STEVE NOVICK  
Special Assistant Attorney General  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301-4096  
(503) 947-4540  
[Paul.Garrahan@doj.state.or.us](mailto:Paul.Garrahan@doj.state.or.us)  
[Steve.Novick@doj.state.or.us](mailto:Steve.Novick@doj.state.or.us)

FOR THE STATE OF RHODE  
ISLAND

PETER F. NERONHA  
ATTORNEY GENERAL

/s/ Nicholas M. Vaz  
Nicholas M. Vaz  
Special Assistant Attorney General  
Office of the Attorney General  
Environmental and Energy Unit  
150 South Main Street  
Providence, Rhode Island 02903  
(401) 274-4400 ext. 2297  
[nvaz@riag.ri.gov](mailto:nvaz@riag.ri.gov)



FOR THE STATE OF VERMONT

CHARITY R. CLARK  
ATTORNEY GENERAL

/s/ Hannah Yindra

HANNAH YINDRA  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-3186  
[Hannah.Yindra@vermont.gov](mailto:Hannah.Yindra@vermont.gov)

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON  
ATTORNEY GENERAL

/s/ Alexandria Doolittle

ALEXANDRIA K. DOOLITTLE  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40117  
Olympia, Washington 98504-0117  
(360) 586-6769  
[Alex.Doolittle@atg.wa.gov](mailto:Alex.Doolittle@atg.wa.gov)

FOR THE STATE OF WISCONSIN

JOSHUA L. KAUL  
ATTORNEY GENERAL

/s/ Bradley J. Motl

BRADLEY J. MOTL  
JENNIFER S. LIMBACH  
Assistant Attorneys General  
Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 267-0505  
[motlbj@doj.state.wi.us](mailto:motlbj@doj.state.wi.us)  
[limbachjs@doj.state.wi.us](mailto:limbachjs@doj.state.wi.us)

FOR THE CITY AND COUNTY OF  
DENVER

KERRY TIPPER  
CITY ATTORNEY

/s/ Edward J. Gorman

EDWARD J. GORMAN  
Assistant City Attorney  
Denver City Attorney's Office  
201 W. Colfax Avenue, Dept. 1207  
Denver, Colorado 80202  
(720) 913-3275  
[Edward.Gorman@denvergov.org](mailto:Edward.Gorman@denvergov.org)

FOR THE CITY OF CHICAGO

MARY B. RICHARDSON-LOWRY  
Corporation Counsel

/s/ Myriam Zreczny Kasper  
Deputy Corporation Counsel - Appeals  
Division  
City of Chicago Department of Law  
2 North LaSalle Street, Suite 580  
Chicago, Illinois 60602  
(312) 744-3564  
[Myriam.Kasper@cityofchicago.org](mailto:Myriam.Kasper@cityofchicago.org)

FOR THE CITY OF NEW YORK

HON. SYLVIA O. HINDS-RADIX  
CORPORATION COUNSEL

ALICE R. BAKER  
Senior Counsel

/s/ Christopher G. King  
CHRISTOPHER G. KING  
Senior Counsel  
New York City Law Department  
100 Church Street  
New York, New York  
Telephone: (212) 356-2074  
[cking@law.nyc.gov](mailto:cking@law.nyc.gov)

FOR THE CITY OF LOS ANGELES

HYDEE FELDSTEIN SOTO  
LOS ANGELES CITY ATTORNEY

/s/ Michael J. Bostrom  
MICHAEL J. BOSTROM  
Senior Assistant City Attorney  
201 N. Figueroa St., 13th Floor  
Los Angeles, CA 90012  
(213) 978-1867  
[Michael.Bostrom@lacity.org](mailto:Michael.Bostrom@lacity.org)

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 3,843 words. I further certify that this motion complies with the typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using a proportionally spaced typeface (Times New Roman) in 14-point font.

Dated: May 23, 2024

/s/ Theodore A. McCombs  
Theodore A. McCombs  
*Attorney for State of California*

## CERTIFICATE OF PARTIES ADDENDUM

Pursuant to Circuit Rule 27(a)(4) and 28(a)(1)(A), I certify that the parties—including proposed intervenors and amici curiae—are set forth below.

Petitioners: Commonwealth of Kentucky; Commonwealth of Virginia; State of Alabama; State of Alaska; State of Arkansas; State of Florida; State of Georgia; State of Idaho; State of Indiana; State of Iowa; State of Kansas; State of Louisiana; State of Mississippi; State of Missouri; State of Montana; State of Nebraska; State of Oklahoma; State of South Carolina; State of South Dakota; State of Tennessee; State of Texas; State of Utah; State of West Virginia; and State of Wyoming (No. 24-1129); Arizona Trucking Association, Warren Petersen and Ben Toma (No. 24-1133); Construction Industry Air Quality Coalition, Inc. and Western States Trucking Association, Inc. (No. 24-1157).

Respondents: United States Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency.

Proposed 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.

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

Dated: May 23, 2024

/s/ Theodore A. McCombs  
Theodore A. McCombs  
*Attorney for State of California*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 23, 2024 I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system.

I further certify that all the above parties are participating in the Court's CM/ECF system and will be served electronically by that system.

Dated: May 23, 2024

/s/ Theodore A. McCombs  
Theodore A. McCombs  
*Attorney for State of California*