

ORAL ARGUMENT NOT YET SCHEDULED

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

NATURAL RESOURCES DEFENSE
COUNCIL,

Petitioner,

v.

NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION, *et al.*,

Respondents.

Case No. 22-1080

& consolidated cases

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

Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientists move to intervene in support of Respondents in Case Nos. 22-1144 and 22-1145. These consolidated cases seek review of final action of the National Highway Traffic Safety Administration (“NHTSA”) entitled *Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks*, 87 Fed. Reg. 25,710 (May 2, 2022) (“Final Rule”). Movants do not seek to intervene in Case No. 22-1080. *See* Cir. R. 15(b).

This Court should grant leave to intervene. First, Movants’ request is timely because it is submitted within 30 days of the filing of the petitions for review in

Case Nos. 22-1144 and 22-1145. Fed. R. App. P. 15(d). Second, Movants possess legally protectable interests in the dispositions of these 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 in No. 22-1144 and Respondents do not oppose this motion. Petitioner in No. 22-1145 takes no position on this motion.

BACKGROUND

A. Legal Background

“In the aftermath of the energy crisis created by the 1973 Mideast oil embargo, Congress enacted the Energy Policy and Conservation Act” (“EPCA”). *Ctr. for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1182 (9th Cir. 2008). EPCA “established a major program to bring about improved motor vehicle fuel efficiency,” including “mandatory vehicle fuel economy standards, intended to be technology forcing . . . [and] strong enough to bring about the necessary fuel conservation which a national energy policy demands.” *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1324, 1339 (D.C. Cir. 1986) (citations omitted). To that end, the statute directs NHTSA to determine “the maximum feasible average fuel

economy level” that “manufacturers can achieve in [each] model year” and to set fuel economy standards at that level. 49 U.S.C. §§ 32902(a), (b)(2)(B).¹

In determining the “maximum feasible” average fuel economy level that automakers can achieve, NHTSA must consider “technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.” *Id.* § 32902(f). NHTSA is then required to set separate average fuel economy standards applicable to automakers’ passenger car and light truck fleets. *Id.* § 32902(b)(3)(A).

In 2012, NHTSA prescribed average fuel economy standards for new light-duty vehicles of model years 2017–2021. 77 Fed. Reg. 62,624 (Oct. 15, 2012). Although “statutorily limited to promulgating standards for a maximum of five model years,” NHTSA also announced to the market a set of “‘augural’ standards for model years 2022 to 2025 based on its current best judgment of what it would have set at [the] time had it the authority to do so.” *See California v. EPA*, 940 F.3d 1342, 1346 (D.C. Cir. 2019) (cleaned up).

In 2020, however, NHTSA took final action to weaken these fuel economy standards, reducing the preexisting standard for model year 2021 and setting new

¹ The statute assigns this task to the Secretary of Transportation, who has delegated it to NHTSA. 49 C.F.R. § 1.94(c).

fuel economy standards for model years 2022–2026. 85 Fed. Reg. 24,174 (Apr. 30, 2020). Whereas the prior standards would have required approximately 5% annual increases in fuel economy, the new “less demanding standard” NHTSA finalized would “reduc[e] the required rate of increase to 1.5[%] annually.” 85 Fed. Reg. at 24,703. Movants petitioned for review of NHTSA’s 2020 action, as did numerous others, arguing that this “less demanding standard” failed to comply with EPCA’s mandate that standards be set at the “maximum feasible” level. This Court is presently holding that litigation in abeyance.²

B. The Final Rule

In 2021, NHTSA proposed to strengthen its fuel economy standards for model years 2024–2026. 86 Fed. Reg. 49,602 (Sept. 3, 2021).³ NHTSA proposed to increase the rate of annual improvement in average fuel economy to approximately 8% in each of these model years, *id.* at 49,603, and solicited public comment on alternatives that would further increase the rates of annual improvement. Movants submitted comments to NHTSA urging the agency to finalize one of its stronger proposed alternatives, as it was technologically feasible

² See Order, *Competitive Enter. Inst. v. NHTSA*, Lead Case No. 20-1145, Dkt. No. 1949799 (June 8, 2022).

³ NHTSA concluded that “statutory lead time requirements mean[t] that MY 2024 [was] the earliest model year that can currently be amended” in the fuel economy program. 87 Fed. Reg. at 25,720 (citing 49 U.S.C. § 32902(a) and (g)).

and economically practicable to do so, and stronger standards would better serve the national need for energy conservation.⁴

NHTSA's Final Rule, finalized in early 2022, prescribed standards that require 8% annual improvements in model years 2024 and 2025 as proposed, but strengthened the standards to a 10% annual improvement for model year 2026. 87 Fed. Reg. at 25,710. NHTSA estimates that the new standards could "save about 60 billion gallons of gasoline," *id.* at 25,736, and "reduce average fuel outlays over the lifetimes of affected vehicles that provide consumers hundreds of dollars in net savings," *id.* at 25,710. NHTSA projects that "the revised standards would require an industry fleet-wide average of roughly 49 mpg in [model year] 2026," *id.*, bringing the fleet to approximately the same level of average fuel economy as would have been required in model year 2025 had NHTSA's original 2012 augural standards gone into force, *compare* 77 Fed. Reg. at 62,627. These petitions followed.

STANDARD FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) states that a motion to intervene in defense of an agency action "must contain a concise statement of the interest of the moving party and the grounds for intervention." That rule does not specify any

⁴ Joint Summary Comments of Environmental, Advocacy, and Science Organizations, Docket ID: NHTSA-2021-0053-1572 (Oct. 26, 2021).

standard for intervention, but because “the policies underlying intervention” in district courts “may be applicable in appellate courts,” *Int’l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965), this Court may look to Federal Rule of Civil Procedure 24 for guidance, *cf. Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Rule 24 provides that leave to intervene be granted to a movant that timely “claims an interest relating to the ... transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2).

This Court additionally requires a showing of Article III standing by putative intervenors seeking to defend agency actions against petitions for review. *See Nat. Res. Def. Council v. EPA*, 896 F.3d 459, 462–63 (D.C. Cir. 2018). Standing is regularly shown “where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party’s benefit.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317 (D.C. Cir. 2015). An organization may defend agency action on its members’ behalf when: “(1) at least one of its members would have standing to [defend] in his or her own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the [defense] asserted nor the relief

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

STATEMENT OF INTEREST AND STANDING

Movants are nonprofit, public-interest organizations that have consistently advocated for improving the efficiency of automobiles and reducing pollution from the transportation sector.⁵ Movants are committed to advancing their members’ interest in a wider availability of a broader range of more efficient vehicles in the marketplace and to protecting their members from the effects of harmful air pollution, including effects traceable to climate change.⁶ Movants have protectable interests in shielding their members from harms that would result if NHTSA’s Final Rule is vacated.

Movants likewise have standing to intervene. 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 desiring to purchase or lease more efficient vehicles;⁷ people who live, work, and recreate near locations where NHTSA’s fuel

⁵ See, e.g., Decl. of Katherine Garcia ¶¶ 2, 5–8; Decl. of Gina Trujillo ¶ 6; Decl. of Robert Weissman ¶ 2.

⁶ See, e.g., Garcia Decl. ¶¶ 4, 14; Trujillo Decl. ¶¶ 5–6; Weissman Decl. ¶¶ 4–5.

⁷ See, e.g., Decl. of Lynsay Ayer ¶¶ 3–5; Decl. of Kathleen Woodfield ¶ 7; Decl. of Stephen Skrovan ¶ 5; Weissman Decl. ¶¶ 3–5; Decl. of Michele Timmons ¶ 9.

economy standards most directly affect air-pollution levels;⁸ people who live, work, recreate, and own property in areas that experience the harmful effects of climate change;⁹ and people with professions that benefit from the proliferation of more efficient vehicles.¹⁰

If this Court were to vacate the Final Rule, Movants' members would suffer economic, health, recreational, and aesthetic injuries from diminished deployment of more-efficient automobiles; increased air pollution; and worsened effects of climate change. *See* Sections A–C, *infra*. Movants' members therefore satisfy the injury-in-fact, causation, and redressability requirements of Article III standing. *Cf. Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 76–78 (D.C. Cir. 2020) (finding that Movant organization had standing to challenge agency action based on increased climate-related emissions and effects of climate change on a member's property); *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 112–13 (D.C. Cir. 1990) (holding that consumers who experience a reduced opportunity to purchase certain types of vehicles have standing to challenge fuel-economy rule); *Nat. Res. Def. Council v. NHTSA*, 894 F.3d 95, 104–105 (2d Cir. 2018) (finding that Movant

⁸ *See, e.g.*, Woodfield Decl. ¶¶ 2–5; Garcia Decl. ¶ 4; Timmons Decl. ¶¶ 7–8; Decl. of Patricia Maria Weinmann ¶¶ 6–7; Decl. of Kim Floyd ¶¶ 3–6; Decl. of Vicente Perez Martinez ¶¶ 4–5, 9.

⁹ *See, e.g.*, Woodfield Decl. ¶ 3; Decl. of John Steel ¶¶ 6–11; Decl. of Gerald Malczewski ¶¶ 5, 9–10; Garcia Decl. ¶ 4; Floyd Decl. ¶¶ 8–9; Perez Martinez Decl. ¶¶ 6, 10.

¹⁰ *See, e.g.*, Decl. of Douglas Snower ¶¶ 5, 7.

organizations had standing to challenge agency action based on increased automobile air pollution near members' homes).

Movants also satisfy the remaining requirements of associational standing. The interests they seek to protect by participating in these cases are germane to their organizational purposes of increasing the availability of more-fuel-efficient vehicles and reducing pollution from the transportation sector. *See Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000) (characterizing germaneness requirement as “undemanding; mere pertinence between litigation subject and organizational purpose is sufficient”); *Ctr. for Auto Safety*, 793 F.2d at 1323–1324 (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 of the Final Rule 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, 597–598 (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, 1016–1017

(D.C. Cir. 2014), and to ensure that their members’ desired automobiles are not “difficult to obtain,” *Weissman v. Nat’l R.R. Passenger Corp.*, 21 F.4th 854, 860 (Dec. 28, 2021); *see also Ctr. for Auto Safety*, 793 F.2d at 1324. The same reasoning applies here as well.

A. Consumer Injuries

Vacating the Final Rule would harm Movants’ members by limiting their options to purchase, sell, and lease more-fuel-efficient vehicles.¹¹ Under stronger fuel economy regulations like the Final Rule, automakers allocate more resources to producing and selling more-fuel-efficient vehicles, increasing the variety and quantity of more-fuel-efficient options available to customers.¹² *See, e.g.*, 87 Fed. Reg. at 25,974 & tbl. VI-5 (NHTSA explaining that “more stringent” fuel economy standards “require not-insignificant application of additional [existing efficiency] technology” to new vehicles); *id.* at 25,808 (NHTSA modeling estimating “a significant penetration of strong hybrids and plug-in hybrids” into the market to meet increasingly stringent standards); *id.* at 26,010 & tbl. VI-13 (NHTSA analysis estimating that “considerable fuel-saving technology is applied” to new vehicles in response to increasing fuel economy standards); *cf. Competitive*

¹¹ *See, e.g.*, Ayer Decl. ¶¶ 5, 9, 12; Woodfield Decl. ¶¶ 7, 10, 13; Skrovan Decl. ¶¶ 5–6; Weissman Decl. ¶¶ 3–5; Timmons Decl. ¶ 11; Snower Decl. ¶¶ 7, 11–12.

¹² *See, e.g.*, Ayer Decl. ¶¶ 9, 12; Woodfield Decl. ¶¶ 10, 13–14; Skrovan Decl. ¶ 6; Weissman Decl. ¶¶ 4–5; Snower Decl. ¶¶ 7, 11–12.

Enter. Inst., 901 F.2d at 116 (noting “overwhelming evidence to support a conclusion that the auto manufacturers’ product design and product mix decisions are not made substantially independent of the government’s imposition of fuel economy standards”).

Movants have members who plan to purchase more-fuel-efficient vehicles of model years affected by NHTSA’s Final Rule.¹³ Vacating the Final Rule will limit these members’ choices and opportunities to purchase these vehicles and will cause them to spend more on fuel.¹⁴ *Cf.* 87 Fed. Reg. at 26,022 (observing that reduced consumer fuel costs are one of “the largest source of benefits” of increasing fuel economy standards).

B. Air Pollution Injuries

If the Final Rule is vacated, Movants’ members will suffer from increased exposure to harmful air pollution caused by pollutants such as oxides of nitrogen (“NOx”), volatile organic compounds (“VOCs”), fine particulate matter (“PM”), and sulfur oxides (“SOx”). These pollutants are emitted by upstream processes in the fuel supply chain—including the production, refining, and distribution of vehicle fuel—that will increase in the absence of stronger fuel economy standards.

¹³ *See, e.g.*, Ayer Decl. ¶¶ 4–5; Woodfield Decl. ¶ 7; Skrovan Decl. ¶ 5; Timmons Decl. ¶¶ 9, 11.

¹⁴ *See, e.g.*, Ayer Decl. ¶¶ 9, 12–13; Woodfield Decl. ¶¶ 10, 13–14; Skrovan Decl. ¶ 6; Timmons Decl. ¶¶ 9, 11; Snower Decl. ¶¶ 7, 11–12.

See, e.g., 87 Fed. Reg. at 25,865–25,868 & n.617. Gasoline refining in particular results in significant emissions of NO_x, fine PM, SO_x, and benzene.¹⁵

NO_x and VOC emissions are precursors to ground-level ozone, which is associated with significant public health effects.¹⁶ Fine PM, often called “soot,” is associated with a host of adverse health effects, and can damage lung tissue, aggravate existing respiratory and cardiovascular diseases, alter the body’s defense systems against foreign materials, and cause cancer and premature death.¹⁷

Children, whose lungs are still developing, are among those at highest risk from fine PM pollution.¹⁸

According to NHTSA, stronger fuel economy standards decrease the amount of petroleum consumed and, as a result, decrease petroleum extraction and refining and the pollution associated with those activities. 87 Fed. Reg. at 25,865; *see also id.* at 25,736 (NHTSA analysis estimating that the Final Rule will reduce gasoline consumption by 60 billion gallons). Movants have many members—including

¹⁵ *See, e.g.*, NHTSA, *Final Supplemental Environmental Impact Statement for Model Year 2024–2026 Corporate Average Fuel Economy Standards* at 4-24, 4-28 Dkt. No. NHTSA-2021-0054-0019 (March 2022) (“Final SEIS”), available at https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-04/Final-SEIS-Complete_CAFE-MY-2024-2026.pdf.

¹⁶ *See* Final SEIS at 4-6.

¹⁷ *See* Final SEIS at 4-6 – 4-7.

¹⁸ *See, e.g.*, Final SEIS at 4-1, 4-4; California Air Resources Board, *Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀)*, <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health> (visited July 31, 2022).

members with children—who will be impacted by increased levels of fine PM, NO_x, and other dangerous pollutants due to their proximity to refineries.¹⁹ Many of these members live in areas where refineries contribute to PM and ozone levels that already fail to attain health-based standards under the Clean Air Act.²⁰ Increased refinery operation in these areas will worsen their already unhealthy conditions, seriously harming some of Movants’ most vulnerable members.²¹

Vacating the Final Rule will also harm Movants’ members by increasing the freight transport—conducted in large part by diesel vehicles—required to distribute the additional refined fuels required by a less-efficient national vehicle fleet, thereby worsening near-roadway pollution.²² Pollution levels are typically elevated near major roadways, causing harm to those living, working, and attending school nearby. *See* Final SEIS at 4-4 (noting that “hundreds of studies published in peer-reviewed journals” confirm that “[l]ocations close to major roadways generally have elevated concentrations of many air pollutants emitted from motor vehicles”); *id.* at 4-4 – 4-5 (discussing numerous studies finding adverse health impacts associated with spending time in traffic or near major roads). This is especially true for communities of color and low-income communities, who are disparately

¹⁹ *See, e.g.*, Woodfield Decl. ¶ 4; Perez Martinez Decl. ¶ 9; Garcia Decl. ¶ 4.

²⁰ *See, e.g.*, Woodfield Decl. ¶¶ 3–4; Perez Martinez Decl. ¶¶ 4, 9; Garcia Decl. ¶ 4.

²¹ *See, e.g.*, Woodfield Decl. ¶¶ 4, 6; Perez Martinez Decl. ¶¶ 7, 9–10; Garcia Decl. ¶ 4.

²² *See* 87 Fed. Reg. at 25,736, 25,869–25,870; Final SEIS at 4-10, 4-24.

impacted by near-roadway pollution.²³ Movants have many members who live, work, attend school, or recreate near major roadways, or transit along them, and near-roadway pollution will interfere with these members' activities and harm their health and the health of their families, especially those in the most vulnerable populations.²⁴

C. Climate Injuries

Movants' members will suffer a variety of injuries from climate change-related emissions if the Final Rule is vacated. These emissions harm Movants' members by leading to the formation of ground-level ozone and other harmful pollution, increasing wildfire frequency and severity, contributing to extreme weather events, impairing agricultural production and other economic activities, threatening property from sea level rise and other climate change effects, and decreasing opportunities to recreate outdoors and appreciate nature.²⁵

Climate change contributes to higher levels of ground-level ozone, or smog, because smog formation is influenced by air temperature and solar radiation

²³ See Final SEIS at 7-12 – 7-13 (“Studies have consistently demonstrated a disproportionate prevalence of minority and low-income populations that are living near mobile sources of pollutants and therefore are exposed to higher concentrations of criteria air pollutants.”)

²⁴ See, e.g., Woodfield Decl. ¶¶ 5–6; Timmons Decl. ¶¶ 7–8; Garcia Decl. ¶ 4; Weinmann Decl. ¶¶ 5–10; Floyd Decl. ¶¶ 4–5; Perez Martinez Decl. ¶¶ 4, 7.

²⁵ See, e.g., 87 Fed. Reg. at 25,877, 26,001; see generally, e.g., Final SEIS ch.5; U.S. Global Change Research Program, Fourth National Climate Assessment, vol. II, at 25-32 (2018) (“U.S. NCA4”); Intergovernmental Panel on Climate

level.²⁶ Exposure to ozone is associated with significant adverse public health effects, including decreased lung function, respiratory-related hospitalizations, cardiac arrest, and premature death, especially for vulnerable populations such as children, the elderly, people who work and recreate outdoors, and people with underlying respiratory conditions.²⁷

Movants have members who live or spend significant time in ozone nonattainment areas and other high-ozone areas, and some of these members and their families are members of vulnerable populations.²⁸ The ozone-related health impacts visited on Movants' members will worsen as levels of ground-level ozone increase.²⁹ 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 Final Rule were to be vacated.³⁰

Climate change also increases the frequency and severity of wildfires near where many members live, by creating hotter, drier conditions more conducive to

Change, Climate Change 2022: Impacts, Adaptation and Vulnerability, Summary for Policymakers at 10–22 (2022).

²⁶ See, e.g., U.S. NCA4, vol. II, at 27, 1130.

²⁷ See Final SEIS at 4-6; U.S. NCA4, vol. II, at 517–518.

²⁸ See, e.g., Woodfield Decl. ¶¶ 3, 6; Floyd Decl. ¶¶ 2, 5; Perez Martinez Decl. ¶¶ 4, 7; Garcia Decl. ¶ 4.

²⁹ See, e.g., U.S. NCA4, vol. II, at 517–518.

³⁰ See, e.g., Floyd Decl. ¶¶ 5–7; Perez Martinez Decl. ¶ 10; Woodfield Decl. ¶¶ 6, 13–14.

starting and exacerbating large fires.³¹ Those conditions expose Movants' members to health-harming and dangerous fire, smoke, and ash; force them to limit recreation, travel, and other outdoor activities, and to take other costly and burdensome precautions; and increase their risk of fire-related injury, death, or property damage.³²

Climate change heightens the frequency and intensity of extreme weather events, such as heat waves, storms and heavy downpours, floods, and droughts.³³ These 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.³⁴

An increase in climate-destabilizing pollution due to vacatur of the Final Rule 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, wildfires, and extreme weather.³⁵ Additionally, climate change will limit members' ability to engage in

³¹ See, e.g., Final SEIS at 5-21; U.S. NCA4, vol. II, at 27; Steel Decl. ¶ 6.

³² See, e.g., U.S. NCA4, vol. II, at 46, 67–68, 513, 521, 650; Steel Decl. ¶¶ 7–11.

³³ See, e.g., Final SEIS at S-23 – S-24; U.S. NCA4, vol. II, at 27–28.

³⁴ See, e.g., Steel Decl. ¶ 10; Floyd Decl. ¶ 9; Perez Martinez Decl. ¶ 6.

³⁵ See, e.g., Steel Decl. ¶ 10; Perez Martinez Decl. ¶¶ 5–6; Floyd Decl. ¶¶ 6–9.

winter recreation activities by reducing winter snowpack.³⁶ And it is increasingly limiting members' ability to visit, study, and appreciate natural ecosystems, including coastal ecosystems threatened by sea-level rise, as well as threatened and endangered species.³⁷

GROUNDNS FOR INTERVENTION

The Court should permit Movants to intervene in the petitions for review in Case Nos. 22-1144 and 22-1145. For the reasons stated above, Movants have interests in upholding the Final Rule, and the disposition of these petitions “may as a practical matter impair or impede [Movants’] ability to protect [their] interest[s].” Fed. R. Civ. P. 24(a)(2). Further, Respondents may not “adequately represent” Movants’ interests. *Id.*; see also *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (explaining that this “minimal” requirement is “not onerous” (quotations omitted)). Movants can make the requisite “minimal” showing, *In re Brewer*, 863 F.3d 861, 873 (D.C. Cir. 2017), “that the representation of [their] interest may be inadequate,” *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980). This Court “often conclude[s]” that “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.

³⁶ See, e.g., Malczewski Decl. ¶¶ 9–10, 12.

³⁷ See, e.g., Floyd Decl. ¶¶ 8–10, 12.

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

This Court has permitted several of the Movants here to intervene in support of respondent agencies in many previous actions seeking to invalidate NHTSA fuel economy standards. *See, e.g.*, Order, *Competitive Enter. Inst. v. NHTSA*, Case No. 20-1145 (D.C. Cir. Oct. 8, 2020), Dkt. No. 1865427 (petition for review of, *inter alia*, fuel economy standards for passenger vehicles and light trucks); Order, *Truck Trailer Mfrs. Ass’n, Inc. v. EPA*, Case No. 16-1430 (D.C. Cir. Mar. 10, 2017), Dkt. No. 1665427 (petition for review of, *inter alia*, fuel economy 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 Case Nos. 22-1144 and 22-1145.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion to Intervene contains 4,065 words and was composed in Times New Roman font, 14-point. The motion complies with applicable type-volume, typeface, and type-style requirements.

/s/ Pete Huffman

Dated: August 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2022, I served the foregoing Motion to Intervene and attachments on all parties through the Court's electronic case filing (ECF) system.

/s/ Pete Huffman