

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

No. 22-1031 (and consolidated cases)

American Lung Association, Clean Air Council, Clean Wisconsin, and National Parks Conservation Association (collectively, Movants) move under Fed. R. App. 15(d), intervene in support of Respondents U.S. Environmental Protection Agency (EPA) in the above-captioned consolidated cases. Movants have agreed with existing Public Interest Organization Movant-Intervenors, ECF 1937409, to join them in briefing and defending this matter. Respondents and State Petitioners do not oppose this motion to intervene. State Respondent-Intervenors consent to this motion to intervene. The remaining petitioners take no position on the motion at this time.

INTRODUCTION

Section 202(a) of the Clean Air Act (CAA) directs EPA to “prescribe (and from time to time revise)” standards for “the emission of any air pollutant from new motor vehicles or new motor vehicle engines,” which “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a). Petitioners challenge EPA’s final action issued pursuant to this direction and published as *Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards*, 86 Fed. Reg. 74,434 (Dec. 30, 2021) (Final Rule).

In 2012, EPA issued a final rule establishing light-duty vehicle greenhouse gas emission standards for model years 2017–2025. 77 Fed. Reg. 62,624 (Oct. 15, 2012). In 2016, EPA proposed to determine that the standards were appropriate based on an even wider range of available technologies than originally predicted and at costs similar, or lower than, those projected. 81 Fed. Reg. 87,927, 87,927-28 (Dec. 6, 2016). In 2020, however, EPA took final action to weaken greenhouse gas emission standards for 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.” Final Rule, 86 Fed. Reg. at 74,499.

EPA’s Final Rule, at issue here, finalized revised and more stringent

greenhouse gas standards in each model year from 2023 through 2026. 86 Fed. Reg. 74,434. The Final Rule builds on the analysis accompanying the prior rules as well as an updated record indicating that more stringent standards are feasible at reasonable cost and will achieve significantly greater greenhouse gas emission reduction. *Id.* at 74,435. The rates of annual improvement range from 5 percent to 10 percent compared to 1.5 percent in the 2020 rule. *Id.* at 74,440.

STANDARD FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) “requires the intervenor to file a [timely] motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

This Court additionally requires a showing of Article III standing by putative intervenors seeking to defend agency actions against petitions for review. *See Nat. Res. Def. Council v. EPA*, 896 F.3d 459, 462–63 (D.C. Cir. 2018). Standing is regularly shown “where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party’s benefit.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015). An organization may defend agency action on its members’ behalf when: “(1) at least one of its members would have standing to [defend] in his or her own right; (2) the interests it seeks to protect are germane to the

organization’s purpose; and (3) neither the [defense] asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hearth, Patio & Barbecue Ass’n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021) (cleaned up).

STATEMENT OF INTEREST AND STANDING

Movants’ clear interest in the disposition of this action supports their request for intervention as well as their standing to defend the Final Rule.

Movants are not-for-profit public health and environmental organizations committed to protecting their members and others from the impacts of dangerous air pollution from the transportation sector, including climate change, impacts on public health and the national parks, and to advancing their members’ interest in wider availability of cleaner vehicles.¹

Movants have consistently advocated for reducing emissions of greenhouse gases and other pollutants from the transportation sector²—the nation’s largest source of climate-destabilizing pollution, Final Rule, 86 Fed. Reg. at 74,490—and increasing availability of a broader range of cleaner automobiles in the marketplace.³ Movants have protectable interests in shielding their members from

¹ See Decl. of Harold Wimmer ¶¶ 3–4 (American Lung Association); Decl. of Joseph Minott ¶¶ 4–5, 24 (Clean Air Council); Decl. of Kathryn Nekola ¶¶ 3–5 (Clean Wisconsin); Decl. of Mark Rose ¶¶ 3–5 (National Parks Conservation Association).

² See, e.g., Minott Decl. ¶ 6; Nekola Decl. ¶ 6; Rose Decl. ¶ 6; Wimmer Decl. ¶ 5.

³ Decl. of David Hill ¶ 20 (American Lung Association); Decl. of Pamela Ritger ¶¶ 12–13 (Clean Wisconsin).

harms that would result if the Final Rule's standards for vehicular greenhouse gas emissions are vacated.

Movants clearly have Article III standing. As described in more detail below, their 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 effects of climate change;⁴ people who live, work, and recreate near locations where EPA's vehicular greenhouse-gas emission standards most directly affect local air-pollution levels;⁵ and people desiring to purchase or lease cleaner vehicles.⁶

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* Sections A–C, *infra*. Movants' members therefore satisfy the 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

⁴ Hill Decl. ¶¶ 17–19; Minott Decl. ¶¶ 17–18, 21–22; Ritger Decl. ¶¶ 7, 9–11, 13, 13; Rose Decl. ¶ 10.

⁵ Hill Decl. ¶¶ 11, 18, 21; Minott Decl. ¶¶ 19, 21; Ritger Decl. ¶¶ 4–6, 8–9, 11, 13; Rose Decl. ¶¶ 7–9.

⁶ Ritger Decl. ¶ 12–13.

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. The interests they seek to protect by participating in this case are germane to their organizational purposes of advocating for reductions of greenhouse gases and other air pollutants from the transportation sector and increasing the availability of lower-polluting vehicles. *See Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000) (characterizing germaneness requirement as “undemanding; mere pertinence between litigation subject and organizational purpose is sufficient”); *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1323–24 (D.C. Cir. 1986) (finding standing of “non-profit consumer organizations that work to promote energy conservation” to represent members whose “vehicles available for purchase will likely be less fuel efficient” due to challenged fuel-economy regulation). 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 regularly allowed Movants and similarly situated organizations to intervene to defend EPA’s Clean Air Act regulations addressing greenhouse gas pollution and climate change, *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’s practice of granting intervention in cases like this one recognizes that movants have a right to defend government action that protects their concrete interests and offer a distinct perspective that assists the process of judicial review.

A. Climate Injuries

Movants’ members will suffer a variety of injuries related to climate change if the Final Rule is vacated. EPA estimates that, compared to the standards it set in 2020, and over the lifetime of vehicles through 2050, the Final Rule will reduce carbon dioxide emissions by 3.1 billion metric tons, methane emissions by 3.3 million metric tons, and nitrogen oxide emissions by 97,600 tons. Final Rule, 86 Fed. Reg. at 74,488-89. Vacating the Final Rule would jeopardize these greenhouse gas emissions reductions.

Increased greenhouse-gas emissions harm Movants’ members by leading to formation of ground-level ozone and other harmful pollution, contributing to

extreme weather events and flooding, 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.⁷ 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.⁸

Movants have members who live or spend significant time in ozone nonattainment areas and other high-ozone areas,⁹ and some of these members and their families are members of vulnerable populations.¹⁰ Movants' members already experience ozone-related health impacts, and these impacts will worsen if vehicle emission standards are weakened.¹¹ Some members are forced to limit their

⁷ See Hill Decl. ¶¶ 9, 11; Minott Decl. ¶¶ 12, 15; Nekola Decl. ¶ 12; Wimmer Decl. ¶¶ 6, 10.

⁸ Hill Decl. ¶¶ 12–13, 18; Minott Decl. ¶ 12, 20–21; Wimmer Decl. ¶¶ 6–10.

⁹ Hill Decl. ¶ 21; Minott Decl. ¶ 12; Ritger Decl. ¶ 8; Rose Decl. ¶ 8.

¹⁰ See Wimmer Decl. ¶¶ 6, 8–10; Hill Decl. ¶¶ 17–18; Minott Decl. ¶¶ 20–21; Ritger Decl. ¶¶ 5, 8–9; Rose Decl. ¶ 8.

¹¹ See Hill Decl. ¶ 15; Minott Decl. ¶¶ 12, 20–21; Rose Decl. ¶ 8; Wimmer Decl. ¶¶ 6, 8–10.

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 weakened.¹²

Climate change heightens the frequency and intensity of extreme weather events, such as heat waves, storms and heavy downpours, floods, and droughts.¹³ These events harm Movants' members in many ways: by increasing risk of injury, death, or property damage;¹⁴ and decreasing property values.¹⁵

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,¹⁶ wildfires,¹⁷ and extreme weather.¹⁸ Additionally, climate change will limit members' ability to engage in winter recreation activities by reducing winter snowpack.¹⁹ And it is increasingly limiting members' ability to visit, study, and appreciate natural

¹² Hill Decl. ¶ 17; Minott Decl. ¶ 21; Ritger Decl. ¶ 8; Rose Decl. ¶¶ 8–10; Wimmer Decl. ¶ 10.

¹³ Hill Decl. ¶ 4; Minott Decl. ¶ 8; Nekola ¶¶ 9–10; Rose Decl. ¶ 10.

¹⁴ Minott Decl. ¶ 18; Ritger Decl. ¶ 7.

¹⁵ Minott Decl. ¶ 18.

¹⁶ Hill Decl. ¶ 17; Minott Decl. ¶ 21; Rose Decl. ¶ 9.

¹⁷ Rose Decl. ¶ 10.

¹⁸ Hill Decl. ¶ 17; Ritger Decl. ¶ 9; Rose Decl. ¶ 10.

¹⁹ Rose Decl. ¶ 10.

ecosystems, including national parks,²⁰ coastal ecosystems threatened by sea-level rise, as well as threatened and endangered species.²¹

B. Other Air Pollution Injuries

If the Final Rule is vacated, Movants’ members also 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 the upstream processes—including production, refining, and distribution of the gasoline needed to power higher-emitting vehicles—that will increase in prevalence if the strengthened standards are vacated.²² EPA projected that the Final Rule will reduce overall, long-term emissions of NOx, VOCs, and fine PM. Final Rule, 86 Fed. Reg. at 74,491–92.

NOx and VOC emissions are precursors to ground-level ozone, which is associated with significant public health effects.²³ Fine PM, often called “soot,” is associated with a host of adverse health effects, including asthma attacks, increased risk of hospitalization, lung cancer, strokes and premature death.²⁴ Children, whose lungs are still developing, are among those at highest risk from fine PM pollution.

²⁰ Rose Decl. ¶¶ 9-10.

²¹ Rose Decl. ¶ 10.

²² Hill Decl. ¶ 11; Minott Decl. ¶ 14.

²³ Hill Decl. ¶¶ 12–13.

²⁴ Wimmer Decl. ¶¶ 7–9.

Vacating the Final Rule will also harm Movants' members by worsening near-roadway pollution. Pollution levels are typically elevated near major roadways, causing harm to those living, working, and attending school nearby. 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.²⁵

C. Consumer and Business Injuries

Vacating the Final Rule would harm Movants' members by limiting their options to purchase lower-emitting vehicles.²⁶ 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.

Movants have members who plan to purchase lower-emitting vehicles of model years affected by EPA's Final Rule.²⁷ Vacating the Rule will limit these members' choices and opportunities to purchase these vehicles,²⁸

²⁵ Minott Decl. ¶ 19; Ritger Decl. ¶ 6; Rose Decl. ¶ 8.

²⁶ Ritger Decl. ¶ 13.

²⁷ Ritger Decl. ¶ 12.

²⁸ Ritger Decl. ¶ 13.

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 can make the requisite “minimal” showing, *In re Brewer*, 863 F.3d 861, 873 (D.C. Cir. 2017), “that the representation of [their] interest may be inadequate,” *SEC v. Dresser Indus., Inc.*, 628 F.2d 1368, 1390 (D.C. Cir. 1980) (emphasis added). As this Court “often conclude[s],” “governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736; *see also id.* at 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 interests of their members in avoiding dangerous air pollution, protecting public health and the national parks, and increasing the availability and variety of cleaner vehicles. Thus,

“examined from the perspective of [governmental parties’] responsibilities,”

Movants’ interests are not adequately represented. *Id.* at 737.

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

CONCLUSION

For the forgoing reasons, 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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