



Act: Final Action on Petitions, 87 Fed. Reg. 25,412 (Apr. 29, 2022) (“Final Action”). Petitioners and respondent state that they do not oppose intervention.

This Court should grant leave to intervene. In attacking EPA’s Endangerment Finding that greenhouse gas emissions from motor vehicles endanger public health and welfare, Petitioners seek to undo the legal foundation for existing and future Clean Air Act emissions standards that save lives, reduce climate-destabilizing pollution, and benefit Movants’ members. This motion is timely because it is submitted within 30 days of the filing of the above-captioned petition for review. Fed. R. App. P. 15(d). Movants possess legally protectable interests in the dispositions of any petitions for review of the Final Action. No existing party adequately represents those interests. Accordingly, this motion should be granted, allowing Movants to intervene in Case No. 22-1139 and all consolidated petitions for review. *See* D.C. Cir. Rule 15(b).

## **BACKGROUND**

### **A. Statutory and Regulatory Background**

To attain the “primary goal” of “pollution prevention,” 42 U.S.C. § 7401(c), Section 202(a)(1) of the Clean Air Act directs the Administrator to prescribe standards for the emission of any air pollutant from new motor vehicles “which in his 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). *See*

*Massachusetts v. EPA*, 549 U.S. 497 (2007) (holding that greenhouse gases including carbon dioxide are an “air pollutant” subject to regulation under the Clean Air Act, and reversing the denial of a rulemaking petition asking EPA to regulate carbon dioxide emissions from motor vehicles under Section 202(a)).

In 2009, EPA found that “greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.” 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009) (“Endangerment Finding”). EPA rested that finding on an “ocean of evidence” demonstrating the harmful consequences from anthropogenic climate change, *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 1123 (D.C. Cir. 2012). The extensive record documented serious public health risks, including changes in air quality, more frequent heat waves and other extreme weather events, and increases in food- and water-borne pathogens, 74 Fed. Reg. 66,496, as well as harms to public welfare such as threats to water supplies and quality, *id.* at 66,498.<sup>1</sup> Movants

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<sup>1</sup> As EPA has explained in subsequent actions, information that has become available since 2009 “strengthen[s] and further support[s] the judgment that [greenhouse gases] in the atmosphere may reasonably be anticipated to endanger the public health and welfare of current and future generations.” 81 Fed. Reg. 54,424 (Aug. 15, 2016).

submitted comments to EPA in support of the proposed Endangerment Finding and the record supporting it.<sup>2</sup>

This Court upheld the Endangerment Finding against numerous challenges, concluding that it “is consistent with *Massachusetts v. EPA* and the text and structure of the CAA, and is adequately supported by the administrative record.” *Coal. for Responsible Regulation*, 684 F.3d at 117. While the Supreme Court granted certiorari to consider “one question” relating to stationary-source permitting programs, *see Utility Air Regulatory Grp. v. EPA.*, 573 U.S. 302, 314 (2014), it denied the petitions challenging the Endangerment Finding, *Virginia v. EPA*, 571 U.S. 951 (2013); *Pacific Legal Found. v. EPA*, 571 U.S. 951 (2013).

Based upon the Endangerment Finding, EPA has promulgated a series of rules limiting greenhouse gas emissions from motor vehicles. In 2010, EPA promulgated greenhouse gas emission standards for vehicles covering model years 2012 through 2016. 75 Fed. Reg. 25,324 (May 7, 2010). In 2012, EPA prescribed greenhouse gas emission standards for new light-duty vehicles of model years 2017–2025. 77 Fed. Reg. 62,624 (Oct. 15, 2012). In 2020, however, the agency

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<sup>2</sup> Am. Lung Assn. Comments (June 23, 2009) <https://www.regulations.gov/comment/EPA-HQ-OAR-2009-0171-4004>; Am. Pub. Health Assn. et al. Comments (June 22, 2009) <https://www.regulations.gov/comment/EPA-HQ-OAR-2009-0171-8977>.

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).<sup>3</sup> In December 2021, EPA finalized revised greenhouse gas emission standards for model years 2023–2026 that strengthened the stringency of the standards that had been promulgated in 2020. 86 Fed. Reg. 74,434 (Dec. 30, 2021). EPA is currently working on new light-duty vehicle emissions standards from model years 2027 and beyond. *See id.* at 74,437.

### **B. CHECC’s Petition and EPA’s Final Action**

On February 2, 2017, Petitioners Concerned Household Electricity Consumers Coalition, Joseph S. D'Aleo, Clement Dwyer, Jr., Scott Univer, Dr. James P. Wallace, III and Douglas S. Springer (collectively, “CHECC”) submitted to EPA a “Petition for Reconsideration of ‘Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(A) of the Clean Air Act.’” In the petition, CHECC asserted that “[n]o scientists have yet devised an empirically validated theory proving that higher atmospheric CO<sub>2</sub> levels will lead to higher global average surface temperatures,” and claimed to have “invalidat[ed]” each of the lines of evidence supporting the the Endangerment Finding. Petition at 12, 13.

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<sup>3</sup> That action “was the most significant weakening of mobile source emissions standards in EPA’s history.” 86 Fed. Reg. at 74,499.

They requested that EPA “promptly convene a proceeding to reconsider the Endangerment Finding.” *Id.* at 14.

On April 29, 2022, EPA issued a published a notice in the Federal Register announcing that it had denied CHECC’s petition as well as three accompanying petitions demanding that EPA reconsider, reopen or commence a new rulemaking to undo the Endangerment Finding. 87 Fed. Reg. 25,412. In an accompanying memorandum explaining the decision, EPA explained in detail why the petitioners’ arguments did not warrant the institution of new proceedings to reopen the Endangerment Finding. *EPA’s Denial of Petitions Relating to the Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, Doc. ID EPA-HQ-OAR-2022-0129-0053 (Apr. 29, 2022).

On June 27 and 29, 2022, respectively, CHECC and FAIR Energy Foundation (No. 22-1140) petitioned this Court for review of EPA’s April 29, 2022 denial of four petitions for reconsideration of the Endangerment Finding.

### **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, 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, 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' interest in the disposition of this action supports their request for intervention as well as their standing to defend the Final Action.

Movants are nonprofit, public-interest organizations committed to protecting the public from the effects of harmful air pollution, including effects traceable to climate change.<sup>4</sup> Movants have consistently advocated for reducing emissions of greenhouse gases and other pollutants from the transportation sector<sup>5</sup>—the nation's largest source of climate-destabilizing pollution, *see* 86 Fed. Reg. at 74,490—and for the availability of a broader range of cleaner automobiles in the marketplace. Movants have protectable interests in shielding their members from harms that would result if the Final Action were vacated and the Endangerment Finding were undone.

Movants likewise have standing to intervene in this action. As described in more detail below, Movants' members would be injured if the Final Action is vacated and accordingly would have standing to defend the Final Action in their own rights. Movants' members include people who live, work, recreate, and own

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<sup>4</sup> Arnold Decl. ¶ 4; Benjamin Decl. ¶¶ 4, 5; Chandler Decl. ¶¶ 5, 6; Hill Decl. ¶ 3; Minott Decl. ¶¶ 3, 5; Wimmer Decl. ¶¶ 4, 5; Witherspoon Decl. ¶ 4; Rose Decl. ¶¶ 4, 6; Whalen Decl. ¶ 4.

<sup>5</sup> Arnold Decl. ¶¶ 4, 7; Benjamin Decl. ¶ 5; Chandler Decl. ¶¶ 3, 8; Hill Decl. ¶ 3; Minott Decl. ¶ 5; Wimmer Decl. ¶ 5; Witherspoon Decl. ¶¶ 3-6; Rose Decl. ¶ 7; Whalen Decl. ¶ 5.



property in areas that experience the effects of climate change;<sup>6</sup> people who live, work, and recreate near locations where EPA's vehicular greenhouse-gas emission standards most directly affect local air-pollution levels;<sup>7</sup> and people with professions that benefit from the proliferation of vehicles that conform to EPA's standards.<sup>8</sup>

Movants and their members have benefited from multiple EPA rules establishing emissions standards that have been based on the Endangerment Finding. These standards have resulted in, and continue to result in, substantial reductions in emissions of greenhouse gases and other dangerous air pollutants. *See, e.g.*, 75 Fed. Reg. at 25,490, Table III.F.1-2 (estimating that the standards adopted under 2010 would reduce carbon dioxide-equivalent emissions by 962 million metric tons over the lifetime of the covered model year 2012-2016 vehicles); 77 Fed. Reg. at 62,665 (estimating that standards adopted in 2010 would reduce such emissions by 1,956 million metric tons over the life of the 2017-2025 vehicles); 86 Fed. Reg. at 74,437 (concluding that EPA's 2021 standards would

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<sup>6</sup> *See* Arnold Decl. ¶ 8; Beddall Decl. ¶¶ 7-9; Chandler Decl. Decl. ¶¶ 13-15, 20, 23-25; Hill Decl. ¶¶ 8, 9, 13, 17, 18; Minott Decl. ¶¶ 7-11, 18-22; Witherspoon Decl. ¶¶ 8, 12, 15; Kinney Decl. ¶¶ 10-12, 14, 15; Whalen Decl. ¶¶ 8, 10, 12, 16, 17; Rose Decl. ¶¶ 9, 11; Fort Decl. ¶¶ 10-17.

<sup>7</sup> *See* Hill Decl. ¶ 21; Rose Decl. ¶¶ 8, 9; Hill Decl. ¶ 21; Minott Decl. ¶ 11; Witherspoon Decl. ¶ 15; Whalen Decl. ¶ 12.

<sup>8</sup> *See* Chandler Decl. ¶ 8; Whalen Decl. ¶ 5.

reduce carbon dioxide emissions by 3.1 billion tons by 2050). As explained above, the Endangerment Finding was the legal foundation for all of these rules. Were Petitioners' efforts to undo the Endangerment Finding to succeed, the benefits from reduced pollution, and similar benefits anticipated from EPA rules that will govern future vehicle model years would be reduced, delayed, or lost altogether.

Accordingly, if this Court were to vacate the Final Action, Movants' members would suffer economic, health, recreational, and aesthetic injuries from increased air pollution,<sup>9</sup> worsened effects of climate change,<sup>10</sup> and diminished deployment of lower-polluting automobiles. *See* pp. 9-10, *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 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).

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<sup>9</sup> *See* Craft Decl. ¶¶ 6, 15–16.

<sup>10</sup> *See* Fort Decl. ¶ 19.

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 of the Endangerment Finding 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 hold in this instance as well.

As are set forth in detail in the accompanying declarations, Movants and their members would be injured if the Petitioners’ challenges to the Endangerment Finding were successful.

A. Climate Injuries

Movants will suffer a variety of injuries related to climate change if the Final Action is vacated. The EPA’s Endangerment Finding has paved the way for federal standards that significantly reduce greenhouse gas emissions. EPA’s decision in the Final Action not to reopen the Endangerment Finding confirms its continued robustness, and the continued legal foundation for federal emissions standards. Absent the Endangerment Finding, rules requiring greenhouse gas emissions reductions, and the emissions reductions themselves, would be unlikely to occur, resulting in accelerated climate change and deteriorating air quality. Increased exposure to climate risks would impact Movants and their members severely.

Increased greenhouse gas emissions harm the members of Movants’ organizations and their families by exposing them to higher-than-average temperatures; more harmful pollution and ground level ozone;<sup>11</sup> extreme weather

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<sup>11</sup> *See* Craft Decl. ¶ 16.

events; flooding and sea-level rise;<sup>12</sup> property damage from sea level rise and other climate impacts; agricultural hardship; worsening allergy seasons; longer drought seasons and more frequent wildfires;<sup>13</sup> diminishing opportunities for outdoor recreation and enjoyment of nature;<sup>14</sup> and increased expenses for taxpayers and property owners.

Higher temperatures increase the formation of ground level ozone and climate change makes the ozone season both longer and more intense,<sup>15</sup> which aggravates respiratory conditions such as asthma and lung disease;<sup>16</sup> and prolongs and intensifies allergy season. Ozone pollution has also been linked to heart disease, cognitive decline, and stillbirths.<sup>17</sup> Higher-than-average temperatures also force national parks to close entire areas to the public due to more frequent wildfires,<sup>18</sup> and impose additional cooling and water bills on individuals living in

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<sup>12</sup> See Fort Decl. ¶¶ 14–17.

<sup>13</sup> See Fort Decl. ¶ 12.

<sup>14</sup> See Fort Decl. ¶ 11.

<sup>15</sup> See Arnold Decl. ¶ 9; Beddall Decl. ¶ 5; Benjamin Decl. ¶ 8; Craft Decl. ¶¶ 15–16.

<sup>16</sup> See Witherspoon Decl. ¶ 13; Hill Decl. ¶ 17; Arnold Decl. ¶ 9; Benjamin Decl. ¶ 8; Craft ¶ 8–9.

<sup>17</sup> See Craft Decl. ¶¶ 10, 13.

<sup>18</sup> See Fort Decl. ¶ 16. See also Paulina Villegas, Fire Near Yosemite Spreads Into California's Largest of the Season, Washington Post (July 25, 2022), <https://www.washingtonpost.com/climate-environment/2022/07/25/yosemite-oak-wildfire-evacuations/>.

abnormally warm regions.<sup>19</sup> Moreover, extraordinary heat can makes outdoor activity uncomfortable, and even medically unsafe, preventing people from getting the exercise necessary for cardiovascular health.<sup>20</sup>

Movants' members and their close family members live in areas that are already feeling the effects of rising temperatures.<sup>21</sup> Their preexisting medical conditions, such as asthma and sarcoidosis, have been exacerbated by heat exhaustion, harmful air pollution, and other downstream effects of higher temperatures.<sup>22</sup> In the same vein, Movants' members and their families have experienced worsening allergies due to a dramatically warmer climate and inflammatory air pollution, which will worsen if emissions are not curtailed.<sup>23</sup> Movants' members have also had to alter or limit their outdoor recreation to avoid the ill effects of extreme temperatures.<sup>24</sup> As active people who cherish their time in the outdoors and at cultural sites, this is no small cost. Not only have members cautiously cut down or canceled their visits to beautiful and historic national parks such as Yosemite, but they have also avoided playing sports and exercising

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<sup>19</sup> See Rose Decl. ¶ 11.

<sup>20</sup> See Hill Decl. ¶ 17.

<sup>21</sup> See Rose Decl. ¶ 11; Hill Decl. ¶¶ 17-18; Chandler Decl. ¶ 24.

<sup>22</sup> See Minott Decl. ¶ 20; Witherspoon Decl. ¶¶ 7, 13-14; Hill Decl. ¶¶ 17-18.

<sup>23</sup> See Minott Decl. ¶ 22; Witherspoon Decl. ¶ 12; Hill Decl. ¶ 19; Chandler Decl. ¶ 19.

<sup>24</sup> See Rose Decl. ¶¶ 10-11.

outdoors due to heat-related shortness of breath and physical discomfort.<sup>25</sup> These lifestyle changes come at a high cost to the cardiovascular health and mental wellbeing of Movants' members. Economically, increased temperatures have also been burdensome for Movants' members, forcing them to expend significant costs on additional water and cooling bills to stay cool during longer and more intense summer seasons which result from emissions-induced climate change.<sup>26</sup>

Climate change increases the severity, variability, and frequency of extreme weather events, including storms and severe flooding.<sup>27</sup> These events are further compounded by rising sea levels, another symptom of a changing climate.<sup>28</sup> More aggressive storm patterns are causing repeat flooding and damage to Movants' members properties, giving rise to high repair costs and diminishing property values.<sup>29</sup> Property damage from extreme weather events would only worsen if the Final Action were vacated, forcing Movants' members to choose between facing exorbitant repair and preventative costs or moving out of their beloved homes.

Climate change also increases the frequency and severity of wildfires and droughts in the areas where many Movants' members and families live, work and

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<sup>25</sup> See Rose Decl. ¶ 10; Hill Decl. ¶ 17; Chandler Decl. ¶ 20.

<sup>26</sup> See Rose Decl. ¶ 11.

<sup>27</sup> See Fort Decl. at ¶ 9.

<sup>28</sup> See *id.*

<sup>29</sup> See Minott Decl. ¶¶ 18-19.

recreate.<sup>30</sup> These conditions expose Movants' members to fire, smoke, and ash, posing a grave threat to their safety and health. Movants' members in these areas have started to limit their outdoor activities and travel to avoid dangerous wildfire conditions, and will have to do so more if greenhouse gas emissions are not properly reduced.<sup>31</sup>

Finally, many of Movants' members are farmers or otherwise directly impacted by agriculture in their work or local community.<sup>32</sup> These members have been encountering serious difficulty in growing a reliable and sturdy crop yield in the face of increasingly variable weather patterns; droughts; wildfires; flooding and erosion; sea-level rise; and extreme heat.<sup>33</sup> These farmers and community members depend on meaningful emissions reductions to preserve their livelihoods and provide food for their communities. These crucial reductions may not be met if the Final Action is vacated.

#### B. Other Air Pollution Injuries

If the Endangerment Finding were undone, Movants' members would also suffer from increased exposure to harmful air pollution caused by pollutants

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<sup>30</sup> See Beddall Decl. ¶ 7; Chandler Decl. ¶ 20; Witherspoon Decl. ¶ 15; Kinney Decl. ¶ 11; Whalen Decl. ¶ 16; Rose Decl. ¶¶ 9, 11; Fort Decl. ¶ 12–13, 16.

<sup>31</sup> See Rose Decl. ¶ 9.

<sup>32</sup> See Beddall Decl. ¶¶ 7–8; Whalen Decl. ¶¶ 15–16; Chandler Decl. ¶ 23–25.

<sup>33</sup> See Beddall Decl. ¶¶ 7–8; Whalen Decl. ¶¶ 15–16; Chandler Decl. ¶ 23–25.



including fine particulate matter and ground-level ozone.<sup>34</sup> These pollutants are predominantly emitted by industry and transportation.<sup>35</sup> The Final Action reaffirms the EPA's statutory duty to promulgate greenhouse gas standards for motor vehicles and industry, and regulations the Agency has promulgated pursuant to that duty actively reduce levels of harmful pollutants.<sup>36</sup>

When inhaled, fine particulate matter, ground-level ozone, and other pollutants exacerbate existing medical conditions and increase the risk of developing respiratory illnesses among healthy individuals, including lung disease.<sup>37</sup> Harmful air pollution also aggravates conditions such as asthma and sarcoidosis and increases the likelihood that such conditions will worsen or result in premature death.<sup>38</sup> Children under the age of eighteen and individuals over the age of sixty-five are the most vulnerable to these risks.<sup>39</sup>

Vacating the Final Action will harm Movants' members, particularly those who live in close proximity to highways and non-mobile sources of emissions, by increasing the risk of release of harmful pollutants and fine particulate matter into

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<sup>34</sup> See Rose Decl. ¶ 8-10; Arnold Decl. ¶¶ 4, 9; Minott Decl. ¶¶ 10-11; Wimmer Decl. ¶ 7; Witherspoon Decl. ¶ 8; Whalen Decl. ¶¶ 11-12; Hill Decl. ¶¶ 10-11.

<sup>35</sup> See Rose Decl. ¶ 7.

<sup>36</sup> See Benjamin Decl. ¶ 6.

<sup>37</sup> See Arnold Decl. ¶ 10; Hill Decl. ¶ 4; Craft Decl. ¶ 8-11.

<sup>38</sup> See Benjamin Decl. ¶ 9; Minott Decl. ¶ 19-20; Craft Decl. ¶ 8.

<sup>39</sup> See Arnold Decl. ¶ 11; Benjamin Decl. ¶ 10; Craft Decl. ¶ 12.

the air they breathe. The health of these individuals and their families is already declining due to increasing contamination from urbanization and industry, and ramping up the operation of emitting sources would only aggravate their already serious conditions and increase their vulnerability to other conditions altogether.<sup>40</sup>

Haze from air pollution also hinders enjoyment of nature by reducing visibility<sup>41</sup> and making breathing less comfortable, particularly for those with preexisting respiratory conditions.<sup>42</sup> Movants' members include avid naturalists whose ability to admire nature's beauty and enjoy in outdoor recreation is being impaired by declining air quality.<sup>43</sup> Air pollution impacts everyday life in countless ways—health, productivity, recreation, and more. Vacating the Final Action would increase the risks that Movants' members will have diminished opportunities to recreate in and enjoy the clear and fresh air that national parks and other preserved areas are intended to provide. The Final Action reaffirms the Endangerment Finding, which underpins EPA rules that reduce polluting and climate change-

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<sup>40</sup> See Minott Decl. ¶ 19; Witherspoon Decl. ¶¶ 13-14; Hill Decl. ¶¶ 17-18.

<sup>41</sup> See Arnold Decl. ¶ 4; Hill Decl. ¶ 18; Rose Decl. ¶ 10.

<sup>42</sup> See Rose Decl. ¶ 10.

<sup>43</sup> See Chandler Decl. ¶ 20.

inducing greenhouse gas emissions, and Movants' members are protected by its remaining undisturbed.<sup>44</sup>

### GROUNDNS FOR INTERVENTION

The Court should permit Movants to intervene in all petitions for review of the Final Action. For the reasons stated above, Movants have an interest in upholding the Final Action, 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, Respondent EPA 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

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<sup>44</sup> *See* Minott Decl. ¶¶ 13, 24; Whalen Decl. ¶ 18; Arnold Decl. ¶¶ 6, 8, 10–11; Benjamin Decl. ¶¶ 6, 9–11, Witherspoon Decl. ¶ 16; Hill Decl. ¶¶ 2, 13–15, 21; Rose Decl. ¶ 12; Wimmer Decl. ¶¶ 5–7, 10–12; Chandler Decl. ¶ 26.

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 the federal respondent’s “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 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 recognized that Movants have interests in defending the Endangerment Finding and the Clean Air Act protections flowing from it. Movant Environmental Defense Fund and other environmental nonprofits were granted leave to intervene to defend the Endangerment Finding, *see* Order, D.C. Cir. No. 09-1322, ECF No. 1243328 (May 5, 2010). Environmental Defense Fund and other Movants have been granted leave to participate as respondent-intervenors to defend vehicle emission standards that have been based upon the Endangerment Finding. *See, e.g.*, Order, No. 10-1092, ECF No. 1259234 (Aug. 5, 2010) (granting Environmental Defense Fund and other environmental groups leave to intervene to defend 2010 vehicle emission standards); Order, No. 22-1031, ECF No. 1943675 (Apr. 20, 2022) (granting environmental groups including Movants

Environmental Defense Fund, National Parks Conservation Association, Clean Wisconsin, Clean Air Council and American Lung Association leave to intervene to defend EPA's 2021 vehicle emission standards rule).<sup>45</sup> 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 Action. *See* D.C. Cir. R. 15(b).

Respectfully submitted,

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<sup>45</sup> Movant Environmental Defense Fund petitioned for review of EPA's 2020 action weakening emissions standards, that litigation is currently in abeyance. *See* Order, *Competitive Enter. Inst. v. NHTSA*, Lead Case No. 20-1169 (consolidated with No. 20-1145, ECF No. 1892931 (Apr. 2, 2021)).

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with all applicable type-volume and typeface requirements. It contains 4359 words and was composed in Times New Roman font, 14-point, using Microsoft Word 365.

/s/ Sean H. Donahue

DATED: July 27, 2022

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document and attachments on all parties through the Court's CM/ECF system.

/s/ Sean H. Donahue

DATED: July 27, 2022