ORAL ARGUMENT NOT YET SCHEDULED

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

COMPETITIVE ENTERPRISE INSTITUTE, *et al.*, *Petitioners*, v. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, *et al.* *Respondents*.	)	No. 20-1145

MOTION OF PUBLIC INTEREST ORGANIZATIONS TO INTERVENE IN SUPPORT OF RESPONDENTS IN CASE NO. 20-1145

Environmental Defense Fund, Conservation Law Foundation, Consumer Federation of America, Environment America, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Sierra Club and Union of Concerned Scientists respectfully move to intervene in support of Respondents in Case No. 20-1145. *See* D.C. Cir. R. 15(b). Petitioners here are Competitive Enterprise Institute, Anthony Kreucher, Walter M. Kreucher, James Leedy, and Marc Scribner (collectively, CEI). CEI challenges final actions of the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) published as *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 85

Fed. Reg. 24,174 (Apr. 30, 2020) (Final Rule). The motion to intervene is timely. *See* Fed. R. App. P. 15(d), 26(a)(1)(C).

Some movants also have petitioned for review of the Final Rule. *See* D.C. Cir. Cases No. 20-1168, 1169. But Movants and CEI will be on opposite sides of the dispute over the rule's legality: Whereas Movants will contend that EPA and NHTSA erred by weakening their vehicular greenhouse-gas emission and fuel-economy standards, respectively, CEI has argued that the agencies should further weaken those standards or, in the case of EPA's standards, eliminate them. Movants seek leave to intervene to guard against additional harm to their members that will ensue if CEI's petition is granted.

Respondents do not oppose this motion to intervene. CEI takes no position on the motion at this time.

BACKGROUND

A. Statutory and Regulatory Background

"[T]o protect and enhance the quality of the Nation's air resources," 42 U.S.C. § 7401(b)(1), the Clean Air Act mandates that EPA prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles…, which in [the agency's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare," *id.* § 7521(a)(1). In 2009, EPA found that greenhouse gases endanger

public health and welfare and that mobile-source emissions cause or contribute to that endangerment. 74 Fed. Reg. 66,496 (Dec. 15, 2009). That finding triggered EPA's duty to establish greenhouse-gas emission standards for new automobiles.

The Energy Policy and Conservation Act (EPCA) aims to reduce domestic petroleum consumption. *See* 42 U.S.C. § 6201. EPCA requires manufacturers of light-duty vehicles (passenger cars and light trucks) to achieve fleet average fuel-economy standards. *See* 49 U.S.C. § 32902(a). NHTSA must set the standards at the "maximum feasible" level, considering "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).

In 2010, EPA and NHTSA jointly published their greenhouse-gas and fuel-economy standards for new light-duty vehicles of model years 2012–2016. 75 Fed. Reg. 25,324 (May 7, 2010). In 2012, the agencies prescribed greenhouse-gas and fuel-economy standards for model year 2017–2025 vehicles. 77 Fed. Reg. 62,624 (Oct. 15, 2012).[1] EPA projected that these Clean Car Standards would "result in [model year] 2025 light-duty vehicles with nearly double the fuel economy, and approximately one half of the [greenhouse-gas] emissions compared to [model year] 2010 vehicles." *Id.* at 62,630. The agencies projected the standards would

[1] Because EPCA limits NHTSA to prescribing fuel-economy standards five years at a time, 49 U.S.C. § 32902(b)(3)(B), NHTSA's standards for model years 2022–2025 were not finalized in 2012 and are known as the "augural" standards. 77 Fed. Reg. at 62,627.

reduce carbon pollution by six billion tons over the lifetime of model year 2012–2025 vehicles.[2] In early 2017, based on an extensive and robust technical record, EPA issued a final determination that the standards for model years 2022–2025 remained appropriate and could be met at lower cost than the agency had projected in 2012.[3]

B. The Final Rule

In 2018, EPA withdrew its 2017 final determination and concluded that the model year 2022–2025 greenhouse-gas emission standards were inappropriate and should be revised. 83 Fed. Reg. 16,077 (Apr. 13, 2018). Movants and other parties challenged EPA's withdrawal, but this Court determined that such challenges must await a final rule amending the standards. *California v. EPA*, 940 F.3d 1342, 1352–53 (D.C. Cir. 2019). EPA proposed to freeze its emission standards for model years 2021–2026 at model year 2020 levels, and NHTSA proposed to prescribe fuel-economy standards for those model years at model year 2020 levels. 83 Fed. Reg. 42,986 (Aug. 24, 2018).

---

[2] EPA Regulatory Announcement, *EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks* at 3, EPA-420-F-12-051 (Aug. 2012), https://nepis.epa.gov/Exe/ZyPDF.cgi/P100EZ7C.PDF?Dockey=P100EZ7C.PDF.

[3] EPA, *Final Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* at 1, 4, EPA-420-R-17-001 (Jan. 2017), https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf.

Movants submitted many public comments in the administrative proceeding that addressed all aspects of EPA's and NHTSA's proposal.[4] Movants urged that the agencies retain the emission and fuel-economy standards established in 2012. CEI's comments, by contrast, asserted that EPA and NHTSA "ha[d] not gone far enough in making [their standards] more lenient."[5] Petitioner Walter Kreucher further contended that EPA lacks statutory authority to regulate greenhouse gases and should rescind the 2009 endangerment finding that triggered the duty to limit emissions of those pollutants.[6]

The Final Rule challenged here lowers the improvements in fleet average greenhouse-gas emissions and fuel economy from approximately 5% per year under the standards set in 2012 to approximately 1.5% per year. The rule harms

---

[4] *See, e.g.*, Comments of Center for Biological Diversity, Conservation Law Foundation, Earthjustice, Environmental Defense Fund, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists, Docket No. EPA-HQ-OAR-2018-0283-5070 (Oct. 26, 2018) [hereinafter Health and Environmental Group Comments].

[5] Comments of the Competitive Enterprise Institute at 1, Docket No. NHTSA-2018-0067-12015 (Oct. 26, 2018).

[6] Comments of Walter Kreucher at 1–4, Docket No. NHTSA-2018-0067-0444 (Aug. 13, 2018) (asserting that "[c]arbon dioxide does not rise to the level of an air pollutant that 'cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public welfare,'" that EPA "has no choice but to rescind its 2009 endangerment finding" for greenhouse gases if it does set a National Ambient Air Quality Standard for carbon dioxide, and that "EPA must abandon its duplicative carbon dioxide standard").

Movants' members substantially, and those harms would worsen if CEI's petition were granted.

STANDARD FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) states that a motion to intervene in defense of an agency action "must contain a concise statement of the interest of the moving party and the grounds for intervention." That rule does not specify any standard for intervention, but because "the policies underlying intervention" in district courts "may be applicable in appellate courts," *Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965), this Court may look to Federal Rule of Civil Procedure 24 for guidance. *Cf. Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). That rule provides for intervention as of right by a party 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 respondent agencies against petitions for review. *See Nat. Res. Def. Council v. EPA*, 896 F.3d 459, 462–63 (D.C. Cir. 2018). The putative intervenor has standing if it would be injured by a decision granting the petition. *See Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316–

19 (D.C. Cir. 2015). This Court has repeatedly held that environmental organizations have standing to sue 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). Impacts on Movants' members' choices of zero- or low-emitting and fuel-efficient vehicles are also injuries sufficient to establish standing. *See, e.g.*, *Competitive Enter. Inst. v. NHTSA*, 901 F.2d 107, 112–13 (D.C. Cir. 1990); *Public Citizen v. NHTSA*, 848 F.2d 256, 261 (D.C. Cir. 1988); *Ctr. for Auto Safety v. NHTSA*, 793 F.2d 1322, 1332 (D.C. Cir. 1986).

STATEMENT OF INTEREST AND STANDING

Movants have a strong interest in protecting their members from injuries that would result if CEI's petition succeeds in further weakening or eliminating federal standards for vehicular greenhouse-gas emissions or average fuel economy. Those injuries would stem from worsening air pollution and reduced deployment of more fuel-efficient and lower-polluting automobiles.

Movants are nonprofit public-interest organizations committed to protecting their members from impacts of dangerous air pollution, including climate change, and to advancing their members' interest in the availability of cleaner, more fuel-efficient vehicles.[7] Movants have consistently advocated for reducing emissions of

[7] *See* Decl. of Gina Coplon-Newfield ¶¶ 2–5, 13 (Sierra Club); Decl. of Mel Hall-Crawford ¶¶ 2–3 (Consumer Federation of America); Decl. of Sean Mahoney ¶¶

greenhouse gases and other pollutants from the transportation sector[8]—the nation's largest source of climate-destabilizing pollution.[9] Movants' members will be injured if CEI's petition succeeds. In particular, movants' members include those who live, work, recreate, and own property in areas that experience the effects of climate change,[10] those who live and work near petroleum refineries and major roadways where federal standards most directly affect local air-pollution levels,[11] those who are interested in purchasing low- or zero-emitting and fuel-efficient

---

3–6 (Conservation Law Foundation); Decl. of Jeremy Proville ¶¶ 3–4, 7–8, 10 (Environmental Defense Fund); Decl. of Robert Weissman ¶ 2 (Public Citizen).

[8] *See, e.g.*, Coplon-Newfield Decl. ¶¶ 7–11; Hall-Crawford Decl. ¶ 3; Mahoney Decl. ¶¶ 6–8; Weissman Decl. ¶ 2.

[9] *See* Energy Info. Admin., *Annual Energy Outlook 2020*, at 13 (Jan. 2020), https://www.eia.gov/outlooks/aeo/pdf/AEO2020%20Full%20Report.pdf.

[10] Coplon-Newfield Decl. ¶ 4; Decl. of Philip Coupe ¶¶ 2, 5; Decl. of Sara Crosby ¶¶ 2–3, 8; Decl. of Kim Floyd ¶¶ 4–9; Decl. of Daniel Hildreth ¶¶ 6–10; Decl. of Elizabeth Koenig ¶¶ 2, 6–7; Mahoney Decl. ¶ 10; Decl. of Gerald Malczewski ¶¶ 5–6, 9; Decl. of Ronald Rothschild ¶¶ 2–3; Decl. of Laurence Stanton ¶¶ 6, 10–19.

[11] Coplon-Newfield Decl. ¶ 4; Mahoney Decl. ¶ 12; Decl. of Vicente Perez Martinez ¶ 4; Rothschild Decl. ¶ 4; Decl. of Igor Tregub ¶¶ 4, 5.

vehicles,[12] and those whose livelihoods depend on professions that are impacted by motor vehicle greenhouse-gas and fuel-economy standards.[13]

A. Climate Injuries

Even EPA and NHTSA estimated that the Final Rule will increase vehicular greenhouse-gas emissions by 922.5 million metric tons over the lifetime of vehicles through model year 2029, compared to the standards prescribed in 2012,[14] and the disposition of CEI's petition may result in even greater increases. By 2040, the Final Rule will add 1.5 billion tons of climate pollution, an amount equivalent to the total pollution generated by operating 68 coal-fired power plants for five years.[15] The agencies project that freezing the standards at model year 2020 levels would lead to an additional 1.08 billion metric tons of climate pollution compared to the prior standards,[16] although the emissions impact of such a flatline is likely

[12] Decl. of Christopher Fleming ¶¶ 3–4; Decl. of Irene Leech ¶ 3; Malczewski Decl. ¶ 13, 15; Perez Martinez Decl. ¶ 8; Rothschild Decl. ¶¶ 8, 13; Stanton Decl. ¶¶ 21–22.

[13] Coupe Decl. ¶¶ 9–11; Mahoney Decl. ¶ 11; Decl. of Douglas Snower ¶¶ 6, 8–10.

[14] 85 Fed. Reg. at 25,055 tbl. VII-117, 25,172.

[15] *See* EDF Fact Sheet, *Trump Administration Moves Ahead with Harmful Clean Cars Rollback*, https://www.edf.org/sites/default/files/Cars_Final_Rollback_Factsheet.pdf.

[16] 85 Fed. Reg. at 25,055 tbl. VII-117, 25,172.

much greater[17]—and CEI has advocated even weaker standards that would result in even more climate-destabilizing emissions.[18]

These greenhouse-gas emissions will harm Movants' members by promoting formation of ozone and other harmful pollution, increasing wildfire frequency and severity, contributing to extreme weather events, impairing agricultural production and other economic activities, 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 climate conditions and solar radiation levels.[19] Exposure to ozone is associated with significant 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.[20] Movants have members who live or spend significant time

---

[17] *See* Comments of Environmental Defense Fund, Appendix A at 46–47, Docket No. NHTSA-2018-0067-12108 (Oct. 26, 2018); Health and Environmental Group Comments, Appendix A at 42–45, 167–200 (describing numerous flaws in the emissions modeling and technical analysis used by the agencies in developing the Final Rule).

[18] Comments of the Competitive Enterprise Institute at 3 ("DOT should consider freezing the standard at the current 2018 level.").

[19] *See* Ausman Decl. ¶ 6; Cooley Decl. ¶ 4; Coupe Decl. ¶ 7; Craft Decl. ¶ 6; Dello Iacono Decl. ¶ 12; Fort Decl. ¶ 17; Reidy Decl. ¶ 26.

[20] Craft Decl. ¶¶ 6–17.

in ozone nonattainment areas and other high-ozone areas,[21] and some of these members and their families are members of vulnerable populations.[22] Movants' members already experience ozone-related health impacts, and these impacts will become worse if vehicle emission standards are further weakened.[23] 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 be increased if the standards are further weakened.[24]

Climate change also increases the frequency and severity of wildfires near where many members live, by creating hotter, drier conditions more conducive to starting large fires.[25] Those conditions expose Movants' members to health-harming and sometimes life-threatening smoke and ash;[26] force them to limit recreation, travel, and other outdoor activities, and to take other costly and

---

[21] Dello Iacono Decl. ¶ 6; Floyd Decl. ¶¶ 5–7; Fort Decl. ¶ 17; Cooley Decl. ¶ 4; Brock Decl. ¶¶ 3-4; Perez Martinez Decl. ¶ 4; Rothschild Decl. ¶¶ 2–3; Tregub Decl. ¶ 4.

[22] *See* Craft Decl. ¶ 13 (describing vulnerable populations); Brock Decl. ¶¶ 2-3; Dello Iacono Decl. ¶¶ 3, 7; Ausman Decl. ¶¶ 1–2, 7; Perez Martinez Decl. ¶ 5; Reidy Decl. ¶¶ 2–7, 10; Rothschild Decl. ¶ 5.

[23] *See* Ausman Decl. ¶¶ 7–9, 11, 17; Brock Decl. ¶ 9; Coupe Decl. ¶ 7; Dello Iacono Decl. ¶ 13; Reidy Decl. ¶¶ 27.

[24] Ausman Decl. ¶¶ 11, 17; Coupe Decl. ¶ 7; Dello Iacono Decl. ¶¶ 8, 12–13; Floyd Decl. ¶¶ 8–9; Reidy Decl. ¶¶ 28–31; Tregub Decl. ¶ 5.

[25] Ausman Decl. ¶¶ 5–6; Fort Decl. ¶ 11; Reidy Decl. ¶¶ 12–13.

[26] Ausman Decl. ¶¶ 13–14; Koenig Decl. ¶ 7; Reidy Decl. ¶¶ 13–15, 25.

burdensome precautions;[27] increase their risk of fire-related injury, death, or property damage;[28] and adversely impact their property values.[29] Further weakened vehicle standards would contribute to these harms in the future.[30]

Climate change heightens the frequency and intensity of extreme weather events, such as heat waves, storms and heavy downpours, floods, and droughts.[31] These events harm Movants' members in many ways—by decreasing agricultural yields;[32] increasing risk of property damage, injury, or death;[33] decreasing property values;[34] forcing members to take actions and expend resources to prevent and address these impacts in their communities;[35] and limiting members' activities to avoid these and related hazards.[36]

---

[27] Ausman Decl. ¶¶ 13–14; Fort Decl. ¶ 15; Koenig Decl. ¶¶ 5–7; Reidy Decl. ¶¶ 16–20, 23–25.

[28] *See* Fort Decl. ¶¶ 11–12.

[29] Fort Decl. ¶ 12.

[30] *E.g.*, Ausman Decl. ¶ 17; Reidy Decl. ¶¶ 35–37, 43–44.

[31] Ausman Decl. ¶¶ 4–5; Cooley Decl. ¶ 4; Coupe Decl. ¶ 4; Dello Iacono Decl. ¶ 10; Fort Decl. ¶¶ 6–10; Reidy Decl. ¶ 39.

[32] Dello Iacono Decl. ¶¶ 10–11, 13.

[33] Crosby Decl. ¶¶ 3–7; Fort Decl. ¶¶ 8–10; Hildreth Decl. ¶ 9; Reidy Decl. ¶¶ 38, 41.

[34] Cooley Decl. ¶¶ 6–7; Stanton Decl. ¶¶ 16, 19.

[35] Crosby Decl. ¶¶ 4, 7; Stanton Decl. ¶¶ 8–12.

[36] Dello Iacono Decl. ¶ 10; Fort Decl. ¶¶ 15–16; Reidy Decl. ¶¶ 40–42; Stanton Decl. ¶¶ 7, 13–18.

Climate-destabilizing pollution from weakened vehicle standards also impairs the ability of Movants' members to recreate outdoors and appreciate and study nature. Climate change limits members' opportunities to travel and recreate outdoors by exacerbating air pollution,[37] wildfires,[38] and extreme weather.[39] Additionally, climate change will limit members' ability to engage in winter recreation activities by reducing winter snowpack.[40] And it is increasingly limiting members' ability to visit, study, and appreciate natural ecosystems, including coastal ecosystems threatened by sea-level rise, as well as threatened and endangered species.[41]

These and other climate-related injuries would worsen as a result of the further weakening of vehicle emission standards sought by CEI.[42]

B. Other Air Pollution Injuries

If CEI's petition succeeds, Movants' members will suffer from increased exposure to harmful air pollution caused by pollutants such as oxides of nitrogen

[37] *See supra* note 1924 and accompanying text; Floyd Decl. ¶¶ 8, 12; Perez Martinez Decl. ¶ 5.

[38] *See supra* note 2527 and accompanying text.

[39] *See supra* note 3136 and accompanying text.

[40] Fort Decl. ¶ 14; Malczewski Decl. ¶ 9; Stanton Decl. ¶ 7.

[41] Cooley Decl. ¶¶ 6–10; Floyd Decl. ¶ 4.

[42] *See* Ausman Decl. ¶ 17; Cooley Decl. ¶ 13; Dello Iacono Decl. ¶ 13; Fort Decl. ¶ 18; Hildreth Decl. ¶ 12; Malczewski Decl. ¶¶ 17, 22; Reidy Decl. ¶¶ 43–44; Rothschild Decl. ¶¶ 15, 18–19.

("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 less fuel-efficient vehicles that increase in prevalence when standards are weakened. Gasoline refining in particular results in significant emissions of NOx, fine PM, SOx, and benzene.[43] As the agencies have acknowledged, the Final Rule will result in significant emissions of NOx, VOCs, fine PM, and SOx, and weakening the standards further would produce even more emissions of these harmful pollutants.[44]

NOx and VOC emissions are precursors to ground-level ozone, which is associated with significant public health effects as discussed above. *Supra* at 10. Fine PM, often called "soot," is associated with a host of adverse health effects, including decreased lung function, allergic responses, chronic obstructive pulmonary disease, lung cancer, and both acute and chronic cardiovascular

---

[43] *See* EPA & NHTSA, *Final Environmental Impact Statement for The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021–2026 Passenger Cars and Light Trucks*, at 7-5, 7-15, Docket No. NHTSA-2017-0069-0738 (Mar. 2020); Craft Decl. ¶¶ 37-40.

[44] 85 Fed. Reg. at 25,060, 25,084 (projecting that over the lifetime of the affected vehicles, the Final Rule (Alternative 3) will result in 25,500 tons of NOx emissions, 147,500 tons of VOCs, 5,100 tons of PM, 22,400 tons of SOx, and 444 to 1,000 premature deaths, and that freezing the standards at 2020 levels (Alternative 1) would result in 36,600 tons of NOx, 193,500 tons of VOCs, 6,500 tons of PM, 18,600 tons of SOx, and 467 to 1049 premature deaths).

effects.[45] Children, whose lungs are still developing, are among those at highest risk from fine PM pollution.[46]

Weakening vehicle greenhouse-gas and fuel economy standards will significantly increase the amount of fuel consumed, and as a result will increase fuel refining and associated emissions.[47] Movants have many members—including members with children—who will be impacted by increased levels of fine PM, NOx, and other dangerous pollutants due to their proximity to refineries.[48] Many of these members live in areas where refineries contribute to PM, SOx, and ozone levels that already fail to attain health-based standards under the Clean Air Act.[49] Increased refinery operation in these areas will worsen their already unhealthy conditions, seriously harming some of Movants' most vulnerable members.[50]

Weakening vehicle emissions standards will also harm Movants' members by increasing freight transport of refined fuels, thereby worsening near-roadway pollution.[51] Pollution levels are typically elevated near major roadways.[52] However,

---

[45] Craft Decl. ¶¶ 18-26.

[46] Craft Decl. ¶¶ 18, 24.

[47] 85 Fed. Reg. at 25,039.

[48] Brock Decl. ¶¶ 7, 9; Proville Decl. ¶¶ 13-17.

[49] Proville Decl. ¶ 15-17.

[50] Craft Decl. ¶¶ 39, 42.

[51] Craft Decl. ¶¶ 43-47.

[52] Craft Decl. ¶ 43.

roadways are an unavoidable part of life, both because they are needed for travel and because people live, work, or attend school near them.[53] This is especially true for low-income and minority communities, who are disparately impacted by near-roadway pollution.[54] 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.[55]

Thus, if CEI's petition succeeds in weakening emissions standards, emissions of criteria and hazardous pollution from refineries and roadways will intensify, and Movants' members and their families will be harmed.

C. Consumer and Business Injuries

Weakening (or eliminating) fuel economy or emission standards harms Movants' members by limiting their options to sell and purchase low- and zero-emitting and fuel-efficient vehicles.[56] Automakers incentivize dealers to sell particular vehicle models to consumers, based in part on emissions and fuel-economy regulations.[57] Under weaker regulations, automakers allocate fewer resources to selling low- and zero-emission vehicles, limiting the variety and

[53] *See, e.g.*, Perez Martinez Decl. ¶ 4; Reidy Decl. ¶ 33; Rothschild Decl. ¶¶ 4, 18.

[54] Craft Decl. ¶ 48.

[55] *See* Reidy Decl. ¶ 33.

[56] Coupe Decl. ¶ 11; Fleming Decl. ¶ 5; Hall-Crawford Decl. ¶ 4; Lee Decl. ¶¶ 13, 15-16; Leech Decl. ¶ 3; Snower Decl. ¶ 9; Weissman Decl. ¶¶ 4–6.

[57] Lee Decl. ¶¶ 4-6.

quantity of lower-emission options available to customers.[58] Movants have members who plan to purchase low- and zero-emission and fuel-efficient vehicles in the next few years.[59] However, weaker emission and fuel-economy standards, as CEI will likely seek through this litigation, will limit these members' choices and opportunities to purchase these vehicles, and cause them to spend more on fuel.[60] Movants also have members who specialize in selling and servicing electric and hybrid vehicles as well as charging equipment, and whose business would suffer from the weakening of the standards that CEI seeks.[61]

GROUNDS FOR INTERVENTION

The Court should permit Movants to intervene in CEI's petition. For the reasons stated, the disposition of that petition "may as a practical matter impair or impede [Movants'] ability to protect [their] interest[s]." Fed. R. Civ. P. 24(a)(2). Further, Respondents do not "adequately represent" those interests. *Id.* This Court "look[s] skeptically on government entities serving as adequate advocates for

---

[58] Lee Decl. ¶¶ 5, 8-16; Dello Iacono Decl. ¶¶ 14, 22; Malczewski Decl. ¶¶ 16–17.

[59] *E.g.*, Dello Iacono Decl. ¶¶ 18–21; Perez Martinez Decl. ¶ 8; Rothschild Decl. ¶¶ 8, 11, 13; Stanton Decl. ¶ 21–22; Tregub Decl. ¶¶ 5–6; Malczewski Decl. ¶¶ 13–15; Fleming Decl. ¶¶ 3–4; Leech Decl. ¶ 3; Zalzal Decl. ¶ 8.

[60] Lee Decl. ¶¶ 13, 15-16; Coupe Decl. ¶ 12; Dello Iacano Decl. ¶¶ 14, 22; Fleming Decl. ¶ 5; Hall-Crawford Decl. ¶ 4; Leech Decl. ¶ 3; Malczewski Decl. ¶¶ 18–22; Perez Martinez Decl. ¶ 13; Rothschild Decl. ¶¶ 8, 15, 18; Stanton Decl. ¶ 22; Tregub Decl. ¶ 10; Weissman Decl. ¶¶ 4–6.

[61] Coupe Decl. ¶¶ 10–11; Snower Decl. ¶¶ 5–6, 8–10.

private parties," *Crossroads*, 788 F.3d at 321, and there is particular reason for skepticism here. Movants vehemently disagree with EPA's and NHTSA's actions and many of the factual and legal conclusions that underlie those actions. Because EPA and NHTSA presumably will rely on some of those conclusions as a basis for defending their actions against CEI's challenge, the agencies are highly unlikely to adequately represent Movants' interests in the disposition of this petition. Movants "easily me[e]t the minimal burden of showing inadequacy of representation." *Id.*

This Court has permitted several of the movants here to intervene in support of respondent agencies in analogous circumstances. *See, e.g.*, Order, *Truck Trailer Mfrs. Ass'n, Inc. v. EPA*, No. 16-1430 (D.C. Cir. Mar. 10, 2017), ECF 1665427 (petition for review of greenhouse gas and fuel economy standards for heavy-duty trailers); Order, *Robinson Enters., Inc. v. EPA*, No. 19-1175 (D.C. Cir. November 18, 2019), ECF 1816311 (petition for review of repeal and replacement of greenhouse-gas standards for power plants); Order, *Coal. For Responsible Regulation, Inc. v. EPA*, No. 09-1322 (D.C. Cir. May 5, 2010), ECF 1243328 (petition for review of EPA's endangerment finding for greenhouse gases). This motion likewise should be granted.

CONCLUSION

For the foregoing reasons, this Court should grant Movant-Intervenors leave to intervene in support of Respondents in Case No. 20-1145 and any later-filed

case in which a petitioner advocates that EPA further weaken or eliminate vehicle greenhouse-gas emission standards or that NHTSA further weaken fuel-economy standards.

Respectfully submitted,

/s/ Matthew Littleton
Matthew Littleton
Sean H. Donahue
Donahue, Goldberg, Weaver & Littleton
1008 Pennsylvania Avenue SE
Washington, DC 20003
(202) 683-6895
matt@donahuegoldberg.com

Vickie L. Patton
Peter Zalzal
Alice Henderson
Environmental Defense Fund
2060 Broadway, Ste. 300
Boulder, CO 80302
(303) 447-7214
vpatton@edf.org

Counsel for Environmental Defense Fund

Emily K. Green
Conservation Law Foundation
53 Exchange Street, Suite 200
Portland, ME 04101
(207) 210-6439
egreen@clf.org

Counsel for Conservation Law Foundation

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Counsel for Consumer Federation of America and
Public Citizen, Inc.

Michael Landis
The Center For Public Interest Research
1543 Wazee Street, Suite 400
Denver, CO 80202
(303) 573-5995 ext. 389
mlandis@publicinterestnetwork.org

Counsel for Environment America

Robert Michaels
Ann Jaworski
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
(312) 795-3713
rmichaels@elpc.org

Counsel for Environmental Law & Policy Center

Ian Fein
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
(415) 875-6100
ifein@nrdc.org

David D. Doniger
Benjamin Longstreth
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 289-6868
ddoniger@nrdc.org

Counsel for Natural Resources Defense Council, Inc.

Joanne Spalding
Andrea Issod
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5725
joanne.spalding@sierraclub.org

Paul Cort
Regina Hsu
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
(415) 217-2077
pcort@earthjustice.org

Vera Pardee
726 Euclid Avenue
Berkeley, CA 94708
(858) 717-1448
pardeelaw@gmail.com

Counsel for Sierra Club

Travis Annatoyn
Democracy Forward Foundation
1333 H Street NW
Washington, DC 20005
(202) 601-2483
tannatoyn@democracyforward.org

Counsel for Union of Concerned Scientists

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **Motion to Intervene** contains 4,155 words and was composed in Times New Roman font, 14-point, using Microsoft Word 2016. The motion complies with all applicable type-volume and typeface requirements.

/s/ Matthew Littleton
Matthew Littleton

DATED: June 1, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document and attachments on all parties through the Court's electronic case filing (ECF) system.

/s/ Matthew Littleton
Matthew Littleton

DATED: June 1, 2020