

ORAL ARGUMENT NOT 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 (L)

STATE OF CALIFORNIA, et al.,

Petitioners,

v.

ANDREW R. WHEELER, et al.,

Respondents.

No. 20-1167 (C)

and other consolidated cases

**MOTION BY THE STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, HAWAI'I, ILLINOIS, MAINE, MARYLAND,
MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, NORTH
CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT,
WASHINGTON AND WISCONSIN, THE COMMONWEALTHS OF
MASSACHUSETTS AND VIRGINIA, THE DISTRICT OF COLUMBIA,
THE CITY AND COUNTY OF DENVER, THE BAY AREA AIR QUALITY
MANAGEMENT DISTRICT, THE SACRAMENTO METROPOLITAN AIR
QUALITY MANAGEMENT DISTRICT, AND THE SOUTH COAST AIR
QUALITY MANAGEMENT DISTRICT FOR LEAVE TO INTERVENE IN
SUPPORT OF RESPONDENTS IN CASE NO. 20-1145**

Pursuant to Federal Rule of Appellate Procedure (“FRAP”) 15(d) and Circuit Rule 15(b), the States of California (by and through its Governor Gavin Newsom, Attorney General Xavier Becerra, and the California Air Resources Board), Colorado, Connecticut, Hawai’i, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the City and County of Denver, the Bay Area Air Quality Management District, the Sacramento Metropolitan Air Quality Management District, and the South Coast Air Quality Management District (collectively, “Movant-Intervenors”) hereby move the Court for leave to intervene in case number 20-1145 in support of Respondents National Highway Traffic Safety Administration (“NHTSA”), NHTSA Acting Administrator James C. Owens, Environmental Protection Agency (“EPA”), and EPA Administrator Andrew R. Wheeler.

Movant-Intervenors request intervention for the purpose of opposing any arguments that EPA and NHTSA should have adopted weaker greenhouse gas emission and fuel economy standards, respectively, for model year 2021–2026 cars and light trucks. Movant-Intervenors also seek to intervene to oppose any attempts

to limit the ability of these agencies to adopt more robust standards in the future.¹ Movant-Intervenors have a compelling interest in the availability and sale of more fuel-efficient vehicles, as reductions in fuel consumption produce myriad benefits. They also have a compelling interest in mitigating the substantial and growing adverse effects of climate change on human health, the environment, and their natural resources. They seek intervention here to protect those interests, as several recent actions taken by Respondents call into question their commitment to robustly regulate the emissions and fuel economy of cars and light trucks.

In an email sent on May 26, 2020, counsel for Movant-Intervenors requested the position of the parties regarding this motion. Counsel for petitioners Competitive Enterprise Institute, Anthony Kreucher, Walter M. Kreucher, James Leedy, and Marc Scribner (collectively, “CEI Petitioners”) responded that CEI Petitioners would not take a position in advance of seeing the motion. Counsel for Respondents stated that Respondents consent to this motion.

¹ Movant-Intervenors are petitioners in *State of California, et al. v. Wheeler, et al.*, case no. 20-1167 (May 27, 2018), and *South Coast Air Quality Management District, et al. v. NHTSA, et al.*, case no. 20-____ (May 28, 2020), which challenge the same final rule at issue in this case. The Court has consolidated case numbers 20-1145, 20-1167, 20-1168, and 20-1169. Clerk’s Order, ECF #1844674 (May 28, 2020); Clerk’s Order, ECF #1844893 (May 29, 2020).

BACKGROUND

In this case, CEI Petitioners seek review of regulations jointly published by EPA and NHTSA entitled “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) (“Rule”). In the Rule, the agencies took certain actions involving the greenhouse gas emission standards for cars and light trucks issued by EPA pursuant to Section 202 of the Clean Air Act, 42 U.S.C. § 7521, and the corporate average fuel economy (or “CAFE”) standards issued by NHTSA for those same vehicles pursuant to the Energy Policy and Conservation Act, 49 U.S.C. § 32902. The Rule establishes standards for model years 2021–2026, replacing current standards with weaker ones as well as establishing new standards for previously uncovered model years.² Whereas the prior standards increased in stringency by approximately 5% each year, the Rule reduces the rate of increased annual stringency to only approximately 1.5%.

Respondents’ own analysis concludes that the Rule’s relaxation of the prior standards will have substantial adverse environmental and public health impacts. EPA projects its new emission standards will increase fuel consumption by 78

² In 2012, EPA promulgated greenhouse gas emission standards that included model years 2021–2025, and NHTSA promulgated final CAFE standards for model year 2021 and announced “augural” standards for model years 2022–2025.

billion gallons, while NHTSA's analysis of its fuel economy standards projects that fuel consumption will rise by 84 billion gallons when compared to the final and augural standards it advanced in 2012. 85 Fed. Reg. at 24,180-81. According to Respondents, the Rule will increase greenhouse gas emissions between 867 and 923 million additional metric tons, nearly the amount emitted by the nation's cars and light trucks each year.³ *Id.* The nation's increased gasoline dependency will generate thousands of metric tons of smog-forming criteria pollutants and toxic compounds, which contribute to childhood asthma, respiratory illness, and other adverse health outcomes.⁴ As a result, Respondents project that the Rule will decrease productivity, increase hospitalizations, and cause up to 1,000 premature deaths.⁵ Respondents also expect consumers to pay more. They estimate that the

³ EPA, Fast Facts: U.S. Transportation Sector Greenhouse Gas Emissions 1990–2017 (June 2019), 2 (available at <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100WUHR.pdf>) (cars and light trucks generated 1.098 billion metric tons of greenhouse gases in 2017); *see also* 85 Fed. Reg. at 24,852 (Figure VI-89). The greenhouse gas emission and fuel consumption figures in the Rule assume that the standards established for the latest model year extend through model year 2029. The agencies then modeled the impacts based on the estimated lifetime of all vehicles sold through model year 2029. 85 Fed. Reg. at 25,085.

⁴ Final Regulatory Impact Analysis, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks (March 2020), 1618, 1619, 1622, 1623 (Tables VII-357, VII-358, VII-361, VII-362).

⁵ *Id.* at 1634, 1636 (Tables VII-372, VII-374).

average costs of vehicle ownership (including the cost to purchase a vehicle and fuel costs) will rise between \$110 and \$678 per vehicle. 85 Fed. Reg. at 24,180-81. In sum, Respondents conclude that the Rule's total impact will be negative under a 3% discount rate, costing society between \$13.1 and \$22 billion, and that the total impact only appears positive when applying a 7% rate that more heavily devalues future impacts. *Id.* at 24,178.

On May 27 and 28, 2020, Movant-Intervenors, together with other States and municipalities, filed petitions for review with this Court challenging the legality of the Rule and seeking the reinstatement of the agencies' prior, more protective standards. *See supra* n. 1. In contrast, Movant-Intervenors expect CEI Petitioners to argue that Respondents should have weakened the standards further. During the rulemaking, the agencies proposed to freeze the standards for upcoming years at model year 2020 levels. That proposal was less protective than the lax standards the agencies eventually adopted, yet the Competitive Enterprise Institute submitted comments arguing that the agencies' proposal "ha[d] not gone far enough" and advocating for "an even more lenient standard" that would keep in place "the current 2018 level" for future model years.⁶ In his comments, Petitioner Walter Kreucher even claimed that EPA lacks authority to regulate carbon dioxide

⁶ Comment Letter of Competitive Enterprise Institute, 1, 3 (Oct. 26, 2018) (Docket ID NHTSA-2018-0067-12015).

emissions from vehicles and must “abandon” its greenhouse gas emission standards.⁷ CEI Petitioners presumably will advocate those positions again here, and may also raise arguments that, if adopted by this Court, would undermine EPA and NHTSA’s respective authorities to set robust greenhouse gas emission and fuel economy standards in the future. For these reasons, Movant-Intervenors seek to intervene on behalf of Respondents to oppose any further weakening of the standards and any claims aimed at eroding the ability of EPA and NHTSA to vigorously regulate the greenhouse gas emissions and fuel economy of cars and light trucks.

LEGAL STANDARD

FRAP 15(d) authorizes intervention in circuit court proceedings to review agency action but does not articulate a standard. Based on the Supreme Court’s observation that the “policies underlying intervention” in District Court “may be applicable in appellate courts,” *International Union v. Scofield*, 382 U.S. 205, 217 n. 10 (1965), appellate courts reviewing motions brought pursuant to FRAP 15(d) “have turned to the rules governing intervention in the district courts under [Federal Rule of Civil Procedure (“FRCP”) 24].” *Sierra Club, Inc. v. EPA*, 358

⁷ Comments of Walter Kreucher, 1–4 (Aug. 13, 2018) (Docket No. NHTSA-2018-0067-0444).

F.3d 516, 517–18 (7th Cir. 2004); *see also Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997).

Under FRCP 24, a party’s ability to intervene as of right depends on four factors:

(1) the timeliness of the motion; (2) whether the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) whether the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest; and (4) whether the applicant’s interest is adequately represented by existing parties.

Fund For Animals, Inc. v. Norton, 322 F.3d 728, 731 (D.C. Cir. 2003) (internal quotation marks and citation omitted).

Under Circuit Rule 15(b), a motion to intervene in a case seeking review of an administrative action or order “will be deemed a motion to intervene in all cases” before the Court “involving the same agency action or order . . . unless the moving party specifically states otherwise.” In this case, because Movant-Intervenors are also petitioners in other cases challenging the Rule’s weakening of the standards, *see supra* n. 1, and because their interests are generally aligned with those of the petitioners in case numbers 20-1168 and 20-1169, Movant-Intervenors seek to intervene in support of Respondents only in case number 20-1145 and any other case in which a petitioner or petitioners argue that the standards established

in the Rule should be weakened further or seek to impair the agencies' future ability to adopt robust standards.⁸

ARGUMENT

Movant-Intervenors readily satisfy the requirements for intervention.

Timeliness: This motion is timely. FRAP 15(d) provides that a party seeking intervention must do so “within 30 days after the petition for review is filed.” CEI Petitioners filed their petition on May 1, 2020. Because the thirtieth day, May 31, 2020, is a Sunday, the period in which to file extends to June 1, 2020. FRAP 26(a)(1)(C).

Sufficiency of Interests: To demonstrate that they have sufficient interests to support intervention, Movant-Intervenors need only show that they satisfy the requirements for Article III standing: a concrete injury, causation, and redressability. *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). For purposes of intervention in the administrative review context, if a party seeking intervention in support of an agency demonstrates injury, then causation and

⁸ For the same reason, Movant-Intervenors are not seeking to intervene in the following cases: *National Coalition for Advanced Transportation v. EPA, et al.*, Case No. 20-____ (May 28, 2020); *Advanced Energy Economy v. Wheeler, et al.*, Case No. 20-____ (May 28, 2020); and *Calpine Corp., et al., v. EPA, et al.*, Case No. 20-____ (May 28, 2020).

redressability are also established. *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316–19 (D.C. Cir. 2015).

Movant-Intervenors would be injured if CEI Petitioners succeed in obtaining a ruling from this Court that leads to even weaker standards than those contained in the Rule. Movant-Intervenors also would be injured by a ruling that compromises the federal agencies' statutory mandates to reduce harmful vehicle emissions and promote energy conservation, such as a ruling requiring Respondents to give primacy to the "adverse traffic safety impacts" that CEI Petitioners allege are caused by the standards. Petition for Review, ECF #1841600, at 2 (May 1, 2020). Such a precedent could impair EPA and NHTSA's ability to promulgate effective and robust standards for model years beyond 2026.

The administrative record contains abundant evidence of the types of injuries Movant-Intervenors would suffer as a result of weakened standards. *See Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) ("In many if not most cases the petitioner's standing to seek review of administrative action is self-evident; no evidence outside the administrative record is necessary for the court to be sure of it."). Movant-Intervenors provided the agencies with a summary of the climate-related harms they already have begun to experience, which will grow in coming years, and which will be aggravated by increases in greenhouse gas emissions such as those the agencies admit will result from the Rule, and that also

would result from the further weakening of the standards sought by CEI Petitioners.⁹ Among the harms Movant-Intervenors detailed are longer fire seasons and the increasing severity of wildfires in California; declining mountain snowpacks on which California and Washington rely for their water supplies; an increase in extreme weather events that cause flooding and infrastructure damage in New York, Connecticut, Vermont, North Carolina, and other eastern states; sea level rise that leads to coastal flooding and erosion in Massachusetts, Virginia, California, and other coastal States; ocean acidification, which is disrupting marine fisheries in Maine and Oregon; and rising temperatures, which, among other effects, lead to more “high ozone” days in California and make it more difficult to achieve and maintain compliance with federal air quality standards. The Fourth National Climate Assessment issued by EPA and other federal agencies likewise

⁹ See, e.g., Detailed Comments of California, et al., on the Environmental Protection Agency’s and the National Highway Traffic Safety Administration’s Joint Proposed “SAFE” Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, at 15–26 (Oct. 26, 2018) (Docket ID EPA-HQ-OAR-2018-0283-5481); Analysis in Support of Comments of the California Air Resources Board on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 303–308 (Oct. 26, 2018) (Docket ID EPA-HQ-OAR-2018-0283-5054) (“California Air Resources Board Comment Letter”); Letter from Wayne Nastri, Executive Officer, South Coast Air Quality Management District to EPA and NHTSA Re Comments by the South Coast Air Quality Management District Regarding Proposed Rollback of Fuel Economy and GHG Standards and Withdrawal of California Waiver, 2–3 (Oct. 25, 2018) (Docket ID EPA-HQ-OAR-2018-0283-4124) (“South Coast Air Quality Management District Comment Letter”).

provides a detailed, region-by-region breakdown of the harmful impacts of climate change throughout the United States.¹⁰

These harms result in the loss of State lands and natural resources and the increased expenditure of funds by Movant-Intervenors on, among other things, wildfire prevention and response, strengthening and repairing infrastructure impacted by extreme weather events, the protection of public health, and additional actions necessary to meet federal air quality standards in the face of rising temperatures and increased ozone concentrations. CEI Petitioners' objective of forcing Respondents to adopt even more lenient standards would result in increased emissions and even greater harms for Movant-Intervenors.

That these types of injuries support Movant-Intervenors' standing has been demonstrated in multiple prior cases. Indeed, many Movant-Intervenors were among the parties that filed the petition that led to the Supreme Court's decision in *Massachusetts v. EPA*. Based on the same types of climate-related injuries described above, the Supreme Court decided that States had standing to sue EPA to compel it to first put in place some of the very standards that CEI Petitioners now seek to weaken. 549 U.S. 497, 522–23 (2007). On similar grounds, several

¹⁰ See U.S. Global Change Research Program, Fourth National Climate Assessment, Vol. II, Chapters 18–27 (2018), available at <https://nca2018.globalchange.gov/>. Respondents “drew upon” this report for the Rule’s climate impacts analysis. 85 Fed. Reg. at 24,849.

Movant-Intervenors successfully established standing to challenge a NHTSA decision to weaken its fuel economy program. *See Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 104 (2d Cir. 2018). And, in a similar context, this Court granted leave to several of the Movant-Intervenors here to intervene in support of EPA's and NHTSA's greenhouse gas and fuel economy standards for heavy duty trailers. Order, *Truck Trailer Mfrs. Ass'n, Inc. v. EPA*, No. 16-1430 (D.C. Cir. Mar. 10, 2017), ECF #1665427. Finally, given the "special solicitude" to which States are entitled in the standing context, *Massachusetts v. EPA*, 549 U.S. at 519, Movant-Intervenors' interests in support of intervention are particularly strong here.

Movant-Intervenors are also injured by the increases in the emission of criteria pollutants and toxic chemicals that Respondents concede will result from weaker standards. This harm would increase if CEI Petitioners were to achieve their objective of further weakening the standards. The rise in pollution will exacerbate adverse health impacts and make it more difficult for States such as California to meet the requirements in their State Implementation Plans.¹¹ Because such States depend on early planning to reduce the costs of achieving compliance,

¹¹ *See* California Air Resources Board Comment Letter at 283–88; South Coast Air Quality Management District Comment Letter at 2.

changes in federal regulatory approaches that significantly increase criteria emissions are costly and disruptive to those States.¹²

As this Court explained in *Crossroads*, once a putative intervenor establishes injury related to a challenge to an agency’s action, “then it rationally follows the injury is directly traceable to [that challenge],” and the injury can be prevented “by defeating [the] challenge.” 788 F.3d at 316. “Put differently, if [Movant-Intervenors] can prove injury, then [they] can establish causation and redressability.” *Id.* That this is the case here is supported by the Supreme Court’s holding in *Massachusetts v. EPA* that the State petitioners had demonstrated causation and redressability because “reducing domestic automobile emissions is hardly a tentative step” and “would slow the pace of global emissions increases, no matter what happens elsewhere.” 549 U.S. at 524-26. EPA confirmed the link between vehicle emissions and climate harms in its 2009 endangerment finding in which it found that “the combined emissions of [] greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare.” 74 Fed. Reg. 66,496 (Dec. 15, 2009). The cars and light trucks regulated by the standards at issue here constitute one of the nation’s most significant sources of greenhouse gases, accounting for

¹² California Air Resources Board Comment Letter at 284–85.

more than 17% of the nation's greenhouse gas emissions in 2017.¹³ Similarly, the fuel they consume is a significant source of harmful criteria pollutants.¹⁴ With their petition, CEI Petitioners seek to further relax the standards regulating these sources, which would enlarge the nation's dependency on oil, increase the pace of emissions, and worsen Movant-Intervenors' injuries. Denial of their petition would avoid that outcome.

In sum, Movant-Intervenors meet the requirements for standing, and have demonstrated sufficient interests to support intervention as of right.

Impairment of Movant-Intervenors' Interests: For the above reasons, disposition of the CEI Petitioners' petition could impair or impede movants' ability to protect their interests. *See Fund for Animals*, 322 F.3d at 733 (intervention in administrative review proceedings is appropriate where the movant would be harmed by a successful challenge to a regulatory action and that harm could be avoided by a ruling denying the relief sought by the petitioner).

Inadequate Representation: The final element under FRCP 24(a) is whether movants' interests are adequately protected by the existing parties. This Court has

¹³ EPA, Fast Facts: U.S. Transportation Sector Emissions (June 2019), available at <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions>.

¹⁴ California Air Resources Board Comment Letter at 287–88; South Coast Air Quality Management District Comment Letter at 2.

made clear that a party need only “show[] that representation of [its] interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Fund for Animals*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). “[I]nterests need not be wholly adverse before there is a basis for concluding that existing representation of a different interest may be inadequate.” *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967) (quotation marks omitted). Courts have also recognized that federal and state entities may not share the same interests. *See Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) (finding the interests of the State of Arizona were not necessarily represented by the Forest Service); *see also Crossroads*, 788 F.3d at 321 (noting that this Court “looks skeptically” on federal agencies adequately advocating on behalf of private parties, “even when the interest of a federal agency and potential intervenor can be expected to coincide”).

Movant-Intervenors have unique sovereign and quasi-sovereign interests in limiting climate change pollution in order to prevent and mitigate loss and damage to publicly-owned coastal property, to protect public infrastructure, and to limit emergency response costs borne by the public. *See Massachusetts v. EPA*, 549 U.S. at 521–23. These interests have not always aligned with those of Respondents. As mentioned above, many Movant-Intervenors filed the petition seeking to compel EPA to address climate change by regulating the greenhouse gas

emissions from cars and light trucks. Movant-Intervenors objected to Respondents' 2018 proposal to freeze the standards for upcoming model years. Moreover, they have filed petitions seeking to vacate the Rule and restore the agencies' prior, more protective standards. This constitutes more than the requisite minimal showing that Respondents may not adequately represent Movant-Intervenors' interests.

Permissive Intervention: For the above reasons, Movant-Intervenors readily satisfy the requirements for intervention as of right. They also meet the less burdensome requirements for permissive intervention under FRCP 24(b). That provision allows the court to “permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact” so long as the motion is timely and intervention would not “unduly delay or prejudice the rights of the original parties.” FRCP 24(b)(1)(B), (3). This Court has “eschewed strict readings of the phrase ‘claim or defense’” and its body of precedents instead “compels a flexible reading of Rule 24(b).” *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

Movant-Intervenors meet the requirements for permissive intervention. As demonstrated above, they have compelling interests in preventing any further weakening of the standards for model years 2021–2026 and preserving the ability of EPA and NHTSA to adopt robust standards in the future. This motion is timely

and granting it will not cause undue delay or prejudice to the rights of any parties. CEI Petitioners filed their petition for review mere weeks ago on May 1, 2020, its initial submissions are not due until June 22, 2020, and Respondents have until July 6, 2020 to file the certified index. Order, ECF #1844068 (May 22, 2020). Moreover, the Court has not yet set a briefing schedule.

CONCLUSION

For the reasons stated, Movant-Intervenors respectfully request that the Court grant their motion to intervene in case number 20-1145 and any other case in which a petitioner or petitioners argue that the standards established in the Rule should be weakened further, or seek to erode the ability of EPA and NHTSA to regulate the greenhouse gas emissions and fuel economy of cars and light trucks.

Dated: May 29, 2020

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), Movant-Intervenors submit this certificate.

Parties, Intervenors, and Amici: The following list provides the current parties, intervenors, and amici in case number 20-1145:

Petitioners: Competitive Enterprise Institute; Anthony Kreucher; Walter M. Kreucher; James Leedy; and Marc Scribner.

Respondents: National Highway Traffic Safety Administration; James C. Owens, in his official capacity as Acting Administrator, National Highway Traffic Safety Administration; Environmental Protection Agency; and Andrew R. Wheeler, in his official capacity as Administrator of the Environmental Protection Agency.

Movant-Intervenors in Support of Respondents: Alliance for Automotive Innovation.

Action Under Review: “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).

Related Cases: The following cases involve challenges to the same agency action at issue in case number 20-1145: *State of California, et al. v. Wheeler, et al.*, Case No. 20-1167 (May 27, 2020); *Natural Resources Defense Council, et al.*

v. Wheeler, et al., Case No. 20-1168 (May 27, 2020); *Environmental Defense Fund, et al. v. Owens, et al.*, Case No. 20-1169 (May 27, 2020); *South Coast Air Quality Management District, et al. v. NHTSA, et al.*, Case No. 20-____ (May 28, 2020); *National Coalition for Advanced Transportation v. EPA, et al.*, Case No. 20-____ (May 28, 2020); *Advanced Energy Economy v. Wheeler, et al.*, Case No. 20-____ (May 28, 2020); *Calpine Corp., et al. v. EPA, et al.*, Case No. 20-____ (May 28, 2020).

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS**

I hereby certify that the foregoing Motion by the State of California, et al. for Leave to Intervene in Support of Respondents in Case No. 20-1145, dated May 29, 2020, complies with the type-volume limitations of Rule 27 of the Federal Rules of Appellate Procedure. According to Microsoft Word, the word processing system used to compose this motion, this document contains 3,773 words excluding the parts exempted by Rule 32(f).

I further certify that this document complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because this document has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

/s/ David Zaft

DAVID ZAFT

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Motion by the State of California, et al. for Leave to Intervene in Support of Respondents in Case No. 20-1145 to be filed on May 29, 2020 using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ David Zaft _____

DAVID ZAFT