

ORAL ARGUMENT NOT YET SCHEDULED

No. 17-1086

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**ALLIANCE OF AUTOMOBILE
MANUFACTURERS,**

Petitioner,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,**

Respondents.

On Petition for Review of Determination of the U.S. Environmental
Protection Agency**MOTION TO INTERVENE OF THE STATE OF CALIFORNIA,
BY AND THROUGH GOVERNOR EDMUND G. BROWN JR.,
THE CALIFORNIA AIR RESOURCES BOARD, AND
ATTORNEY GENERAL XAVIER BECERRA**

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Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the State of California, by and through Governor Edmund G. Brown Jr., the California Air Resources Board (ARB), and Attorney General Xavier Becerra, respectfully moves to intervene as a Respondent to defend the U.S. Environmental Protection Agency's (EPA) "Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation" (hereafter, Midterm Evaluation). Pursuant to Circuit Rule 15(b), California intends this motion to intervene to apply to all petitions for review of the Midterm Evaluation.

INTRODUCTION

In its Midterm Evaluation, EPA determined that its existing greenhouse gas emissions standards for light-duty vehicles with model years 2022 through 2025 remain appropriate. Specifically, EPA found that the standards are feasible at reasonable cost, will achieve significant carbon-dioxide emissions reductions, and will provide significant benefits to consumers and to the public. EPA also found that the auto industry is thriving and meeting the standards more quickly than required. Accordingly, EPA left the standards in place, unaltered.

California has compelling interests in defending the findings EPA made and the ultimate conclusion EPA reached in the Midterm Evaluation, if those findings and conclusion are in fact subject to judicial review in this Court (or any other).

EPA's greenhouse gas emissions standards for light-duty vehicles are currently coordinated with California's standards for the same vehicles and model years. This coordination reflects the pioneering role California has long played in the field of air pollution regulation, especially with regard to vehicles. *See Motor & Equip. Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1109-1110 (D.C. Cir. 1979). It also reflects California's long-standing commitment to supporting national efforts to reduce air pollution. Those same interests support California's intervention to defend EPA's determination, in the Midterm Evaluation, to leave the existing national standards in place.

Indeed, the Midterm Evaluation draws upon a July 2016 Draft Technical Assessment Report that was jointly issued by EPA, the National Highway Traffic Safety Administration, and California's ARB. ARB (like Petitioner Alliance of Automobile Manufacturers) also participated directly in the Midterm Evaluation by providing substantive comments on EPA's Proposed Determination. California has a compelling interest in defending the findings and conclusions EPA reached through this process—all of which are fully supported by the record.

Finally, California seeks to intervene because the greenhouse gas emission reductions that will be achieved through the light-duty vehicle standards are an important part of broader efforts to reduce these harmful, climate-altering emissions. California has substantial interests in strong federal emissions

standards that can secure the nationwide emissions reductions crucial to mitigating climate impacts—impacts already being felt in California. Any weakening or delay of the national standards will result in increased harms to our natural resources, our economy, and our people. While delay or weakening of the standards themselves is not directly at issue in this challenge to the Midterm Evaluation, California is concerned that an adverse decision or other action in this case might ultimately lead to such a result. California has a compelling interest in minimizing those risks by intervening to defend the Midterm Evaluation.

BACKGROUND

In 2009, EPA found that greenhouse gas emissions qualify as “pollutants” for purposes of the Clean Air Act because they endanger public health and welfare. Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009). In 2010, EPA and the National Highway Traffic Safety Administration jointly issued standards to reduce greenhouse gas emissions from light-duty vehicles (cars and light trucks) for model years 2012 to 2016. Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010). This Court upheld the endangerment findings and the light-duty vehicle standards in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 113 (D.C. Cir. 2012), *rev’d in part on other grounds sub nom Util. Air*

Regulatory Grp. v. EPA, 134 S. Ct. 2427 (2014). The Court granted a motion by a number of States, including California, to intervene in that action—a motion made on grounds similar to those raised here. *See id.* at pp. 107-113.

In 2012, EPA and the National Highway Traffic Safety Administration jointly issued a second set of standards covering model years 2017 to 2025. 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012). In that 2012 rulemaking, EPA also established a regulatory commitment to determine, no later than April 1, 2018, whether the standards for model years 2022 through 2025 remained appropriate. *See* 40 C.F.R. 86.1818-12(h). The Midterm Evaluation fulfills that commitment.

The Midterm Evaluation is based on a thorough and careful review of an extensive record, including the Draft Technical Assessment Report issued jointly by EPA, the National Highway Traffic Safety Administration, and ARB; a Technical Support Document prepared by EPA and released with the agency's Proposed Determination; hundreds of other published reports; and thousands of public comments.

ARGUMENT

This motion to intervene meets the standards under Federal Rule of Appellate Procedure 15(d) as well as Federal Rule of Civil Procedure 24, which this Court

has sometimes incorporated into its intervention analysis. *See, e.g., Building & Const. Trades Dept., AFL-CIO v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (quoting *Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965) and applying Rule 24 standards to intervention in appellate proceedings). The main issues under either Federal Rule of Appellate Procedure 15(d) or Federal Rule of Civil Procedure 24 are timeliness and the proposed intervenor's interest in the case. *See* Fed. R. App. Proc. 15(d); Fed. R. Civ. Pro. 24.

This motion is timely because it was filed within 30 days of the Petition for Review, which was filed on March 13, 2017. *See* Fed. R. App. Proc. 15(d).

California's interests in the Midterm Evaluation are also more than sufficient to support intervention. “[C]onstitutional standing is alone sufficient to establish that [a proposed intervenor] has an interest relating to the property or transaction which is the subject of the action.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (internal quotation omitted). States have “independent interest[s] in all the earth and air within [their] domain” that entitle them to “special solicitude in ... standing analysis.” *See Massachusetts v. EPA*, 549 U.S. 497, 519-20 (2007) (internal quotation omitted). Climate change, the Supreme Court observed, has already led to “serious and well-recognized” harms to State interests, including accelerated rising of sea levels that are swallowing States’

coastal lands. *Id.* at 521-22.¹ The Court also concluded that unregulated greenhouse gas emissions contribute to these injuries to States, satisfying the causation inquiry for standing. *Id.* at 523-525. Finally, the Court held that some reduction in, or some regulation of, greenhouse gas emissions could slow or reduce the onset of climate-change-related harms, which was enough to meet the redressability requirement for standing, even if the reduction or regulation would not, in and of itself, eliminate the risks of climate change. *Id.* at 525-26.

These holdings apply squarely to the case at bar, in which California seeks to defend a Midterm Evaluation affirming standards that reduce the very same emissions. Consistent with these holdings, this Court has allowed California and other States to intervene to defend federal greenhouse gas regulations, including standards similar to those considered in the Midterm Evaluation. *See, e.g., Coalition for Responsible Regulation, Inc.*, 684 F.3d at 107-113. The same interests recognized in *Massachusetts* and these other cases could be impaired by any delay or weakening of the Midterm Evaluation as a result of this litigation.

¹ EPA has similarly, and more recently, concluded that climate change threatens public health by increasing the likelihood of deaths and illnesses related to heat waves, ozone pollution, and extreme weather. Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed Reg. 73,478, 73,486 (Oct. 25, 2016). It also threatens public welfare by “plac[ing] large areas of the country at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts.” *Id.*

California accordingly has standing and more than sufficient interests to support granting this motion to intervene.

In addition, as noted above, California's standards are currently coordinated with the national standards considered in the Midterm Evaluation. And the Midterm Evaluation followed from the Draft Technical Assessment Report that was jointly issued by EPA, the National Highway Traffic Safety Administration and California's ARB. These efforts to coordinate with the relevant federal agencies and participate alongside those agencies in assessing technical issues reflects California's interest in strong national standards that reduce greenhouse gas emissions.

Finally, although California's interests may appear, at this early stage in the litigation, to be aligned with EPA's interests in defending the Midterm Evaluation, that has not always been the case in the past and may not always be the case in the future. *See, e.g., Massachusetts*, 549 U.S. 497 (suit by Massachusetts to compel EPA to make endangerment finding for greenhouse gas emissions and to regulate greenhouse gas emissions from vehicles). EPA may, for example, seek to resolve this case short of judgment in ways that could adversely affect California's interests. Indeed, courts have recognized that the interests of one governmental entity may not be the same as another governmental entity. *See, e.g., Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995),

abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011). California seeks to intervene here so that it may adequately protect the important and substantial interests described above.

CONCLUSION

For the foregoing reasons, the State of California, by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Xavier Becerra, respectfully requests that this Court grant it leave to intervene to defend the Midterm Evaluation.

Dated: March 14, 2017

Respectfully Submitted,

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**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,**

Respondents.

On Petition for Review of Determination of the U.S. Environmental
Protection Agency**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

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Attorneys for Proposed Intervenor

Pursuant to D.C. Circuit Rule 28(a)(1), the State of California, by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Xavier Becerra, hereby certifies as follows:

(A) Parties and Amici

There were no district court proceedings in this petition for review of agency action. The parties before this Court are:

Petitioner: Alliance of Automobile Manufacturers;

Respondents: U.S. Environmental Protection Agency (EPA); E. Scott Pruitt, in his official capacity as EPA Administrator.

There are no other intervenors and no amici at this time.

(B) Rulings Under Review

Petitioners seek review of the action by EPA titled Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation.

(C) Related Cases

Movants are not aware of any related cases.

Dated: March 14, 2017

Respectfully Submitted,

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Senior Assistant Attorneys General
Gavin G. McCabe
Supervising Deputy Attorney General

/s/ M. Elaine Meckenstock
M. Elaine Meckenstock
Deputy Attorney General
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CERTIFICATE OF SERVICE

Case **Alliance of Automobile** No. 17-1086
Name: **Manufacturers v. US**
EPA, et al.

I hereby certify that on March 14, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MOTION TO INTERVENE OF THE STATE OF CALIFORNIA, BY AND THROUGH GOVERNOR EDMUND G. BROWN JR., THE CALIFORNIA AIR RESOURCES BOARD, AND ATTORNEY GENERAL XAVIER BECERRA

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 14, 2017 at Oakland, California.

M. Elaine Meckenstock

/s/ M. Elaine Meckenstock

Declarant

Signature