

CASE NOT YET SCHEDULED FOR ORAL ARGUMENT

IN THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

AMERICAN PUBLIC HEALTH
ASSOCIATION, *et al.*,

Petitioners,

v.

Case No. 26-1037

U.S. ENVIRONMENTAL
PROTECTION AGENCY and LEE
ZELDIN, Administrator, U.S.
Environmental Protection Agency,

Respondents.

**MOTION OF STATES OF WEST VIRGINIA, KENTUCKY,
AND 23 OTHER STATES TO INTERVENE AS RESPONDENTS**

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In this proceeding for review, Petitioners challenge a decision by the Environmental Protection Agency that rescinds the 2009 Greenhouse Gas Endangerment Finding, which in turn served as a prerequisite for regulating emissions from new motor vehicles and new motor vehicle engines. *See* 91 Fed. Reg. 7686 (Feb. 18, 2026) (“Final Rule”). Under Federal Rule of Appellate Procedure 15(d), the States of West Virginia, Kentucky, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming move to intervene as Respondents.

BACKGROUND

The Clean Air Act “establishes a comprehensive program for controlling and improving the nation’s air quality through state and federal regulation.” *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 821-22 (5th Cir. 2003). This case involves one part of that program.

In 2009, in the context of evaluating potential vehicle emission standards under CAA Section 202, EPA decided that a “well mixed” and “aggregate” group of six gases, including carbon dioxide, endangered public health or welfare. *Coal. for Responsible Regul., Inc. v. EPA*, 684 F.3d 102, 114 (D.C.

Cir. 2012). That finding in turn led to a “cascading series of greenhouse gas-related rules and regulations” that reached beyond the vehicle-emission context and fundamentally reshaped America. *Id.* Relying heavily on agency deference, this Court upheld the Endangerment Finding. *Id.* at 117. But the U.S. Supreme Court has since sustained two challenges to major rules stemming from that finding, largely because they each lacked a sufficient nexus with the CAA’s text while imposing sweeping regulatory changes. *See generally West Virginia v. EPA*, 597 U.S. 679 (2022); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014).

A few weeks ago, EPA issued the Final Rule, which revisits its 2009 Endangerment Finding. The agency has now concluded that it “lack[s] statutory authority to maintain this novel and transformative regulatory program.” 91 Fed. Reg. at 7688. “Congress did not decide the Nation’s policy response to global climate change concerns in CAA section 202(a)(1),” EPA explained, “let alone clearly authorize the EPA to make that policy choice by prescribing emission standards.” *Id.* Thus, the Final Rule rescinds the Endangerment Finding and repeals the new motor vehicle and engine greenhouse-gas-related emission standards.

Petitioners—a cadre of special interest groups—filed this petition for review of the Final Rule on February 18, 2026. It is the first of what is expected to be many such petitions.

STANDARD OF REVIEW

Federal Rule of Appellate Procedure 15(d) provides that anyone who wishes to intervene in a proceeding for review of an administrative order may move to do so within 30 days after the petition for review is filed. The motion need only contain “a concise statement of the interest of the moving party and the grounds for intervention.” FED. R. APP. P. 15(d); *see also Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

“Rule 15(d) does not provide standards for intervention, so appellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24.” *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004) (cleaned up); *accord In re Brewer*, 863 F.3d 861, 872 (D.C. Cir. 2017). Sometimes, courts will also consider “the statutory design of the [relevant] act.” *Texas v. U.S. Dep’t of Energy*, 754 F.2d 550, 551 (5th Cir. 1985). Other times, courts have found it sufficient that no prejudice will result from an

otherwise unopposed intervention. *See Int’l Union of Operating Eng’rs, Loc. 18 v. NLRB*, 837 F.3d 593, 596 (6th Cir. 2016).

At bottom, this Court has adopted a relatively liberal approach to intervention, especially when it comes to administrative cases like this one. *See Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 910-11 (D.C. Cir. 1977). “[A] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.” *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011).

ARGUMENT

The factors in Federal Rule of Civil Procedure 24 favor letting the States intervene. Under that rule, “a ‘court must permit anyone to intervene’ who, (1) ‘[o]n timely motion,’ (2) ‘claims an interest relating to the property or 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,’ (3) ‘unless existing parties adequately represent that interest.’” *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 190 (2022) (quoting FED. R. CIV. P. 24(a)(2)). The Court will also grant intervention if the proposed intervenor “has a claim or defense that shares with the main action a common question of law or fact.” FED. R. CIV. P. 24(b)(1)(B).

First, the States' motion is timely. The States are filing their motion within 30 days, as the relevant federal rule contemplates. FED. R. APP. P. 15(d). The Court has not yet entered a scheduling order, no party has filed anything other than standard procedural filings, and the States' involvement will not delay any of the dates that will be ordered.

Second, the States have a direct and unique interest in these proceedings. Many of the States here are involved in ongoing litigation concerning these vehicle emission standards. *See Kentucky v. EPA*, No. 24-1087 (D.C. Cir. filed Apr. 18, 2024). Likewise, they have filed extended comments on the proposed rule that became the Final Rule. *See, e.g.*, Letter from Att'y Gen. of the States of W. Va., *et al.* to Lee Zeldin, EPA Adm'r (Sept. 22, 2025), <https://tinyurl.com/sen4xjfb>; Letter from Ind. Att'y Gen., *et al.* to Lee Zeldin, EPA Adm'r (Sept. 22, 2025), <https://tinyurl.com/25kftcur>. For good reason. Among other things, emission standards increase the costs of managing, maintaining, and replacing fleets of state-owned vehicles. *See* Pet'rs Br. at 8-9, *Kentucky v. EPA*, No. 24-1087 (D.C. Cir. filed Sept. 6, 2024), Doc. 2073629. They increase road and infrastructure costs while depriving States of fuel-tax revenue. *Id.* at 9-10. The state-centered impacts are even greater when one considers the many other greenhouse-gas-related rules that

turn on the 2009 Endangerment Finding. These regulations directly affect (and undermine) critical state industries, energy infrastructure, and more.

Beyond these direct economic effects, the Final Rule raises fundamental questions about how climate-related matters should be addressed—whether through federal administrative agencies, Congress, the States, or other repositories of power. EPA has promulgated the Final Rule in part out of respect for the separation of powers. *See, e.g.*, 91 Fed. Reg. at 7725. And “[t]he allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States.” *Bond v. United States*, 564 U.S. 211, 221 (2011); *see also* Bradford R. Clark, *Separation of Powers As A Safeguard of Federalism*, 79 TEX. L. REV. 1321, 1324 (2001) (“Permitting the federal government to avoid these constraints would allow it to exercise more power than the Constitution contemplates, at the expense of state authority.”). Thus, the States should be permitted to speak up for it. No wonder, then, that this Court has allowed States to intervene in previous challenges concerning the Endangerment Finding. *See* Order, *Coal. for Responsible Regul., Inc. v. EPA*, No. 09-1322 (D.C. Cir. May 5, 2010), Doc. 1243328.

Leaving the States out of this litigation would impair their interests. If Petitioners prevail, then the onerous vehicle emission standards will come

alive again. So, too, would all the other greenhouse-gas-related litigation that choked off critical state-level activities for de minimis benefits. If that resumption happens, then the States “might protect their rights by bringing a separate lawsuit” or reviving their pending actions. *Brewer*, 863 F.3d at 873 (cleaned up). That kind of “separate litigation would be difficult and burdensome.” *Id.* (cleaned up). And damage to the States’ interests while that secondary litigation wends its way through again would be “substantial and likely irreparable.” *Fund for Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003).

Third, Respondents will not adequately represent the States’ interests. To be sure, the States expect that Respondents will defend the Final Rule vigorously. But that identity of interest is not enough to deny intervention when the parties’ relevant interests don’t “overlap fully.” *Berger*, 597 U.S. at 197. The States may bring unique legal arguments (such as special expertise when it comes to the major-questions doctrine) and a unique factual understanding. At the very least, States are in a better position to counter anticipated arguments from other States about the consequences of the Final Rule and climate change for States themselves. After all, state-led efforts were the original impetus for the Endangerment Finding. *See Massachusetts*

v. EPA, 549 U.S. 497 (2007). So because “the burden on the applicant of demonstrating a lack of adequate representation should be treated as minimal,” the States have more than met the obligation to do so here. *Fund for Animals*, 322 F.3d at 736. That’s especially so considering that a “governmental party[’s]” interests generally “differ[] from other parties, public or private, that assert their own interests, even when these interests coincide.” *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 992 n.21 (2d Cir. 1984).

Beyond the Rule 24 factors, the other factors favor the States, too. For instance, the CAA’s statutory design favors intervention. Recall that “[t]he Clean Air Act regulates air quality through a federal-state collaboration.” *Ohio v. EPA*, 603 U.S. 279, 283 (2024) (cleaned up). States thus play a central role in cases involving the Act, this one included. And given that the States have acted quickly to intervene, their involvement should not prejudice any party. Indeed, state involvement in environmental litigation of this sort has become routine in this Court. *See, e.g., Order, West Virginia v. EPA*, No. 24-1120 (D.C. Cir. June 6, 2024), Doc. No. 2058199. So the States do not expect any party to oppose their involvement here, either.

CONCLUSION

The States respectfully request that the Court grant their motion to intervene as Respondents.

Respectfully submitted,

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