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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States,

Defendants.

No. 4:25-cv-04966-HSG

MOTION TO INTERVENE AS DEFENDANTS BY WESTERN STATES TRUCKING ASSOCIATION AND CONSTRUCTION INDUSTRY AIR QUALITY COALITION

Date: November 20, 2025
Time: 2:00 p.m.
Courtroom: 2, 4th Floor, Oakland Courthouse
Judge: Hon. Haywood S. Gilliam, Jr.

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 20, 2025, at 2:00 p.m. PST, or as soon thereafter as this matter may be heard[1] in the United States District Court for the Northern District of California, 1301 Clay Street, Courtroom 2 (4th Floor), Oakland, CA 94612, Proposed Intervenors Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc. will appear and present their motion to intervene in this case pursuant to Federal Rule of Civil Procedure 24.

MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24 ("Rule 24") and Civil Local Rule 7-2, Western States Trucking Association, Inc. ("WSTA") and Construction Industry Air Quality Coalition, Inc. ("CIAQC") (collectively "Movants") respectfully move to intervene, by right or by permission, as Defendants in this civil action. Movants are entitled to intervene under Rule 24(a)(2). Alternatively, this Court should grant permissive intervention under Rule 24(b)(1)(B). This Motion is supported by the following Memorandum of Points and Authorities, its supporting declarations and exhibits, all pleadings and papers filed in this action, and such other written and oral argument or evidence as may be presented at or before the time the Motion is taken under submission.

MEMORANDUM OF POINTS AND AUTHORITIES

The State of California adopted an electric vehicle mandate for both passenger cars and heavy-duty vehicles. By model year 2035, all cars and light trucks sold in the state must be electric. Cal. Code Regs. tit. 13, § 1962.4. By model year 2036, all medium- and heavy-duty vehicles sold in California (with some emergency vehicles

[1] Movants are aware that this Court has set a hearing on other parties' motions to intervene on October 23, 2025. Dkt. No. 87. Movants are prepared to present this motion on that date and respectfully request hearing this motion at that time. Consolidating the hearings will avoid undue delay and will likely be more convenient for the Plaintiffs and the Court.

excepted) must be electric. *Id.* § 2016(c). The express purpose of this mandate is to reduce vehicle emissions. *Id.* §§ 1962.4(b); 1963(a).

The federal Clean Air Act ("CAA") prohibits states from regulating emissions from new motor vehicles. 42 U.S.C. § 7543(a). However, Congress provided a special carveout for California. CAA section 209 allows the Environmental Protection Agency ("EPA") to issue a waiver that allows California to adopt emissions standards that are stricter than federal standards. *Id.* § 7543(b). EPA issued waivers for California's car and heavy-duty electric vehicle mandates in 2025 and 2023, respectively. EPA also issued a waiver that allowed California to implement low nitrogen oxides (NO_x) emissions standards for heavy-duty trucks that further incentivizes electric vehicles.

In response, both houses of Congress passed legislation to repeal each of the three waivers. The president signed them into law. *See* Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025). Each of those laws states the EPA's waiver "shall have no force or effect." Without a waiver, the CAA prevents California from enforcing emissions standards that effectively mandate electric vehicles. 42 U.S.C. § 7543(a).

Now California and 10 other states have brought the present lawsuit seeking to invalidate those laws. Plaintiffs seek judicial declarations that the laws are invalid and that therefore the car and heavy-duty electric vehicle mandates are valid and in effect. *See* Pls.' Compl., Dkt. No. 1 at 40.

Movants will suffer severe economic harms if California's electric vehicle mandates take effect. For example, the mandates increase the purchase price for all heavy-duty vehicles sold in the state and reduce the availability of reliable diesel-powered heavy-duty vehicles. Movants' members operate these regulated vehicles in California in the ordinary course of their businesses, and California's electrification mandates would directly increase Movants' costs and decrease their profits.

Accordingly, Movants petitioned for review of EPA's grant of California's waiver application for the electric vehicle mandates. *See Western States Trucking Ass'n et al.*

v. U.S. Envtl. Prot. Agency, No. 23-1143 (D.C. Cir.), and Movants' case in the D.C. Circuit remains pending. But for the filing of the instant case by the Plaintiffs, the laws repealing EPA's waiver grant would not have been put in question and Movants would have been inclined to voluntarily dismiss the pending action in the D.C. Circuit. Now Movants will not agree to dismiss that case until the instant case is finally resolved. The outcome in this case—especially on whether a CAA section 209 waiver is a rule—will affect how Movants will litigate (or voluntarily dismiss, as the case may be) their pending case in the D.C. Circuit. For this reason, and for all the reasons stated below in more detail, Movants satisfy the requirements to intervene as of right and for permissive intervention.

STATEMENT OF ISSUES

1. Whether Movants WSTA and CIAQC are entitled to intervene as of right under Fed. R. Civ. P. 24(a)(2).
2. Whether Movants WSTA and CIAQC should be permitted to intervene under Fed. R. Civ. P. 24(b).

BACKGROUND

I. The Clean Air Act and Federal Preemption of Emissions Standards

In 1967 Congress amended the CAA to prohibit states from adopting or enforcing "any standard relating to the control of emissions from new motor vehicles." CAA § 209, 42 U.S.C. § 7543(a). "The express language in section 7543(a) indicates Congress's intent to exclusively regulate the control of new motor vehicle emissions prior to their initial sale." *Sims v. Fla., Dep't of Highway Safety & Motor Vehicles*, 862 F.2d 1449, 1455 (11th Cir. 1989). Pursuant to the CAA, the EPA has promulgated national standards for motor vehicle emissions. *See generally* 40 C.F.R. Part 86.

At the same time it enacted the preemption provision, Congress also gave EPA the authority to waive preemption for a state that had its own vehicle emissions standards in 1966. 42 U.S.C. § 7543(b)(1). California is the only state eligible for this waiver. *California v. EPA*, 940 F.3d 1342, 1345 (D.C. Cir. 2019). To be eligible for such

a waiver, California must show that its proposed standards are "at least as protective of public health and welfare as applicable Federal standards." 42 U.S.C. § 7543(b)(1). EPA cannot issue a waiver if it finds the standards are arbitrary and capricious, do not address "compelling and extraordinary conditions" within California, or are not consistent with section 202 of the CAA. *Id.* § 7543(b)(1)(A)–(C). If EPA approves the waiver, California can enforce those emissions standards. The CAA allows other states to adopt these standards so long as "such standards are identical to the California standards for which a waiver has been granted." *Id.* § 7507(1). Because it is expensive and inefficient for auto manufacturers to produce two versions of every vehicle—i.e., one that is California compliant and one that meets EPA's federal standards—California's emissions standards become de facto national standards.

II. California Imposes an Electric Vehicle Mandate for Cars and Trucks

In September 2020, California Governor Gavin Newsom announced a goal to ban gas-powered cars and trucks by 2035. *See* Cal. Exec. Order No. N-79-20 at 2, *available at* https://tinyurl.com/5hyj3js5. The state legislature never voted on this mandate. Instead, the California Air Resources Board ("CARB") promulgated a series of regulations in 2022 to implement this electric vehicle mandate:

- **Advanced Clean Cars II ("ACC II")** requires light-duty car manufacturers sell an increasing percentage share of electric vehicles between model year 2026 and model year 2035. In model year 2026, 35% of vehicles sold in California must be a "zero-emission vehicle." Cal. Code Regs. tit. 13, § 1962.4(c)(1)(B). By model year 2035, that percentage increases to 100%. *Id.* The ACC II Rule thus prohibits selling gasoline powered cars beginning in 2035.
- **Advanced Clean Trucks ("ACT")** requires medium- and heavy-duty truck manufacturers to sell an increasing percentage of electric vehicles between model year 2024 and model year 2035. *Id.* § 1963.1. Sales of internal-combustion vehicles must be offset with "credits" generated by sales of electric trucks. *Id.* The required offset increases annually and varies by vehicle class.

In model year 2035, the ACT Rule requires manufacturers to offset at least 55% of their Class 2b-3 sales (heavy-duty pickups), 75% of their Class 4-8 sales (from box trucks to semis), and 40% of their Class 7-8 (day and sleeper cab semi-trucks) with zero emission vehicles. *Id.* After model year 2035 the ACT Rule prohibits selling non-electric heavy-duty vehicles in California. *Id.* § 2016(c).

- **Omnibus Low NO_x Program ("Omnibus Program")** sets nitrogen oxides (NO_x) emissions standards for model year 2024 and later medium- and heavy-duty vehicles. These standards are set at levels that further incentivize manufacturers to sell electric vehicles and phase out internal combustion engines. *See id.* § 1956.8(a)(2)(C), (D).

The express purpose of these three rules is to reduce new vehicle emissions. *Id.* §§ 1962.4(b); 1963(a). That means California had to seek a CAA section 209 waiver from EPA for each rule.

III. EPA Issues CAA Section 209 Waivers for California's Electric Vehicle Mandate

EPA issued waivers for each of the three CARB rules. EPA first issued a waiver for the ACT Rule in 2023. *California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision*, 88 Fed. Reg. 20,688 (Apr. 6, 2023). EPA then issued a waiver for the ACC II Rule in 2025. *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 642 (Jan. 6, 2025). EPA issued a waiver for the Omnibus Program the same day. *California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The 'Omnibus' Low NOX Regulation; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 643 (Jan. 6, 2025). These waivers allowed California, eleven other states, and the District of Columbia to implement these regulations. *See* Cal. Air Res. Bd., States That

Have Adopted California's Vehicle Regulations, https://tinyurl.com/3ws67cd9 (last updated Apr. 2025).

IV. Congress Repeals EPA's Waivers

Following EPA's waiver approvals in 2025, Congress took action to repeal the waivers. In April, three U.S. Representatives introduced joint resolutions to repeal the ACT Rule, ACC II Rule, and Omnibus Program. H.R.J. Res. 87, 119th Cong. (2025); H.R.J. Res. 88, 119th Cong. (2025); H.R.J. Res. 89, 119th Cong. (2025). The legislative text of each resolution named the EPA waiver, included its Federal Register citation, and stated the waiver "shall have no force or effect." *Id.* Each piece of legislation passed the House and Senate without amendment in April and May 2025. *See* 139 Stat. 65–67 (2025) (explaining legislative history). President Trump signed them into law on June 12. *See* Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025). Following that action, federal law unequivocally states that the ACT, ACC II, and Omnibus Program waivers "shall have no force or effect."

As stated above, the express purpose of the ACT Rule, ACC II Rule, and Omnibus Program is to reduce new vehicle emissions. Cal. Code Regs. tit. 13, §§ 1962.4(b); 1963(a). Without a valid waiver in effect, California cannot "attempt to enforce" these standards. 42 U.S.C. § 7543(a).

V. The ACT Rule and Omnibus Program Will Harm WSTA and CIAQC

In this lawsuit, Plaintiffs claim the "preemption waivers are valid and in effect" and seek a judicial declaration that the laws repealing the waivers are "unconstitutional, unlawful, void, and of no effect." *See* Pls.' Compl., Dkt. No. 1 at 40. If the ACT Rule and Omnibus Program go into effect, they will inflict serious harm on Movants' members. Movants are trade organizations whose members in California use medium- and heavy-duty trucks as part of the ordinary course of their business. *See* Brown Decl. ¶ 11; Aboudi Decl. ¶ 6; Lewis Decl. ¶ 7. These rules limit the

availability of vehicles needed for WSTA and CIAQC members to profitably conduct their businesses.

The ACT Rule's electric vehicle sales requirement imposes increased market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet. *See* Brown Decl. ¶ 14; Aboudi Decl. ¶ 8; Lewis Decl. ¶ 12. The electric trucks the ACT Rule mandates cost $300,000 more per truck as compared to diesel-powered trucks. Aboudi Decl. ¶ 14. Additionally, as fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the ACT Rule, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease. *See* Brown Decl. ¶ 15; Aboudi Decl. ¶ 10; Lewis Decl. ¶ 13. If WSTA and CIAQC's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide or even statewide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations. *See* Brown Decl. ¶ 16; Aboudi Decl. ¶ 11; Lewis Decl. ¶ 14.

STANDARD TO INTERVENE

Rule 24 allows a party to intervene as of right in subsection (a) and by permission in subsection (b). Fed. R. Civ. P. 24. The Ninth Circuit uses a four-prong test to analyze intervention as of right under Rule 24(a): (1) whether the applicant has a significantly protectable interest in the subject of the action; (2) whether the action's outcome may, as a practical matter, impair the applicant's ability to protect that interest; (3) whether the motion is timely; and (4) whether the existing parties may not adequately represent the applicant's interest. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022). These factors are not applied rigidly. Courts favor intervention when practical and equitable considerations support it, and the Ninth Circuit has instructed that the rule should be "broadly interpreted in favor of intervention." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893,

897 (9th Cir. 2011). Furthermore, "a district court is required to accept as true the non-conclusory allegations made in support of an intervention motion." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001).

Rule 24(b) allows permissive intervention where the applicant "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). To obtain permissive intervention, a party must show: (1) an independent basis for jurisdiction; (2) that the motion is timely; and (3) that its claim or defense shares a legal or factual question with the main action. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). But "the independent jurisdictional grounds requirement does not apply . . . in federal-question cases when the proposed intervenor is not raising new claims." *Id.* at 844. The court must also assess whether intervention would "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

The Ninth Circuit has explained that courts should construe Rule 24 "broadly in favor of proposed intervenors" to allow "parties with a *practical* interest in the outcome of a particular case to intervene." *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002) (emphasis in original).

ARGUMENT

This Court should grant this motion because Movants are entitled to intervene as of right under Rule 24(a)(2) and because Movants meet the standard for permissive intervention under Rule 24(b)(1)(B).

I. Movants Are Entitled To Intervene as of Right Because They Are the End-Users Affected by the Regulations at Issue.

Movants satisfy Rule 24(a)(2)'s requirements to intervene as of right. This motion is timely, the Movants have a significantly protectable interest in the subject of this case, this case's outcome will impair Movants' ability to protect that interest, and the existing parties may not adequately represent Movants' interest. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022).

A. The motion is timely because it was filed early in the case prior to any substantive proceedings.

"Timeliness is the threshold requirement for intervention." *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990). The Ninth Circuit uses three factors to assess timeliness: "the stage of the proceeding, prejudice to other parties, and the reason for and length of the delay." *Id.* All three factors favor granting the motion.

Movants are seeking to intervene at the very early stages of this case. Movants filed this motion "before any hearings or rulings on substantive matters." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995). Plaintiffs have not filed a preliminary injunction or other substantive motion, and Defendants have not filed an answer or motion to dismiss. The initial case management conference has not yet occurred, and Defendants have until September 19 to respond to the complaint. *See* Dkt. Nos. 8, 81. If "the motion was filed before the district court had made any substantive rulings" there is little risk of prejudice to either party. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996).

The Ninth Circuit does not use a strict deadline for timeliness when a case is still in its early stages. Even so, this motion was filed well within the timeframe the Ninth Circuit has used for other motions to intervene. *See e.g., Idaho Farm Bureau Fed'n*, 58 F.3d at 1397 (allowing intervention when motion was filed four months after complaint).

Movants are seeking to intervene shortly after this case was filed and before the parties have filed any substantive motions. Movants have not delayed seeking to intervene, and intervening at this early stage in the proceedings will not prejudice the parties. Thus this motion is timely.

B. Movants have a significantly protectable interest in whether the ACT Rule is valid, and this case's outcome may impair Movants' ability to protect that interest.

This lawsuit seeks to revive California's ACT Rule. Movants have a significant interest in ensuring the ACT Rule remains repealed.

To establish a significant interest, the movant must show "that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). "The relationship requirement is met 'if the resolution of the plaintiff's claims actually will affect the applicant.'" *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998)). This test is a "practical, threshold inquiry, and no specific legal or equitable interest need be established." *Citizens for Balanced Use*, 647 F.3d at 897 (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)) (cleaned up). An economic interest is a significant interest if it is "concrete and related to the underlying subject matter of the action." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004)

Movants are the end-users of the trucks the ACT Rule regulates. At the time it adopted the ACT Rule, CARB estimated as part of its cost-benefit analysis that the rule would impose $9.1 billion in costs on vehicle manufacturers through 2040. *See* Cal. Air. Res. Bd., Updated Costs and Benefits Analysis for the Proposed Advanced Clean Trucks Regulation 14 (Apr. 28, 2020), https://tinyurl.com/3ws67cd9 [hereafter "CARB ACT Rule Cost-Benefit Analysis"]. Vehicle manufacturers will naturally pass on those costs to customers. CARB admitted as much when it noted "ZEVs have higher upfront capital costs for the vehicle and infrastructure investments." *Id.* at 12. As an example, Oakland Port Services, Inc. (a member of WSTA) estimates the ACT Rule will increase its purchase price for new trucks by $300,000. Aboudi Decl. ¶ 14. CARB's cost-benefit analysis and the Aboudi Declaration provide sufficient evidence that this economic impact is concrete.

This economic impact is also directly "related to the underlying subject matter of the action." *Alisal Water Corp.*, 370 F.3d at 919. Plaintiffs have one goal in this suit: revive the ACT Rule, ACC II Rule, and Omnibus Program. *See* Pls.' Compl., Dkt. No. 1 at 40 (prayer for relief requesting the Court "[d]eclare that the three preemption

waivers at issue are valid and in effect"). Receiving that relief will impose costs on the end-users of the trucks the ACT Rule regulates. Thus the Movants have an economic interest that satisfies the significant interest test.

Once a court finds Movants have a significant protectable interest, there is often "little difficulty concluding that the disposition of the case may, as a practical matter, affect it." *Citizens for Balanced Use*, 647 F.3d at 898 (cleaned up). All that is required is that the Movants "be substantially affected in a practical sense by the determination made in an action." *Id.* If this Court holds that the ACT Rule Waiver is valid and in effect, Movants will be "substantially affected" by the economic consequences of more costly trucks. *See* Brown Decl. ¶ 14; Aboudi Decl. ¶¶ 8, 14; Lewis Decl. ¶ 12.

The Movants also have a significant interest in this case based on how it can affect the Movants' ACT Rule litigation. Movants are petitioners in *Western States Trucking Ass'n et al. v. U.S. Envtl. Prot. Agency*, Case No. 23-1143 (D.C. Cir.)—a petition for review challenging the ACT Rule. Following Congress's repeal of the ACT Rule waiver, EPA sought to voluntarily dismiss that case.[2] Movants were initially inclined to agree to voluntary dismissal. But Movants ultimately declined consent to voluntary dismissal when Plaintiffs filed the instant case. Thus, this case has already affected how Movants are litigating the separate lawsuit pending in the D.C. Circuit. And a favorable outcome for Plaintiffs will require Movants to continue prosecuting that case once the abeyance has been lifted. But for this lawsuit, Movants could avoid the time and costs associated with litigating its case in the D.C. Circuit.

[2] *Western States Trucking Ass'n v. U.S. Envtl. Prot. Agency* is presently held in abeyance pending the outcome of *Texas v. EPA*, No. 22-1031 (D.C. Cir.), even though the two cases are challenging different rules. *See Western States Trucking Ass'n v. U.S. Envtl. Prot. Agency*, No. 23-1143, Doc. No. 2032808 (D.C. Cir. Dec. 21, 2023). The D.C. Circuit recently placed *Texas v. EPA* in abeyance after EPA indicated it was reconsidering the rule being challenged in that case. *Texas v. EPA*, No. 22-1031, Doc. No. 1208758920 (D.C. Cir. filed July 18, 2025).

Furthermore, this case will likely decide whether the ACT Rule Waiver was a "rule" under the Administrative Procedure Act. After all, each of Plaintiffs' counts relies on the argument that the waivers are not properly considered rules. *See* Pls.' Compl., Dkt. No. 1 ¶¶ 116, 118, 126, 128–32, 137–40, 146–48, 157, 172. Treating such waivers as rules rather than orders or other administrative actions provides avenues that otherwise would not be available for Movants to challenge the ACT Rule and future waivers. The federal government may seek to defend this lawsuit on narrow grounds that may not fully support Movants' position that CAA section 209 waivers should always be treated as rules under the Administrative Procedure Act. This is especially troublesome given the fact that the Federal Defendants in this case are also defendants in the ACT Rule challenge pending in the D.C. Circuit, where Movants are plaintiffs rather than defendants. No court has explicitly decided whether a CAA section 209 waiver is a rule. Movants have a strong interest in the outcome of this argument, and a favorable outcome for Plaintiffs could, as a practical matter, impair that interest. Thus Movants have a significantly protectable interest in the subject of this case, and its outcome could impair Movants' ability to protect its interest.

C. The existing parties will not adequately protect Movants' interests in the case.

The Defendants will not adequately represent Movants' interest in this case. "The burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can demonstrate that representation of its interests 'may be' inadequate." *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). Although there is a presumption of adequate representation when the Movant and parties share an ultimate objective, "it is sufficient for Applicants to show that, because of the difference in interests, it is likely that Defendants will not advance the same arguments as Applicants." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 824 (9th Cir. 2001). Private parties need not prove an actual conflict with the government; it is sufficient that the

government's representation "'may be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972).

Movants' interests diverge from Defendants in three ways. *First*, Defendants are likely to argue for dismissal on narrow grounds. *Second*, the federal government has a history of changing positions on CAA section 209 waivers. *Third*, Movants have economic interests and interests as regulated parties that the government Defendants do not represent.

Defendants are likely to focus their argument on justiciability.[3] Movants frequently challenge the federal government's actions, especially climate regulations. Deciding this case on justiciability grounds alone could make it more difficult for Movants to bring cases against the federal government in the future. Instead, Movants will primarily focus their arguments on the fact that EPA's waivers are rules under the APA, meaning Congress acted properly under the Congressional Review Act ("CRA"). Movants will also argue that—notwithstanding the CRA—the Constitution empowers Congress to revoke an agency's authority, and that there is no private right of action to enforce the Senate's rules. As explained in its proposed Motion to Dismiss (attached as Exhibit D), the CRA is a procedural mechanism that allows Congress to invalidate an agency rule using expedited procedures. It expedites consideration by limiting debate on a qualifying resolution of disapproval in the Senate to ten hours. *See generally* Maeve P. Carey & Christopher M. Davis, Cong. Research Serv., R43992, The Congressional Review Act (CRA): Frequently Asked Questions (Aug. 29, 2024), https://www.congress.gov/crs-product/R43992.

It should also be noted that Movants are suing many of the same federal defendants in *Western States Trucking Ass'n et al. v. U.S. Envtl. Prot. Agency*. Movants

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[3] Movants will also argue for dismissal based on justiciability, but only so that they do not forfeit this alternative ground for dismissal. Movants also recognize that a "federal court's jurisdiction is a threshold question." *Retail Flooring Dealers of Am., Inc. v. Beaulieu of Am.*, LLC, 339 F.3d 1146, 1148 (9th Cir. 2003).

should not have to rely on an adverse party from another case to represent its interests here.

The federal government has a history of changing positions in cases involving CAA section 209 waivers. *See, e.g.*, *California v. Wheeler*, No. 19-1239 and consolidated cases (D.C. Cir.) (challenge to withdrawal of ACC I waiver); *see also Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2130–31 (2025) (explaining that the Bush EPA denied the ACC I waiver in 2008, the Obama EPA granted it in 2013, the Trump EPA rescinded it in 2019, and the Biden EPA reinstated it in 2022). Additionally, EPA's change in position on whether these three waivers are rules arguably sparked the instant lawsuit. It is far from speculative that Defendants could change positions again, as is their right. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change."). If that happens, Defendants may seek to settle this case or choose not to appeal an adverse ruling. Movants' participation in this case will ensure their interests are protected against the federal government's changing positions.

Finally, Defendants do not represent Movants' significant economic interests in this case. The Ninth Circuit has recognized government defendants represent the public interest at large, which may differ from an industry group's parochial interests. *California ex rel. Lockyer*, 450 F.3d 436, 445 (9th Cir. 2006). This Court has also allowed intervention in part because an industry association's direct economic interest differs from a federal government defendant's interest in the case. *California v. BLM*, No. 18-cv-00521-HSG, 2018 U.S. Dist. LEXIS 119379, at *24 (N.D. Cal. July 17, 2018) (noting the proposed intervenors "have a 'direct economic stake' in this controversy"). Here, while both Defendants and Movants are interested in defending Congress's action, the economic stakes are much higher for Movants. If Movants lose this case, it will cost them dearly. *See* Brown Decl. ¶ 14; Aboudi Decl. ¶¶ 8, 14; Lewis Decl. ¶ 12. Even Plaintiff California agrees that the increased costs associated with the relevant

emissions standards could run into the billions. CARB ACT Rule Cost-Benefit Analysis, *supra*, at 12, 14. If Defendants lose, they will not suffer economic loss. This divergent interest also supports intervention.

In a similar way, the federal government, as a regulator, does not have the same interests as a regulated party. *See Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (explaining that the Secretary of Commerce could not adequately represent groups who are presently subject to the Secretary's regulations). Movants' members are subject to regulations from both Plaintiff State of California and Defendant EPA. Like in *Mosbacher*, Movants cannot rely on one of its regulators (i.e. EPA, whom it is currently suing in another case over one of the waivers at issue here) to represent its interests in the instant case. For these reasons, Movants have satisfied their "minimal" burden of showing inadequate representation.

Because Movants satisfy Rule 24(a)(2)'s requirements, they are entitled to intervene as of right.

II. Movants Should Be Granted Permission To Intervene Because There Are Common Questions of Law and Fact Between Movants' Defense and the Main Action.

Movants also satisfy Rule 24(b)'s requirements for permissive intervention. Movants need not show an independent basis for jurisdiction, since this is a federal question case and Movants will not raise any new claims. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011). For the reasons stated above, this motion is timely. Thus the Court need only consider whether there is a common question of law and fact with the main action and whether intervention will cause undue delay or prejudice. *See id.* at 843; Fed. R. Civ. P. 24(b)(2)(B), (b)(3).

Movants seek to defend Public Laws 119-15, 119-16, and 119-17 against each of the Plaintiffs' claims. Thus they share a common question of law and fact with the main action. *See Levin Richmond Terminal Corp. v. City of Richmond*, 482 F. Supp. 3d 944, 968 (N.D. Cal. 2020) ("Proposed intervenors intend to defend the Ordinance

against each of the claims raised in plaintiffs' complaints, and thus, their defenses share common questions of law with the main action."). Movants' interest in this case "arises from the same set of facts as Plaintiff[s'] claims." *Nooksack Indian Tribe v. Zinke*, 321 F.R.D. 377, 383 (W.D. Wash. 2017). Movants do not need additional discovery and do not seek to inject extraneous claims into this case. They seek to defend the same claims that Plaintiffs have brought against the Defendants. Thus the Movants' defenses "undisputed[ly]" share common questions of fact. *Id.*

Allowing permissive intervention will not cause undue delay or prejudice. Movants need no additional time to fully participate in this case. Plaintiffs cannot argue that Movants' mere request to intervene is prejudicial. "[T]he fact that including another party in the case might make resolution more difficult does not constitute prejudice." *Kalbers v. United States DOJ*, 22 F.4th 816, 825 (9th Cir. 2021) (quoting *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 857 (9th Cir. 2016)) (cleaned up). As explained below, Movants will work with other intervenors to avoid duplicative briefing and will work with all parties on reasonable case-management orders to ensure Movants' participation does not cause any undue delay.

Because Movants satisfy Rule 24(b)'s requirements for permissive intervention, the Court should grant permission to intervene as defendants.

III. Movants Are Amenable To Certain Limits That Plaintiffs Have Suggested For Other Proposed Intervenor-Defendants.

Movants are aware that Plaintiffs have proposed case management conditions in its opposition to other proposed intervenor-defendants' motions. Dkt. No. 84 at 10. To expedite resolution of these issues, Movants will address those proposed conditions here.

Plaintiffs have proposed the following conditions: (1) intervenors may not initiate discovery; (2) intervenors are limited to those claims and issues raised in Plaintiffs' complaint; (3) intervenors must jointly brief and argue all dispositive motions; (4) all parties must meet and confer two weeks prior to filing a dispositive

motion and must submit a joint proposed briefing schedule one week before the motion is filed; and (5) a combined total page limit for intervenors' briefs set at two-thirds the limit of the brief for the party they are supporting.

First, like Proposed Intervenor-Defendants American Free Enterprise Chamber of Commerce and American Fuel & Petrochemical Manufacturers, Movants believe discovery is unnecessary for all parties because this case involves only pure questions of law. *See* Dkt. No. 88 at 20. Movants would consent to a mutual waiver of discovery in this case. However, like the other Proposed Intervenor-Defendants, Movants would oppose limiting intervenors' discovery rights without also limiting Plaintiffs' discovery.

Second, as to limiting claims and defenses, Movants seek to defend Public Laws 119-15, 119-16, and 119-17 against each of the Plaintiffs' claims. Movants do not intend to bring any counterclaims or crossclaims.

Third, Movants are willing to work with other Proposed Intervenor-Defendants on consolidated briefing to avoid duplication. However, Movants would request that any orders on consolidated briefing take place once all Intervenor-Defendants (and any Intervenor-Plaintiffs) are known so that they can properly align their interests on briefs and motions.

Fourth, for these same reasons, the notice and briefing schedule conditions are premature and should be revisited once all Intervenor-Defendants (and any Intervenor-Plaintiffs) are known.

Fifth, Movants would tend to oppose Plaintiffs' proposed page limits. A major reason for Movants' request to intervene is to ensure its interests, which no other party represents, receive full and fair consideration. Movants have already explained the reasons why Defendants do not adequately represent their interests. Until all of the intervenors are known, Movants would be reticent to agree to allow other Intervenor-Defendants to represent their interests on an abbreviated brief. If the

Court is inclined to impose page limits, Movants request it revisit this matter after it has decided all motions to intervene.

CONCLUSION

Movants have demonstrated they meet the requirements for intervention as of right and permissive intervention. This motion is timely, Movants have a significant protectable interest in the validity of California's electric vehicle mandates that is not adequately represented by Defendants, and Movants' defense shares common questions of law and fact with this case. For these reasons, the Court should grant WSTA and CIAQC's motion to intervene as defendants.

Dated: September 15, 2025

Respectfully submitted,

/s/ Theodore Hadzi-Antich

Robert Henneke* (TX 24046058)
Theodore Hadzi-Antich (CA 264663)
Eric Heigis (CA 343828)
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Email: tha@texaspolicy.com

Attorneys for Proposed Intervenor-Defendants Western States Trucking Association, Inc., and Construction Industry Air Quality Coalition, Inc.

*Motion for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, I served WSTA's and CIAQC's Motion to Intervene by filing with the Clerk of the Court for the Northern District of California by using the CM/ECF system, causing electronic service upon all counsel of record.

/s/ Theodore Hadzi-Antich
Theodore Hadzi-Antich

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the form requirements of Local Rule 7-2(b) because it does not exceed 25 pages in length.

/s/ Theodore Hadzi-Antich
Theodore Hadzi-Antich

LIST OF EXHIBTS

A. Declaration of Lee Brown

B. Declaration of William Aboudi

C. Declaration of Michael Lewis

D. Proposed Motion to Dismiss

E. Proposed Answer

F. Proposed Order

EXHIBIT A

DECLARATION OF LEE BROWN

Robert Henneke (TX 24046058)
Chance Weldon (TX 24076767)
Theodore Hadzi-Antich (CA 264663)
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Attorneys for Intervenors

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., *Plaintiffs*, v. UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States, *Defendants*.	No. 4:25-cv-04966-HSG **DECLARATION OF LEE BROWN**

I, Lee Brown, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Western States Trucking Association, Inc. ("WSTA"), formerly known as California Dump Truck Owners Association. I make this

declaration in support of WSTA's motion to intervene as a defendant in *California v. United States*, to which this declaration is attached.

3. WSTA is a nonprofit corporation formed for the general purpose of "protect[ing] the interests of the owners and operators of trucks using the highways of the State of California." Exhibit A at 1 (WSTA articles of incorporation). We additionally "conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of the shipping public, and those engaged in the transportation business . . . ." *Id.* at 1–2. WSTA's purpose is also, in part, "to sue and be sued" in the interest of its members. *Id.* at 2. In short, we represent the interests of multiple member trucking companies that transport cargo and goods within the state of California and beyond.

4. WSTA's purpose is generally to support its trucking company members in all aspects of their businesses, including the ability of their members to maintain their trucks for their full useful lives and to purchase replacement trucks at reasonable cost that will not adversely impact their businesses.

5. On April 6, 2023, the U.S. Environmental Protection Agency ("EPA") approved a waiver that allowed California to implement its Advanced Clean Trucks Rule ("ACT Rule"). *See* California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688 (Apr. 6, 2023) [hereafter "ACT Rule Waiver"].

6. The ACT Rule requires medium- and heavy-duty truck manufacturers to sell an increasing percentage of electric vehicles between model year 2024 and model year 2035. *See* Cal. Code Regs. tit. 13, § 1963.1. After model year 2035 the ACT Rule prohibits selling non-electric heavy-duty vehicles in California. *Id.* § 2016(c).

7. WSTA and its members have advocated against the California Air Resources Board's ("CARB") electric vehicle mandates and overly stringent heavy-duty vehicle regulations, including the ACT Rule.

8. WSTA petitioned for review of the ACT Rule in the D.C. Circuit. That lawsuit remains pending. *See Western States Trucking Ass'n et al. v. U.S. Envtl. Prot. Agency*, Case No. 23-1143 (D.C. Cir.).

9. WSTA's members include Oakland Port Services Corp. ("Oakland Port Services"), whose CEO is William Aboudi. The contents of William Aboudi's declaration are hereby incorporated herein in their entirety.

10. Members of WSTA, in addition to Oakland Port Services, are also injured by California's ACT Rule. WSTA is filing this motion to intervene on behalf of all of our members.

11. As detailed in the declaration of William Aboudi, WSTA members will be injured by the ACT Rule, which will directly affect their profitability, market share, and overall economic stability.

12. The ACT Rule will limit the types of vehicles available that are necessary to conduct WSTA members' business activities, making them choose between purchasing costly and unreliable vehicles and losing significant profits.

13. By steadily increasing the share of electric vehicles that truck manufacturers must sell, the ACT Rule limits the vehicles that can be sold to and operated by WSTA's members. Because many of WSTA's members, including Oakland Port Services, own fleets of heavy-duty vehicles, they will be forced to purchase electric vehicles that are more expensive, thereby losing revenue.

14. The ACT Rule limits the availability of vehicles needed for WSTA members to profitably conduct their businesses. The rule's electric vehicle sales requirement imposes increased market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

15. As fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the ACT Rule, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

16. If WSTA's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

17. California promulgated these regulations knowing full well that their approval would cause businesses like those represented by WSTA to purchase electric trucks or lose significant business. These regulations will increase WSTA member costs by a significant amount.

18. Due to the lack of nationwide or statewide charging infrastructure, reliability problems with existing electric heavy-duty vehicles, and the higher cost of new heavy-duty vehicles when compared to traditional diesel models, multiple WSTA members may not be able to continue running their businesses profitably if the ACT Rule takes effect.

19. On June 12, 2025, President Trump signed Public Law 119-15, 139 Stat. 65 (2025). That law repealed EPA's ACT Rule Waiver Grant, thereby preventing the ACT Rule from taking effect.

20. If the ACT Rule remains repealed, the businesses of many WSTA members will not suffer the economic injuries described or referred to in paragraphs 9-18.

21. Given these circumstances, I am informed that WSTA may "stand in the shoes" of its members and intervene as a defendant on their behalf in the instant lawsuit because doing so is consistent with and will further WSTA's associational purposes. Exhibit A at 2.

22. I am also informed that the Court can redress and prevent WSTA members' injuries by denying Plaintiffs' requested relief and upholding Congress's and the President's decisions to repeal the ACT Rule Waiver.

23. WSTA has a protectable interest in this case. If Plaintiffs receive the relief they have requested—a declaration that the ACT Rule is valid—WSTA's members will suffer pocketbook injuries, as set forth in paragraphs 9-18 hereof, thereby impeding as a practical matter WSTA's protectible economic interests. Also, as explained in paragraph 8, WSTA has petitioned for review of the ACT Rule in a case pending in the D.C. Circuit. If the Plaintiffs in this case receive their requested relief, WSTA will have to continue to prosecute the D.C. Circuit case and may need to change the manner in which it litigates the issues therein, thereby impeding as a practical matter WSTA's interests in avoiding litigation and the costs associated therewith.

24. As explained in paragraph 9, WSTA has challenged section 209 waivers for California in the past and will likely challenge additional waivers in the future, consistently arguing that any such waivers are rules under the Administrative Procedure Act. I am informed that treating these waivers as rules rather than orders or other administrative actions provides avenues for WSTA to challenge the ACT Rule and future waivers that otherwise would not be available to WSTA. I am also informed that the federal government may seek to defend this lawsuit on narrow grounds that may not fully support WSTA's position that section 209 waivers should always be treated as rules under the Administrative Procedure Act. This is especially troublesome given the fact that the Federal Defendants in this case are also defendants in the ACT Rule challenge pending in the D.C. Circuit, where WSTA is a plaintiff rather than a defendant. Accordingly, I do not believe that the Federal Defendants will adequately represent or protect WSTA's interests in this case.

Pursuant to 28 U.S.C. § 1746, I, Lee Brown, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 9th day of September, 2025, in Upland, in the State of California.

LEE BROWN
Executive Director
Western States Trucking Association, Inc.

EXHIBIT A

ARTICLES OF INCORPORATION

of

CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION

(A California non-profit corporation)

Know all men by these presents that we, the persons whose names are signed hereto, have associated ourselves together, to become incorporated under the laws of the State of California, for the transaction of business in said state, and for such purpose we adopt the following articles of incorporation:

ARTICLE I.

The name of this corporation is:

California Dump Truck Owners Association.

It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

ARTICLE II.

The purposes for which this corporation is formed are:

(a) Generally to protect the interests of the owners and operators of trucks using the highways of the State of California.

(b) To conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of

the shipping public, and those engaged in the transportation business, and particularly those engaged in the dump trucking business.

(c) To educate the producer and shipping business in general regarding the many advantages of using independent dump trucking operators.

(d) To promote general safety and to prove to the public that the truckmen are highly efficient, safe drivers, and gentlemen of the highways.

(e) To teach the public that the trucks owned and operated by the members of this association are reliable equipment, manned by competent, safe operators, and that the trucks are capable of carrying the loads that they are designed to carry anywhere, any time, and on time at reasonable prices.

(f) To sue and be sued.

(g) To contract and be contracted with.

(h) To receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and to otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations.

(i) To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer, and expend funds and property subject to such trust.

(j) To convey, exchange, lease, mortgage, encumber,

transfer or dispose of property, real or personal.

(k) To borrow money, contract debts, and issue bonds, notes and debentures, and secure the same.

(l) To do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

(m) And incidental to the main purposes of this non-profit corporation to carry on any business whatsoever which this corporation may deem proper or convenient in connection with any of the foregoing purposes or otherwise, or which may be calculated directly or indirectly to promote the interests of this non-profit corporation or to enhance the value of its property; to conduct its business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries.

The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in nowise limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be regarded as independant purposes.

ARTICLE XII.

The existence of this corporation is to be perpetual.

ARTICLE IV.

The county in this state where the principal office

for the transaction of the business of this non-profit corporation is to be located in the county of Los Angeles.

ARTICLE V.

The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors and who shall be known as directors, are:

NAMES:	ADDRESSES:
Freasie Jones	1718 E. Plymouth, Long Beach
Frank Heidlebaugh	3125 E. 11th St. Long Beach
J. A. Frethiem	800 Edgewood, Inglewood
Barney Bryce	1111 Raymond Ave., Long Beach
E. T. Seibert	Box 62, Route 3, Santa Ana
E. M. Balcom	5632 Lankershim Blvd., No. Hollywood
Leonard F. Schempp	5128 S. Gramercy, L.A.
H. J. Babbin	1002 Glickman Ave., El Monte
H. L. Willingham	2103 Pontius, West L.A.
T. E. Milligan	645 E. 79th St., L.A.
Edw. Davis	6316 11th Ave., L.A.
George Harrop	1381 No. Catalina St., Burbank

The number of directors shall remain at twelve until changed by an amendment to the by-laws adopted pursuant to this authority.

ARTICLE VI.

The authorized number and qualifications of the members of this organization, the different classes of membership, the property, voting and other rights, and privileges of each class of membership, and the liability of each or all classes, to dues or assessments and the method of collection thereof, may be set forth in the by-laws of this corporation, except that

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia F. Runyon
Notary Public in and for the County of Los Angeles, State of California

(Notarial Seal)

My Commission Expires Dec. 4, 1944

We, the undersigned, desiring to associate with the first directors for the purpose of forming California Dump Truck Owners Association , a California non-profit corporation, have subscribed our names to these articles of incorporation, have subscribed our names to these articles of incorporation.

MEMBERS

NAMES:	ADDRESSES:
Ed. W. Davis	6316 11th Ave. L.A.
Barney J. Bryce	1111 Raymond Ave. L.B.
Frank Heidlebaugh	3125 E. 11th St. L.B.
T. E. Milligan	64[illegible]79 St., L.A.
E. M. Balcom	5632 Lankershim Blvd. No.Ho.
George Harrop	1381 No. Catalina St. Burbank
E. T. Seibert	Box 62 Route #3, Santa Ana
H. L. Wellingham	2103 Pontius West L.A.
H. J. Gebelin	1002 Glickman Ave. El Monte
A and W Trucking Service (By J. Abromson)	1180 So. Boyle Ave. L.A.
Leonard F. Schempp	5128 So. Gramercy Pl. L.A.
J. P. Gross	5821 Priory Bell
Rudolph Tenvold	6019 So. Hilton Pl L.A.
J. P. Sutor	127 E. Ave. 37 L.A.
C. C. Dent	271 [illegible] L.A.

voting rights or privileges shall be restricted to regular members as defined in the by-laws.

We, the persons who are to act in the capacity of first directors, hereby subscribe to the foregoing articles in the corporation of California Dump Truck Owners Association this 13th day of June, 1941.

Frank Heidlebaugh
Barney Bryce

E. T. Seibert

E. M. Balcom

Leonard F. Schempp

H. J. Gebelin

H. L. Willingham

T. E. Milligan

Ed. W. Davis

George Harrop

Freasie Jones
J. A. Frethiem

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 13th day of June, in the year one thousand nine hundred and forty-one, before me Virginia F. Runyon a Notary Public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared the above twelve (12) incorporators, Frank Heidlebaugh, Barney Bryce, E. T. Seibert, E. M. Balcom, Leonard F. Schempp, H. J. Gebelin, H. L. Willingham, T. E. Milligan, Ed. W. Davis, Freasie Jones, George Harrop, J. A. Frethiem,

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia F. Runyon
Notary Public in and for the county of Los Angeles, State of California
My Commission expires Dec. 4, 1944

(Notarial Seal)

EXHIBIT B

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

The undersigned certify that:

1. They are the president and the secretary, respectively, of California Dump Truck Owners Association, a California corporation.

2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

   The name of this corporation is:
   California Construction Trucking Association.
   It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 01/05/12

Fred Martin, President

DATE: 01/05/12

Mary Proctor, Secretary

EXHIBIT C

NCTO

A0772453

0180202

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION

FILED
Secretary of State
State of California
JUL 07 2015

The undersigned certify that:

1. They are the president and the secretary, respectively, of California Construction Trucking Association, a California corporation.

2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

   The name of this corporation is:
   Western States Trucking Association.
   It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 7-1-2015

Susan Jones

Susan Jones, President

DATE: 6/30/2015

Mary Proctor, Secretary

EXHIBIT B

DECLARATION OF WILLIAM ABOUDI

Robert Henneke (TX 24046058)
Chance Weldon (TX 24076767)
Theodore Hadzi-Antich (CA 264663)
Eric Heigis (CA 343828)
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., *Plaintiffs,* v. UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States, *Defendants.*	No. 4:25-cv-04966-HSG **DECLARATION OF WILLIAM ABOUDI**

I, William Aboudi, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the CEO of Oakland Port Services Corp. ("Oakland Port Services"). Oakland Port Services is an interstate authorized trucking company that is a member

of Western States Trucking Association, Inc. ("WSTA"), a named petitioner in the above-captioned suit. WSTA represents my interest in this lawsuit.

3. My company, which is based in Oakland, California, transports international cargo within California and other states using heavy duty trucks.

4. On April 6, 2023, the U.S. Environmental Protection Agency ("EPA") approved a waiver that allowed California to implement its Advanced Clean Trucks Rule ("ACT Rule"). *See* California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688 (Apr. 6, 2023) [hereafter "ACT Rule Waiver"].

5. The ACT Rule requires medium- and heavy-duty truck manufacturers to sell an increasing percentage of electric vehicles between model year 2024 and model year 2035. *See* Cal. Code Regs. tit. 13, § 1963.1. After model year 2035 the ACT Rule prohibits selling non-electric heavy-duty vehicles in California. *Id.* § 2016(c).

6. Oakland Port Services owns or intends to purchase 2024 or newer model year vehicles using heavy-duty diesel engines and operates or intends to operate said vehicles in California and other states in order to continue to conduct its business operations. For this reason, the ACT Rule will directly affect the profitability, market share, and overall economic stability of my business.

7. Electric heavy-duty vehicles cost more than twice as much as a comparable diesel-powered vehicle.

8. By decreasing and eventually eliminating the share of diesel-powered heady-duty vehicles that can be sold in California, the ACT Rule increases market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, which will increase my costs in purchasing vehicles, parts, and supplies necessary to maintaining a profitable trucking fleet.

9. Because Oakland Port Services owns a fleet of heavy-duty vehicles, I will be forced to purchase more expensive diesel and electric powered vehicles to continue operating my business, thereby losing revenue.

10. The ACT Rule will directly lead to fewer diesel-powered heavy-duty vehicles on the road. This will have the additional effect of increasing diesel fuel prices and decreasing the prevalence of diesel refueling stations, making it even harder for Oakland Port Services to conduct business.

11. If I wish to continue operating Oakland Port Services, these regulations will eventually force me to purchase unreliable electric trucks that often break down or catch fire. There is no nationwide charging infrastructure yet available for such trucks. My employees will lose valuable time and be made to risk their lives due to these regulations.

12. California promulgated these regulations knowing full well that their approval would cause trucking businesses like mine to purchase electric trucks at additional cost or lose significant business.

13. The ACT Rule will increase Oakland Port Services' operational costs per truck by approximately $3,000 per year.

14. The ACT Rule will increase Oakland Port Services' purchase costs per truck by approximately $300,000 at time of purchase.

15. Due to a lack of charging infrastructure, reliability problems with existing electric heavy-duty vehicles, and the higher cost of new electric heavy-duty vehicles when compared to traditional diesel models, I will not be able to continue running my businesses profitably if the ACT Rule takes effect.

16. On June 12, 2025, President Trump signed Public Law 119-15, 139 Stat. 65 (2025). That law repealed EPA's ACT Rule Waiver, thereby preventing the ACT Rule from taking effect.

17. If the ACT Rule remains repealed, my business will not suffer the economic injuries set forth in this declaration.

18. Given these circumstances, I am informed that the Court can redress and prevent Oakland Port Services' injuries by denying Plaintiffs' requested relief and upholding Congress's and the President's decisions to repeal the ACT Rule Waiver.

19. I need to rely on WSTA to represent Oakland Port Services' interests in this lawsuit.

20. Oakland Port Services has a protectable interest in this case. If Plaintiffs receive the relief it has requested—a declaration that the ACT Rule is valid— Oakland Port Services will suffer pocketbook injuries, as set forth in paragraphs 6-18 hereof, thereby impeding as a practical matter Oakland Pert Services' protectible economic interests.

21. I am informed that the federal government defendants may not adequately defend Oakland Port Services' interest in this case. Oakland Port Services—through its membership in WSTA—has challenged section 209 waivers for California in the past and will likely challenge additional waivers in the future. *See e.g., Western States Trucking Ass'n et al. v. U.S. Envtl. Prot. Agency*, Case No. 23-1143 (D.C. Cir.). I am informed that treating these waivers as rules rather than orders or other administrative actions provides avenues for WSTA to challenge the ACT Rule and future waivers that otherwise would not be available to WSTA. I am also informed that the federal government may seek to defend this lawsuit on narrow grounds that may not fully support WSTA's position that section 209 waivers should always be treated as rules under the Administrative Procedure Act. This is especially troublesome given the fact that the Federal Defendants in this case are also defendants in the ACT Rule challenge pending in the D.C. Circuit, where WSTA is a plaintiff rather than a defendant. Accordingly, I do not believe that the Federal Defendants will adequately represent or protect Oakland Port Service's interests in this case.

Pursuant to 28 U.S.C. § 1746, I, William Aboudi, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 9TH day of SEPTEMBER, 2025, in OAKLAND, in the State of CALIFORNIA.

WILLIAM ABOUDI
CEO, Oakland Port Services
10 Burma Rd., Oakland, CA 94607

EXHIBIT C

DECLARATION OF MICHAEL LEWIS

Robert Henneke (TX 24046058)
Chance Weldon (TX 24076767)
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Attorneys for Intervenors

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., *Plaintiffs,* v. UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States, *Defendants.*	No. 4:25-cv-04966-HSG **DECLARATION OF MICHAEL LEWIS**

I, Michael Lewis, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Construction Industry Air Quality Coalition, Inc. ("CIAQC"). I make this declaration in support of CAIQC's motion to intervene as a defendant in *California v. United States*, to which this declaration is attached.

3. CIAQC is a nonprofit California trade association representing the interests of other California nonprofit trade associations and their members whose air emissions are regulated by California state, regional, and local regulations, as well as federal regulations. Our organization's articles of incorporation are attached herein as Exhibit A.

4. CIAQC's specific purpose is "to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies." Exhibit A at 1 (CIAQC articles of incorporation). To those ends, CIAQC may "engage in any lawful act or activity for which a corporation may be organized under [applicable California law]." *Id.* This includes bringing legal challenges on behalf of its members. We represent the interests of multiple member construction companies that transport cargo and goods within the state of California and beyond in connection with construction activities.

5. On April 6, 2023, the U.S. Environmental Protection Agency ("EPA") approved a waiver that allowed California to implement its Advanced Clean Trucks Rule ("ACT Rule"). *See* California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20,688 (Apr. 6, 2023) [hereafter "ACT Rule Waiver"].

6. The ACT Rule requires medium- and heavy-duty truck manufacturers to sell an increasing percentage of electric vehicles between model year 2024 and model year 2035. *See* Cal. Code Regs. tit. 13, § 1963.1. After model year 2035 the ACT Rule prohibits selling non-electric heavy-duty vehicles in California. *Id.* § 2016(c).

7. The ACT Rule applies to on-road vehicles with a gross vehicle weight rating that is 8,501 pounds and above. *Id.* § 1963(c). CIAQC's members operate trucks subject to the ACT Rule to transport cargo and goods as part of their regular business activities.

8. CAIQC and its members have advocated against the California Air Resources Board's ("CARB") electric vehicle mandates and overly stringent heavy-duty vehicle regulations, including the ACT Rule.

9. CIAQC petitioned for review of the ACT Rule in the D.C. Circuit. That lawsuit remains pending. *See Western States Trucking Ass'n et al. v. U.S. Envtl. Prot. Agency*, Case No. 23-1143 (D.C. Cir.).

10. The ACT Rule will limit the types of vehicles available that are necessary to conduct CIAQC members' business activities, making them choose between

purchasing costly and unreliable vehicles required by the regulations and losing significant profits.

11. By steadily increasing the share of electric vehicles that truck manufacturers must sell, the ACT Rule limits the vehicles that can be sold to and operated by CIAQC's members. The ACT Rule will force CIAQC's members who own heavy-duty vehicles to purchase electric vehicles that are more expensive, thereby losing revenue.

12. The ACT Rule limits the availability of vehicles needed for CIAQC's members to profitably conduct their businesses. The rule's electric vehicle sales requirement imposes increased market scarcity of reliable and cost-effective diesel-powered heavy-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

13. As fewer diesel-powered heavy-duty vehicles remain on the road thanks to the knock-on effects of the ACT Rule, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

14. If CIAQC's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

15. CIAQC's members frequently operate in locations where there is no electric power because CIAQC members are installing electric power at that specific location, which only further complicates the use of all-electric vehicles.

16. On June 12, 2025, President Trump signed Public Law 119-15, 139 Stat. 65 (2025). That law repealed EPA's ACT Rule Waiver, thereby preventing the ACT Rule from taking effect.

17. If the ACT Rule remains repealed, the businesses of many CIAQC members will not suffer the economic injuries described in paragraphs 10-15 hereof.

18. Given these circumstances, I am informed that CIAQC may "stand in the shoes" of its members to intervene as a defendant in the instant lawsuit on their behalf because doing so is consistent with and will further CIAQC's associational purposes. Exhibit A at 2.

19. I am also informed that the Court can redress and prevent CIAQC members' injuries by denying Plaintiffs' requested relief and upholding Congress's and the President's decisions to repeal the ACT Rule Waiver.

20. CIAQC has protectable interests in this case. If Plaintiffs receive the relief they have requested—a declaration that the ACT Rule is valid—CIAQC's members will suffer pocketbook injuries, as set forth in paragraphs 10-15 hereof, thereby impeding as a practical matter CIAQC's protectible economic interests. Also, as explained in paragraph 9 hereof, CIAQC has petitioned for review of the ACT Rule in a case pending in the D.C. Circuit. If the Plaintiffs in this case receive their requested relief, CIAQC will have to continue to prosecute the D.C. Circuit case and may need to change the manner in which it litigates the issues therein, thereby impeding as a practical matter CIAQC's protectible interests in avoiding litigation and the costs associated therewith.

21. As explained in paragraph 9, CIAQC has challenged Clean Air Act section 209 waivers for California in the past and will likely challenge additional waivers in the future, consistently arguing that any such waivers are rules under the Administrative Procedure Act. I am informed that treating such waivers as rules rather than orders or other administrative actions provides avenues for CIAQC to challenge the ACT Rule and future waivers that otherwise would not be available to CIAQC. I am also informed that the federal government may seek to defend this lawsuit on narrow grounds that may not fully support CIAQC's position that section 209 waivers should always be treated as rules under the Administrative Procedure Act. This is especially troublesome given the fact that the Federal Defendants in this case are also defendants in the ACT Rule challenge pending in the D.C. Circuit, where CIAQC is a plaintiff rather than a defendant. Accordingly, I do not believe that the Federal Defendants will adequately represent or protect CIAQC's interests in this case.

Pursuant to 28 U.S.C. § 1746, I, Michael Lewis, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 12th day of SEPTEMBER, 2025, in HACIENDA HEIGHTS, in the State of CALIFORNIA.

MICHAEL LEWIS
Executive Director
Construction Industry Air Quality Coalition, Inc.

EXHIBIT A

1954125

FILED
in the office of the Secretary of State
of the State of California

NOV 17 1995

BILL JONES, Secretary of State

ARTICLES OF INCORPORATION OF CONSTRUCTION INDUSTRY AIR QUALITY COALITION

I.
NAME

The name of the corporation is Construction Industry Air Quality Coalition.

II.
PURPOSES

2. (A) This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

(B) The specific purpose of this corporation is to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies.

III.
AGENT FOR SERVICE OF PROCESS

The name and address in the State of California of this corporation's initial agent for service of process is: Michael Lewis, 1330 South Valley Vista Drive, Diamond Bar, California 91765.

IV.
OTHER PROVISIONS

A. An existing unincorporated association, Construction Industry Air Quality Coalition, is being incorporated by the filing of these articles.

B. The Bylaws may provide for two classes of membership: general and associate.

C. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

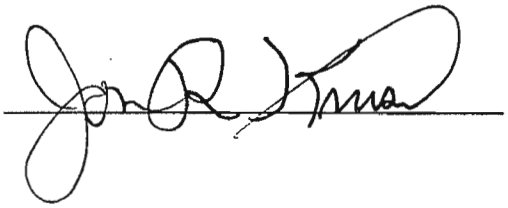
Dated: September 5, 1995

Amy Glad

Jon R. Kruse

Amy Glad and Jon R. Kruse declare under penalty of perjury under the laws of the State of California that they are two of the Board Members of Construction Industry Air Quality Coalition, the subject of the Articles of Incorporation attached to this declaration, and further declare that Construction Industry Air Quality Coalition has duly authorized and approved its incorporation by means of the attached Articles in accordance with its rules and procedures.

Executed at Monterey Park, County of Los Angeles, California, on September 5, 1995



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 1286
RANCHO CORDOVA, CA. 95741-1286

November 17, 1995

In reply refer to
340:G :PTS

CONSTRUCTION INDUSTRY AIR QUALITY
COALITION
1330 SOUTH VALLEY
VISTA DRIVE
DIAMOND BAR CA 91765

Purpose	:	BUSINESS LEAGUE
Code Section	:	23701e
Form of Organization	:	Corporation
Accounting Period Ending	:	December 31
Organization Number	:	

You are exempt from state franchise or income tax under the section of the Revenue and Taxation Code indicated above.

This decision is based on information you submitted and assumes that your present operations continue unchanged or conform to those proposed in your application. Any change in operation, character, or purpose of the organization must be reported immediately to this office so that we may determine the effect on your exempt status. Any change of name or address also must be reported.

In the event of a change in relevant statutory, administrative, judicial case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your application upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes should they occur. This paragraph constitutes written advice, other than a chief counsel ruling, within the meaning of Revenue and Taxation Code Section 21012 (a)(2).

You may be required to file Form 199 (Exempt Organization Annual Information Return) on or before the 15th day of the 5th month (4 1/2 months) after the close of your accounting period. See annual instructions with forms for requirements.

You are not required to file state franchise or income tax returns unless you have income subject to the unrelated business income tax under Section 23731 of the Code. In this event, you are required to file Form 109 (Exempt Organization Business Income Tax Return) by the 15th day of the 5th month (4 1/2 months) after the close of your annual accounting period.

If the organization is incorporating, this approval will expire unless incorporation is completed with the Secretary of State within 60 days.

Exemption from federal income or other taxes and other state taxes requires separate applications.

A copy of this letter has been sent to the Office of the Secretary of State.

P SHEK
EXEMPT ORGANIZATION UNIT
CORPORATION AUDIT SECTION
Telephone (916) 845-4171

EO :
cc: CURTIS L. COLEMAN

COPY

EXHIBIT D

PROPOSED MOTION TO DISMISS

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Attorneys for Proposed Intervenor-Defendants Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc.

*Motion for admission *pro hac vice* forthcoming

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States,

Defendants.

No. 4:25-cv-04966-HSG

INTERVENOR-DEFENDANTS WESTERN STATES TRUCKING ASSOCIATION AND CONSTRUCTION INDUSTRY AIR QUALITY COALITION'S PROPOSED MOTION TO DISMISS

Date: _____, 2025
Time: 2:00 p.m.
Courtroom: 2, 4th Floor, Oakland Courthouse
Judge: Hon. Haywood S. Gilliam, Jr.

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

NOTICE OF MOTION

PLEASE TAKE NOTICE that on _____, 2025, at 2:00 p.m., or as soon thereafter as this matter may be heard in the United States District Court for the Northern District of California, 1301 Clay Street, Courtroom 2 (4th Floor), Oakland, CA 94612, Intervenor-Defendants Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc. will appear and present their motion to dismiss this case with prejudice pursuant to Federal Rule of Civil Procedure 12(b).

MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) and Local Rule 7-2, Intervenor-Defendants Western States Trucking Association, Inc. ("WSTA") and Construction Industry Air Quality Coalition, Inc. ("CIAQC") (collectively "Intervenor-Defendants") respectfully move to dismiss for lack of subject-matter jurisdiction and for failure to state a claim. This Motion is supported by the following Memorandum of Points and Authorities, all pleadings and papers filed in this action, and such other written and oral argument or evidence as may be presented to the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

The State of California adopted an electric vehicle mandate for both passenger cars and heavy-duty vehicles. By model year 2035, all cars and light trucks sold in the state must be electric. Cal. Code Regs. tit. 13, § 1962.4. By model year 2036, all medium- and heavy-duty vehicles sold in California (with some emergency vehicles excepted) must be electric. *Id.* § 2016(c). The express purpose of this mandate is to reduce vehicle emissions. *Id.* §§ 1962.4(b); 1963(a).

The federal Clean Air Act ("CAA") prohibits states from regulating emissions from new motor vehicles. 42 U.S.C. § 7543(a). However, Congress provided a special carveout for California. CAA section 209 allows the Environmental Protection Agency

("EPA") to issue a waiver that allows California to adopt emissions standards that are stricter than federal standards. *Id.* § 7543(b). EPA issued waivers for California's car and heavy-duty electric vehicle mandates in 2025 and 2023, respectively. EPA also issued a waiver that allowed California to implement low nitrogen oxides (NO_x) emissions standards for heavy-duty trucks that further incentivizes electric vehicles.

In response, both houses of Congress passed legislation to repeal each of the three waivers. The president signed them into law. *See* Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025). Each of those laws states the EPA's waiver "shall have no force or effect." Without a waiver, the CAA prevents California from enforcing emissions standards that effectively mandate electric vehicles. 42 U.S.C. § 7543(a).

Now California and 10 other states have brought the present lawsuit seeking to invalidate those laws. Plaintiffs seek judicial declarations that the laws are invalid and that therefore the car and heavy-duty electric vehicle mandates are valid and in effect. *See* Pls.' Compl., Dkt. No. 1 at 40.

Plaintiffs' claims fail on multiple grounds. *First*, the Congressional Review Act ("CRA") is incorporated into each House of Congress's rules and is thus an unreviewable political question. The political questions doctrine prevents Plaintiffs from attempting to judicially enforce the Senate's filibuster rule. The political questions doctrine also precludes Plaintiffs' Take Care Clause claim. As if that were not enough, the CRA itself explicitly bars judicial review of any determinations made under the act. *Second*, Plaintiffs cannot show standing because their alleged injury is not traceable to Defendants' actions and is not redressable. *Third*, Plaintiffs cannot challenge EPA's decision to treat the CAA section 209 waivers as rules because that decision was not final agency action. *Fourth*, CAA section 209 waivers are properly considered rules, which is the lynchpin to each of Plaintiffs' claims. That means Plaintiffs fail to state a claim under the CRA, Administrative Procedure Act ("APA"), Take Care Clause, Separation of Powers, the Tenth Amendment, Federalism, *ultra*

vires, and Nonstatutory review. Therefore, the Court should dismiss this case with prejudice.

STATEMENT OF ISSUES

1. Whether this Court lacks jurisdiction because:
   a. Plaintiffs' claims present nonjusticiable political questions;
   b. Plaintiffs' claims are barred by the Congressional Review Act's jurisdiction-stripping provision;
   c. Plaintiffs lack standing to challenge EPA's actions; and
   d. The EPA's action that Plaintiffs challenge was not final agency action.
2. Whether Plaintiffs fail to state any claim upon which relief can be granted because the challenged laws were duly enacted and consistent with constitutional and statutory requirements.

BACKGROUND

I. The Clean Air Act and Federal Preemption of Emissions Standards

In 1967 Congress amended the CAA to prohibit states from adopting or enforcing "any standard relating to the control of emissions from new motor vehicles." CAA § 209, 42 U.S.C. § 7543(a). "The express language in section 7543(a) indicates Congress's intent to exclusively regulate the control of new motor vehicle emissions prior to their initial sale." *Sims v. Fla., Dep't of Highway Safety & Motor Vehicles*, 862 F.2d 1449, 1455 (11th Cir. 1989). Pursuant to the CAA, the EPA has promulgated national standards for motor vehicle emissions. *See generally* 40 C.F.R. Part 86.

At the same time it enacted the preemption provision, Congress also gave EPA the authority to waive preemption for a state that had its own vehicle emissions standards in 1966. 42 U.S.C. § 7543(b)(1). California is the only state eligible for this waiver. *California v. EPA*, 940 F.3d 1342, 1345 (D.C. Cir. 2019). To be eligible for such a waiver, California must show that its proposed standards are "at least as protective of public health and welfare as applicable Federal standards." 42 U.S.C. § 7543(b)(1). EPA cannot issue a waiver if it finds the standards are arbitrary and capricious, do

not address "compelling and extraordinary conditions" within California, or are not consistent with section 202 of the CAA. *Id.* § 7543(b)(1)(A)–(C). If EPA approves the waiver, California can enforce those emissions standards. The CAA allows other states to adopt these standards so long as "such standards are identical to the California standards for which a waiver has been granted." *Id.* § 7507(1). Because it is expensive and inefficient for auto manufacturers to produce two versions of every vehicle—i.e., one that is California compliant and one that meets EPA's federal standards—California's emissions standards become de facto national standards.

II. California Imposes an Electric Vehicle Mandate for Cars and Trucks

In September 2020, California Governor Gavin Newsom announced a goal to ban gas-powered cars and trucks by 2035. *See* Cal. Exec. Order No. N-79-20 at 2, *available at* https://tinyurl.com/5hyj3js5. The state legislature never voted on this mandate. Instead, the California Air Resources Board ("CARB") promulgated a series of regulations in 2022 to implement this electric vehicle mandate:

- **Advanced Clean Cars II ("ACC II")** requires light-duty car manufacturers sell an increasing percentage share of electric vehicles between model year 2026 and model year 2035. In model year 2026, 35% of vehicles sold in California must be a "zero-emission vehicle." Cal. Code Regs. tit. 13, § 1962.4(c)(1)(B). By model year 2035, that percentage increases to 100%. *Id.* The ACC II Rule thus prohibits selling gasoline powered cars beginning in 2035.
- **Advanced Clean Trucks ("ACT")** requires medium- and heavy-duty truck manufacturers to sell an increasing percentage of electric vehicles between model year 2024 and model year 2035. *Id.* § 1963.1. Sales of internal-combustion vehicles must be offset with "credits" generated by sales of electric trucks. *Id.* The required offset increases annually and varies by vehicle class. In model year 2035, the ACT Rule requires manufacturers to offset at least 55% of their Class 2b-3 sales (heavy-duty pickups), 75% of their Class 4-8 sales (from box trucks to semis), and 40% of their Class 7-8 (day and sleeper cab semi-

trucks) with zero emission vehicles. *Id.* After model year 2035 the ACT Rule prohibits selling non-electric heavy-duty vehicles in California. *Id.* § 2016(c).

- **Omnibus Low NO_x Program ("Omnibus Program")** sets nitrogen oxides (NO_x) emissions standards for model year 2024 and later medium- and heavy-duty vehicles. These standards are set at levels that further incentivize manufacturers to sell electric vehicles and phase out internal combustion engines. *See id.* § 1956.8(a)(2)(C), (D).

The express purpose of these three rules is to reduce new vehicle emissions. *Id.* §§ 1962.4(b); 1963(a). That means California had to seek a CAA section 209 waiver from EPA for each rule.

III. EPA Issues CAA Section 209 Waivers for California's Electric Vehicle Mandate

EPA issued waivers for each of the three CARB rules. EPA first issued a waiver for the ACT Rule in 2023. *California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision*, 88 Fed. Reg. 20,688 (Apr. 6, 2023). EPA then issued a waiver for the ACC II Rule in 2025. *California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 642 (Jan. 6, 2025). Finally, EPA issued a waiver for the Omnibus Program the same day. *California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The 'Omnibus' Low NOX Regulation; Waiver of Preemption; Notice of Decision*, 90 Fed. Reg. 643 (Jan. 6, 2025). These waivers allowed California, eleven other states, and the District of Columbia to implement these regulations. *See* Cal. Air Res. Bd., *States That Have Adopted California's Vehicle Regulations*, https://tinyurl.com/3ws67cd9 (last updated Apr. 2025).

IV. Congress Repeals EPA's Waivers

Following EPA's waiver approvals in 2025, Congress took action to repeal the waivers. In April, three U.S. Representatives introduced joint resolutions to repeal the ACT Rule, ACC II Rule, and Omnibus Program. H.R.J. Res. 87, 119th Cong. (2025); H.R.J. Res. 88, 119th Cong. (2025); H.R.J. Res. 89, 119th Cong. (2025), respectively. The legislative text of each resolution named the EPA waiver, included its Federal Register citation, and stated the waiver "shall have no force or effect." *Id.* Each piece of legislation passed the House and Senate without amendment in April and May 2025. *See* 139 Stat. 65–67 (2025) (explaining legislative history). President Trump signed them into law on June 12. *See* Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025). Following that action, federal law unequivocally states that the three waivers "shall have no force or effect."

As stated above, the express purpose of the ACT Rule, ACC II Rule, and Omnibus Program is to reduce new vehicle emissions. Cal. Code Regs. tit. 13, §§ 1962.4(b); 1963(a). Without a valid waiver in effect, California cannot "attempt to enforce" these standards. 42 U.S.C. § 7543(a).

V. Procedural History

Plaintiffs filed this lawsuit within hours of the President signing the EPA waiver repeals into law. Pls.' Compl., Dkt. No. 1 (filed June 12, 2025). Plaintiffs allege statutory and constitutional violations by EPA and its Administrator, non-party Congress, and the President. The Complaint requests this Court declare Public Laws 119-15, 119-16, and 119-17 "unconstitutional, unlawful, void, and of no effect" and that the waivers for the ACC II Rule, ACT Rule, and Omnibus Program "are valid and in effect." Pls.' Compl., Dkt. No. 1 at 40. Several parties have moved to intervene, but no other substantive motions have yet been filed.

STANDARD FOR GRANTING MOTION

A court must grant a motion to dismiss if it lacks subject matter jurisdiction over a case. Plaintiffs bear the burden of establishing that jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *United States v. Orr Water Ditch Co.*, 600 F.3d 1152, 1157 (9th Cir. 2010). A statute that bars judicial review deprives federal courts of jurisdiction to review claims under it. *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 563 (9th Cir. 2019). Additionally, courts lack jurisdiction to adjudicate a claim involving a political question. *Corrie v. Caterpillar*, 503 F.3d 974, 980 (9th Cir. 2007). To demonstrate Article III standing (also a jurisdictional requirement), "plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). When jurisdiction is lacking, the Court must dismiss the action. *See, e.g.*, *Nat. Res. Def. Council, Inc. v. S. Coast Air Quality Mgmt. Dist.*, 651 F.3d 1066, 1073 (9th Cir. 2011).

A court must dismiss a complaint under Rule 12(b)(6) if the complaint lacks a cognizable legal theory or lacks sufficient facts to establish a cognizable legal theory. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). When deciding a motion to dismiss, courts "accept[] as true all well-pleaded allegations of material fact and construe them in the light most favorable to the non-moving party." *Hyde v. City of Willcox*, 23 F.4th 863, 869 (9th Cir. 2022). Courts will not, however, "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (citation omitted).

ARGUMENT

California's complaint must be dismissed. Congress passed, and the President signed into law, legislation that declares three of California's CAA section 209 waivers "shall have no force or effect." *See* Pub. L. No. 119-15, 139 Stat. 65 (2025); Pub. L. No. 119-16, 139 Stat. 66 (2025); Pub. L. No. 119-17, 139 Stat. 67 (2025). Nothing in the

Constitution prohibits Congress from enacting a law—through bicameralism and presentment—that restricts an agency's power. *See City of Arlington v. FCC*, 569 U.S. 290, 317 (2013) (quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

Plaintiffs allege Congress did not follow its own internal rules for passing a specific type of legislation. This attempt to judicially enforce the Senate's filibuster rule runs counter to more than a century of Supreme Court decisions. *United States v. Ballin*, 144 U.S. 1, 5 (1892).

Plaintiffs' argument also relies on the flawed conclusion that a CAA section 209 waiver is not a rule under the CRA. A CAA section 209 waiver is properly classified as a rule because it has prospective and binding legal effects on a broad category of unidentified individuals. If a CAA section 209 waiver is a rule, then all of Plaintiffs' legal theories fail to state a claim.

I. This Court Lacks Jurisdiction to Decide Plaintiffs' Case

This Court lacks jurisdiction for four reasons. *First*, Congress's choice on how to interpret the rules of its proceedings and the Executive Branch's decisions on how to faithfully execute the law are non-reviewable political questions. *Second*, the CRA explicitly bars judicial review, which deprives this court of jurisdiction. *Third*, Plaintiffs lack standing because they cannot show traceability and redressability. *Fourth*, EPA's decision to submit the CAA section 209 waivers to Congress was not final agency action.

A. Plaintiffs' claims involve non-reviewable political questions.

Plaintiffs' claims involve two non-reviewable political questions concerning how Congress interprets the rules of its proceedings and how the Executive Branch decides to faithfully execute the law.

The political questions doctrine bars courts from deciding claims that involve a lack of judicial competency to resolve the issue or adversely implicate the judiciary's relationship with the coordinate branches of government. *Baker v. Carr*, 369 U.S. 186,

210 (1962). One category of political questions arises when the Constitution's text demonstrates that the matter has been committed to the political branches. *Id.* at 217. This includes each House of Congress's power to "determine the Rules of its Proceedings." U.S. Const. art. I, § 5, cl. 2; *see United States v. Ballin*, 144 U.S. 1, 5 (1892) (holding Congress's "power to make rules is . . . absolute and beyond the challenge of any other body or tribunal.").

The political questions doctrine also bars claims that lack "judicially discoverable and manageable standards for resolving" the issue or if a court cannot resolve the issue "without expressing lack of the respect due coordinate branches of government." *Baker*, 369 U.S. at 217. The Supreme Court has recognized that "the duty of the President in the exercise of the power to see that the laws are faithfully executed . . . is purely executive and political." *Mississippi v. Johnson*, 71 U.S. 475, 499 (1867). This means that vague Take Care Clause claims challenging the President's discretionary duties are political questions outside the reach of federal courts.

Political questions are "nonjusticiable," meaning courts "lack subject matter jurisdiction" and are analyzed for dismissal under Rule 12(b)(1). *Corrie v. Caterpillar*, 503 F.3d 974, 982 (9th Cir. 2007).

1. The CRA is incorporated into Congress's rules of proceedings, so determinations under the CRA are non-reviewable political questions.

The CRA is a procedural mechanism that allows Congress to invalidate an agency rule using expedited procedures. Maeve P. Carey & Christopher M. Davis, Cong. Research Serv., R43992, The Congressional Review Act (CRA): Frequently Asked Questions 16 (Aug. 29, 2024), https://www.congress.gov/crs-product/R43992. It does so by limiting debate on a qualifying resolution of disapproval in the Senate to ten hours. *Id.*; 5 U.S.C. § 802(d)(2). Under the Senate's rules, there is no limit on how long Senators can debate a measure. Valerie Heitshusen, Cong. Research Serv., 96-

548, The Legislative Process on the Senate Floor: An Introduction 2–3 (July 22, 2019), https://www.congress.gov/crs-product/96-548. Debate can be brought to a close only by agreeing to a cloture motion under Senate Rule XXII. *Id.* at 3. A cloture motion requires "three-fifths of the Senators duly chosen and sworn" (60 Senators if there is no more than one vacancy) to vote to end debate. *Id.*; S. Rule XXII(2) cl. 2, 119th Cong. (2025). Contrary to popular belief, the Senate filibuster does not require 60 votes for final passage of legislation. Once debate has ended, the Senate's rules only require a simple majority of those present and voting to pass legislation. Carey & Davis, *supra*, at 16.

Congress passed, and the President signed, the CRA in 1996 as part of the Contract with America Advancement Act of 1996. Pub. L. No. 104-121, § 251, 110 Stat. 847, 868–74 (1996), *codified at* 5 U.S.C. §§ 801–808. Although it was enacted as a statute, Congress clarified it enacted the CRA "as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively" and reserved "the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time." 5 U.S.C. § 802(g); *accord* Carey & Davis, *supra*, at 16 ("The CRA . . . [is] considered to be rules of the House and Senate, despite being enacted in law. As such, the chambers may suspend these rules in whole or in part by unanimous consent, suspension of the rules, or special rule."); *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 557 (9th Cir. 2019). That means Plaintiffs' challenge to the CRA is a challenge to Congress's rules of proceedings, not the substance of the laws Congress passed.

This makes sense. A statute—whether procedural or substantive—cannot expand a branch's powers beyond what the Constitution grants. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803). Just as Congress could not expand the Supreme Court's original jurisdiction through the Judiciary Act of 1789, Congress cannot expand its Article I lawmaking power through the CRA. *Id.*

Plaintiffs do not directly challenge the CRA's constitutionality. Even if they did, that argument would not get them very far.[1] Enacting a law using the CRA "validly amend[s] [an agency]'s authority." *Ctr. for Biological Diversity*, 946 F.3d at 562. Even without the CRA, Congress has the inherent power to invalidate agency actions—whether or not the CRA exists. "Agencies are creatures of Congress; an agency literally has no power to act unless and until Congress confers power on it." *City of Arlington v. FCC*, 569 U.S. 290, 317 (2013) (quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)) (cleaned up). If the CRA were repealed, Congress could still pass a law saying, "The agency action titled _____ shall have no force or effect."[2] If such a bill passed the House and Senate and the President signed it, there would be no basis to impeach its validity. That is exactly what happened with Public Laws 119-15, 119-16, and 119-17. A majority of the House and Senate voted to pass these measures, and the President signed them into law. Plaintiffs admitted that Congress passed these measures and that the President signed them into law. Pls.' Compl, Dkt. No. 1 at ¶¶ 95, 111, 113. This underscores that the Plaintiffs are challenging the procedure by which Public Laws 119-15, 119-16, and 119-17 passed, not Congress's Article I power to pass them.

That procedural challenge falls within the political questions doctrine. In *United States v. Ballin* the Supreme Court held that Congress's "power to make rules is . . . absolute and beyond the challenge of any other body or tribunal." 144 U.S. 1, 5 (1892). This principle applies broadly to the Senate's consideration of legislation, executive appointments, and impeachment trials. *Id.* (challenge to legislation); *NLRB v. Canning*, 573 U.S. 513, 516 (2014) (challenge to recess appointments); *Nixon v.*

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[1] Indeed, the Ninth Circuit has previously rejected Constitutional challenges to the CRA. *Ctr. for Biological Diversity*, 946 F.3d at 562.

[2] Moreover, Congress could pass such a law regardless of any determinations the Executive Branch made about the agency action. The President's veto power provides the Executive Branch's exclusive check on such legislative action.

United States, 506 U.S. 224, 237–38 (1993) (challenge to impeachment trial procedures).

Plaintiffs' claimed defects in Public Laws 119-15, 119-16, and 119-17 are a challenge to Congress's procedure in considering that legislation. Plaintiffs cannot make an end-run around the political questions doctrine by couching their claims as challenges to the President's and EPA's actions. *Ballin* and its progeny confirm that the political questions doctrine renders this claim nonjusticiable. Therefore the Court should dismiss Counts I, II, and III for lack of jurisdiction.

2. The Executive Branch's decisions on how to faithfully execute the law are non-reviewable political questions.

Plaintiffs also challenge under the Take Care Clause the President and EPA Administrator's decision to treat the ACC II, ACT, and Omnibus Program waivers as rules.[3] The Take Care Clause gives the President the duty to "take care that the laws be faithfully executed." U.S. Const. art. II, § 3.

Although this duty is phrased in mandatory terms, courts would have a hard time enforcing it "without expressing lack of the respect due coordinate branches of government." *Baker*, 369 U.S. at 217. Indeed, the Take Care Clause lacks "judicially discoverable and manageable standards for resolving" claims such as these. *Id.* Even before the Supreme Court developed the political questions doctrine, it recognized the difficulty in courts micromanaging how the President executes his duties: "the duty of the President in the exercise of the power to see that the laws are faithfully executed . . . . is in no just sense ministerial. It is purely executive and political." *Mississippi v. Johnson*, 71 U.S. 475, 499 (1866). This means that vague Take Care Clause claims challenging the President's discretionary (rather than ministerial) duties are political questions outside the reach of federal courts.

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[3] Although not framed as a Take Care Clause challenge, Plaintiffs complain that Congress improperly and retroactively changed the criteria for CAA section 209 waivers. *See* Pls.' Compl., Dkt. No. 1 at ¶ 174 (Count VI). Ninth Circuit precedent forecloses such an argument under the Take Care Clause. *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553, 562 (9th Cir. 2019).

Count IV's Take Care Clause claim is a political question that renders it nonjusticiable. Therefore the Court should dismiss Count IV for lack of jurisdiction.

B. The CRA's bar on judicial review deprives this Court of jurisdiction to decide Plaintiffs' claims.

In addition to being a non-reviewable political question, the CRA explicitly bars judicial review of a "determination, finding, action, or omission" under the Act. 5 U.S.C. § 805. "On its face, this language bars judicial review of *all* challenges to actions under the CRA, including constitutional challenges." *Ctr. for Biological Diversity*, 946 F.3d at 561 (emphasis added). This includes both Congressional and agency actions. *Cf. id.* at 563 ("federal courts do not have jurisdiction over statutory claims that arise under the CRA"); *see also Montanans for Multiple Use v. Barbouletos*, 568 F.3d 225, 229 (D.C. Cir. 2009) (the CRA "denies courts the power to void rules on the basis of *agency noncompliance* with the Act" (emphasis added)).

By barring judicial review, the CRA deprives federal courts of jurisdiction to review claims under it. *Ctr. for Biological Diversity*, 946 F.3d at 563. All of Plaintiffs' counts challenge a "determination, finding, action, or omission" under the CRA. *See* Pls.' Compl., Dkt. No. 1 ¶¶ 116, 118, 126, 128–32, 137–40, 146–48, 157, 172. Count VII assumes that the Court has granted the relief requested in one of the other six counts that rely on a CRA violation, and on that basis alleges Defendants are violating federal law. *Id.* ¶¶ 182–86. Therefore the Court should dismiss all counts for lack of jurisdiction.

Despite the CRA's clear text, the Ninth Circuit has held that courts may consider constitutional claims related to actions taken under the CRA. *Ctr. for Biological Diversity*, 946 F.3d at 561. Even under that precedent, however, Plaintiffs' statutory claims (Counts I–III), which are based entirely on alleged determinations, actions, or omissions "under" the CRA, are beyond this Court's review. 5 U.S.C. § 805; *Ctr. for Biological Diversity*, 946 F.3d at 563–64. Moreover, Plaintiffs do not allege the CRA itself is unconstitutional or that it authorizes unconstitutional acts. Rather,

Plaintiffs argue that Defendants' actions related to the CRA process violate other Constitutional duties. But those actions relate back to a "determination, finding, action, or omission" under the CRA. Congress plainly made those actions unreviewable. 5 U.S.C. § 805. Intervenors preserve for appeal whether *Ctr. for Biological Diversity* properly applied the CRA's bar on judicial review as it relates to constitutional claims.

C. Plaintiffs lack standing because they cannot show traceability or redressability.

Plaintiffs also lack standing for their claims. To establish standing, Plaintiffs must show "an injury that is 'concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.'" *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Clapper v. Amnesty Int'l USA*, 568 U. S. 398, 409 (2013)).

Plaintiffs allege they are injured because they are "prevent[ed] … from enforcing laws they have chosen to adopt within their jurisdictions." Pls.' Compl., Dkt. No. 1, at ¶ 5. But that injury is not traceable to Defendants' actions. Plaintiffs' injury (if any) came from Congress exercising its Article I legislative powers. Plaintiffs' claimed injuries were inflicted once the President signed Public Laws 119-15, 119-16, and 119-17. This "exercise [of] independent judgment" by Congress and the President severs any causal chain to EPA. *Murthy*, 603 U.S. at 60. Congress was under no obligation to accept EPA's characterization of the waivers as rules or to pass CRA resolutions of disapproval once the waivers were submitted. As explained in Section I.A.1. above, Congress has the Constitutional authority to repeal an agency rule outside of the CRA's process. And the President has unreviewable power to sign or veto a bill. *Cf. Bowsher v. Synar*, 478 U.S. 714, 755 (1986) (describing the President's veto power as "unilateral"). He exercised independent judgment in concluding H.J. Res. 87, 88, and 89 were an appropriate means to repeal the waivers. These "unfettered choices made by independent actors" extinguish any link between the

challenged EPA actions and Plaintiffs' alleged injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992).

Plaintiffs' alleged injury also will not be redressed "by a favorable ruling" on EPA's actions. *Murthy*, 603 U.S. at 57. Plaintiffs seek a declaration that EPA's reclassification and submission actions were *ultra vires*, Pls.' Compl., Dkt. No. 1 at ¶ 120, and violate the APA, *id.* at ¶ 133, so therefore the "Resolutions are unlawful, void, and of no effect." *Id.* But one does not follow the other. Such a declaration would not render Public Laws 119-15, 119-16, and 119-17 unenforceable. Those laws were enacted "in conformity with the express procedures of the Constitution's prescription for legislative action: passage by a majority of both Houses and presentment to the President," *INS v. Chadha*, 462 U.S. 919, 958 (1983); *see also* U.S. Const. art. I, § 7, cls. 2–3; *United States v. Ballin*, 144 U.S. 1, 6 (1892) (under the "federal constitution," "the act of a majority of the quorum is the act of the body"). Therefore, those laws are and will remain a legitimate exercise of the federal legislative power, regardless of any alleged deficiency in EPA's non-binding characterization and submission. *See Chadha*, 462. U.S. at 951.

Plaintiffs' challenge is not like the typical Constitutional challenge. Plaintiffs do not claim that EPA's post-enactment implementation of law is unconstitutional. Rather, Plaintiffs challenge alleged pre-enactment flaws. But there is no "fruit of the poisonous tree" doctrine for legislation. *Cf. Utah v. Strieff*, 579 U.S. 232, 237 (2016). Even if there were flaws in EPA's pre-enactment reasoning, Congress's enactment through bicameralism and presentment effectively ratified EPA's actions.

Nor may Plaintiffs seek "damages" or prospective relief against EPA to remedy an alleged past violation; and Plaintiffs do not "claim that they might enjoin Congress." *California v. Texas*, 593 U.S. 659, 673 (2021). Here, EPA has completed the submission of the waiver decisions, and the legislative process is complete. A decision of the court related to EPA's actions "would amount to 'an advisory opinion without the possibility of any judicial relief.'" *California v. Texas*, 593 U.S. at 673. No

action of this Court regarding EPA's actions could remedy Plaintiffs' alleged injury. Plaintiffs have not carried their burden to show standing for their claims. Therefore, the Court should dismiss the complaint for lack of jurisdiction.

D. EPA's decision to submit the CAA section 209 waivers to Congress was not final agency action.

The EPA actions that Plaintiffs challenge are not "final agency action," 5 U.S.C. § 704, and so this Court lacks jurisdiction over Plaintiffs' APA claim. *Havasupai Tribe v. Provencio*, 906 F.3d 1155, 1161 (9th Cir. 2018) ("Final agency action is a jurisdictional requirement imposed by 5 U.S.C. § 704" (cleaned up)); *see also* Pls.' Compl., Dkt. No. 1 at ¶ 122–135 (Count II).

An agency action is "final" if it (1) "mark[s] the 'consummation' of the agency's decisionmaking process" and (2) is "one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). EPA's actions do not satisfy *Bennett*'s second criterion. EPA's decision to treat the ACC II Rule, ACT Rule, and Omnibus Program waivers as "rules" and to submit them to Congress created no right, imposed no obligation, and had no "direct consequences" for Plaintiffs. *Dalton v. Specter*, 511 U.S. 462, 469 (1994).

Even after EPA's submission, the waivers remained in effect until Congress passed (and the President signed) resolutions of disapproval. Congress's Constitutional power to repeal agency action did not depend upon EPA's submission. Like other agency actions the Supreme Court has held are not final, EPA's characterization and submission of the waivers were, at most, "recommendations [that] were in no way binding on the President [and Congress], who had absolute discretion to accept or reject them." *Bennett*, 520 U.S. at 178; *see also Dalton*, 511 U.S. at 469; *Franklin v. Massachusetts*, 505 U.S. 788, 798 (1992).

The APA only allows challenges to final agency action. EPA's challenged actions do not meet *Bennett*'s test for final agency action. Therefore, the Court should dismiss Plaintiffs' APA claim for lack of jurisdiction.

II. Plaintiffs Fail to State a Cognizable Claim

Each of Plaintiffs' claims relies on the argument that CAA section 209 waivers are not properly considered rules under the CRA. *See* Pls.' Compl., Dkt. No. 1 ¶¶ 116, 118, 126, 128–32, 137–40, 146–48, 157, 172. If CAA section 209 waivers are rules, all of Plaintiffs' claims fail.

A. CAA section 209 waivers are properly classified as rules because they have purely prospective legal effects on a broad category of unidentified individuals.

A CAA section 209 waiver is properly considered a "rule" under the CRA. The CRA adopts the APA's definition of a "rule," except that the CRA does not apply to rules of particular applicability. 5 U.S.C. § 804(3)(A); *see also* 5 U.S.C. § 551(4) (APA definition for "rule"). CAA section 209 waivers could fit into three possible categories: (1) rules of general applicability; (2) rules of particular applicability; and (3) adjudicatory orders. Of these three, CAA section 209 waivers best fit as rules of general applicability.

A rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). *Yesler Terrace Cmty. Council v. Cisneros* explains the distinction between rulemaking and adjudication:

> Two principal characteristics distinguish rulemaking from adjudication. First, adjudications resolve disputes among specific individuals in specific cases, whereas rulemaking affects the rights of broad classes of unspecified individuals. Second, because adjudications involve concrete disputes, they have an immediate effect on specific individuals (those involved in the dispute). Rulemaking, in contrast, is prospective, and has a definitive effect on individuals only after the rule subsequently is applied.

37 F.3d 442, 448 (9th Cir. 1994). CAA section 209 waivers allow Plaintiffs to substitute state emissions standards for federal ones. These waivers have "all the hallmarks of a rule." *Id.* at 448.

First, the waivers "had no immediate, concrete effect on anyone, but merely permitted" California and other states to enforce state emissions standards "in the future." *Id.*; *see also* 42 U.S.C. § 7521(a)(2) (applicable to California standards through § 7543(b)(1)(C), requiring California's standards to give manufacturers adequate lead time "to permit the development and application of the requisite technology"); *id.* § 7507(2) (copycat states must "adopt such standards at least two years before commencement of [the applicable] model year"). EPA waivers therefore have "prospective," rather than "immediate," effect. *Yesler*, 37 F.3d at 448.

Second, the waivers "affected the rights of a broad category of individuals not yet identified": manufacturers who, in the future, may sell new motor vehicles in those states. *Id.* California's regulations do not merely apply to an existing, definite list of manufacturers.[4] The ACT Rule applies to "[a]ny manufacturer that certifies on-road vehicles over 8,500 lbs. gross vehicle weight rating for sale in California." Cal. Code Regs. tit. 13, § 1963(b). EPA's waiver does not narrow the broad applicability of California's regulation. Moreover, once EPA issues a waiver, *any* other state may adopt California's standards without any additional factual showing or hearing. 42 U.S.C. § 7507. In the past, EPA regularly concluded that waivers are "nationally applicable" and of "nationwide scope [and] effect." *See, e.g.*, 88 Fed. Reg. at 20,725 (ACT Rule waiver).

EPA's waiver process cannot properly be shoehorned into the definition for an adjudication. EPA's "decision plainly involved more than applying a rule of decision to particular facts." *Yesler*, 37 F.3d at 449. EPA's waiver decision weighs policy-laden considerations, including the technological feasibility and cost appropriateness of the

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[4] In contrast, CARB's Clean Truck Partnership only applies to signatories to the agreement. *See* Press Release, Cal. Air. Res. Bd., CARB and Truck and Engine Manufacturers Announce Unprecedented Partnership to Meet Clean Air Goals (July 6, 2023), https://tinyurl.com/bde2vu5m. If CARB were a federal agency, this would be an example of a rule of particular applicability under the APA.

state standards. 42 U.S.C. § 7521(a)(2) (applicable to California standards through § 7543(b)(1)(C)).

A CAA section 209 waiver's prospective application and policy-laden considerations means it fits more comfortably as a rule than an adjudicatory order. A CAA section 209 waiver's application to "a broad category of individuals not yet identified" make it a rule of general rather than particular applicability. Thus EPA's waivers for the ACC II Rule, ACT Rule, and Omnibus Program are properly considered rules of general applicability and are subject to the CRA.

B. All of Plaintiffs' claims rely on the flawed theory that CAA section 209 waivers are not rules, and thus fail.

Each of Plaintiffs' claims relies on the argument that CAA section 209 waivers are not properly considered rules under the CRA. Count I alleges the Defendants' decision to consider the waivers as rules was *ultra vires*. *See* Pls.' Compl., Dkt. No. 1 ¶¶ 116, 118. Count II alleges EPA's decision to interpret the waivers as rules violated the APA. *Id.* ¶¶ 126, 128–32. Count III alleges Defendants violated the CRA because the waivers do not meet the CRA's definition of a rule. *Id.* ¶¶ 137–40. Count IV alleges the President and EPA Administrator did not take care that the laws be faithfully executed because the waivers are not rules. *Id.* ¶¶ 146–48. Count V alleges Congress impermissibly delegated to the Executive Branch its duty to determine whether a CAA section 209 waiver is a rule. *Id.* ¶ 157. Like Count III, Count VI alleges the Defendants violated the Tenth Amendment because the CRA does not apply to waivers. *Id.* ¶ 172. Count VII assumes that the Court has granted the relief requested in one of the other six counts, and on that basis alleges Defendants are violating federal law. *Id.* ¶¶ 182–86. Thus Plaintiffs' assertion that CAA section 209 waivers are not rules is the lynchpin of its entire case.

As explained above, CAA section 209 waivers meet the CRA's definition of a rule. 5 U.S.C. § 804(3). That means Defendants were following the law from the outset. Implementing a duly enacted statute or performing the executive's duties under a

statute is not unlawful. *Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992). Because each of Plaintiffs' claims rely on a flawed theory that the ACC II, ACT, and Omnibus Program waivers are not rules, Plaintiffs have failed to state a claim. Therefore the Court should dismiss these claims under Rule 12(b)(6).

CONCLUSION

California's complaint should be dismissed. Plaintiffs bring claims that are barred by the political questions doctrine, claims for which they lack standing, and claims based on unreviewable agency action. These claims should be dismissed for lack of jurisdiction. Plaintiffs also rely on the flawed conclusion that a CAA section 209 waiver is not a rule under the CRA. A CAA section 209 waiver is properly classified as a rule because it has purely prospective effects on a broad category of unidentified individuals. If a CAA section 209 waiver is a rule, then all of Plaintiffs' legal theories fail. These claims should be dismissed for failure to state a claim. With no claims remaining, the Court should dismiss this case with prejudice.

Dated: _____, 2025

Respectfully submitted,

_____

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*Motion for admission *pro hac vice* forthcoming

EXHIBIT E

PROPOSED ANSWER

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., *Plaintiffs,* v. UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States, *Defendants.*	No. 4:25-cv-04966-HSG **INTERVENOR-DEFENDANTS WESTERN STATES TRUCKING ASSOCIATION AND CONSTRUCTION INDUSTRY AIR QUALITY COALITION'S PROPOSED ANSWER**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

SPECIFIC DENIALS

Pursuant to Federal Rule of Civil Procedure 8(b), Western States Trucking Association, Inc. ("WSTA") and Construction Industry Air Quality Coalition, Inc. ("CIAQC") (collectively "Intervenor-Defendants") deny each and every allegation contained in Plaintiffs' Complaint, including the relief sought, except for those

expressly admitted herein. In several instances, Intervenor-Defendants have identified statements in Plaintiffs' Complaint that are legal conclusions or non-factual statements rather than factual assertions. No response to such legal conclusions or non-factual statements is required; however, if such a response is required, Intervenor-Defendants deny such legal conclusions and non-factual statements. The Complaint also purports to quote or characterize other documents. To the extent the Complaint could be understood to incorporate statements of fact or implications of fact within those documents as factual allegations, Intervenor-Defendants deny such allegations unless expressly admitted herein.

The headings and numbered paragraphs below directly correlate to the sections and numbered paragraphs of Plaintiffs' Complaint. Those titles and headings are reproduced in this Original Answer for organizational purposes only, and Intervenor-Defendants do not admit any matter contained in them.

INTRODUCTION

1. This paragraph contains legal conclusions and characterizations of statutory provisions, which require no response. To the extent that a response is required, Intervenor-Defendants deny any characterization of the statutory provisions, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

2. Intervenor-Defendants deny the allegations in Paragraph 2.

3. The allegations in Paragraph 3's first sentence purport to characterize the Clean Air Act ("CAA"), which speaks for itself and provides the best evidence as to its contents. That sentence contains factual allegations to which Intervenor-Defendants lacks sufficient information or knowledge to formulate a belief as to the truth of the allegations and deny them on that basis. Paragraph 3 characterizes a court decision, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

4. Intervenor-Defendants admit Paragraph 4's first sentence to the extent that it alleges that between April 2023 and January 2025, EPA granted California's requests for CAA section 209 waivers of preemption for the Advanced Clean Trucks ("ACT"), Advanced Clean Cars II ("ACC II"), and Omnibus Low NOx ("Omnibus Program") regulations. Intervenor-Defendants admit Paragraph 4's second sentence to the extent that it alleges that other States, including the remaining Plaintiffs, purport to have adopted some or all of these standards pursuant to CAA section 177. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

5. The allegations in Paragraph 5's first three sentences purport to characterize the legislative history of Public Laws 119-15, 119-16, and 119-17, which prior to enactment were numbered H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89, respectively. Intervenor-Defendants admit that Congress passed, and the President signed into law, these three measures in accordance with Article I, Section 7 of the U.S. Constitution (bicameralism and presentment). Intervenor-Defendants admit that these laws took effect on June 12, 2025. Intervenor-Defendants also admit Plaintiffs filed this lawsuit. The remainder of the paragraph contains arguments and legal conclusions that do not require a response. To the extent that a response is required, Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

6. This paragraph contains legal conclusions and characterizations of statutory provisions, which require no response. To the extent a response is required, Intervenor-Defendants deny any characterization of the statutory provisions, which speak for themselves.

7. This paragraph contains legal conclusions and characterizations of statutory provisions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 7.

8. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 8.

9. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 9.

10. Intervenor-Defendants deny the allegations in Paragraph 10.

11. Intervenor-Defendants deny the allegations in Paragraph 11.

12. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 12.

13. Intervenor-Defendants deny the allegations in Paragraph 13.

PARTIES

14. Intervenor-Defendants admit the allegations in Paragraph 14.

15. Intervenor-Defendants admit the allegations in Paragraph 15.

16. Intervenor-Defendants admit the allegations in Paragraph 16.

17. Intervenor-Defendants admit the allegations in Paragraph 17.

18. Intervenor-Defendants admit the allegations in Paragraph 18.

19. Intervenor-Defendants admit the allegations in Paragraph 19.

20. Intervenor-Defendants admit the allegations in Paragraph 20.

21. Intervenor-Defendants admit the allegations in Paragraph 21.

22. Intervenor-Defendants admit the allegations in Paragraph 22.

23. Intervenor-Defendants admit the allegations in Paragraph 23.

24. Intervenor-Defendants admit the allegations in Paragraph 24.

25. Intervenor-Defendants admit the allegations in Paragraph 25.

26. Intervenor-Defendants admit the allegations in Paragraph 26.

27. Intervenor-Defendants admit the allegations in Paragraph 27.

28. Intervenor-Defendants admit the allegations in Paragraph 28.

JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

29. This paragraph contains legal conclusions, which require no response.

30. This paragraph contains legal conclusions, which require no response.

31. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants note that California's seat of government is in Sacramento, located in the Eastern District of California, and a substantial part of the events or omissions giving rise to the claim occurred in Sacramento.

32. This paragraph contains legal conclusions, which require no response.

FACTUAL BACKGROUND

33. Intervenor-Defendants admit only so much of Paragraph 33 that alleges that California began mandating motor vehicle emission standards before Congress did so. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

34. Intervenor-Defendants admit only so much of Paragraph 34 that alleges that California has requested and received from EPA waivers of Clean Air preemption of California motor vehicle emissions standards under 42 U.S.C. § 7543(b)(1). Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

35. The allegations in Paragraph 35's first sentence purport to reference and quote the opinion in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), which speaks for itself and is the best evidence of its content. The allegations in the remainder of Paragraph 35 purport to characterize the legislative debate surrounding an amendment to the CAA, as recorded at 113 Cong. Rec. 30,950, 30,952, and 30,956–57 (1967). The Congressional Record speaks for itself and is the best evidence of its content. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

36. The allegations in Paragraph 36 purport to characterize the legislative debate surrounding an amendment to the CAA, as recorded at H.R. Rep. No. 90-728 (1967) and 113 Cong. Rec. at 30941, 30,955 (1967). The Congressional Record and House of Representatives committee report speak for themselves and are the best evidence of their content. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

37. Intervenor-Defendants admit that 42 U.S.C. § 7543(b)(1) uses the word "shall" and that the provisions were codified as described in Footnote 4. Intervenor-Defendants deny any additional factual allegations contained in Paragraph 37.

38. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 38.

39. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 39.

40. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, the Intervenor-Defendants deny any characterization and refer the Court to the statute, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

41. Intervenor-Defendants admit that EPA has granted California numerous waivers of Clean Air Act preemption, that those waivers have been granted under both Democratic and Republican presidential administrations, and that EPA's issuance of those waivers is subject to judicial review under 42 U.S.C. § 7607(b)(1). Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

42. Intervenor-Defendants deny that an "electric or hydrogen vehicle" is a "zero-emission vehicle," as alleged in Footnote 6. Intervenor-Defendants admit that EPA granted waivers of Clean Air Act preemption as indicated in the Federal Register

citations, and that California has adopted increasingly stringent emissions requirements for passenger cars and light trucks over time.

43. This paragraph characterizes California ACC II regulations, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the regulations, which speak for themselves.

44. This paragraph characterizes California's ACT Rule, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the regulations, which speak for themselves. Intervenor-Defendants admit that the California Air Resources Board ("CARB") issued the statement in quotation marks. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

45. This paragraph characterizes California's Omnibus Program, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the regulations, which speak for themselves.

46. Intervenor-Defendants deny the allegations in Paragraph 46.

47. Intervenor-Defendants deny the allegations in Paragraph 47.

48. This paragraph characterizes a Senate report, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the report, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

49. This paragraph characterizes a House report, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the report, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

50. Intervenor-Defendants admit that Congress passed the Congressional Review Act ("CRA") as part of a larger legislative package, and the President signed

it into law as Public Law 104-121, 110 Stat. 847 (Mar. 29, 1996). As to the other provisions in Public Law 104-121, Intervenor-Defendants lack sufficient knowledge of the matters alleged and on that basis denies them.

51. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

52. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

53. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

54. Intervenor-Defendants admit only so much of Paragraph 54 that alleges that Congress has established an ad-hoc, informal process involving the Government Accountability Office ("GAO"), for instance, where an agency fails to submit an action that one or more members of Congress believe is a "rule" subject to the CRA. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

55. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

56. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

57. This paragraph characterizes statutory text, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and respectfully refer the Court to the text, which speaks for itself.

Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

58. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 58.

59. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 59.

60. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 60.

61. Intervenor-Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 61 related to what Congress has considered using the CRA to disapprove. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 61.

62. Intervenor-Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 62 related to what Congress has considered using the CRA to disapprove. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 62.

63. This paragraph characterizes statutory text, and contains argument and legal conclusions, which require no response. To the extent that a response is required, Intervenor-Defendants refer the Court to the statutory text, which speaks for itself.

64. The allegations in Paragraph 64 are a mixture of legal argumentation, which requires no response, and allegations purporting to quote or characterize 42 U.S.C. § 7607(d)(1), which speaks for itself and is the best evidence of its content. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 64.

65. This paragraph characterizes statements by EPA published in the Federal Register, which require no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Federal Register publications, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

66. This paragraph characterizes a GAO decision letter, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the letter, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

67. This paragraph quotes members of the House and Senate commenting on legislation that is not being challenged in this lawsuit. Intervenor-Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 67 and on that basis denies them.

68. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 68.

69. This paragraph characterizes a Federal Register publication, and contains argument and legal conclusions, which require no response. To the extent that a response is required, Intervenor-Defendants refer the Court to the Federal Register, which speaks for itself.

70. Intervenor-Defendants lacks sufficient information about the allegations in Paragraph 70 and on that basis denies them.

71. Intervenor-Defendants admit the second sentence of Paragraph 71's second sentence, which alleges that President Trump signed a day-one Executive Order indicating certain "state emissions waivers" should be ended. Intervenor-Defendants deny any remaining factual allegations contained in this paragraph.

72. This paragraph's first sentence characterizes an Executive Order, which requires no response. This paragraph's second and third sentences contain legal

conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in this paragraph.

73. This paragraph contains a mixture of legal arguments, which require no response, and EPA announcements which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 73.

74. This paragraph contains a mixture of legal arguments, which require no response, and EPA announcements which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 74.

75. This paragraph contains a mixture of legal arguments, which require no response, and EPA announcements which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 75.

76. This paragraph contains a mixture of legal arguments, which require no response, and a statement from a Congressional committee which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 76.

77. Intervenor-Defendants admit that EPA submitted the waivers to Congress in February 2025. Intervenor-Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 77 and on that basis denies them.

78. This paragraph characterizes actions recounted in a letter written by GAO, which Plaintiffs attached to their Complaint as Exhibit B, and so requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to Exhibit B, which speaks for itself.

79. Intervenor-Defendants admit that the letter that Plaintiffs attached as Exhibit B states that three Senators requested a legal opinion from GAO on whether the waivers were rules under the CRA.

80. This paragraph characterizes actions recounted in a letter written by GAO, which Plaintiffs attached to their Complaint as Exhibit B, and so requires no

response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to Exhibit B, which speaks for itself.

81. This paragraph contains a mixture of legal arguments, which require no response, and a statement from a Member of Congress which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 81.

82. Intervenor-Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 82.

83. This paragraph characterizes a letter written by GAO, which Plaintiffs attached to their Complaint as Exhibit B, and so requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to Exhibit B, which speaks for itself. To the extent that Plaintiffs' characterization of the letter contains additional factual allegations, Intervenor-Defendants deny them.

84. This paragraph characterizes a letter written by GAO, which Plaintiffs attached to their Complaint as Exhibit B, and so requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to Exhibit B, which speaks for itself. To the extent that Plaintiffs' characterization of the letter contains additional factual allegations, Intervenor-Defendants deny them.

85. Intervenor-Defendants admit that H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89, were introduced on April 2, 2025, which was "[a]bout a month" after the date on the letter Plaintiffs attached to their Complaint as Exhibit B. The remaining allegations in this paragraph contain legal conclusions and require no response. To the extent a response is required, Intervenor-Defendants deny the remaining allegations in Paragraph 85.

86. This paragraph characterizes a newsletter published by a media outlet, which requires no response. To the extent that a response is required, Intervenor-

Defendants deny any characterization of the newsletter or additional factual allegations contained in the paragraph and refer the Court to the newsletter, which speaks for itself.

87. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 87.

88. This paragraph characterizes a publicly available journal article, and so requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization of that article and refer the Court to the article, which speaks for itself.

89. This paragraph contains a mixture of legal arguments, which require no response, and quote a Congressional Research Service Report and law review article which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 89.

90. Defendant-Intervenors lack sufficient information regarding the allegations in Paragraph 90, and on that basis deny them.

91. This paragraph contains a mixture of legal arguments, which require no response, and quote a law review and a magazine article which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 91.

92. Defendant-Intervenors lack sufficient information regarding Members of Congress's subjective intentions, and on that basis deny the allegations in Paragraph 92.

93. Defendant-Intervenors admit that members of the U.S. House of Representatives introduced resolutions to repeal the ACC II Rule, the ACT Rule, and the Omnibus Program. The remainder of this paragraph contains a mixture of legal arguments, which require no response, and quotes a newsletter article which speaks

for itself. To the extent a response is required, Intervenor-Defendants deny the remaining allegations in Paragraph 93.

94. This paragraph contains a mixture of legal arguments, which require no response, and quotes a newsletter article which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 94.

95. Intervenor-Defendants admit that a majority of the U.S. House of Representatives properly voted to pass H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89.

96. Intervenor-Defendants deny the allegations in Paragraph 96.

97. This paragraph characterizes a news article, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the document, which speaks for itself.

98. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 98.

99. This paragraph contains a mixture of legal arguments, which require no response, and quotes Members of Congress which speak for themselves. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 99.

100. This paragraph contains a mixture of legal arguments, which require no response, and quotes a Member of Congress which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 100.

101. Intervenor-Defendants admit that Senate Majority Leader John Thune introduced the indicated point of order and that the Senate voted to agree to that point of order. Intervenor-Defendants deny any remaining factual allegations contained in this paragraph.

102. This paragraph contains a mixture of legal arguments, which require no response, and quotes a statute which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 102.

103. Intervenor-Defendants admit that Majority Leader Thune introduced the point of order indicated in Paragraph 103's second sentence. The remainder of this paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the remaining allegations in Paragraph 103.

104. This paragraph characterizes a statement by Senator Whitehouse reported in the Congressional Record, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Congressional Record, which speaks for itself. Intervenor-Defendants deny any remaining factual allegations in Paragraph 104.

105. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 105.

106. This paragraph characterizes a statement by the Senate's presiding officer reported in the Congressional Record, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Congressional Record, which speaks for itself. Intervenor-Defendants deny any remaining factual allegations in this paragraph.

107. This paragraph characterizes Members of Congress's statements in the Congressional Record, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Congressional Record, which speaks for itself. Intervenor-Defendants deny any remaining factual allegations in this paragraph.

108. This paragraph characterizes Members of Congress's statements in the Congressional Record, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Congressional Record, which speaks for itself. Intervenor-Defendants deny any remaining factual allegations in this paragraph.

109. This paragraph contains legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 109.

110. This paragraph characterizes Members of Congress's statements in the Congressional Record, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Congressional Record, which speaks for itself. Intervenor-Defendants deny any remaining factual allegations in this paragraph.

111. Intervenor-Defendants admit that a majority of the U.S. Senate properly voted to pass H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89 on May 22, 2025.

112. This paragraph characterizes an EPA press release. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the press release, which speaks for itself. Intervenor-Defendants deny any additional factual allegations contained in this paragraph.

113. Intervenor-Defendants admit the allegations in Paragraph 113.

CLAIMS FOR RELIEF

COUNT I
Ultra Vires – Conduct in Excess of Statutory Authority
(Against All Defendants)

114. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

115. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph alleges that there is no authority for Congress to pass the laws being challenged, Intervenor-Defendants deny that allegation. *See* U.S. Const. I, § 5, cl. 2 ("Each House may determine the Rules of its Proceedings . . . .").

116. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

117. Intervenor-Defendants deny the allegations in Paragraph 117.

118. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

119. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

120. Intervenor-Defendants deny the allegations in Paragraph 120.

121. Intervenor-Defendants deny the allegations in Paragraph 121.

COUNT II
Violation of the Administrative Procedure Act
(Against the United States, EPA and Its Administrator)

122. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

123. Intervenor-Defendants admit the allegations in Paragraph 123.

124. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

125. This paragraph quotes and characterizes statutory text, which requires no response. To the extent a response is required, Intervenor-Defendants deny any characterization and refer the Court to the text, which speaks for itself.

126. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

127. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

128. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

129. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

130. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

131. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

132. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

133. Intervenor-Defendants deny the allegations in Paragraph 133.

134. Intervenor-Defendants deny the allegations in Paragraph 134.

135. Intervenor-Defendants deny the allegations in Paragraph 135.

COUNT III
Violation of the Congressional Review Act
(Against All Defendants)

136. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

137. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

138. Intervenor-Defendants lacks sufficient information about the allegations in Paragraph 138 and on that basis denies them.

139. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

140. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

141. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

142. Intervenor-Defendants deny the allegations in Paragraph 142.

143. Intervenor-Defendants deny the allegations in Paragraph 143.

COUNT IV
Violation of the Take Care Clause
(Against President Trump, EPA, and Its Administrator)

144. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

145. This paragraph characterizes a provision of the United States Constitution, which requires no response. To the extent that a response is required, Intervenor-Defendants deny any characterization and refer the Court to the Constitution, which speaks for itself.

146. Intervenor-Defendants lack sufficient information or knowledge to formulate a belief as to the allegations in Paragraph 146 and denies them on that basis. Further, the allegations in Paragraph 146 contain legal conclusions, which require no response. To the extent a response is required, Intervenor-Defendants deny the allegations.

147. This paragraph contains a mixture of legal arguments, which require no response, and quote a document from EPA which speaks for itself. To the extent a response is required, Intervenor-Defendants deny the allegations in Paragraph 147.

148. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

149. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

150. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

151. Intervenor-Defendants deny the allegations in Paragraph 151.

152. Intervenor-Defendants deny the allegations in Paragraph 152.

COUNT V
Violation of Separation of Powers
(Against All Defendants)

153. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

154. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

155. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

156. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

157. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

158. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

159. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

160. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

161. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

162. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

163. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

164. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

165. Intervenor-Defendants admit that EPA's section 209 waivers for the ACC II Rule, ACT Rule, and Omnibus Program were the subject of pending litigation when Congress passed H.J. Res. 87, H.J. Res. 88, and H.J. Res. 89. The remainder of this paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any remaining factual allegations, Intervenor-Defendants deny them.

166. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph alleges that Congress cannot pass a law invalidating an executive agency's action, Intervenor-Defendants deny that allegation. *See City of Arlington v. FCC*, 569 U.S. 290, 317 (2013) (quoting *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)) ("Agencies are creatures of Congress; an agency literally has no power to act unless and until Congress confers power on it." (cleaned up)).

167. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

168. Intervenor-Defendants deny the allegations in Paragraph 151.

169. Intervenor-Defendants deny the allegations in Paragraph 152.

COUNT VI

Violation of the Tenth Amendment and Structural Principles of Federalism (Against All Defendants)

170. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

171. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

172. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

173. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

174. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

175. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

176. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

177. Intervenor-Defendants deny the allegations in Paragraph 151.

178. Intervenor-Defendants deny the allegations in Paragraph 152.

COUNT VII

Nonstatutory Review: Violations of Federal Law by Federal Officials (Against All Defendants)

179. Intervenor-Defendants incorporate by reference each of their responses to the preceding paragraphs as if fully set forth herein.

180. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

181. Intervenor-Defendants admit that, following the enactment of Public Laws 119-15, 119-16, and 119-17, the ACC II Rule, ACT Rule, and the Omnibus Program are "preempted" by the Clean Air Act and thus "unenforceable."

182. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

183. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

184. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

185. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

186. This paragraph contains legal conclusions, which require no response. To the extent that this paragraph contains any factual allegations, Intervenor-Defendants deny them.

187. Intervenor-Defendants deny the allegations in Paragraph 187.

188. Intervenor-Defendants deny the allegations in Paragraph 188.

PRAYER FOR RELIEF

The remainder of the Complaint contains Plaintiffs' prayer for relief, which requires no response. To the extent that a response is deemed required, Intervenor-Defendants deny that Plaintiffs are entitled to the relief that they seek or to any other relief in this action.

DEFENSES

1. **Rule 12(b)(1): Lack of Subject Matter Jurisdiction**: This court lacks subject matter jurisdiction over this case because Congress, in the Congressional Review Act, has expressly withheld jurisdiction over Plaintiffs' claims in this suit. *See* 5 U.S.C. § 805.

2. **Rule 12(b)(1): Lack of Subject Matter Jurisdiction**: This court lacks subject matter jurisdiction over Plaintiffs' claims because they raise non-justiciable political questions.

3. **Rule 12(b)(1): Lack of Article III Standing**: Plaintiffs lack Article III standing to bring their claims because their alleged injury—their inability to enforce their preempted regulations—is neither fairly traceable to the

challenged EPA actions, nor redressable by a favorable ruling related to those actions.

4. **Rule 12(b)(1): Lack of Subject Matter Jurisdiction**: This court lacks subject matter jurisdiction over Plaintiffs' Administrative Procedure Act claim because (1) an agency's decision to submit a rule to Congress is not subject to judicial review, 5 U.S.C. § 805; and (2) the challenged EPA actions are not "final agency action." 5 U.S.C. § 704.

5. **Rule 12(b)(6): Failure to State a Claim on Which Relief Can Be Granted**: This court should dismiss all of Plaintiffs' claims because they are not legally cognizable claims.

Dated: _____, 2025

Respectfully submitted,

_____

Robert Henneke* (TX 24046058)
Theodore Hadzi-Antich (CA 264663)
Eric Heigis (CA 343828)
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*Motion for admission *pro hac vice* forthcoming

EXHIBIT F

PROPOSED ORDER

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*Motion for admission *pro hac vice* forthcoming

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., *Plaintiffs,* v. UNITED STATES OF AMERICA, U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, and DONALD J. TRUMP, in his official capacity as President of the United States, *Defendants.*	No. 4:25-cv-04966-HSG **[PROPOSED] ORDER GRANTING WESTERN STATES TRUCKING ASSOCIATION, INC. AND CONSTRUCTION INDUSTRY AIR QUALITY COALITION INC.'S MOTION TO INTERVENE PURUSANT TO FRCP RULE 24**

[PROPOSED] ORGER GRANTING MOTION TO INTERVENE

This matter is before the Court on a Motion to Intervene filed by Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc. The Court, having considered all papers filed in connection with this Motion, as well as any oral argument made in connection therewith, it is **ORDERED, ADJUDGED and DECREED**:

That the motion is **GRANTED** and Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition Inc. are admitted as Intervenor-Defendants in the above-captioned case.

Date:

HON. HAYWOOD S. GILLIAM, JR.
United States District Judge