

No. 25-8013

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF
DELAWARE; STATE OF MASSACHUSETTS, Named As
Commonwealth of Massachusetts; STATE OF NEW JERSEY; STATE
OF NEW MEXICO; STATE OF NEW YORK; STATE OF RHODE
ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; STATE
OF OREGON,

Plaintiffs - Appellees,

v.

UNITED STATES OF AMERICA, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, DONALD
J. TRUMP,

Defendants,

WESTERN STATES TRUCKING ASSOCIATION; CONSTRUCTION
INDUSTRY AIR QUALITY COALITION, INC.,

Movant Intervenor-Defendants – Appellants.

On Appeal from the U.S. District Court
for the Northern District of California
4:25-cv-04966-HSG; Hon. Haywood S. Gilliam, Jr.

APPELLANTS' OPENING BRIEF

Robert Henneke
Theodore Hadzi-Antich
Eric Heigis
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal because “denial of intervention as of right is an appealable final order.” *United States v. Oakland*, 958 F.2d 300, 302 (9th Cir. 1992). The district court denied Appellants’ motion to intervene on December 2, 2025. 1-ER-003–11. Appellants timely appealed by filing their notice of appeal 16 days later. Fed. R. App. P. 4(a)(1)(B); 3-ER-398–402.

INTRODUCTION

This appeal concerns whether operators of heavy-duty trucks may intervene in California’s case seeking to revive its electric vehicle mandate. Last year Congress passed, and the president signed into law, three measures repealing the mandates. California and ten other states brought the suit below seeking a judicial declaration allowing them to enforce their electric vehicle mandate despite these federal laws. Although the mandate’s significant economic harms support Appellants’ interests to intervene in the case, the lawsuit itself can be defeated without relying on those economic effects. Namely, if the Clean Air Act waivers that the Environmental Protection Agency (“EPA”) issued to California meet the Administrative Procedure Act’s (“APA”) definition for “rules” and not “orders,” then all of the Appellees’ claims will fail.

The Federal Defendants¹ abandoned this meritorious argument—choosing instead to narrowly focus on certain threshold defenses. Abandoning a meritorious argument—along with the Federal Defendants’ position as an adverse party in Appellants’ separate case challenging one of the waivers—demonstrates that the Federal Defendants cannot adequately represent Appellants’ interests in this case.

When the district court analyzed the presumption of adequate representation, it did not address either of these arguments made by Appellants. Instead, it concluded that the proposed intervenors failed to overcome the presumption of adequate representation because they seek the same outcome as the Federal Defendants and none of proposed intervenors’ arguments are unique to their economic interests. But it is self-evident that the Appellants’ particular economic interests in this case are not and cannot be shared by the Federal Defendants, who are government actors. Accordingly, under Rule 24 and this Court’s precedents, the district court erred in refusing to permit Appellants to make a meritorious argument abandoned by the Federal Defendants.

¹ The United States, EPA, Administrator Lee Zeldin, and President Donald J. Trump are the Defendants below, collectively “Federal Defendants.” The Federal Defendants informed Appellants that they take no position on this appeal and will not file any substantive briefs.

This Court should allow Appellants to intervene so that they can protect their interests by making the meritorious and crucial argument that the Federal Defendants chose to abandon.

ISSUE PRESENTED

Whether the district court erred in denying the motion to intervene as of right by holding that the Federal Defendants adequately represent Appellants' interests in the case.

STATUTORY AND OTHER AUTHORITIES

Located in the addendum.

STATEMENT OF THE CASE

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

This case's underlying subject matter concerns federal preemption under the Clean Air Act ("CAA"). 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, EPA has promulgated nationally applicable 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 the waiver: (1) 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), and (2) EPA cannot issue a waiver if it finds the standards are (a) arbitrary and capricious, (b) do not address “compelling and extraordinary conditions” within California, or (c) are not consistent with section 202 of the CAA. *Id.* § 7543(b)(1)(A)–(C).

California can enforce the specific emissions standards in the application only if EPA approves the section 209 waiver. The CAA allows other states to adopt those waived 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 nationally applicable 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 in California by 2035. 3-ER-390. The state legislature never voted on this mandate. Instead, the California Air Resources Board (“CARB”) promulgated a series of regulations in 2022 to implement Governor Newsom’s electric vehicle goal:

- **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 in California 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 first reduce and then eliminate 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 Mandates

EPA issued waivers for each of the three CARB rules. EPA first issued a waiver for the ACT Rule in 2023. 3-ER-351–88. EPA then issued a waiver for the ACC II Rule in 2025. 3-ER-347–48. Finally, EPA issued a waiver for the Omnibus Program the same day in 2025. 3-ER-348–50. These waivers allowed California, eleven other states, and the District of Columbia to implement these regulations. 3-ER-344–46.

IV. Congress Repeals EPA’s Waivers

In 2025, following EPA’s waiver approvals, 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.J. Res. 87, H.J. Res. 88, and H.J. Res. 89, respectively. The legislative text of each resolution simply (1) named the EPA waiver, (2) included its Federal Register citation, and (3) stated the waiver “shall have no force or effect.” 3-ER-325–27. Each piece of legislation passed the House and Senate without amendment in April and May 2025. *See id.* (explaining legislative history). President Trump signed them into law on June 12. *See id.* (signing dates for Pub. L. Nos. 119-15, 119-16, and 119-17). Accordingly, 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” those standards. 42 U.S.C. § 7543(a).

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

In its complaint, Appellees 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.” 2-ER-124; 2-ER-126. If the Appellees win this case and the ACT Rule and Omnibus

Program go into effect, those regulations will inflict serious harm on Appellants' members. The Appellants—Western States Trucking Association, Inc. (“WSTA”) and Construction Industry Air Quality Coalition, Inc. (“CIAQC”)—are trade organizations whose members in California use medium- and heavy-duty trucks as part of the ordinary course of their business. 2-ER-290–91; 2-ER-301; 3-ER-308–09. 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. 2-ER-292; 2-ER-301; 3-ER-309. The electric trucks the ACT Rule mandates cost \$300,000 more per truck as compared to diesel-powered trucks. 2-ER-302. Indeed, California admitted that the ACT Rule would impose \$9.1 billion in costs on vehicle manufacturers through 2040. 3-ER-397. Manufacturers will naturally pass on those costs to consumers like WSTA and CIAQC's members. CARB admitted as much when it noted “ZEVs have higher upfront capital costs for the vehicle and infrastructure investments.” 3-ER-395.

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. 2-ER-292; 2-ER-302; 3-ER-310. There is no nationwide or

even statewide charging infrastructure yet available for such vehicles. 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. 2-ER-292; 2-ER-302; 3-ER-310. Appellants' employees will lose valuable time and be made to risk their lives due to these regulations. 2-ER-292; 2-ER-302; 3-ER-310.

VI. Procedural History

Appellees filed this lawsuit within hours of the President signing the EPA waiver repeals into law. 3-ER-328; 3-ER-343. They filed an amended complaint on October 10. 2-ER-082–281. The Federal Defendants filed a motion to dismiss the amended complaint on November 17. 2-ER-042–081. The district court scheduled a motion to dismiss hearing on February 19. 2-ER-027.

WSTA and CIAQC moved to intervene in September 2025. *See* 1-ER-003. Several other parties also moved to intervene. *See id.* at n.1. In December the district court denied all of the motions to intervene in a single order. 1-ER-011. WSTA and CIAQC are the only proposed intervenors that are parties in this appeal, though a group of thirteen other proposed intervenors filed a separate appeal. 2-ER-014–21. WSTA and CIAQC are the only parties seeking expedited briefing. *See* Dkt. No. 3.

SUMMARY OF ARGUMENT

WSTA and CIAQC meet Rule 24’s standard to intervene as of right. The district court held that WSTA and CIAQC did not meet all of the factors for intervention because the Federal Defendants adequately represent WSTA and CIAQC’s interests in the case. 1-ER-008–10. Timeliness is not at issue in this case. 1-ER-006. The primary dispute in this appeal is whether the Federal Defendants adequately represent WSTA and CIAQC’s interests.

The Federal Defendants do not and cannot adequately represent WSTA and CIAQC’s interests in this case. The Federal Defendants abandoned a meritorious argument that a CAA section 209 waiver is a “rule” and not an “order.” This argument, of itself, could defeat each of Plaintiffs’ claims below. 2-ER-041. A proposed intervenor can overcome the presumption of adequate representation if there is “a likelihood that the government will abandon or concede a potentially meritorious reading of the statute.” *State ex rel. Lockyer v. United States*, 450 F.3d 436, 444 (9th Cir. 2006). Because the Federal Defendants have already abandoned this argument, WSTA and CIAQC have overcome the presumption of adequate representation. Additionally, the Appellants and Federal Defendants are adverse parties in a separate case involving the ACT Rule waiver. *See Western States Trucking Ass’n et al. v. U.S. Env’tl. Prot. Agency*, No. 23-1143 (D.C. Cir.). The Federal Defendants are incentivized to not make any arguments that may make it easier to

challenge a CAA section 209 waiver now or in the future. Thus, they cannot adequately represent WSTA and CIAQC's interests in this case.

WSTA and CIAQC meet the other factors to intervene as of right. WSTA and CIAQC have two significantly protectable interests: their interest in the D.C. Circuit case's outcome and their members' economic interests if this case revives the repealed regulations. This case has already affected how WSTA and CIAQC are litigating the separate lawsuit pending in the D.C. Circuit. But for this lawsuit, WSTA and CIAQC would have agreed to voluntary dismissal and could avoid the time and costs associated with litigating its case in the D.C. Circuit. As to economic interests, WSTA and CIAQC represent the end-users affected by the regulations Appellees seek to revive. If the district court holds that the ACT Rule Waiver is valid and in effect, WSTA and CIAQC will be substantially affected by the economic consequences of more costly trucks. "To trigger a right to intervene . . . an economic interest must be 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). WSTA and CIAQC introduced un rebutted evidence showing the ACT Rule will increase costs for their members who operate heavy-duty trucks. 2-ER-302. This interest is related to the case's underlying subject matter because the Appellee's requested relief in the district court will trigger this negative economic effect on WSTA and CIAQC.

WSTA and CIAQC have demonstrated a significantly protectable interest that may be impaired by this case’s outcome, and no existing party adequately represents that interest. Accordingly, this Court should reverse the district court and allow WSTA and CIAQC to intervene as of right.

STANDARD OF REVIEW

This Court “review[s] de novo the district court’s ruling on a motion of intervention as of right. The question of whether the motion was timely filed is reviewed for abuse of discretion.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 918–19 (9th Cir. 2004).

This Court 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. Intervention is proper when practical and equitable considerations support it, and this Court 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). Moreover, this Court has explained that Rule 24 should be construed “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 reverse the district court because WSTA and CIAQC are entitled to intervene as of right under Rule 24(a)(2). Appellees did not dispute that WSTA and CIAQC’s motion to intervene was timely. 1-ER-006. The primary dispute in this appeal is whether the Federal Defendants adequately represent WSTA and CIAQC’s interests.

I. Federal Defendants Do Not Adequately Represent WSTA and CIAQC’s Interests.

The district court held that the Federal Defendants adequately represent WSTA and CIAQC’s interests, meaning WSTA and CIAQC do not meet Rule 24’s standard for intervention as of right. 1-ER-008–09. Rule 24 allows intervention as of right “unless existing parties adequately represent [movant’s] interest.” Fed. R. Civ. P. 24(a)(2). A presumption of adequate representation arises when a movant shares the same ultimate objective as an existing party. *State ex rel. Lockyer v. United States*, 450 F.3d 436, 443 (9th Cir. 2006). This presumption can be overcome if the movant has “distinctly different, and likely conflicting, interests” from those of the existing parties. *Id.* at 444.

WSTA and CIAQC overcome the presumption in two ways. *First*, the Federal Defendants in their motion to dismiss abandoned a

meritorious argument that could favorably resolve all of Appellees' claims. *Second*, WSTA and CIAQC are suing the Federal Defendants in a separate case directly challenging EPA's approval of the ACT Rule Waiver. WSTA and CIAQC cannot reasonably be required to rely on those same adverse parties to adequately represent their interests here.

A. The Federal Defendants' motion to dismiss abandons a meritorious argument that could resolve all of Plaintiff States' claims.

This Court has said that intervention applicants must make a "very compelling showing" to rebut the presumption that the government does not adequately represent its citizens. *Lockyer*, 450 F.3d at 443. As specifically relevant to the instant case, *Lockyer* held that "[i]n order to make a 'very compelling showing' of the government's inadequacy, the proposed intervenor must demonstrate a likelihood that the government will abandon or concede" a potentially meritorious argument. *Id.* at 444.

There is much more than a "likelihood" that the Federal Defendants will abandon a meritorious argument here. They have already done so. The Federal Defendants filed their motion to dismiss in November 2025. 2-ER-042. That motion does not seek to defend on the merits EPA's decision to treat the three waivers as rules. Instead, the Federal Defendants defend the validity of Public Laws 119-15, 119-16, and 119-17 on several other grounds: (1) the court lacks jurisdiction, 2-ER-056–64; (2) the plaintiffs lack standing, 2-ER-064–66; (3) the resolutions of disapproval supersede earlier enacted legislation, 2-ER-066–68; (4) there

is no final agency action, 2-ER-068–69; (5) EPA’s actions are only reviewable in a court of appeals, 2-ER-069–71; and (6) the claims fail as a matter of law, 2-ER-071–80.

While these arguments may prove to be meritorious, the Federal Defendants abandon what the WSTA and CIAQC believe is the even more meritorious argument that CAA section 209 waivers are “rules.” As explained in WSTA and CIAQC’s Proposed Motion to Dismiss, this argument allows the Court to dismiss all of Plaintiffs’ claims for failure to state a claim. 2-ER-041. That is because all of Plaintiffs’ claims rely on their underlying argument that the waivers are *not* rules subject to the CRA, so therefore, according to the Plaintiffs, the Federal Defendants violated a host of constitutional, statutory, and non-statutory provisions. But if the waivers are rules, then the Federal Defendants acted properly *ab initio*. Abandoning this meritorious argument is more than enough to make the “very compelling showing” that the Federal Defendants do not adequately represent WSTA and CIAQC’s interests. *State ex rel. Lockyer v. United States*, 450 F.3d 436, 444 (9th Cir. 2006).

WSTA and CIAQC are in a similar position as the proposed intervenors in *Lockyer*, where California sued the federal government to invalidate the Weldon Amendment. *Id.* at 439. The Weldon Amendment restricts federal funding for states that discriminate against healthcare providers who refuse to perform abortions. *Id.* A group of pro-life healthcare providers sought intervention. *Id.* at 440. The federal

government defended the law by offering in its motion for summary judgment a narrowing construction of the Weldon Amendment that would preserve California’s federal funding. *Id.* at 444. The proposed intervenors advanced a broader reading that would cut off California’s funding and defended the law on other grounds. *Id.* at 444–45. Because no existing party was presenting this argument, this Court held that the proposed intervenors had overcome the presumption of adequate representation.

So too here. WSTA and CIAQC “bring a point of view to the litigation not presented by either the plaintiffs or the defendants.” *Id.* at 445. Again, the waivers-as-rules argument could defeat each of Plaintiffs’ claims. 2-ER-041. Yet the Federal Defendants did not advance this argument.

Perhaps it is the Department of Justice’s practice to not bring broader arguments than are necessary to win. *Lockyer* recognized that the government sometimes offers “a limiting construction in defense of a statute,” for policy or institutional reasons. *Lockyer*, 450 F.3d at 444. That limiting construction is “an important consideration” to whether the government “will adequately represent its constituents’ interests.” *Id.* It is also possible that the Federal Defendants refuse to make the waiver-as-rules argument here because it is adverse to their interests in other cases, such as WSTA and CIAQC’s D.C. Circuit case challenging the ACT Rule Waiver grant. *See Western States Trucking Ass’n et al. v. U.S. Envtl.*

Prot. Agency, No. 23-1143 (D.C. Cir.). Either way, the conclusion is the same: the Federal Defendants do not adequately represent WSTA and CIAQC’s interests.

That Federal Defendants abandoned this meritorious argument is not a mere difference in litigation strategy. *Cf. Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (“differences in litigation strategy do not normally justify intervention”). WSTA and CIAQC have a strong interest in the district court holding that CAA section 209 waivers are “rules.” WSTA and CIAQC have challenged CAA section 209 waivers in the past—including the ACT Rule Waiver—and will likely challenge additional waivers in the future. *See, e.g., Western States Trucking Ass’n et al. v. U.S. Env’tl. Prot. Agency*, No. 23-1143 (D.C. Cir.). Treating these waivers as “rules” rather than “orders” or other administrative actions provides avenues that otherwise would not be available for WSTA and CIAQC to challenge the ACT Rule and future waivers in separate litigation.

For example, the CAA itself does not require EPA’s waiver decisions to be made on the record. *See* 42 U.S.C. § 7543. That means if EPA’s decision to grant a waiver is an adjudication, then it is an *informal* adjudication. *See Safe Extensions, Inc. v. FAA*, 509 F.3d 593, 604 (D.C. Cir. 2007) (unless the statute requires proceedings on the record, agency adjudications “fall into the vast category of ‘informal adjudications’”). Informal adjudications have few procedural guardrails. The D.C. Circuit

has explained, “no provision of the APA contains specific procedures to govern an informal agency adjudication.” *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 337 (D.C. Cir. 1989). Informal adjudication requires no more than a prompt notice of denial and a brief statement of the grounds for denial. 5 U.S.C. § 555(e); see *New Life Evangelistic Ctr., Inc. v. Sebelius*, 753 F. Supp. 2d 103, 117 (D.D.C. 2010). Although the CAA requires notice prior to issuing a waiver, it does not require any additional procedural steps. See 42 U.S.C. § 7543(a)–(b). If waivers are not rules, that means EPA could grant CAA section 209 waivers with no more than a brief statement of its decision. Such a short statement would limit opportunities to challenge the agency’s decisionmaking that led to the waiver.

On the other hand, if CAA section 209 waivers are “rules,” they are subject to the Administrative Procedure Act’s substantial procedural requirements for informal rulemaking—which provide much greater opportunity for public participation and a detailed explanation that can form the basis for litigation. Compare 5 U.S.C. § 553 (informal rulemaking), with *id.* § 555(e) (informal adjudication). The procedures for informal rulemaking include: (1) notice of the rulemaking, (2) an opportunity to comment, (3) the agency must consider and respond to the comments, and (4) the final rule must include a concrete statement of the rule’s basis and purpose. *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015). The CAA specifically requires the first two of these, while the

Administrative Procedure Act requires all four parts for informal rulemaking. Informal adjudication, on the other hand, would not require the latter two. This is one of the reasons why WSTA and CIAQC are particularly interested in whether a CAA section 209 waiver is a “rule” or an “order.” WSTA and CIAQC cannot bring an APA arbitrary and capricious challenge without a concrete explanation of the agency’s decision based on the totality of circumstances, including responses to comments filed by interested parties.

In the district court, Appellees admitted that the “presumption of adequacy [is] overcome where movants provided ‘direct evidence that the United States will take a position that actually compromises (and potentially eviscerates)’ their legal position.” 2-ER-287 (quoting *State ex rel. Lockyer v. United States*, 450 F.3d 436, 445 (9th Cir. 2006)). In their motion to dismiss, the Federal Defendants abandoned the potentially meritorious argument that a CAA section 209 waiver is a “rule.” 2-ER-042–81. The Federal Defendants were likely aware of WSTA and CIAQC’s waivers-as-rules argument, given that Appellants included it in a proposed motion to dismiss that was filed two months before the Federal Defendants’ motion to dismiss. Regardless of whether the Federal Defendants were aware of the argument, failing to raise it in their motion to dismiss is direct evidence that the Federal Defendants do not adequately represent WSTA and CIAQC’s interests. Accordingly,

WSTA and CIAQC have overcome the presumption of adequate representation.

Despite WSTA and CIAQC raising this argument below, the district court did not consider it. Instead, the district court said “[n]one of Proposed Intervenor’s arguments appear unique to them or tailored to their specific economic interests.” 1-ER-009. It is true that other proposed intervenors raised the waivers-as-rules argument. But multiple proposed intervenors making the same argument does not preclude intervention. Rule 24 looks to whether *existing parties* adequately represent a movant’s interests. *See* Fed. R. Civ. P. 24(a)(2). Just as in *Lockyer*, WSTA and CIAQC “bring a point of view to the litigation not presented by either the plaintiffs or the defendants.” *State ex rel. Lockyer v. United States*, 450 F.3d 436, 445 (9th Cir. 2006). On that basis, WSTA and CIAQC should be allowed to intervene as of right.

B. Federal Defendants cannot adequately represent WSTA and CIAQC’s interests because they are adverse parties in a separate case involving the ACT Rule Waiver.

Apart from abandoning a meritorious argument, the Federal Defendants cannot adequately represent WSTA and CIAQC’s interests because they are adverse parties in Appellants’ case challenging the ACT Rule Waiver. Shortly after EPA issued the CAA section 209 waiver for the ACT Rule, WSTA and CIAQC filed a petition for review in the D.C. Circuit. *See Western States Trucking Ass’n et al. v. U.S. Env’tl. Prot.*

Agency, No. 23-1143 (D.C. Cir.). Among other things, WSTA and CIAQC are arguing that a CAA section 209 waiver is a “rule” and not an “order.” That case is presently held in abeyance pending the outcome of *Texas v. EPA*, No. 22-1031 (D.C. Cir.).² *See id.* at Doc. No. 2032808 (D.C. Cir. Dec. 21, 2023).

WSTA and CIAQC should not have to rely upon a party they are suing to represent their interests in a related case. The mere fact that they are adverse parties is a conflict of interest that demonstrates one cannot adequately represent the other. The Federal Defendants are unlikely to make any argument in the instant case that makes it easier to challenge waivers in the future. A judicial decision holding that a CAA section 209 waiver is a “rule” triggers additional APA procedural requirements, which in turn provides additional avenues to challenge them. The Federal Defendants are naturally opposed to adding new procedural requirements and avenues for challenges. That may explain why the Federal Defendants refrained from making the waivers-as-rules argument in their motion to dismiss. And it demonstrates why the Federal Defendants cannot adequately represent WSTA and CIAQC’s interests in this case.

² The D.C. Circuit recently placed *Texas v. EPA* in abeyance after EPA indicated it was reconsidering the rule at issue in that case. *Texas v. EPA*, No. 22-1031, Doc. No. 1208758920 (D.C. Cir. filed July 18, 2025).

Not only are Appellants WSTA and CIAQC adverse parties to the Federal Defendants, WSTA and CIAQC are also subject to Defendant EPA's regulations. The First Circuit recognized that this can cause an additional "conflict of interest" relevant to weighing adequacy of representation. *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44–45 (1st Cir. 1992). In a case involving the Secretary of Commerce, it held that the Secretary could not adequately represent groups who are presently subject to, and are directly challenging, the Secretary's regulations. *Id.* at 44. That inadequate representation led the court to allow intervention. *Id.* at 45. Like in *Mosbacher*, WSTA and CIAQC cannot rely on one of its regulators to represent its interests in reducing costly regulatory requirements.

WSTA and CIAQC's position as an adverse party in a related case is a conflict of interest that demonstrates the Federal Defendants cannot adequately represent their interests in this case. The Court should hold that WSTA and CIAQC have overcome the presumption of adequate representation.

II. WSTA and CIAQC Have a Protectable Interest That Could Be Impeded by the Case's Outcome

Although the district court did not address in detail WSTA and CIAQC's interests in the case, the Appellees contested it below and the interest must be established to achieve intervention as of right.

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).

WSTA and CIAQC have two interests in this case. *First*, WSTA and CIAQC represent the end-users affected by the regulations Appellees seek to revive. *Second*, the outcome of this case may affect the outcome of WSTA and CIAQC’s D.C. Circuit case..

A. WSTA and CIAQC have a significantly protectable interest in whether Public Laws 119-15, 119-16, and 119-17 validly repealed waivers that would impose substantial costs on California truckers.

This lawsuit seeks to revive California’s ACT Rule. WSTA and CIAQC have a significant interest in ensuring the ACT Rule remains repealed.

“To trigger a right to intervene . . . an economic interest must be 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). WSTA and CIAQC will face concrete economic injuries if the Plaintiffs succeed in the underlying subject matter of this case—that is, reviving the now-repealed waivers for the ACT Rule and Omnibus Program.

WSTA and CIAQC are the end-users of the trucks the ACT Rule regulates. WSTA and CIAQC introduced declarations that show the ACT Rule will increase the purchase price for new trucks by \$300,000. 2-ER-302. California admitted that the ACT Rule would impose \$9.1 billion in costs on vehicle manufacturers through 2040. 3-ER-397.

When a regulation imposes substantial costs on manufacturers, they 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.” 3-ER-395. WSTA and CIAQC need not “introduce evidence from expert economists or from directly regulated third parties to show how third parties would likely respond to

a government regulation” when it can “show a predictable chain of events.” *See Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 120–21 (2025). This principle is squarely applicable here, where WSTA and CIAQC have demonstrated a significantly protectable economic interest in the outcome of this case based on a predictable chain of events. And Appellees cannot show that overturning Public Laws 119-15, 119-16, and 119-17—which would necessarily revive the three waiver grants repealed by those laws—will impose zero costs on truck operators. 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. The only impediment is the three CRA resolutions of disapproval, and Appellees request the court declare them “unconstitutional, unlawful, void, and of no effect.” 2-ER-126. Receiving that relief will automatically revive California’s regulations, imposing costs on the end-users of the trucks the ACT Rule regulates. Thus WSTA and CIAQC have an economic interest that satisfies the significant interest test.

Once a court finds a movant has 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 v. Mont.*

Wilderness Ass’n, 647 F.3d 893, 898 (9th Cir. 2011) (cleaned up). All that is required is that the movant “be substantially affected in a practical sense by the determination made in an action.” *Id.* If the district court holds that the ACT Rule Waiver is valid and in effect, WSTA and CIAQC will be “substantially affected” by the economic consequences of more costly trucks. 2-ER-292; 2-ER-301–02; 3-ER-309.

Appellees did not dispute the costs proffered by WSTA and CIAQC in the district court. Doing so would not have got them very far, as “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). Instead, Appellees argued that this economic interest is not related to the underlying subject matter of this case.

The district court likewise took an unduly narrow view of the case’s underlying subject matter. While the district court *stated* that it “does not minimize the economic interests that Proposed Intervenors assert,” it concluded without analysis that those interests are unrelated to the “procedural” question of whether the federal government properly used the CRA to repeal the waivers. 1-ER-007.

That holding ignores the practical—and automatic—result from invalidating the CRA resolutions of disapproval. If the district court grants the Appellees’ requested relief to “[d]eclare the Resolutions unconstitutional, unlawful, void, and of no effect,” 2-ER-126, then EPA’s

waivers (and the regulations they approve) automatically take effect. There are no intermediate steps or further relief needed for California's electric vehicle mandate to take effect. But for Public Laws 119-15, 119-16, and 119-17, California's regulations would be valid and enforceable. So a declaration invalidating Public Laws 119-15, 119-16, and 119-17 necessarily revives the electric vehicle mandate waivers. The Appellees admitted this in the district court: "Plaintiffs' request to have the three waivers declared valid simply follows from a ruling invalidating" those laws. 2-ER-284.

The district court defined this case's "underlying subject matter" too narrowly. This Court has instructed that a district court's review of the factors for intervention "is guided primarily by practical considerations, not technical distinctions." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). The district court erred by ignoring the practical effects that the Appellees' requested relief will have on WSTA and CIAQC. Under this Court's precedents, those practical interests easily satisfy Rule 24's requirements for intervention as of right. This Court should hold that WSTA and CIAQC have a significantly protectable interest that may be impaired by this case's outcome.

B. This case has already affected how WSTA and CIAQC are litigating their D.C. Circuit case.

WSTA and CIAQC also have a significant interest in this case based on how it can affect the Appellants’ ACT Rule litigation. As explained above, WSTA and CIAQC are petitioners in *Western States Trucking Ass’n et al. v. U.S. Eenvtl. 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. WSTA and CIAQC were initially inclined to agree to voluntary dismissal. But WSTA and CIAQC ultimately declined consent to voluntary dismissal when Appellees filed the instant case. Thus, this case has already affected how WSTA and CIAQC are litigating the separate lawsuit pending in the D.C. Circuit. And a favorable outcome for Plaintiffs will require WSTA and CIAQC to continue prosecuting that case once the abeyance has been lifted. But for this lawsuit, WSTA and CIAQC could avoid the time and costs associated with litigating its case in the D.C. Circuit.

Furthermore, the present case could decide whether the ACT Rule Waiver was a “rule” under the APA. After all, each of Appellees’ counts relies on the argument that the waivers are not properly considered rules. 2-ER-113–14; 2-ER-117; 2-ER-119–21; 2-ER-124–25 . As compared to the original complaint, the amended complaint doubled down on this argument. *Compare id.*, with 3-ER-330–37; 3-ER-340.

Again, treating such waivers as “rules” rather than “orders” or other administrative actions provides avenues that otherwise would not be available for WSTA and CIAQC to challenge the ACT Rule and future waivers. The Federal Defendants have not argued the waivers are rules. Based on its interest in avoiding new procedural requirements, the Federal Defendants may concede that the waivers are not rules. 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 and CIAQC are petitioners rather than defendants. No court has explicitly decided whether a CAA section 209 waiver is a “rule.” WSTA and CIAQC have a strong interest in the outcome of this argument, and a favorable outcome for Appellees could, as a practical matter, impair that interest. Thus WSTA and CIAQC have a significantly protectable interest in the subject of this case, and its outcome could impair Movants’ ability to protect its interest.

CONCLUSION

For the foregoing reasons, WSTA and CIAQC respectfully request this Court reverse the district court and allow them to intervene as of right.

DATE: January 15, 2026

Respectfully submitted,

/s/*Eric Heigis*

ROBERT HENNEKE
THEODORE HADZI-ANTICH
tha@texaspolicy.com

ERIC HEIGIS
eheigis@texaspolicy.com
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
Telephone: (512) 472-2700
Facsimile: (512) 472-2728
Attorneys for Appellants

STATEMENT OF RELATED CASES

The undersigned attorney states the following: I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

- No. 26-88, *State of California, et al. v. American Free Enterprise Chamber of Commerce, et al.* This case involves a different set of proposed intervenors appealing the same order denying the motions to intervene.

/s/*Eric Heigis*

ERIC HEIGIS

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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I hereby certify that on January 15, 2026, I electronically filed the foregoing with the Clerk of the Court for the Ninth Circuit Court of Appeals by using the appellate CM/ECF system.

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/s/ *Eric Heigis*
ERIC HEIGIS

No. 25-8013

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF
DELAWARE; STATE OF MASSACHUSETTS, Named As
Commonwealth of Massachusetts; STATE OF NEW JERSEY; STATE
OF NEW MEXICO; STATE OF NEW YORK; STATE OF RHODE
ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; STATE
OF OREGON,

Plaintiffs - Appellees,

v.

UNITED STATES OF AMERICA, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN, DONALD
J. TRUMP,

Defendants,

WESTERN STATES TRUCKING ASSOCIATION; CONSTRUCTION
INDUSTRY AIR QUALITY COALITION, INC.,

Movant Intervenor-Defendants – Appellants.

On Appeal from the U.S. District Court
for the Northern District of California
4:25-cv-04966-HSG; Hon. Haywood S. Gilliam, Jr.

STATUTORY ADDENDUM TO APPELLANTS' OPENING BRIEF

Robert Henneke
Theodore Hadzi-Antich
Eric Heigis
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701

STATUTORY ADDENDUM

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1. Federal Rule of Civil Procedure Rule 24. Intervention..... A-1

STATUTORY AND OTHER AUTHORITIES

Federal Rule of Civil Procedure 24. Intervention.

- (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
- (1) is given an unconditional right to intervene by a federal statute; or
 - (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.
- (b) **Permissive Intervention.**
- (1) *In General.* On timely motion, the court may permit anyone to intervene who:
 - (A) is given a conditional right to intervene by a federal statute; or
 - (B) has a claim or defense that shares with the main action a common question of law or fact.
 - (2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:
 - (A) a statute or executive order administered by the officer or agency; or
 - (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.
 - (3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.
- (c) **Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.