U.S. Department of
JUSTICE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE,

Plaintiff,

v.

ENGINE MANUFACTURERS ASSOCIATION, D/B/A TRUCK & ENGINE MANUFACTURERS ASSOCIATION, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the CALIFORNIA AIR RESOURCES BOARD, *et al.*,

Defendants.

No. 24 C 50504

Hon. Iain D. Johnston

THE UNITED STATES OF AMERICA and UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Plaintiffs-Intervenors

v.

STEVEN S. CLIFF, in his official capacity as the Executive Officer of the CALIFORNIA AIR RESOURCES BOARD,

Defendant.

MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO INTERVENE AS PLAINTIFF AGAINT DEFENDANT STEVEN S. CLIFF

TABLE OF CONTENTS

INTRODUCTION

California is defying federal law by attempting to enforce preempted California vehicle and engine emissions standards through its so-called "Clean Truck Partnership," which the California Air Resources Board ("CARB") uses to enforce three sets of stringent emissions standards at issue in this case: the Omnibus' Low NOx ("Omnibus") rule, the Advanced Clean Trucks ("ACT") rule, and the Advanced Clean Fleets ("ACF") rule. Individually or collectively, these emission standards impose a nationwide ban on internal-combustion engines in heavy-duty trucks by 2036.

Yet the decision whether to ban internal-combustion engines in heavy-duty trucks rests ultimately with the federal government. And it has declined to take such a radical step. In June 2025, the President signed into law Congressional joint resolutions of disapproval providing that Environmental Protection Agency ("EPA") preemption waivers for the Omnibus and ACT rules "have no force or effect." *See* Pub. L. No. 119-15, 139 Stat. 65 (ACT); Pub. L. No. 119-17, 139 Stat. 67 (Omnibus). These rules, along with the ACF rule for which EPA had never issued a waiver, are now preempted under the express prohibition in the Clean Air Act that bars *any* State from *attempting to* enforce its own emissions standards. *See* 42 U.S.C. § 7543(a).

Even so, neither the Clean Air Act nor Congressional disapprovals have stopped CARB—and its executive officer Steven S. Cliff who is sued in his official capacity—from demanding compliance with California standards. On the contrary, a Congressional committee was just "made aware that CARB staff" (who are all supervised by Defendant Cliff) "is denying auto manufacturers approval to bring vehicles to market unless the manufacturers agree to comply with the preempted

regulations."[1]

This ongoing defiance of federal law must stop. The United States, including its Environmental Protection Agency (collectively, the "United States"), have a compelling interest in California complying with federal law and promoting national uniform emission standards, as Congress mandated in the Clean Air Act. As such, "this is a paradigmatic case for intervention as of right" under Federal Rule of Civil Procedure 24(a)(2) because the United States (1) timely filed this motion, (2) has a unique sovereign interest in enforcing national uniform standards, (3) would face potential impairment of that interest if this Court concludes that CARB can enforce preempted regulations, and (4) is not adequately represented by any other party. *Driftless Area Land Conservancy v. Huebsch,* 969 F.3d 742, 744, 746 (7th Cir. 2020).

Alternatively, the United States should be allowed to permissively intervene under Rule 24(b). In fact, Rule 24(b) was amended expressly to permit a federal "agency upon timely application to be admitted as an intervenor to any action in which a party relies upon a statute . . . administered by" that agency. 7C Charles A. Wright, Arthur R. Miller, and Mary Kay Kane, *Federal Practice and Procedure* § 1912 (3d ed. 2025) ("Wright & Miller). And EPA administers the Clean Air Act. Moreover, if granted intervention, the United States (who shares a claim with Plaintiff) would neither unduly delay this case, which is early in the litigation, nor prejudice a party.

Accordingly, under either Rule 24(a) or Rule 24(b), the Court should grant the United States' Motion to Intervene as Plaintiff Against Defendant Steven S. Cliff.

[1] U.S. House of Representatives Committee on Energy and Commerce, *Letter to Steven S. Cliff* at 2 (Aug. 11, 2025), https://perma.cc/EB5X-FZR2 (discussing evidence).

BACKGROUND

Section 209 of the Clean Air Act expressly preempts State laws that regulate motor vehicle emissions with an important exception: EPA may waive the application of federal preemption for California emissions regulations under limited circumstances. *See* 42 U.S.C. § 7543(a)-(b). If EPA grants a Clean Air Act waiver, then CARB—through its executive officer—enforces the California standards.

From 2021 to 2023, CARB promulgated a series of regulations imposing stringent emissions standards on trucks with a gross vehicle weight rating above 8,500 lbs. (hereinafter "heavy-duty trucks"). Heavy-duty trucks are a backbone of our national supply chain and economy, as they transport a vast amount of goods and materials that keep businesses operating, consumers stocked, and prices low. They also produce emissions. Unhappy with their emissions, California imposed strict emissions standards on truck manufacturers that are significantly more stringent than federal emissions standards. CARB then obtained or attempted to obtain preemption waivers from EPA. Three California regulatory standards are relevant here.

First, in June 2020, CARB adopted the "Advanced Clean Trucks" (ACT) rule. *See* Cal. Code Regs. tit. 13, § 1963.1. This rule requires manufacturers to meet ever-increasing sales quotas for zero-emissions trucks with each model year—irrespective of the pace of advances in zero-emissions power-train technology. *Id.* CARB requested and received a Clean Air Act preemption waiver from EPA for its ACT rule. *See* 88 Fed. Reg. 20,688 (Apr. 6, 2023). But the federal government revoked that waiver when the President signed a Congressional joint resolution into law on June 12, 2025. *See* Statement by the President, The White House (June 12, 2025) ("Presidential

Signing Statement"), https://perma.cc/D8EJ-6Q2V (stating that the ACT regulation is "fully and expressly preempted by the Clean Air Act and cannot be implemented"). This joint resolution provided that the Clean Air Act preemption waiver for the ACT rule "shall have no force or effect." Pub. L. No. 119-15, 139 Stat. 65 (2025) (ACT).

Second, in September 2021, CARB implemented its Omnibus' Low NOx ("Omnibus") rule. This rule requires truck manufacturers to reduce heavy-duty vehicle nitrogen-oxide (NOx) and particulate emissions, and it makes extensive changes to other CARB regulations affecting heavy-duty trucks and engines. *See* Cal. Code Regs. tit. 13, § 1956.8; *see* CARB, Final Regulation Order, Title 13, at 3, Nonrulemaking Docket No. EPA-HQ-OAR-2022-0332, https://www.regulations.gov/document/EPA-HQ-OAR-2022-0332-0005. In January 2025, just before the inauguration of President Trump, EPA granted CARB a waiver request for the Omnibus rule. *See* Notice of Decision, Omnibus Low NOx Regulation; Waiver of Preemption; Notice of Decision, 90 Fed. Reg. 643 (Jan. 6, 2025). But the federal government revoked that waiver when the President signed a Congressional joint resolution into law on June 12, 2025. *See* Presidential Signing Statement (stating that Omnibus is preempted). This joint resolution provided that the Clean Air Act preemption waiver for the Omnibus rule "shall have no force or effect." Pub. L. No. 119-17, 139 Stat. 67 (2025) (Omnibus).

Third, in April 2023, CARB promulgated the Advanced Clean Fleets ("ACF") rule. This rule requires, among other things, that manufacturers exclusively sell zero-emission vehicles in California beginning in model year 2036. Cal. Code Regs. tit. 13, § 2016 (2025). CARB submitted a waiver request for ACT to EPA in July 2024; it then

withdrew the request in January 2025. *See* Withdrawal of California's Request for a Waiver (Jan. 13, 2025), EPA Nonrulemaking Docket; California 209(b) Advanced Clean Fleets Waiver Request (2024), No. EPA-HQ-OAR-2023-0589, https://www.regulations.gov/docket/EPA-HQ-OAR-2023-0589. So EPA has not granted a preemption waiver permitting CARB to implement the ACF rule.

Although he has no valid waiver for these three regulations, Defendant Cliff is attempting to enforce them through the Clean Truck Partnership.[2] In July 2023, CARB adopted the Clean Truck Partnership, which gives certain truck manufacturers compliance flexibility under the preempted regulations, but it otherwise compels them to comply with the Omnibus and ACT rules. It also forces them to sell only zero-emission vehicles starting in 2036, which is consistent with the ACF rule. It is, in essence, a regulatory order that responds to industry concerns but nevertheless imposes compliance requirements, regardless of whether CARB's regulations are legal.

Importantly, in exchange for compliance flexibility, CARB mandated that the signatory truck manufacturers "commit to meet, in California, the relevant provisions of the CARB regulations . . . irrespective of the outcome of any litigation challenging the waivers or authorizations for those regulations or of CARB's overall authority to implement those regulations." CTP ¶ 2. In other words, the Clean Truck Partnership purports to allow CARB to enforce the ACT, Omnibus, and ACF rules, even though CARB no longer can do so. Next, the Clean Truck Partnership states that "California will maintain its certification program," asserting CARB's authority to impose

[2] *See* Second Amended Complaint, Dkt. No. 104-1, Clean Truck Partnership ("CTP").

certification requirements on manufacturers to comply with its emissions standards, regardless of countervailing federal legal authority. *Id.* App'x B ¶ 1.

CARB now uses the Clean Truck Partnership to enforce the preempted ACT, Omnibus, and ACF rules. For example, in response to federal action invalidating the ACT and Omnibus waivers, CARB published "regulatory guidance" in a Manufacturers Advisory Correspondence ("MAC") on May 23, 2025. *See* MAC, ECCD-2025-3, CARB (May 23, 2025), https://perma.cc/J6YC-KCTB. This regulatory directive contends that the "Congressional resolutions of disapproval . . . are the result of illegal actions and are thus invalid," and directs that the preempted regulations remain "applicable to manufacturers." *Id.* at 2. The MAC goes on to state that CARB "will continue to accept and process certification applications," justifying this as "necessary" to "facilitate meeting the commitments of the Clean Truck Partnership." *Id.* at 2. Thus, California requires compliance with CARB's emissions standards, even though the underlying regulations establishing those emissions standards are preempted and unlawful. *See also supra* n.1 (stating that CARB staff is requiring auto manufacturers to "comply with the preempted regulations").

ARGUMENT

I. THE UNITED STATES IS ENTITLED TO INTERVENE UNDER RULE 24(A)

Intervention as of right should be granted where, as here, the movant establishes: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the

existing parties to the action." *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019) (citing Fed. R. Civ. Proc. 24(a)(2)). "Courts should construe Rule 24(a)(2) liberally and should resolve doubts in favor of allowing intervention." *Michigan v. U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *2 (N.D. Ill. Aug. 20, 2010).

A. The United States' Motion Is Timely

"[T]he requirement of timeliness is aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Courts consider four factors when weighing timeliness: "'(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; [and] (4) any other unusual circumstances.'" *City of Chicago*, 912 F.3d at 984. All four factors show that the United States timely moved to intervene in this case.

First, the United States has known about its interest in this case for just a few months. On June 12, 2025, President Trump signed into law Congressional joint resolutions of disapproval providing that EPA preemption waivers for the Omnibus and ACT rules have no force or effect. *See supra* Presidential Signing Statement. At this point, CARB's ongoing enforcement of these regulations through the Clean Truck Partnership became an unacceptable "obstacle to the accomplishment and execution of the full purposes and objectives of Congress"—namely, for uniform emissions standards under the Clean Air Act, which EPA administers. *Wyeth v. Levine*, 555 U.S. 555, 577 (2009) (discussing the "unique understanding" agencies maintain for "statutes they administer"). Since June, when the operative complaint was filed, *see* Dkt.

No. 104, the United States has worked diligently to facilitate proper coordination among multiple agencies and offices that suffer harm by CARB's ongoing enforcement of preempted regulations.

Second, there is no risk of causing prejudice to the original parties by delay. Courts have recognized that prejudice from intervention can "manifest" to existing parties when the litigation has advanced to later stages, such as during "complex and well-publicized . . . settlement negotiations." *City of Chicago*, 912 F.3d at 986–87. But that is not the case here: Plaintiff has only just filed the operative amended complaint and Defendants have not responded. *See* Dkt. Nos. 103, 104; *see also* Dkt. No. 119 (extending response deadline for all Defendants except for Defendant Cliff). In fact, Plaintiff and Daimler consented to this motion and all other Defendant truck manufacturers either did not oppose or took no position, demonstrating that they would suffer no prejudice from the United States' involvement in this case. *See* Dkt. No. 121. And the United States moved to intervene to bring claims only against Defendant Cliff. Accordingly, with Plaintiff's consent and only Defendant Cliff as the named defendant, no other party can claim prejudice beyond the obvious and self-serving reasons that Defendant Cliff opposes this intervention.

What's more, the United States would be prejudiced if its motion is denied. A judgment allowing Defendant Cliff to enforce preempted regulations through the Clean Truck Partnership would do an end-run around Congress' choice to require uniform national emissions standards, as expressly contemplated in the Clean Air Act. *See* 42 U.S.C. § 7543(a). The United States must be allowed to defend the

statutory scheme that Congress chose for the Clean Air Act's motor vehicle emissions program and challenge CARB's attempt to avoid preemption here without having to file another action. Multiple actions would risk conflicting judgments and delay EPA's statutory mandate to adopt and enforce uniform emissions standards.

Finally, this case presents unusual circumstances: a State is flouting federal law. Indeed, CARB is not attempting to hide its disregard for the law Congress wrote. To the contrary, Defendant Cliff recently issued "regulatory guidance" aimed at directly challenging the Congressional joint resolutions of disapproval. *See supra* MAC at 6. For example, notwithstanding the Congressional disapproval signed into law concerning the ACT waiver, Defendant Cliff stated that "CARB will continue to accept and process manufacturer sales reports" for "engines and vehicles under the requirements of the [ACT] regulations." *Id*. at 2. And powerful political organizations are egging on CARB to circumvent federal law, threatening truck manufacturers with governmental retaliation if they defy CARB and its enforcement of the Clean Truck Partnership. *See* Jason Cannon, *Groups warn OEMs over possible Clean Truck agreement exit*, Commercial Carrier Journal (Aug. 4, 2025), https://perma.cc/3BE4-LRX7 ("With the political tides bound to change again, backing out of [the Clean Truck Partnership] will negatively impact future dealings with California regulators.")

B. The United States Has Unique Interests in This Litigation

"Intervention as of right requires a would-be intervenor to have a 'direct, significant and legally protectable interest in the [subject] at issue in the lawsuit.'" *Bost, v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023). This requires that the "interest be 'based on a right that belongs to the proposed intervenor rather than to

an existing party in the suit." *Id.* "Properly understood," the Seventh Circuit has explained, "the 'unique' interest requirement demands only that an interest belong to the would-be intervenor in its own right, rather than derived from the rights of an existing party." *Id.*

The United States has a unique sovereign interest to set and enforce national uniform standards for vehicular emissions, as mandated by Congress in its determination of the public interest. In enacting the Clean Air Act, Congress sought to construct a nationwide regulatory regime focused on limiting emissions of certain pollutants by new motor vehicles and engines. *See* 42 U.S.C. § 7521. Congress entrusted this endeavor to EPA and expressly preempted State regulation of emissions standards or the imposition of State certification requirements, recognizing that a 50-State patchwork of environmental regulations would be untenable and unwise. *See id.* § 7543(a). A narrow exception is when California receives a preemption waiver from EPA. *See id.* § 7543(b). Yet EPA may not grant a waiver to California if California adopts standards that are "arbitrary and capricious" or do not "meet compelling and extraordinal conditions," among other reasons. *Id.* § 7543(b)(1)(A)–(C). As a result, absent a waiver, Congress chose uniformity in the motor vehicle emissions program and gave EPA alone the authority to set national emissions standards.

CARB did receive waivers for its ACT and Omnibus rules. But Congress voided those waivers. Congress again chose national uniformity for heavy-duty truck emissions standards and rejected the option for California to enforce its more restrictive standards. *See* Pub. L. No. 119-15, 139 Stat. 65 (2025) (disapproving the ACT rule's

waiver); Pub. L. No. 119-17, 139 Stat. 67 (2025) (disapproving the Omnibus rule's waiver). And California never obtained a waiver for the ACF rule. The United States now seeks to intervene here to ensure that CARB, through the Clean Truck Partnership, does not frustrate Congress' twice-over choice for uniform emissions standards.

No other party here can claim this same sovereign interest. It goes without saying that the United States alone possesses the unique "interest in protecting the proper and consistent application of the Congressionally designed framework" under the Clean Air Act. *Heaton v. Monogram Credit Card Bank of Georgia,* 297 F.3d 416, 422–24 (5th Cir. 2002) (concluding that "the district court erred on the merits in refusing to allow [the Federal Deposit Insurance Corporation] to intervene" to protect the application of the "Congressionally designed framework" under its charge).

C. This Action Could Impair the United States' Interests

"The Supreme Court has emphasized that the requirement of impairment of a legally protected interest is a minimal one." *Ne. Ohio Coal. for the Homeless & Serv. Emps. Int'l Union, Loc. 1199 v. Blackwell,* 467 F.3d 999, 1007 (6th Cir. 2006). Here, an adverse judgment upholding the Clean Truck Partnership and its underlying preempted regulations would defeat the United States' ability to enforce national uniform emission standards, as directed by Congress. *See id*. (noting that "potential *stare decisis* effects can be a sufficient basis for finding an impairment of interest") (citing *Linton v. Comm'r of Health & Env't*, 973 F.2d 1311, 1319 (6th Cir.1992)). EPA's heavy-duty truck emissions standards cannot be uniform so long as Defendant Cliff enforces CARB's preempted standards through the Clean Truck Partnership.

D. No Party Represents the United States' Sovereign Interests

"The most important factor in determining adequacy of representation is how the interest of the absentee compares with the interests of the present parties." *Driftless,* 969 F.3d at 747 (citing Wright & Miller, § 1909). This rule "is satisfied if the applicant shows that representation of [its] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Id.* (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 (1972)); *see also Bost*, 75 F.4th at 688 (stating that the factor is a "lenient one" when, as here, "there is no notable relationship between" the applicant and the parties). The rule also "calls for a contextual, case-specific analysis, and resolving questions about the adequacy of existing representation requires a discerning comparison of interests." *Driftless*, 969 F.3d at 748.

No party in this case represents the United States' unique sovereign interests. The private parties' interests are economic, including their desire to protect "private investment." *Id.* at 748; *see* Dkt. No. 104 ¶ 27 (Plaintiff is "interested in preservation of free markets, free innovation, and the continued economic viability of internal-combustion engine in our transportation sector, along with the economic growth and opportunities it enables."). The United States, by contrast, has "obligations . . . to the general public" through its administration and enforcement of the Clean Air Act. *Driftless*, 969 F.3d at 748; *see also Ne. Ohio Coal. for Homeless*, 467 F.3d at 1008 (emphasizing the governmental interests in statutes and regulations being "enforced"); *Heaton,* 297 F.3d at 425 ("Government agencies . . . must represent the public interest, not just the economic interests of one industry."); *Cf. New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 690 F.2d 1203, 1208 (5th Cir. 1982) (explaining

that governmental parties with "statutory obligation[s]" have interests to intervene as of right to further their "public responsibilities"). At bottom, the United States' concern for the proper application of its laws, along with its duty to represent the public, mean that its interests are not coterminous with those of private litigants.

II. ALTERNATIVELY, THE UNITED STATES SHOULD BE ALLOWED TO INTERVENE UNDER RULE 24(B)

At a minimum, the United States' sovereign interests and constitutional role in enforcing the Clean Air Act and the recent Congressional resolutions disapproving the waivers warrant permissive intervention under either Rule 24(b)(1) or Rule 24(b)(2). "In exercising its discretion" under either rule, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Rule 26(b)(3); *see also Bost*, 75 F.4th at 691 (stating that courts are "*required*" to consider undue delay and prejudice) (citing Rule 24(b)(3)).

Starting with Rule 24(b)(2), when a government agency moves to intervene, as here, courts may permit intervention if the claim is based on "a statute . . . administered by the . . . agency." Rule 24(b)(2)(A); *see also* Wright & Miller, § 1912 (3d ed. 2025) ("[T]he whole thrust of" Rule 24(b)(2) "is in the direction of allowing intervention liberally to government agencies and officers seeking to speak for the public interest," and "courts have permitted intervention accordingly") (collecting cases); *see generally Cameron v. EMW Women's Surgical Ctr., P.S.C.,* 595 U.S. 267, 277 (2022) (reversing denial of state attorney general's motion to intervene while recognizing that the government's "opportunity to defend its laws in federal court should not be lightly cut off"). Here, Plaintiff's claim is based on Clear Air Act preemption. *See* Dkt.

No. 104 ¶¶ 163–82. And Congress vested EPA with the authority to administer the Clean Air Act and sole authority to establish new motor vehicle standards. *See* 42 U.S.C. §§ 7521(a), 7543(a). Accordingly, the United States satisfies Rule 24(b)(2)(A).

Turning to Rule 24(b)(1)(B), the court may permit anyone to intervene who "has a claim or defense that shares with the main action a common question of law or fact." The United States satisfies this requirement. Its proposed complaint-in-intervention shares with the main action a common claim and question of law: whether the Clean Air Act bars Defendant Cliff from attempting to enforce preempted regulations through the Clean Truck Partnership. *Compare* Dkt. No. 104 ¶¶ 163–82 ("Clean Air Act Preemption"), *with* Ex. A, First & Second Claim for Relief (same).

Granting intervention under either Rule 24(b)(1) or 24(b)(2) would not "unduly delay" this case. Fed. R. Civ. P. 24(b)(3). The intervention motion is timely, as explained. *See supra* § I.A. And the United States does not raise new claims. *See* Wright & Miller, § 1921 (explaining that intervention may be inappropriate if an intervenor would raise new claims that cause delay). The United States also would file a separate action if intervention is denied. Courts have found that avoiding the risk of inconsistent judgments and resolving related issues in a single proceeding support granting permissive intervention. *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995) (finding permissive intervention appropriate where "denial of intervention would in all likelihood have created additional litigation and possibility of conflicting results").

Nor would intervention prejudice the parties. Most significantly, Plaintiff and

Defendant Daimler consented to the United States' request to intervene. *See* Dkt. No. at 121. No other Defendant truck manufacturer opposed the United States' request to intervene, either. *See id.* Further, because Defendants have not filed a responsive pleading, they cannot claim schedule delay or disruption prejudice. The United States will meet any litigation deadlines set by the Court. Indeed, the United States has already thoroughly investigated the facts and claims at issue. Instead of delay, the United States' involvement likely will streamline resolution of this action based on EPA's expertise in the Clean Air Act and regulatory issues central to this case.

CONCLUSION

For all these reasons, the United States' motion to intervene should be granted under either Rule 24(a) or Rule 24(b).

Respectfully submitted,

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