UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

JULIE MOORE, et al.,

Defendants,

and

NORTHEAST ORGANIC FARMING ASSOCIATION OF VERMONT AND CONSERVATION LAW FOUNDATION,

Proposed Defendant-Intervenors.

No. 24-cv-1513 (MKL)

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND FOR LEAVE TO DEFER FILING A RESPONSIVE PLEADING

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

BACKGROUND 2

A. Climate change harms Vermont and costs the State money 2

B. The General Assembly responded with the Climate Superfund Act 3

C. Movants seek to preserve the Climate Superfund Act 4

ARGUMENT 5

I. Movants merit permissive intervention 6

A. This timely motion will not cause undue delay or prejudice 6

B. Movants' defense shares common questions of law with the main action 6

C. Movants have strong interests in preserving the Act 7

D. Movants will contribute to the just and equitable adjudication of the case 11

E. Movants need not show that the State's representation is inadequate 13

II. Movants seek leave to defer filing a responsive pleading 13

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

335-7 LLC v. City of New York, No. 20-cv-1053 (ER),
2020 WL 3100085 (S.D.N.Y. June 11, 2020) 7, 11, 12

Allco Fin. Ltd. v. Etsy,
300 F.R.D. 83 (D. Conn. 2014)..... 6, 13

Ass'n of Conn. Lobbyists LLC v. Garfield,
241 F.R.D. 100 (D. Conn. 2007).....7, 11, 12

Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York,
No. cv-11285 (KMK), 2020 WL 5658703 (S.D.N.Y. Sept. 23, 2020).....6, 11

Blesch v. Holder,
No. 12-cv-1578 (CBA), 2012 WL 1965401 (E.D.N.Y. May 31, 2012)..... 14

Briscoe v. City of New Haven,
No. 3:09-cv-1642 (CSH), 2012 WL 13026762 (D. Conn. Oct. 5, 2012)..... 14

Comcast of Conn. v. Vt. Pub. Util. Comm'n,
No. 5:17-cv-161 (GWC), 2018 WL 11469513 (D. Vt. Feb. 8, 2018) 13

Commack Self-Serv. Kosher Meats, Inc. v. Rubin,
170 F.R.D. 93 (E.D.N.Y. 1996).....7, 11

E.E.O.C. v. KarenKim, Inc.,
698 F.3d 92 (2d Cir. 2012)..... 12

Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie,
508 F. Supp. 2d 295 (D. Vt. 2007)..... 12

Green Mountain Chrysler Plymouth Dodge Jeep v. Torti,
No. 2:05-cv-302, 2006 WL 8567240 (D. Vt. May 3, 2006).....7, 11

H.L. Hayden Co. of New York v. Siemens Med. Sys., Inc.,
797 F.2d 85 (2d Cir. 1986).....5, 7, 11, 13

Hum. Servs. Council of New York v. City of New York,
No. 21-cv-11149 (PGG), 2022 WL 4585815 (S.D.N.Y. Sept. 29, 2022)..... 6

In re Holocaust Victim Assets Litig.,
225 F.3d 191 (2d Cir. 2000)..... 5

N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of State of N.Y.,
516 F.2d 350 (2d Cir. 1975)..... 10

New York v. United States Dep't of Health & Hum. Servs.,
No. 19-cv-4676 (PAE), 2019 WL 3531960 (S.D.N.Y. Aug. 2, 2019). 11, 12, 13

United States v. Columbia Pictures Indus., Inc.,
88 F.R.D. 186 (S.D.N.Y. 1980) 13

United States v. New York City Hous. Auth.,
326 F.R.D. 411 (S.D.N.Y. 2018) 12

United States v. Pitney Bowes, Inc.,
25 F.3d 66 (2d Cir. 1994) 5

Va. House of Delegates v. Bethune-Hill,
587 U.S. 658 (2019)..... 5

Vt. All. for Ethical Healthcare, Inc. v. Hoser,
No. 5:16-cv-205 (GWC), 2016 WL 7015717 (D. Vt. Dec. 1, 2016)..... 12, 13

Windsor v. United States,
797 F. Supp. 2d 320 (S.D.N.Y. 2011)..... 14

Statutes

2020 Vt. Acts & Resolves No. 153 2

2024 Vt. Acts & Resolves No. 122 3

Vt. Stat. Ann. tit 10 § 596 ..... 3, 4, 10

Vt. Stat. Ann. tit 10 § 597 3

Vt. Stat. Ann. tit 10 § 598 4

Court Rules

Fed. R. Civ. P. 24(b)..... 5, 6

PRELIMINARY STATEMENT

Movants Northeast Organic Farming Association of Vermont and Conservation Law Foundation move for permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B) to defend the Climate Superfund Act and preserve its benefits for Vermonters.

Climate change is threatening the way of life in Vermont. The growing frequency and intensity of floods and other extreme weather events puts livelihoods, properties, communities, and lives at risk. The changing climate endangers the small farms that sustain Vermont's food systems and the viability of Vermont's communities. It also poses myriad risks to human health, particularly for the most vulnerable. In response to these threats, Vermont is taking steps to increase its climate resilience. But the cost of recovering from climate disasters and adapting to climate change is high. To date, that burden has primarily been shouldered by taxpayers.

In May 2024, mindful of the urgency and expense of climate adaptation, the Vermont Legislature enacted the Climate Superfund Act (the "Act"). The Act requires large fossil fuel companies to pay for critical adaptation projects in proportion to the amount of fossil fuels they extracted or refined over a discrete 30-year period. The Act shifts part of the cost of climate adaptation from ordinary Vermonters to the companies that profited from—and bear greatest responsibility for—the pollution.

The proposed intervenors are organizations whose members have been harmed by climate change. One of them, Conservation Law Foundation, played a key role in advocating for the Act. The proposed intervenors and their members stand to benefit from implementation of the Act and seek intervention to defend their interests in preserving this important statute.

BACKGROUND

A. Climate change harms Vermont and costs the State money

Vermont has been suffering from climate change for years and continues to suffer today. Rising temperatures, heavier precipitation, and extreme weather events are impacting all aspects of life in Vermont, ranging from agriculture and natural resources to the economy and public health. Declaration of Adeline Rolnick (Rolnick Decl.) Ex. 1 at 3-8. Climate change exacerbates droughts, floods, and irregular growing conditions, which threaten farms and food systems. *Id*. at 5-6. Climate-related health impacts—including air and water quality issues, heat exposure, and mosquito- and tick-borne diseases—disproportionately harm children, the elderly, and low-income households. *Id*. at 2, 8. Extreme weather events jeopardize communities, businesses, properties, and lives. In July 2023, for example, record-setting rainfall over two days caused catastrophic river and flash flooding across the state, including devastating impacts to businesses, homes, and government buildings in Vermont's capital, Montpelier. Rolnick Decl. Ex. 2 at 2; Declaration of Katie Trautz (Trautz Decl.) ¶ 7. That was followed exactly one year later by another severe river and flash flooding event. Rolnick Decl. Ex. 3 at 2-8. These harms will worsen with time.

Vermont is taking measures to reduce the risks of climate impacts to its communities, infrastructure, and natural systems. The General Assembly has enacted binding greenhouse gas reduction requirements that commit the state to reduce emissions to 40 percent below 1990 levels by 2030. *See* Vermont Global Warming Solutions Act of 2020, 2020 Vt. Acts & Resolves No. 153. And the state has identified, and is making progress toward, numerous strategies to reduce its vulnerability to climate change. *See generally* Rolnick Decl. Ex. 4.

But recovering from climate disasters and adapting to climate change is expensive. After the July 2023 flood, the federal government provided over $83 million in public assistance to

reimburse the state government, local governments, and nonprofit organizations for their recovery and repair efforts, as well as $26 million to help residents rebuild. Rolnick Decl. Ex. 5. According to one analysis, from 2011 to 2023, Vermont experienced 20 federally declared climate disasters and received $440 million in post-disaster federal assistance. Rolnick Decl. Ex. 6 at 14-15. Even these federal resources have not been enough: Vermont's small towns and state agencies are still struggling to find resources to recover from the 2023 and 2024 floods. Rolnick Decl. Exs. 7, 8; *see also infra* pp. 9-10. And Vermont will continue to incur these and other climate costs in the future. A University of Vermont study estimates that, without additional adaptation measures, the cost of property damage from flooding in Vermont could exceed $5.2 billion over the next 100 years. Rolnick Decl. Ex. 9 at 2, 3-4. It is less costly to reduce climate vulnerability now through climate adaptation projects than to repeatedly repair damage in the future. Rolnick Decl. Ex. 4 at ii.

B. The General Assembly responded with the Climate Superfund Act

In May 2024, recognizing the need to secure funding for critical adaptation and resilience efforts, the General Assembly enacted the Climate Superfund Act. *See* 2024 Vt. Acts & Resolves No. 122. The Act aims to "provide a source of revenue for climate change adaptation projects" within Vermont and to identify, prioritize, and implement these projects. Vt. Stat. Ann. Tit. 10 § 597(1), (5)-(6). Such projects may include relocating, elevating, and retrofitting infrastructure vulnerable to flooding; increasing energy efficiency in schools and public housing to reduce harm from heat waves and fire smoke; preventing and treating climate-related illness; responding to climate-driven toxic algae blooms, crop loss, and loss of agricultural topsoil; preparing for and recovering from extreme weather events; and defensively upgrading roads, bridges, and transit systems. *Id.* § 596(2). To generate revenue for this effort to address the financial burdens imposed by climate change, the Act calls for the Agency of Natural Resources (the "Agency") to

collect payments from certain companies that extracted or refined fossil fuels during the 30-year covered period, from January 1, 1995, through December 31, 2024. *Id.* § 596(8), (22). The Act limits liability to larger companies who have a sufficient connection to Vermont—specifically, those to whom the Agency attributes more than one billion metric tons of greenhouse gas emissions during the covered period. *Id.* § 596(22). A fossil fuel company's payment will be proportional to the amount of greenhouse gas emissions resulting from fossil fuels it extracted or refined during that period. *See id.* § 598(b).

C. Movants seek to preserve the Climate Superfund Act

Movants are organizations whose members have been harmed by climate change. They stand to benefit from the Act and have strong interests in preserving it.

The Northeast Organic Farming Association of Vermont ("NOFA Vermont") is a nonprofit organization whose purposes include advocacy and education on organic and sustainable agriculture and family-scale farming. Declaration of Grace Oedel (Oedel Decl.) ¶¶ 1-2. It has approximately 1,300 members, including about 700 organic farms. *Id.* ¶ 1. The vast majority of organic farms in Vermont are members of NOFA Vermont. *Id*. Many of these farms participate in farm shares, subsidized Community Supported Agriculture programs, and food assistance programs, including ones that allow Vermonters to spend their public benefits at farmers markets. *Id.* ¶ 5. NOFA Vermont's members have experienced crop loss due to climate impacts including catastrophic flooding, freezes, droughts, and heat stress, which in turn has led to severe economic losses. *Id.* ¶¶ 7-10.

Conservation Law Foundation (CLF) is a nonprofit environmental membership organization dedicated to mitigating the impact of climate change on New England's communities and advancing solutions to help these communities adapt to and thrive in the face of climate disasters. Declaration of Kate Sinding Daly (Daly Decl.) ¶¶ 3-4. It has approximately

450 members in Vermont, some of whom have experienced climate harm, including personal and property damage caused by extreme weather, such as flooding and windstorms in 2023 and 2024. *Id.* ¶¶ 3, 7. CLF has also played a critical role in developing and supporting the adoption of state climate laws and policies in Vermont, including the Climate Superfund Act. *Id.* ¶¶ 5-6. CLF testified in support of the Act and advised lawmakers. *Id.* ¶ 8. CLF continues to track and support the Act's implementation. *Id.* ¶ 9.

ARGUMENT

Movants seek permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). A district court may grant permissive intervention "if the application is timely and if the 'applicant's claim or defense and the main action have a question of law or fact in common.'" *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 202 (2d Cir. 2000) (citing Fed. R. Civ. P. 24(b)(1)). The court's "principal guide" in exercising its discretion is "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 73 (2d Cir. 1994) (quoting Fed. R. Civ. P. 24(b)(3)). The court may also consider the "nature and extent" of proposed intervenors' interests and whether they will "significantly contribute" to, among other things, "the just and equitable adjudication of the legal questions presented." *H.L. Hayden Co. of New York v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986). These considerations all support permissive intervention here.[1]

[1] Movants need not establish Article III standing because as prospective defendant-intervenors, they do not seek to invoke the Court's jurisdiction. *See Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019).

I. Movants merit permissive intervention

A. This timely motion will not cause undue delay or prejudice

This motion—filed just over a month after Plaintiffs served their complaint, ECF Nos. 7, 8—is timely. The case is still in its early stages: initial briefing begins on May 19 and extends through early September. ECF No. 18; *see Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York*, No. cv-11285 (KMK), 2020 WL 5658703, at *7 (S.D.N.Y. Sept. 23, 2020) (intervention motion filed three months after complaint was timely where case was in early stages and no significant substantive motions had been filed); *Allco Fin. Ltd. v. Etsy*, 300 F.R.D. 83, 86 (D. Conn. 2014) (intervention motion filed three months after suit was timely where defendant had not answered or moved to dismiss). Accordingly, Movants' intervention will not introduce undue delay or prejudice to the existing parties. As described below, *infra* pp. 13-14, Movants propose to file a motion to dismiss within 14 days after the State files its responsive pleading or motion to dismiss, which will allow them to minimize unnecessary repetition. Movants are also prepared to cooperate with the parties to advance the efficient adjudication of this case.

B. Movants' defense shares common questions of law with the main action

Movants' defense shares common questions of law with the main action. *See* Fed. R. Civ. P. 24(b)(1)(B). Movants intend to address the fundamental legal questions presented by Plaintiffs, by showing that the Climate Superfund Act is constitutional and is not preempted. Courts in this circuit regularly grant permissive intervention in these circumstances. *See, e.g.*, *Hum. Servs. Council of New York v. City of New York*, No. 21-cv-11149 (PGG), 2022 WL 4585815, at *4 (S.D.N.Y. Sept. 29, 2022) (proposed intervenor "shares the City's presumed defense—namely, whether Local Law [87] is constitutionally sound and whether it is preempted by federal labor law" (citation omitted)); *335-7 LLC v. City of New York*, No. 20-cv-1053 (ER),

2020 WL 3100085, at *3 (S.D.N.Y. June 11, 2020) (proposed intervenors' "defenses share the same fundamental question of law with the main suit: the constitutionality of the [rent stabilization law]"); *Ass'n of Conn. Lobbyists LLC v. Garfield*, 241 F.R.D. 100, 103 (D. Conn. 2007) (proposed intervenors' defenses "share the same or similar questions of law and fact with the main action" in case involving "a facial constitutional challenge to a newly-enacted statute"); *Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y. 1996) (proposed intervenors shared "questions of law and fact in common with the parties" in the constitutionality of New York's kosher laws); *Green Mountain Chrysler Plymouth Dodge Jeep v. Torti*, No. 2:05-cv-302, 2006 WL 8567240, at *1, 5 (D. Vt. May 3, 2006) (proposed intervenors "share[d] common questions of law and fact" with the main action in case involving whether state environmental regulations were preempted).

C. Movants have strong interests in preserving the Act

The "nature and extent" of Movants' interests in this case weigh in favor of intervention. *H.L. Hayden*, 797 F.2d at 89. Movants' members have experienced or witnessed firsthand the harms from climate change and will continue to face these harms without additional—and costly—adaptation measures. These are precisely the harms that motivated the Act's passage and which the Act seeks to limit in the future.

Flooding, including the catastrophic floods that struck Vermont in July 2023 and July 2024, *supra* p. 2, has devastated members' homes, businesses, and communities. Declaration of Allison Palmer (Palmer Decl.) ¶¶ 3-8; Declaration of Karl Bissex (Bissex Decl.) ¶¶ 4-6; Trautz Decl. ¶ 7; Declaration of Wes Hamilton (Hamilton Decl.) ¶¶ 3, 5; Declaration of Andy Jones (Jones Decl.) ¶¶ 9-10, Declaration of Grace Oedel (Oedel Decl.) ¶ 7, 9. Members have been forced to evacuate their homes, in some cases repeatedly, and seen neighbors lose their homes altogether. Palmer Decl. ¶¶ 3-4, 6-7; Bissex Decl. ¶¶ 5-7, 10-11. Floods have damaged local

infrastructure in members' towns, including by wiping out eight bridges in one small town, Bissex Decl. ¶¶ 5, 12, put members' entire farms underwater, leading to millions of dollars in crop loss, Jones Decl. ¶¶ 9-10; Oedel Decl. ¶¶ 7, 9, 11, and put members' patients' health at risk, Declaration of Megan Malgeri (Malgeri Decl.) ¶ 9. And flooding at the height of tourist season has damaged members' businesses and businesses in their communities, resulting in months of lost income and, in some cases, requiring members to gut their buildings to make them usable again. Hamilton Decl. ¶¶ 5-6; Trautz Decl. ¶¶ 5-8.

Movants' members have experienced and witnessed other climate harms, too. At members' farms, heavier rainfall diminishes crop yield by causing nutrient loss and increased diseases. Jones Decl. ¶ 14, Oedel Decl. ¶10. At the same time, increased drought has required farms to increase irrigation. Jones Decl. ¶¶ 14-15, Oedel Decl. ¶ 10. Warmer summers are making it more difficult for farmworkers to perform their jobs, Jones Decl. ¶ 15, and are harming the health of members' patients, particularly those whose preexisting conditions or medications make them more vulnerable to heat and dehydration. Malgeri Decl. ¶¶ 4-8. Wildfire smoke deters tourism to members' communities, Trautz Decl. ¶ 12, and makes it more difficult for farmworkers on members' farms to breathe, Jones Decl. ¶ 15.

Movants and their members are currently shouldering the cost of recovering from these climate harms and adapting for the future. In the face of climate threats, members and their communities have come together to provide disaster relief. They dug out each other's basements and streets, fed each other, and raced to harvest crops before the flood. Palmer Decl. ¶¶ 8-10; Bissex Decl. ¶¶ 9-10; Trautz Decl. ¶ 13; Jones Decl. ¶ 11; Oedel Decl. ¶ 11. Members have incurred financial costs as well. They have built floodwalls for their homes, gutted and rebuilt their businesses, moved their crops into greenhouses, begun the process of relocating their

communities and businesses to higher ground, and more. Palmer Decl. ¶¶ 11-12; Bissex Decl. ¶¶ 15-16; Hamilton Decl. ¶¶ 5-7; Jones Decl. ¶ 8.

Movants' members have suffered real harms in addition to the tangible consequences described above. After recurrent flooding, members no longer feel safe in their homes, Palmer Decl. ¶ 13, secure in the future of their businesses, Jones Decl. ¶ 12, 13, 18; Hamilton Decl. ¶¶ 7-8, or confident in their ability to continue providing for their families, Palmer Decl. ¶¶ 12-13; Hamilton Decl. ¶ 8. They fear for what the next flood could mean. Palmer Decl. ¶ 13; Jones Decl. ¶ 13.

Climate harm is also chipping away at the lifeblood of Vermont—small towns, farms, and businesses. Movants' members have seen neighbors leave their tight-knit communities after losing their homes or due to the stress of recurrent flooding. Palmer Decl. ¶¶ 14-15; Bissex Decl. ¶¶ 10-11. Tourists have been slow to return to flood-damaged towns. Trautz Decl. ¶¶ 5, 7. Businesses that managed to recover from the last flood don't know if they will be able to recover after another. Trautz Decl. ¶ 11. Churches damaged by the July 2023 floods, who were already facing shrinking congregations, still have not reopened, and many Montpelier elevators remain out of service, making it harder for people with disabilities to participate in daily life. Trautz Decl. ¶¶ 9-10. And farms are closing altogether, threatening Vermont's food security. Oedel Decl. ¶¶ 4-5, 7-9.

Movants and their members stand to benefit from the fund established by the Act. Despite their adaptation efforts, members have experienced damaging floods multiple times and expect this to continue. Palmer Decl. ¶¶ 3, 6-7; Jones Decl. ¶¶ 3, 7, 9; Trautz Decl. ¶¶ 6-7, 11. Movants and their members are committed to fighting for their communities' future and adapting to the challenges ahead, but they need additional resources to do so. Bissex Decl. ¶¶ 13-14;

Trautz Decl. ¶¶ 8, 14; Jones Decl. ¶¶ 16-19; Oedel Decl. ¶¶ 12-14. Insurance is either unavailable or insufficient to pay for loss from climate harm, Oedel Decl. ¶ 12; Hamilton Decl. ¶¶ 6-7; Palmer Decl. ¶ 12, and available state and federal funds aren't enough to cover the cost of rebuilding, let alone the costs of adaptation. Bissex Decl. ¶¶ 13-15; Oedel Decl. ¶¶ 13-14; Palmer Decl. ¶ 12. To make up the shortfall, Movants have raised their own funds to pay for disaster response and climate adaptation. Oedel Decl. ¶ 13. But Movants recognize that this will not be sufficient either. *Id*. ¶¶ 13-14.

Funds from the Act could be used for a wide range of additional adaptation projects to protect Movants and their members against future climate harms. For example, eligible projects under the Act might include upgrades to buildings and infrastructure to make them more resilient, adding green space along rivers to diminish flooding, building new housing on higher ground, and making Vermont's health system more resilient by adding backup generators. Trautz Decl. ¶ 14; Hamilton Decl. ¶ 9; Bissex Decl. ¶ 15; Jones Decl. ¶¶ 17, 19; Oedel Decl. ¶ 14; Malgeri Decl. ¶ 10; Vt. Stat. Ann. tit. 10, § 596(2) (defining "climate change adaption project"). In addition, Movants and their members—hundreds of individuals and farms—stand to benefit from other public projects that may be eligible for funding under the Act, such as upgrades to stormwater systems, the electric grid, bridges, and other infrastructure. Because "the validity of a [law] from which its members benefit is challenged," Movants have a "sufficient" interest in this case. *N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of State of N.Y.*, 516 F.2d 350, 352 (2d Cir. 1975) (per curiam).

Finally, Movants and their members played a critical role in advocating for the Act. CLF advised lawmakers during the legislative process and testified in support of the Act. Daly Decl. ¶ 8. Andy Jones, a NOFA Vermont member, likewise testified in support of the Act. Jones Decl.

¶ 20. And CLF continues to track and support the Act's implementation. Daly Decl. ¶ 9. Movants' "active role in the formation and passage" of the Act also suffices to demonstrate an interest in this case. *Bldg. & Realty Inst.*, 2020 WL 5658703, at *11; *see also Commack*, 170 F.R.D. at 102 ("Organizations may have sufficient interest to support intervention . . . in actions involving legislation or regulations previously supported by the organization."); *Green Mountain Chrysler Plymouth Dodge Jeep*, 2006 WL 8567240, at *4 (intervenors' "active involvement in developing" the challenged regulations gave them a "direct and substantial interest").

D. Movants will contribute to the just and equitable adjudication of the case

Given their unique perspectives and deep experience with the challenged legislation and the issues it is designed to address, Movants will "significantly contribute" to "the just and equitable adjudication of the legal questions presented." *H.L. Hayden*, 797 F.2d at 89.

First, by representing a cross-section of Vermonters who are harmed by climate change and who stand to benefit from the Act, Movants will bring a "different perspective to the case . . . that may assist the court in addressing the constitutional issues raised." *Commack*, 170 F.R.D. at 106; *Garfield*, 241 F.R.D. at 103 (granting permissive intervention where intervenors brought a "unique" and "personal" perspective to the challenged "law, its development, and its impact"). While Plaintiffs assert that some of their members may potentially be liable under the Act and Defendants are responsible for implementing the Act, Movants are among those "*protected* by the [Act]." *New York v. United States Dep't of Health & Hum. Servs.*, No. 19-cv-4676 (PAE), 2019 WL 3531960, at *4 (S.D.N.Y. Aug. 2, 2019). Their perspectives will "contribute . . . to the just and equitable adjudication" of the case. *H.L. Hayden*, 797 F.2d at 89.

Second, Movant CLF was "intimately involved" in advocating for the law and continues to be closely involved with its implementation. Daly Decl. ¶¶ 8-9; *335-7 LLC*, 2020 WL 3100085, at *3. It therefore possesses a "viewpoint and knowledge" that "would assist the court

during the course of litigation." *335-7 LLC*, 2020 WL 3100085, at *3; *see also Garfield*, 241 F.R.D. at 102-03 (finding that proposed intervenors, including organizations that advocated for and support the challenged law, offer "specialized expertise and substantial familiarity with the legal issues that are presented for review"). In addition, CLF has previously assisted this court as an intervenor in other climate litigation raising constitutional and preemption claims. *See* Daly Decl. ¶ 10; *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 301 & n.4 (D. Vt. 2007) (Sessions, J.) (CLF permitted to intervene defensively in case challenging greenhouse gas standards that raised constitutional and preemption claims). This experience would benefit the Court. *See Vt. All. for Ethical Healthcare, Inc. v. Hoser*, No. 5:16-cv-205 (GWC), 2016 WL 7015717, at *2 (D. Vt. Dec. 1, 2016) ("[W]elcom[ing] advice and expertise" of proposed intervenor organizations with "considerable experience in the field").

Third, should the Court need to resolve Plaintiffs' request for injunctive relief, Compl. ¶¶ 187-196, and find that more facts are needed to evaluate the equities, Movants' participation will aid the full development of facts the Court deems relevant to that inquiry. *See New York*, 2019 WL 3531960, at *6 (permitting intervention where proposed intervenors could help resolve potential request for preliminary relief); *United States v. New York City Hous. Auth.*, 326 F.R.D. 411, 419 (S.D.N.Y. 2018) (permitting intervention where proposed intervenors would "provide [the] Court with a fuller picture" of the "equities"). Given their members' personal experiences dealing with the harms caused by climate change, Movants would be well-positioned to offer "concrete factual submissions," *New York*, 2019 WL 3531960, at *6, to help the Court decide whether the balance of equities and the public interest favor an injunction. *See E.E.O.C. v. KarenKim, Inc.*, 698 F.3d 92, 100 (2d Cir. 2012) (per curiam) (balance of equities and public interest are pertinent factors in evaluating request for permanent injunction).

E. Movants need not show that the State's representation is inadequate

Movants do not seek to intervene on the ground that the State's representation is inadequate. "[T]o grant permissive intervention, Rule 24(b) does not require a finding that party representation be inadequate." *New York*, 2019 WL 3531960, at *6. Since adequate representation is "clearly a minor factor at most" in the analysis, *United States v. Columbia Pictures Indus., Inc.*, 88 F.R.D. 186, 189 (S.D.N.Y. 1980), courts in this circuit routinely grant permissive intervention even when the government will adequately defend the law. *See, e.g.*, *New York*, 2019 WL 3531960, at *6 (granting permissive intervention even when "proposed intervenors [had] not overcome the presumption of HHS's adequate representation of their interests"); *Comcast of Conn. v. Vt. Pub. Util. Comm'n*, No. 5:17-cv-161 (GWC), 2018 WL 11469513, at *4 (D. Vt. Feb. 8, 2018) (granting permissive intervention even where "the State of Vermont will ably litigate this case," as "the State's representation . . . is not a bar to [proposed intervenor's] intervention"); *Vt. All. for Ethical Healthcare*, 2016 WL 7015717, at *2 (granting permissive intervention even where "the state's interest in enforcing Act 39 is roughly congruent with [proposed intervenors'] interest"). Moreover, granting permissive intervention despite the government's adequate representation is especially appropriate where, as here, proposed intervenors will "assist in the just and equitable adjudication" of the case. *Allco Fin. Ltd.*, 300 F.R.D. at 88 (quoting *H.L. Hayden Co.*, 797 F.2d at 89); *see supra* Section I.D.

II. Movants seek leave to defer filing a responsive pleading

Movants respectfully seek leave to defer filing their responsive pleading pursuant to Federal Rule of Civil Procedure 24(c) until 14 calendar days after Defendants' deadline to file a responsive pleading. This will allow Movants to minimize unnecessary repetition. Courts regularly grant such requests where a movant's position is clear from its papers and opposing parties would not be prejudiced. *See, e.g.*, *Briscoe v. City of New Haven*, No. 3:09-cv-1642

(CSH), 2012 WL 13026762, at *6 (D. Conn. Oct. 5, 2012) (granting intervention and directing movants to file a responsive pleading within ten calendar days of defendants' responsive pleading); *Blesch v. Holder*, No. 12-cv-1578 (CBA), 2012 WL 1965401 at *2 (E.D.N.Y. May 31, 2012) (waiving pleading requirement because movant's "position on this litigation is clearly articulated in its motion papers"); *Windsor v. United States*, 797 F. Supp. 2d 320, 325 (S.D.N.Y. 2011) (similar). As described *supra*, Movants intend to argue that the challenged Act is constitutional and is not preempted. In addition, Movants intend to argue that for jurisdictional and/or jurisprudential reasons, this Court should not adjudicate Plaintiffs' claims. *See Blesch*, 2012 WL 1965401, at *2 (proposed intervenors sufficiently articulated their position in motion papers by stating their intent to defend the challenged statute as constitutional under the due process clause). Plaintiffs would not be prejudiced by a deferral, since the case is at a very early stage; modest adjustments could be made to the briefing schedule on dispositive motions should Plaintiffs need additional time and space to respond to Movants' arguments. Deferral is particularly appropriate here because Defendants' responsive pleading or motion to dismiss will not be filed until May 19, 2025. ECF No. 18. Setting Movants' deadline after this date will allow Movants to minimize repetition, thereby furthering judicial economy.

CONCLUSION

For the foregoing reasons, the Court should grant Movants' motion for permissive intervention and Movants' request to defer filing a responsive pleading or motion to dismiss until 14 calendar days after Defendants file their responsive pleading or motion to dismiss.

Dated: March 31, 2025

Respectfully submitted,

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