

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Plaintiffs,

v.

STATE OF NEW YORK; KATHLEEN
HOCHUL, in her official capacity as Governor
of New York; LETITIA JAMES, in her official
capacity as New York Attorney General; and
Amanda Lefton, in her official capacity as
Commissioner of the New York Department of
Environmental Conservation,

Defendants,

and

FOOD & WATER WATCH, WEST HARLEM
ENVIRONMENTAL ACTION, INC.,
CITIZENS CAMPAIGN FOR THE
ENVIRONMENT, CATSKILL
MOUNTAINKEEPER, FRIDAYS FOR
FUTURE NYC, and THIRD ACT
INITIATIVE, INC.,

*Proposed Defendant-
Intervenors.*

Civil Action No. 1:25-cv-3656 (PKC)

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE**

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PRELIMINARY STATEMENT

Movants Food & Water Watch, West Harlem Environmental Action, Inc., Citizens Campaign for the Environment, Catskill Mountainkeeper, Fridays For Future NYC, and Third Act Initiative, Inc. move for permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B) to defend the Climate Change Superfund Act and preserve its benefits for New Yorkers.¹

The substantial harms from climate change are being felt by Movants and their respective members and supporters across New York, from the Great Lakes to the Catskills to New York City and Long Island. In response, New York is taking steps to increase its climate resilience. But these measures are expensive: the cost to the State of climate adaptation through 2050 is expected to reach several hundred billion dollars. To date, the financial burden of climate adaptation has been primarily shouldered by taxpayers.

To help meet that financial need, the New York State Legislature enacted the Climate Change Superfund Act (the “Act”). The Act requires the largest fossil fuel companies with a connection to the State to pay \$75 billion over 25 years to fund critical adaptation projects. The Act thereby shifts part of the cost of climate adaptation from ordinary New Yorkers to the companies that profited from—and bear greatest responsibility for—climate-harming greenhouse gas pollution.

Movants are nonprofit organizations devoted to addressing various aspects of the climate crisis, including adaptation, resilience, and corporate accountability. Some Movants played a key role in advocating for and securing the passage of the Act. Movants possess concrete experience and hard-won expertise on the causes and current consequences of climate change and the

¹ Pursuant to Federal Rule of Civil Procedure 24(c), Movants are submitting a proposed answer along with this motion to intervene.

possibilities of adapting to address future harms. Movants and their New York members and supporters stand to benefit from implementation of the Act and seek intervention to defend their interests and aid the Court’s just and equitable adjudication of Plaintiffs’ efforts to strike down this important statute.²

BACKGROUND

A. Climate change caused by burning fossil fuels harms New York and its residents and costs the State money

As the New York Legislature recognized in enacting the Act, climate change poses “an immediate, grave threat to the state’s communities, environment, and economy.” 2024 N.Y. Sess. Laws Ch. 679 (S. 2129-B), § 2(1) (McKinney). Its “irreversible” consequences include “rising sea levels, increasing temperatures, extreme weather events, flooding, heat waves, [and] toxic algal blooms.” *Id.* The Legislature also recognized that the combustion of fossil fuels is the primary driver of climate change and that fossil fuel companies are significant contributors of climate-harming greenhouse gas emissions. *See id.* § 2(1), (6)(c).

New York has already incurred massive costs to recover from and adapt to climate change harms. From 1980 to 2024, New York experienced 95 weather or climate disaster events with losses exceeding \$1 billion each, with nearly a third of these events occurring over the last five years.³ For non-New York City local governments, climate change-related hazards account for about 55 percent of their municipal budgets from 2018 to 2028. S. 2129-B, § 2(6)(b). The Legislature estimates that upgrading New York City’s sewer system to deal with heavy rain events alone will cost around \$100 billion. *Id.* It estimates that protecting Long Island from

² Defendants consent to this motion, and Plaintiffs oppose.

³ National Oceanic and Atmospheric Administration, Billion-Dollar Weather and Climate Disasters, *New York Summary*, <https://www.ncei.noaa.gov/access/billions/state-summary/NY> (last accessed August 7, 2025).

extreme weather will cost \$75 to \$100 billion. *Id.* And climate change will continue to cost New York. The Legislature anticipates that, through 2050, the cost of climate adaptation will climb to several hundred billion dollars. *Id.*

B. The New York State Legislature responded with the Climate Change Superfund Act

In December 2024, recognizing the need for “new revenue sources” to fund the “huge investments” required to reduce future harm from the climate crisis, the Legislature enacted the Climate Change Superfund Act. S. 2129-B, § 2(1).⁴

The statute’s purposes are to “provide a source of revenue for climate change adaptive infrastructure projects within the state” and to identify and fund these projects. *See* N.Y. Env’t Conserv. Law § 76-0103(2)(a), (e)-(f). To generate revenue, the Act directs the Department of Environmental Conservation (the “Department”) to collect payments from responsible parties. *Id.* § 76-0103(2)(a). Responsible parties are fossil fuel companies with a requisite nexus to the State that the Department determines are responsible for more than one billion tons of greenhouse gas emissions during the covered period between January 1, 2000, and December 31, 2024. *Id.* § 76-0101(9), (21). The payments will total \$75 billion in the aggregate.⁵ *Id.* § 76-0101(6). The Act provides that at least 35 percent, with a goal of 40 percent or more, of the funds will be allocated to climate change adaptation projects that benefit disadvantaged communities, N.Y. Env’t Conserv. Law § 76-0103(2)(g), in recognition of the disproportionate risks those communities face from climate change.

⁴ The Act was amended in February 2025, 2025 N.Y. Sess. Laws Ch. 100 (S. 824) (McKinney), and it is now effective as amended.

⁵ A responsible party’s share of that amount is proportional to the greenhouse gas emissions attributable to the fossil fuels it extracted or refined during the covered period. *Id.* § 76-0101(7)-(8), 76-0103(3)(b). A responsible party can choose to pay in one lump sum or over 25 annual payments. *Id.* § 76-0103(3)(e)(i).

The \$75 billion that responsible parties are expected to pay represents a fraction of the several hundred billion dollars in costs that New York will incur through 2050 to adapt to climate change. S. 2129-B, § 2(6)(b)-(c). Yet the Act’s intent is clear: the fossil fuel companies that have most contributed to climate change through their pollution also should contribute funding for necessary adaptation efforts. *Id.* § 2(4)-(5). And they should do so at a level that reduces the financial burden the climate crisis places on New York taxpayers. *Id.* § 2(6)(c).

C. Movants seek to preserve the Climate Change Superfund Act

Movants are organizations that strive to address the climate crisis and reduce the harms their members, supporters, and communities face from climate change, including through climate adaptation initiatives and corporate accountability campaigns. They and their members, supporters, and communities stand to benefit from the Act and seek to preserve it.

Food & Water Watch (“FWW”) is a nonprofit membership organization with over 1.4 million members nationwide and over 115,000 members in New York. Declaration of Emily Wurth (Wurth Decl.) ¶ 2. FWW’s mission is to ensure safe and sustainable food, clean and affordable water, and a livable climate for all. *Id.* Its work includes advocating for corporate accountability in the fossil fuel industry, and it supports state climate superfund legislation. *Id.* ¶ 3. FWW campaigned extensively to ensure the enactment of the Act in New York through field organizing, lobbying, media engagement, and holding numerous rallies and events. *Id.* ¶¶ 6-7. Between August and December 2024, FWW rallied from New York City to the Capitol in Albany, urging Governor Kathy Hochul to sign the Act. *Id.* ¶ 7. Following FWW’s campaign, on December 24, 2024, Governor Hochul signed the Act into law. *Id.* ¶ 8.

West Harlem Environmental Action, Inc. (“WE ACT for Environmental Justice”) is a nonprofit membership organization with over 45 staff and 1,100 members that fights the impact of climate change on communities of color and low-income communities, with a focus on

northern Manhattan. Shepard Decl. ¶¶ 1-2. Its members are harmed by climate change: for example, extreme heat exacerbates health issues and can be life-threatening, particularly for those who do not have or cannot afford to turn on air conditioning. *Id.* ¶¶ 4, 6. WE ACT for Environmental Justice has deep expertise working to protect members from these harms: it directs the Manhattan Clean Energy Hub, which helps provide low and no-cost renewable energy upgrades to improve air quality and reduce utility costs, *id.* ¶ 3; it runs a leadership training program to prepare members to engage more effectively in advocacy work, *id.*; and in collaboration with community partners, it has developed research-backed plans, including the Northern Manhattan Climate Action Plan, to identify concrete steps to enhance northern Manhattan's climate resilience, *id.* ¶ 9. Most of the communities the organization serves in northern Manhattan meet the State's criteria for disadvantaged communities. *See id.* ¶ 10.

Citizens Campaign for the Environment ("CCE") is a nonprofit membership organization that advocates for stronger environmental policy. Declaration of Adrienne Esposito (Esposito Decl.) ¶ 1. CCE has over 100,000 members across New York State and Connecticut, including approximately 40,000 members on Long Island and 20,000 members in central and western New York. *Id.* It has staff in Buffalo, Syracuse, and on Long Island. *Id.* Flooding, which is increasingly common due to climate-related excessive rain and sea level rise, harms CCE's members across New York. *Id.* ¶¶ 3, 8. Heavy rains and floods can damage septic systems, threatening human and environmental health with dangerous bacteria, and lead to sewer overflows and increased runoff, harming water quality and forcing beach closures. *Id.* ¶¶ 3, 9. CCE's members are also harmed by other climate change impacts, including a prolonged tick season, droughts and fires, harmful algal blooms in water bodies, and extreme storms. *Id.* ¶¶ 5, 9,

10. CCE engages in education, research, lobbying, and public outreach to advocate for solutions to these climate-related issues. *See id.* ¶ 2.

Catskill Mountainkeeper is a nonprofit environmental organization with support from more than 700 individuals whose mission is to promote and protect the natural environment and communities within the Catskill region. Declaration of Ramsay Adams (Adams Decl.) ¶¶ 1-2. The Catskills are a popular recreation site and provide 90 percent of drinking water for New York City. *Id.* ¶ 3. Climate change has harmed the region through droughts, wildfires, and floods. *Id.* ¶¶ 4-7. Last fall, a critical repair to the Delaware Aqueduct, which delivers half of New York City’s water supply from the Catskills, was delayed by severe droughts. *Id.* ¶ 4. The outdated infrastructure in the Catskills is not prepared for or built to withstand climate disasters. *Id.* ¶ 8. Catskill Mountainkeeper has fought for a safer, more resilient future by, among other things, pushing for the 2019 Climate Leadership and Community Protection Act, which binds the State to greenhouse gas emission reduction goals. *Id.* ¶ 9. It is also deeply invested in initiatives to provide clean energy alternatives to Catskill residents. *Id.* ¶ 10.

Fridays for Future NYC (“FFF”) is the New York City chapter of Fridays for Future, an international grassroots movement comprised of student activists advocating for action on climate change. Declaration of Helen Mancini (Mancini Decl.) ¶¶ 2-3. FFF’s advocacy uses decentralized organizing. *Id.* ¶ 4. Corporate accountability and science-based policy choices are FFF’s primary focus in securing a livable environment for the next generation. *Id.* ¶ 3. FFF expended considerable resources to ensure the Act’s passage, including lobbying, canvassing, meeting with policy makers, and participating in numerous events in Albany to call for the passage of the Act. *Id.* ¶¶ 6-7.

Third Act Initiative, Inc. (“TAI”) is a nonprofit membership organization with over 80,000 members nationwide comprised primarily of individuals over the age of 60 that works to advocate for renewable energy, prevent the expansion of fossil fuel infrastructure, and uplift democracy. Declaration of Patrick Almonrode (Almonrode Decl.) ¶¶ 2-4. The New York City-based working group has almost 600 members. *Id.* ¶ 2. TAI sees the importance in leaving the world in a better state for future generations. *Id.* ¶ 4. In furtherance of its mission, TAI invested significant resources into a campaign to secure the Act’s passage by mobilizing its members, holding educational events, and engaging with the media. *Id.* ¶¶ 5-6. In December 2024, TAI and FFF joined together in a sit-in in Albany, signaling the urgent need for Governor Hochul’s signature. *Id.* ¶ 7.

ARGUMENT

Movants seek permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). Rule 24(b) is “‘to be liberally construed’ in favor of intervention.” *Hum. Servs. Council of N.Y. v. City of N.Y.*, 21-cv-11149 (PGG), 2022 WL 4585815, at *3 (S.D.N.Y. Sept. 29, 2022) (citation omitted). Permissive intervention is appropriate where the movant’s application is timely and its claim or defense “shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Granting permissive intervention lies within the court’s discretion, with primary consideration given to whether it will “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3); *see also United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 73 (2d Cir. 1994).

The court may also consider the “nature and extent” of proposed intervenors’ interests and whether they will “significantly contribute to full development of the underlying factual issues in the suit and to 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) (citation

omitted). Other relevant factors considered include those required for intervention of right, which similarly involve an interest that may be impaired and is otherwise not adequately represented. *Bldg. & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, No. 19-cv-11285 (KMK), 2020 WL 5658703, at *7-8 (S.D.N.Y. Sep. 23, 2020). However, in the context of permissive intervention, those factors “should be considered as a whole, rather than focusing narrowly on any one of the criteria, and . . . application of the factors is flexible and discretionary.” *Id.* (cleaned up). These considerations all support permissive intervention here.

In recent decisions in two cases presenting similar challenges to Vermont’s Climate Superfund Act, including one filed by the United States, the District of Vermont granted permissive intervention to nonprofit organizations that—like Movants here—represent a cross-section of people “who have been allegedly harmed by climate change” and who therefore “bear a unique perspective which will allow for the full development of relevant facts.” *See Chamber of Com. v. Moore*, No. 2:24-cv-01513, 2025 WL 1795803, at *3 (D. Vt. June 30, 2025); *see also* Order Granting Motion to Intervene, *United States v. Vermont*, No. 2:25-cv-00463 (D. Vt. Aug. 8, 2025), ECF No. 34. Movants merit permissive intervention in this case for the same reasons.⁶

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

In determining whether a movant’s application is timely, courts consider: “(1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances mitigating for or against a finding of timeliness.” *Pitney Bowes*, 25 F.3d at 70. While courts use these factors as a guide, timeliness “must be evaluated

⁶ 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).

against the totality of the circumstances” *Bldg. & Realty Inst.*, 2020 WL 5658703, at *6 (internal quotations and citations omitted). Ultimately, the question of timeliness is “flexible and . . . entrusted to the district judge’s sound discretion.” *United States v. Yonkers Bd. of Educ.*, 801 F.2d 593, 594-95 (2d Cir. 1986).

This motion is timely. The case is still in its early stages: the initial status conference has not yet taken place, no discovery has been taken, and substantive briefing, which begins at the end of August, will not conclude until November. *See* ECF Nos. 50, 56 (setting briefing schedule). Movants filed a pre-motion letter indicating their intent to seek intervention on July 28, 2025, ECF No. 42, less than three months after they had notice of this action through Plaintiffs’ filing of their complaint, ECF No. 1 (May 1, 2025). This motion comes less than three weeks after that pre-motion letter.⁷ Movants’ actions are well within what courts have found to be timely. *See, e.g., Bldg. & Realty Inst.*, 2020 WL 5658703, at *7 (intervention motion was timely when movants sought permission to file three months after complaint was filed, case was in early stages, and no significant substantive motions had been filed); *The Pike Co. v. Universal Concrete Prods., Inc.*, 284 F. Supp. 3d 376, 394-96 (W.D.N.Y. 2018) (motion filed five months after the commencement of the action was timely considering it would not result in prejudice to the parties and no discovery had taken place); *Granite State Ins. Co. v. KM Tactical, LLC*, No. 23-cv-7769 (ALC) (GS), 2025 WL 1502019, at *5 (S.D.N.Y. May 27, 2025) (motion filed five

⁷ In addition, counsel for a subset of Movants informed Plaintiffs of their intent to seek intervention on June 11, less than six weeks after Plaintiffs filed their complaint. Counsel explained that they intended to defer their filing until the Court’s ruling on Defendants’ motion to transfer, in order to avoid potentially extraneous motion practice in the event the Court granted the transfer motion. This motion comes less than two weeks after the Court’s ruling denying the transfer motion. *See* ECF No. 50 (Aug. 4, 2025).

months after complaint was timely when there had been no discovery and the only motion practice concerned transfer).

“[T]his action is in its infancy” and, as such, Movants’ participation “will not result in delay or prejudice” to any party. *Friends of the E. Hampton Airport, Inc. v. Fed. Aviation Admin.*, No. 15-cv-0441 (JS), 2016 WL 792411, at *9 (E.D.N.Y. Feb. 29, 2016). Dispositive motions have not yet been briefed and the existing schedule, which spans August through November, can easily accommodate Movants’ participation. In fact, Plaintiffs’ proposed briefing schedules anticipated the possibility of intervenor briefs. *See* ECF No. 33 at 3; ECF No. 49 at 3. Movants are prepared to adhere to the existing briefing schedule should the Court grant their motion to intervene, and they are committed to avoiding duplication and to cooperating with the parties to advance the efficient adjudication of this case. *See* Order Granting Motion to Intervene at 5, *United States v. Vermont*, No. 2:25-cv-00463 (D. Vt. Aug. 8, 2025), ECF No. 34 (rejecting, in a similar challenge to the Vermont Climate Superfund Act, the United States’ argument that nonprofit organizations’ intervention would cause delay and prejudice where intervention would “cause no delay in the filing of motions or responses” and no “prejudicial delay in the disposition of the issues”); *see also, e.g., 335-7 LLC v. City of New York*, No. 20-cv-1053, 2020 WL 3100085, at *4 (S.D.N.Y. June 11, 2020) (permitting intervention where proposed intervenors would be “subject to the same briefing schedule regarding the defendants’ pending motions to dismiss”).

By contrast, Movants would be prejudiced if their motion were denied. Movants’ members and supporters “have experienced the impacts of climate change and borne the cost of recovering from harms caused by climate change,” *Chamber*, 2025 WL 1795803, at *2, and have an interest in sustaining the Act’s benefits. Movants FWW, FFF, and TAI also “have an interest in

seeking to uphold the validity of the legislation they worked to enact” and “would be denied the full opportunity to do so” if not permitted to intervene. *Id.* at *2.

Finally, there are no unusual circumstances that militate against a finding of timeliness.

II. Movants’ defense shares common questions of law with the main action

Movants intend to address the fundamental legal questions presented by Plaintiffs by showing that the Act is constitutional and is not preempted. Therefore, “Movants’ defense shares common questions of law or fact with the underlying action.” *Chamber*, 2025 WL 1795803 at *3 (citing Fed R. Civ. P. 24(b)(1)(B)); *see also, e.g., 335-7 LLC*, 2020 WL 3100085, at *3 (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”); *Green Mountain Chrysler Plymouth Dodge Jeep v. Torti*, No. 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 a case involving whether state environmental regulations were preempted).

III. 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 (citation omitted). Movants all have organizational interests in addressing the climate crisis, whether it be through furthering climate adaptation and resilience, promoting renewable energy, or advocating against fossil fuel use and for corporate accountability. Movants’ members and supporters have experienced firsthand the harms from climate change and will continue to face these harms without additional costly adaptation measures. Without the Act, they will continue to shoulder much of the burden of paying for those

measures. Movants have experience addressing the harms climate change poses to New York communities, including by designing, advocating for, and implementing adaptation solutions. Movants therefore possess concrete experience and expertise regarding both the harms that motivated the Act's passage and the solutions the Act envisions to address those harms. Movants FWW, TAI, and FFF also have substantial interests in defending the Act based on their advocacy to hold the fossil fuel industry accountable for its climate-harming pollution and their corresponding successful campaign for the enactment of the Act.

The extreme storms and flooding addressed by the Act have harmed Movants and their members, supporters, and communities. Hurricane Sandy devastated Long Island in 2012, Esposito Decl. ¶¶ 4, 13, and hurricanes and severe storms have caused severe damage in New York City, Schles Decl. ¶¶ 5-7. Multiple floods have ravaged the Catskill region in recent years, with one flood destroying Movant Catskill Mountainkeeper's office in 2017. Adams Decl. ¶¶ 6-7. While major storms exact the heaviest toll, heavy rain and flooding have become an ever-present threat. Torrential downpours flood roadways and strand vehicles on Long Island, Esposito Decl. ¶ 3, interrupt subway service in New York City, Shepard Decl. ¶ 7, and increase flooding along the shores of the Great Lakes, Esposito Decl. ¶ 8. And with sea level rise, coastal areas encounter "sunny day flooding" even without storms, caused only by high tides. *Id.* ¶ 3.

Climate change has disrupted members' livelihoods and daily lives in other ways. In western and central New York, Movant CCE's members often can't visit beaches along Lake Erie, which close due to poor water quality following sewage overflows after heavy rains. Esposito Decl. ¶ 9. Climate change threatens some of the State's pristine and unfiltered drinking water sources, too. Since 2017, harmful algal blooms have increased in Skaneateles Lake, which provides drinking water to Syracuse and surrounding towns in the Finger Lakes region. Esposito

Decl. ¶ 10. And in November 2024, a severe drought forced a pause in a critical project to repair the aqueduct that delivers half of New York City’s drinking water from the Catskills region.

Adams Decl. ¶ 4. That severe drought also contributed to unprecedented wildfires last fall in the Catskills, *id.* ¶ 5, and in New York City, where smoke exacerbated the air pollution people already breathe, Shepard Decl. ¶ 6.

Climate-related harms will fall disproportionately on communities of color and low-income communities, including those that Movant WE ACT for Environmental Justice serves. Extreme heat is life-threatening in areas like northern Manhattan, where residents—especially those in public housing—have less access to air conditioning. Shepard Decl. ¶ 4. Even if not deadly, rising temperatures harm members by exacerbating health issues like asthma or Chronic Obstructive Pulmonary Disease COPD (Chronic Obstructive Pulmonary Disease). *Id.* ¶ 5. Smoke from wildfires, like those that burned in New York City in fall 2024, introduces another pollutant to communities that are already overburdened by air pollution. *Id.* ¶ 6. Smoke also forces members to close their windows to keep smoke out, worsening the heat for those who do not have or cannot afford to turn on air conditioning. *Id.* This is one example of how climate change compounds existing stressors to put vulnerable communities at greater risk.

Significant State, local, and federal funds have been spent on climate adaptation measures to protect New Yorkers, including Movants’ members, supporters, and communities, but they are not enough. On Long Island and in western and central New York, ongoing efforts to restore wetlands, improve wastewater infrastructure, and conserve coastal property are strengthening storm resilience. Esposito Decl. ¶¶ 6, 12. Yet major projects have been pending for years without the resources to implement them at the necessary scale and speed, including a multi-hundred-million-dollar wastewater improvement project and a federal project that identified thousands of

structures for potential elevation. *Id.* ¶ 7. New York has a cooling assistance program to subsidize air conditioning for low-income residents, but funding was insufficient to meet demand for the last three consecutive summers. Shepard Decl. ¶ 4.

In the absence of adequate government support, Movants and their communities have used their own resources to provide disaster relief and adapt to climate change. After Hurricane Sandy, professionals weren't available to clean up thousands of destroyed homes, so volunteers went from home to home, ripping sheetrock off walls to prevent mold growth and hauling destroyed belongings to the curb. Esposito Decl. ¶ 14. One of Movants' members had to spend thousands of dollars on repairs and mitigation efforts for his property following devastating flooding from Hurricane Ida and Tropical Storm Ophelia. Schles Decl. ¶¶ 5-7. But these efforts are not enough, either. And when climate disaster strikes, private insurance cannot fill the gap, with insurers pulling out of certain markets altogether. Esposito Decl. ¶ 13. The consequences of climate change have led to tremendous pain, sorrow, and loss, Esposito Decl. ¶ 14, the feeling that there is nowhere to turn and no one to turn to, Shepard Decl. ¶ 8 and a feeling of unfairness as ordinary people face a disproportionate share of the financial burden of the climate crisis, Schles Decl. ¶ 12.

Movants and their members, supporters, and communities stand to benefit from the Act, which could fund a wide range of adaptation projects to better protect them from future climate harms. Funds could be used to update outdated infrastructure in the Catskills, Adams Decl. ¶ 11, upgrade stormwater and sewage infrastructure on Long Island and in upstate New York, Esposito Decl. ¶¶ 6-7, 12, and improve storm water management in New York City, Shepard Decl. ¶ 9; Schles Decl. ¶ 5. Funds could be used to restore wetlands and implement other nature-based solutions to protect coastal communities along Long Island and the Great Lakes; Esposito Decl.

¶¶ 6, 8, address harmful algal blooms, *see* Esposito Decl. ¶ 10; and defensively upgrade vulnerable roads and transit systems, *see id.* ¶ 3; Shepard Decl. ¶ 7.

Movant WE ACT for Environmental Justice has a particular stake in the Act: most of the communities it serves fall within the State’s criteria for disadvantaged communities, and the organization has worked with community partners to develop research-backed plans that identify concrete steps to enhance northern Manhattan’s climate resilience. Shepard Decl. ¶¶ 9-10. To help protect residents of northern Manhattan, including those who live in public housing, funds could be used to help install cooling systems and to weatherize and retrofit housing units to increase energy efficiency. *Id.* Funds could also be used to improve stormwater management by increasing permeable surfaces to absorb rainwater, *see id.*, and to provide medical care to treat illnesses exacerbated by extreme heat, *see id.* ¶ 5. The community has the knowledge, solutions, and plans for climate adaptation; what it lacks is the money to implement them. *Id.* ¶ 4.

These projects that would benefit Movants and their members, supporters, and communities are exactly the types of projects the Act contemplates funding. *See* N.Y. Env’t Conserv. Law § 76-0101(2) (describing types of potentially eligible projects under the Act); *see also id.* § 76-0103(6)(e), 76-0103(10)(a)(iii)(3) (referring to “grant programs” for not-for-profit and community organizations for potential funding under the Act). Because “the validity of a [law] from which its members benefit is challenged,” Movants have a compelling 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*).

FWW seeks to uphold the Act in furtherance of its organizational mission to advance bold policies to ensure access to safe and sustainable food, clean and affordable water, and a livable climate. Wurth Decl. ¶ 2. FWW advocates extensively on issues related to climate

change, corporate accountability, and the fossil fuel industry. Wurth Decl. ¶ 3. Similarly, TAI and FFF advocate for policies related to fossil fuel industry accountability to create change for future generations. *See* Almonrode Decl. ¶¶ 3-4; Mancini Decl. ¶ 3. In furtherance of their missions, FWW, FFF, and TAI expended significant resources on an organizing campaign to ensure the Act’s enactment. Wurth Decl. ¶¶ 5-8; Almonrode Decl. ¶¶ 5-8; Mancini Decl. ¶¶ 5-7. The organizing campaign included field organizing in New York City and Long Island; utilizing online mobilization tools to engage members and supporters; coordinating lobby days and call-in days to elected officials; and engaging lobbying and media relations firms. Wurth Decl. ¶ 6. It also included facilitating multiple rallies and other events from August to December 2024. *Id.* ¶ 7. Following this extensive campaign, Governor Hochul signed the Act into law. *Id.* ¶ 8. Movants’ “active role in the formation and passage” of the Act suffices to demonstrate an interest in this case. *Bldg. & Realty Inst.*, 2020 WL 5658703, at *11; *see also Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 102 (E.D.N.Y. 1996) (“Organizations may have sufficient interest to support intervention . . . in actions involving legislation or regulations previously supported by the organization.”); *Green Mountain Chrysler*, 2006 WL 8567240, at *4 (intervenors’ “active involvement in developing” the challenged regulations gave them a “direct and substantial interest”).

IV. 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 (citation omitted).

First, Movants, “by representing a cross-section of [New York] citizens who have been allegedly harmed by climate change, bear a unique perspective” that would assist the Court’s just

and equitable adjudication. *Chamber*, 2025 WL 1795803 at *3; *see also Garfield*, 241 F.R.D. at 103 (granting permissive intervention to organizations that could bring a “unique” and “personal” perspective to the challenged “law, its development, and its impact”); *Commack*, 170 F.R.D. at 106 (granting permissive intervention to rabbis, kosher consumers, and rabbinical and lay organizations that would “bring a different perspective to the case . . . that may assist the court in addressing the constitutional issue raised”). While Defendants are responsible for implementing the Act, Movants and their members and supporters are among those “*protected by*” the Act. *New York v. U.S. Dep’t of Health & Hum. Servs.*, No. 19-cv-4676 (PAE), 2019 WL 3531960, at *4 (S.D.N.Y. Aug. 2, 2019) (emphasis in original). Accordingly, Movants’ perspectives—including their expertise on the climate adaptation needs of their communities and regions—will provide the Court with a “fuller picture” of the public interest at stake and “contribute to a just and equitable adjudication” of the case. *United States v. New York City Hous. Auth.*, 326 F.R.D. 411, 419 (S.D.N.Y. 2018); *see also Miller v. Silbermann*, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (in case challenging rent stabilization law, “considerations of fairness strongly weigh in favor of permissive intervention” by tenants who, “in light of their knowledge and concern, will greatly contribute to the Court’s understanding of [the] case”).

Second, Movants FWW, FFF, and TAI were “intimately involved” in advocating for the law. *335-7 LLC*, 2020 WL 3100085, at *3. As organizations that extensively campaigned for the Act’s enactment in New York, they possess 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”).

Third, should fact development be appropriate in this case—for example, should the Court need to resolve Plaintiffs’ request for injunctive relief, Compl. at 29 (prayer for relief)—Movants’ participation will aid the full development of relevant facts. *See New York*, 2019 WL 3531960, at *6 (permitting intervention where proposed intervenors could help resolve potential request for preliminary relief). Given the personal experiences of their members, supporters, and communities in dealing with the harms caused by climate change, Movants would be well-positioned to offer “concrete factual submissions,” *id.*, 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).

Movants merit intervenor status even with the State’s defense. “Rule 24(b) does not necessitate ‘a finding that party representation be inadequate’ in order to grant permissive intervention.” *Chamber*, 2025 WL 1795803 at *3 (quoting *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 if the government will adequately defend a law. *See, e.g., New York*, 2019 WL 3531960, at *6 (granting permissive intervention even when “proposed intervenors did not overcome the presumption of [the federal agency’s] adequate representation of their interests”); *Bldg. & Realty Inst.*, 2020 WL 5658703, at *12 (granting permissive intervention where proposed intervenors “acknowledged . . . that they do not expressly challenge the adequacy of the State and the City’s representation”); *Comcast of Conn. v. Vt. Pub. Util. Comm’n*, No. 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”). Granting permissive intervention even if the government’s representation is adequate would be especially appropriate here because the State consents to intervention and Movants will, for the reasons described above, “assist in the just and equitable adjudication” of the case. *New York City Hous. Auth.*, 326 F.R.D. at 418; *see also Chamber*, 2025 WL 1795803, at *3 (noting that the “state’s consent to intervention may be seen as an acknowledgement” that “Movants may be better situated to advocate for their members who have personally experienced, and borne the cost of, the impact of floods, droughts, and other climate harms”).

CONCLUSION

For the foregoing reasons, Movants urge the Court to grant Movants’ motion for permissive intervention.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word limitation of Local Rule 7.1(c) because it contains 5,859 words, excluding the parts of the brief exempted under Local Rule 7.1(c), according to the word count of Microsoft Word.

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