UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

THOMAS WOODWARD and MADISON WOODWARD III, Plaintiffs, v. AMANDA LEFTON, in her official capacity as Commissioner of the New York Department of Environmental Conservation, et al., Defendants,	CIVIL ACTION NO. 3:26-cv-00736 (AJB/CBF)

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

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PRELIMINARY STATEMENT

For over a decade, New York has protected its air, water, and natural areas with a prohibition on extracting gas with high-volume hydraulic fracturing, known as "fracking." Proposed Intervenors Catskill Mountainkeeper, Delaware Riverkeeper Network ("DRN"), and Food & Water Watch ("FWW") move for permissive intervention under Federal Rule of Civil Procedure 24(b) to defend the state's prohibitions on fracking and ensure continued protection of their supporters' and members' health, New York's drinking water, and the natural environment in their communities. Proposed Intervenors are nonprofit organizations that have devoted years to organizing alongside concerned community members, conducting research, raising awareness of the harms of fracking and advocating before the government to secure a statewide ban on high-volume hydraulic fracking. Their efforts resulted in an administrative ban in 2015 when the State determined fracking's impacts on health and the environment were too harmful to allow. The State's 2015 administrative decision was later codified into statute in 2020. Proposed Intervenors helped strengthen these protections in 2024, when the New York State Legislature preemptively prohibited the experimental technique of carbon dioxide fracking to ensure communities would remain safe from potential future harmful gas extraction processes.

Now, in the guise of an individual property rights claim brought over a decade after the State prohibited high-volume hydraulic fracking, Plaintiffs seek to enjoin enforcement of New York's longstanding protections against fracking statewide. Proposed Intervenors have a strong interest in defending the law, which they helped secure through their advocacy. The health, environmental, and economic interests of Proposed Intervenors' supporters and members would be harmed if Plaintiffs are awarded the sweeping relief they seek here. With this timely motion and a defense that shares issues of law and fact with the main action, Proposed Intervenors meet the standard for permissive intervention under Federal Rule of Civil Procedure 24(b), and their

unique perspective and specialized knowledge can contribute to the just and equitable adjudication of the case. State Defendants consent to intervention, and Proposed Intervenors submit with this motion a proposed motion to dismiss the First Amended Complaint ("Complaint").

BACKGROUND

I. NEW YORK'S BANS ON HIGH-VOLUME HYDRAULIC FRACKING AND OTHER FRACKING METHODS

A. New York's Longstanding Efforts to Prevent Harm from Fracking

High-volume hydraulic fracking is a process used to extract gas from shale using large amounts of water and chemicals. As Plaintiffs recognize in their Complaint, to protect New Yorkers from harm to their health, drinking water, and the natural environment, New York has not allowed any form of high-volume hydraulic fracking to extract gas within the state since 2008 – nearly twenty years ago. The state restricted hydraulic fracking through a series of administrative measures, set forth below, that were codified into statute in 2020 along with a moratorium on propane gel fracking. In 2024, the state added a statutory restriction on a new experimental fracking technique using carbon dioxide.

In 2008, when companies first began applying for gas extraction permits to conduct high-volume hydraulic fracking in New York, the state's Department of Environmental Conservation ("DEC") undertook an update to the Generic Environmental Impact Statement ("GEIS") it had issued in 1992 for its Oil, Gas and Solution Mining Regulatory Program. DEC, Final Supplemental Generic Environmental Impact Statement, Executive Summary at 1, 3, 4 (2015) ("FSGEIS").[1] As the agency noted, high-volume hydraulic fracking, a new technique at the time, "raise[d] new, significant, adverse impacts not studied in 1992." *Id*. at 1. DEC's Supplemental

[1] Available at https://extapps.dec.ny.gov/docs/materials_minerals_pdf/fsgeis2015es.pdf.

GEIS ("SGEIS") went through several phases, beginning with a Draft SGEIS in 2009, followed by a revised Draft SGEIS in 2011. *Id*. In 2012, DEC requested that the New York State Department of Health ("DOH") conduct a public health review of the SGEIS and proposed mitigation measures and advise DEC whether the mitigation measures were adequate to protect public health. *Id*. at 2.

New York's review of fracking's impacts was informed by extensive public participation and consultation with experts. By the time DEC issued its findings statement in 2015 on the SGEIS, the agency had received over 260,000 public comments on its assessments of fracking and potential regulations, "an unprecedented number." *Id*. at 1. The agency evaluated comments from "a broad range of experts from academia, industry, environmental organizations, municipalities, and the medical and public health professions." *Id*. It also reviewed "reports and studies of proposed operations prepared by industry groups" and information from neighboring jurisdictions such as the Pennsylvania Department of Environmental Protection and the Susquehanna River Basin Commission. *Id*. at 5.

During the pendency of the state's environmental review, numerous towns in the region overlying the Marcellus Shale considered or enacted their own bans and moratoria on fracking. *See* Adams Decl. ¶ 13. In June 2014, the New York Court of Appeals upheld two municipalities' zoning laws that prohibited fracking. *See Wallach v. Town of Dryden*, 16 N.E.3d 1188 (2014).

In December 2014, DOH issued its public health review, concluding that "there are significant uncertainties about the kinds of adverse health outcomes that may be associated with [high-volume hydraulic fracking]" and recommending on that basis that New York prohibit the practice. DOH, *A Public Health Review of Hydraulic Fracturing for Shale Gas Development* 2

(Dec. 2014).[2] DOH summarized potential health and environmental impacts of high-volume hydraulic fracking, including:

- Air impacts that could affect respiratory health due to increased levels of particulate matter, diesel exhaust, or volatile organic chemicals.
- Climate change impacts due to methane and other volatile organic chemical releases to the atmosphere.
- Drinking water impacts from underground migration of methane and/or fracking chemicals associated with faulty well construction.
- Surface spills potentially resulting in soil and water contamination.
- Surface-water contamination resulting from inadequate wastewater treatment.
- Earthquakes induced during fracturing.
- Community impacts associated with boom-town economic effects such as increased vehicle traffic, road damage, noise, odor complaints, increased demand for housing and medical care, and stress.

Id. at 4.

On the basis of DOH's recommendation, in June 2015 DEC published a findings statement for the Final SGEIS, concluding that New York could not approve future permits for high-volume hydraulic fracking going forward, due to significant adverse impacts that could not be sufficiently mitigated.[3] In addition to public health risks, those impacts included "potential significant impacts to surface water and groundwater, floodplains and wetlands . . . impacts to New York City's and Syracuse's unfiltered water supply;" land disturbance and loss of habitat; air pollution and greenhouse gas emissions; earthquakes and buildup of naturally occurring radioactive material; noise; truck traffic; and harm to unique natural areas in the Catskills region. Findings Statement at 9–25.

To commemorate the five-year anniversary of New York's administrative ban on high-volume hydraulic fracking, State Senator Metzger introduced a bill to codify the prohibition into

[2] Available at https://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf.
[3] DEC, Final Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program, Findings Statement (June 2015), https://extapps.dec.ny.gov/docs/materials_minerals_pdf/findingstatehvhf62015.pdf.

statute, which the Legislature enacted in 2020. 2020 N.Y. Laws, ch. 58, pt. WW; N.Y. Env't Conserv. Law ("ECL") § 23-0501(3)(a); Declaration of Ramsay Adams (Adams Decl.) ¶ 18. The 2020 legislation also imposed a moratorium on permits for propane gel fracking. 2020 N.Y. Laws, ch. 58, pt. WW; ECL § 23-0501(3)(b). In 2024, the Legislature amended the statute to add a prohibition on the new, experimental practice of using carbon dioxide instead of water for fracking. *See* 2024 N.Y. Laws, ch. 626; ECL § 23-0501(3)(a) (adding the words "or carbon dioxide" to the prohibition on permits for fracking using high volumes of water).

II. PROPOSED INTERVENORS

As detailed below, each of the Proposed Intervenors played an integral role in advocating for and securing New York's statewide prohibition on high-volume hydraulic fracking and have continued to study and raise awareness about the practice's negative impacts on public health and the environment. All three have an interest in this case due to their work on the state actions being challenged and the potential threats to their supporters and members if New York's prohibitions on fracking are invalidated.

A. Catskill Mountainkeeper

The environmental nonprofit Catskill Mountainkeeper spent years calling for a statewide fracking ban as part of its mission to protect the Catskill region by advocating for policies that safeguard its natural environment and promote sustainable, resilient, and just communities. Adams Decl. ¶ 1. Catskill Mountainkeeper has been involved in statewide organizing against fracking in New York state since 2008. Adams Decl. ¶ 3. In 2012, Catskill Mountainkeeper joined with several other allied organizations to launch New Yorkers Against Fracking, with the goal of establishing a permanent statewide ban on high-volume hydraulic fracking in New York. *Id*. ¶ 8. To advance this goal, Catskill Mountainkeeper engaged in multi-pronged advocacy

efforts: gathering research on the harms of fracking, conducting public education, and advocating before key elected officials and state government employees. *Id*. ¶¶ 9–10.

Catskill Mountainkeeper has a direct interest in this case given the potentially devastating impact that fracking would have on the Catskill region. The main economic drivers of the Catskills are recreation and tourism, and the local economy depends on maintaining the pristine, natural beauty of the region. *Id*. ¶ 5. The impacts of fracking—including emissions of hazardous air pollutants, loss of forest areas, and leakage of methane and other contaminants into sources of drinking water—would all be devastating to the region. *Id*. ¶¶ 4–5. The risks associated with water contamination are particularly troubling given that the Catskill region provides 90 percent of the drinking water for New York City. *Id*. ¶ 6.

B. Food & Water Watch

Food & Water Watch ("FWW") has a long history of campaigning to ban fracking at the national, state, and local levels that began in New York over fifteen years ago. Declaration of Emily Wurth ¶¶ 3, 6. FWW is a national nonprofit membership organization headquartered in Washington, D.C., with over 1.4 million members nationwide and over 130,000 members in New York. Wurth Decl. ¶ 2. FWW fights for the safe and healthy food, clean water, and livable climate everyone deserves. *Id*. It empowers people to take on destructive corporations and the policy makers who enable them, in order to stop pollution, defend democracy, and protect the planet — now and for future generations. *Id.* FWW uses grassroots organizing, policy advocacy, research, communications, and litigation to further this mission. *Id.*

FWW has significant interests in protecting New York's high-volume hydraulic fracking ban, which it continues to celebrate and view as a milestone victory more than ten years later. *Id*. ¶¶ 16–17. Achieving the fracking ban in New York has advanced FWW's organizational mission, furthered its campaigns, and continues to safeguard its members from the significant

health, environmental, and climate harms that fracking poses to communities and the planet. *Id*. ¶¶ 3, 18. FWW dedicated an immense amount of time and resources to the campaign to ban fracking in New York. *Id*. ¶ 17. Most notably, in 2012, FWW joined with Catskill Mountainkeeper and other key allies to lead the New Yorkers Against Fracking coalition. *Id*. ¶ 8. FWW was deeply engaged in the multi-year, multi-faceted and ultimately successful campaign to ban fracking in New York. *Id*. ¶¶ 8–13. FWW has also published multiple research pieces investigating the myriad harms of fracking, *e.g.*, Wurth Decl. Exs. 1–3.

C. Delaware Riverkeeper Network

Delaware Riverkeeper Network ("DRN") has been engaged in efforts to safeguard the public from fracking impacts for nearly two decades as parts of its mission to champion the rights of communities to a Delaware River and tributary streams that are free flowing, clean, healthy and abundant with a diversity of life. Declaration of Maya van Rossum ¶ 3; Declaration of Tracy Carluccio ¶ 2. A nonprofit organization established in 1988, DRN has over 1,900 members who live in New York and nearly 30,000 members who live, work, and recreate in the Delaware River Basin. Van Rossum Decl. ¶¶ 3, 7. Members rely on DRN to advocate for and legally protect their recreational, aesthetic, environmental, health, economic, and property interests, and, in states with constitutional Green Amendments such as New York, to vindicate the environmental rights held by its members through both advocacy and legal action. *Id*. ¶¶ 5, 7.

DRN has a direct interest in this lawsuit because its members' environmental, recreational, aesthetic, and health interests would be harmed if New York's fracking ban were enjoined. *Id*. ¶¶ 8–9. DRN has worked to advocate against fracking in New York since as early as 2007, when members of DRN who own property in New York began getting solicitations from gas drilling companies. Carluccio Decl. ¶ 2. DRN held rallies, joined organizational coalitions against fracking, advocated for fracking moratoria, participated in the public comment

periods on DEC's SGEIS, testified at hearings, commissioned studies on fracking and its environmental effects, and educated and empowered its members whose interests were threatened by fracking. *Id*. ¶¶ 3–6.

DRN has also been involved in defending fracking bans and restrictions in several administrative and court cases. *Id*. ¶ 11. DRN continues to engage on issues related to natural gas proliferation, including pipelines, compressor stations, and proposed liquefied natural gas facilities. *Id*. ¶ 12.

III. THE LAWSUIT

Plaintiffs filed this case in April 2026 against a number of state officials alleging that New York's prohibitions on various methods of fracking prevent them from extracting gas from their property in Delaware County, New York, and thus violate the Takings Clause of the Fifth Amendment of the U.S. Constitution. Compl. ¶ 1. The two Plaintiffs allege that together they purchased a 164-acre property near the town of Sidney, New York in 2011, *id*. ¶ 2, after the moratorium on fracking was already in place. They further allege that they sold the surface rights but retained the mineral rights in 2019, *id*. ¶ 15, on the eve of the codification of the fracking ban, and long after the practice was already prohibited by executive action. The Complaint states that New York's prohibition on high-volume hydraulic fracking, "the only commercially viable method of extracting natural gas from the Marcellus and Utica Shale formations," deprived them of economic use of their property. *Id*. ¶¶ 7, 11.

On this basis, the Complaint seeks sweeping relief. Plaintiffs do not seek damages, the traditional remedy for a takings claim, nor do they allege that damages are unavailable or inadequate. Instead, they seek a declaratory judgment that New York's prohibitions on fracking "on [their] face and as applied" violate the Fifth Amendment, and a permanent injunction

enjoining New York from enforcing the fracking prohibitions throughout the state. *Id*. Prayer for Relief ¶¶ A, B.

ARGUMENT

Permissive intervention is appropriate here under Federal Rule of Civil Procedure 24(b) for Proposed Intervenors, who are organizations that were instrumental in securing New York's prohibitions on fracking. Rule 24(b) provides for intervention by permission, which authorizes this Court to grant the timely motion of parties with "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). The Court has discretion to grant intervention under Rule 24(b), which "is to be liberally construed" in favor of intervention. *See Olin Corp. v. Lamorak Ins. Co.*, 325 F.R.D. 85, 87 (S.D.N.Y. 2018) (citation omitted).

Proposed Intervenors meet the two factors set forth in the rule. First, they bring this motion at the outset of the case and have coordinated to file a joint motion in order to avoid delay or prejudice to the parties. Second, their defense rests on common questions of law and fact with the main action, both on threshold issues such as the timeliness of the action and availability of the sweeping relief Plaintiffs seek, as set forth in the accompanying proposed Motion to Dismiss, as well as ultimate questions of law and fact under the takings clause of the Fifth Amendment.

In addition to these factors, courts may also consider "the nature and extent of the intervenors' interests," and "whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal issues presented." *U.S. Postal Serv. v. Brennan,* 579 F.2d 188, 191–92 (2d Cir. 1978) (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). These factors similarly weigh in favor of granting intervention. Proposed Intervenors

have strong interests in upholding the law to advance their organizational missions and to protect the health, environmental, and recreational interests of their members and supporters. Additionally, Proposed Intervenors' experience advocating against fracking in the region and deep knowledge of the threats fracking poses to their communities offer a unique perspective that will contribute to the just adjudication of the case.

I. THIS TIMELY MOTION WILL NOT CAUSE DELAY OR PREJUDICE

The "principal guide in deciding whether to grant permissive intervention 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)). This motion is filed concurrently with the deadline for the State's responsive papers, *see* Order, ECF No. 19 (May 20, 2026), less than two months after the filing of the First Amended Complaint and only about six weeks after the Complaint was served on the state defendants. ECF No. 9 (Apr. 30, 2026); ECF No. 20 (May 28, 2026) (summonses served May 12, 2026). Nothing has yet transpired in the case: the initial status conference has not yet occurred, no discovery has been undertaken, and no briefing schedule has been set. Because "this action is in its infancy," Proposed Intervenors' 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).

The early filing of this motion weighs heavily in favor of granting intervention. "It is firmly established that the most significant criterion in determining timeliness is whether the delay in moving for intervention has prejudiced any of the existing parties." *Hartford Fire Ins. Co. v. Mitlof*, 193 F.R.D. 154, 160 (S.D.N.Y. 2000) (quoting *United States v. Int'l Bus. Machines Corp.*, 62 F.R.D. 530, 541–42 (S.D.N.Y.1974)). To further avoid prejudice to any party,

Proposed Intervenors have coordinated to file this motion and the accompanying proposed Motion to Dismiss jointly, which will streamline responsive briefing. If granted intervention, Proposed Intervenors are prepared to adhere to any court-ordered briefing schedules and to cooperate with the parties to advance the efficient adjudication of this case. Defendants consent to intervention.

II. PROPOSED INTERVENORS' DEFENSE SHARES COMMON ISSUES OF LAW AND FACT WITH THE MAIN ACTION

A "single common question of law or fact" is enough to support permissive intervention. *Miller v. Silbermann*, 832 F. Supp. 663, 673 (S.D.N.Y. 1993) (quoting *McNeill v. N.Y.C. Hous. Auth*., 719 F. Supp. 233, 250 (S.D.N.Y. 1989)). Proposed Intervenors' defenses align with those in the main action. As set forth in the accompanying proposed Motion to Dismiss, they raise threshold defenses regarding timeliness of the action and the availability of a statewide injunction. If the action survives dismissal, Proposed Intervenors intend to defend the central legal issue in the case: that New York's prohibitions on fracking do not effect a constitutional taking of Plaintiffs' property.

Courts in this circuit regularly grant permissive intervention in these circumstances. *See, e.g.*, *Hum. Servs. Council of N.Y. v. City of New York*, 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'"); *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"); *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 case involving whether state environmental regulations were preempted); *Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y. 1996) (proposed intervenors had "questions of law and fact in common with the parties" in the constitutionality of New York's kosher laws).

III. PROPOSED INTERVENORS HAVE STRONG INTERESTS IN DEFENDING NEW YORK'S LONGSTANDING PROHIBITIONS ON FRACKING

Catskill Mountainkeeper, DRN, and FWW have deep stakes in preserving New York's protections against fracking. Not only did each organization spend years advocating for the protections currently enshrined in law, but they are also concerned about the harm that would ensue to New York's drinking water, the health of their supporters and members, the viability of recreation and tourism in the region, and the region's water bodies and natural environment if those protections were invalidated. It is well-established that "sufficient interest to permit [an organization] to intervene" exists where "the validity of a regulation from which its members benefit is challenged." *N.Y. Pub. Interest Rsch. Grp. v. Regents of Univ. of N.Y.*, 516 F.2d 350, 352 (2d Cir. 1975).

A. Proposed Intervenors Have a Strong Interest in This Case Due to Their Advocacy for the Prohibitions on Fracking in New York

Proposed Intervenors' extensive advocacy to prohibit fracking is sufficient interest to support intervention. "Organizations may have sufficient interest to support intervention . . . in actions involving legislation or regulations previously supported by the organization." *Commack,* 170 F.R.D. at 102. *See also Ass'n of Conn. Lobbyists,* 241 F.R.D. at 103 (groups that advocated for campaign finance law had interest in its validity, partially on account of that advocacy and

because "the very purposes for which the organizations were originally created, namely, election reform, are at stake"); *Herdman v. Town of Angelica,* 163 F.R.D. 180, 187 (W.D.N.Y. 1995) (organization had interest in case challenging constitutionality of town ordinance for which it had lobbied).

Proposed Intervenors led the movement to protect New Yorkers and their communities from fracking, and their advocacy was instrumental in securing the 2015 administrative ban on high-volume hydraulic fracking. Around 2007 and 2008, both Catskill Mountainkeeper and DRN began to hear reports from local landowners about gas companies exploring fracking in the area and they started looking into environmental impacts of the practice. Adams Decl. ¶ 3–4; Carluccio Decl. ¶¶ 2–6. Similarly, in 2009, FWW began to hear concerns from its members who were worried that fracking posed a serious threat to groundwater. Wurth Decl. ¶ 6. FWW began researching the impacts of fracking and, in 2011, became the first national environmental organization to call for a ban on fracking. Wurth Decl. ¶¶ 6–7. That year, FWW also released a comprehensive report on the dangers of fracking, which was later updated and republished as *The Urgent Case for a Ban on Fracking* (Feb. 2015). *Id*.; Wurth Decl. Ex. 3.

In 2012, Proposed Intervenors Catskill Mountainkeeper and FWW co-founded a large coalition, New Yorkers Against Fracking, that engaged in a wide range of advocacy to build support for a statewide ban on fracking. *See* Adams Decl. ¶ 8; Wurth Decl. ¶¶ 8–13, 16–17; Wurth Decl. Ex. 4. The coalition, which ultimately grew to include hundreds of organizations including DRN, helped unify the national, state, and grassroots groups calling for a statewide fracking ban. Wurth Decl. ¶ 8; Carluccio Decl. ¶ 4. The advocacy campaign included rallying at the Capitol in Albany and other strategic locations, supporting local fracking bans and moratoria, publishing letters to the editor and op-ed pieces, driving public comments, coordinating film

screenings, and educating key stakeholders and the public about the health risks of fracking, among many other activities. Wurth Decl. ¶¶ 9–12. In addition to joining in New Yorkers Against Fracking, DRN participated in the movement to ban fracking in New York State by holding rallies, commissioning studies on fracking, and raising awareness of the threats that fracking posed to New Yorkers' health and environment. Carluccio Decl. ¶¶ 3–8.

Proposed Intervenors also participated directly in the administrative and legislative processes leading to New York's fracking prohibitions. For example, between 2008 and 2014, staff of Catskill Mountainkeeper provided testimony to the New York State Legislature on the impacts of fracking on multiple occasions and submitted public comments to DEC and the U.S. Environmental Protection Agency on protecting drinking water from the risks posed by fracking. Adams Decl. ¶ 11. DRN submitted letters and petitions to then-Governors Paterson and Cuomo, submitted comments on DEC's fracking regulations and environmental impact statement, and testified at several administrative hearings. Carluccio Decl. ¶¶ 4, 5, 8. During that time, Catskill Mountainkeeper also worked closely with municipal leaders in Sullivan County and New York's Southern Tier who were seeking to enact municipal-level bans on fracking. Adams Decl. ¶ 9. Later, Catskill Mountainkeeper and FWW participated in legislative advocacy to secure the 2024 prohibition on carbon dioxide fracking. *Id.* ¶ 20; Wurth Decl. ¶ 15.

B. Proposed Intervenors Have a Strong Interest in Defending New York's Prohibitions on Fracking to Protect Their Members, Supporters, and Communities

Importantly, Proposed Intervenors have a strong interest in defending New York's prohibitions on fracking against Plaintiffs' facial challenge in this case for the benefit of their members, supporters, and communities. If Plaintiffs prevail in this action and the prohibitions on fracking are declared unconstitutional and unenforceable, fracking in the State of New York

would pose serious environmental and public health threats, including to Proposed Intervenors' members and communities.

Fracking pollutes the air and water, threatening public health and the environment. Wurth Decl. ¶ 4, Ex. 1 at 2–6. Fracking has been linked to a litany of negative health impacts, including respiratory problems, cancer, and reproductive harms, and contaminants associated with fracking have been linked to neurodevelopmental problems and blood-related diseases in children. Wurth Decl. ¶ 4, Ex. 1 at 2–6. Put simply, fracking puts people and communities at risk. Wurth Decl. Ex. 1.

Natural areas, wildlife, and quality of life in the region would also be harmed if New York's prohibitions on fracking were invalidated. Activities related to fracking include the buildout of natural gas infrastructure such as well pads, gathering lines, compressor stations, and larger intra- or interstate pipelines. This infrastructure can cause additional environmental harms through habitat fragmentation, disturbance of streams and wetlands, and air quality impacts. Wurth Decl. Ex. 3. These impacts would harm Proposed Intervenors' members' enjoyment of these special areas and their recreational, aesthetic, and economic interests. Van Rossum Decl. ¶¶ 8–9. The infrastructure associated with fracking also changes local community character and can create nuisances and even threats to public safety. Dangerous fracked gas infrastructure, like power plants, storage facilities, and pipelines compound the health and safety risks posed by fracking itself. Wurth Decl. ¶ 4, Ex. 1 at 6–9. These risks and harms will be borne by members of Proposed Intervenors' respective organizations. Van Rossum Decl. ¶¶ 8–9.

Fracking infrastructure development poses direct threats to Proposed Intervenors' members and supporters. Forest loss and destruction of natural areas from fracking development in the Catskills region would be devastating, especially to the tourism and recreation sectors that

rely on the appeal of the pristine natural environment and drive the area's economy. Adams Decl. ¶ 5. Further, the risks of fracking are not distributed equally, as overburdened communities are disproportionately located near fracking infrastructure and often bear the brunt of the risks associated with fracking. Wurth Decl. ¶ 4, Ex. 1 at 6–9.

IV. INTERVENORS' PARTICIPATION WILL CONTRIBUTE TO THE JUST AND EQUITABLE ADJUDICATION OF THE CASE

Catskill Mountainkeeper, DRN, and FWW have firsthand knowledge of the circumstances surrounding New York's prohibitions on various forms of fracking due to their central role in advocating for and securing those protections over the past two decades, as described above. Given their deep experience with the history and need for the challenged laws, Proposed Intervenors can "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 N.Y. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986). They also have specialized knowledge about the scientific research on impacts of high-volume hydraulic fracking as well as other fracking methods on water and air quality, and deep familiarity with the impacts fracking would have on local communities, drinking water sources, recreation and tourism, and natural areas in the parts of New York State overlying the Marcellus and Utica Shales.

Knowledge surrounding a challenged law and the impacts of a challenge to that law have been deemed grounds for intervention in the Second Circuit. *See Bldg. & Realty Inst. of Westchester and Putnam Cnties., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5658703 (S.D.N.Y. Sep. 23, 2020) (granting permissive intervention to a tenants' rights group on the side of the City because they could "bring to bear on the briefing their detailed knowledge" of the legislation, its effects, and the potential effects of striking it).

Proposed Intervenors' specialized knowledge and unique perspective on the circumstances leading to New York's laws prohibiting various types of fracking can contribute to the development of the record. Should this action survive a motion to dismiss, Proposed Intervenors' knowledge and experience is directly relevant to legal and factual issues that are likely to arise in litigating Plaintiffs' takings claim. For example, the groups' direct experience with the administrative moratoria and ban that predated the 2020 legislative prohibition on high-volume hydraulic fracking can help develop the record related to the reasonableness of Plaintiffs' expectations of extracting gas from their property through fracking at the time they purchased it as well as at the time they sold the surface rights but maintained the mineral rights. *See* Adams Decl. ¶¶ 17–18 (explaining that after the 2015 administrative decision prohibiting issuance of fracking permits, Catskill Mountainkeeper did not need to devote resources to the issue and did not observe industry opposition to the 2020 codification of that decision into statute).

Further, should the Court need to resolve Plaintiffs' request for injunctive relief, Compl. ¶¶ 87–89, Prayer for Relief ¶ B, Proposed Intervenors' participation will aid the full development of the facts relevant to the balance of hardships and consideration of public interest inherent in that inquiry. *See New York v. U.S. Dep't of Health & Human Svcs.*, 2019 WL 3531960, at *6 (S.D.N.Y. Aug. 2, 2019) [hereinafter *HHS*] (permitting intervention where proposed intervenors could help resolve potential request for injunctive relief). As noted above, Proposed Intervenors can directly speak to the hardships that their members, supporters, and communities would experience if the Court were to enjoin New York from enforcing any of its prohibitions on fracking.

In particular, Proposed Intervenors have continued to gather information about updates to scientific research on fracking's impacts in the years after New York studied the available

science between 2008 and 2014. From 2012 to 2023, Catskill Mountainkeeper employee Kathleen Nolan was instrumental in publishing the annual *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks and Harms of Fracking and Associated Gas and Oil Infrastructure*, which compiled new peer-reviewed scientific literature on fracking impacts. Adams Decl. ¶ 13. Similarly, beginning in 2009 and continuing to the present, FWW has produced many research pieces on the health, environmental and climate harms of fracking, *e.g.*, Wurth Decl. Exs. 1–3. After New York's 2015 administrative ban, DRN continued its advocacy against fracking by submitting comments and testimony to the Delaware River Basin Commission with new and updated information concerning fracking's environmental harms, resulting in that body's eventual 2021 prohibition on fracking within the Delaware River Basin. Carluccio Decl. ¶¶ 9, 10, 12.

Proposed Intervenors' unique knowledge can help develop the record regarding harm to the public interest that would result from enjoining enforcement of the fracking bans. *See United States v. N.Y.C. Hous. Auth*., 326 F.R.D. 411, 415, 418–19 (S.D.N.Y. 2018) (intervenors would "provide this Court with a fuller picture to evaluate the fairness, reasonableness, and equities"). "[T]he Court would benefit from concrete factual submissions from the Proposed Intervenors as to the hardships occasioned by the absence of the Rule . . . much as the Court would benefit from factual submissions by plaintiffs as to the hardships occasioned by the Rule." *HHS*, 2019 WL 3531960, at *6.

In sum, Proposed Intervenors' direct experience with the history of the development of New York's prohibitions on fracking, as well as their unique insight into the potential impacts of fracking on their members, supporters, local communities, and public health, will help develop a

full record on relevant factual issues as well as contribute to the fair adjudication of the case with respect to equitable relief.

V. WHILE THE ADEQUACY OF THE STATE'S REPRESENTATION NEED NOT BE A FACTOR FOR PERMISSIVE INTERVENTION, PROPOSED INTERVENORS WILL CONTINUE THE DEFENSE OF FRACKING PROHIBITIONS IF THE STATE'S POSITION WERE TO CHANGE

Proposed Intervenors need not demonstrate that the State will not adequately represent their interests for the purpose of permissive intervention. Even so, while they do not dispute the State's ability and intent to defend its laws, Proposed Intervenors note that the issue of fracking is currently politically fraught and they are uniquely positioned to continue the defense of fracking laws in the event of changing political winds.

There is no requirement that the Court consider inadequate representation in granting permissive intervention, unlike intervention as of right. *See First Mercury Ins. Co. v. Shawmut Woodworking & Supply, Inc.*, No. 12-CV-1096, 2014 WL 12573387, at *6 n.7 (D. Conn. June 17, 2014) (noting that "inadequacy of representation is not a factor that the Court must consider under Rule 24(b)"). "'Rule 24(b) does not list inadequacy of representation as one of the considerations for the court' in exercising its discretion under Rule 24(b), and although a court may consider it, 'it is clearly a minor factor at most.'" *Hum. Servs. Council of N.Y.*, 2022 WL 4585815, at *4 (quoting *Allco Fin. Ltd. v. Etsy*, 300 F.R.D. 83, 88 (D. Conn. 2014)). *See also HHS*, 2019 WL 3531960, at *6 ("[T]o grant permissive intervention, Rule 24(b) does not require a finding that party representation be inadequate."); *State of New York v. Reilly*, 143 F.R.D. 487, 490 (N.D.N.Y. 1992) ("[I]t is well-established that the primary issue remains undue delay or prejudice, while adequacy of representation is, at most, a minor factor.").

Because adequacy of representation is a minor factor at most, "while existing adequate representation may militate against allowing permissive intervention, such intervention may still

be appropriate if the addition of the intervenors will 'assist in the just and equitable adjudication of any of the issues between the parties.'" *United States v. N.Y.C. Hous. Auth.*, 326 F.R.D. at 418 (quoting *Allco Fin. Ltd.*, 300 F.R.D. at 88). Courts thus "routinely grant permissive intervention despite finding that an existing party adequately represents the proposed intervenor's interest." *Hum. Servs. Council of N.Y.*, 2022 WL 4585815, at *4 (citing *Bldg. & Realty Inst.*, 2020 WL 5658703, at *13; *New York v. Scalia*, 2020 WL 3498755, at *2 (S.D.N.Y. June 29, 2020); *HHS*, 2019 WL 3531960, at *6–7; *United States v. N.Y.C. Hous. Auth.*, 326 F.R.D. 411, 417–18 (S.D.N.Y. 2018)); *see also United States v. New York*, No. 10-CV-1214, 2022 WL 1473259, at *2 (N.D.N.Y. May 10, 2022); *Oneida Grp. Inc. v. Steelite Int'l U.S.A. Inc.*, No. 17-CV-0957, 2017 WL 6459464, at *13 (E.D.N.Y. Dec. 15, 2017) (finding permissive intervention warranted even where party representation was found adequate). As such, even if the State's representation is adequate, permissive intervention would be appropriate here because, as demonstrated above, Proposed Intervenors would contribute to the just and equitable adjudication of the case.

In addition, Proposed Intervenors are aware that fracking has again become politically fraught and seek intervention to ensure a strong defense of New York's fracking bans regardless of any shifting political winds. Adams Decl. ¶ 21. Only two weeks ago, the Administrator of the U.S. Environmental Protection Agency, who previously ran for Governor of New York and pledged during his campaign to legalize fracking in the State, called again for New York to reverse its position on fracking.[4] At the same time, the gubernatorial candidate running against Defendant Kathy Hochul in the upcoming November election called for the state's fracking ban to be overturned.[5] The Second Circuit has noted that where it is "widely understood that the

[4] *Hochul Defends Fracking Ban as Blakeman Presses for It to Be Overturned*, Spectrum News (Jun. 12, 2026), https://spectrumlocalnews.com/nys/central-ny/news/2026/06/12/hochul-defends-fracking-ban-as-blakeman-presses-for-it-to-be-overturned.
[5] *Id.*

views of the incumbent . . . administration were not shared by their likely successors," parties should not wait until a new administration has moved to resolve a matter against their interests before seeking intervention. *Floyd v. City of New York*, 770 F.3d 1051, 1058–59 (2d Cir. 2014) (denying intervention as not timely where parties should have been "on notice of the potential political and judicial dangers that these cases posed to their interests well before" liability and remedial orders and before election of new administration).

CONCLUSION

Proposed Intervenors make this timely motion to defend New York's prohibitions on fracking. As leaders in the fight to secure regulatory and legislative bans on various methods of fracking, who have unique perspectives on the harm that would result if Plaintiffs were to succeed in obtaining an injunction against enforcement of those bans, Proposed Intervenors have a strong interest in the case and can contribute to the development of the record and the just and equitable adjudication of this action. Courts in this Circuit have often granted intervention under Rule 24(b) in similar circumstances. Proposed Intervenors ask the Court to do the same here, so that they may defend the protections against fracking that are so critical to their missions, their members and supporters, and the preservation of the natural environment.

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