UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMALGAMATED TRANSIT UNION, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF LABOR, et al.,

Defendants,

THE STATE OF CALIFORNIA,
1300 "I" Street, Sacramento, CA 95814-2919

[Proposed] Defendant-Intervenor.

Civil Action No. 1:25-cv-3872

ORAL HEARING REQUESTED

MOTION OF [PROPOSED] DEFENDANT-INTERVENOR THE STATE OF CALIFORNIA TO INTERVENE

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INTRODUCTION

The State of California seeks to intervene in this litigation to defend an administrative determination made by the United States Department of Labor (Department) that California's Public Employees' Pension Reform Act of 2013 (PEPRA) does not interfere with the continuation of transit workers' collective bargaining rights. In order for a regional transit agency to receive federal assistance under the Urban Mass Transportation Act of 1964 (UMTA), the Secretary of Labor must certify that the interests of employees affected by the assistance are protected under arrangements the Secretary concludes are fair and equitable, including as may be necessary to ensure the continuation of collective bargaining rights. As more than a billion dollars of federal funding to California transit agencies each year turns on this certification process, along with significant adverse impacts to transit-dependent communities, the environment, and jobs funded by federal grants, California's interests in the resolution of this case are beyond question. Further, California has been involved in extensive prior litigation addressing this question, beginning in 2013 as a plaintiff successfully challenging the Department's administrative decision not to certify the presence of fair and equitable labor arrangements in California due to PEPRA, and then, in 2019, as an intervenor-defendant defending the Department's later administrative decisions to certify the presence of fair and equitable labor arrangements in California, notwithstanding PEPRA, from a challenge filed by current plaintiffs Amalgamated Transit Union International and several local affiliates (ATU).[1]

The Eastern District of California has already issued five merits rulings holding that the PEPRA does not interfere with the continuation of transit workers' bargaining rights within the meaning of the UMTA. As a result, the Department is already permanently enjoined from relying on PEPRA as a basis to deny certification under the UMTA's Section 13(c) for two California regional transit entities. In an apparent end-run around the *stare decisis* effect of the judgment in this prior proceeding, ATU filed this new lawsuit to collaterally attack the Eastern

[1] Defendant-Intervenor met and conferred with Plaintiffs' counsel via email on December 3, 2025. Plaintiffs take no position on this motion. Defendant-Intervenor was not able to meet and confer with defendants as they have not yet made an appearance in this matter.

District of California's judgment in a new forum. Even more troubling, in an effort to preclude consideration of the extensive, fact-bound administrative records compiled in the two prior cases weighing decisively in favor of the Department's current position, ATU now seeks to present this dispute as a pure question of law and consolidate it with separate UMTA litigation involving a Florida statute imposing an annual recertification process on labor unions and prohibiting deductions of union dues—subjects wholly unrelated to PEPRA and public pensions. Consolidation would be inappropriate here.

California should be permitted to intervene as of right under Federal Rule of Civil Procedure 24(a) to protect critical federal grant funding that supports and improves California's regional transit systems, and to ensure that PEPRA can be applied consistently to all California public employees, including transit workers. These interests, which would be impaired by an adverse ruling in this matter, are not adequately represented by the existing federal defendants, neither of whom share California's particular interests in preserving federal assistance or in the application of PEPRA to public employment. California should also be permitted to intervene in order to have an opportunity to oppose the consolidation motion. California has standing to participate as a defendant in these proceedings, and its motion to intervene is timely.

In the alternative, permissive intervention is warranted because the State's defense shares common legal questions with the main action, and because the State's role in administering and defending PEPRA warrants its participation. The Court should therefore grant this Motion.

RELEVANT BACKGROUND AND PROCEDURAL HISTORY

I. THE UMTA'S REQUIREMENTS FOR "FAIR AND EQUITABLE" LABOR ARRANGEMENTS

In 1964, Congress enacted the UMTA to revamp deteriorating transit systems throughout the nation, 49 U.S.C. § 5301(a), and in part "to provide federal aid for local governments in acquiring failing private transit companies so that communities could continue to receive the benefits of mass transportation despite the collapse of the private operations." *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union*, 457 U.S. 15, 17 (1982). While debating

the UMTA's merits, Congress expressed concerns "that public ownership might threaten existing collective-bargaining rights of unionized transit workers employed by private companies." *Jackson Transit*, 457 U.S. at 17. Accordingly, Congress included a provision in the UMTA requiring applicants for transit assistance to seek certification from the Department that the "interests of employees affected by the assistance" are protected by "fair and equitable" arrangements that provide for the "continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(B).

II. THE ENACTMENT OF PEPRA AND THE 2013 LITIGATION

Confronted with growing concerns over the unfunded liability of California's public pension systems, which includes the two largest public pensions systems in the country, the California Legislature enacted PEPRA in September 2012. Cal. Stats. 2012, ch. 296 (AB 340); Cal. Stats. 2012, ch. 297 (AB 197). Among other things, PEPRA required that all new employees contribute at least 50 percent of the "normal costs" of a defined benefit retirement plan. Cal. Gov't Code §§ 7522.30(a), 20683.2. It also imposed new standards for calculating pensionable compensation to close loopholes under which workers could inflate their retirement benefits, creating arbitrary and inequitable results. *See Alameda Cty. Deputy Sheriff's Ass'n v. Alameda Cty. Employees' Ret. Ass'n*, 470 P.3d 85, 93-94 (Cal. 2020). One of the primary purposes of PEPRA was to ensure that California's public pension system remained sustainable and capable of meeting its future obligations. *See State of Cal. v. U.S. Dep't of Labor,* 76 F.Supp.3d 1125, 1138 (E.D. Cal. 2014) (*State of Cal. I)*.

In September 2013, following PEPRA's enactment, the Department denied Section 13(c) certification to two state transit authorities—Monterey-Salinas Transit and the Sacramento Regional Transit District—on the basis that PEPRA modified pension terms offered to public employees hired on or after January 1, 2013 in a way that was "inconsistent with section 13(c)(1)'s mandate to preserve pension benefits under existing collective bargaining agreements and section 13(c)(2)'s mandate to ensure continuation of collective bargaining rights. *Amalgamated Transit Union Intl. v. U.S. Dep't of Labor*, No. 1:19-cv-2533-EGS (D.C. 2019),

Dkt. 1-1 ("2019 Determination") at 3. While the Department's certification determination was pending, the Department acknowledged in a letter to the Governor of California "the devastating impact that a loss of transit dollars would have on transit services, commuters, jobs, and economic development in California." *See Amalgamated Transit Union v. U.S. Dep't of Labor*, Case 1:19-cv-02533-EGS (D.D.C. 2019), Dkt. 9-2. The Department also recognized the "significant negative consequences . . . for service providers, employees and transit users," including "service cuts and layoffs," that would arise if questions about the Section 13(c) implications of PEPRA remained unresolved. *Id.*

The Monterey and Sacramento transit entities, along with California,[2] challenged the Department's certification denial in a lawsuit filed in the Eastern District of California. *State of Cal. v. U.S. Dep't of Labor*, No. 2:13-cv-02069 KJM DAD (E.D. Cal. 2013). ATU obtained leave of court to participate in these proceedings as an amicus. *State of Cal. I*, 76 F. Supp. 3d at 1128 (E.D. Cal. 2014).

On December 30, 2014, the Eastern District of California ruled in favor of the State and transit entities, finding that the Department's determination that PEPRA interfered with the continuation of collective bargaining rights was arbitrary and capricious, in violation of the Administrative Procedures Act (APA). *State of Cal. I*, 76 F. Supp. 3d at 1141–45. The court held that "there is nothing in federal labor policy 'which expressly forecloses all state regulatory power with respect to those issues, such as pension plans, that may be the subject of collective bargaining,'" *id*. at 1143 (quoting *Malone v. White Motor Corp*., 435 U.S. 497, 504–05 (1978); that Department's determination had "essentially wri[tten] a substantive term into labor-management agreements, outside of [the Department's] authority to do so," *id*.; and that the Department had erred by failing "to consider the realities of the process of public sector bargaining," including the fact that a state's wage and benefit policies heavily impact the state's budget and tax policies, which in turn "'are considered, within our governmental system,

[2] California appeared in the action by and through the California Transportation Agency, a pass-through recipient of UMTA funding.

fundamental legislative policies to be decided by a legislative body, not by a negotiator at the bargaining table,'" *id*. at 1143–44 (quoting *Robinson v. State of New Jersey*, 741 F.2d 598, 607 (3d Cir. 1984)). The court remanded the matter to the Department for further proceedings consistent with its decision. *Id*. at 1148. In response, the Department began certifying grants under Section 13(c) for all transit entities subject to PEPRA, apart from the plaintiff Monterey and Sacramento transit entities. *See, e.g.,* 2019 Determination Letter.

On August 13, 2015, the Department issued new final determinations denying certification to the Monterey and Sacramento transit entities on the basis that PEPRA interfered with the continuation of collective bargaining rights of transit workers in violation of Section 13(c). 2019 Determination Letter at 3. The transit agencies and the State again challenged these determinations before the Eastern District of California. *Id*. And again, the district court ruled in favor of the State and transit agencies, holding that the Department's actions were arbitrary, capricious, and contrary to Section 13(c), and that PEPRA was a permissible state-law backdrop for collective bargaining that did not interfere with federal labor policy. *State of Cal. v. U.S. Dep't of Labor*, No. 2:13-cv-02069 KJM DB, 2016 WL 4441221, at **9-28 (E.D. Cal. Aug. 22, 2016) (*State of Cal. II*); *State of Cal. v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180, 1186–89 (E.D. Cal 2018) (*State of Cal. III*). The district court rejected the Department's "broad[] reli[ance] on the basic fact that PEPRA 'changed government employee pension rights as proof that the State has not 'preserved' existing rights," which failed to identify changes in state law that "negatively and meaningfully impact" workers' rights. *State of Cal. III*, 306 F. Supp. 3d at 1189. The district court then issued a permanent injunction preventing the Department "from relying on PEPRA, as currently enacted, to deny the State's application for funding under either § 13(c)(1) or § 13(c)(2) to the extent the State intends those funds to benefit [the Monterey and Sacramento transit agencies]." *Id*. at 1190.

After initially appealing the district court's decision, the Department voluntarily moved to dismiss its appeal on November 5, 2018. 2019 Determination Letter at 4. While the Department's motion to dismiss was pending, ATU moved to intervene for the purpose of taking

over the appeal. *Id*. On December 19, 2018, the Ninth Circuit denied ATU's motion to intervene and dismissed the appeal. *Id*.

III. THE 2019 LITIGATION

On June 14, 2019, the Department began certifying UMTA grants for California transit agencies notwithstanding PEPRA, and over ATU's objections. 2019 Determination Letter at 7-9. ATU filed a lawsuit against the Department in 2019 in the D.C. District Court, in which California intervened as a defendant and transferred the venue to the Eastern District of California under 28 U.S.C. § 1404. *See Amalgamated Transit Union Int'l v. U.S. Dep't of Labor*, No. 1:19-cv-2533-EGS (D.D.C. 2019), Dkts. 1, 15, 20.

In 2021, the Department, now under a new administration, stayed the pending litigation and issued a letter "reconsidering" and "nullifying" its 2019 determination. Letter from Arthur F. Rosenfeld, Director, Office of Labor-Management Standards, to Robert Molofsky, General Counsel, ATU (Jun. 14, 2019) ("2021 Reconsideration"), Dkt. 1 at 29. Although the 2021 Reconsideration took no action on the 11 specific grants challenged by ATU, the letter made clear that the Department would deny grant applications on the basis of PEPRA moving forward. *Id.*

California filed a cross-complaint against the Department challenging the 2021 Reconsideration under the APA. *See Amalgamated Transit Union Intl. v. U.S. Dep't of Labor*, No. 2:20-cv-0953-KJM (E.D. Cal. 2020), Dkt 70. Once again, the court ruled in favor of California, holding that the 2021 Reconsideration violated the APA both procedurally (because the Department failed to follow its own binding procedures when it issued the letter, which amounted to a substantive rule that the Department has no power to issue), and substantively (because the Department's reasoning was arbitrary and capricious as it related to denying certification on the basis of PEPRA. *Id.* at Dkt. 111. The court based its rulings on an extensive, fact-bound showing that fair and equitable labor arrangements continued after PEPRA's enactment, resulting in collective bargaining agreements for transit workers that secured wage gains and other important concessions from management following PEPRA.

Both the Department and ATU appealed, and their appeals were consolidated. *Amalgamated Transit Union Int'l v. U.S. Dep't of Labor*, No. 23-15503 (9th Cir. 2023), Dkt. 16. In 2024, the Ninth Circuit issued an unpublished memorandum disposition narrowly holding that, because the 2021 Reconsideration simply "announce[d] the position" the Department would take with respect to future grant applications from transit agencies subject to PEPRA and did not present a concrete dispute about a particular denial, the matter was not prudentially ripe. *Amalgamated Transit Union Int'l v. U.S. Dep't of Lab.*, 2024 WL 3565264 at *1 (9th Cir. July 29, 2024). Accordingly, the Ninth Circuit found that the district court lacked jurisdiction to hear the matter, vacated the district court's judgment and injunction, and remanded the matter with instructions to dismiss the case. *Id.* at 2. This dismissal did not disturb the permanent injunction from the predecessor case filed by California. *See State of Cal. III*, 306 F. Supp. 3d at 1190.

IV. THE PRESENT DISPUTE

The extensive proceedings before the Eastern District of California, spanning more than a decade, should have put to rest the question of whether PEPRA impacts the existence of "fair and equitable" labor arrangements for Section 13(c) purposes. Although the injunction precluding the Department from relying on PEPRA as a basis to deny certification applies only to the Monterey and Sacramento transit agencies, the analysis underpinning that injunctive relief has broad application to any grant applicant under the UMTA whose employees are subject to PEPRA—which is to say, the vast majority of regional transit agencies within California. Indeed, Judge Mueller relied on this same reasoning in granting the State's requested relief in 2022. Nevertheless, as other public transit entities in California have applied for new federal transit grants, ATU continues to interpose objections arising from PEPRA's asserted effects upon the collective bargaining rights of transit entity employees.

This time, ATU has objected to the certification of ten grant applications.[3] In its Determination Letter of March 31, 2025, the Department noted Judge Mueller's "preliminary

[3] The specific transit entities and grant application numbers to whose certification ATU purportedly objected include: (1) Alameda-Contra Costa Transit District (grant application CA- (continued…)

injunction halting the Department's implementation of the 2021 Reconsideration" and the "permanent injunction barring the Department from relying on PEPRA as a basis to deny Section 13(c) certification to California transit grants" as the basis for recommitting to the reasoning set forth in the 2019 Determination Letter. *Amalgamated Transit Union Intl. v. U.S. Dep't of Labor*, No. 1:25-cv-03872 (D.D.C. 2025) ("*ATU CA*"), Dkt. 1 at 17 ("2025 Determination Letter"). The Department subsequently certified the grant applications over ATU's objections.

On November 6, 2025, ATU filed the complaint in this case seeking to invalidate the Department's determination as contrary to law and in excess of its statutory authority, in violation of the APA. The State now brings the instant Motion to Intervene.

ARGUMENT

California should be granted leave to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) to defend the Department's determination that PEPRA does not interfere with the continuation of collective bargaining rights under Section 13(c). In the alternative, the State seeks permissive intervention under either Rule 24(b)(1), because its proposed defenses present common questions of law and fact with the claims and defenses in this action, or Rule 24(b)(2), because ATU's claims are based on PEPRA, a state statute.

I. CALIFORNIA SHOULD BE PERMITTED TO INTERVENE AS OF RIGHT

Under Federal Rule of Civil Procedure 24, a federal court "must permit anyone to intervene" who, upon a timely motion, "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

2025-022); (2) Central Contra Costa Transit Authority (grant application CA-2025-016); (3) Golden Gate Bridge, Highway and Transportation District (grant application CA-2025-185); (4) Long Beach Public Transportation Company (grant application CA-2025-055); (5) Los Angeles County Metropolitan Transportation Authority (grant application CA-2025-078); (6) Omnitrans (grant application CA-2025-060); (7) Riverside Transit Agency (grant application CA-2025-018); (8) San Mateo County Transit District (grant application CA-2025-235); (9) Santa Clara Valley Transportation Authority (grant application CA-2025-175); and (10) SunLine Transit Agency (grant application CA-2025-136). *See* Compl. ¶ 33.

When deciding whether a non-party may intervene as of right, the D.C. Circuit employs a four-factor test requiring the proposed intervenor to show (1) the timeliness of the motion; (2) whether the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) whether the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) whether the applicant's interest is adequately represented by existing parties. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003); *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 320 (D.C. Cir. 2015). Additionally, an applicant seeking to intervene as of right under Rule 24(a) must possess Article III standing to participate in the lawsuit. *100Reporters LLC v. U.S. Dep't of Justice*, 307 F.R.D. 269, 274 (D.D.C. 2014). California meets all five requirements.

A. California's Motion Is Timely

Rule 24(a) imposes a timeliness requirement primarily to "prevent[] potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties," although timeliness is not required "for its own sake." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Courts assess timeliness not simply based on how much time has elapsed, but also in relation to "the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant's rights, and the improbability of prejudice to those already in the case." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 129 (D.C. Cir. 1972).

Here, the case is in its inception, and the Department has not yet appeared. The Court has not issued any decisions on the merits of ATU's claim. Intervention by California will not unduly disrupt this litigation to the detriment of any party and is therefore timely.

B. California Has Significant Interests in the Certification of UMTA Grant Applications

The D.C. Circuit has characterized the "interest" prong of the test more as a "pre-requisite" than a "determinative criterion for intervention." *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C. Cir. 1969). "[T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967). When assessing the interest of a potential intervenor, courts look to the "practical consequences" of denying intervention, instead of applying "a narrow formulation that 'interest' means 'a specific legal or equitable interest.'" *Id*. (*quoting Toles v. United States*, 371 F.2d 784 (10th Cir. 1967)); *see also Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981). In administrative actions, with their "greater impetus to intervention," *Nuesse*, 385 F.2d at 700, the D.C. Circuit has "generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015); *see Military Toxics Project v. Envtl. Prot. Agency*, 146 F.3d 948 (D.C. Cir. 1998) (finding organization had sufficient interest to intervene where its members benefited from an agency rule challenged by another party).

The State of California has strong interests in maintaining viable public transit systems and securing the employment of those California residents needed to operate those systems. The federal transit grants applications cited in ATU's complaint would invest over $275,000,000 in improving transit systems throughout the state, thus effecting a significant cumulative impact on the state beyond any harm to the localities served by the individual grantees. *Cf. Carey v. Klutznick*, 637 F.2d 834, 836–38 (2d Cir. 1980) (finding both New York State and New York

City had standing arising from financial injury caused by census undercount of residents of New York City); *see generally RJN*, Exs. A–H; *See Amalgamated Transit Union Intl. v. U.S. Dep't of Labor*, No. 2:20-cv-0953-KJM (E.D. Cal. 2020), Dkt. 80 at 7 (discussing evidence of aniticpated harms to Los Angeles Metropolitan Transit Agency, Santa Clara Valley Transportation Authority, and Golden Gate Bridge, Highway, and Transportation District, among other agencies, including anticipated service cuts, layoffs, disruptions to capital improvements, cost increases, and credit defaults, should UMTA grant funding be discontinued). Should a court invalidate DOL's determination to certify the ten grants under Section 13(c), this funding may not issue, and future grant applications may be imperiled on the same grounds.

The interests of a state "in the validity of what his federal counterpart has done in an area of overlapping fact and intertwined law" are especially strong. *Nuesse*, 385 F.2d at 700. The Department's determination concerns the interplay between the UMTA's condition of "fair and equitable" labor arrangements and PEPRA, a state law duly enacted by the California Legislature pursuant to its independent authority to regulate and preserve public pension systems for virtually all California public employees—not merely transit workers. The question posed by ATU's complaint will require evaluation of the Department's administrative decision through the lens of state law, and California is better positioned than any current party to present argument as to what PEPRA does and does not do. See *Amalgamated Transit Union Int'l. v. U.S. Dep't of Labor*, 1:25-cv-03872, Dkt. 1 ("Compl.") ¶¶ 1, 13-18, 42-43; *see also Amalgamated Transit Union Int'l. v. U.S. Dep't of Labor*, No. 2:20-cv-0953-KJM (E.D. Cal. 2020), Dkt. 111; *State of Cal. III*, 306 F. Supp. 3d at 1186–89; *State of Cal. II*, 2016 WL 4441221, at **9–28.

California has unique interests in this litigation as it concerns PEPRA. First, California seeks to ensure that the parties to this litigation characterize PEPRA in a manner consistent with

its terms, the Legislature's intent, and decisional law interpreting it. Second, California is uniquely interested in advancing arguments that are consistent with the Eastern District of California's merits rulings and the permanent injunction in place from the earlier litigation California conflicting interpretations of PEPRA and regarding the extent to which it preserves the collective bargaining rights of transit workers within its purview. Finally, California has an interest in ensuring that PEPRA can be applied consistently across California public employees, regardless of their industry or vocation. These significant interests, which the current parties to the litigation do not share, warrant the State's intervention in this action as of right.

C. Without Intervention, the Disposition of This Action Would Impair California's Interests

Where, as here, a proposed intervenor which stands to benefit from a favorable agency decision seeks to intervene in support of that decision, the impairment of the movant's interest is plain. *See, e.g.*, *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) ("[T]here is no question that the task of reestablishing the status quo . . . if the [plaintiff] succeeds in this case will be difficult and burdensome."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 14 (D.D.C. 2010) ("Simply put, the Bureau's decision below was favorable to [the applicant intervenor coal company seeking to protect its ability to lease federal land], and the present action is a direct attack on that decision."); *Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 158 (D.D.C. 2001) ("[I]ntervenor's interest would be practically impaired because they would have to start over again [on their successful pesticide permit] demonstrating to EPA the safety of their pesticide products.").

There can be no question that if the Department's decision is set aside, the loss of federal funding to the ten public transit entities "during any interim period would be substantial and likely irreparable." *Fund For Animals*, 322 F.3d at 735; *cf. Mova Pharm. Corp. v. Shalala*, 140

F.3d 1060, 1076 (D.C.C. 1998) (holding that danger of loss of market share due to denial of a preliminary injunction satisfied the third Rule 24(a)(2) element); *see supra* at 4, 11. Although the Department has the authority to issue interim certifications to avoid loss of funding to its grantees, 29 C.F.R. 215.3(d)(7)), it previously declined to do so in the earlier litigation proceedings in the Eastern District of California. And the mere possibility that California may vindicate its interests in subsequent litigation does not offset this harm, especially where, as here, the final judgment in this action will bind the federal defendants. *See Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 910 (D.C. Cir. 1977) ("[I]t is not enough to deny intervention under 24(a)(2) because applicants may vindicate their interests in some later, albeit more burdensome, litigation.").

As explained above, California has a direct interest in ensuring the uniform interpretation of PEPRA across all public employees who are subject to its reforms. Cal. Const., art. V, §§ 1, 13 (empowering the Governor and the Attorney General to enforce state law when necessary). The Eastern District of California has already repeatedly determined that PEPRA presents no bar to the Section 13(c) certification of transit grants and enjoined the Department from relying on PEPRA to deny certification as to grants to the Sacramento Regional Transit District and Monterey-Salinas Transit. *State of Cal. III*, 306 F. Supp. 3d at 1187. Should ATU obtain a contrary court order as to other California public transit entities, this would impede the State's interests under *stare decisis* principles. *See Nuesse*, 385 F.2d at 702 (*stare decisis* can "supply the practical disadvantage that warrants intervention as of right"). More fundamentally, it will give rise to two divergent, conflicting legal standards regarding whether the UMTA preserves the collective bargaining rights of employees of different public transit entities. This, in turn, would

either preclude uniform enforcement of PEPRA at penalty of foregoing vital funding streams for public transit in the state.

In short, if the 2025 Determination were invalidated, that result would risk foreclosing federal transit assistance to California under the UMTA, to the detriment of California, its environment, and its transit-dependent residents, and it would give rise to conflicting court decisions that would impair the consistent administration of PEPRA across public agencies. These potential harms warrant intervention as of right.

D. California's Interests Are Not Adequately Represented by Existing Parties.

Here, the federal defendants cannot adequately represent the State of California's interests in this litigation because their respective interests differ. The burden of showing inadequacy of representation by existing parties is "minimal," and the applicant need only show that representation of its interests by existing parties "may be" inadequate. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). Applicant intervenors ordinarily should be allowed to intervene unless it is clear that the existing parties will provide adequate representation. *United States v. Amer. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980).

Although the State does not dispute the presumed adequacy of the federal defendants' ability to represent their own constituents, *Envtl. Def. Fund, Inc. v. Costle*, 79 F.R.D. 235, 241 (D.D.C. 1978), aff'd (D.C. Cir. July 31, 1978), they cannot adequately represent the interests of the State of California, particularly because their interests significantly differ. If they lose on the merits of this action, the federal defendants do not stand to lose grant funding; that harm alone gives the State of California a unique interest. The D.C. Circuit has consistently found "inadequacy of governmental representation" when the existing governmental party has no

financial stake in the outcome of the suit. *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *see also Fund for Animals*, 322 F.3d at 736; *Nuesse*, 385 F.2d at 703.

Further, although California seeks to intervene for the broad purpose of defending the Department's determination, it is unlikely that the federal defendants and California would present the same case. The prior Section 13(c) litigation in the Eastern District of California reveals just how sharply the federal defendants' interests in these issues have diverged from California's in the past. *See supra* at 3-8. Although California has consistently asserted that PEPRA does not operate as a bar to Section 13(c) certification, the Department has, at times, declined to certify transit grants on the same grounds on which ATU now objections, and has declined to issue interim certifications to the detriment of California grantees while the litigation was pending. *See* 29 C.F.R. 215.3(d)(7). It is therefore possible, and indeed probable, that the Department's reasoning could diverge sharply during the pendency of this litigation.

The federal defendants' interests differ from California's in other respects as well. California likely holds stronger views than the federal defendants about the meaning and intent of PEPRA, given that the law was enacted by the State, applies only within California, and was designed to promote the State's fiscal solvency. Similarly, the federal defendants are likely better situated than the State of California to defend certain claims at issue in ATU's complaint, such as whether the Department acted in excess of its statutory authority, given its involvement in the decision-making process.

Similarly, the federal defendants do not have the same interest in upholding the prior decisions rendered by the Eastern District of California and may not oppose Plaintiffs' recent Motion for Consolidation with *Amalgamated Transit Union Intl. v. U.S. Dep't of Labor*, No. 1:25-cv-03876 (D.D.C. 2025) ("*ATU Florida"*) if permitted to intervene. *See ATU CA,* Dkt. 7-1.

Although this new case is in its nascent stages, the prior litigation among ATU, the Department, and California has been ongoing for over a decade. This resulted in merits rulings and intensive record development. California would strongly oppose consolidation with *ATU Florida*, with its different posture and its focus upon an unrelated Florida statute having nothing to do with public pension reform and wholly divorced from California's interests in this case. Meanwhile, as Plaintiffs note in their motion, "it is difficult to fathom what prejudice the DOL could suffer" from consolidation. *ATU CA*, 1:25-cv-03872, Dkt. 7-1 at 18.

Accordingly, it is not clear that the federal defendants will adequately represent California's interests in this lawsuit. Intervention as of right should therefore be granted.

E. The State of California Has Standing to Intervene.

After considering the four elements necessary for intervention as of right under Rule 24(a), the reviewing court must then inquire as to whether the applicant would have standing under Article III. *100Reporters LLC*, 307 F.R.D. at 281. Substantially similar to the "interest" analysis discussed above, the standing inquiry requires a showing of "injury-in-fact, causation, and redressability." *Deutsche Bank National Trust Co. v. Fed. Deposit Ins. Corp.*, 717 F.3d 189, 193 (D.C. Cir 2013). Additionally, the State's motion to intervene must be fit for resolution under the related ripeness doctrine. *State Farm Mutual Auto. Ins. Co. v. Dole*, 802 F.2d 474, 480 (D.C. Cir. 1986) ("[I]f the interests of the court and agency in postponing review outweigh the interests of those seeking relief, settled principles of ripeness squarely call for adjudication to be postponed.").

"An intervenor of right must independently demonstrate Article III standing if it pursues relief that is broader than or different from the party invoking a court's jurisdiction." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674, n.6 (2020). However, "intervenors that seek the same relief sought by at least one existing party need not do

so." *Institutional S'holder Servs., Inc. v. Sec. & Exch. Comm'n*, 142 F.4th 757, 764 (D.C. Cir. 2025) (*citing Little Sisters*, 591 U.S. at 674, n.6). As of now, the State of California seeks the same relief as the Department, that is, upholding the certification of the ten grants at issue under the UMTA. A separate showing of standing is therefore not necessary.

Regardless, California has independent Article III standing to participate in this litigation as a defendant. *See Military Toxics Project v. Envtl. Prot. Agency*, 146 F.3d 948, 953 (D.C. Cir. 1998) (*citing City of Cleveland v. Nuclear Regulatory Comm'n*, 17 F.3d 1515, 1516–18 (D.C. Cir. 1994)). In cases challenging an administrative action where the proposed intervenor is "'an object of the action (or forgone action) at issue," *Sierra Club v. Envtl. Prot. Agency*, 292 F.3d 895, 899–900 (D.C. Cir. 2002) (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)), the standing of the proposed intervenor is "in many if not most cases . . . self-evident." *Id*. at 900. California risks losing funding for ten grants funding California-based transit projects if ATU prevails in its challenge. This injury, which is neither conjectural nor speculative, suffices to demonstrate an injury-in-fact. *Deutsche Bank*, 717 F.3d at 193; *see also Fund for Animals*, 322 F.3d at 733 (finding the Mongolian government had standing to intervene in a lawsuit seeking to place Mongolian wildlife on an endangered-species list, the outcome of which action would reduce the number of U.S. hunters traveling to Mongolia and paying hunting fees to the government). It was sufficient to confer standing on California to challenge the Department's certification determination in the prior proceedings before this Court and in the Eastern District of California.

Additionally, California's potential loss of federal transit funding is "fairly traceable" to ATU's challenge to 2025 Determination, and the resulting injury would be redressed by a favorable ruling. *Bennett v. Spear*, 520 U.S. 154, 167 (1997). Indeed, California has received

one limited permanent injunction finding that PEPRA is not a sufficient basis to deny Section 13(c) certification, and received a second, broader injunction prior to the Ninth Circuit's determination that the 2021 Determination Letter did not create an issue ripe for adjudication. Here, by contrast, the Department *has* certified the grants at issue, and the potential injury to the State of California is not speculative. The issue is ripe, and California therefore has Article III standing to intervene as a defendant.

II. ALTERNATIVELY, THIS COURT SHOULD GRANT PERMISSIVE INTERVENTION

A. The State May Permissively Intervene Under Rule 24(b)(1) Because Its Defense Involves Common Questions of Law with the Main Action.

In the alternative, should this Court determine that the State of California cannot intervene as of right, the State requests permissive intervention pursuant to Rule 24(b)(1). Permissive intervention under Rule 24(b)(1) may be allowed in the Court's discretion (1) where the Court has an independent ground for asserting subject-matter jurisdiction, and (2) if the applicant establishes "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); *see also E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998); *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 10 (D.D.C. 2007). In exercising its discretion, the Court shall also consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b)(1). Courts construe such motions liberally in favor of the moving party. *See* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1913 (3d ed. 2007).

All three elements warrant permissive intervention here. First, the Court has an independent ground for asserting subject-matter jurisdiction. *See* 28 U.S.C. § 1331 (setting forth federal question jurisdiction). As a defendant, the State would be subject to claims asserting

violation of the APA "'arising under'" the laws of the United States. *Van Antwerp*, 523 F. Supp. 2d at 10 (quoting 28 U.S.C. § 1331).

Second, the State's defense of this matter would share the same primary question of law—whether the Department's UMTA determination regarding PEPRA is contrary to law—as the main action. *Id*. ("Intervenors have an interest in [maintaining a challenged environmental permit], and they present defenses to the precise claims brought by plaintiffs. This showing is sufficient for the purposes of permissive intervention.").

Third, there is no risk that California's participation would unduly delay this litigation or prejudice the adjudication of any existing party's rights. Rather, given the history of the prior proceedings in this District and the Eastern District of California, judicial economy favors California's participation.

Accordingly, if the State is denied intervention as of right, it should be granted permissive intervention under Rule 24(b)(1) to participate as a defendant-intervenor in this litigation.

B. The State of California May Permissively Intervene Under Rule 24(b)(2) Because ATU's Claims Are Based on PEPRA, a California Statute.

Federal Rule of Civil Procedure 24(b)(1)(B) authorizes a court to grant permissive intervention where the proposed intervenor has a claim or defense that shares with the main action a common question of law or fact. Here, California, if allowed to intervene, would assert that the Department's determinations did not violate the APA, which is a question in common with ATU's APA claim. Rule 24(b)(2)(A) authorizes permissive intervention by state parties to iwhere, as here, ATU's claim is based on "a statute or executive order administered by the officer or agency." Fed. R. Civ. P. 24(b)(2)(A). Permissive intervention under Rule 24(b)(2)(A) is available "when sought because an aspect of the public interest with which [the officer or agency] is officially concerned is involved in the litigation" (*Nuesse* 385 F.2d at 706), even

where the officer or agency "ha[s] no claim in the orthodox sense of being able to institute an independent action." 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1912 (3d ed. 2007) ("[T]he whole thrust of [Rule 24(b)(2)] is in the direction of allowing intervention liberally to governmental agencies and officers seeking to speak for the public interest.").

Here, ATU's claim is based on the application of PEPRA, a California state statute, to Section 13(c)'s certification requirements. Compl. ¶¶ 13-18. The State is obligated to see that its duly enacted laws, including PEPRA, are "faithfully executed." Cal. Const., art. V, § 1; *see also id.*, § 13 (empowering the Attorney General to enforce state law when necessary). If California does not receive leave to intervene as of right, it should be permitted to intervene permissively under Rule 24(b)(2) in order to carry out this responsibility.

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CONCLUSION

Because the State of California meets all criteria for intervention, the Court should grant intervention as of right under Rule 24(a). The State of California also meets the requirements for permissive intervention under Rule 24(b)(1) or (b)(2), which should be granted if intervention as of right is denied. Should the Court grant this motion, the State requests an additional 14 days from the date of the order permitting intervention to file an opposition to ATU's motion to consolidate. Dkt. 7.

Dated: December 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **Amalgamated Transit Union v. U.S. Department of Labor** Case No. **1:25-cv-03872**

I hereby certify that on December 5, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

1. **MOTION OF [PROPOSED] DEFENDANT-INTERVENOR THE STATE OF CALIFORNIA TO INTERVENE**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct, and that this declaration was executed on December 5, 2025, at Los Angeles, California.

J. Sissov	*/s/ J. Sissov*
Declarant	Signature

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