

Case Nos. 25-881 and 25-1481

---

**IN THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT**

---

OUTDOOR POWER EQUIPMENT INSTITUTE,

*Petitioner-Appellant*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

*Respondent-Appellee.*

---

STATE OF CALIFORNIA, ET AL.,

*Intervenors.*

---

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, ET AL.,

*Petitioner-Appellant*

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

*Respondent-Appellee.*

---

On Petition for Review of Notice of Decision of the  
United States Environmental Protection Agency

---

**BRIEF OF AMICI CURIAE TREE CARE INDUSTRY ASSOCIATION,  
NATIONAL ASSOCIATION OF LANDSCAPE PROFESSIONALS, GOLF  
COURSE SUPERINTENDENTS ASSOCIATION OF AMERICA, AND  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL  
BUSINESS LEGAL CENTER, INC. IN SUPPORT OF PETITIONER**

---

*Counsel listed on next page*

Frances Williamson  
VINSON & ELKINS LLP  
Texas Tower  
845 Texas Avenue, Suite 4700  
Houston, Texas 77002  
713.758.2223  
fwilliamson@velaw.com

Corinne V. Snow  
VINSON & ELKINS LLP  
2200 Pennsylvania Ave., NW  
Suite 500 West  
Washington, DC 20037  
212.237.0157  
csnow@velaw.com

*Attorneys for Amici Curiae Tree Care Industry Association,  
National Association of Landscape Professionals, Golf Course  
Superintendents Association of America, and National Federation  
of Independent Business Small Business Legal Center, Inc.*

## TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| TABLE OF AUTHORITIES .....  | iii         |
| STATEMENT OF <i>AMICI CURIAE</i> .....  | 1           |
| SUMMARY OF THE ARGUMENT .....   | 4           |
| ARGUMENT .....  | 5           |
| I.    The waiver puts the citizens of California at risk because the new ZEE required by the SORE Amendments cannot meet the needs of utility vegetation management professionals and emergency responders. ....                            | 5           |
| A.    Tree care and UVM professionals rely on fossil fuel-powered chainsaws for routine vegetation management around power lines.....   | 6           |
| B.    Emergency responders cannot rely on ZEE chainsaws during natural disasters. ....  | 9           |
| II.    EPA's authorization of CARB's SORE Amendments will further impair the safety of Californians who rely on generators during lengthy emergencies and natural disasters. ....   | 12          |
| III.    The waiver creates meaningful practical challenges for professional users of this equipment and will likely increase costs for their customers, reducing access to these services and exposing Californians to wildfire risks. .... | 14          |
| A.    It is not feasible to produce ZEE fit for the uses currently satisfied by SORE equipment, as it lacks similar performance capacity.....   | 15          |
| 1.    ZEE cannot reach levels of performance similar to SORE-powered equipment because it cannot be used in common weather conditions. ....   | 15          |
| 2.    ZEE cannot reach levels of run-time similar to SORE equipment without additional batteries and lengthy charging intervals.....  | 17          |
| B.    EPA's authorization of the SORE Amendments will harm professional end users because the infrastructure needed for sustained and effective charging is not in place.....   | 19          |
| C.    There is not enough ZEE in the market to satisfy the needs of specialty landscape professionals.....  | 21          |

|  |    |
|--|----|
| D. The inability of landscape professionals to serve clients harms those who need professional assistance mitigating wildfire hazards on their property..... | 22 |
| CONCLUSION.....  | 23 |
| CERTIFICATE OF SERVICE .....   | 25 |

## TABLE OF AUTHORITIES

|  | <u>Page(s)</u> |
|--|----------------|
| <b>Regulations:</b>  |                |
| Cal. Code Regs. tit. 13, § 2403(f) .....   | 5              |
| <b>Rules:</b>  |                |
| Fed. R. App. P. 29(a)(4)(E).....   | 1              |
| Fed. R. App. P. 29(b)(4) .....   | 1              |
| <b>Other Authorities:</b>  |                |
| <i>Battery-Powered Chainsaws Reviewed for Field Use</i> , U.S. FOREST SERV. (Aug. 28, 2023), <a href="https://perma.cc/EJ8G-HNZJ">https://perma.cc/EJ8G-HNZJ</a> .....   | 8, 10          |
| <i>BLM Crews</i> , NAT'L INTERAGENCY FIRE CTR., <a href="https://perma.cc/9WBP-VZ3K">https://perma.cc/9WBP-VZ3K</a> .....  | 9              |
| Briggs & Stratton, LLC, Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines (July 28, 2023), <a href="https://bit.ly/45J6Dyv">https://bit.ly/45J6Dyv</a> .....                   | 18, 19, 21     |
| Cal. Pub. Util. Comm'n & Cal. Dep't of Forestry & Fire Prot., <i>Understanding Our Shared Vegetation Responsibilities</i> (Nov. 2015), <a href="https://perma.cc/6B9R-WUEJ">https://perma.cc/6B9R-WUEJ</a> .....                   | 6              |
| Cal. Pub. Util. Comm'n, General Order No. 165: Inspection Requirements for Electric Distribution and Transmission Facilities (2017), <a href="https://perma.cc/TUY8-83K9">https://perma.cc/TUY8-83K9</a> .....                     | 7              |
| <i>Get Ready</i> , CAL. DEP'T OF FORESTRY & FIRE PROT., <a href="https://perma.cc/UJ6J-BSGE">https://perma.cc/UJ6J-BSGE</a> .....  | 22             |
| Golf Course Superintendents Ass'n of Am., Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines (June 22, 2023), <a href="https://bit.ly/3LTgM54">https://bit.ly/3LTgM54</a> ..... | 19, 21         |
| Nat'l Ass'n of Landscape Pros., Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines (July 27, 2023), <a href="https://bit.ly/4qhuUD4">https://bit.ly/4qhuUD4</a> .....           | 16, 17         |

| <b>Other Authorities—Continued:</b>   | <b><u>Page(s)</u></b>      |
|---|----------------------------|
| Outdoor Power Equip. Inst., Comment Letter on California State Nonroad Engine Pollution Control Standards (July 28, 2023), <a href="https://bit.ly/4rpGm0s">https://bit.ly/4rpGm0s</a> .....  | 10, 11, 13, 15, 16, 18, 19 |
| Portable Generator Mfrs.’ Ass’n, Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines (July 28, 2023), <a href="https://bit.ly/3ZQp1C0">https://bit.ly/3ZQp1C0</a> .....                           | 12, 13, 14                 |
| <i>Power Lines &amp; Trees</i> , S. CAL. EDISON,<br><a href="https://perma.cc/3NMX-KBYW">https://perma.cc/3NMX-KBYW</a> .....   | 8                          |
| <i>Renewable Energy Mandates Increase Chances of Major Blackouts</i> , AM. ENERGY ALL. (Mar. 18, 2024), <a href="https://perma.cc/EJ8F-AZ92">https://perma.cc/EJ8F-AZ92</a> .....   | 20                         |
| Ringley, Trish, <i>Landscaping for Wildfire Resilience</i> , UNIV. OF CAL. AGRIC. & NAT. RES., <a href="https://perma.cc/WLW5-4AFC">https://perma.cc/WLW5-4AFC</a> .....  | 22                         |
| <i>Tree Trimming</i> , L.A. DEP’T OF WATER & POWER,<br><a href="https://perma.cc/2M5N-NXPW">https://perma.cc/2M5N-NXPW</a> .....  | 6                          |
| <i>Trees and Powerlines</i> , PG&E,<br><a href="https://perma.cc/6LYR-PJRB">https://perma.cc/6LYR-PJRB</a> .....  | 8                          |
| U.S. Dep’t of Homeland Sec., Sci. & Tech., <i>Chain Saws for Firefighting and Rescue</i> (Aug. 2010), <a href="https://perma.cc/7NPJ-57S5">https://perma.cc/7NPJ-57S5</a> .....   | 9                          |
| Vahedi, Soroush, et al., <i>Wildfire and Power Grid Nexus in a Changing Climate</i> , NATURE REV. ELEC. ENG’G (2025),<br><a href="https://perma.cc/8S85-3WR9">https://perma.cc/8S85-3WR9</a> .....  | 6, 7, 11                   |
| Valachovic, Yana, et al., <i>Reducing the Vulnerability of Buildings to Wildfire: Vegetation and Landscaping Guidance</i> , UNIV. OF CAL. AGRIC. & NAT. RES. (July 2021), <a href="https://perma.cc/NJ72-V6ZK">https://perma.cc/NJ72-V6ZK</a> ..... | 22, 23                     |
| <i>Wildland Fire and Chain Saw Skills &amp; Certifications</i> , CAL. CONSERVATION CORPS, <a href="https://perma.cc/HAJ3-E8X9">https://perma.cc/HAJ3-E8X9</a> .....   | 9                          |

## **STATEMENT OF *AMICI CURIAE*<sup>1</sup>**

**The Tree Care Industry Association (TCIA)** is the only national trade association for tree care companies in the United States. Established in 1938 as the National Arborist Association, TCIA supports the tree care industry through advocacy, education, and standards development. TCIA has more than 1,400 tree care company members and nearly 400 affiliated corporate members, whose businesses provide services to residential communities, state and local governments, commercial businesses, and electric utilities. Collectively, TCIA member companies employ more than 150,000 workers nationwide. Their work safeguards communities from hazards that threaten critical infrastructure, including through wildfire prevention efforts that mitigate hazardous vegetation near utility infrastructure, maintain rights-of-way, and create defensible space to reduce ignition risk, as well as essential services in the wake of natural disasters. TCIA not only develops safety and education programs, standards of tree care practice, and management information for tree care firms, it also provides continuing education, training,

---

<sup>1</sup> All parties consented to the filing of this brief. No party's counsel authored this brief in whole or in part. No party, or party's counsel, made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made such a monetary contribution. *See FED. R. APP. P. 29(a)(4)(E), (b)(4).*

conferences, and publications to promote the safe and appropriate practice of tree care.

**The National Association of Landscape Professionals (NALP)** is the national trade organization representing the \$171 billion landscape industry employing over 1.4 million employees in the United States. Landscape companies throughout the nation specialize in lawn care, landscape maintenance, tree care, irrigation, and water management. Landscape professionals work daily performing essential services to homes and businesses to maintain their landscapes, sustain the environment, and maintain healthy and safe green spaces.

**The Golf Course Superintendent Association of America (GCSAA)** is the professional association for the men and women who manage and maintain the game's most valuable resource —the golf course. The golf industry recognizes the Association as a key contributor in elevating the game and business. Since 1926, GCSAA has been the top professional association in the United States and worldwide to focus on golf course management. GCSAA provides education, information, and representation to more than 21,000 members in over 70 countries. Its mission is to serve its members, advance their profession, and improve communities through the enjoyment, growth, and vitality of the game of golf.

**The National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center)** is a nonprofit, public interest law firm

established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

*Amici* have a strong interest in this challenge, as their members include professionals who rely on small offroad engine (SORE) equipment every day for their livelihoods, as well as the citizens of California, who rely on fossil fuel powered SORE devices in times of emergency and natural disaster. The grant of California's waiver at issue in this case creates new and unjustified challenges and risks to the lives and livelihoods of *amici*'s members by forcing a transition to electric or battery powered equipment that are inadequate for many conditions. *Amici*'s brief will provide the Court with industry and operator insight into the many reasons why EPA's waiver will be harmful to all Californians and especially to landscape care professionals.

## **SUMMARY OF THE ARGUMENT**

The California Air Resource Board (CARB) amended its small offroad engine regulations (the SORE Amendments) to impose strict emission limits, forcing the conversion of leaf blowers, chainsaws, string trimmers, riding lawn mowers, portable generators, and other implements to zero-emissions equipment (ZEE). Essentially, the Amendments force a transition to electric and battery powered equipment. While *amici* are sympathetic to the reasons animating CARB's efforts to reduce emissions, the SORE Amendments do more harm than good.

EPA's authorization of CARB's SORE Amendments imperils the citizens of California—the very people the Amendments aim to protect. First, the waiver puts the citizens of California at risk because equipment compliant with the new ZEE requirements cannot meet the needs of utility vegetation management (UVM) professionals and emergency-response personnel. The Amendments limit the availability of effective chainsaws and equipment needed to reduce wildfire risks and respond to natural disasters, and thus puts emergency responders and the communities they protect in harm's way. The Amendments *compound* this safety concern once those fires or electrical outages occur by requiring conversion from SORE-powered generators to less-effective ZEE. The need for effective generators is *already* a significant health and safety issue in California, where electric disruptions due to storms, floods, mudslides, and wildfires are increasingly common.

The waiver also creates meaningful practical challenges for professional users of impacted equipment and will likely raise costs for their customers. The lack of access created by price increases will further endanger California's communities and expose them to wildfire risks caused by overgrown vegetation and poorly managed landscaping.

## **ARGUMENT**

**I. The waiver puts the citizens of California at risk because the new ZEE required by the SORE Amendments cannot meet the needs of utility vegetation management professionals and emergency responders.**

Tree care professionals, UVM professionals, and emergency-response personnel rely on SORE equipment for intense uses that ZEE cannot satisfy.<sup>2</sup> Without the proper equipment, namely chainsaws, these professionals will be unable to effectively serve the communities who rely on them to prevent, reduce, and mitigate wildfire damage.

---

<sup>2</sup> California creates an exemption from its SORE regulations for emergency response equipment. Cal. Code Regs. tit. 13, § 2403(f). However, this exemption has limited utility—while ZEE may be “available,” it is not *sufficient* to use in emergency situations for the reasons stated in this section. Furthermore, California permits the purchase of non-conforming emergency equipment *only if* conforming equipment is “not available” *and* the purchaser goes through an “approval” process. *Id.*

**A. Tree care and UVM professionals rely on fossil fuel-powered chainsaws for routine vegetation management around power lines.**

Tree care professionals and UVM contractors like line-clearance tree crews rely on the durability and maneuverability of SORE-powered equipment—primarily chainsaws. Mandating the use of electric and battery-powered chainsaws impedes these operations.

Tree trimming is an essential element of power-line maintenance, as contact between vegetation and power lines has the capacity to cause both wildfires and power outages. Research has shown that “[w]ildfires caused by power lines tend to be larger and more devastating than other fires.” Soroush Vahedi et al., *Wildfire and Power Grid Nexus in a Changing Climate* 1, NATURE REV. ELEC. ENG’G (2025), <https://perma.cc/8S85-3WR9>. The California Public Utility Commission (CPUC) states that “[t]rees contacting high voltage power lines can . . . be a fire ignition source,” and that trees are “one of the largest causes of power outages” in the state. Cal. Pub. Util. Comm’n & Cal. Dep’t of Forestry & Fire Prot., *Understanding Our Shared Vegetation Responsibilities* (Nov. 2015), <https://perma.cc/6B9R-WUEJ>. The Los Angeles Department of Water and Power has a similar stance on the importance of tree trimming: “tree trimming is necessary to minimize tree related outages and protect the public.” *Tree Trimming*, L.A. DEP’T OF WATER & POWER, <https://perma.cc/2M5N-NXPW> (last visited Feb. 2, 2026). The costs of routine tree

trimming are baked into approved electrical rates and thus shared by the communities the utility companies serve.

The link between vegetation, utility lines, and fires is not academic. “In California, 60% of notable wildfires . . . were caused by power lines, resulting in significant damage and fatalities.” Vahedi, *supra*, at 6. Luckily, California recognizes that proper vegetation maintenance is essential to reducing the risk of wildfires, and various state agencies have issued regulations to that effect. For example, CPUC General Order 165 requires utilities to conduct recurring inspections of urban transmission and distribution facilities, with particular emphasis on “High Fire-Threat District[s].” Cal. Pub. Util. Comm’n, General Order No. 165: Inspection Requirements for Electric Distribution and Transmission Facilities (2017), <https://perma.cc/TUY8-83K9>. The Order further empowers utilities to “use their own expertise and judgment to determine” if an area requires additional attention or presents fire-risks not identified by the California Public Utilities Commission. *Id.* This places an obligation on utilities to monitor and control vegetation growing around transmission lines, work typically performed by UVM contractors.

This is no small task. Companies like Pacific Gas & Electric “inspect approximately 100,000 miles of overhead powerlines annually” and “prune or cut down more than one million trees each year that . . . may cause a wildfire or power

outage.” *Trees and Powerlines*, PG&E, <https://perma.cc/6LYR-PJRB> (last visited Feb. 2, 2026). And Southern California Edison—a major utility provider in Southern California—reports that it “inspects 1.6 million trees throughout its 50,000-square-mile area,” with “[m]ore than 740,000 of these” located in high-fire-risk areas. *Power Lines & Trees*, S. CAL. EDISON, <https://perma.cc/3NMX-KBYW> (last visited Feb. 2, 2026). These efforts require significant manpower and equipment that can endure hours of intense usage. Unfortunately, ZEE cannot meet this standard.

ZEE chainsaws are incompatible with the high-intensity usage of UVM contractors and tree care professionals. The United States Forest Service, a federal agency whose staff routinely uses chainsaws to care for the nation’s forests, conducted field testing and identified multiple disadvantages with battery-powered chainsaws, including their limited battery life and impracticality for prolonged use. *Battery-Powered Chainsaws Reviewed for Field Use*, U.S. FOREST SERV. (Aug. 28, 2023), <https://perma.cc/EJ8G-HNZJ>. The SORE Amendments force UVM contractors to use tools that will slow their operations, reducing the number of sites they can visit and trees they can trim. And if contractors increase their costs to offset slower operations, the utility companies may pass on those costs to the public through rate increases, harming the pocketbooks of California’s citizens.

**B. Emergency responders cannot rely on ZEE chainsaws during natural disasters.**

In addition to their use by utilities, chainsaws are also vital equipment for emergency-response personnel who rely on these tools to protect California's communities. Many federal agencies recognize the importance of chainsaws in effective emergency response. The Department of Homeland Security concluded that powerful and durable chainsaws "allow emergency response personnel to perform vital emergency-related tasks such as cutting ventilation holes in structures, constructing shoring systems to support unstable buildings, and clearing fire lines."

U.S. Dep't of Homeland Sec., Sci. & Tech., *Chain Saws for Firefighting and Rescue* 1 (Aug. 2010), <https://perma.cc/7NPJ-57S5>. The Bureau of Land Management identifies chainsaws as essential tools for its wildfire-response crews. *BLM Crews*, NAT'L INTERAGENCY FIRE CTR., <https://perma.cc/9WBP-VZ3K> (last visited Feb. 2, 2026). And the California Conservation Corps identified chainsaw certification as "[o]ne of the most important" for its firefighters to obtain. *Wildland Fire and Chain Saw Skills & Certifications*, CAL. CONSERVATION CORPS, <https://perma.cc/HAJ3-E8X9> (last visited Feb. 2, 2026). Clearly, chainsaws are essential equipment for the men and women who risk their lives to protect California communities during natural disasters like wildfires.

To do their jobs, disaster-response personnel need the proper equipment. Emergency responders often deploy chainsaws in inclement weather conditions.

Electric and battery-operated chainsaws cannot meet these demanding performance standards. Federal agencies have noted that electric chainsaws have temperature constraints for charging and operating—characteristics that are undesirable for equipment that personnel must use in high-heat conditions like wildfires. *Battery-Powered Chainsaws*, U.S. FOREST SERV., *supra*. In addition to wildfires, California’s emergency responders utilize chainsaws in response to other weather events like floods, storms, and mudslides. Severe storms create widespread downed-tree hazards that block roads and damage property, requiring debris-and-tree-removal operations to eliminate immediate threats to public safety and restore safe access. California emergency management authorities recognize debris-and-tree-removal operations are necessary components of disaster response and recovery. “The inability to use *outdoor* power equipment in all necessary environments and conditions presents technical and safety challenges for . . . emergency responders” who have to provide life-saving services amidst storm and flood conditions. Outdoor Power Equip. Inst., Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines 36 (July 28, 2023), <https://bit.ly/4rpGm0s> [hereinafter OPEI Comment Letter]. While SORE-power equipment can be operated in rain or shine, electrical chainsaws and other vegetation-clearing devices that rely on batteries cannot: “[t]he operator manuals for many of the professional-grade pieces of equipment [analyzed] by CARB . . . warn

against exposing the equipment to rain or wet conditions due to increased risk of electrical shock.” *Id.* The inability of emergency responders to use their chainsaws whenever temperatures are high or water is present would impair the function of rescue and recovery teams, or force responders to expose themselves to the risk of battery explosion and electrocution. SORE equipment does not put emergency responders in this position.

Finally, the reliance of electric chainsaws and other ZEE on electrical charging stations reduces their utility in emergency situations. Wildfires damage power lines and cause widespread power outages. Vahedi, *supra*, at 16. Utility providers shut down power lines during periods of intense weather. *Id.* And wildfires strain California’s electrical grid and cause regional blackouts. With these realities in mind, it is nonsensical to believe that ZEE—devices that typically require routine charging—are suitable for emergency situations when electricity is likely unavailable.

Any impediments to tree and vegetation removal caused by inadequate equipment could decrease the effectiveness of emergency-response efforts and increase the risk that wildfires and severe storms will harm California communities. EPA’s authorization of CARB’s SORE Amendments unnecessarily hinders the work of UVM contractors and emergency responders to prevent wildfires and protect Californians from the effects of inevitable natural disasters.

**II. EPA’s authorization of CARB’s SORE Amendments will further impair the safety of Californians who rely on generators during lengthy emergencies and natural disasters.**

Californians are no stranger to natural disasters like rainstorms, snow storms, floods, mudslides, and wildfires. Accordingly, they recognize the importance of SORE-powered generators in maintaining their comfort and safety during emergency situations. Research by the Portable Generator Manufacturers’ Association (PGMA) shows that “shipments of portable generators into California” has been steadily growing, “with notable spikes during” periods of “high fire activity in the state.” Portable Gen. Mfrs.’ Ass’n, Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines 5 (July 28, 2023), <https://bit.ly/3ZQp1C0> [hereinafter PGMA Comment Letter]. Imposing a zero-emissions standard on SORE-powered equipment will reduce generator effectiveness and accessibility, harming Californians.

Generators are critical for emergency response and must reliably run for extended periods of time without grid power. The value of a generator is based on its dependability during a widespread power outage. “[S]park-ignited portable generators are a unique product” and differ from other SORE equipment discussed in CARB’s Amendments because they are used “for emergency home backup power,” not “discretionary activities.” PGMA Comment Letter at 2. Therefore, “when determining whether a zero emissions replacement product will have similar

functionality as a spark-ignited generator,” the “key characteristic” analyzed is “its ability to run for extended periods of time without grid power.” *Id.* at 11. Zero-emission generators cannot pass this test.

Zero-emissions generators have inherently lower performance standards than their SORE counterparts. “ZEE portable generators do not actually generate electricity as do spark-ignition SORE portable generators”—they only “store power” created by another source. Pet. for Review at 43 n.85, ECF No. 1.1. This technological constraint indicates that low-emission, portable generators cannot be installed, applied, or operated in a manner comparable to that of SORE generators. *See generally* OPEI Comment Letter. Consider the requisite runtime for a portable generator. In California, “the average duration of [a Public Safety Power Shutoff] is 55.5 hours.” PGMA Comment Letter at 10-11. If a portable generator cannot last the duration of a shutoff or other outage caused by a natural disaster, it is useless. By contrast, SORE-powered generators can support a household for days without access to the electrical grid, as long as the user has enough fuel. Not only are zero-emission generators dependent on electricity to operate, CARB has acknowledged that residential zero-emission generators can only power “a refrigerator” for up to four days. Pet. for Review at 48. California families rely on their generators for more than fresh produce during an emergency, and zero-emission generators cannot provide the security they need.

Research by the PGMA emphasizes the performance weaknesses of zero-emission generators. First, a “spark-ignited generator can last longer on a single tank of fuel than the ZEE generator can last on an initial charge.” PGMA Comment Letter at 58. Second, while a ZEE generator can increase its power availability to better match a SORE generator, it can only do so with the addition of expensive batteries. *Id.* at 59. And third, while a SORE generator “can be easily refueled by gasoline or propane,” a zero-emission generator “requires costly accessories such as solar panels[] to serve as a recharging method” during a grid outage. *Id.* at 58. For these reasons, the zero-emission generators required by the SORE Amendments are not suitable replacements for the more reliable spark-ignited generators.

**III. The waiver creates meaningful practical challenges for professional users of this equipment and will likely increase costs for their customers, reducing access to these services and exposing Californians to wildfire risks.**

Californians rely on landscape professionals to provide wildfire-mitigation services. If the cost to use equipment like chainsaws, trimmers, leaf blowers, and lawn mowers increases—an inevitable result of the transition to ZEE, which lacks similar performance and run-time capacity—landscape professionals will have to charge their clients more. And because there is little-to-no existing infrastructure for landscape professionals to charge their ZEE, business productivity will decrease and drive up prices. An increase in the cost of landscaping services reduces access to wildfire-mitigation expertise and leaves many California families vulnerable.

**A. It is not feasible to produce ZEE fit for the uses currently satisfied by SORE equipment, as it lacks similar performance capacity.**

The SORE Amendments force landscape professionals to use equipment that is less effective than SORE-powered equipment. First, ZEE cannot operate in many weather conditions common to California. And second, ZEE cannot maintain adequate run-time without additional batteries or lengthy charging intervals, which impose additional costs and disrupt the workday.

1. *ZEE cannot reach levels of performance similar to SORE-powered equipment because it cannot be used in common weather conditions.*

Because ZEE is electric, it cannot be used in the rain or in high temperatures. ZEE also cannot be exposed to water. In many areas of California, early mornings often bring with them significant fog, dew, and marine layer, almost guaranteeing wet working conditions until the late morning. If landscape professionals cannot begin work until after the dissipation of fog and dew, they will be unable to visit as many sites. Many operator manuals also state that the batteries used by ZEE should not be exposed to “direct sunlight, fire, or high temperature, including storage inside a vehicle in hot weather due to the possibility of the battery generating heat, rupturing, or igniting.” OPEI Comment Letter at 37. Some products even warn that batteries should not be used in temperatures “above 104 °F.” *Id.* These temperature restrictions—not present in SORE-powered equipment—effectively prevent ZEE usage in certain regions of California during the summer months. For example, in

Palm Springs and Palm Desert, the average high reaches 109 °F in the summer. *Id.* And even when it is only “90 °F outside”—a temperature common throughout large swathes of the state in the summer—temperatures can exceed over 130 °F inside parked trucks and enclosed trailers, which many landscapers use to store their equipment. *Id.* These temperature restrictions present technological feasibility challenges and prevent landscape professionals from using their equipment for months at a time, including seasons when wildfire risks are high and mitigation needs are dire.

Furthermore, the modeling used by CARB to approximate battery life relied on batteries “optimized to perform” at temperatures between 58°- 68° F, while summer heatwaves in California “can bring temperatures that regularly exceed 90°.” Nat’l Ass’n of Landscape Pros., Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines 2 (July 27, 2023), <https://bit.ly/4qhuUD4> [hereinafter NALP Comment Letter]. As a result, the battery life (and replacement expenses) CARB predicted underrepresent the costs incurred by landscape professionals to replace dead batteries. *Id.* Because of temperature constraints alone, the mandated use of ZEE will restrict the number of months landscape professionals can provide services and increase the maintenance costs needed to provide those services.

2. *ZEE cannot reach levels of run-time similar to SORE equipment without additional batteries and lengthy charging intervals.*

Landscape professionals will have to purchase more batteries for their ZEE to sustain operations for a full workday or otherwise face lengthy charging intervals that impair productivity. Landscape professionals rely on their equipment to operate throughout the day, and the conversion of SORE devices to ZEE will force users to buy additional batteries. The upfront cost of acquiring ZEE is “prohibitively expensive for most businesses, especially smaller businesses” like those run by many landscape professionals. NALP Comment Letter at 12, App. B. The cost of batteries makes purchasing and operating ZEE even more difficult.<sup>3</sup> The NALP calculated that a typical three-person landscaping crew—equipped with a ride-on mower, a string trimmer, an edger, and a blower—would require over 30 batteries to complete just 20 jobs, amounting to over \$7,000 in expenses. *Id.* at 3-4. Battery cost can even make individual pieces of equipment unattainable. For example, one popular electric leaf blower retails for about \$350, similar to gas-powered units. However, the use of “th[e] electric leaf blower for an entire workday requires the purchase of additional batteries and chargers, thus driving the up-front cost to exceed \$3,000.” *Id.* at 3.

---

<sup>3</sup> The few ZEE products with comparable runtime to SORE-powered equipment are cost-prohibitive. For example, many “commercial gas-powered riding mowers range from \$8,000-\$11,000 while the few commercial riding ZEE mowers available with [the same] 4-5hr run time range from \$16,000 to \$21,000+.” NALP Comment Letter at 3.

Other estimates indicate that “[t]o roughly match the performance of the gas-powered blower, . . . a landscaper would require three to four batteries per leaf blower per day.” OPEI Comment Letter at 27. And in the case of string trimmers, electric units only operate 12-31 minutes per battery and slow their rotational speed as the battery depletes, “while gas-powered units typically run for 45-60 minutes on [one] tank of gas.” *Id.* at 29.

Not only would a user have to purchase more batteries to replicate the runtime of SORE-powered equipment, he would also have to spend significant time replacing or recharging the batteries. “The downtime necessitated by charging electrical equipment would hinder continuous operation, which would lead to fewer jobs completed, less revenue, and reduced employment.” Briggs & Stratton, LLC, Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines 2 (July 28, 2023), <https://bit.ly/45J6Dyv> [hereinafter Briggs & Stratton Comment Letter]. With little-to-no infrastructure to charge equipment at job sites, landscape professionals would have to take more time out of their workday to locate suitable charging facilities. Feedback given to CARB by the Los Angeles County Zoo supports this conclusion. The Zoo stated that its “employees had trouble with the battery life and power output of the equipment when compared to gas powered equipment,” and that several employees struggled with “remembering to charge equipment the day before rather than fill up with fuel

as-needed.” OPEI Comment Letter at 30-31. The same charging-facility restrictions apply to tree care professionals and UVM contractors—discussed earlier—who sometimes operate at remote and rural sites; without infrastructure to charge equipment batteries, these operators will be unable to reliably use chainsaws and other devices to complete essential tasks.

**B. EPA’s authorization of the SORE Amendments will harm professional end users because the infrastructure needed for sustained and effective charging is not in place.**

A critical limitation of ZEE effectiveness is the cost for professional users to access or install charging infrastructure. Golf Course Superintendents Ass’n of Am., Comment Letter on California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines (June 22, 2023), <https://bit.ly/3LTgM54> [hereinafter GCSAA Comment Letter]. There is little-to-no existing infrastructure for landscape professionals to use at various job sites throughout the day. One commenter noted that “[i]n order to recharge batteries in the field, diesel- and gasoline-powered generators will likely be used in greater numbers and with greater frequency, offsetting the reduction in emissions envisaged by the CARB proposal.” Briggs & Stratton Comment Letter at 2-3. After all, “a commercial landscaper cannot just plug into a customer’s home electrical system if they are running low on battery.” *Id.* at 3.

And infrastructure limitations increase for those attempting to operate larger ride-on equipment. Equipment like riding mowers requires the installation of 240-volt lines—the same voltage commonly used for electric vehicle charging. The cost of installation for this complex infrastructure can often run into the hundreds of thousands of dollars, with some golf courses—who must charge multiple pieces of large equipment at once—reporting millions of dollars’ worth of investment to completely retrofit maintenance facilities.<sup>4</sup> And once installed, charging facilities are susceptible to the power outages and blackouts common throughout California. In the span of four years, California experienced over 200 outages. *Renewable Energy Mandates Increase Chances of Major Blackouts*, AM. ENERGY ALL. (Mar. 18, 2024), <https://perma.cc/EJ8F-AZ92>. If this trend continues, many businesses relying on ZEE will be left without the ability to work during times of grid failure or insufficient energy supply—a stark limitation not experienced with SORE-powered equipment. Until such infrastructure becomes common, less burdensome to install, and more reliable, the transition to ZEE will hinder the operations of landscape professionals, decrease the number of jobs they can complete, and cause them to either charge customers more or face declining profits.

---

<sup>4</sup> Cost of conversion for golf courses in California is made even more difficult by the fact that they have been excluded from participating in the state’s Clean Off-Road Equipment (CORE) fund, which helps offset costs related to conversion.

**C. There is not enough ZEE in the market to satisfy the needs of specialty landscape professionals.**

Many pieces of the specialized equipment landscape professionals often need do not have ZEE equivalents. For example, golf course superintendents “commonly rely on numerous pieces of specialty equipment . . . [for which there is no] zero emission alternative[].” GCSAA Comment Letter at 2. This equipment includes aerification equipment, small spray units, hover mowers, turf vacuums, and trenching units. And many of the tools must be commercial-grade due to their frequency of use—in the summer, modern maintenance practices encourage aerification nearly every two weeks. Golf course professionals should not be forced to cease operations because the market has not created the products they need. And many forms of specialty equipment simply cannot be transitioned to ZEE. “[B]attery viability for . . . over 1,300 other applications . . . remains out of reach for a variety of reasons which were not accounted for” by CARB. Briggs & Stratton Comment Letter at 3. While certain equipment is “ready for battery power”—like walk-behind mowers—many tools and pieces of machinery cannot (or will not) be converted to ZEE in the timeframe prescribed by CARB. While this delay is not the fault of the end users, they will be the ones to shoulder the market’s failure.

**D. The inability of landscape professionals to serve clients harms those who need professional assistance mitigating wildfire hazards on their property.**

Aside from the damage the SORE Amendments will cause small businesses, the forced transition to ZEE will increase the cost of wildfire-mitigation work provided by landscape professionals, placing Californians at risk.

California institutions widely recognize landscape management as an essential tool to mitigate wildfire risk: lawn mowing is considered a vital step in wildfire preparedness by the California government, *Get Ready*, CAL. DEP'T OF FORESTRY & FIRE PROT., <https://perma.cc/UJ6J-BSGE> (last visited Feb. 2, 2026); the UC Master Gardeners of San Luis Obispo County advise that “regular landscape maintenance is essential” to wildfire resilience, Trish Ringley, *Landscaping for Wildfire Resilience*, UNIV. OF CAL. AGRIC. & NAT. RES., <https://perma.cc/WLW5-4AFC> (initial capitalization omitted) (last visited Feb. 2, 2026); and the University of California Agriculture & Natural Resources Division has concluded that “a home’s odds of surviving a wildfire can be substantially improved” with “ongoing maintenance of . . . landscaping to reduce combustible materials.” Yana Valachovic et al., *Reducing the Vulnerability of Buildings to Wildfire: Vegetation and Landscaping Guidance* 1, UNIV. OF CAL. AGRIC. & NAT. RES. (July 2021), <https://perma.cc/NJ72-V6ZK>. Accordingly, home owners—or the landscape professionals they hire—must “manage [the] accumulations of leaves and other

vegetative debris, limb and prune trees, and mow or trim grass to reduce pathways along which fire can reach the house.” *Id.* at 5. Many property owners will have difficulty implementing the state-recommend fire safety practices if landscape professionals cannot assist them with pruning, vegetation removal, and lawn mowing.

Landscape practices require the use of SORE-powered equipment like leaf blowers, chainsaws, and lawnmowers. The transition to ZEE makes this equipment more expensive and less accessible, and makes it less likely regular citizens will be able to afford the necessary services to prepare their lawns for wildfires. In these ways, the waiver undermines the efforts of Californians and landscape professionals to keep their lives and property safe from fires.

## **CONCLUSION**

For the reasons stated above, the Court should grant the Petition and vacate the SORE Amendments.

Dated: February 10, 2026

Respectfully submitted,

*s/ Corinne V. Snow*

Corinne V. Snow  
VINSON & ELKINS LLP  
2200 Pennsylvania Avenue, NW  
Suite 500 West  
Washington, DC 20037  
212.237.0157  
csnow@velaw.com

Frances Williamson  
VINSON & ELKINS LLP  
Texas Tower  
845 Texas Avenue, Suite 4700  
Houston, Texas 77002  
713.758.2223  
fwilliamson@velaw.com

*Attorneys of Record for Amici Curiae  
Tree Care Industry Association  
National Association of Landscape  
Professionals  
Golf Course Superintendents  
Association of America  
National Federation of Independent  
Business Small Business Legal Center,  
Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system. I certify that all participants in the case are registered ACMS users and that service will be accomplished by the ACMS system.

*s/ Corinne V. Snow*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>*

**9th Cir. Case Number(s)** 25-881 and 25-1481

I am the attorney or self-represented party.

**This brief contains** 4,932 words, including 0 words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - it is a joint brief submitted by separately represented parties.
  - a party or parties are filing a single brief in response to multiple briefs.
  - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated [redacted].
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature**

[redacted] s/ Corinne V. Snow

(use "s/[typed name]" to sign electronically-filed documents)

**Date**

[redacted] February 10, 2026