

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF CALIFORNIA, *et al.*,

Petitioners,

v.

ANDREW R. WHEELER, *et al.*,

Respondents.

No. 20-1167  
(consolidated with  
No. 20-1145)

**STATE AND MUNICIPAL PETITIONERS' NON-BINDING  
STATEMENT OF ISSUES TO BE RAISED**

Pursuant to the Court's Order of May 28, 2020, the undersigned petitioners in *State of California, et al. v. Andrew R. Wheeler, et al.*, Case No. 20-1167 (collectively, the "State and Municipal Petitioners"), submit the following non-binding, preliminary statement of issues to be raised in this case regarding certain final actions of Respondents United States Environmental Protection Agency and Administrator Andrew R. Wheeler (collectively, "EPA") and Respondents National Highway Traffic Safety Administration and Acting Administrator James C. Owens (collectively "NHTSA"). In this case, the State and Municipal Petitioners challenge the actions taken by EPA and NHTSA set forth in the Federal Register notice published at 85 Fed. Reg. 24,174 (Apr. 30, 2020) and titled "The

Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks” (the “Federal Standards Rollback Rule”), and the action taken by EPA set forth in the Federal Register notice published at 83 Fed. Reg. 16,077 (Apr. 13, 2018) and titled “Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles” (the “Revised Mid-Term Evaluation”).

Without waiving their right to modify these issues or raise additional issues in this matter, the State and Municipal Petitioners intend to raise the following issues with regard to EPA and NHTSA’s Federal Standards Rollback Rule and EPA’s Revised Mid-Term Evaluation:

1. Whether EPA’s adoption of the greenhouse gas emission standards for model year 2021–2026 vehicles set forth in the Federal Standards Rollback Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, or other law because, *inter alia*:

- (a) In prescribing its greenhouse gas emission standards, EPA failed to comply with the Clean Air Act, including Section 202, 42 U.S.C. § 7521, and relied upon unreasonable interpretations of the statute, breached its statutory duties, and disregarded statutory limitations;

(b) EPA failed to adequately consider and reasonably weigh relevant factors including the impacts that the emission of air pollutants caused by EPA's action will have on public health and welfare, and EPA also failed to adequately consider and reasonably weigh the evidence before it, failed to consider important aspects of the problem the rule was intended to address, and improperly considered and/or gave undue weight to non-statutory factors;

(c) EPA violated its statutory duty to exercise its independent judgment and apply its own technical expertise;

(d) The analyses and modeling underlying EPA's decision were flawed, ignored contrary evidence, and contained multiple, substantial errors that render EPA's decision unsupported, arbitrary and capricious, and otherwise unlawful;

(e) EPA failed to provide the reasoned explanation required by the Administrative Procedure Act for its decision to adopt greenhouse gas standards that are substantially weaker than the standards it adopted in 2012;

(f) EPA violated numerous procedural requirements, including, without limitation, failing to provide a reasonable opportunity for public comment on the proposed rule, failing to make critical record material available for review and public comment, relying upon data, methodologies, and legal interpretations that were not provided in the proposed rule, relying upon data and methodologies

that were not subjected to peer review, failing to consider the full record before the agency, and failing to consider and respond to comments; and

(g) EPA failed to comply with its responsibilities under the Endangered Species Act.

2. Whether NHTSA's adoption of the corporate average fuel economy standards for model years 2021–2026 contained in the Federal Standards Rollback Rule is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Energy Policy and Conservation Act, 49 U.S.C. §§ 32901 *et seq.* (as amended by the Energy Independence and Security Act), the Administrative Procedure Act, or other law because, *inter alia*:

(a) In setting the fuel economy standards, NHTSA failed to comply with the Energy Policy and Conservation Act, including, but not limited to, the requirement at 49 U.S.C. § 32902(a) that the standards “shall be the maximum feasible average fuel economy standard for each fleet for that model year,” and NHTSA relied upon unreasonable interpretations of the statute, breached its statutory duties, and disregarded statutory limitations;

(b) NHTSA failed to adequately consider and reasonably weigh relevant factors and the evidence before it, failed to consider important aspects of the problem the rule was intended to address, and improperly considered and/or gave undue weight to non-statutory factors;

(c) In the final rule, NHTSA unlawfully weakened the minimum domestic passenger car standards for Model Years 2021–2026 established by the Energy Policy and Conservation Act, 49 U.S.C. § 32902(b)(4);

(d) In conducting its analysis, NHTSA erroneously considered “the trading, transferring, or availability of credits” in violation of the Energy Policy and Conservation Act, 49 U.S.C. § 32902(h);

(e) The analyses and modeling underlying NHTSA’s decision were flawed, ignored contrary evidence, and contained multiple, substantial errors that render NHTSA’s decision unsupported, arbitrary and capricious, and otherwise unlawful;

(f) NHTSA failed to provide the reasoned explanation required by the Administrative Procedure Act for its decision to adopt fuel economy standards that are substantially weaker than the final standards it adopted in 2012 for model year 2021, and the “augural” standards it announced at that time for later model years;

(g) NHTSA violated numerous procedural requirements, including, without limitation, failing to provide a reasonable opportunity for public comment on the proposed rule, failing to make critical record material available for review and public comment, relying upon data, methodologies, and legal interpretations that were not provided in the proposed rule, relying upon data and methodologies

that were not subjected to peer review, failing to consider the full record before the agency, and failing to consider and respond to comments;

(h) NHTSA failed to comply with its responsibilities under the National Environmental Policy Act; and

(i) NHTSA failed to comply with its responsibilities under the Endangered Species Act.

3. Whether EPA's Revised Mid-Term Evaluation is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act, the Administrative Procedure Act, EPA's own regulations, or other law because, *inter alia*:

(a) The Revised Mid-Term Evaluation failed to provide adequate explanation, lacked factual support and analysis, and ignored the detailed and extensive record before EPA, including the 2016 Technical Assessment Report, supplemental technical analyses, and significant public comment;

(b) The Revised Mid-Term Evaluation violated the procedural and substantive requirements found at 40 C.F.R. § 86.1818-12(h), including the requirements that the Administrator base his decision on a record that was made available for public review and comment and provide detailed assessments of enumerated factors set forth in the regulation; and

(c) EPA failed to provide a reasoned explanation for its departure from, and withdrawal of, its January 2017 Final Determination, in which it determined that the greenhouse gas emission standards for model years 2022–2025 vehicles remained appropriate under Section 202 of the Clean Air Act.

Dated: June 29, 2020

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 29, 2020, I filed the foregoing State and Municipal Petitioners' Non-Binding Statement of Issues to be Raised in Case No. 20-1167 using the Court's CM/ECF system, and that service was thereby accomplished upon counsel of record registered with the Court's system.

*/s/ David Zaft* \_\_\_\_\_  
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