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. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and ANDREW WHEELER, Acting Administrator, U.S. Environmental Protection Agency, Respondents.	No. 18-1114, consolidated with 18-1118, 18-1139, 18-1162

RESPONDENTS' MOTION TO DISMISS
PETITIONS FOR LACK OF JURISDICTION

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

INTRODUCTION AND SUMMARY

These petitions for review are premature. Petitioners attempt to challenge the April 2018 decision of the Environmental Protection Agency to engage in a future Clean Air Act rulemaking that could, when completed, revise greenhouse gas emission standards for model year 2022-2025 light-duty vehicles. See "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles," 83 Fed. Reg. 16,077 (Apr. 13, 2018) ("the Mid-Term Evaluation" or "the Evaluation"). But that was a decision only to initiate a rulemaking. EPA is in the process of developing a notice of proposed rulemaking, but has not yet even published a proposal, much less concluded a rulemaking. If EPA takes final rulemaking action to revise emission standards, and if Petitioners believe the revised standards are not in accordance with applicable law, Petitioners will be free to pursue judicial review of that action at the appropriate time. The Mid-Term Evaluation, however, is not a reviewable final agency action, nor is it ripe for review.

For related reasons, Petitioners lack standing. EPA's decision to engage in further rulemaking does not amend the model year 2022-2025 emission standards or any other requirement. Because the existing standards remain in place pending further rulemaking, Petitioners have not incurred any injury. Nor can Petitioners satisfy the redressability prong. EPA has broad authority under section 202(a)(1) of the Clean Air Act, 42 U.S.C. § 7521(a)(1), to "from time to time revise" its vehicle

emission standards through rulemaking. Such ongoing statutory authority to revise existing emission standards through rulemaking cannot be curtailed through an advisory opinion addressing EPA's decision to start a rulemaking process.

For these reasons, the petitions should be dismissed.

I. STATUTORY AND REGULATORY BACKGROUND

A. The Clean Air Act and Emission Standards for Light-Duty Vehicles

Title II of the Clean Air Act, 42 U.S.C. §§ 7521-7590, establishes a regulatory framework for controlling air pollution from motor vehicles and other mobile sources. Section 202(a)(1) directs EPA to prescribe, and "from time to time revise" emission standards for certain vehicle air pollutants "which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." Id. § 7521(a)(1). Any section 202(a)(1) emission standard or revision thereof "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." Id. § 7521(a)(2).

B. Greenhouse Gas Vehicle Emission Standards

EPA has determined, pursuant to section 202(a)(1), that elevated atmospheric concentrations of six well-mixed greenhouse gases may reasonably be anticipated to

endanger public health and welfare, and that emissions from new motor vehicles contribute to such air pollution. 74 Fed. Reg. 66,496, 66,516, 66,536 (Dec. 15, 2009) ("Endangerment Finding").[1] Based on this Endangerment Finding, EPA has promulgated several rules establishing greenhouse gas emission standards for various categories of new motor vehicles.[2] In view of the extremely close relationship between greenhouse gas emissions and fuel economy,[3] EPA has done so through joint rulemakings with the National Highway Traffic Safety Administration (NHTSA), which has simultaneously promulgated fuel economy standards for new vehicles pursuant to that agency's separate authority under the Energy Policy and Conservation Act ("EPCA").[4]

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[1] The greenhouse gases which are together defined as the relevant air pollution for purposes of the Endangerment Finding include carbon dioxide (CO_2), methane, nitrous oxide, hydrofluorcarbons, perfluorcarbons, and sulfur hexafluoride. 74 Fed. Reg. at 66,516.

[2] See 81 Fed. Reg. 73,478 (Oct. 25, 2016) (Phase 2 standards for medium- and heavy-duty engines and vehicles); 77 Fed. Reg. 62,624 (Oct. 15, 2012) (standards for model year 2017-2025 light-duty vehicles); 76 Fed. Reg. 57,106 (Sept. 15, 2011) (Phase 1 standards for medium- and heavy-duty vehicles); 75 Fed. Reg. 25,324 (May 7, 2010) (standards for model year 2012-2016 light-duty vehicles).

[3] CO_2 standards are always and directly linked to fuel consumption because CO_2 is a necessary and inevitable byproduct of burning fuels such as gasoline or diesel. Thus, the more fuel a vehicle burns or consumes, the more CO_2 it emits.

[4] EPCA directs the Secretary of Transportation to prescribe corporate average fuel economy standards for new automobiles. 49 U.S.C. § 32902(a). The Secretary has delegated that authority to NHTSA. 49 C.F.R. § 1.95(a).

C. EPA's Mid-Term Evaluation for Model Year 2022-2025 Standards

As relevant here, in October 2012 EPA promulgated greenhouse gas emission standards for model year 2017-2025 light-duty vehicles (i.e., passenger cars and light trucks). 77 Fed. Reg. 62,624. When EPA promulgated these standards in 2012, it recognized that manufacturers would actually implement the standards for model year 2022-2025 vehicles (up to 13 years later). Bearing this long time frame in mind, EPA made a formal regulatory commitment in promulgating the 2012 standards that it would conduct, by April 1, 2018, a mid-term evaluation of the continued appropriateness of the standards for model years 2022-2025, based on EPA's further consideration of various factors, including the feasibility and practicability of the standards and costs to vehicle manufacturers and consumers. Id. at 62,652, 62,784-86. EPA committed that if, in the mid-term evaluation, it determined that the standards are not appropriate, "the Administrator shall initiate a rulemaking to revise the standards, to be either more or less stringent as appropriate." Id. at 63,161. EPA expressly recognized that if it were to make a final decision following the mid-term evaluation to *retain* the existing standards, such decision would be a final agency action subject to judicial review, as that would be the end of EPA's decisionmaking process. Id. at 62,784-85. But conversely, if EPA were to make a decision to engage in further rulemaking to adjust the standards, it would be the conclusion of that further rulemaking that would be judicially reviewable as a final agency action. Id.

On January 12, 2017, EPA made a decision—14 months before the regulatory deadline, and at the tail-end of the previous Administration—to retain the existing greenhouse gas emission standards for model year 2022-2025 light-duty vehicles.[5] Shortly after the current Administration took office, EPA announced its intention to reconsider that initial decision. 82 Fed. Reg. 14,671 (Mar. 22, 2017). EPA proceeded to solicit comment and held a public hearing on the reconsideration. 82 Fed. Reg. 39,551 (Aug. 21, 2017); 82 Fed. Reg. 39,976 (Aug. 23, 2017).

After reconsideration, the EPA Administrator on April 2, 2018 signed EPA's revised Mid-Term Evaluation, and the Evaluation was published in the Federal Register on April 13. 83 Fed. Reg. 16,077. EPA concluded that the model year 2022-2025 standards are based on outdated information, with more recent information suggesting that those standards may be too stringent. Id. Among other things, EPA found that the January 2017 determination had been "optimistic in its assumptions and projections with respect to the availability and effectiveness of technology and the feasibility and practicability of the standards," such that now "there is greater uncertainty as to whether technology will be available to meet the standards on the timetable established in the regulations." Id. at 16,079. EPA also concluded that relevant data and assessments, including those regarding gas prices and technology

[5] EPA published this decision on its website at https://www.epa.gov/regulations-emissions-vehicles-and-engines/epa-administrators-signed-cover-letter-final.

costs, should be updated and more thoroughly assessed. Id. at 16,078, 16,083-84. EPA further found that the January 2017 determination had not adequately considered whether consumers would be willing to purchase vehicles with new technologies, and that new analytical tools should be used to look anew at the impacts of the standards on new vehicle sales and fleet turnover as part of decision-making in the forthcoming rule. Id. at 16,083. EPA also expressed an intent to further assess impacts of the standards on vehicle safety as part of the forthcoming rule. Id.

Accordingly, EPA announced that it would initiate a rulemaking process, in collaboration with NHTSA, to further consider the appropriate level of the emission standards for model years 2022-2025. Id. at 16,087. EPA reiterated—consistent with the statements it had made in promulgating these standards in 2012—that its decision to engage in further rulemaking did not change the legal rights and obligations of any stakeholders and accordingly was not a final agency action subject to judicial review. Id. at 16,078, 16,087.

EPA advised that it would continue going forward to work in partnership with NHTSA. Id. at 16,078. NHTSA has not yet established any fuel economy standards for light-duty vehicles for model years 2022-2025, and NHTSA has an independent

obligation under EPCA to conduct a de novo rulemaking to do so. 77 Fed. Reg. at 62,631.[6]

II. ARGUMENT

Petitioners' challenge to EPA's Mid-Term Evaluation is not justiciable. First, the Evaluation is not a final agency action because it neither marks the consummation of EPA's decision-making process nor determines any relevant rights or obligations. An agency's decision to initiate a rulemaking—which is all the Evaluation is—is not itself a final agency action subject to judicial review. Second, and relatedly, the issues raised in these suits are not ripe for review where EPA will be engaging in a notice-and-comment rulemaking process in which it will further consider, based on a new record, the issues of apparent concern to Petitioners.

Third, and also relatedly, Petitioners lack Article III standing. The challenged Evaluation does not injure Petitioners. EPA's decision to engage in further rulemaking does not make any change to existing standards or limit EPA's discretion concerning what final action to take regarding those standards. Nor would any alleged injury flowing from the mere possibility that EPA might revise standards in

[6] NHTSA is directed by statute to set fuel economy standards for "at least 1, but not more than 5" model years at a time. 49 U.S.C. § 32902(b)(3)(B). Thus, NHTSA in its joint 2012 rulemaking with EPA set fuel economy standards for only five model years: 2017-2021, with 2022-2025 model year standards to be set in a later separate rulemaking. NHTSA in the joint 2012 rule adopted nonbinding "augural" fuel economy standards for the 2022-2025 model years.

the future be redressable. A decision in this case would not divest EPA of statutory authority to engage in notice-and-comment rulemaking to revise the model year 2022-2025 standards.

For all of these reasons, and as discussed further below, these petitions should be dismissed.

A. The Mid-Term Evaluation Does Not Constitute Final Agency Action.

Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), governs judicial review of EPA action under the Act. Section 7607(b)(1) states, in pertinent part, that "*final* action taken, by the Administrator under this [Act]" is subject to review by this Court (emphasis added). Thus, in the absence of final agency action under the Clean Air Act, this Court "lack[s] jurisdiction to hear an administrative challenge." Sierra Club v. EPA, 873 F.3d 946, 951 (D.C. Cir. 2017) (citation omitted).

The finality inquiry is governed by the familiar two-part test described in Bennett v. Spear, 520 U.S. 154 (1997): "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." Id. at 177-78 (internal quotation marks and citations omitted); see also Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 478 (2001) (holding that "the phrase 'final action' . . . bears the same meaning in [42 U.S.C. § 7607(b)(1)] that it does under the

Administrative Procedure Act"). Each of the two Bennett prongs must be satisfied. Soundboard Ass'n v. FTC, 888 F.3d 1261, 1267, (D.C. Cir. 2018).

EPA's Mid-Term Evaluation does not meet either of Bennett's criteria. The Evaluation does not meet the first criterion because it does not represent "the consummation of [the Administrator's] decision-making process." It instead reflects a decision to *initiate* a notice-and-comment rulemaking process, without resolving what the outcome of that rulemaking process will be. Thus, it is an "interlocutory" and "tentative" action. Bennett, 520 U.S. at 178.

In its forthcoming rulemaking, EPA will publish a notice of proposed rulemaking in the Federal Register and then consider new comments, data, and information related to EPA's proposed revisions prior to taking any final rulemaking action. See 42 U.S.C. § 7607(d) (specifying procedural requirements of rulemakings concerning vehicle emission standards under section 7521); see also 83 Fed. Reg. at 16,078 (noting EPA's intention to further consider new data and assessments regarding technology effectiveness and cost in the forthcoming rulemaking); id. at 16,083, 16,086 (noting EPA's intention to explore new analytical tools to look at new vehicle sales and fleet turnover, including possible impacts on safety, in the forthcoming rulemaking).

After EPA issues its proposal, it will consider any comments and any additional information and data in the administrative record prior to making its final decision.

Therefore, any rulemaking outcome consistent with applicable law remains possible. The Administrator retains discretion under section 7521(a) to decide in a final rulemaking notice, after receiving public comments on proposed revised standards and based on the administrative record before EPA at that time, that the existing standards established in 2012 should be retained, be made more stringent, or be made less stringent. In any event, even if EPA has reached some preliminary judgments within the Evaluation, that does not mean the Agency's preliminary judgments can be challenged in court at this time; judicial review still must await the *conclusion* of EPA's decision-making process.

Nor is the second Bennett criterion satisfied. The Evaluation does not "determine" any relevant rights or obligations because it does not revise the existing vehicle emission standards promulgated in 2012. Those standards remain in place. The Evaluation simply indicates that EPA will proceed with a further rulemaking proceeding, without dictating any particular rulemaking outcome. *See* 40 C.F.R. § 86.1818-12(h).

This Court's prior decisions confirm that the Evaluation does not qualify as final action. These decisions make clear that an agency commitment to "merely begin[] a [rulemaking] process" that could culminate in an ultimate revision to existing standards fails the two-prong Bennett test. Clean Air Council v. Pruitt, 862 F.3d 1, 6 (D.C. Cir. 2017) ("EPA's decision to grant reconsideration . . . fails this test"); see also

NRDC v. EPA, 706 F.3d 428, 433 (D.C. Cir. 2013) (EPA's statement of preliminary views on how to implement revised particulate matter standards were not final "[g]iven EPA's expressed intent to issue a final, binding notice-and-comment rule").

Also instructive is this Court's decision in In re Murray Energy Corp., 788 F.3d 330 (D.C. Cir. 2015), a case that involved a similar flurry of premature cases endeavoring to block EPA from issuing a final rule addressing greenhouse gas emissions. The Murray Energy petitioners, "champing at the bit" to attack an anticipated EPA final rule, jumped the gun by seeking review of the contents of the Agency's proposed rule, which arguably had some consequences. Id. at 334. The Court rejected those premature suits on finality grounds, and the same result should apply to the present suits. Indeed, these petitions are even more premature than those in Murray Energy, as EPA had not even issued a rulemaking proposal when these petitions were filed.

B. The Forthcoming Rulemaking Process Regarding Revised Model Year 2022-2025 Standards Renders The Petitions Unripe.

For largely the same reasons, this case also is not ripe for review. In assessing the ripeness of a case, this Court "focus[es] on two aspects: the 'fitness of the issues for judicial decision' and the extent to which withholding a decision will cause 'hardship to the parties.'" Am. Petroleum Inst. ("API") v. EPA, 683 F.3d 382, 387 (D.C. Cir. 2012) (quoting Abbott Labs v. Gardner, 387 U.S. 136, 149 (1967)). Here,

the issues are not fit for judicial decision and petitioners will suffer no hardship from waiting until EPA issues a final agency action properly subject to judicial review.

The fitness of an issue for judicial decision depends on whether it is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final. Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs, 417 F.3d 1272, 1281 (D.C. Cir. 2005). "The fitness requirement is primarily meant to protect the agency's interest in crystallizing its policy before that policy is subjected to judicial review and the court's interest in avoiding unnecessary adjudication and in deciding issues in a concrete setting." API, 683 F.3d at 387 (internal quotation marks and citation omitted). "Courts decline to review 'tentative' agency positions because," among other consequences, "the integrity of the administrative process is threatened by piecemeal review of the substantive underpinnings of a rule, and judicial economy is disserved because judicial review might prove unnecessary if persons seeking such review are able to convince the agency to alter a tentative position." Id. (citation omitted). The ripeness doctrine ensures that Article III courts "make decisions only when they have to, and then, only once." Id.

None of the issues presented here is fit for review. In the Evaluation, EPA has decided only to initiate a rulemaking to revise, as appropriate, model year 2022-2025 light-duty vehicle greenhouse gas emission standards. The subsequent notice-and-

comment rulemaking process will undoubtedly be a fact-intensive inquiry. And as discussed above, EPA has made no final decisions concerning revisions to the standards. Any preliminary conclusions reached by EPA in the Evaluation are subject to further consideration and may be revised.

Thus, the issues presented are not fit for review. Even assuming the Mid-Term Evaluation contained errors or deficiencies, Petitioners are free to bring such concerns to EPA's attention during the forthcoming rulemaking. Any final EPA action will need to take into consideration Petitioners' comments. *See* 42 U.S.C. § 7607(d)(6)(B) (requiring promulgated rule to be accompanied by "response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period"). Consequently, there is no reason to conclude, even if any procedural or substantive error could be identified at this point in time, that the error would remain following the conclusion of notice-and-comment rulemaking. See NRDC v. EPA, 822 F.2d 104, 111 (D.C. Cir. 1987) (a presumption of regularity extends to agency rulemakings). As this Court has made clear on numerous occasions, fitness is plainly lacking when a claimant seeks judicial review of a legal dispute that may be mooted by the outcome of a pending notice-and-comment rulemaking process. See, e.g., API, 683 F.3d at 386; Atlantic States Legal Found. Inc. v. EPA, 325 F.3d 281, 285 (D.C. Cir. 2003); Utility Air Regulatory Group v. EPA, 320 F.3d 272, 278-79 (D.C. Cir. 2003).

Nor can Petitioners demonstrate hardship arising from the postponement of judicial review. Unless and until EPA actually revises the light-duty vehicle standards after completing the upcoming rulemaking process, the existing standards established in 2012 remain in place, and the legal rights and obligations of stakeholders have not changed. Furthermore, even if Petitioners' showing of "hardship" were sufficient to meet the second element of the ripeness test, they still could not overcome the demonstrable unfitness of the case for review at this time. "Although both the fitness and hardship prongs encompass a number of considerations, a dispute is not ripe if it is not fit . . . and . . . it is not fit if it does not involve final agency action." Holistic Candlers & Consumers Ass'n v. FDA., 664 F.3d 940, 943, n.4 (D.C. Cir. 2012) (citations omitted).

C. Petitioners Lack Standing

For many of the same reasons, Petitioners also lack standing. "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." Clapper v. Amnesty Int'l USA, 568 U.S. 398 (2013). The Supreme Court in Lujan v. Defenders of Wildlife explained the "irreducible constitutional minimum" that a petitioner seeking to invoke a federal court's jurisdiction must establish. 504 U.S. 555, 560-61 (1992). A petitioner must show an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) that

their injury is fairly traceable to the challenged action of the respondent; and (3) that it is "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Id. at 560-61 (citations omitted).

Petitioners cannot satisfy their burden of establishing the elements necessary to support standing: they cannot identify any injury traceable to the challenged action of the respondent; nor can they establish that any injury would likely be redressed by a favorable decision.

To demonstrate an injury in fact for purposes of the standing inquiry, a threatened injury must be "certainly impending"; thus, "[a]llegations of possible future injury are not sufficient." Clapper, 568 U.S. at 409 (internal quotation marks and citation omitted). Likewise, "predictions of future events" are "too speculative to support a claim of standing." Turlock Irr. Dist. v. FERC, 786 F.3d 18, 25 (D.C. Cir. 2015).

Here, Petitioners cannot possibly demonstrate a "certainly impending" injury where EPA has expressed only its intent to *initiate* a rulemaking, the outcome of which is inherently uncertain. The Evaluation does not itself change the existing emission standards, dictate the outcome of further rulemaking, or otherwise change any pertinent rights or obligations. To be sure, within the Evaluation EPA has stated some conclusions that motivate its statement of intent to proceed with rulemaking, but all of those conclusions are subject to further consideration and amendment

through the rulemaking process. The ultimate outcome of the forthcoming rulemaking will not be known until it has actually been concluded. Therefore, Petitioners cannot identify any actual imminent injury, much less one that is traceable to the Evaluation.

Consistent with this conclusion, this Court has previously held that an administrative agency's mere "initiation of a rulemaking" through a notice-and-comment process does not impair the rights of interested parties so as give rise to Article III standing. Alternative Res. & Dev. Found. v. Veneman, 262 F.3d 406, 411 (D.C. Cir. 2001). In Alternative Research, the Court concluded that an association of biomedical researchers lacked standing to challenge a settlement establishing a schedule for rulemaking to consider whether to regulate the treatment of birds, mice and rats used in such research. Id. As the Court observed, parties potentially affected by such a rulemaking have the opportunity, first, to *participate* in the rulemaking—by making known any objections they may have and, if desired, attempting to persuade the agency not to finalize the proposal—and then to seek judicial review if the proposal is finalized in a manner that genuinely harms their interests. See id.

The Court then reaffirmed this reasoning in Defenders of Wildlife v. Perciasepe, 714 F.3d 1317 (D.C. Cir. 2013), in which it held that an association of energy companies lacked standing to intervene for the purpose of challenging a consent decree that set a rulemaking schedule to revise regulations governing

wastewater discharges from power plants. See id. at 1323-26. The Court again made clear that merely commencing a notice-and-comment rulemaking that *may* result in a "new, stricter rule" does not create standing, because Article III "requires more than the *possibility* of potentially adverse regulation." Id. at 1325 (emphasis added) (citation omitted); see also In re Idaho Conservation League, 811 F.3d 502 (D.C. Cir. 2016) (similarly holding proposed intervenors lacked standing to challenge joint motion for order on consent).

The logic underlying these cases fully applies here. Because Petitioners' purported injury is likewise based on predicting the substantive content of a rulemaking that has only just been initiated, it is too speculative. Until and unless EPA conducts and concludes a rulemaking, and revises the existing emission standards in a manner that injures Petitioners, there is no actual injury that can serve as the basis for standing. Petitioners are essentially asking the Court for an improper advisory opinion concerning the merits of EPA's preliminary conclusions. See Cierco v. Mnuchin, 857 F.3d 407, 414 (D.C. Cir. 2017) ("[A] federal court may not render advisory opinions or decide questions that do not affect the rights of parties properly before it.") (internal quotation marks and citation omitted).

Petitioners also cannot demonstrate that any purported injury would likely be redressed by a ruling. Regardless of any decision concerning the Evaluation, EPA

would retain its clear statutory authority to proceed with further analysis and rulemaking to revise the existing vehicle standards as appropriate. See 42 U.S.C. § 7521(a). Any final EPA decision following rulemaking would be based on a different administrative record, the contents of which are not yet determined.

In short, Petitioners cannot identify an actual imminent injury that is traceable to the actions of EPA and that is redressable. Therefore, they lack standing.

CONCLUSION

This case is not justiciable. EPA has not taken final action. The issues in dispute are not ripe. There is no live case or controversy. Prompt dismissal will conserve judicial resources as well as those of the parties.

Respectfully submitted,

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Dated: July 10, 2018

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondents' Motion to Dismiss Petitions for Lack of Jurisdiction has been filed with the Clerk of the Court this 10th day of July, 2018, using the CM/ECF System, through which true and correct copies will be served electronically on all counsel of record that are registered to use CM/ECF.

/s/ Eric G. Hostetler
Eric G. Hostetler

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains approximately 4,387 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: July 10, 2018

/s/ *Eric G. Hostetler*
Counsel for Respondent

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

As required by D.C. Cir. Rule 27(a)(4), the undersigned counsel certifies as follows:

A. Parties and amici

The parties in these consolidated cases are:

Petitioners: State of California, by and through its Governor Edmund G. Brown Jr., Attorney General Xavier Becerra and California Air Resources Board, State of Connecticut, State of Delaware, District of Columbia, State of Illinois, State of Iowa, State of Maine, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, by and through its Minnesota Pollution Control Agency and Minnesota Department of Transportation, State of New Jersey, State of New York, State of Oregon, Commonwealth of Pennsylvania, by and through its Department of Environment Protection and Attorney General Josh Shapiro, State of Rhode Island, State of Vermont, Commonwealth of Virginia, State of Washington, National Coalition for Advanced Transportation, Center for Biological Diversity, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, Union of Concerned Citizens, Consolidated Edison Company of New York, Inc., National Grid USA, New York Power Authority, City of Seattle, by and through its City Light Department;

Respondents: Environmental Protection Agency, Andrew Wheeler, as Acting Administrator of the United States Environmental Protection Agency

Movant-Intervenors for Respondents: Alliance of Automobile Manufacturers, Association of Global Automakers, Inc.

A. Rulings under Review.

The agency action under review is: "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles" that was published at 83 Fed. Reg. 16,077 (Apr. 13, 2018).

B. Related Cases.

This case has not been before this court or any other court, and there are no related cases pending in this court or in any other court of which counsel is aware.

Dated: July 10, 2018

/s/ Eric G. Hostetler
Counsel for Respondent