ORAL ARGUMENT NOT YET SCHEDULED

No. 23-1144 and consolidated cases

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

State of Iowa, et al.,
Petitioners,

v.

Environmental Protection Agency and Michael S. Regan, in his official capacity, as Administrator of the U.S. Environmental Protection Agency
Respondents.

On Petition for Review of Action by the U.S. Environmental Protection Agency

BRIEF OF PETITIONERS THE STATES OF IOWA, ALABAMA, ARKANSAS, GEORGIA, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, UTAH, WEST VIRGINIA, AND WYOMING

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Under D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and Amici.

Petitioners in Case No. 23-1144 are the State of Iowa, State of Alabama, State of Arkansas, State of Georgia, State of Indiana, State of Kansas, State of Kentucky, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Nebraska, State of North Dakota, State of Ohio, State of Oklahoma, State of South Carolina, State of Utah, State of West Virginia, and State of Wyoming.

Petitioners in consolidated appeal Case No. 23-1143 are the Western States Trucking Association, Inc. and Construction Air Quality Coalition, Inc.

Petitioners in consolidated appeal Case No. 23-1145 are the Illinois Soybean Association, Iowa Soybean Association, Minnesota Soybean Growers Association, North Dakota Soybean Growers Association, Ohio Soybean Association, South Dakota Soybean Association, Clean Fuels Development Coalition, ICM, Inc., and Diamond Alternative Energy, LLC.

Petitioners in consolidated Case No. 23-1146 are the American Fuel

& Petrochemical Manufacturers, Agricultural Retailers Association, American Petroleum Institute, American Royalty Council, California Asphalt Pavement Association, California Manufacturers & Technology Association, Consumer Energy Alliance, Domestic Energy Producers Alliance, Energy Marketers of America, Louisiana Mid-Continent Oil & Gas Association, National Association of Convenience Stores, Nevada Petroleum Marketers & Convenience Store Association, Petroleum Alliance of Oklahoma, Texas Association of Manufacturers, Texas Oil & Gas Association, and the Texas Royalty Council and Western States Petroleum Association.

Petitioners in consolidated Case No. 23-1147 are The 200 for Homeownership, The 60 Plus Association, Orange County Water District and the Mesa Water District.

Petitioner in consolidated Case No. 23-1148 is the Owner-Operator Independent Drivers Association, Inc.

Respondents are the U.S. Environmental Protection Agency and Michael S. Regan in his official capacity as Administrator of the U.S. Environmental Protection Agency.

Movant-Intervenors on behalf of respondents are East Yard

Communities for Environmental Justice, People's Collective for Environmental Justice, Natural Resources Defense Council, Center for Biological Diversity, Environmental Defense Fund, Sierra Club, State of Washington, District of Columbia, State of New Jersey, State of Maine, State of Hawaii, State of Illinois, State of Maryland, State of Colorado, State of New York, State of Connecticut, State of Vermont, State of Rhode Island, State of North Carolina, State of California, State of Minnesota, State of Delaware, State of Oregon, City of New York, Commonwealth of Pennsylvania, Commonwealth of Massachusetts, and the City of Los Angeles.

B. Rulings under review. The agency action under review is:

Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision, 88 Fed. Reg. 20688 (Apr. 6, 2023).

C. Related cases.

The U.S. Court of Appeals for the District of Columbia has consolidated five cases that challenge the same agency action that is challenged here. *Western States Trucking Ass'n, Inc. v, EPA*, No. 23-1143; *Illinois Soybean Ass'n v. EPA,* No. 23-1145*; Am. Fuel and Petrochemical*

Mfrs. v. EPA, No. 23-1146; *The 200 for Homeownership v. EPA*, No. 23-1147; *Owner-Operator Indep. Drivers Ass'n v. EPA*, No. 23-1148.

s/ *Eric H. Wessan*
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INTRODUCTION

Congress tasked the Environmental Protection Agency with setting federal standards for new motor vehicle emissions in the Clean Air Act. Every State is then preempted from developing its own emissions standards—every State, that is, but California.

The Act permits EPA to grant California a waiver to enact vehicle emission standards more stringent than those imposed by the federal government. *See* 42 U.S.C. § 7543(b)(1). The forty-nine other States must either follow the federal government's standards or California's. That is, States other than California must either submit to EPA's one-size-fits-all federal regulatory scheme for vehicle emissions or adopt California's more demanding scheme. But the sole supposed purpose of giving California this unique—and unconstitutional—authority is to address local air pollution problems in California.

In 2023, EPA granted California a Clean Air Act waiver allowing it to impose a rule that would ban the sale of many, if not most, heavy duty trucks. That "Advanced Clean Trucks" rule requires manufacturers to transition from gasoline and diesel trucks and vans to "zero-emission" trucks beginning in 2024. California admits the rule is designed to force

manufacturers to phase out most gasoline- and diesel-powered heavy-duty vehicles by 2035.

The challenged waiver is unlawful for many reasons, two of which are highlighted in this brief. First, the Clean Air Act's California waiver allowance is unconstitutional because it unlawfully gives California sovereign authority that no other State has. Second, the waiver is unlawful because it allows California to impose standards for heavy-duty vehicles without providing the Act's required lead time. *See* 42 U.S.C. § 7521(a)(3)(c). This Court should set the waiver aside.

STATEMENT OF JURISDICTION

This is a challenge to EPA's waiver allowing California to set vehicle-emission standards more stringent than those imposed by federal law. *See Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision*, 88 Fed. Reg. 20688 (Apr. 6, 2023). EPA took the challenged action on April 6, 2023. Iowa and the other petitioner States timely filed this challenge on June 5, 2023. This Court has jurisdiction under 42 U.S.C. § 7607(b)(1).

STATEMENT OF THE ISSUES

1. Whether section 209(b)(1) of the Clean Air Act violates the equal-sovereignty doctrine and is thus unconstitutional.

2. Whether EPA violated the Clean Air Act by granting California a waiver for a program that fails to meet the Act's lead-time requirements for heavy-duty vehicles and engines.

STATUTES AND REGULATIONS

The relevant statutes are included in the addendum filed with this brief.

STATEMENT OF THE CASE

I. Statutory Background.

The purpose of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b). Title II of the Clean Air Act tasks EPA with regulating federal standards for new motor vehicle emissions. 42 U.S.C. § 7410. The "cornerstone of Title II" is its preemption clause, section 209(a). *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. New York State Dep't of Env't Conservation*, 17 F.3d 521, 526 (2d Cir. 1994). That clause generally prohibits States from adopting or enforcing

"any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. § 7543(a). This prevents "an anarchic patchwork of federal and state regulatory programs" and avoids "undue economic strain" on manufacturers. *Motor Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F.2d 1095, 1109 (D.C. Cir. 1979) (citation omitted).

Section 209(b) of the Clean Air Act allows EPA to grant California—and only California—an exception from preemption. 42 U.S.C. § 7543(b). While section 209(b) does not mention California by name, it refers to "any State" that had adopted specified standards "prior to March 30, 1966." 42 U.S.C. § 7543(b). But California was the only State that met that historical criterion and "is thus the only state eligible for a waiver." *Motor Equip. Mfrs. Ass'n*, 627 F.2d at 1101 n.1. Congress may not have written "California" explicitly into the Act, but it did set California apart in its unique regulatory position.

A California senator with his own parochial interests in mind persuaded Congress that his State's "unique problems and pioneering efforts" warranted a waiver from preemption. S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967); *Motor Vehicle Mfrs. Ass'n*, 17 F.3d at 525. Those "unique problems" stemmed from "criteria pollutants" like ground-level ozone,

carbon monoxide, sulfur dioxide, nitrogen dioxide, and fine particulate matter. H.R. Rep. No. 90-728, at 22 (1967). California's "geography and prevailing wind patterns," coupled with its unusually large number of vehicles, allegedly made smog a bigger problem in California than in other States. 49 Fed. Reg. 18,887, 18890 (May 3, 1984) (citing 113 Cong. Rec. 30,948 (Nov. 2, 1967)); *see* H.R. Rep. No. 90-728, at 22.

But Congress did not allow EPA to grant California its special waiver without California first meeting certain criteria. California must first "determine[] that [its own] State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards." 42 U.S.C. § 7543(b)(1). Moreover, EPA cannot grant a waiver if it "finds that": "(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such State standards to meet compelling and extraordinary conditions, or (C) such State standards and accompanying enforcement procedures are not consistent with [Section 202(a)]." *Id.*

Section 202(a)(1) directs EPA to prescribe automotive emission standards. Section 202(a)(2) explains that any "regulation prescribed under paragraph (1) . . . 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." 42 U.S.C. § 7521(a)(2). Regulations applicable to heavy-duty vehicles or engines, however, "shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated." *Id.* § 7521(a)(3)(C).

Unfortunately, that unlawful California exception to preemption did not stay confined to California. In 1977, Congress amended the Clean Air Act to include section 177. *See* 42 U.S.C. § 7507. That section permits other States to "piggyback" onto California's standards if the State's standards "are identical to the California standards for which a waiver has been granted for such model year," and "California and such State adopt such standards at least two years before commencement of such model year." Pub. L. No. 95–95, § 129(b), 91 Stat. 685, 750.

II. Regulatory Background.

Since Congress first preempted most State vehicle standards and authorized California to ask for waivers of that preemption, California has applied for and received more than 100 waivers. Emily Wimberger & Hannah Pitt, *Come and Take It: Revoking the California Waiver*, Rhodium Grp. (Oct. 28, 2019), https://perma.cc/5L3A-AZXR. Those waivers have

often at least been arguably consistent with section 209(b)'s history and text and have addressed local air-quality conditions by regulating criteria pollutants. *See*, *e.g.*, *Quality Control Standards for Automated Valuation Models*, 38 Fed. Reg. 10,235, 10,318–19 (Apr. 26, 1973) (standards for carbon monoxide and nitrogen oxides).

But recently California has tried to transform its waiver privilege from a tool for solving local air pollution problems to a means for regulating against global climate change and promoting California's "green" technology industry. That includes requiring all new light-duty vehicle sales, and most medium- and heavy-duty trucks, to be zero-emitting by 2035. *See Advanced Clean Cars II*, California Air Resources Bd., https://perma.cc/7VQC-3VU9 (last visited Oct. 23, 2023; *Path to Zero Emission Trucks FAQ*, California Air Resources Bd., https://perma.cc/5ZUQ-XEQQ (last visited Oct. 23, 2023).

A. California Air Resources Board Regulations.

On December 20, 2021, the California Air Resources Board ("CARB") notified EPA that it had finalized three rulemaking actions: the Advanced Clean Trucks ("ACT"), Zero Emission Airport Shuttle Bus, and Zero Emission Powertrain Certification regulations. *See* 87 Fed. Reg. 35,768,

35,769 (June 13, 2022). ACT is at issue.

ACT, adopted by CARB on January 26, 2021, regulates medium- and heavy-duty vehicles and engines. ACT requires medium- and heavy-duty vehicles manufacturers to phase out diesel and gasoline trucks sold in California and instead to sell electric models. *See* Cal. Code Regs. tit. 13, §§ 1963, 1963.1–.5. That requires the manufacturers to sell as an increasing percentage of their total sale zero-emissions vehicles or near-zero-emissions vehicles, like plug-in electric hybrids, from model year 2024 to 2035. *Id*.

CARB requested a new waiver for each regulation from EPA. *See* 87 Fed. Reg. 35,768, 35,769. In its waiver analysis, CARB alleged that each regulation met the section 209(b)(1)'s requirements. *Id*. First, it explained that its regulations will not cause California motor vehicle emission standards to be less protective of public health and welfare than applicable federal standards. Next, CARB contends that no basis exists for EPA to find that CARB's determination is arbitrary and capricious under section 209(b)(1)(A). *Id*. CARB also explained that it believed its regulation follows section 209(b)(1)(C), which requires California's regulations to be consistent with the Clean Air Act. *Id*.

After receiving CARB's request, EPA issued a notice of opportunity

for hearing and comment for the California regulations at issue. *Id.*

B. Challenged Waiver.

Shortly after, EPA granted CARB its requested waivers. *See* 88 Fed. Reg. 20,688 (Apr. 6, 2023). In its decision, EPA explained that each regulation met the criteria for a new waiver, and that opponents of the waivers did not meet their supposed "burden of proof" for EPA to deny the waiver requests under any of the three waiver prongs outlined in section 209(b)(1). *Id*. at 20,609.

EPA also addressed comments it received during the public comment period. Several comments raised equal sovereignty concerns, contending that the waivers violate the constitution. EPA dismissed those concerns, claiming that "the review of CARB waiver requests is limited to the criteria set forth in section 209 and that [it] need not engage in an Equal Sovereignty constitutional law analysis." *Id*. at 20,701.

EPA also responded to comments that CARB's ACT regulation did not provide the statutorily required lead time. EPA concluded that because California may adopt standards that are "in the aggregate" at least as protective as federal standards, it need not comply with Congress's

requirements to give four years of lead time and three years of regulatory stability. *Id*. at 20,704.

STANDARD OF REVIEW

The Court shall set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A)–(B).

SUMMARY OF THE ARGUMENT

The waiver is "not in accordance with law" and "contrary to constitutional right [or] power." *Id*. The Court must set it aside.

I. EPA issued California's waiver under a statute—the Clean Air Act's section 209(b)—that is unconstitutional under the equal-sovereignty doctrine. Thus, the waiver is "not in accordance with law" and "contrary to constitutional right" and "power." 5 U.S.C. § 706(2)(A)–(B).

The equal-sovereignty doctrine is "implicit in [the Constitution's] structure and supported by historical practice." *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019). When the States declared their independence, each "claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority 'to do all . . . Acts and Things

which Independent States may of right do.'" *Murphy v. NCAA*, 138 S. Ct. 1461, 1475 (2018) (quoting Declaration of Independence ¶ 32). One indispensable feature of this sovereignty was that it was *equal* sovereignty between States. Anthony J. Bellia, Jr. & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 935–40 (2020); *see also Schooner Exchange v. McFaddon*, 7 Cranch 116, 137 (1812). No one could have conceived of "a 'State' with fewer sovereign rights than another 'State.'" Bellia & Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. at 937–38.

The Constitution limits the States' sovereignty in some respects, but they all retain sovereignty not surrendered in the Constitution itself. *Murphy*, 138 S. Ct. at 1475. Accordingly, when Congress acts pursuant to its enumerated powers, it is bound to observe the States' equal sovereignty. Thus, laws passed under Congress's Article I powers violate the Constitution if they withdraw sovereign authority from some States but not others. *Cf. Stearns v. Minnesota*, 179 U.S. 223, 244–45 (1900).

It follows that section 209(b) violates the Constitution. Section 209(b) empowers EPA to let California create new-vehicle-emission standards. But that provision forbids EPA from letting any other State do the same.

The power to make law is a "sovereign power." *McCulloch v. Maryland*, 4 Wheat. 316, 409 (1819). Because section 209(b) allows California to retain a piece of sovereign authority that federal law strips from every other State, it runs afoul of the Constitution.

The violation is especially stark here because this waiver permits California alone to regulate an issue—climate change—that is global in scale. Even if the equal-sovereignty doctrine permits Congress to give California alone the power to regulate matters of unique importance to California, Congress cannot empower California alone to regulate a global problem like climate change.

II. EPA's waiver of CARB's ACT regulation is illegal under the Clean Air Act because it does not meet the statute's lead time requirements. Section 209(b)(1) allows EPA to grant California a waiver if the State determines that the standards it has adopted are, "in the aggregate," at least as protective of public health and welfare as applicable Federal standards. EPA may not grant California a waiver, however, if it finds that "such State standards and accompanying enforcement procedures are not consistent with [section 202(a)] of this title." 42 U.S.C. § 7543(b)(1).

Section 202(a) addresses the authority of EPA's Administrator to

prescribe auto emissions standards by regulation. *See id*. § 7521(a). Under section 202(a)(2) "[a]ny regulation prescribed under paragraph (1) . . . 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). But section 202(a)(3)(C) makes an exception for classes or categories of heavy-duty vehicles. Regulations applicable to these vehicles must "apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated." *Id*. § 7521(a)(3)(C).

CARB's ACT regulation is "not consistent" with the lead time or stability requirements of section 202(a). CARB finalized ACT regulation on January 26, 2021, and it takes effect in model year 2024. This regulation gives only two full model years of lead time, not the requisite four, and does not provide three years of regulatory stability. So the regulation is "not consistent" with the express lead time requirement of section 202(a)(3)(C) and is thus not entitled to a waiver. The clear and unambiguous terms of the operative Clean Air Act provisions dictate that result.

STANDING

The States have Article III standing to sue. "To establish Article III standing, Petitioners must satisfy a familiar three-part test: (1) an injury in fact; (2) fairly traceable to the challenged agency action; (3) that will likely be redressed by a favorable decision." *Belmont Mun. Light Dep't v. FERC*, 38 F.4th 173, 185 (D.C. Cir. 2022) (internal quotation marks omitted). The injury in fact must be "both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Hemp Indus. Ass'n v. DEA*, 36 F.4th 278, 290 (D.C. Cir. 2022) (internal quotations omitted). Monetary injuries—for example, compelled expenditures or predictable losses of funds—qualify. *See, e.g.*, *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2565–66 (2019); *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990). So do impairments of constitutional privileges. *See, e.g.*, *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 55 (D.C. Cir. 2019).

Injury in fact. The States have suffered both monetary and constitutional injuries in fact.

Beginning with monetary damages, the Advanced Clean Truck regulation will increase the cost of trucks, hurting businesses and consumers nationwide. That is because manufactures must increase the

cost of trucks nationwide to offset the cost of meeting California's requirements. This is especially harmful for States, like Iowa, whose trucking industry provides over 100,000 jobs. Truckers, businesses, and consumers alike will suffer as prices for a new truck will increase to the high six figures. The States are submitting evidence related to the purchase of those vehicles, and that the shift to electric vehicles will cause the States to generate less fuel-tax revenue, shrinking the funding available for road maintenance and reducing the quality of State services. *See* Add.10–19.

The States have also sustained a constitutional injury. The waiver was issued pursuant to a statute—section 209(b)(1) of the Clean Air Act—that contravenes the States' constitutional right to equal sovereignty. The loss of a "constitutionally protected … interest … qualif[ies] as a concrete, particularized, and actual injury in fact." *Data Breach*, 928 F.3d at 55.

Traceability and redressability. The States' injuries are traceable to the waiver. The States' injuries are redressable because a judgment setting aside the waiver would eliminate the source of their injuries. To the extent there is any doubt on this score, the Court should resolve it in the States' favor. States "have greater leeway in showing standing given the 'special solicitude' they receive for matters involving their 'quasi-sovereign

interests.'" *Alaska v. USDA*, 17 F.4th 1224, 1230 (D.C. Cir. 2021) (quoting *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007)). More precisely, courts will relax the traceability and redressability requirements if: (1) the State asserts a quasi-sovereign interest; and (2) "Congress afforded 'a concomitant procedural right to challenge'" the action. *Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 182 (D.C. Cir. 2019) (quoting *Massachusetts*, 549 U.S. at 520). Here, the States assert a sovereign interest in defending their equal sovereignty and a statutory right to challenge agency rulemaking as violative of federal law and are entitled to special consideration.

ARGUMENT

I. Section 209(b)(1) of the Clean Air Act is unconstitutional.

EPA relied on section 209(b) of the Clean Air Act when it issued its preemption waiver to California. Because that statute is unconstitutional, EPA's waiver is contrary to law and to constitutional right and power. 5 U.S.C. § 706(2)(A)–(B). It must be vacated.

A. The Constitutional equal-sovereignty doctrine forbids singling out States for special treatment.

The United States of America "was and is a union of States, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself." *Coyle v. Smith*, 221 U.S. 559, 567 (1911). That "'constitutional equality' among the States," comes from the Constitution's text and structure. *Franchise Tax Bd. v. Hyatt*, 578 U.S. 171, 179 (2016). The Supreme Court has long treated the States' sovereign equality as a "truism." *Virginia v. West Virginia*, 246 U.S. 565, 593 (1918).

The States' equal sovereignty, while "not spelled out in the Constitution," is "nevertheless implicit in its structure and supported by historical practice." *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019).

While the separation of powers is often described as checks-and-balances between the three branches of federal government, that concept also plays a role in federalism—the respect between the federal government and States and between the States themselves. The equal-sovereignty doctrine thus accords with the "separation of powers," which the Framers viewed "as the absolutely central guarantee of a just Government." *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting).

Indeed, separation of powers depends as much on "preventing the diffusion" of power as it does on stopping the centralization of power. *Freytag v. Comm'r*, 501 U.S. 868, 878 (1991). After all, to avoid "a gradual concentration" of governmental authority in one level or branch of government, The Federalist No. 51, p.349 (James Madison) (Jacob Cooke ed., 1961), each level and branch of government must retain the power the Constitution assigns to it. *See Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2202–03 (2020).

The equal-sovereignty doctrine preserves constitutional balance. It allows Congress to enact preemptive laws, which necessarily limit State sovereignty, but prevents Congress from selectively limiting State

sovereignty or, even worse, targeting or discriminating against specific States. "[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." *New York v. United States*, 505 U.S. 144, 166 (1992); *see also Murphy*, 138 S. Ct. at 1476.

If the federal government exercises such authority anyway, it aggrandizes its own power and the power of the favored States while weakening the power of the disfavored States. Allowing Congress to redistribute the power that the Constitution affords equally to each State contradicts any sensible understanding of the separation of powers.

The Supreme Court most recently confirmed that the equal-sovereignty doctrine limits Congress's power to unequally burden the States' sovereign authority in *Shelby County, Ala. v. Holder*, 570 U.S. 529, 544–45 (2013). *Shelby County* challenged the Voting Rights Act's imposition on only some States needing federal permission before amending their election laws. *Id.* So Section 4 of the Voting Rights Act, which contained the formula used to decide which States needed federal preclearance before changing their election laws, was unconstitutional.

Moreover, *Shelby County* held that section of the Voting Rights Act

exceeded Congress's authority under the Fifteenth Amendment, which empowers Congress to pass "appropriate legislation" enforcing the Amendment's prohibition on denying or abridging the right to vote based on race. U.S. Const., amend. 15, § 2; *see Shelby Cnty.*, 570 U.S. at 536. In deciding whether such legislation was "appropriate," courts must consult the background principle of equal sovereignty. *Shelby Cnty.*, 570 U.S. at 536. When legislation departs from that principle—as Section 4 did, by unequally limiting the States' power to adopt and enforce election laws—it will be upheld as "appropriate legislation" only if the disparate treatment is justified. *Shelby Cnty.*, 570 U.S. at 544–45, 552; *accord Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009). Because the federal government failed to justify Section 4's differential treatment of States, Congress had no authority to enact that provision. *Shelby Cnty.*, 570 U.S. at 551–55.

Shelby County shows the equal-sovereignty doctrine's strength and importance within our constitutional structure. Even with the Fifteenth Amendment's explicit grant of authority to Congress, without a solid rationale undergirding discriminating against certain States, Section 4 could not survive. *See South Carolina v. Katzenbach*, 383 U.S. 301, 329

(1966); *Shelby Cnty.*, 570 U.S. at 551–55. Still, considering the background presumption of equal sovereignty, Fifteenth Amendment legislation departing from the equal-sovereignty baseline is "appropriate" only if the need for such differential treatment is solidly grounded in evidence. *Shelby Cnty.*, 570 U.S. at 554. If the equal-sovereignty doctrine retains some strength even in contexts where the States have surrendered their complete sovereign equality, it must retain its strength in contexts where the States have not surrendered their entitlement to sovereign equality.

The equal-sovereignty doctrine is not unlimited. The Constitution guarantees "equal sovereignty, not . . . equal treatment in all respects." Thomas Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L. J. 1087, 1149 (2016) (emphasis omitted). To demand that every law benefit every State equally "would make legislation impossible and would be as wise as to try to shut off the gentle rain from heaven because every man does not get the same quantity of water." *State ex rel. Webber v. Felton*, 84 N.E. 85, 88 (Ohio 1908).

The equal-sovereignty doctrine demands "parity" only "as respects political standing and sovereignty." *United States v. State of Texas*, 339

U.S. 707, 716 (1950), *superseded by statute on other grounds recognized by Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1887 (2019). Congress may not unequally limit or expand the States' "political and sovereign power," *id*. at 719 and must instead adhere to the principle that no State is "less or greater . . . in dignity or power" than another, *Coyle*, 221 U.S. at 566.

Federal discrimination between States' sovereignty thus violates the equal-sovereignty doctrine. But disparate treatment unrelated to sovereign authority does not. "Congress may devise . . . national policy with due regard for the varying and fluctuating interests of different regions." *Sec'y of Agric. v. Cent. Roig Ref. Co.*, 338 U.S. 604, 616 (1950). In other words, Congress may pass legislation treating States differently, as long as it does not give some States favorable treatment regarding the exercise of their sovereign authority. Only disparate treatment of sovereign authority implicates the equal-sovereignty principle.

Federal laws giving States authority over matters of unique concern to those States may pass constitutional muster. But this Court need not resolve that issue here: even if Congress can empower States to exercise authority to regulate State-specific concerns, EPA's waiver

applies section 209(b) to a situation in which California has no unique interest—and cannot claim unique interest.

B. The Clean Air Act violates the equal-sovereignty doctrine by allowing California to exercise sovereign authority withdrawn from every other state.

Section 209(a), by preempting State laws setting vehicle emission standards, limits the States' sovereign authority. After all, the "power of giving the law on any subject whatever, is a sovereign power." *McCulloch v. Maryland*, 17 U.S. 316, 409 (1819). Since the States would have the power to regulate new-car emissions but for section 209(a), that section limits sovereignty.

But section 209(a) not only limits State sovereignty, it does so unequally. Section 209(b)(1) allows California, and only California, to obtain a federal waiver that permits it to set vehicle emission standards. While other States may adopt California's standards, California alone may set those standards. Thus, California alone retains some of its "sovereign power" to "giv[e] the law" in this area. *McCulloch*, 17 U.S. at 409.

Section 209(b) violates the equal-sovereignty doctrine by allowing California to exercise sovereign authority that section 209(a) takes from

every other State. The law creates an "extension of the sovereignty of [California] into a domain of political and sovereign power of the United States from which the other States have been excluded." *Texas*, 339 U.S. at 719–20. That unequal treatment is unconstitutional.

Congress passed section 209 under its Commerce Clause authority. And in ratifying the Commerce Clause, States did not "compromise[] their right to equal sovereignty," Bellia & Clark, *International Law Origins*, 120 Colum. L. Rev. at 938; *see Shelby Cnty.*, 570 U.S. at 551–55. Thus, the Commerce Clause provides no basis for disrupting the States' retained right to equal sovereignty.

At the very least, section 209(b) is unconstitutional as applied to EPA's ACT waiver. While the equal-sovereignty doctrine may permit laws allowing only some States to regulate issues that only those States face, *see* Bellia & Clark, *supra*, at 26–27, section 209(b) is not that sort of law. Every State contends with the potential downstream effects, including environmental effects, of trucks and other heavy-duty vehicles.

Even accepting a narrow version of the equal-sovereignty doctrine, section 209(b) is unconstitutional. Rather than allow all States with their own unique environmental concerns to seek a waiver, it gives special

treatment to only California. The Act thus forever excludes all other States, no matter if those States face their own localized environmental concerns.

So even if EPA tries to justify section 209(b) as addressing a California-specific air-quality concern, that justification does not suffice here. The challenged waiver purports to allow California to regulate greenhouse gases as part of the State's effort to curb climate change. But the causes and effects of any relevantly alleged climate change are "global," not State-specific, in nature. *City of New York v. Chevron Corp.*, 993 F.3d 81, 88 (2d Cir. 2021). And even if section 209(b) may constitutionally authorize some waiver to allow California to address California-specific issues, it is unconstitutional in its application here because climate change is not just a problem in California.

According to EPA, carbon dioxide and other greenhouse gases produced by human activity "changed the earth's climate." *Causes of Climate Change*, U.S. Environmental Protection Agency, https://perma.cc/WR4F-TFDP. EPA also contends that greenhouse gases "remain in the atmosphere long enough to become well mixed, meaning that the amount that is measured in the atmosphere is roughly the same

all over the world, regardless of the source of the emissions." *Overview of Greenhouse Gases*, U.S. Environmental Protection Agency, https://perma.cc/5777-TJRN. So nothing California-specific there.

That makes climate change "a global problem," *New York*, 993 F.3d at 88, "harmful to humanity at large." *Massachusetts*, 549 U.S. at 541 (Roberts, C.J., dissenting) (quoting *Massachusetts v. EPA*, 415 F.3d 50, 60 (D.C. Cir. 2005) (Sentelle, J., dissenting in part and concurring in the judgment)). The "task of dealing with" all this requires action "at the national and international level." *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 415 (D.C. Cir. 2013) (Kavanaugh, J., concurring). So any risks associated with climate change are not of unique or of special concern to California. Any effect greenhouse-gas emissions have on global temperatures will be felt everywhere—not just in California.

Indeed, EPA has never disturbed its finding that California's standards "will not meaningfully address global air pollution problems of the sort associated with [greenhouse-gas] emissions." 84 Fed. Reg. at 51,349. Nor did it make any new finding in this waiver decision.

There is no evidence even that California will suffer effects from climate change that are worse than those experienced by other States.

EPA's own projections contend that temperature changes are projected to be greater in the Northeast. *See Climate Change and Social Vulnerability in the United States* 12, EPA (Sept. 2021), https://perma.cc/5VAE-9VLG. So EPA believes that sea-level rise is projected to affect New York, Houston, and Philadelphia more than coastal California cities. *Id*. at 14. So too with the effects of automotive pollution. EPA contends that changes in particulate matter will more likely affect the Southeast. *Id*. at 22.

The bottom line: "Climate change affects all Americans." *Id*. at 4. California is not uniquely challenged and its interest in slowing global climate change cannot justify a departure from the constitutional principle of equal State sovereignty.

* * *

In sum, the equal sovereignty of the States forbids Congress from giving California alone the power to regulate a global risk faced by every State in the country and by every nation on Earth. Accordingly, section 209(b) violates the Constitution, and so does the waiver that EPA issued for the challenged rule. Because that waiver rests on an unconstitutional statute, it is "not in accordance with law" and is "contrary to

constitutional right" and "power." 5 U.S.C. §§ 706(2)(A)–(B). The Administrative Procedure Act requires this Court to set aside the waiver.

II. EPA's ACT waiver contradicts section 202(a)(3)(C)'s lead time requirement for heavy-duty vehicles and engines.

This Court should vacate the waiver under the Administrative Procedure Act even if it rejects the States' equal-sovereignty argument. The ACT waiver is separately "not in accordance with law," 5 U.S.C. § 706(2)(A), because it fails to provide the requisite lead time and stability period under section 202(a)(3)(C). 42 U.S.C. § 7521(a)(3)(C).

The ACT waiver violates the Act's sections 209(b)(1) and 202(a). *See* 42 U.S.C. §§ 7543(b)(1), 7521(a). Under section 209(b)(1), EPA cannot grant a waiver of federal preemption to California for emission-control standards if its "standards and accompanying enforcement procedures are not consistent with section [202(a)] of this title." 42 U.S.C. § 7543(b). It is that criterion—requiring CARB's standards to be "consistent with" section 202(a)—that EPA failed to establish in granting its waiver.

Section 202(a)(1) grants EPA the authority to establish emission standards for new motor vehicles and engines. Section 202(a)(2) then specifies that those standards, "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." 42 U.S.C. § 7521(a)(2). Standards regulating heavy duty vehicles or engines, however, must also comply with the section 202(a)(3).

Under section 202(a)(3)(C), emissions standards for heavy-duty vehicles must provide the Congressionally mandated lead time and stability periods:

> **(C) Lead time and stability.—**
> Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

42 U.S.C. § 7521(a)(3)(C).

ACT fails to provide the mandated four years of lead time and three years of stability. CARB adopted ACT on January 26, 2021, with its terms to take effect at the start of the 2024 model year. That provides only two full model years of lead time. Because two is less than four, ACT is "not consistent" with section 202(a) and is ineligible for CARB's sought section 209(b)(1)(C) waiver.

EPA's failure to account for lead time precluding a CARB waiver

ignores this Court's precedent. In *American Motors Corporation v. Blum*, the American Motors Corporation challenged a California waiver for passenger car emission standards and nitrogen oxides. 603 F.2d 978 (D.C. Cir. 1979). The petitioner argued that California's standards conflicted with section 202(a) Act because they denied the petitioner the two-year lead time Congress mandated. *Id.* at 981. EPA pushed back, contending that section 209(b)(1)(C) required California's standards to be consistent with only section 202(a), not 202(b) as well. *Id.*

This Court disagreed with EPA's position in *Blum* and vacated the waiver. *Blum* explained that the EPA Administrator is "bound by section 202(a)(2) to allow such lead time as he finds necessary" for regulations established under section 202(a)(1). *Id.* But "the Administrator is not directed to allow such lead time as he finds necessary" where Congress "itself finds and mandates that . . . a lead period of two years is necessary." *Id.*

Blum held that not requiring CARB to follow the Act's lead time requirements could allow any State adopting California's standards to deny manufacturers the Congressionally mandated lead time. *Id.* EPA could not authorize what it itself could not do under the Act. The Court

thus concluded that a waiver cannot obviate lead time, and because the California regulation did not provide the lead time of two years, it was inconsistent with section 202(a)(2). *Id.*

Applying *Blum*, it follows that CARB is bound by section 202(a)(3)(C)'s lead time and stability requirements. Indeed, CARB's statutory compliance requirement is more straightforward here than in *Blum*. There, the lead time requirement at issue was not stated expressly in section 202(a) but read in through section 202(b)(1)(B). Yet this Court found that section 202(a)(2) implicitly incorporated that lead time requirement and applied it.

Here, section 202(a) codifies the lead time requirement applicable to heavy-duty vehicles. *Blum*—correctly—extended section 202(a)(2) to apply by implication then, and this Court should apply section 202(a) where the text explicitly incorporates it now.

EPA tries and fails to contend that *Blum* does not control. 88 Fed. Reg. 20,720. First, EPA contends that because *Blum* did not resolve section 202(a)(3)(C) in a California waiver proceeding, it is not on point. *Id.* But *Blum*'s reasoning is clear: failing to apply a statutorily mandated lead time requirement is not allowed.

EPA next fails to distinguish *Blum* by parsing section 202(a)(3)(C)'s text and legislative history. 88 Fed. Reg. 20,721. EPA argues that section 202(a)(3)(C) does not govern when California has made a showing of technology feasibility for the standards under review. *Id.* But there is no textual distinction between the general lead time requirement in section 202(a)(2) and the specific minimum lead time requirement for heavy-duty standards in section 202(a)(3)(C). Both apply. And both are constraints on EPA's authority to adopt standards for new motor vehicles and engines. Moreover, both are found in section 202(a)—the section explaining what CARB's regulations must follow receive a waiver.

EPA also suggests that section 202(a)(2) applies to both EPA and CARB regulations, while only applying section 202(a)(3)(C) to EPA's own heavy-duty regulations. That tortures section 202(a)'s text, which applies to CARB regulations in full. CARB's emission standards apply to heavy-duty engines and vehicles, and those standards must be "consistent with" all the requirements of section 202(a) to qualify for a waiver. *Blum* confirms that straightforward reading of the text. 603 F.2d at 981.

EPA's reliance on legislative history is also misplaced. When a statute is unambiguous, its plain language controls. Straightforward

statutes avoid needing to explore matters beyond their clear terms, including legislative history. *See United States v. Barnes*, 295 F.3d 1354, 1359 (D.C. Cir. 2002). The Act here states CARB's heavy-duty regulations must be "consistent with" section 202(a). Nothing in the legislative history can nullify that prescription.

EPA's assertion that legislative history shows section 202(a)(3)(C) does not apply to CARB regulations is unpersuasive. It contends that legislative history makes clear that Congress intended for California to have broad regulatory authority over vehicle emissions to enable California to address its unique and compelling air quality problems. 88 Fed. Reg. 20,721. But however important addressing air quality concerns might be, nothing in the legislative history suggests that Congress intended to override the stipulated lead time requirements at issue. Indeed, it is the opposite.

Congress has amended sections 202(a) and 209 several times and has maintained section 209(b)(1)(C)'s consistency requirement without exempting CARB from section 202(a)(3)(C) or stating any intention to do so. For example, in the Act's 1970 amendments, Congress removed the general lead time requirement from section 202(a) and inserted it into a

new subsection. *See* Clean Air Act Amendments of 1970, Pub. L. No. 91-604, § 6(a), 84 Stat. 1676, 1690 (1970). While section 202(a) expanded into additional subsections, Congress did not amend the requirement in section 209(b) that CARB's regulations must be consistent with 202(a) to receive a preemption waiver.

So too in 1977, when Congress again amended section 209 and added subsections to section 202(a) codifying the four-year lead time and three-year stability mandates specific to heavy-duty vehicles and engines. *See* Clean Air Act Amendments of 1977, Pub. L. No. 95-95, §§ 207, 224(a), 91 Stat. 685, 755, 766–67 (1977). Yet Congress maintained CARB's waiver criteria that CARB's regulations must be "consistent with" section 202(a). That includes the subsections mandating minimum lead time and stability periods for heavy-duty vehicle and engine standards. *Id*. § 207.

In 1990, Congress recodified the four-year lead time requirement and the three-year stability requirement into a new subsection (what became section 202(a)(3)(C)). Congress kept that new subsection within section 202(a) and maintained the preemption-waiver requirement that CARB's regulations must be fully "consistent with" section 202(a). *See*

Clean Air Act Amendments of 1990, Pub. L. No. 101-549, § 201(1), 104 Stat. 2399, 2472 (1990). Then, Congressional testimony highlighted the need for extended lead time in the heavy-duty engine and vehicle industry, noting that the industry was not vertically integrated, had lower sales volumes than the light-duty industry, and so needed longer time periods to recoup capital investments. *See* Hearing on S.1630 Before Subcomm. On Env't Protection, 101st Cong. 312-13 (1989).

As such, even if this Court declines to follow the statute's plain text and resorts to legislative history, EPA's interpretation fails. The relevant legislative history demonstrates that Congress intended to maintain the requirement that California's emission regulations must be consistent with section 202(a), including subsection 202(a)(3)(C).

Without text or legislative history, EPA next argues CARB's waiver is "consistent with" section 209(b)(1)(C) because "consistent with" does not mean "compliant with" and therefore two years of lead time is "consistent" with four. 88 Fed. Reg. 20,717. That approach doubly fails. First, *Blum* interpreted "consistent with" to mean "compliant with." 603 F.2d at 981. It concluded that a California regulation that failed to provide the statutorily required lead time of two years was "inconsistent"

with section 202(a)(2). *Id*.

Second, EPA's interpretation of two years lead time being "consistent with" a four-year requirement fails. For example, imagine that California, the largest state by population, decided it needed three United States Senators to better serve its population's unique and localized needs. But Article I of the Constitution requires the United States Senate to be "composed of two Senators from each State." U.S. Const. art. I, § 3, cl. 1. California could argue that its three senators is consistent with the constitution, but that argument would fail. So too here. Two years of lead time is too short given the statute's four-year mandate, even if EPA believes that such an approach is "consistent" with the four-year requirement. And that shortened timeframe makes a meaningful difference in an industry with typical developmental timelines of at least three years. *See*, *e.g.*, *How Long Does It Take to Build a Car These Days?*, JVISUSA (Oct. 17, 2022), https://perma.cc/QH2N-WFN2.

EPA also argues that CARB does not have to apply the four-year lead time because California's compliance is to be evaluated "in the aggregate," rather than having each component of its approach checked

for complying with the Act. 88 Fed. Reg. 20,721. But Congress did not include such "in the aggregate" language in section 209(b) to allow California to cherry-pick its favorite parts of the Clean Air Act with which to comply.

Instead, as EPA admits, Congress added the language for a precise purpose: to allow California "to enable stronger standards for a specific pollutant where a weaker standard for a second pollutant was necessary due to interactions between control technologies." *Id*. at 20,692. Indeed, the "only reason" Congress added the language was to "permit California to adopt standards for oxides of nitrogen considerably more stringent than the applicable federal standards" which might not have been "technologically feasible if California were bound by the stringent carbon monoxide standard." *Ford Motor Co. v. Env't Prot. Agency*, 606 F.2d 1293, 1305 (D.C. Cir. 1979) (MacKinnon, J., dissenting). That does not grant California the power to avoid the Congressionally mandated lead time.

* * *

ACT conflicts with section 202(a) by failing to allow for the Act's required four years of lead time and three years of stability. 42 U.S.C. § 7521(a)(3)(C). *Blum* is controlling and requires that the waiver be set

aside because any contrary reading of the statute would contradict the plain text and frustrate congressional purpose.

CONCLUSION

The Court should invalidate the waiver EPA issued to California.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed R. App. P. 32(e), (f) and (g), I hereby certify that the foregoing complies with the Court's September 19, 2023 Scheduling Order because it contains 7,057 words, excluding exempted portions, according to the count of Microsoft Word.

I further certify that the motion complies with Fed. R. App. P. 27(d)(1)(E), 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook Font.

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2023, I caused the foregoing to be electrically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

/s/ *Eric H. Wessan*
Eric H. Wessan
Counsel for State of Iowa

ORAL ARGUMENT NOT YET SCHEDULED

No. 23-1144 and consolidated cases

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

State of Iowa, et al.,
Petitioners,

v.

Environmental Protection Agency and Michael S. Regan, in his official capacity, as Administrator of the U.S. Environmental Protection Agency
Respondents.

On Petition for Review of Action by the U.S. Environmental Protection Agency

STATE PETITIONERS' ADDENDUM OF STATUTES AND STANDING DECLARATIONS

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PRIMARY STATUTES AND REGULATIONS

Section 209 of the Clean Air Act, *see* 42 U.S.C. § 7543, provides:

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to

which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 176 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

Section 202(a) of the Clean Air Act, *see* 42 U.S.C. § 7521, provides:

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) —

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any 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.

(3)

(A) In general. —

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of

such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks.—

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NOx) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) Lead time and stability.—

Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices.—

The Administrator shall study the practice of rebuilding

heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles.—

For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) [1] of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)

(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements

prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)

(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A)

shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboad vapor recovery.—

Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

Implementation Schedule for Onboard Vapor Recovery Requirements	
Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100
*Percentages in the table refer to a percentage of the manufacturer's sales volume.	

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

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

STATE OF IOWA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 23-1144
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF JAZZMIN RANDALL

I, JAZZMIN RANDALL, hereby declare as follows:

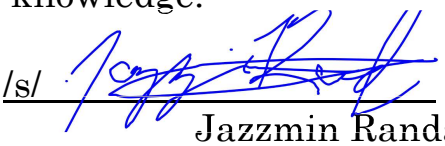
1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Director of the Office of Fleet Management at the Georgia Department of Administrative Services. I have held this position for 5 years. My responsibilities include managing the purchase, lease, fuel, and maintenance of State of Georgia vehicles.

3. During each year of my tenure, the State of Georgia has purchased gas powered vehicles.

[Signature on following page]

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on 10-31-2023. /s/ 

Jazzmin Randall

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

STATE OF IOWA, et al.	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 23-1144
	)	
EPA, et al.	)	
	)	
Respondents.	)	

DECLARATION OF GREGORY BRIGHT

I, Gregory Bright, hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case and have personal knowledge of the matters discussed in this declaration.

2. I am the Statewide Fleet Director at the Indiana Department of Transportation. I have held this position for one and a half (1.5) years. My responsibilities include (1) the creation and implementation of all policies, procedures and specifications for Indiana Department of Transportation fleet vehicles and equipment [including but not limited to the technical specification requirements for and compliance of those vehicles and equipment], (2) overseeing and directing all purchases of fleet vehicles and equipment and (3) tracking and monitoring all Indiana Department of Transportation fleet vehicles and equipment.

3. During the last five years, the Indiana Department of Transportation has purchased, on average, over 80 diesel- and 135 gas-powered vehicles per year.

If the cost of diesel- or gas-powered vehicles increases, it would impact or reduce the State of Indiana's capacity to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on 11/2/2023

Gregory Bright

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

STATE OF IOWA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 23-1144
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF STEVE HARLESS

I, Steve Harless, hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Deputy Commissioner overseeing Fleet Operations at the Indiana Department of Administration. I have held this position for 10 years. My responsibilities include overseeing fleet vehicle purchases for the State of Indiana, monitoring fleet vehicle usage, and monitoring fleet vehicle fuel consumption.

3. During the last five years, the State of Indiana has purchased, on average, 89 diesel and 412 gas powered vehicles per year. If the cost of

diesel- or gas-powered vehicles increases, it will hurt the State's ability to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on 11.02.2023

/s/
Steve Harless

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

STATE OF IOWA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 23-1144
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF LEE WILKINSON

I, Lee Wilkinson, hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Administrative Services Division Director at the Iowa Department of Transportation (DOT). I have held this position for sixteen (16) years and ten (10) months. I am responsible for Iowa DOT's equipment program, accounting, auditing, and budgetary operations, human resource functions, facilities, and the procurement of goods and services, which includes the purchase of all diesel trucks. My division is responsible for developing Iowa DOT's annual equipment program from the beginning through the procurement. This includes determining what

equipment we need to replace, how much we will replace, determining the financial impact of the plan, and the actual procurement of the equipment on the program.

3. During the last five years, the State of Iowa has purchased, on average, over 116 diesel and 149 gas powered vehicles per year. If the cost of diesel- or gas-powered vehicles increases, it will hurt the State's ability to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on 10/30/2023

/s/ Lee Wilkinson
Lee Wilkinson

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

STATE OF IOWA, ET AL. PLAINTIFFS

VS. NO. 23-1144

EPA, ET AL. DEFENDANTS

DECLARATION OF ROSS CAMPBELL

I, Ross Campbell, hereby declare as follows:

1. I am the Director of the Office of Purchasing, Travel and Fleet Management for the State of Mississippi's Department of Finance and Administration. I have held that position for approximately six years. My duties and responsibilities as Director include oversight of purchases of vehicles by the State and state agencies. My Office also enters into statewide vehicle contracts for use by state agencies to purchase vehicles.

2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of matters discussed in this declaration.

3. The State of Mississippi's agencies purchase heavy-duty vehicles directly, under statewide contracts.

4. Every year that I have served in my current position, heavy-duty vehicle purchases by the State of Mississippi's agencies have included gas-powered vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed this the 2 day of November 2023.

Ross Campbell

Ross Campbell

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

STATE OF IOWA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 23-1144
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF NOLAN L. WIGGINS, JR.

I, Nolan L. Wiggins, Jr., hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Director of the Division of State Agencies Support Services, which includes the office of State Fleet Management, at the South Carolina Department of Administration. I have held this position for six (6) years. My responsibilities include overseeing State Fleet Management which I have overseen for approximately eleven (11) years.

3. During the last five years, South Carolina's State Fleet Management has purchased an average of approximately 458 vehicles per year. State Fleet Management currently owns approximately two (2)

NLW 11.2.23

diesel vehicles, and the rest are gas powered vehicles. If the cost of diesel- or gas-powered vehicles increases, it will hurt State Fleet Management's ability to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on Nov. 2, 2023

/s/
Nolan L. Wiggins, Jr.