

ORAL ARGUMENT NOT YET SCHEDULED

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

<p>STATE OF CALIFORNIA, <i>et al.</i>,</p> <p style="text-align: right;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ANDREW R. WHEELER, <i>et al.</i>,</p> <p style="text-align: right;">Respondents.</p>	<p>No. 19-1239 (consolidated with No. 19-1230)</p>
<p>CITY AND COUNTY OF SAN FRANCISCO,</p> <p style="text-align: right;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ANDREW R. WHEELER, <i>et al.</i>,</p> <p style="text-align: right;">Respondents.</p>	<p>No. 19-1246 (consolidated with No. 19-1230)</p>

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

Pursuant to the Court’s Orders of November 20, 2019, and December 2, 2019,
the undersigned petitioners in *State of California, et al. v. Andrew Wheeler, et al.*
(Case No. 19-1239) and in *City and County of San Francisco v. Andrew Wheeler,*

et al. (Case No. 19-1246) (collectively, “State and Municipal Petitioners”), submit the following non-binding, preliminary statement of issues to be raised in these cases regarding the final action of Respondents United States Environmental Protection Agency and Administrator Andrew R. Wheeler (collectively, “EPA”) titled “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 Fed. Reg. 51,310 (Sept. 27, 2019) (the “Action”).

1. Whether the Action is *ultra vires*, arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act, the Administrative Procedure Act, or other law because, *inter alia*, EPA lacks authority to revoke a waiver of preemption granted under Section 209(b) of the Clean Air Act, as it did here, and because EPA had no legitimate reason to take the Action.

2. Whether EPA’s revocation of parts of California’s waiver on the ground that the National Highway Traffic Safety Administration has issued a regulation purporting to declare state greenhouse gas emission and zero-emission vehicle standards for light-duty vehicles preempted by the Energy Policy and Conservation Act is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act, the Administrative Procedure Act, or other law.

3. Whether EPA’s revocation of parts of California’s waiver on the ground that California does not need its greenhouse gas emission and zero-emission vehicle standards for model years 2021-2025 to meet extraordinary and compelling

conditions under Section 209(b)(1)(B) of the Clean Air Act is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act, the Administrative Procedure Act, or other law.

4. Whether EPA's determination that Section 177 of the Clean Air Act excludes greenhouse gas emission standards is *ultra vires*, arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act, the Administrative Procedure Act, or other law.

5. Whether the Action is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Clean Air Act and the Administrative Procedure Act because EPA failed to comply with required procedures, including considering the full record before the agency and considering and responding to comments.

NHTSA's Action:

In addition, while State and Municipal Petitioners believe the district court has original jurisdiction over the action of Respondents United States Department of Transportation, Secretary Elaine L. Chao, National Highway Traffic Safety Administration, and Acting Administrator James C. Owens (collectively, "NHTSA") set forth in the same Federal Register notice, their petitions for review protectively challenge that action. Therefore, State and Municipal Petitioners submit the following non-binding, preliminary statement of issues with respect to that action:

6. Whether the action is *ultra vires*, arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Energy Policy and Conservation Act, the Administrative Procedure Act, or other law because NHTSA lacks authority to issue a regulation declaring state laws preempted by the Energy Policy and Conservation Act.

7. Whether NHTSA's declaration that state greenhouse gas emission and zero-emission vehicle standards are expressly preempted by the Energy Policy and Conservation Act is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Energy Policy and Conservation Act, the Administrative Procedure Act, or other law.

8. Whether NHTSA's declaration that state greenhouse gas emission and zero-emission vehicle standards are conflict-preempted by the Energy Policy and Conservation Act is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Energy Policy and Conservation Act, the Administrative Procedure Act, or other law.

9. Whether the action is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with law because NHTSA failed to perform the requisite analysis under the National Environmental Policy Act.

10. Whether the action is arbitrary and capricious, an abuse of discretion, or otherwise not in accord with the Energy Policy and Conservation Act and the

Administrative Procedure Act because NHTSA failed to comply with required procedures, including required consultations and the requirement to consider and respond to comments.

Dated: December 26, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2019, I caused a copy of the foregoing **State and Municipal Petitioners' Non-Binding Statement of Issues to be Raised** to be filed with the Clerk of the Court using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

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