

**ORAL ARGUMENT NOT SCHEDULED**

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

<hr/>		)	
UNION OF CONCERNED SCIENTISTS,	)	)	
et al.,	)	)	
	)	)	
Petitioners,	)	)	
	)	)	
v.	)	)	No. 19-1230, and
	)	)	consolidated cases
NATIONAL HIGHWAY TRAFFIC	)	)	
SAFETY ADMINISTRATION, et al.,	)	)	
	)	)	
Respondents.	)	)	
	)	)	
<hr/>	)	)	

**PETITIONERS’ SUPPLEMENTAL RESPONSE TO ORDER  
REQUESTING PROPOSED BRIEFING FORMATS**

On February 4, 2020, this Court ordered all parties to submit proposed formats and schedules for briefing all issues in these consolidated petitions. ECF No. 1826992. On March 5, 2020, the parties jointly submitted a proposed format and schedule. ECF No. 1832077. The Court has not entered a briefing format or schedule to date.

In recent weeks, the COVID-19 pandemic has had an exceptionally adverse effect on petitioners and their counsel that they could not reasonably have anticipated when the parties submitted their joint proposal. The effects of the pandemic continue to be felt nationwide, and at this time it is hard to assess how long these extraordinary

conditions will persist. It is now clear to petitioners, however, that the proposed May 22, 2020, deadline for their principal briefs is no longer workable in light of significant constraints on petitioners' counsel, including illnesses and childcare responsibilities, as well as extraordinary demands on state and local government petitioners themselves. Petitioners are apprising the Court of this change before a scheduling order is entered.

Petitioners have conferred with the other parties, and, while the parties did not reach an agreement about how much additional time might be warranted by the extraordinary circumstances confronting the nation and the world now, petitioners and respondents have agreed to a modified schedule that delays the onset of briefing by 21 days as compared to the original joint proposal and shifts all other deadlines accordingly. Petitioners and respondents agree that this requested amendment is without prejudice as to future requests for modification of the briefing schedule, and petitioners reserve their right to seek such modifications as the circumstances warrant.

The following intervenors do not oppose entry of this modified schedule: Ohio, Alabama, Alaska, Arkansas, Georgia, Indiana, Louisiana, Missouri, Nebraska, South Carolina, Texas, Utah, West Virginia; and the American Fuel & Petrochemical Manufacturers. The following intervenors take no position on the modified schedule: Coalition for Sustainable Automotive Regulation and Automotive Regulatory Council.

The amended proposed briefing schedule appears on the following page with the proposed number of briefs and word allocations, which are unchanged from the original joint proposal.

<b>Brief or Filing</b>	<b>Date Due</b>	<b>Words</b>
Petitioners	Friday, June 12	35,000 total, shared between up to 4 briefs
Amici curiae supporting petitioners and amici curiae supporting neither party, if any	Friday, June 19	
Respondents	Wednesday, August 26	35,000 total
Amici curiae supporting respondents, if any	Wednesday, Sept. 2	
Intervenors supporting Respondents	Tuesday, Sept. 8	24,500 total, shared between up to 3 briefs
Petitioners (reply)	Tuesday, Sept. 29	17,500 total, shared between up to 4 briefs
Deferred Appendix	Tuesday, Oct. 6	
Final briefs	Tuesday, Oct. 13	

For these reasons and those stated in the parties' joint submission, petitioners respectfully request that the Court adopt this proposed briefing format and schedule.

DATED: April 3, 2020

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California

ROBERT BYRNE  
Senior Assistant Attorney General

GARY E. TAVETIAN  
DAVID A. ZONANA  
Supervising Deputy Attorneys General

JESSICA BARCLAY-STROBEL  
JULIA K. FORGIE  
MEREDITH J. HANKINS  
JENNIFER KALNINS TEMPLE  
CAROLYN NELSON ROWAN  
JONATHAN A. WIENER  
Deputy Attorneys General

/s/ M. Elaine Meckenstock  
M. ELAINE MECKENSTOCK  
Deputy Attorney General  
1515 Clay street, 20<sup>th</sup> Floor  
Oakland, CA 94612  
(510) 879-0299  
elaine.meckenstock@doj.ca.gov

*Counsel for Petitioner State of California, by and  
through its Governor Gavin Newsom, Attorney  
General Xavier Becerra, and California Air  
Resources Board on behalf of all Petitioners in Cases  
No. 19-1239 and 19-1246*

/s/ Matthew Littleton

MATTHEW LITTLETON  
SEAN H. DONAHUE  
Donahue, Goldberg, Weaver &  
Littleton  
1008 Pennsylvania Ave SE  
Washington, DC 20003  
(202) 683-6895  
matt@donahuegoldberg.com

*Counsel for Petitioner Environmental Defense Fund  
on behalf of all Petitioners in Cases No. 19-1230  
and 19-1243*

BARBARA BAIRD, Chief Deputy  
Counsel

/s/ Brian Tomasovic

BRIAN TOMASOVIC  
KATHRYN ROBERTS  
South Coast Air Quality Mgmt. District  
21865 Copley Dr.  
Diamond Bar, CA 91765  
Telephone: (909) 396-3400  
Fax: (909) 396-2961

*Counsel for South Coast Air Quality Management  
District on behalf of all Petitioners in Case No. 19-  
1241*

/s/ Stacey L. VanBelleghem  
STACEY L. VANBELLEGHEM  
ETHAN PRALL  
Latham & Watkins, LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004-1304  
(202) 637-2200  
stacey.vanbelleghem@lw.com

*Counsel for National Coalition for Advanced  
Transportation, Petitioner in Case No. 19-1242*

/s/ Kevin Poloncarz  
KEVIN POLONCARZ  
DONALD L. RISTOW  
JAKE LEVINE  
Covington & Burling LLP  
Salesforce Tower  
415 Mission Street, 54th Floor  
San Francisco, CA 94105-2533  
(415) 591-7070  
kpoloncarz@cov.com

*Counsel for Calpine Corporation, Consolidated  
Edison, Inc., National Grid USA, New York  
Power Authority, and Power Companies Climate  
Coalition, Petitioners in Case No. 19-1245*

/s/ Jeffery Scott Dennis  
JEFFERY S. DENNIS  
Managing Director and General  
Counsel  
Advanced Energy Economy  
1000 Vermont Ave. NW Suite 300  
Washington, D.C. 20005  
202.383.1950  
jdennis@aee.net

*Counsel for Advanced Energy Economy, Petitioner in  
Case No. 19-1249*

**CERTIFICATE OF COMPLIANCE**

The foregoing response to an order complies with the typeface and volume requirements of the rules of this Court and Federal Rules of Appellate Procedure. The document is set in Garamond font, 14-point, and contains 469 words according to the word-count function of Microsoft Word 365 (Mar. 2020 ed.).

*/s/ Matthew Littleton*

MATTHEW LITTLETON

Donahue, Goldberg, Weaver &  
Littleton

1008 Pennsylvania Ave SE

Washington, DC 20003

(202) 683-6895

[matt@donahuegoldberg.com](mailto:matt@donahuegoldberg.com)

**CERTIFICATE OF SERVICE**

I filed the foregoing document with the U.S. Court of Appeals for the District of Columbia Circuit on April 3, 2020, using the CM/ECF system. All parties are represented by counsel that are CM/ECF users and will be served by the CM/ECF system.

*/s/ Matthew Littleton*

MATTHEW LITTLETON

Donahue, Goldberg, Weaver &  
Littleton

1008 Pennsylvania Ave SE

Washington, DC 20003

(202) 683-6895

matt@donahuegoldberg.com