

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, *et al.*

Respondents.

No. 18-1114
(consolidated with 18-1118, 18-1139,
18-1162)**UNOPPOSED MOTION BY THE SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT FOR LEAVE TO PARTICIPATE AS AMICUS
CURIAE IN SUPPORT OF PETITIONERS**

Pursuant to Fed. R. App. Pro. 29(b) and D.C. Cir. Rule 29(b), the South Coast Air Quality Management District (“South Coast District”) respectfully moves for leave to participate as amicus curiae in support of the Petitioners State of California (by and through its Governor Edmund G. Brown Jr., Attorney General Xavier Becerra and California Air Resources Board), *et al.*, in case No. 18-114, now consolidated before the Court with case Nos. 18-1118, 18-1139, and 18-1162.

Counsel for all petitioners in these consolidated cases have provided the consent of their clients to amicus participation by the South Coast District. Counsel for the federal respondents have stated they do not oppose the motion. Counsel for movant intervenors in support of respondents have also provided the consent of their clients to amicus participation by the South Coast District.

In support of this motion, the South Coast District states as follows:

1. On April 2, 2018, Respondent Environmental Protection Agency (“EPA”) and E. Scott Pruitt, as then-EPA Administrator, signed the challenged action titled “Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles,” published at 83 Fed. Reg. 16,077 (April 13, 2018). The action was meant to satisfy EPA’s regulations for the “mid-term evaluation of standards,” set forth at 40 C.F.R. 86.1818-12(h) and requiring the Administrator to issue a final determination on whether the fleet average CO₂ standards for passenger automobiles and light trucks for model years 2022-2025 remain appropriate under Clean Air section 202(a); 42 U.S.C. § 7521(a). The action under challenge in these consolidated cases provides EPA’s determination that the current program is *not appropriate* and also withdraws a January 12, 2017 “Final Determination” that made a prior, contrary finding that model year 2022-2025 standards remained appropriate.

2. The South Coast District is a political subdivision of California responsible for comprehensive air pollution control in the Los Angeles metropolitan area and parts of surrounding counties that make up the South Coast Air Basin. *See* Cal. Health & Safety Code § 40410. The basin-wide jurisdiction encompasses an area of 10,743 square miles and the economic base for a population of more than 16 million people. This region has a storied history of critical air pollution problems due, in no small part, to its topography and sunny climate. *See* Cal. Health & Safety Code § 40402; *see also, e.g.*, *Coal. for Responsible Regulation, Inc. v. E.P.A.*, No. 09-1322, 2012 WL 6621785, at *3 (D.C. Cir. Dec. 20, 2012) (Brown, J., dissenting from denial of reh'g en banc) (recalling days when “the air in the Los Angeles basin was so thick with smog that a mountain, or even a nearby mountain range, could simply disappear.”).

Tailpipe emissions are uniquely culprit to this area's historical ozone pollution problems. By the 1930s, Los Angeles was heralded as “a city built on the automobile”; and by the 1950s, pioneering science had found automobile exhaust to be a major contributor to the serious smog episodes that recurrently strike the basin. *See* Christopher H. Wells, *CAR COUNTRY: AN ENVIRONMENTAL HISTORY* 163-166, 181 (2013). Still today, emissions from mobile sources, including passenger automobiles and light trucks, represent over 80% of smog-contributing nitrogen oxides (“NO_x”) pollution in the basin. *See* South Coast District, 2016 Air

Quality Management Plan, “Appendix III: Base and Future Year Emission Inventory,” at III-2-2, <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-iii.pdf?sfvrsn=6>.

3. Programs to reduce mobile source emissions are crucial for the South Coast Air Basin because of population exposure and the exigencies of the area’s nonattainment designations under EPA’s National Ambient Air Quality Standards (NAAQS). Presently, the basin is home to over two-thirds of the nation’s population living in areas designated non-attainment for the PM 2.5 (2012) NAAQS and over three-fourths of the nation’s population living in areas designated serious, severe, or extreme nonattainment for the 8-Hour Ozone (2008) NAAQS. *See* U.S. Env’tl. Prot. Agency, Green Book: PM-2.5 (2012) Nonattainment Areas by State/County/Area, <https://www3.epa.gov/airquality/greenbook/kncty.html> and 8-Hour Ozone (2008) Nonattainment Areas by State/County/Area, <https://www3.epa.gov/airquality/greenbook/hncty.html> (data “current as of May 31, 2018”).

4. Whereas the California Air Resources Board (here represented under Petitioner State of California) has primary responsibility for the control of pollution from motor vehicles, the South Coast District has local, primary

responsibility for control of air pollution from all sources *other than motor vehicles*. Cal. Health & Safety Code § 40000. Nevertheless, the South Coast District is required to meet air quality standards regardless of the source of air pollution. By necessity, the South Coast District has developed into one of the most sophisticated and stringent regulators of non-vehicular emission sources in the world. It also seeks to promote or require vehicular emission reductions within recognized limitations on its authority over those sources. *See, e.g.*, Engine Mfrs. Ass'n. v. South Coast Air Quality Mgmt. Dist., 541 U.S. 246 (2004) (remanding for hearing on whether Clean Air Act section 209(a) preempted the district's "Fleet Rules" *in toto*), *aff'd*, 498 F.3d 1031 (2007) (upholding Fleet Rules, in part, under the market participant doctrine as to their regulating vehicle purchasing and leasing decisions of state and local governments). The South Coast District appears here, as in the past, under its distinct litigating authority and with litigation interests distinct from the California-governmental petitioners. *See id.* (South Coast District as Respondent and California as amicus); *see also* New York v. EPA, 489 F.3d 1250 (D.C. Cir. 2006) (consolidated cases with South Coast District as Petitioner and California as Respondent-Intervenor); Cal. Health & Safety Code § 40701 (giving authority "to sue and be sued in the name of the district").

5. The South Coast District has time-locked plans for future attainment of the NAAQS. These plans depend, overtly and materially, on ongoing emissions

reductions from mobile sources, including—via certain, co-benefit reductions—the vehicular CO₂ standards targeted for a “roll back” by means of the action challenged here. *See* Administrator Pruitt, Twitter (April 3, 2018), <https://bit.ly/2JbrHQY>. For illustration: from years 2018 to 2026, the district had anticipated and planned for “summer planning emissions” of smog-contributing NO_x from passenger automobiles and light trucks to dwindle from 37.10 to 16.51 tons per day. *See* South Coast District, 2016 Air Quality Management Plan, “Appendix III: Base and Future Year Emission Inventory,” *supra*, at “Attachment B: Summer Planning Emissions by Source Category in South Coast Air Basin.” While this truncated picture assumes reductions that only partly hinge on preserving model year 2022-2025 standards, the full, all-time pollution reduction benefits of the standards are also not reflected in these numbers.

The challenged action, which discards the original finding to leave the standards intact, impairs the district’s planning certainty. Apart from the calculable pollution harms from any relaxation in the standards, this uncertainty frustrates the South Coast District’s planning to achieve the NAAQS, as such planning must depend on progress that is secured by enforceable restrictions and achieved by legally-fixed timelines.

6. The South Coast District is charged to represent citizens of the basin when actions of other public agencies will have an adverse impact on air quality in

the basin. *See* Cal. Health & Safety Code § 40412. Participation as an amicus in review of the challenged rollback is consistent with that responsibility.

Accordingly, should the consolidated cases proceed to merits briefing, the South Coast District seeks to participate as amicus curiae to support petitioners' shared view that the federal respondent's action must be set aside as arbitrary, capricious, and not in accordance with legal requirements.

Among the commitments that EPA set for itself in promulgating 40 C.F.R. 86.1818-12(h) was its requirement to set forth "in detail" the bases for its determination, including a detailed assessment of listed factors. One listed factor is the requirement to assess the impact of the standards on the reduction of emissions (including emissions other than CO₂). The finalized action's failure to reasonably address this factor bears special emphasis, and the South Coast District, by its experience and position, is qualified to speak to how lack of detail in this assessment area is defective in itself and demonstrative of broader, fatal flaws in the record underlying EPA's action. As an air quality agency dedicated to air quality improvements for millions of citizens, the South Coast District is positioned to offer a unique perspective, and its amicus filing would provide information that is distinct from other arguments expected from the parties.

7. D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as amicus curiae up to seven days after the filing of the principal brief of the party

being supported, but encourages the filing of a notice of intent as promptly as practicable after the case is docketed. Amicus South Coast District is filing this motion as soon as practicable and before the parties have filed briefs addressing the merits of the case. If permitted to file an amicus brief, the South Coast District would file a document within the briefing schedule established by this Court for all briefs, including those filed by amicus curiae and within any proscribed word limitations.

WHEREFORE, the proposed amicus South Coast Air Quality District respectfully requests leave to file a brief of amicus curiae pursuant to the schedule and any other directions, including word limitations, established by the Court.

Date: August 3, 2018

Respectfully Submitted,

/s/ Brian Tomasovic

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CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1)&(2) and 29(b) and D.C. Circuit Rule 29(c) because it meets the prescribed format requirements, does not exceed 20 pages, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Date: August 3, 2018

/s/ Brian Tomasovic

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CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to D.C. Circuit Rule 27(a)(4) and 28(a)(1)(A), counsel certifies as follows: Except for the South Coast Air Quality Management District, all parties, intervenors, and amici appearing in this court are, to the best of my knowledge, listed in the Certificate as to Parties, Rulings and Related Cases [1740813] filed by Petitioners Consolidated Edison Company of New York, Inc., National Grid USA, New York Power Authority, and The City of Seattle, by and through its City Light Department in case No. 18-1162. Respondent Andrew Wheeler, as the Acting Administrator of the EPA, automatically substitutes for E. Scott Pruitt, the former Administrator, by operation of Fed. R. App. Pro. 43(c)(2).

Date: August 3, 2018

/s/ Brian Tomasovic

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*Counsel for Amicus Curiae South Coast Air
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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system for service on all registered counsel in these consolidated cases.

Date: August 3, 2018

/s/ Brian Tomasovic

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