

ORAL ARGUMENT NOT YET SCHEDULED

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

**State of California, State of Connecticut,
State of Illinois, State of Maryland,
Commonwealth of Massachusetts, State of
Minnesota, State of New Jersey, State of
New York, State of Oregon, Commonwealth
of Pennsylvania, State of Vermont, State of
Washington, District of Columbia,**

Petitioners,

v.

Environmental Protection Agency,

Respondent.

Case No. 21-1018
(consolidated with
case no. 21-1021)

NON-BINDING STATEMENT OF ISSUES

The undersigned petitioners in *State of California, et al. v. EPA* (case no. 21-1018) (State Petitioners) respectfully submit their non-binding statement of issues to be raised regarding their challenge to the EPA's final rule, "Control of Air Pollution from Airplanes and Airplane Engines: Greenhouse Gas Emission Standards and Test Procedures," 86 Fed. Reg. 2,136 (Jan. 11, 2021) (Rule), which adopts greenhouse gas emission standards for certain classes of aircraft. Without waiving any

rights to submit additional issues or change issues raised below, State Petitioners intend to raise the following objections in support of their challenge to the Rule pursuant to section 307(d)(9) of the Clean Air Act, 42 U.S.C. § 7607(d)(9):

Failure to evaluate any standard that reduces emissions

In 2016, EPA found that greenhouse gas emissions from aircraft endanger the public health and welfare, due to the existential threat of climate change.¹ Nevertheless, the Rule adopts greenhouse gas emission standards that, by EPA's own analysis, will fail to reduce the emissions of any aircraft, and will prompt no action at all by manufacturers to reduce aircraft emissions. 86 Fed. Reg. at 2,164, 2,167. State Petitioners accordingly intend to raise the following issues regarding this failure:

1. Whether EPA acted arbitrarily, capriciously, or not in accordance with the law in adopting ineffective greenhouse gas

¹ Finding that Greenhouse Gas Emissions from Aircraft Cause or Contribute to Air Pollution that May Reasonably Be Anticipated to Endanger Public Health and Welfare, 81 Fed. Reg. 54,422, 54,440, 54,452-58, 54,461 (Aug. 15, 2016) (Endangerment Finding).

emission standards, having already found that these emissions contribute to dangerous, climate-changing air pollution.

2. Whether EPA, in considering only proposed and alternative emission standards that significantly lagged the technological state of the art and would fail to meaningfully reduce greenhouse gas emissions, violated Section 231 of the Clean Air Act and acted arbitrarily, capriciously, or otherwise not in accordance with the law.

3. Whether EPA, in considering only proposed and alternative emission standards that significantly lagged the technological state of the art and would fail to meaningfully reduce greenhouse gas emissions, after consistently basing Section 231 standards on pollution reduction needs and technological feasibility, reversed agency interpretation and policy without giving a reasoned explanation, and acted arbitrarily, capriciously, or otherwise not in accordance with the law.

Improper reliance on ICAO standards

The International Civil Aviation Organization (ICAO) is a United Nations body that develops and recommends international standards for noise and emissions from aircraft engines. Once ICAO adopts these standards, member states must adopt, on or before the effective date of

the ICAO standards, domestic standards that are at least as stringent to maintain their fleets' permission to fly in other states' airspace.

Member states may, however, adopt *more* stringent standards simply by providing notice. Nonetheless, EPA justifies its decision not to adopt more stringent but technologically feasible standards in the interest of “harmonizing” U.S. standards with ICAO standards. 86 Fed. Reg. at 2,144-45, 2,156-57. State Petitioners accordingly intend to raise the following issues regarding this rationale:

4. Whether EPA, having found that greenhouse gas emissions from aircraft contribute to dangerous, climate-changing air pollution, may reasonably and lawfully adopt ineffective emission standards under its independent statutory duty to regulate dangerous aircraft emissions, solely or primarily in the interest of harmonization with ICAO standards.

Other arbitrary, capricious, and unlawful actions

5. Whether EPA acted arbitrarily, capriciously, or not in accordance with the law in failing to consider the co-benefits of stricter emission standards, including significant reductions of nitrogen oxides

and particulate matter, and the impact on State Petitioners' attainment of National Ambient Air Quality Standards.

6. Whether EPA acted arbitrarily, capriciously, or not in accordance with the law in failing to consider the environmental justice impacts of ineffective greenhouse gas emission standards, where minority and low-income communities are disproportionately located near airports and exposed to greater criteria and hazardous air pollutants from aircraft takeoff and landing emissions, which more stringent greenhouse gas emission standards could have reduced.

7. Whether EPA acted arbitrarily, capriciously, or not in accordance with the law in failing to consider the federalism impacts of ineffective greenhouse gas emission standards, where States are prohibited from setting more stringent standards for aircraft pollution than EPA's and rely on the federal government to adequately protect their populations from the harmful effects of such pollution.

8. Whether EPA acted arbitrarily, capriciously, or not in accordance with the law in finding good cause to make the Rule immediately effective upon publication, despite waiting four years to take any action at all on the 2016 Endangerment Finding.

Dated: February 11, 2021

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Non-Binding Statement of Issues was filed on February 11, 2021 using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Theodore McCombs

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