

ORAL ARGUMENT NOT YET SCHEDULED

No. 20-1145

Consolidated with Cases No. 20-1167, -1168,
-1169, -1173, -1174, -1176, -1177 & -1230

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

COMPETTIVE ENTERPRISE INSTITUTE et al.,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION et al.,

Respondents,

**RESPONSE OF PUBLIC INTEREST ORGANIZATION
PETITIONERS IN OPPOSITION TO RESPONDENTS'
MOTION TO HOLD CASES IN ABEYANCE**

Public Interest Organization Petitioners oppose Respondents' motion for indefinite abeyance and support the suggestion by State and Local Government Petitioners that the Court order a six-month extension of the briefing schedule. We offer these brief additional reasons in support of that suggestion.

The Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) rules here under review drastically weakened the preexisting greenhouse gas and fuel-economy standards for the millions of passenger cars and light trucks to be manufactured and sold in model years 2021–2026. The Agencies themselves concede that their Rollback will cause the emission of nearly one billion tons more

carbon dioxide and other climate-disrupting air pollutants over the lifetime of the vehicles affected by the Rollback and cost consumers at least \$175 billion in increased fuel costs over the same period. To avoid these enormous harms, Public Interest Organization Petitioners brought this litigation seeking vacatur of the Rollback.

Public Interest Organization Petitioners welcome Executive Order 13,990, which directs EPA and NHTSA to review and potentially propose rules revising those standards by July 2021. However, at this time, it is not possible to determine whether such proposed rules will remedy the concrete, substantial, and long-lived consequences of the Rollback, especially for the earliest model years affected by the Rollback. The harms resulting from the Rollback are already being felt. For example, the Rollback allows model year 2021 vehicles—which are currently being sold and will remain on the road for the next 15 years—to emit substantially more climate-changing pollution and consume substantially more fuel than under the prior standards. By weakening the Agencies' standards, the Rollback also allows automakers to accumulate more credits for fleets of model year 2021 vehicles that exceed the weakened standards. Automakers then will be able to use those credits to manufacture higher emitting, less fuel-efficient vehicles in later model years.

At this time, it is unclear for which model years the Agencies will propose revised standards, or what limitations the Agencies may propose on automakers' use of credits accrued in any model years that the revised standards will not address. If revised rules proposed in July do not address all the model years covered by or credits generated

under the Rollback here under review, the only timely and complete relief available to Public Interest Organization Petitioners will be through this litigation. An indefinite abeyance would exacerbate our ongoing and cumulative harms.

For these reasons, Public Interest Organization Petitioners oppose Respondents' motion to place these cases in indefinite abeyance. Noting that opening briefs have already been filed, we support the suggestion of State and Local Government Petitioners that the Court instead issue a six-month extension of the April 14, 2021, deadline for filing the federal government's response brief, with a consequent extension of the deadlines for other merits briefs. This would allow all parties time to assess the impact of a July 2021 proposal on the issues raised in the current cases, including the issues pertaining to standards and credits for the early model years set forth above, and then to make further proposals regarding the course of this litigation.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This response to a motion was prepared in 14-point Garamond font using Microsoft Word 365 (Nov. 2020 ed.), and it complies with the typeface and typestyle requirements of Federal Rule of Appellate Procedure 27(d)(1)(E). The document contains 518 words and complies with the type-volume limitation of Rule 27(d)(2)(A).

/s/ Matthew Littleton

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CERTIFICATE OF SERVICE

I certify that on March 1, 2021, I electronically filed the foregoing response to a motion using the Court's CM/ECF system. All counsel registered as CM/ECF users will be served by that system. I further certify that service will be accomplished via email for the following case participant:

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