

## ORAL ARGUMENT NOT YET SCHEDULED

**No. 19-1230**

Consolidated with Nos. 19-1239, 19-1241, 19-1242, 19-1243,  
19-1245, 19-1246, 19-1249, 20-1175, and 20-1178

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

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UNION OF CONCERNED SCIENTISTS et al.,  
*Petitioners,*

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,  
*Respondent.*

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**STATE AND LOCAL GOVERNMENT PETITIONERS’  
MOTION TO GOVERN**

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The undersigned State and Local Government Petitioners (Case Nos. 19-1239, 19-1241, and 19-1246) submit this motion to govern pursuant to the Court's order that placed these consolidated cases in abeyance. Dkt. No. 1884115.<sup>1</sup>

These cases involve challenges to actions taken by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) in September 2019. 84 Fed. Reg. 51,310 (Sept. 2, 2019). Although the two agencies' actions were finalized in the same Federal Register notice, each agency took its own separate and distinct actions. NHTSA promulgated a rule purporting to declare certain state laws to be preempted under the Energy Policy and Conservation Act of 1975. *Id.* at 51,311. EPA withdrew portions of a Clean Air Act Section 209(b) preemption waiver it had granted to California in 2013 and announced an interpretation of Section 177 of the Clean Air Act. *Id.* at 51,328, 51,350.

On February 1, 2021, the agencies asked this Court to hold these cases in abeyance while they reviewed their respective actions. Dkt. No. 1883150. The Court granted that request. Dkt. No. 1884115. In that abeyance order,

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<sup>1</sup> The Commonwealth of Virginia, a Petitioner in Case No. 19-1239, does not join this motion but does not oppose continued abeyance of these cases.

the Court directed the federal government to notify the Court and the parties within 7 days of any agency action resulting from reconsideration and directed the parties to file motions to govern within 30 days of that notification.

The United States Department of Justice notified the Court on December 27, 2021 that NHTSA has completed its review and reconsideration of its action but “EPA has not concluded its reconsideration proceeding.” Dkt. No. 1928287.

State and Local Government Petitioners agree with the overall position that Respondents have indicated they will take in their motion and that Respondent-Intervenor States have taken in theirs: that these cases should remain in abeyance, particularly since at least some of the agency actions at issue are still under reconsideration. Dkt. No. 1931687 (Respondent-Intervenor States’ Motion).

Specifically, the State and Local Government Petitioners respectfully request that this Court issue an order continuing to hold these cases in abeyance under the terms of the current abeyance order. Those terms provide 1) that the Respondent agencies are obligated “to notify the court and the parties within 7 days of any agency action resulting from the review

[of the actions challenged herein] or of a determination that no action will be taken”; and 2) that the parties shall “file motions to govern further proceedings within 30 days of that notification.” Dkt. No. 1884115. A renewed abeyance order maintaining those terms will provide the parties with the time necessary to evaluate this litigation once *both* agencies’ reconsideration proceedings are complete and with an appropriate opportunity to inform the Court of the results of the parties’ evaluations.

The National Council for Advanced Transportation, Petitioner in Case No. 19-1242, consents to this motion, and the remaining Petitioners (Case Nos. 19-1230, 19-1243, 19-1245, 19-1249, 20-1175, and 20-1178) do not oppose. Respondents likewise do not oppose. Respondent-Intervenor American Fuel and Petrochemical Manufacturers consents to this motion. Respondent-Intervenor States take no position on this motion but filed a motion supporting continued abeyance of these cases (Dkt. No. 1931687).

Dated: January 26, 2022

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 538 words. I further certify that this motion complies with the typeface requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared using a proportionally spaced typeface (Times New Roman) in 14-point font.

Dated: January 26, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on **January 26, 2022**, I electronically filed the foregoing motion to govern with the United States Court of Appeals for the District of Columbia Circuit via the CM/ECF system. All parties will be served by that system.

Dated: January 26, 2022

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