

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

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

NATIONAL COALITION FOR
ADVANCED TRANSPORTATION, *et al.*

Plaintiff-Intervenors,

v.

ELAINE L. CHAO, in her capacity as
Secretary, United States Department of
Transportation, *et al.*,

Defendants.

Case No. 1:19-cv-02826-JMC

Consolidated with 1:19-cv-02907
and 1:19-cv-03436

JOINT STATUS REPORT

Pursuant to this Court's April 11, 2022 order, the undersigned parties provide the following status report on developments relevant to the pending motion to dismiss or transfer these consolidated cases. As described in more detail below, this case is currently stayed by order of this Court pending the D.C. Circuit's disposition of the cases consolidated under *Union of Concerned Scientists et al. v. National Highway Traffic Safety Administration et al.*, D.C. Cir. No. 19-1230 (*UCS*), which challenge the same administrative action at issue in this case. As further described below, the NHTSA rule that is challenged in this case was repealed in December 2021, and the parties are engaged in ongoing consultations regarding the status of this case following that repeal action. Plaintiffs anticipate filing a further status report within 30 days of this filing, and Federal Defendants have no objection to a limited period of further abeyance

with the understanding that the Plaintiffs require some additional time to determine how to proceed.

1. These consolidated cases concern the National Highway Traffic Safety Administration's ("NHTSA's") Preemption Rule, promulgated as part of a joint action with the U.S. Environmental Protection Agency, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51,310 (Sept. 27, 2019). In their motion to dismiss these cases, the Federal Defendants argued that jurisdiction lay exclusively in the court of appeals, and asked that this court either dismiss the case in light of protective petitions for review challenging the same action in the D.C. Circuit, or transfer the case to that court. Doc. #42. Plaintiffs opposed, and briefing on the motion to dismiss was completed in November 2019. Docs. #43, 44.

2. All of the plaintiffs and plaintiff-intervenors here also filed protective petitions for review of NHTSA's Preemption Rule in the D.C. Circuit. *UCS*, Nos. 19-1230 (and consolidated cases). Those petitions also included challenges to the final actions that the U.S. Environmental Protection Agency (EPA) issued alongside the Preemption Rule but that, under the Clean Air Act, the D.C. Circuit must review directly.

3. In December 2019, NHTSA and EPA, as well as their supporting intervenors, moved in the *UCS* case that the D.C. Circuit expedite its consideration of the consolidated petitions for review. *UCS*, ECF#1820782 & ECF#1821514. Shortly thereafter, many of the petitioners in the *UCS* case, including most of the state and municipal and public-interest organizations that are plaintiffs here, moved that the D.C. Circuit hold the consolidated petitions in abeyance pending, among other things, this Court's disposition of the challenge to the Preemption Rule. *UCS*, ECF#1821653 & ECF#1821672. NHTSA and EPA opposed the motions for abeyance and

contended that the D.C. Circuit should order the parties to proceed to briefing the merits of their actions alongside the question whether the court of appeals has jurisdiction to directly review the Preemption Rule. *UCS*, ECF#1823683. On February 4, 2020, the D.C. Circuit denied both the motions for expedition and the motions for abeyance, and ordered the parties to submit a proposed briefing format that covered “all the issues” in the cases. *UCS*, ECF#1826992.

4. Plaintiffs filed a notice with this Court alerting it to these developments. Doc. 58. The Federal Defendants responded by reiterating their position that the case should be dismissed or transferred. Doc. 59. In a minute order dated Feb. 11, 2020, the Court, “in the interest of judicial economy,” stayed this case “until further order of this Court, pending resolution of the related litigation in the D.C. Circuit.” The Court also ordered that the parties file a joint notice “within 30 days of any disposition” of the D.C. Circuit litigation.

5. Merits briefing in the D.C. Circuit cases, including on the issue of which court had jurisdiction over the challenge to the Preemption Rule, was completed in October 2020. *UCS*, ECF#1868457. Prior to oral argument being scheduled, President Biden took office and issued an Executive Order directing NHTSA to review and potentially rescind or revise the Preemption Rule, and EPA to do the same with respect to its parts of the agencies’ joint actions. EO 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” Sec. 2(a)(ii).

6. NHTSA and EPA then moved to hold *UCS* in abeyance pending their implementation of that order. The D.C. Circuit granted that motion, *UCS*, ECF#1884115, and directed the agencies to notify the court and the parties within 7 days of any agency action resulting from

their review of those actions, or any determination that no action would be taken, and to file motions to govern further proceedings within 30 days of such notification.¹

7. NHTSA completed its review and repealed the Preemption Rule in December 2021. “Corporate Average Fuel Economy (CAFE) Preemption,” 86 Fed. Reg. 74,236 (Dec. 29, 2021). NHTSA and EPA notified the D.C. Circuit that NHTSA had rescinded the Preemption Rule, adding that EPA had not yet concluded its reconsideration. *UCS*, ECF#1928287. At the request of the parties, the court ordered that the cases continue to be held in abeyance, and again asked that the agencies notify it once EPA had completed its review, with motions to govern to follow. *UCS*, ECF#1934435.

8. EPA completed that review in March 2022, likewise rescinding its portion of the joint actions. “California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision,” 87 Fed. Reg. 14,332 (March 14, 2022). Consistent with the D.C. Circuit’s order, EPA and NHTSA notified the court. *UCS*, ECF#1939146. Competing motions to govern followed. The petitioners and respondents asked that the case remain in abeyance. *UCS*, ECF#1943207. The respondent-intervenors argued that the case should be taken out of abeyance and proceed to argument on the merits, in part on the grounds that they anticipated soon filing a challenge to EPA’s rescission of its action. *UCS*, ECF#1942613 (Apr. 2022 Ohio et al. Mot. to Govern). Those motions to govern remain pending at the D.C. Circuit at the time of this filing.

¹ Around that same time, the industry parties that previously intervened in support of NHTSA in this case and in support of NHTSA and EPA in the D.C. Circuit withdrew from both cases, leaving no defendant-intervenors supporting NHTSA’s rule before this Court. Doc. 68; *UCS*, ECF#1883185.

9. In light of these developments, Plaintiffs and Plaintiff-intervenors are currently coordinating efforts to provide the Court a collective view as to how these cases should proceed, if at all. Plaintiffs and Plaintiff-intervenors anticipate filing a further status report within thirty days of the date of this filing, and request that the case remain stayed in the interim. For their part, the Federal Defendants believe that NHTSA's December 2021 repeal of the Preemption Rule moots these cases. The Federal Defendants have initiated discussions with the parties regarding the cases' status and, with the understanding that the plaintiffs require additional time to determine how to proceed, have no objection to the case remaining stayed while those discussions continue.

Dated: April 25, 2022

Respectfully submitted,

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