

ORAL ARGUMENT NOT SCHEDULED

No. 20-1145

Consolidated with Nos. 20-1167, 20-1168, 20-1169, 20-1173,
20-1174, 20-1176, and 20-1177

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

COMPETITIVE ENTERPRISE INSTITUTE, et al.,
Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, et al.,
Respondents

**COORDINATING PETITIONERS' MOTION TO CONTINUE
HOLDING CASES IN ABEYANCE**

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(additional counsel listed in signature blocks)

In response to the Court’s April 8, 2022 order (Dkt. No. 1942366), Petitioners in Case Nos. 20-1167, 20-1168, 20-1169, 20-1173, 20-1174, 20-1176, and 20-1177 (“Coordinating Petitioners”) respectfully submit this motion to govern further proceedings and request that the Court continue to hold these consolidated cases in abeyance.¹ The remaining Petitioners (in Case No. 20-1145), the Respondents, and the Respondent-Intervenors who provided a position do not oppose this request.²

These consolidated cases seek judicial review of standards promulgated in 2020 by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA)—specifically, greenhouse gas emission standards promulgated by EPA and fuel economy standards promulgated by NHTSA for light-duty vehicles of model years 2021 through 2026. *See* 85 Fed. Reg. 24,174 (April 30, 2020). Both agencies have since reconsidered their actions, and both agencies have now promulgated more stringent standards for some of the model years encompassed in their 2020 actions. 86 Fed. Reg. 74,434 (Dec. 30, 2021)

¹ The Commonwealth of Virginia, a Petitioner in Case No. 20-1167, neither joins nor opposes this motion.

² Respondent-Intervenor American Honda Motor Company did not provide a position.

(EPA); 87 Fed. Reg. 25,710 (May 2, 2022) (NHTSA). Multiple petitioners have challenged EPA's new standards in this Court. *Texas v. EPA*, Case No. 22-1031 (and consolidated cases). The 59-day period to challenge NHTSA's new standards has not yet expired.

Coordinating Petitioners request that this Court hold these challenges to the 2020 rules in abeyance pending resolution of the challenges to EPA's new standards and any challenges that may be filed to NHTSA's new standards. Continued abeyance would promote judicial and party economy. Neither the Court nor the parties would need to expend further resources on these cases unless and until doing so is warranted—for example, if there are remaining issues in these cases after resolution of challenges to the new standards. Moreover, in the event that there is a need to pursue these cases, in whole or in part, abeyance of the existing cases would avoid the need for new petitions for review, and neither the parties nor the Court would have to address questions about the timeliness of such petitions. Instead, the parties and this Court could proceed to resolve any outstanding issues in these cases in an efficient manner.

BACKGROUND

In April 2020, EPA and NHTSA finalized separate actions in a joint rulemaking. 85 Fed. Reg. at 24,174. EPA substantially weakened its greenhouse gas emission standards for light-duty vehicles of model years 2021-2026. *Id.* at 24,175, 25,106; *see also* 86 Fed. Reg. at 74,440 (Figure 1) (comparing standards adopted in 2012 and in 2020 (labeled “SAFE FRM”)). NHTSA substantially weakened its fuel economy standards for light-duty vehicles of model year 2021 and adopted standards for model years 2022-2026 that were significantly weaker than it had previously found feasible. *See* 85 Fed. Reg. at 24,174-175.

Many groups of Petitioners sought timely review of EPA’s and NHTSA’s standards in this Court, and this Court consolidated those cases. Dkt. Nos. 1844674, 1844893, 1845111, 1849787.³ Petitioners filed their opening briefs on January 14, 2021. Dkt Nos. 1880153, 1880207, 1880213, 1880214. On February 19, 2021, Respondents moved this Court to place these cases in abeyance pending reconsideration of the challenged actions in response to an Executive Order signed by President Biden on January 20,

³ One of the cases (No. 20-1230) was later voluntarily dismissed. Dkt. No. 1882480.

2021. Dkt. No. 1886329 at 1. This Court granted Respondents' motion, placing the cases in abeyance on April 2, 2021. Dkt. No. 1892931. Pursuant to that order, Respondents were required to notify the Court and the parties of any agency action resulting from Respondents' reconsideration of their respective actions. *Id.*

On December 20, 2021, EPA completed its reconsideration and signed its final action, revising its greenhouse gas emission standards for model years 2023-2026. Dkt. No. 1928288 at 3. The agency notified the Court and the parties of this development on December 27, 2021. *Id.*

EPA's final action was published in the Federal Register on December 30, 2021. 86 Fed. Reg. 74,434. Multiple petitions for review were filed in this Court challenging EPA's action. *Texas v. EPA*, Case No. 22-1031 (and consolidated cases).

On March 31, 2022, NHTSA signed its final action on reconsideration, revising its fuel economy standards for model years 2024-2026, and Respondents notified the parties and the Court of this development on April 7, 2022. Dkt. No. 1942300 at 2. NHTSA's final action was published in the Federal Register on May 2, 2022. 87 Fed. Reg. 25,710. Under the relevant statute, those "adversely affected by" NHTSA's final action must file

petitions for review “not later than 59 days after the regulation is prescribed.” 49 U.S.C. § 32909(a), (b). To Coordinating Petitioners’ knowledge, no such petitions have been filed, but this period has not expired.

On April 8, 2022, in response to Respondents’ notice that both agencies had completed their reconsideration proceedings, this Court directed the parties to file motions to govern further proceedings in this case by May 9, 2022. Dkt. No. 1942366.

ARGUMENT

This Court has the authority to hold proceedings in abeyance when doing so would promote justice, judicial economy, and the efficient resolution of cases on its docket. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). This Court has exercised that authority and held challenges to agency actions in abeyance where, as here, an agency has reversed a challenged action and that reversal has been (or will be) challenged—circumstances that give rise to the possibility that the reversing action could be vacated and the original

action reinstated. *See, e.g., American Petroleum Inst. v. EPA*, No. 13-1108 (D.C. Cir. Dec. 10, 2020) (Dkt. No. 1875192) (granting parties' joint motion to hold proceeding in abeyance pending resolution of later-filed challenges to subsequent agency action); *Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir. Aug. 26, 2020) (Dkt. No. 1858346) (same).

Coordinating Petitioners respectfully request this Court follow suit here. EPA's new standards have already been challenged. *Texas v. EPA*, Case No. 22-1031 (and consolidated cases). And if Petitioners in those cases succeed, it could lead to reinstatement of some of the standards challenged in these consolidated cases. The same possibility exists for NHTSA's new standards, given that the time has not yet run for petitions for review of NHTSA's latest action. Until challenges to both agencies' new standards are resolved, these cases should remain in abeyance. How those challenges will be resolved is critical information that Coordinating Petitioners need in order to assess whether and how to proceed with these cases. Some resolutions might lead Coordinating Petitioners here to conclude their cases are moot or otherwise agree to, or even seek, dismissal. But other resolutions could require litigation of some, or even all, of the issues presented in these cases.

Thus, continuing to hold these cases in abeyance will allow for the most efficient and orderly resolution of these cases, conserving both the Court's and parties' resources. Neither the parties nor the Court need take any further action on these cases, unless and until such action is warranted. And should such action prove to be warranted, briefing can continue and this Court can proceed to swift resolution of whatever issues remain, avoiding the need to start these cases over and all the inefficiencies that would entail.

CONCLUSION

Coordinating Petitioners respectfully request that this Court continue holding these cases in abeyance until at least the earlier of: (1) the resolution of all cases consolidated with *Texas v. EPA*, Case No. 22-1031; or (2) the resolution of challenges to NHTSA's new standards (or, if no such challenges are filed, the expiration of the time to file one). This Court should also require the parties to file motions to govern these proceedings within 30 days of either of these two events.

Dated: May 9, 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 1,333 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.

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2022, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system.

I further certify that all parties are participating in the Court's CM/ECF system and will be served electronically by that system.

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