



**XAVIER BECERRA**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**

300 SOUTH SPRING STREET, SUITE 1702  
LOS ANGELES, CA 90013

Public: (213) 897-2000  
Telephone: (213) 269-6372  
Facsimile: (213) 731-2128  
E-Mail: David.Zaft@doj.ca.gov

November 8, 2019

Mr. Mark Langer  
Clerk, United States Court of Appeals  
for the D.C. Circuit  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

**RE: *State of California, et al. v. U.S. EPA*, Case No. 18-1114**  
**Decision Issued October 25, 2019**

Dear Mr. Langer:

Petitioners in case number 18-1114 (the “State Petitioners”) respectfully request that the Court correct an error contained in its October 25, 2019 opinion. If not corrected, this error may create confusion about the requirements under the Clean Air Act for California’s motor vehicle emissions standards.

At page 6 of its Slip Opinion, the Court states that “Congress required California, along with any state that adopted California’s standards under Section 177, to give auto manufacturers ‘a two-year lead time’ to comply. *Chamber of Commerce of U.S. v. EPA*, 642 F.3d 192, 196 (D.C. Cir. 2011) (citing 42 U.S.C. § 7507).”

However, 42 U.S.C. § 7507 (“Section 177”), which applies to states adopting California’s standards, does not impose a fixed, two-year lead time upon California when *California* adopts or enforces its vehicle emissions standards. Instead, when reviewing California’s request for a waiver for its own standards, courts and the U.S. Environmental Protection Agency (“EPA”) have applied a non-fixed, case-by-case, functional lead-time requirement based on 42 U.S.C. §§ 7453(b)(1)(C), 7521(a). *See Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.3d 449, 463 & n.13 (D.C. Cir. 1998). Consistent with this, *Chamber of Commerce of U.S. v. EPA*, cited in the above-quoted portion of the Court’s opinion, distinguishes California, which it explains is “the only state eligible for a waiver of federal preemption under [42 U.S.C. § 7543(b)(1)],” from states adopting California’s standards, which are subject to Section 177’s requirements.

In order to avoid the possibility of future confusion regarding the applicability of Section 177’s two-year lead time requirement to California, the State Petitioners request that the Court modify the statement in the opinion quoted above. The State Petitioners suggest the following revision (with suggested deletions shown in two places in bold and strikethrough):

Mr. Mark Langer  
November 8, 2019  
Page 2

Congress required ~~California, along with~~ any state that adopted California's standards under Section 177, to give auto manufacturers "a two-year lead time" to comply. *Chamber of Commerce of U.S. v. EPA*, 642 F.3d 192, 196 (D.C. Cir. 2011) (citing 42 U.S.C. § 7507).

I have contacted lead counsel for Petitioners in the other consolidated cases, as well as counsel for Respondents and Respondents-Intervenors, all of whom confirmed that they have no objection to the correction requested above. In light of this, the State Petitioners are making the above request by letter, but, if directed to do so by the Court, they will prepare and file a motion.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ David Zaft<sup>1</sup>  
DAVID ZAFT  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

300 S. Spring St., Suite 1702  
Los Angeles, California 90013  
(213) 269-6372  
david.zaft@doj.ca.gov

DZ:

cc: Counsel for all parties in the consolidated cases (via CM/ECF)

---

<sup>1</sup> Signed with consent on behalf of all State Petitioners in Case No. 18-1114.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2019, I caused the foregoing letter to Mr. Mark Langer, Clerk of the United States Court of Appeal for the D.C. Circuit, dated November 8, 2019, to be filed with the Clerk of the Court using the Court's CM/ECF system, and that service was accomplished thereby upon counsel of record.

Dated: November 8, 2019

/s/ David Zaft  
David Zaft