ORAL ARGUMENT NOT YET SCHEDULED

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

No. 19-1230
Consolidated with Nos. 19-1239, 19-1241, 19-1242, 19-1243, 19-1245, 19-1246, 19-1249, 20-1175, 20-1178

UNION OF CONCERNED SCIENTISTS, ET AL.,
PETITIONERS,
v.
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ET AL.,
RESPONDENTS,

AND

COALITION FOR SUSTAINABLE AUTOMOTIVE REGULATION, ET AL.

INTERVENORS FOR RESPONDENT.

On Petition For Review Of Agency Action By The National Highway Traffic Safety Administration, No: NHTS-84FR51310

BRIEF FOR *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amicus curiae* Chamber of Commerce of the United States of America ("Chamber") certifies the following:

(A) Parties and *Amici*. Except for the following, all parties, intervenors, and *amici* supporting Petitioners or no party are listed in the opening briefs for State and Local Government Petitioners and Public Interest Petitioners, Respondents, and Intervenor-Respondents:

Amicus: Urban Air Initiative, Inc.

Amicus curiae Chamber also acknowledges that additional *amici* may file briefs in support of Respondents.

(B) Rulings Under Review. These petitions challenge actions of the United States Environmental Protection Agency and the National Highway Traffic Safety Administration, jointly published as "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51,310 (Sept. 27, 2019) (to be codified at 49 C.F.R. pt. 531, 533).

(C) Related Cases. An accurate statement regarding related cases appears in the Brief for Respondents.

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DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, *amicus curiae* Chamber hereby submits the following corporate disclosure statement:

The Chamber states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

No counsel for a party authored this brief in whole or in part, and no person other than the *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

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STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

Pursuant to Federal Rule of Appellate Procedure 29(a)(2) and the filed Notice of May 26, 2020, all parties in the consolidated cases have consented to the filing of *amicus* briefs in support of any party or no party. *See* Case No. 19-1230, Doc. 1844268.

Pursuant to D.C. Circuit Rule 29(d), counsel for *amicus curiae* Chamber certifies that a separate brief is necessary to provide the broad perspective of the businesses that the Chamber represents, which cover every sector of the Nation's economy, including automotive manufacturers who will be directly affected by this litigation. As one of the Nation's preeminent business associations, *amicus curiae* is particularly well-suited to provide the Court important context on these subjects, which will assist the Court in resolving this case.

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TABLE OF CONTENTS

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES i

DISCLOSURE STATEMENTS iii

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING iv

TABLE OF AUTHORITIES vi

GLOSSARY OF TERMS ix

STATUTES AND REGULATIONS 1

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 4

ARGUMENT 6

I. The Energy Policy And Conservation Act Preempts Any State Or Local Requirement "Related To" Fuel Economy Standards, Which Includes Tailpipe Greenhouse Gas Emission Standards 6

II. The One National Program That The Agencies Adopted Serves Important Congressional Objectives, As Both The Prior Administration And The Current Administration Recognized 17

CONCLUSION 23

TABLE OF AUTHORITIES

Cases

Altria Grp., Inc. v. Good,
555 U.S. 70 (2008) 2

Bruesewitz v. Wyeth LLC,
562 U.S. 223 (2011) 2

Chamber of Commerce v. Whiting,
563 U.S. 582 (2011) 14

Cipollone v. Liggett Grp., Inc.,
505 U.S. 504 (1992) 16

Crosby v. Nat'l Foreign Trade Council,
530 U.S. 363 (2000) 7

Dan's City Used Cars, Inc. v. Pelkey,
569 U.S. 251 (2013) 7

Engine Mfrs. Ass'n v. EPA,
88 F.3d 1075 (D.C. Cir. 1996) 18

Epic Sys. Corp. v. Lewis,
138 S. Ct. 1612 (2018) 15

Food Mktg. Inst. v. Argus Leader Media,
139 S. Ct. 2356 (2019) 15

Gobeille v. Liberty Mut. Ins. Co.,
136 S. Ct. 936 (2016) 1, 8

Kansas v. Garcia,
140 S. Ct. 791 (2020) 7

Massachusetts v. EPA,
549 U.S. 497 (2007) 13

∗ *Morales v. Trans World Airlines, Inc.*,
504 U.S. 374 (1992) 6, 7, 8, 9, 12, 13, 15

∗ Authorities chiefly relied upon are marked with an asterisk.

Moshea v. Nat'l Transp. Safety Bd.,
570 F.3d 349 (D.C. Cir. 2009)....8

Nat'l Meat Ass'n v. Harris,
565 U.S. 452 (2012) 1

Nw., Inc. v. Ginsberg,
134 S. Ct. 1422 (2014) 1

Puerto Rico v. Franklin Cal. Tax-Free Tr.,
136 S. Ct. 1938 (2016) 1, 7

Ricci v. DeStefano,
557 U.S. 557 (2009) 16

Williamson v. Mazda Motor of Am., Inc.,
562 U.S. 323 (2011) 1

Statutes

42 U.S.C. § 13212 ....15, 16

42 U.S.C. § 17002 14

49 U.S.C. § 1305 8

49 U.S.C. § 32902 19

49 U.S.C. § 32919 ....5, 9, 12, 17

Cal. Health & Safety Code § 43018.5....11

Regulations

49 C.F.R. pt. 531 app. B 10

49 C.F.R. pt. 533 app. B 10

77 Fed. Reg. 62,623 (Oct. 15, 2012)....22

77 Fed. Reg. 62,624 (Oct. 15, 2012)....3

83 Fed. Reg. 42,986 (proposed Aug. 24, 2018) 3

Cal. Code Regs. tit. 13, § 1961.1....11

Cal. Code Regs. tit. 13, § 1961.3....11

Presidential Memorandum on Improving Energy Security,
American Competitiveness and Job Creation, and
Environmental Protection Through a Transformation of Our

Nation's Fleet of Cars and Trucks, 75 Fed. Reg. 29,399 (May 21, 2010) 22

* The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310 (Sept. 27, 2019) 5, 9, 10, 12, 13, 14, 18, 19, 23

Other Authorities

Framework Agreement on Clean Cars, California Air Resources Board, (Aug. 17, 2020) 2

Glob. Energy Inst., U.S. Chamber of Commerce, *Addressing Climate Change* 2

* Glob. Energy Inst., U.S. Chamber of Commerce, *Divided Highway: The Importance of Uniform, Achievable Nationwide Automobile Standards* (2019) 4, 17, 19, 20, 22

Hart Schwartz*, America's Aging Vehicles Delay Rate of Fleet Turnover*, The Fuse (Jan. 23, 2018) 21

Kim Hill et al., Ctr. for Auto. Research, *Contribution of the Automotive Industry to the Economies of All Fifty States and the United States* (2015) 20

Letter from Neil L. Bradley, Exec. Vice President & Chief Policy Officer, U.S. Chamber of Commerce to Chairman Lisa Murkowski & Ranking Member Joe Manchin, S. Comm. on Energy & Nat. Res. (July 15, 2019) 5

Letter from U.S. Chamber of Commerce et al. to Speaker Nancy Pelosi & Minority Leader Kevin McCarthy, U.S. H.R. (Aug. 17, 2020) 5

Maria T. Oliver-Hoyo & Gabriel Pinto, *Using the Relationship Between Vehicle Fuel Consumption and CO_2 Emissions to Illustrate Chemical Principles*, 85 J. of Chem. Educ. 218 (2008) 11

Settlement Agreement between Cal. Air. Res. Bd. & Ford Motor Co., California Air Resources Board (Aug. 17, 2020) 2

GLOSSARY OF TERMS

Chamber	Chamber of Commerce of the United States of America
EISA	Energy Independence and Security Act
EPA	United States Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
NHTSA	National Highway Traffic Safety Administration
Primary Pet'rs Br.	Brief of State and Local Government Petitioners and Public Interest Petitioners

STATUTES AND REGULATIONS

Pertinent statutes and regulations are contained in the addenda to the Brief of State and Local Government Petitioners and Public Interest Petitioners ("Primary Pet'rs Br."), and the Respondents' Brief.

INTEREST OF *AMICUS CURIAE*

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the Nation. The Chamber and its members greatly benefit from federal rules that advance important societal and statutory objectives such as environmental protection, while providing a uniform, nationwide regulatory regime. The Chamber thus regularly files *amicus* briefs that offer a broader point of view on the importance of preemption to creating and sustaining a consistent, nationwide market. *See, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938 (2016); *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016); *Nw., Inc. v. Ginsberg*, 134 S. Ct. 1422 (2014); *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012); *Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323 (2011); *Bruesewitz*

v. Wyeth LLC, 562 U.S. 223 (2011); *Altria Grp., Inc. v. Good*, 555 U.S. 70 (2008). The Chamber has a special interest in this case, as automakers, including some of the Chamber's members, generally make cars for sale in a single, nationwide market.[1]

With respect to the national and global problem of climate change, the Chamber believes that inaction is not an option and continues to engage actively in a variety of ways to address this challenge. *See* Glob. Energy Inst., U.S. Chamber of Commerce, *Addressing Climate Change*, https://www.globalenergyinstitute.org/climate-change (last visited Sept. 14, 2020). The Chamber has endorsed, lobbied for, and promoted a robust package of legislation to enact climate solutions. The Chamber is working to secure additional funding for federal research and

[1] To be sure, the automakers do not have a unified view. For example, American Honda Motor Company, BMW of North America, Ford Motor Company, Volkswagen Group of America, Inc., and Volvo Car USA, LLC recently entered into settlement agreements with the California Air Resources Board, committing those companies to a schedule of fuel economy improvements and emissions reductions. *Framework Agreement on Clean Cars*, California Air Resources Board, (Aug. 17, 2020), https://ww2.arb.ca.gov/news/framework-agreements-clean-cars. Those companies agreed not to support the United States' position in this case and to "oppose participation in any such challenges by any trade associations to which [they] belong." *E.g.*, *Settlement Agreement between Cal. Air. Res. Bd. & Ford Motor Co.*, California Air Resources Board ¶ 28 (Aug. 17, 2020), https://ww2.arb.ca.gov/sites/default/files/2020-08/final-ford-framework-agreement.pdf.

development of emissions-reducing technologies, including critical transportation-related solutions such as breakthroughs in energy storage capabilities. In addition to these federal legislative efforts, the business community is investing billions of dollars in technologies, as well as infrastructure supporting those technologies, which will help make climate goals a reality. These efforts are key to advancing effective climate policies that leverage the power of business and ensure the continued global economic competitiveness of American manufacturing and industry.

The Chamber has strongly supported a nationally uniform standard for regulating automobile emissions, calling for a middle-ground solution between the unrealistic and unachievable standards that the Environmental Protection Agency ("EPA") and National Highway and Traffic Safety Administration ("NHTSA") finalized in 2012, 77 Fed. Reg. 62,624 (Oct. 15, 2012), and the insufficiently stringent standards that the EPA and the NHTSA proposed in 2018, 83 Fed. Reg. 42,986 (proposed Aug. 24, 2018). *See* Glob. Energy Inst., U.S. Chamber of Commerce, *Divided Highway: The Importance of Uniform, Achievable*

Nationwide Automobile Standards, 3, 6 (2019) [hereinafter *Divided Highway*].[2]

INTRODUCTION AND SUMMARY OF ARGUMENT

Our Nation's automotive policies have been incredibly successful over the last 50 years, resulting in drastic improvements in pollutant emissions, fuel economy, and overall air quality, while delivering better automobile safety, performance, and value for consumers. This success is poised to continue into the foreseeable future, so long as reasonable, achievable standards for fuel economy and emissions govern the nationwide automotive market as a whole. To that end, the NHTSA's and the EPA's efforts at maintaining a nationwide policy for automotive emissions and fuel-economy standards—the so-called "One National Program"—further those critical goals.

Legislative efforts that the Chamber has supported will accelerate development and adoption of next-generation transportation technologies, building upon the more-than-fifty electric and hybrid vehicle models already available to consumers. *See* Letter from Neil L.

[2] Available at https://www.globalenergyinstitute.org/sites/default/files/2019-08/gei-report-dividedhighway-aug2019-websiteversion.pdf.

Bradley, Exec. Vice President & Chief Policy Officer, U.S. Chamber of Commerce to Chairman Lisa Murkowski & Ranking Member Joe Manchin, S. Comm. on Energy & Nat. Res. (July 15, 2019);[3] *see also* Letter from U.S. Chamber of Commerce et al. to Speaker Nancy Pelosi & Minority Leader Kevin McCarthy, U.S. H.R. (Aug. 17, 2020).[4] For this progress to continue, however, automakers need to have a single, consistent, nationwide regime of rules related to fuel economy standards.

Congress mandated just such a nationwide framework in the Energy Policy and Conservation Act ("EPCA"), including by unambiguously preempting all state laws "related to fuel economy standards or average fuel economy standards." 49 U.S.C. § 32919(a).

As the NHTSA and the EPA correctly concluded in the SAFE Rule, *see* "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51,310, 51,314 (Sept. 27, 2019), EPCA's preemption provision overrides California's regulation of greenhouse gas emissions. That conclusion follows both from the United

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[3] Available at https://www.globalenergyinstitute.org/sites/default/files/190715_Markup_SenateENR.pdf.

[4] Available at https://www.uschamber.com/sites/default/files/200817_coalition_energyinnovationlegislation_houseleadership.pdf.

States Supreme Court's interpretation of statutes that use the broad "related to" formulation in *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), and from the on-the-ground reality of the interaction between fuel economy and greenhouse gas emissions, such as carbon dioxide.

Applying EPCA's broad preemption provision, as written, honors Congress' policy choice of mandating nationwide uniformity in fuel economy standards and presents the best possible avenue for preserving a single national marketplace for light-duty vehicles, while continuing the strong, sustained gains in fuel economy and air quality America has seen over the last 50 years. Notably, both the current and prior Administrations recognized the broad benefits of a national standard for both consumer choice and environmental protection.

ARGUMENT

I. The Energy Policy And Conservation Act Preempts Any State Or Local Requirement "Related To" Fuel Economy Standards, Which Includes Tailpipe Greenhouse Gas Emission Standards

In the SAFE Rule, the EPA and the NHTSA correctly recognized that EPCA's preemption provision prohibits state efforts to regulate greenhouse gas emissions from automobiles.

A. A foundational principle underlying the Constitution's Supremacy Clause, U.S. Const. art. VI, cl. 2, is that "Congress has the power to preempt state law," *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000), and can do so by ordering preemption in express terms, *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020). When Congress preempts state law expressly by statute, a court's only remaining "task is to identify the domain expressly pre-empted." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) (citation omitted). In such instances, courts "do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent," *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (citation omitted), including the substance and breadth of such preemption, *see Morales*, 504 U.S. at 383.

The United States Supreme Court in *Morales* made clear that when Congress uses the phase "relating to" in a preemption provision, courts are bound to interpret that provision broadly. In *Morales*, the Court addressed a provision of the Airline Deregulation Act "prohibiting the States from enforcing any law '*relating to* rates, routes, or services' of any

air carrier." *Id.* at 378–79 (quoting 49 U.S.C. § 1305(a)(1)) (emphasis added). In discerning the meaning of the phrase "relating to," the Court emphasized the expansive breadth of "relating to" preemption clauses, explaining that they have a "broad scope" and "an expansive sweep"; and are "broadly worded," "deliberately expansive," and "conspicuous for [their] breadth." *Id.* at 383–84 (citations omitted); *see also Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 943 (2016) (describing "relate to" preemption as "comprehensive"); *Moshea v. Nat'l Transp. Safety Bd.*, 570 F.3d 349, 352 (D.C. Cir. 2009) ("[T]he words 'related to' are broad."). "Relating to" preemption provisions, the Court concluded, encompass all state laws that "ha[ve] a connection with, or reference to," the subject of the federal statute. *Morales*, 504 U.S. at 384 (citations omitted).

Applying these interpretive guideposts to the preemption provision in *Morales*, the Court concluded that the Texas guidelines at issue in that case "quite obviously" related to airline fares. *Id.* at 387. Those guidelines regulated print, broadcast, and billboard advertisements of airline fares, requiring certain disclosures and mandating the conspicuousness of such disclosures in these advertisements. *Id.* These airline-fare-advertising restrictions, the Court held, had "the forbidden

significant effect upon fares," in the same way that "[p]rice advertising surely 'relates to' price," and they were not so "tenuous, remote, or peripheral" to avoid preemption. *Id.* at 388–90 (alteration in original; citations omitted).

B. These principles mandate the conclusion that the EPA and the NHTSA reached in the SAFE Rule. EPCA's text is clear, using the near-identical "related to" formulation that the Supreme Court in *Morales* held was "expansive," "broadly worded," "deliberately expansive," and "conspicuous for its breadth." 504 U.S. at 384 (citations omitted). EPCA preempts all state laws and regulations "*related to* fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under" the Act. 49 U.S.C. § 32919(a) (emphasis added). As the EPA and the NHTSA correctly explained, this preempts, at the minimum, "any state law or regulation regulating or prohibiting tailpipe carbon dioxide emissions from automobiles," or "having the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy," 84 Fed. Reg. at 51,362 (to be codified at 49 C.F.R. pt. 531 app.

B, 533 app. B), because reducing greenhouse gas emissions from automobiles *means* improving fuel economy or changing fuel altogether.

Regulation of greenhouse gas emissions from automobiles is plainly "related to fuel economy standards," under *Morales*' broad understanding of "related" preemption, because the two are inseparable: effective regulation of greenhouse gas emissions entails regulation of fuel economy. As the EPA and the NHTSA state, this is "a matter of science and mathematics" that commenters "did not and cannot dispute." *Id.* at 51,315. Carbon dioxide is the natural byproduct of internal-combustion-engine-powered vehicles, such that "the same tests" measure both fuel consumption and greenhouse gas emissions, and almost all technologically feasible reductions in carbon-dioxide emissions at present are achievable through improvements in fuel economy. *Id.* at 51,315 (citation omitted).

Industry commenters overwhelmingly agreed with these basic assessments. *See id.* at 51,315–16. Even Petitioners acknowledge that most industry practices and technologies that automakers presently "use to comply with greenhouse gas emissions standards improve fuel economy and reduce tailpipe carbon-dioxide emissions." Primary Pet'rs

Br. 100. This basic relationship between fuel economy and carbon dioxide emissions has even led educators to recommend using the two to teach introductory chemistry principles to first-year college students. *See* Maria T. Oliver-Hoyo & Gabriel Pinto, *Using the Relationship Between Vehicle Fuel Consumption and CO_2 Emissions to Illustrate Chemical Principles*, 85 J. of Chem. Educ. 218, 218–20 (2008).

These principles make clear that EPCA preempts California's greenhouse gas emission standards. The California legislature directed the California Air Resources Board to "develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles." Cal. Health & Safety Code § 43018.5(a). The Board complied with this directive, prescribing fleetwide vehicle limits for carbon dioxide and equivalent emissions on a grams per mile basis for "passenger cars, light-duty trucks, and medium-duty passenger vehicles that are produced and delivered for sale in California." Cal. Code Regs. tit. 13, § 1961.1(a)(1)(A)(i); *see also id.* § 1961.3(a)(1)(A). Given the undisputed scientific relationship between carbon-dioxide emissions and fuel economy, there is a clear "connection" between California's tailpipe carbon-dioxide standards and EPCA's

regulation of fuel economy, such that "related to" preemption plainly applies. *See Morales*, 504 U.S. at 384.

It is irrelevant that California's regulations of greenhouse gas emissions do not "specifically address[ ]" fuel economy in their nomenclature. *See id.* at 386. The "relat[ion]," 49 U.S.C. § 32919(a), between the California tailpipe carbon dioxide emissions standards and EPCA's fuel-economy efforts is a real-world fact, *see supra*, pp. 9–11, making California's state-law labels legally irrelevant, 84 Fed. Reg. at 51,315–16. Or, as *Morales* explained, "the sweep of the 'relating to' language" preempts even state laws not "specifically addressed" to the subject of the federal statute. 504 U.S. at 386.

The EPA's and the NHTSA's interpretation of EPCA's preemptive effect is measured and limited, covering only those emissions that relate to fuel economy. The agencies concluded, for example, that "EPCA does not preempt all potential State or local regulation of greenhouse gas emissions from vehicles." 84 Fed. Reg. at 51,313. They viewed as not preempted "regulation of vehicular refrigerant leakage" and those regulations with only an "incidental impact on fuel economy, such as a requirement to use child seats." *Id.* at 51,313–14. The agencies' limited

interpretion here is thus consistent with *Morales*' explanation that "relat[ed] to" language does not bar state laws with only a "tenuous, remote, or peripheral" connection to the federal subject-matter. *Morales*, 504 U.S. at 390 (citation omitted).

C. The various arguments that Petitioners and their *amici* make to avoid application of EPCA preemption are legally wrong.

First, contrary to Petitioners' submission, *see* Primary Pet'rs Br. 95, the textualist reading of EPCA's preemption provision is consistent with *Massachusetts v. EPA*, 549 U.S. 497 (2007). That case held that EPCA's preemption provision does not permit the EPA to "shirk its environmental responsibilities." *Id.* at 532. Where there is "overlap" between the EPA's and the Department of Transportation's obligations, "there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency." *Id.* Here, both the EPA and the NHTSA have taken the Supreme Court's admonition to heart and continue to carry out their regulatory responsibilities together. *See* 84 Fed. Reg. at 51,316 ("This joint action enables the Federal government to administer its overlapping obligations while avoiding inconsistency.").

EPCA's preemption provision prohibits States like California from undermining these joint, congressionally mandated efforts.

Second, notwithstanding Petitioners' arguments, Primary Pet'rs Br. 94–98, nothing in the recent amendments to EPCA in the Energy Independence and Security Act ("EISA"), modifies the EPCA preemption provision's plain text, including its capacious "related to" language, 84 Fed. Reg. at 51,313, 51,321–22. The text of the EISA, "not the legislative history," is Congress's "authoritative statement" of the law, *Chamber of Commerce v. Whiting*, 563 U.S. 582, 599 (2011) (citation omitted)—and that text evinces no congressional intent to limit EPCA's preemption provision in any relevant regard. Petitioners rely on the EISA's "saving clause," 42 U.S.C. § 17002, which provides that "nothing in [the EISA] or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation." *Id.* Thus, by its plain wording, the EISA does *not* "supersede[ ]" or "limit[ ]" EPCA, *id.*, including its preemption provision. Nor could the EISA's saving clause limit EPCA's preemption provision implicitly because a saving clause "cannot be

allowed to supersede [a] specific substantive pre-emption provision," given the implausibility of Congress "undermin[ing] this carefully drawn statute through a general saving clause." *Morales*, 504 U.S. at 384–85.

For similar reasons, arguments about certain individual legislators' subjective intent in voting for the EISA are legally irrelevant. *See* Br. of Five Former Sec'ys of the Dep't of Transp. & Four Former Adm'rs of the Envtl. Prot. Agency As *Amici Curiae* in Supp. of Pet'rs 20–21; Br. of *Amici Curiae* Members of Congress in Supp. of Pet'rs 19. "[L]egislative history is not the law," and once Congress enacts a statute, courts "ask only what the statute means," *not* "what the legislature meant," *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018); *see also* 84 Fed. Reg. at 51,313 ("[L]egislative history does not alter the plain text of the statute."). Where, as here, the Court is presented with "clear statutory language," "arguments from legislative history" are never permitted to "muddy" it. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (citation omitted).

Finally, Petitioners' reliance on the EISA's procurement provisions to avoid preemption fail. *See* Primary Pet'rs Br. 96–97. Section 141 of the EISA, 42 U.S.C. § 13212(f)(3)(A), directs the EPA Administrator to

"identify[ ] . . . low greenhouse gas emitting vehicles" for inclusion in the Federal government's own fleet, *id.* at § 13212(f)(2)(A), and requires that the Administrator consider (for the federal government's own vehicles) "the most stringent standards for vehicle greenhouse gas emissions . . . for vehicles sold anywhere in the United States," *id.* at § 13212(f)(3)(B).

Petitioners contend that Congress must have envisioned multiple greenhouse gas standards or the "most stringent" language would be "meaningless." Primary Pet'rs Br. 96–97. But nothing in this text evinces any congressional intent beyond a preference for low emissions vehicles. *See* 42 U.S.C. § 13212(f)(2)(A). And, unlike EPCA's preemption provision, it says nothing about *state* standards. Courts are charged with reconciling federal statutes, not setting them up to be inconsistent with one another. *See, e.g.*, *Ricci v. DeStefano*, 557 U.S. 557, 580 (2009). Because "Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, . . . there is no need to infer congressional intent to pre-empt state laws from the substantive provisions of the legislation." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992) (citations omitted).

II. The One National Program That The Agencies Adopted Serves Important Congressional Objectives, As Both The Prior Administration And The Current Administration Recognized

Maintaining a uniform, nationwide standard in the complex policy area of fuel economy, consistent with the plain text of the EPCA's preemption provision, 49 U.S.C. § 32919(a), and the One National Program, advances this Nation's historical successes in air-quality remediation and consumer automotive choice.

The United States has been broadly successful in improving both air quality and fuel economy over the last 50 years. Since Congress enacted the Corporate Average Fuel Economy standards in the 1970s, average miles per gallon of light-duty vehicles have improved from 13.5 in 1975, to 22.4 in 2019. *Divided Highway*, *supra*, at 3. Auto manufacturers have made these gains despite competing interests—consumer preferences have shifted to larger and more powerful vehicles. *Id.* At the same time, automotive pollutant emissions have fallen *drastically*, with emissions of criteria pollutants falling between 49% and 90% since 1970, despite a 155% increase in miles driven. *Id.* at 3 & fig.2.

A single, uniform standard for fuel economy is essential for continuing this success because of the overlapping, interstate market for

automobiles in the United States, where manufacturers sell vehicles into every state. Dealing with "inconsistent or even duplicative requirements related to fuel economy standards" on a state-by-state basis threatens to make unbearable the already "significant cost[s]" of compliance with even just the "Federal fuel economy and [greenhouse gas] emissions requirements." 84 Fed. Reg. at 51,317. Requiring "manufacturers to expend scarce resources on specific technology regardless of consumer demand," based on disuniform state mandates, "unjustifiably increase[s] manufacturers' compliance costs, which must be either passed along to consumers or absorbed by the industry." *Id.* at 51,314, 51,317.

As this Court has noted, there is an inherent "difficulty [in] subjecting motor vehicles, which readily move across state boundaries, to control by individual states." *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1079 (D.C. Cir. 1996). Avoiding this "spectre of an anarchic patchwork of federal and state regulatory programs, a prospect which threaten[s] to create nightmares for the manufacturers," *id.* (citation omitted), demands a nationwide standard.

A uniform set of rules is also important for reducing the compliance burdens and planning uncertainties associated with implementing

vehicle design, supply chains, and distribution practices under multiple, inconsistent regulatory regimes. *See* 84 Fed. Reg. at 51,316. Further complicating these concerns in the automotive industry are the particularly long planning and "lead" times manufacturers require to develop their various car models. *See Divided Highway*, *supra*, at 7. Congress acknowledged such difficulties by building in multiple-year lead times before adopted fuel-economy standards can take effect. 49 U.S.C. § 32902(g)(2), (k)(3); *see also* 84 Fed. Reg. at 51,319. Faced with multiple, inconsistent, and changing regulatory regimes, this industry may require even longer to plan for future environmental requirements, or worse, "be left to do little more than guess at potential outcomes," while they prepare for an uncertain regulatory landscape. *Divided Highway*, *supra*, at 7.

A fragmented approach will have significant, negative downstream costs on other industries, from sales to parts manufacturing to advertising and finance. *See id.* at 7–9. A 2015 Report by the Center for Automotive Research estimated that the automotive industry accounted for roughly seven million jobs in America, with most concentrated in the Midwest and Southeast regions of the country. Kim Hill et al., Ctr. for

Auto. Research, *Contribution of the Automotive Industry to the Economies of All Fifty States and the United States*, 1, 5–6 (2015) [hereinafter CAR, *Auto Industry*];[5] *see also Divided Highway*, *supra*, at 8. Thus, every vehicle manufacturing job creates almost seven other jobs in industries across the economy. CAR, *Auto Industry*, *supra*, at 1. Imposing undue costs on automotive manufacturing, leading to reductions in sales, will thus have negative effects on a broad swath of the Nation's economy.

Uniformity and the One National Program also have important environmental benefits in their own right. Providing clear and uniform regulatory oversight allows manufacturers to better predict and react to such demands, lowering vehicle costs. *Divided Highway*, *supra*, at 7. Unnecessarily increasing compliance and regulatory expenses, on the other hand, can raise vehicle costs, which threatens to delay the positive environmental impacts of technological advancement by delaying "fleet turnover," or the replacement of older, less-efficient vehicles with newer, more efficient ones. *Id.* Recent years have already seen a slowed rate of

[5] Available at http://www.cargroup.org/wp-content/uploads/2017/02/Contribution-of-the-Automotive-Industry-to-the-Economies-of-All-Fifty-States-and-the-United-States2015.pdf.

fleet turnover, due in part to increased costs in new vehicles, *id.*, with the average light-duty vehicle now remaining on the road for three years longer than it would have two decades ago, Hart Schwartz*, America's Aging Vehicles Delay Rate of Fleet Turnover*, The Fuse (Jan. 23, 2018).[6] And when these older, less-efficient vehicles remain on the road, even "sharp gains in fuel economy in recent years" will be delayed over a much longer period of time, *id.*, as consumers choose to drive older, less-efficient vehicles for longer, rather than pay the inflated cost for newer vehicles, *Divided Highway*, *supra*, at 7.

The importance of a uniform standard in these matters is neither a recent discovery nor a matter of partisan preference. During the prior Administration, President Obama—with California's agreement—directed the EPA and the NHTSA to develop "a *coordinated national program* . . . to improve fuel efficiency and to reduce greenhouse gas emissions of passenger cars and light-duty trucks." Presidential Memorandum on Improving Energy Security, American Competitiveness and Job Creation, and Environmental Protection Through a

[6] Available at http://energyfuse.org/americas-aging-vehicles-delay-rate-fleet-turnover/.

Transformation of Our Nation's Fleet of Cars and Trucks, 75 Fed. Reg. 29,399, 29,400 (May 21, 2010) (emphasis added). The agencies complied, adopting final rules that "apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles (i.e. sport utility vehicles, cross-over utility vehicles, and light trucks), and represent the continuation of a harmonized and consistent National Program for these vehicles." 77 Fed. Reg. 62,623, 62,626–27 (Oct. 15, 2012); *see also id.* at 62,635 (noting that "stakeholders uniformly expressed interest in maintaining a harmonized and coordinated national program").[7] The current Administration has similarly determined that uniformity is critical, while concluding that the standards needed to be modified to reflect current economic, market, and

[7] Unfortunately, the level at which the prior Administration set that uniform standard ultimately proved unachievable, largely based on erroneous predictions about fuel costs and consumer preferences. *Divided Highway*, *supra*, at 4. For example, 2013 fuel-cost forecasts predicted that a gallon of gasoline would cost $3.87 on average in 2026 America. *Id.* at 4 & fig.3. More recent forecasts now predict that same gallon of gas will only cost $3.12 on average in 2026. *Id.* Fuel costs drive consumer preferences, so the disparity led government forecasts drastically to overestimate market demand for the most fuel-efficient vehicles. *Id.* at 4 & fig. 4. Those unforeseen difficulties transformed the 2012 standard from an optimistic one into one that automakers were destined to fail. *See id.* at 5 ("[A]utomakers [have] no direct technological path to achieve the [2012] standards, except perhaps via cross-subsidization in which electric vehicles are sold at a substantial loss while the cost of lower mileage vehicles is raised to dampen their sales and ease financial losses.").

technological conditions. 84 Fed. Reg. at 51,317. The current Administration has thus sought to achieve the same environmental goals embodied in the 2012 standards, albeit at a different regulatory level. *See, e.g.*, *id.* at 51,316.

* * *

The goals of maintaining a single, nationwide automobile marketplace and continued environmental progress are entirely compatible. The Chamber supports national standards that mandate technologically feasible fuel-economy increases, with benefits that justify their costs. Allowing California to set its own standards would fracture markets; disrupt planning, investment, and production; and infringe on federal prerogatives. The One National Program provides regulatory stability in the automotive manufacturing market, while allowing for future adjustments to continue, and improve upon, recent successes American manufacturers have made in automotive fuel economy.

CONCLUSION

This Court should deny the Petitions.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B), and this Court's May 20, 2020 briefing order, *see* Case No. 19-1230, Doc. 1843712, because this brief contains 4,318 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and D.C. Circuit Rule 32(b), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this brief has been prepared in a proportionately spaced typeface using 2016 Microsoft Word in 14-point Century Schoolbook font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2020, I filed the foregoing Brief with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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