

ORAL ARGUMENT NOT SCHEDULED**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF OHIO, et al.,

Petitioners,

No. 22-1081

v.

(and consolidated cases)

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and MICHAEL S.  
REGAN, in his official capacity as  
Administrator of the U.S. Environmental  
Protection Agency

Respondents.

**STATE AND LOCAL GOVERNMENT RESPONDENT-  
INTERVENORS' OPPOSITION TO STATE PETITIONERS'  
MOTION FOR LEAVE TO SUPPLEMENT THE RECORD**ROB BONTA  
Attorney General of California  
ROBERT W. BYRNE  
EDWARD H. OCHOA  
Senior Assistant Attorneys General  
MYUNG J. PARK  
GARY E. TAVETIAN  
Supervising Deputy Attorneys  
GeneralJESSICA BARCLAY-STROBEL  
KRISTIN MCCARTHY  
THEODORE A.B. MCCOMBS  
M. ELAINE MECKENSTOCK  
JONATHAN WIENER  
CAITLAN MCLOON  
Deputy Attorneys General  
300 S. Spring Street  
Ste. 1702  
Los Angeles, CA 90013  
Telephone: (213) 269-6438  
Fax: (213) 897-2802  
Email: [Caitlan.McLoon@doj.ca.gov](mailto:Caitlan.McLoon@doj.ca.gov)  
*Attorneys for State of California, by and  
through its Governor Gavin Newsom,  
its Attorney General Rob Bonta, and the  
California Air Resources Board*

(additional counsel on signature pages)

## INTRODUCTION

State and Local Government Respondent-Intervenors<sup>1</sup> oppose State Petitioners' motion for leave to supplement the record supporting their standing with an additional declaration filed with their reply brief. (ECF No. 1989429.) “[A] petitioner whose standing is not self-evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto at the first appropriate point in the review proceeding,” namely “with the petitioner’s opening brief—and not . . . in reply to the brief of the respondent agency.” *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002); Circuit Rule 28(a)(7). This Court only “allow[s] petitioners to support their standing . . . in affidavits submitted along with the reply brief,” *Am. Library Assoc. v. FCC*, 401 F.3d 489, 494 (D.C. Cir. 2005), where “good cause” exists to excuse the delay, *Twin Rivers Paper Co. LLC v. SEC*, 934 F.3d 607, 614 (D.C. Cir. 2019) (cleaned up). This Court has found good cause exists when petitioner “reasonably thought it had established standing when it submitted its initial declarations”; the

---

<sup>1</sup> State and Local Government Respondent-Intervenors, as used herein, consist of the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts and Pennsylvania; the District of Columbia; and the cities of Los Angeles and New York.

“supplemental declarations did not raise an entirely new theory of standing”; standing was “patently obvious from the supplemental declarations”; and respondents “suffered no prejudice from the timing of the supplemental declarations’ submission.” *Nat’l Council for Adoption v. Blinken*, 4 F.4th 106, 112 (D.C. Cir. 2021) (cleaned up). Petitioners have not established good cause for this late filing.

They assert that the supplemental declaration merely “adds specificity to declarations already submitted with the opening brief” and “definitively lock[s] in standing.” Mot. to Supplement 2-3. But the supplemental declaration does no such thing. Rather than filling the real gaps Respondents and Respondent-Intervenors identified in Petitioners’ initial declarations, the supplemental declaration doubles down on abstract *theory* without providing a single specific fact or citation to economic literature. Indeed, it makes unsupported claims that are directly contradicted by the specific factual evidence already in the record. This new declaration, thus, fails to demonstrate that Petitioners have standing, much less makes their standing patently obvious. State and Local Government Respondent-Intervenors would also be prejudiced by the Court’s consideration of the new claims and theories in the supplemental declaration, given the timing of its submission.

## ARGUMENT

### **A. State Petitioners Could Not Have Reasonably Believed their Original Declarations Established Standing, and the Supplemental Declaration Falls Far Short of Making their Standing Patently Obvious**

1. Petitioners' supplemental declaration purports to further their theory that California's zero-emission-vehicle standards will cause them to pay higher prices for conventional vehicles, thus causing them economic injury.

Ohio Br. 14-15.<sup>2</sup> As EPA and State and Local Government Respondent-Intervenors pointed out in their answering briefs, the initial declarations that petitioners submitted contained no *facts* supporting this contention.

California Br. at 9-13; EPA Br. 23-26. In particular, Petitioners' declarations did not contain or reference any vehicle price data or any facts about how and when the prices Petitioners pay for state-fleet vehicles are determined. California Br. 11; EPA Br. 23-26. Vehicle pricing data was available to Petitioners and its declarants through public sources. *E.g.*, California Add86, Add116. And Petitioners unquestionably had information

---

<sup>2</sup> Respondents and State and Local Government Respondent-Intervenors addressed Petitioners' other standing theories—an alleged constitutional injury, as well as allegedly reduced fuel tax revenue and allegedly increased stress on roads and electrical grids—in their briefs. EPA Br. 26-29; California Br. 9-10, 11 n.2. These theories are not further addressed here because the supplemental declaration does not purport to assist them.

about when and how *they* negotiate the prices of vehicles they buy— information that is of particular importance since this case involves California standards that cease to require further changes from automakers after model year 2025. California Br. 11-13. Indeed, because “vacating California’s waiver could not possibly affect the . . . price of automobiles delivered” in the past, Petitioners were required to establish that their alleged injuries will occur during the one to two remaining model years. *Chamber of Com. v. EPA*, 642 F.3d 192, 204 (D.C. Cir. 2011).

“A petitioner bears the burden of establishing each of [the three] elements” for standing—*injury-in-fact*, causation, and redressability. *Chamber of Com.*, 642 F.3d at 200. “[A]ny petitioner alleging only future injuries”—as Petitioners must here—“confronts a significantly more rigorous burden to establish standing.” *Id.* (cleaned up). Petitioners’ supplemental declaration is improper because they cannot have “*reasonably* thought” their original submission had established that their States will pay higher prices for conventional vehicles. *Nat’l Council for Adoption*, 4 F.4th at 12 (emphasis added). Petitioners provided no pricing data of any kind and no information indicating whether their States have already locked in prices for the relevant model years—even though that data and information was readily available to the Petitioners.

Nor is this a case where the supplemental declaration would render standing “patently obvious.” *Communities Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 685 (D.C. Cir. 2004). The supplemental declaration *still* contains no vehicle price data and no information about when and how the prices Petitioners will pay for state-fleet vehicles are determined. It, thus, provides no additional specificity about, or even any support for, the claim that their States might face price increases in the relevant years.

2. Petitioners’ supplemental declaration also fails to cure the problems stemming from the three faulty assumptions in their initial submissions: (1) that zero-emission-vehicle sales in California are unprofitable, (2) that automakers will respond by increasing the price of conventional vehicles in California, and (3) that vehicle prices are uniform nationwide. *See* California Br. 11. Each of these three assumptions would need to be correct for Petitioners’ alleged pricing injury to occur. Their initial declarations did not support any of these assumptions, and the supplemental declaration does not do so either.

As State and Local Government Respondent-Intervenors showed, publicly available vehicle data—omitted from Petitioners’ initial declarations—debunks the first assumption. Zero-emission-vehicle sales are rapidly increasing (even beyond the requirements in California) and are

generating profits in California and elsewhere. California Add87-91. Petitioners’ motion does not explain why their initial, counterfactual assumption was reasonable, and the supplemental declaration does not provide any additional support for that assumption. Instead, the declarant doubles down on the fact-less assertion that zero-emission vehicles “do not satisfy consumer preferences at competitive prices.” Supp. Zycher Decl. at ¶ 8.<sup>3</sup> Petitioners’ failure to support this theory with *any* facts at the beginning was unreasonable, and their supplementation remains deficient.

As to Petitioners’ second assumption—that manufacturers will raise conventional vehicle prices in response to allegedly unprofitable zero-emission-vehicle sales—Respondent-Intervenors showed that this was an unreasonable assumption that is contravened by the peer-reviewed economic literature. California Add117-18. The supplemental declaration responds not with facts (or other economic literature), but with additional counterfactual assumptions. *Compare* Supp. Zycher Decl. ¶ 11 (claiming

---

<sup>3</sup> In their reply brief, Petitioners attempt to respond to Respondent-Intervenors’ showing, arguing that manufacturers would willingly accept losses on zero-emission-vehicle sales while allowing dealers to make sizable profits on those same vehicles. Ohio Reply 5. That argument makes little economic or logical sense, but, regardless, Petitioners do not cite the supplemental declaration for their argument, underscoring that this declaration adds nothing on this central pillar of Petitioners’ standing theory.

“auto producers . . . have not been willing to invest in a shift from [conventional vehicles] to [zero-emission vehicles]”) *with* Industry Respondent-Intervenors Br. 12 (“[M]akers of internal combustion vehicles have invested billions in electric vehicles, and some industry respondent-intervenors were founded solely to produce electric vehicles”). In addition, the supplemental declaration expands the definition of a “cross-subsidy” to include manufacturers taking a short-run loss on zero-emission vehicles. Supp. Zycher Decl. ¶ 9. Whether or not that expanded definition is correct as a matter of economic theory, the fact that manufacturers may take short-run losses on zero-emission vehicles, *without raising conventional vehicle prices*, undercuts Petitioners’ standing.

Finally, Petitioners’ opening brief adduced no facts to support the third assumption—that vehicle prices must be the same nationwide—but instead claimed it was supported by basic economic theory. Ohio Add43-44. As State and Local Government Respondent-Intervenors demonstrated, that assumption is controverted by both economic theory and actual vehicle prices. California Add110-16. Indeed, publicly available vehicle pricing data shows significant geographic variances. *Id.* at 91-96. Petitioners cannot reasonably have believed that their initial showing established standing. And, again, the supplemental declaration does not correct the



deficiencies of Petitioners' initial showing, much less establish standing beyond any doubt.

Instead, Petitioners attempt to challenge the significance of the geographic variation in vehicle prices, claiming that these numbers “do not control for ‘applicable taxes or other fees,’” which could “easily explain the dollar disparities.” Supp. Zycher Decl. ¶¶ 14-15. In keeping with Petitioners' general approach, this is entirely unsubstantiated: the supplemental declaration does not provide actual facts—such as tax rates or fees in the localities in question—that could support this contention. In any event, Petitioners' unsubstantiated assertion was already disproved by the opposing declaration to which it claims to be responding. Respondent-Intervenors' declarant explained that while “[t]he pricing data . . . does not include any applicable taxes or other fees, or other state or local government charges,” in fact, “many of the vehicle prices provided . . . are higher in California than in States with lower state sales tax rates, meaning the total price differences . . . are probably understated.” California Add093-094. Thus, far from adding specificity to their standing theory, Petitioners' supplemental declaration fails to grapple with the specific facts in the record.

**B. State Respondent-Intervenors Would Be Prejudiced by Acceptance of Petitioners' Late Submission**

Petitioners' motion should also be denied on the basis of prejudice because it contains new assumptions and claims to which Respondents and Respondent-Intervenors have no opportunity to respond. *Nat'l Council for Adoption*, 4 F.4th at 112-13. Petitioners attempt to salvage their economic injury claim by introducing new assumptions—i.e., that demand for conventional vehicles responds to price alone, or that a technological “break-through” or “substantial decline in input costs” is “highly unlikely”—that are not only abstract and unsupported, but incorrect. *E.g.*, Supp. Zycher Decl. ¶¶ 4, 5. Petitioners' declarant also appears to have changed his definition of one of his central concepts (cross-subsidization), as discussed above. Finally, the declarant appears to agree that vehicle prices in Petitioners' States can, and probably will, be lower than prices in States that have adopted California's zero-emission-vehicle standards but then, to save Petitioners' standing theory, claims that auto dealers in Petitioners' States will willingly raise prices and eliminate their competitive advantage. Supp. Zycher Decl. ¶ 16.

State and Local Government Respondent-Intervenors submitted two declarations, totaling more than thirty pages, in response to Petitioners'

initial declarations. Had the additional assumptions and claims presented in the supplemental declaration been included in Petitioners' initial submission, State and Local Government Respondent-Intervenors would have been able to address those claims substantively, including by presentation of additional data regarding technological advancements and falling technology costs. The inability to do so now constitutes prejudice that should result in denial of Petitioners' motion, particularly since the supplemental declaration falls far short of rendering Petitioners' standing "irrefutable." *Cf. Communities Against Runway Expansion*, 355 F.3d at 685 (respondent "was not prejudiced by its inability to respond to the supplemental declaration" where declaration made standing "irrefutable").

### CONCLUSION

For the foregoing reasons, Petitioners' motion should be denied, the supplemental declaration of Benjamin Zycher attached thereto should be excluded, and the Court should strike any references to that supplemental declaration from Petitioners' reply brief.

Dated: March 20, 2023

Respectfully submitted,

ROB BONTA  
Attorney General of California  
ROBERT W. BYRNE  
EDWARD H. OCHOA  
Senior Assistant Attorneys General  
MYUNG J. PARK  
GARY E. TAVETIAN  
Supervising Deputy Attorneys General  
JESSICA BARCLAY-STROBEL  
KRISTIN MCCARTHY  
THEODORE A.B. MCCOMBS  
M. ELAINE MECKENSTOCK  
JONATHAN WIENER  
Deputy Attorneys General

*/s/ Caitlan McLoon*

CAITLAN MCLOON

Deputy Attorney General

300 S. Spring Street

Ste. 1702

Los Angeles, CA 90013

Telephone: (213) 269-6438

Fax: (213) 897-2802

Email: [Caitlan.McLoon@doj.ca.gov](mailto:Caitlan.McLoon@doj.ca.gov)

*Attorneys for State of California, by and  
through its Governor Gavin Newsom, its  
Attorney General Rob Bonta, and the  
California Air Resources Board*

FOR THE STATE OF COLORADO

PHILIP J. WEISER  
Attorney General

*/s/ Scott Steinbrecher*

SCOTT STEINBRECHER  
Acting Deputy Attorney General

DAVID A. BECKSTROM  
Assistant Attorney General  
Natural Resources and Environment  
Section

Ralph C. Carr Colorado Judicial  
Center

1300 Broadway, Seventh Floor  
Denver, Colorado 80203

Telephone: (720) 508-6287

[scott.steinbrecher@coag.gov](mailto:scott.steinbrecher@coag.gov)

FOR THE STATE OF  
CONNECTICUT

WILLIAM TONG  
Attorney General

MATTHEW I. LEVINE  
Deputy Associate Attorney General

*/s/ Scott N. Koschwitz*

SCOTT N. KOSCHWITZ  
Assistant Attorney General

165 Capitol Avenue  
Hartford, CT 06106

Telephone: (860) 808-5250

Fax: (860) 808-5386

[Scott.Koschwitz@ct.gov](mailto:Scott.Koschwitz@ct.gov)

FOR THE STATE OF DELAWARE

FOR THE STATE OF HAWAII

KATHLEEN JENNINGS  
Attorney General

ANNE E. LOPEZ  
Attorney General

*/s/ Christian Douglas Wright*  
CHRISTIAN DOUGLAS WRIGHT  
Director of Impact Litigation  
RALPH K. DURSTEIN III  
JAMESON A.L. TWEEDIE  
Deputy Attorneys General  
Delaware Department of Justice  
820 N. French Street  
Wilmington, DE 19801  
Telephone: (302) 683-8899  
[Christian.Wright@delaware.gov](mailto:Christian.Wright@delaware.gov)  
[Ralph.Durstein@delaware.gov](mailto:Ralph.Durstein@delaware.gov)  
[Jameson.Tweedie@delaware.gov](mailto:Jameson.Tweedie@delaware.gov)

*/s/ Lyle T. Leonard*  
LYLE T. LEONARD  
Deputy Attorney General  
465 S. King Street, #200  
Honolulu, Hawaii 96813  
Telephone: (808) 587-3050  
[Lyle.T.Leonard@hawaii.gov](mailto:Lyle.T.Leonard@hawaii.gov)

## FOR THE STATE OF ILLINOIS

KWAME RAOUL  
Attorney General  
MATTHEW J. DUNN  
Chief, Environmental Enforcement/  
Asbestos Litigation Division

/s/ Elizabeth Dubats  
ELIZABETH DUBATS  
JASON E. JAMES  
Assistant Attorneys General  
Office of the Attorney General  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
Telephone: (312) 814-3000  
[Elizabeth.Dubats@ilag.gov](mailto:Elizabeth.Dubats@ilag.gov)

## FOR THE STATE OF MAINE

AARON M. FREY  
Attorney General  
  
/s/ Emma Akrawi  
EMMA AKRAWI  
Assistant Attorney General  
6 State House Station  
Augusta, ME 04333  
Telephone: (207) 626-8800  
[Emma.Akrawi@maine.gov](mailto:Emma.Akrawi@maine.gov)

FOR THE STATE OF MARYLAND

ANTHONY G. BROWN  
Attorney General

/s/ Cynthia M. Weisz

CYNTHIA M. WEISZ  
Assistant Attorney General  
Office of the Attorney General  
Maryland Department of the  
Environment  
1800 Washington Blvd.  
Baltimore, MD 21230  
Telephone: (410) 537-3014  
[Cynthia.Weisz2@maryland.gov](mailto:Cynthia.Weisz2@maryland.gov)

JOSHUA M. SEGAL  
Special Assistant Attorney General  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
Telephone: (410) 576-6446  
[JSegal@oag.state.md.us](mailto:JSegal@oag.state.md.us)

FOR THE STATE OF MINNESOTA

KEITH ELLISON  
Attorney General

/s/ Peter Surdo

PETER N. SURDO  
Special Assistant Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2127  
Telephone: (651) 757-1061  
[Peter.Surdo@ag.state.mn.us](mailto:Peter.Surdo@ag.state.mn.us)



## FOR THE STATE OF NEVADA

AARON D. FORD  
Attorney General

*/s/ Heidi Parry Stern*

HEIDI PARRY STERN  
Solicitor General  
DANIEL P. NUBEL  
Senior Deputy Attorney General  
Office of the Nevada Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, NV 89101  
[HStern@ag.nv.gov](mailto:HStern@ag.nv.gov)

## FOR THE STATE OF NEW JERSEY

MATTHEW J. PLATKIN  
Attorney General

*/s/ Lisa J. Morelli*

LISA J. MORELLI  
RACHEL MANNING  
NELL HRYSHKO  
Deputy Attorneys General  
New Jersey Division of Law  
25 Market Street  
Trenton, New Jersey 08625  
Tel: (609) 376-2745  
[Lisa.Morelli@law.njoag.gov](mailto:Lisa.Morelli@law.njoag.gov)

## FOR THE STATE OF NEW MEXICO FOR THE STATE OF NEW YORK

RAÚL TORREZ  
Attorney General

*/s/ Bill Grantham*

BILL GRANTHAM  
Assistant Attorney General  
Attorney General of New Mexico  
408 Galisteo St.  
Villagra Bldg.  
Sante Fe, NM 87501  
Tel: (505) 717-3520  
[wgrantham@nmag.gov](mailto:wgrantham@nmag.gov)

LETITIA JAMES  
Attorney General  
JUDITH N. VALE  
Deputy Solicitor General  
ELIZABETH A. BRODY  
Assistant Solicitor General  
YUEH-RU CHU  
Chief, Affirmative Litigation Section  
Environmental Protection Bureau

*/s/ Gavin G. McCabe*

GAVIN G. MCCABE  
ASHLEY M. GREGOR  
Assistant Attorneys General  
28 Liberty Street, 19th Floor  
New York, NY 10005  
Telephone: (212) 416-8469  
[Gavin.McCabe@ag.ny.gov](mailto:Gavin.McCabe@ag.ny.gov)

FOR THE STATE OF NORTH  
CAROLINA

JOSHUA H. STEIN  
Attorney General  
DANIEL S. HIRSCHMAN  
Senior Deputy Attorney General

/s/ Asher P. Spiller  
ASHER P. SPILLER  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6400  
[ASpiller@ncdoj.gov](mailto:ASpiller@ncdoj.gov)

FOR THE STATE OF RHODE  
ISLAND

PETER F. NERONHA  
Attorney General

/s/ Nicholas M. Vaz  
NICHOLAS M. VAZ  
Special Assistant Attorney General  
Office of the Attorney General  
Environmental and Energy Unit  
150 South Main Street  
Providence, Rhode Island 02903  
Telephone: (401) 274-4400 ext. 2297  
[NVaz@riag.ri.gov](mailto:NVaz@riag.ri.gov)

## FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
Attorney General  
/s/ Paul Garrahan  
PAUL GARRAHAN  
Attorney-in-Charge  
STEVE NOVICK  
Special Assistant Attorney General  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301-4096  
(503) 947-4540  
[Paul.Garrahan@doj.state.or.us](mailto:Paul.Garrahan@doj.state.or.us)  
[Steve.Novick@doj.state.or.us](mailto:Steve.Novick@doj.state.or.us)

## FOR THE STATE OF VERMONT

CHARITY R. CLARK  
Attorney General

/s/ Nicholas F. Persampieri  
NICHOLAS F. PERSAMPIERI  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
Telephone: (802) 828-3171  
[Nick.Persampieri@vermont.gov](mailto:Nick.Persampieri@vermont.gov)

FOR THE STATE OF  
WASHINGTON

ROBERT W. FERGUSON  
Attorney General

*/s/ Christopher H. Reitz*  
CHRISTOPHER H. REITZ  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40117  
Olympia, WA 98504  
Telephone: (360) 586-4614  
[Chris.Reitz@atg.wa.gov](mailto:Chris.Reitz@atg.wa.gov)

FOR THE COMMONWEALTH  
OF MASSACHUSETTS

ANDREA JOY CAMPBELL  
Attorney General  
SETH SCHOFIELD  
Senior Appellate Counsel

*/s/ Matthew Ireland*  
MATTHEW IRELAND  
Assistant Attorney General  
Office of the Attorney General  
Energy and Environment Bureau  
One Ashburton Place, 18th Floor  
Boston, MA 02108  
Telephone: (617) 727-2200  
[Matthew.Ireland@mass.gov](mailto:Matthew.Ireland@mass.gov)

FOR THE COMMONWEALTH OF  
PENNSYLVANIA

MICHELLE HENRY  
Acting Attorney General  
JILL GRAZIANO  
Chief Deputy Attorney General

*/s/ Ann R. Johnston*  
ANN R. JOHNSTON  
Senior Deputy Attorney General  
Office of Attorney General  
Strawberry Square  
14th Floor  
Harrisburg, PA 17120  
Telephone: (717) 497-3678  
[AJohnston@attorneygeneral.gov](mailto:AJohnston@attorneygeneral.gov)

FOR THE DISTRICT OF  
COLUMBIA

BRIAN L. SCHWALB  
Attorney General

*/s/ Caroline S. Van Zile*  
CAROLINE S. VAN ZILE  
Solicitor General  
Office of the Attorney General for the  
District of Columbia  
400 6th Street, NW, Suite 8100  
Washington, D.C. 20001  
Telephone: (202) 724-6609  
Fax: (202) 741-0649  
[Caroline.VanZile@dc.gov](mailto:Caroline.VanZile@dc.gov)

FOR THE CITY OF LOS ANGELES

HYDEE FELDSTEIN SOTO  
City Attorney

*/s/ Michael J. Bostrom*  
MICHAEL J. BOSTROM  
Senior Assistant City Attorney  
200 N. Main Street, 6<sup>th</sup> Floor  
Los Angeles, CA 90012  
Telephone: (213) 978-1867  
Fax: (213) 978-2286  
[Michael.Bostrom@lacity.org](mailto:Michael.Bostrom@lacity.org)

FOR THE CITY OF NEW YORK

HON. SYLVIA O. HINDS-RADIX  
New York City Corporation Counsel  
ALICE R. BAKER  
Senior Counsel

*/s/ Christopher G. King*  
CHRISTOPHER G. KING  
Senior Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007  
Telephone: (212) 356-2074  
[cking@law.nyc.gov](mailto:cking@law.nyc.gov)

**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing opposition complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 1,961 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: March 20, 2023

/s/ Caitlan McLoon

Caitlan McLoon

*Attorney for State of California, by and through its Governor Gavin Newsom, its Attorney General Rob Bonta, and the California Air Resources Board*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 20, 2023 I electronically filed the foregoing opposition 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.

Dated: March 20, 2023

/s/ Caitlan McLoon

Caitlan McLoon

*Attorney for State of California, by and through its Governor Gavin Newsom, its Attorney General Rob Bonta, and the California Air Resources Board*