

ORAL ARGUMENT NOT YET SCHEDULED

**No. 20-1145**

Consolidated with Cases No. 20-1167, -1168,  
-1169, -1173, -1174, -1176, -1177 & -1230

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

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COMPETTIVE ENTERPRISE INSTITUTE et al.,

*Petitioners,*

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION et al.,

*Respondents,*

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**RESPONSE OF PUBLIC INTEREST ORGANIZATION  
PETITIONERS IN OPPOSITION TO RESPONDENTS'  
MOTION TO HOLD CASES IN ABEYANCE**

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Public Interest Organization Petitioners oppose Respondents' motion for indefinite abeyance and support the suggestion by State and Local Government Petitioners that the Court order a six-month extension of the briefing schedule. We offer these brief additional reasons in support of that suggestion.

The Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA) rules here under review drastically weakened the preexisting greenhouse gas and fuel-economy standards for the millions of passenger cars and light trucks to be manufactured and sold in model years 2021–2026. The Agencies themselves concede that their Rollback will cause the emission of nearly one billion tons more

carbon dioxide and other climate-disrupting air pollutants over the lifetime of the vehicles affected by the Rollback and cost consumers at least \$175 billion in increased fuel costs over the same period. To avoid these enormous harms, Public Interest Organization Petitioners brought this litigation seeking vacatur of the Rollback.

Public Interest Organization Petitioners welcome Executive Order 13,990, which directs EPA and NHTSA to review and potentially propose rules revising those standards by July 2021. However, at this time, it is not possible to determine whether such proposed rules will remedy the concrete, substantial, and long-lived consequences of the Rollback, especially for the earliest model years affected by the Rollback. The harms resulting from the Rollback are already being felt. For example, the Rollback allows model year 2021 vehicles—which are currently being sold and will remain on the road for the next 15 years—to emit substantially more climate-changing pollution and consume substantially more fuel than under the prior standards. By weakening the Agencies’ standards, the Rollback also allows automakers to accumulate more credits for fleets of model year 2021 vehicles that exceed the weakened standards. Automakers then will be able to use those credits to manufacture higher emitting, less fuel-efficient vehicles in later model years.

At this time, it is unclear for which model years the Agencies will propose revised standards, or what limitations the Agencies may propose on automakers’ use of credits accrued in any model years that the revised standards will not address. If revised rules proposed in July do not address all the model years covered by or credits generated

under the Rollback here under review, the only timely and complete relief available to Public Interest Organization Petitioners will be through this litigation. An indefinite abeyance would exacerbate our ongoing and cumulative harms.

For these reasons, Public Interest Organization Petitioners oppose Respondents' motion to place these cases in indefinite abeyance. Noting that opening briefs have already been filed, we support the suggestion of State and Local Government Petitioners that the Court instead issue a six-month extension of the April 14, 2021, deadline for filing the federal government's response brief, with a consequent extension of the deadlines for other merits briefs. This would allow all parties time to assess the impact of a July 2021 proposal on the issues raised in the current cases, including the issues pertaining to standards and credits for the early model years set forth above, and then to make further proposals regarding the course of this litigation.

Respectfully submitted,

/s/ Matthew Littleton

Matthew Littleton

Sean H. Donahue

Donahue, Goldberg,

Weaver & Littleton

1008 Pennsylvania Avenue SE

Washington, DC 20003

(202) 683-6895

matt@donahuegoldberg.com

Vickie L. Patton

Peter M. Zalzal

Alice Henderson

Environmental Defense Fund

2060 Broadway, Suite 300

Boulder, CO 80302

(303) 447-7215

vpatton@edf.org

*Counsel for Environmental Defense Fund*

Maya Golden-Krasner  
Center For Biological Diversity  
660 South Figueroa Street, Suite 1000  
Los Angeles, CA 90017  
(213) 785-5402  
mgoldenkrasner@biologicaldiversity.org

*Counsel for Center for Biological Diversity*

Ariel Solaski  
Jon A. Mueller  
Chesapeake Bay Foundation, Inc.  
6 Herndon Avenue  
Annapolis, MD 21403  
(443) 482-2171  
asolaski@cbf.org

*Counsel for Chesapeake Bay Foundation, Inc.*

Shana Lazerow  
Communities For A Better Environment  
6325 Pacific Boulevard, Suite 300  
Huntington Park, CA 90255  
(323) 826-9771  
slazerow@cbecal.org

*Counsel for Communities for a Better  
Environment*

Emily K. Green  
Conservation Law Foundation  
53 Exchange Street, Suite 200  
Portland, ME 04102  
(207) 210-6439  
egreen@clf.org

*Counsel for Conservation Law Foundation*

Michael Landis  
The Center For Public Interest Research  
1543 Wazee Street, Suite 400  
Denver, CO 80202  
(303) 573-5995 ext. 389  
mlandis@publicinterestnetwork.org

*Counsel for Environment America*

Robert Michaels  
Ann Jaworski  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, IL 60601  
(312) 795-3713  
rmichaels@elpc.org

*Counsel for Environmental Law & Policy  
Center*

David D. Doniger  
Natural Resources Defense Council  
1152 15th Street NW, Suite 300  
Washington, DC 20005  
(202) 289-6868  
ddoniger@nrdc.org

Ian Fein  
Natural Resources Defense Council  
111 Sutter Street, 21st Floor  
San Francisco, CA 94104  
(415) 875-6100  
ifein@nrdc.org

*Counsel for Natural Resources Defense  
Council, Inc.*

Joanne Spalding  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
(415) 977-5725  
joanne.spalding@sierraclub.org

Paul Cort  
Regina Hsu  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
(415) 217-2077  
pcort@earthjustice.org

Vera Pardee  
726 Euclid Avenue  
Berkeley, CA 94708  
(858) 717-1448  
pardeelaw@gmail.com

*Counsel for Sierra Club*

Scott L. Nelson  
Public Citizen Litigation Group  
1600 20th Street NW  
Washington, DC 20009  
(202) 588-1000  
snelson@citizen.org

*Counsel for Consumer Federation of America  
and Public Citizen, Inc.*

Sean Lev  
Democracy Forward Foundation  
1440 G Street NW, #8162  
Washington, DC 20005  
(202) 448-9090  
slev@democracyforward.org

*Counsel for Union of Concerned Scientists*

**CERTIFICATE OF COMPLIANCE**

This response to a motion was prepared in 14-point Garamond font using Microsoft Word 365 (Nov. 2020 ed.), and it complies with the typeface and typestyle requirements of Federal Rule of Appellate Procedure 27(d)(1)(E). The document contains 518 words and complies with the type-volume limitation of Rule 27(d)(2)(A).

/s/ Matthew Littleton

Matthew Littleton

**CERTIFICATE OF SERVICE**

I certify that on March 1, 2021, I electronically filed the foregoing response to a motion using the Court's CM/ECF system. All counsel registered as CM/ECF users will be served by that system. I further certify that service will be accomplished via email for the following case participant:

Diane K. Taira  
State of Hawaii  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
diane.k.taira@hawaii.gov

/s/ Matthew Littleton  
Matthew Littleton