

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

NATIONAL COALITION FOR
ADVANCED TRANSPORTATION,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

ANDREW R. WHEELER, in his official
capacity as Administrator, United States
Environmental Protection Agency,

UNITED STATES DEPARTMENT OF
TRANSPORTATION,

ELAINE L. CHAO, in her official capacity
as Secretary, United States Department of
Transportation,

NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION,

JAMES C. OWENS, in his official
capacity as Acting Administrator, National
Highway Traffic Safety Administration,

Respondents.

No. 19-1242 (Consolidated with
Nos. 19-1230 (Lead), 19-1241,
19-1243, 19-1245, 19-1246, 19-
1249)

**PETITIONER NATIONAL COALITION FOR ADVANCED
TRANSPORTATION'S NON-BINDING STATEMENT OF ISSUES**

Pursuant to the Court's December 2, 2019 Order, Petitioner National Coalition for Advanced Transportation ("NCAT") submits the following non-binding, preliminary statement of issues to be raised in this proceeding to review the final agency actions by respondent United States Environmental Protection Agency ("EPA"), entitled "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program" and published in the Federal Register on September 27, 2019, at 84 Fed. Reg. 51,310:

(1) Whether EPA lacks authority to partially revoke the waiver it previously granted to California in 2013 under Clean Air Act Section 209(b).

(2) Whether EPA's withdrawal of the Section 209(b) waiver on the grounds that California does not need its regulatory standards to meet "compelling and extraordinary conditions" within the meaning of Clean Air Act Section 209(b)(1)(B) is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of Administrative Procedure Act.

(3) Whether EPA's withdrawal of the Section 209(b) waiver based on NHTSA's Energy Policy and Conservation Act preemption determination is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of Administrative Procedure Act.

(4) Whether EPA's determination that states other than California cannot use Clean Air Act Section 177 to adopt or enforce greenhouse gas standards identical to those for which California had been granted a waiver of preemption is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in violation of Administrative Procedure Act.

As explained in NCAT's Petition for Review, D.C. Cir. Case No. 19-1242 Doc. No. 1816844, NCAT also protectively petitioned for review of the final agency actions of the National Highway Transportation and Safety Administration ("NHTSA"), an agency of the U.S. Department of Transportation, also published in the *Federal Register* on September 27, 2019, at 84 Fed. Reg. 51,310. NCAT believes that the federal district courts have exclusive jurisdiction over review of that determination in the first instance. NCAT has intervened in support of plaintiffs in the district court cases challenging NHTSA's actions, consolidated under *California v. Chao*, No. 1:19-cv-02826-KBJ. In the event that the district court determines that it is without jurisdiction to decide those NHTSA challenges, NCAT respectfully would add the following issues to this proceeding:

(5) Whether NHTSA's preemption regulation violated the Administrative Procedure Act by exceeding the agency's statutory authority, or because this regulation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) Whether NHTSA's preemption regulation is an unlawful *ultra vires* action.

(7) Whether NHTSA's preemption regulation violated the Administrative Procedure Act because the agency failed to comply with the National Environmental Policy Act.

December 23, 2019

Respectfully submitted,

s/ Stacey L. VanBelleghem

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2019, the foregoing document was filed electronically using the CM/ECF system, which will send notification of the filing to counsel of record who are registered CM/ECF users.

s/ Stacey L. VanBellegem
Stacey L. VanBellegem