

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

STATE OF OHIO, et al.,

Petitioners,

v.

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

Respondents.

Case No. 22-1081

Consolidated with 22-1083, 1084, -
1085

STATEMENT OF ISSUES TO BE RAISED

Pursuant to the Court's order on May 13, 2022, Petitioners in Case No. 22-1081 (Ohio, et al.) submit this non-binding, preliminary statement of issues to be raised regarding Respondents' final action entitled *California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision*, 87 Fed. Reg. 14,332 (Mar. 14, 2022).

1. Whether Section 209(b)(1) of the Clean Air Act violates the Constitution by allowing California, and only California, to set new-vehicle emissions standards more stringent than the "applicable Federal standards."

2. Whether the EPA violated the equal-sovereignty doctrine when it reissued California's 2013 Clean Air Act waiver under Section 209(b)(1) of the Clean Air Act.

3. Whether the EPA's reissuance of the California's 2013 Clean Air Act waiver is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because EPA failed to consider whether its action is consistent with the equal-sovereignty doctrine.

4. Whether the EPA's reissuance of California's 2013 Clean Air Act waiver is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or contrary to constitutional power because Congress has broadly preempted state requirements that are "related to" fuel-economy standards. 49 U.S.C. §32919(a).

DATED: June 13, 2022

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/s/ Benjamin M. Flowers
BENJAMIN M. FLOWERS
Ohio Solicitor General
MICHAEL HENDERSHOT
Chief Deputy Solicitor General
MAY MAILMAN
Deputy Solicitor General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
(614) 466-8980
(614) 466-5087 fax
benjamin.flowers@ohioago.gov
Counsel for State of Ohio

STEVE MARSHALL
Attorney General of Alabama

LESLIE RUTLEDGE
Attorney General of Arkansas

/s/ Edmund G. LaCour Jr. (BMF per au-
thority)

EDMUND G. LACOUR JR.
Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
(334) 242-7300
(334) 353-8400 fax
Edmund.LaCour@AlabamaAG.gov

Counsel for State of Alabama

/s/Nicholas J. Bronni (BMF per author-
ity)

NICHOLAS J. BRONNI
Solicitor General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
(501) 682-2007
Nicholas.Bronni@arkansasag.gov

Counsel for the State of Arkansas

CHRISTOPHER M. CARR
Attorney General of Georgia

/s/ Stephen J. Petrany (BMF per authority)

STEPHEN J. PETRANY
Solicitor General
Georgia Department of Law
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3408
spetrany@law.ga.gov
Counsel for State of Georgia

DEREK SCHMIDT
Attorney General of Kansas

/s/ Jeffrey A. Chanay (BMF per authority)

Jeffrey A. Chanay
Chief Deputy Attorney General
120 S.W. 10th Avenue, 3rd Floor
Topeka, KS 66612
(785) 368-8435
(785) 291-3767 fax
jeff.chanay@ag.ks.gov
Counsel for State of Kansas

THEODORE E. ROKITA
Attorney General of Indiana

/s/ Thomas M. Fisher (BMF per authority)

THOMAS M. FISHER
Solicitor General
Office of the Indiana Attorney General
IGC-South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204-2770
(317) 232-6255
Tom.Fisher@atg.in.gov
Counsel for State of Indiana

DANIEL CAMERON
Attorney General of Kentucky

/s/ Matthew F. Kuhn (BMF per authority)

MATTHEW F. KUHN
Solicitor General
Office of Kentucky Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5400
Matt.Kuhn@ky.gov
Counsel for State of Kentucky

JEFF LANDRY
Attorney General of Louisiana

/s/ Elizabeth B. Murrill (BMF per authority)

ELIZABETH B. MURRILL
Solicitor General
J. SCOTT ST. JOHN
Deputy Solicitor General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, Louisiana 70804
(225) 326-6766
murrille@ag.louisiana.gov
stjohnj@ag.louisiana.gov

Counsel for State of Louisiana

ERIC S. SCHMITT
Attorney General of Missouri

/s/ D. John Sauer (BMF per authority)

D. JOHN SAUER
Solicitor General
JEFF P. JOHNSON
Deputy Solicitor General
Supreme Court Building
P.O. Box 899
Jefferson City, Missouri 65102
(573) 751-8870
(573) 751-0774 fax
John.Sauer@ago.mo.gov

Counsel for State of Missouri

LYNN FITCH
Attorney General of Mississippi

/s/ Justin L. Matheny (BMF per authority)

JUSTIN L. MATHENY
Deputy Solicitor General
Office of the Attorney General
P.O. Box 220
Jackson, MS 39205-0220
(601) 359-3825
justin.matheny@ago.ms.gov

Counsel for State of Mississippi

AUSTIN KNUDSEN
Attorney General of Montana

/s/ David M.S. Dewhirst (BMF per authority)

DAVID M.S. DEWHIRST
Solicitor General
KATHLEEN L. SMITHGALL
Assistant Solicitor General
Montana Department of Justice
215 N Sanders St
Helena, MT 59601
(406) 444-2026
David.Dewhirst@mt.gov
Kathleen.Smithgall@mt.gov

Counsel for State of Montana

DOUGLAS J. PETERSON
Attorney General of Nebraska

JOHN M. O'CONNOR
Attorney General of Oklahoma

/s/ James A. Campbell (BMF per authority)

JAMES A. CAMPBELL
Solicitor General
JUSTIN D. LAVENE
Assistant Attorney General
Office of the Nebraska Attorney General
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682
jim.campbell@nebraska.gov
justin.lavene@nebraska.gov
Counsel for State of Nebraska

/s/ Bryan Cleveland (BMF per authority)

BRYAN CLEVELAND
Deputy Solicitor General
Oklahoma Attorney General's Office
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921
bryan.cleveland@oag.ok.gov
Counsel for State of Oklahoma

ALAN WILSON
Attorney General of South Carolina

/s/ James Emory Smith, Jr. (BMF per authority)

JAMES EMORY SMITH
Deputy Solicitor General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803)734-3680
esmith@scag.gov

Counsel for State of South Carolina

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

/s/ Judd E. Stone II (BMF per authority)

JUDD E. STONE II
Solicitor General
RYAN S. BAASCH
Assistant Solicitor General
KATIE B. HOBSON
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
(512) 936-1700
(512) 474-2697 fax
Ryan.Baasch@oag.texas.gov
Katie.Hobson@oag.texas.gov

Counsel for State of Texas

SEAN D. REYES
Attorney General of Utah

/s/ Melissa A. Holyoak (BMF per authority)

MELISSA A. HOLYOAK
Utah Solicitor General
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114
(801) 366-0260
melissaholyoak@agutah.gov

Counsel for State of Utah

PATRICK MORRISEY
Attorney General of West Virginia

/s/ Lindsay S. See (BMF per authority)

LINDSAY S. SEE
Solicitor General
MICHAEL R. WILLIAMS
Senior Deputy Solicitor General
Office of the West Virginia Attorney
General
State Capitol, Bldg 1, Room E-26
Charleston, WV 25305
(682) 313-4550
Lindsay.S.See@wvago.gov

Counsel for State of West Virginia

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2022, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system.

/s/ Benjamin M. Flowers
BENJAMIN M. FLOWERS
Ohio Solicitor General