ARGUED SEPTEMBER 14, 2023

Nos. 22-1031 (and consolidated cases)

United States Court of Appeals for the District of Columbia Circuit

STATE OF TEXAS, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

ADVANCED ENERGY UNITED, et al.,

Intervenors.

On Petition for Review of a Final Rule Issued by the National Highway Traffic Safety Administration

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SUPPLEMENTAL BRIEF OF RESPONDENT-INTERVENOR NATIONAL COALITION FOR ADVANCED TRANSPORTATION

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August 19, 2024

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INTRODUCTION

The United States Environmental Protection Agency ("EPA") has an unambiguous responsibility under Clean Air Act Section 202(a)(1) to promulgate "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [EPA's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). The statute also directs EPA to provide time for the "development and application of the requisite technology" and to give "appropriate consideration to the cost of compliance within such period." *Id.* § 7521(a)(2).

EPA fulfilled that responsibility by promulgating federal greenhouse gas emissions standards for passenger cars and light trucks for model years 2023 through 2026 ("the Standards") based on the available technologically and economically feasible emission-control technologies, including vehicle electrification. *See* 86 Fed. Reg. 74,434 (Dec. 30, 2021). EPA's standards have consistently reflected a range of feasible emissions control strategies, including vehicle electrification, since the first greenhouse gas motor vehicle standards in 2010. *See* Final Brief of Respondents EPA and Michael S. Regan filed April 27, 2023 ("EPA Br.") 15-16. Over that time period, EPA has applied a consistent framework in its rules,

developing standards on fleet averages and allowing averaging, banking and trading. *See id.*

This Court has requested supplemental briefs addressing: (1) to what extent, if any, the court's decision in *Ohio v. EPA*, 98 F.4th 288 (D.C. Cir. 2024), *petition for cert. filed*, No. 24-7 (U.S. docketed July 8, 2024), *and* No. 24-13 (U.S. docketed July 9, 2024), is relevant to petitioners' standing to bring their petitions for review in these cases; and (2) to what extent, if any, the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), is relevant to the issues of statutory interpretation presented in these cases. Industry Respondent-Intervenor National Coalition for Advanced Transportation responds that *Ohio v. EPA* applied the long-recognized principle that petitioners bear the burden of demonstrating standing, and this principle similarly supports EPA's argument that the State Petitioners' claims here should be dismissed on standing grounds. The Supreme Court's rejection of the *Chevron* deference doctrine in *Loper Bright* has no bearing on the statutory interpretation arguments in this case, which are based on the plain text of the statute.

ARGUMENT

I. The Statutory Arguments in This Case Do Not Rely on Deference to Agency Interpretation of Statutory Ambiguity

In *Loper Bright Enterprises v. Raimondo,* the Supreme Court concluded that "courts must exercise independent judgment in determining the meaning of statutory

provisions," and courts "under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." 144 S. Ct. 2244, 2262, 2273 (2024). But EPA has not asked this Court to defer to an interpretation of an ambiguous statutory provision. Rather, EPA and Respondent-Intervenors' arguments in defense of the Standards rely on the plain text of Clean Air Act Section 202, which unambiguously calls for EPA to set standards "applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7521(a)(1). These petitions also implicate EPA factual determinations, *see, e.g.,* EPA Br. 49, 51, 82-94, which remain subject to the Administrative Procedure Act's "arbitrary and capricious" standard of review, *see* 5 U.S.C. § 706(2)(a). Moreover, *Loper Bright* does not undermine in any way EPA's arguments that the petitions must be dismissed for failure to meet the express statutory mandate of exhaustion, *see* EPA Br. 38-39 (citing 42 U.S.C. § 7607(d)(7)(B)), nor does it undermine EPA's argument that the challenges are untimely, *see* EPA Br. 35-38. Finally, *Chevron* deference is not implicated in EPA and Respondent Intervenors' extensive arguments that these standards do not present any major questions. *See* EPA Br. 47-61; Final Brief of Industry Respondent-Intervenors 5-21; Final Brief of State and Public Interest Respondent-Intervenors 19-28.

II. Long-Recognized Standing Principles Applied in *Ohio v. EPA* Also Apply Here

As this Court reiterated in *Ohio v. EPA*, petitioners bear the burden of demonstrating they have standing. 98 F.4th 288, 299-300 (D.C. Cir. 2024) (laying out principles and concluding petitioners failed to meet their burden), *petition for cert. filed*, No. 24-7 (U.S. docketed July 8, 2024), *and* No. 24-13 (U.S. docketed July 9, 2024). This case is factually distinct from *Ohio v. EPA*, but, for the reasons demonstrated by EPA, State Petitioners here have also not met their standing burden. EPA Br. 29-31.

CONCLUSION

For the foregoing reasons, the Court should deny the petitions.

Dated: August 19, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that this brief complies with the type-volume limitation of the Court's Order of July 29, 2024 because it contains 757 words, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word and Times New Roman 14-point font.

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