ARGUED SEPTEMBER 14, 2023

Nos. 22-1080, 22-1144, 22-1145 (consolidated)

United States Court of Appeals for the District of Columbia Circuit

NATURAL RESOURCES DEFENSE COUNCIL, et al.,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, et al.,

Respondents.

CLEAN FUEL DEVELOPMENT COALITION, et al.,

Intervenors.

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

SUPPLEMENTAL BRIEF OF RESPONDENT-INTERVENORS NATIONAL COALITION FOR ADVANCED TRANSPORTATION AND ZERO EMISSION TRANSPORTATION ASSOCIATION

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August 19, 2024

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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), ... 2, 3

STATUTES

49 U.S.C. § 32902(a) 1

OTHER AUTHORITIES

87 Fed. Reg. 25,710 (May 2, 2022) 1

GLOSSARY

Industry Respondent-Intervenors Br.	Final Brief of Respondent-Intervenors National Coalition for Advanced Transportation and Zero Emission Transportation Association
NHTSA	National Highway Traffic Safety Administration
NHTSA Br.	Final Brief of Respondents National Highway Traffic Safety Administration et al.

INTRODUCTION

Respondent National Highway Traffic Safety Administration ("NHTSA") has statutory responsibility under the Energy Policy and Conservation Act, amended by the Energy Independence and Security Act, to establish Corporate Average Fuel Economy standards setting a "maximum feasible average fuel economy level" for each model year. 49 U.S.C. § 32902(a). The agency fulfilled that responsibility by promulgating fuel economy standards for passenger cars and light trucks for model years 2024 through 2026 ("the Standards"). *See* 87 Fed. Reg. 25,710 (May 2, 2022). The Standards are consistent with the text, purpose, and history of the statute, which all confirm that the agency may properly take into account the real-world vehicle fleet and requirements, including battery-electric vehicles, as the starting point for a rulemaking to establish the "maximum feasible average fuel economy level," 49 U.S.C. § 32902(a); *see* Final Brief of Respondents National Highway Traffic Safety Administration et al. ("NHTSA Br.") 29-48; Final Brief of Respondent-Intervenors National Coalition for Advanced Transportation and Zero Emission Transportation Association ("Industry Respondent-Intervenors Br.") 5-11. Contrary to American Fuel Manufacturers Petitioners' and State Petitioners' arguments, the statute does not call for the agency to fabricate a fictional motor vehicle fleet that bears no resemblance to actuality. *See* NHTSA Br. 3-4, 24, 39; Industry Respondent-Intervenors Br. 7-8.

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-Intervenors National Coalition for Advanced Transportation and Zero Emission Transportation Association respond that *Ohio v. EPA* applied the long-recognized principle that petitioners bear the burden of demonstrating standing and the Supreme Court's rejection of the *Chevron* deference doctrine in *Loper Bright* has no bearing on this case because the Standards are consistent with the plain text of the statute.

ARGUMENT

I. The Standards Are Consistent With the Plain Text of the Statute, So This Case Does Not Implicate 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 Respondents' and Respondent-Intervenors' arguments in defense of the

Standards rely on the plain text of Energy Policy and Conservation Act, and the statute text, purpose and history show that Respondents have the best reading of the statute. *See* NHTSA Br. 29-48; Industry Respondent-Intervenors Br. 6-9.

II. The Court Applied Long-Recognized Standing Principles in *Ohio v. EPA*

In *Ohio v. EPA*, this Court applied the established principle that 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). *Ohio v. EPA* does not offer any support to grant the petitions in this case.

CONCLUSION

For the foregoing reasons, the Court should deny the petitions.[1]

Dated: August 19, 2024

Respectfully submitted,

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[1] For the reasons explained in Industry Respondent-Intervenors' brief, even if this Court finds remand is necessary, vacatur is inappropriate in these circumstances. *See* Industry Respondent-Intervenors Br. 11-14.

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 605 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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