

ORAL ARGUMENT NOT YET SCHEDULED

No. 23-1143

(Consolidated with 23-1144, 23-1145, 23-1146, 23-1147, and 23-1148)

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

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0330, EPA-HQ-OAR-2022-0331; FRL-9900-02-OAR

**NONBINDING STATEMENT OF ISSUES OF
WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.**

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Pursuant to this Court’s Order of June 6, 2023, Petitioners in Case No. 23-1143, Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc. hereby file this Nonbinding Statement of Issues concerning the final agency action of the United States Environmental Protection Agency (“EPA”), published at 88 Fed. Reg. 20688 (Apr. 6, 2023), entitled, “*California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero Emission Power Train Certification; Waiver of Preemption; Notice of Decision*” (the Waiver Grant”), and the accompanying administrative record. The Petitioners in 23-1143 hereby raise the following issues:

1. Whether EPA applied the correct statutory standard to make the Waiver Grant decision;
2. Whether section 209 of the Clean Air Act requires EPA to make California waiver decisions based on California’s need for the particular air emission standard for which California files a waiver request, and on compelling and extraordinary conditions in the state;
3. Whether EPA’s position and interpretation that California’s “need” for any particular standard refers not to the need for the standard itself but to the need for California to have its own motor vehicle air emissions programs “as a whole” is permissible under section 209 of the Clean Air Act;

4. Whether the legislative history of section 209 of the Clean Air Act shows Congress's intent that EPA make California waiver application decisions based on the need for the specific California standard for which a waiver is requested rather than the need for the California motor vehicle emissions program as a whole;

5. Whether EPA's decision to grant the Waiver was arbitrary and capricious;

6. Whether California failed to demonstrate the requisite need for the emission standard for which it applied for a waiver; and

7. Whether granting the Waiver violates the Equal-Sovereignty Doctrine of the United States Constitution.

The Petitioners in 23-1143 reserve the right to supplement or modify this issue statement.

DATED: July 5, 2023

Respectfully submitted,

/s/Theodore Hadzi-Antich

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/Theodore Hadzi-Antich
THEODORE HADZI-ANTICH