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DEPARTMENT OF JUSTICE

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May 26, 2023

Mark Langer
Clerk of the Court
D.C. Circuit Court of Appeals
E. Barrett Prettyman Courthouse
333 Constitution Ave., NW
Washington, DC 20001

Re: *Ohio v. EPA*, No. 22-1081 (and consolidated); Response to May 16, 2023
Letter Regarding *National Pork Producers Council v. Ross*, No. 21-468, 2023 WL
3356528 (May 11, 2023)

Dear Mr. Langer:

Respondent-Intervenor California respectfully responds to Petitioner Ohio's letter regarding *National Pork Producers Council v. Ross*. Contrary to Ohio's claim, the *Pork Producers* decision involved no "application" of the equal sovereignty principle Ohio invokes here. Ohio Ltr. 2. Rather, the Supreme Court considered—and rejected—a dormant Commerce Clause challenge to a California restriction on in-state sales that challengers alleged had outsized economic effects. *Pork Producers*, Slip Op. 1 (describing issues presented). In so doing, the Court cautioned against extending its opinions—which "dispose of discrete cases"—outside their contexts. *Id.* at 11.

In fact, the constitutional analysis in *Pork Producers* strongly supports the validity of Section 209(b) of the Clean Air Act. The Court emphasized that "the Framers equipped Congress with considerable power to regulate interstate commerce and preempt contrary state laws" and cautioned against judicial usurpation of that congressional power. *Id.* at 28. Here, Congress exercised its Commerce Clause powers to carefully craft a preemption provision that balances the benefits the Nation receives from having a second set of vehicle emission standards applicable in some markets, with the automotive industry's concerns about patchwork regulation. State Resp.-Int. Br. 1-2, 15, 23-24. *Pork Producers* confirms Congress

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is the proper body to strike such a balance because “[t]he Constitution vests Congress with the power to regulate . . . interstate trade” in various products, including new motor vehicles, as well as the power to preempt state laws when doing so. Slip Op. 5-6.

If Ohio disagrees with the policy judgments Congress has maintained for decades concerning interstate commerce in new motor vehicles, the State may attempt “to persuade Congress to use its express Commerce Clause authority to adopt [the] uniform rule” Ohio prefers. *Id.* at 28. If, however, Ohio believes that “winning a majority of a handful of judges may seem easier than marshaling a majority of elected representatives across the street,” this Court should follow the Supreme Court and decline Ohio’s “incautious invitations” to “endorse . . . new theories of implied judicial power” under which the courts, rather than Congress, would determine how interstate commerce is conducted. *Id.* at 21, 29.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2023 I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system.

I further certify that all parties are participating in the Court's CM/ECF system and will be served electronically by that system.

Dated: May 26, 2023

/s/ M. Elaine Meckenstock

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