

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**STATE OF CALIFORNIA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 18-1114

(consolidated with 18-1118,
18-1139, 18-1162)**NOTICE BY THE CONSUMER FEDERATION OF AMERICA OF INTENT
TO FILE BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**MICHAEL J. STEEL
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Dated: October 19, 2018

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. Pro. 26.1 and D.C. Cir. Rules 26.1, *amicus curiae* Consumer Federation of America (“CFA”) submits the following corporate disclosure statement:

CFA is a non-profit, non-stock corporation. CFA has no parent corporations and no publicly traded corporations have an ownership interest in CFA. CFA is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.

Date: October 19, 2018

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NOTICE OF INTENT TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to Fed. R. App. Pro. 29(a)(3) and D.C. Cir. Rule 29(b), the Consumer Federation of America (“CFA”) hereby notifies this Court of the intent to file an *amicus curiae* brief in the above captioned matter in support of the Petitioners State of California (by and through its Governor Edmund G. Brown Jr., Attorney General Xavier Becerra and California Air Resources Board), *et al.*.

Counsel for all petitioners in these consolidated cases have provided the consent of their clients to *amicus* participation by CFA. Counsel for the federal respondents and counsel for movant intervenors in support of respondents have also provided the consent of their clients to *amicus* participation by CFA.

On April 2, 2018, Respondent Environmental Protection Agency (“EPA”) and E. Scott Pruitt, as then-EPA Administrator, signed the challenged action titled “Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles,” published at 83 Fed. Reg. 16,077 (April 13, 2018). The action aimed to satisfy EPA’s regulations for the “mid-term evaluation of standards,” set forth at 40 C.F.R. 86.1818-12(h) and requiring the Administrator to issue a final determination on whether the fleet average CO₂ standards for passenger automobiles and light trucks for model years 2022-2025 remain appropriate under Clean Air section 202(a); 42 U.S.C. § 7521(a). The action challenged in these consolidated cases sets forth EPA’s determination that the

current program is *not appropriate* and also withdraws a January 12, 2017 “Final Determination” that made a prior, contrary finding that model year 2022-2025 standards remained appropriate.

CFA is an association of more than 250 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education. For over 30 years, CFA has been a vigorous and continuous participant in the process of establishing regulations to improve the efficiency of energy-using consumer durables and lower the cost of energy borne by consumers. Indeed, CFA has participated in every round of rulemaking for fuel economy standards since the passage of the Energy Independence and Security Act, which rebooted and reformed the CAFE program. In doing so, CFA conducts extensive public opinion polling, reviews technical economic studies, and analyzes evidence on the market performance of consumer products to determine whether there are significant potential consumer savings that would result from a higher standard.

CFA has been particularly active on the matters and standards at issue in this case. CFA has filed comments on the fuel consumption of vehicles at the National Highway Traffic Safety Administration (NHTSA),¹ the Environmental Protection

¹ Consumer Federation of America, ID: NHTSA-2017-0069-0149, *Comments of the Consumer Federation of America*, Notice of Intent to Prepare an Environmental Impact Statement, 82 Fed. Reg. 34740 (July 26, 2017); (hereafter, CFA EIS Comments).

Agency (EPA),² EPA and NHTSA acting jointly,³ the Department of Transportation (DOT)⁴ and the California Air Resources Board (CARB).⁵ In addition, CFA testified before the EPA⁶ and the Committee on Energy and Commerce on the Midterm Review for Motor Vehicles.⁷ CFA has also been active in regulatory proceedings dealing with medium and heavy duty trucks⁸ and published a paper that explains why the fuels used by medium and heavy duty trucks to provide intermediate services to business and industry are an important

² Consumer Federation of America, ID: EPA-HQ-OAR-2015-0827-9923, *Comments of the Consumer Federation of America*, Proposed Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, 81 Fed. Reg. 87927 (December 30, 2016); (hereafter CFA Determination Comments).

³ Consumer Federation of America, ID: NHTSA-2016-0068-0054, *Comments of the Consumer Federation of America*, Notice of Availability of Midterm Evaluation Draft Technical Assessment Report for Model Year 2022–2025 Light Duty Vehicle GHG) Emissions and CAFE Standards, 81 Fed. Reg. 49217, (July 26, 2016); (hereafter CFA TAR Comments).

⁴ Consumer Federation of America, ID: OST-2017-0057, *Comments of the Consumer Federation of America*, Transportation Infrastructure: Notice of Review of Policy, Guidance and Regulation, 82 Fed. Reg. 26734, (June 8, 2017); (hereafter, CFA DOT Infrastructure Comments).

⁵ Consumer Federation of America, *Comments of the Consumer Federation of America on the California Air Resources Board Mid-Term Review*, (March 24, 2017); (here after, CFA CARB Comments).

⁶ Jack Gillis, Director of Public Affairs, Consumer Federation of America, Public Hearing Statement Before the U.S. Environmental Protection Agency on the Reconsideration of the Final Determination of the Mid-term Evaluation of Greenhouse Gas Emissions Standards for Model Years 2022-2025 Light-duty Vehicles (September 6, 2017); (hereafter CFA EPA Reconsideration Testimony).

⁷ *Midterm Review and an Update on the Corporate Average Fuel Economy Program and Greenhouse Gas Emissions Standards for Motor Vehicles Before the Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade, Subcommittee on Energy and Power*, 114th Cong. 142-154 (2016) (testimony of Dr. Mark Cooper, Director of Research, Consumer Federation of America); (hereafter, CFA Mid-term Congressional Testimony).

⁸ Consumer Federation of America, *Comments of the Consumer Federation of America*, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles, Phase 2; 80 Fed. Reg. 40137 (July 13, 2015) (hereafter CFA Work Trucks, 2015); Consumer Federation of America, ID: NHTSA-2014-0074-0010, *Comments of the Consumer Federation of America*, Notice of Intent to Prepare an Environmental Impact Statement for New Medium- and Heavy-duty Vehicle Fuel Economy Standards, 79 Fed. Reg. 38842 (July 9, 2014); (hereafter, CFA Work Trucks, 2014).

consumer pocketbook issue.⁹ CFA has also participated in complementary activities dealing with energy efficiency standards at the Department of Energy.¹⁰

CFA brings a unique and critical viewpoint to bear in this case. The cost of transportation fuels—the consumer expense most directly affected by the regulations at issue—is a major household expenditure. Indeed, transportation fuel consumption is one of the most important consumer pocketbook issues that policymakers must tackle. Further, efficiency standards deliver massive pocketbook savings to consumers, which in turn aid economic growth. Regulatory reform that threatens to stymie the implementation and enforcement of current fuel economy, energy efficiency, public health, and environmental protection standards would impose severe harm on the public. The regulatory changes challenged by petitioners threaten to do just that, and the stakes for consumers are enormous. Over the past forty years, fuel economy standards have delivered trillions of dollars in consumer net pocketbook savings, growth for the economy, and environmental benefits. Given this strong record of success, a freeze and rollback of current standards and the failure to adopt beneficial future standards would cost

⁹ Mark Cooper, *Paying the Freight*, ID: NHTSA-2014-0074-0010, *Comments of the Consumer Federation of America*, Notice of Intent to Prepare an Environmental Impact Statement for New Medium- and Heavy-duty Vehicle Fuel Economy Standards, 79 Fed. Reg. 38842 (July 9, 2014).

¹⁰ Consumer Federation of America, *Comments of the Consumer Federation of America*, Reducing Regulation and Controlling Regulatory Costs, before the Department of Energy, Exec. Order Nos. 13771, 13777, 13778, 82 Fed. Reg. 9339 (July 14, 2017); (hereafter, CFA, DOE Deregulation), and Consumer Federation of America, et al., 2015, *Joint Comments of the Consumer Federation of America, National Consumer Law Center, Massachusetts Union of Public Housing Tenants and Texas Ratepayers' Organization to Save Energy*, Notice of Proposed Rulemaking for Energy Conservation Standards for Residential Furnaces, 10 C.F.R. § 430 (2015); (hereafter, CFA Furnaces, 2015).

consumers, the economy, and the nation as a whole on the order of a quarter of a trillion dollars. In short, CFA has demonstrated a strong interest in maintaining and improving the fuel economy standards at issue in this case and would be adversely affected by any action taken by the federal government to delay implementation of these standards or to make them less stringent.

As CFA would highlight in its *amicus* filing, the challenged action is procedurally unsound and threatens to undermine critical consumer benefits. Given its organizational focus and extensive history of consumer advocacy on fuel economy standards, CFA is uniquely positioned to present the consumer perspective on these issues.

D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as *amicus curiae* up to seven days after the filing of the principal brief of the party being supported, but encourages the filing of a notice of intent as promptly as practicable after the case is docketed. *Amicus* CFA is filing this motion as soon as practicable and before the parties have filed briefs addressing the merits of the case. If permitted to file an *amicus* brief, CFA would file a document within the briefing schedule established by this Court for all briefs, including those filed by *amicus curiae* and within any proscribed word limitations.

Dated: October 19, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system for service on all registered counsel in these consolidated cases.

Date: October 19, 2018

Respectfully Submitted,

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