

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

CHAMBER OF COMMERCE OF THE)
UNITED STATES OF AMERICA and)
NATIONAL AUTOMOBILE)
DEALERS ASSOCIATION,)

Petitioners)

Case No. 09-1237

v.)

U.S. ENVIRONMENTAL)
PROTECTION AGENCY and)
LISA P. JACKSON, Administrator,)
U.S. Environmental Protection Agency,)

Respondents)

**PETITIONERS' NON-BINDING
STATEMENT OF ISSUES**

Pursuant to this Court’s Procedural Order of September 10, 2009, Petitioners Chamber of Commerce of the United States of America and National Automobile Dealers Association hereby submit the following Non-Binding Statement of Issues to be raised in this proceeding to review the decision by the U.S. Environmental Protection Agency (“EPA”) and Lisa P. Jackson, the Administrator of the EPA (collectively, “Respondents”) to reverse EPA’s decision denying the State of California’s request for a waiver of Clean Air Act (the “Act”) preemption to

enforce its state greenhouse gas emission standards for model year 2009 and later new motor vehicles. *See* 74 Fed. Reg. 32,744 (July 8, 2009).

1. Whether the Respondents erred in reconsidering and reversing EPA's decision denying California's request to waive preemption for its greenhouse gas emission standards under Section 209(b) of the Act.

2. Whether the Respondents erred in concluding that California did not act in an arbitrary and capricious fashion when it determined that its greenhouse gas emissions standards satisfy the "protectiveness" standard imposed by Section 209(b)(1)(A) of the Act.

3. Whether the Respondents erred in concluding that California's waiver request should not be denied under Section 209(b)(1)(B) of the Act, which mandates denial unless California can show that its greenhouse gas emission standards are needed to meet "compelling and extraordinary conditions."

4. Whether the Respondents erred in concluding that California's waiver request should not be denied under Section 209(b)(1)(C) of the Act, which requires that California's standards be denied unless they are consistent with Section 202(a) of the Act.

5. Whether the Respondents complied with the procedural requirements of the Act and the Administrative Procedure Act when they reconsidered and reversed EPA's final decision denying that request.

6. Whether California is precluded from obtaining a preemption waiver for its greenhouse gas emission standards under the Energy Policy and Conservation Act of 1975.

Dated: October 13, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petitioners' Non-Binding Statement of Issues has been filed with the Clerk of the Court this 13th day of October 2009 by using the CM/ECF System.

The following participants or proposed intervenors in the case who are registered CM/ECF users will be served by the CM/ECF system.

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In addition, I hereby certify that the foregoing Petitioners' Non-Binding Statement of Issues has been served by United States first-class mail this 13th day of October 2009 upon each of the following participants or proposed intervenors in the case who are not registered CM/ECF users:

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