No. _____

IN THE

Supreme Court of the United States

MINNESOTA AUTOMOBILE DEALERS ASSOCIATION,
Petitioners,

—V.—

MINNESOTA POLLUTION CONTROL AGENCY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under Section 177 of the Clean Air Act, Minnesota qualifies to adopt California's vehicle emission standards when there are no areas in Minnesota which fail to satisfy the National Ambient Air Quality Standards.

PARTIES TO THE PROCEEDING

Petitioner Minnesota Automobile Dealers Association is a Minnesota trade association that advocates on behalf of its dealer-members in the Minnesota retail motor vehicle industry.

Respondent Minnesota Pollution Control Agency is a Minnesota state agency.

CORPORATE DISCLOSURE STATEMENT

Petitioner Minnesota Automobile Dealers Association certifies that it has no parent companies, that no publicly held companies own 10% or more of its stock, and that no publicly traded companies or corporations have an interest in the outcome of this appeal.

STATEMENT OF RELATED CASES

This case arises from and is related to the following proceedings in the Minnesota Court of Appeals and the Minnesota Supreme Court:

- *Minn. Auto. Dealers Ass'n v. Minn. Pollution Control Agency,* No. A22-0796, 986 N.W.2d 225 (Minn. Ct. App.), opinion issued January 30, 2023;
- *Minn. Auto. Dealers Ass'n v. Minn. Pollution Control Agency*, No. A22-0796, 2023 Minn. LEXIS 231 (Minn.), denial of petition for review, decided May 16, 2023; and
- *Minn. Auto. Dealers Ass'n v. Minn. Pollution Control Agency*, No. A22-0796, judgment entered May 25, 2023 (Minn. Ct. App.).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

Other Authorities

OPINIONS BELOW

The Minnesota Court of Appeals decision appears at 986 N.W.2d 225 and is reproduced at App. 3. The Minnesota Supreme Court's denial of review appears at 2023 Minn. LEXIS 231 and is reproduced at App. 29.

JURISDICTION

The Minnesota Court of Appeals issued its decision on January 30, 2023. The Minnesota Supreme Court denied review on May 16, 2023, and judgment was entered on May 25, 2023, rendering the Court of Appeals judgment final and subject to no further review by any Minnesota state court. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 209(a) of the Clean Air Act (42 U.S.C. § 7543(a)) states, in relevant part:

> **State standards**
>
> **(a) Prohibition**
>
> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such

> motor vehicle, motor vehicle engine, or equipment.

Section 177 of the Clean Air Act (42 U.S.C. § 7507) states, in relevant part:

> **New motor vehicle emission standards in nonattainment areas**
>
> Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—
>
> (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
>
> (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

STATEMENT OF THE CASE

Petitioner Minnesota Automobile Dealers Association ("MADA") is a trade association representing the majority of retail automobile dealers in the State of Minnesota.

On December 21, 2020, the Minnesota Pollution Control Agency ("MPCA") published in the Minnesota State Register notice of its intent to adopt rules related to "vehicle greenhouse gas emissions standards"

(the "Rules") which follow California's standards based on California's waiver from the federal Clean Air Act's ("CAA") uniformity requirement for vehicle tailpipe emissions. 45 Minn. Reg. 663-670. After notice, comments, a hearing, and a report of the Administrative Law Judge, the Rules were approved and adopted by publication in the State Register on July 26, 2021. 46 Minn. Reg. 66.

These Rules incorporate by reference "California Code of Regulations, title 13, sections 1900, 1956.8(h) (medium-duty vehicle greenhouse gas emission standards only), 1961.2, 1961.3, 1962.2, 1962.3, 1965, 1968.2, 1976, 1978, 2035, 2037 to 2041, 2046, 2062, 2109, 2111 to 2121, 2122 to 2135, 2139, and 2141 to 2149, as amended." Minn. R. 7023.0150, Subp. 2. The California standards referenced include standards for Low Emission Vehicles (LEV) and Zero Emission Vehicles (ZEV).

The Rules state that they become effective "on the date given in a commissioner's notice published in the State Register after the standards incorporated by reference in subpart 2 are granted a waiver by the U.S. Environmental Protection Agency under United States Code, title 42, section 7543." Minn. R. 7023.0150, Subp. 4.

When the EPA issued its former SAFE I rule in 2019, now rescinded, it noted that CAA Section 177 is limited to those states with "plan requirements for *nonattainment areas*." 84 Fed. Reg. 51310, 51350 (Sept. 27, 2019) (emphasis added). The EPA stated that as such, because greenhouse gas emissions do not relate to criteria pollutants which have an assigned National Ambient Air Quality Standard ("NAAQS"), California could not use a waiver to regulate tailpipe

emissions. *Id.* The EPA stated that "the text, placement in Title I, and relevant legislative history are all indicative that CAA section 177 is in fact intended for NAAQS *attainment* planning and not to address global air pollution." *Id.* at 51351 (emphasis added).

On March 14, 2022, the EPA later withdrew this "non-binding" interpretation with another non-binding interpretation after the new executive administration took control of the EPA. 87 Fed. Reg. 14332, 14375-76. The EPA also rescinded its waiver withdrawal in the SAFE I rule and fully restored California's authority under the CAA to implement its own greenhouse gas emission standards and zero emission vehicle sales mandate. 87 Fed. Reg. 14332-33.

The MPCA purports to adopt California's emissions standards under Section 177, which provides an exception to the general prohibition stated in CAA Section 209(a), 42 U.S.C. § 7543(a) against States "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part [42 U.S.C. §§ 7521 *et seq*.]." The exception outlined in Section 177 provides that a State may do what section 209(a) prohibits so long as that State "has plan provisions approved under this part [42 U.S.C. §§ 7501 *et seq*.]," the standards "are identical to the California standards," and the standards are adopted "at least two years before commencement of such model year." 42 U.S.C. § 7507.

In contention is whether Minnesota "has plan provisions approved under this part [42 U.S.C. §§ 7501 *et seq*.]." Minnesota only has one technical "non-attainment" area—in Eagan, based on lead-emissions issues that were identified in 2008, with NAAQS achieved by

2015. 80 Fed. Reg. 51127 (Aug. 24, 2015). The only apparent reason that the Eagan lead-emissions matter has not been redesignated to "attainment" is that the MPCA has failed to request redesignation.

Eagan, Minnesota is a suburb of St. Paul, with a population of approximately 69,086. *Eagan at a Glance*, City of Eagan, Minnesota, *available at* https://cityofeagan.com/at-a-glance-demographics (last visited Aug. 10, 2023). The population of Minnesota is approximately 5.7 million. *QuickFacts, Minnesota*, United States Census Bureau, *available at* https://www.census.gov/quickfacts/MN (last visited Aug. 10, 2023). Eagan thus represents about 0.01% of Minnesota's population. And, in fact, the technical "nonattainment" area in Eagan is much smaller than the whole city—it surrounds the one secondary lead smelter in the area, Gopher Resource Corporation. *Eagan, Minnesota Technical Support Document*, U.S. EPA, at p. 6, *available at* https://www.epa.gov/sites/default/files/2016-04/documents/05_mn_epamod2.pdf (last visited Aug. 10, 2023). It follows that the lead emissions at issue are derived from lead smelting, not tailpipe emissions from motor vehicles using unleaded gasoline.

On June 8, 2022, Petitioner MADA brought a declaratory judgment action directly in the Minnesota Court of Appeals to challenge the enactment of the rules in question. App. 31. MADA raised the question of whether Minnesota has the authority under the Clean Air Act to adopt California's motor-vehicle-emissions standards in its Petition for a Declaratory Judgment and in its briefs to the Minnesota Court of Appeals. App. 47-48. The Minnesota Court of Appeals squarely addressed this federal question in its opinion on appeal here. App. 25-27. MADA then presented the

issue for review to the Minnesota Supreme Court, which denied discretionary review. App. 29-30. The federal question presented to the Court here was thus timely and properly raised, and the Court has jurisdiction to review the state-court judgment on a writ of certiorari.

REASONS FOR GRANTING THE PETITION

As many State legislatures and regulatory bodies steer their states into greater restrictions on motor-vehicle emissions, this case presents a question of national importance: can states opt into California motor-vehicle emissions standards under Section 177 of the Clean Air Act on the basis of having a technical "nonattainment" area when the EPA has cited their technical "nonattainment" area as actually having achieved attainment with the relevant National Ambient Air Quality Standard ("NAAQS") for nearly a decade?

To underscore the importance of the issue presented in this case, as of May 2022, seventeen (17) states, including Minnesota, have adopted California's emissions regulations. *States that have Adopted California's Vehicle Standards under Section 177 of the Federal Clean Air Act*, California Air Resources Board, May 13, 2022, *available at* https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177_states_05132022_NADA_sales_r2_ac.pdf (last accessed Aug. 10, 2023). Like Minnesota, another of those states, Maine, has no areas in the state which are not in compliance with the NAAQS. *See Nonattainment and Maintenance Area Dashboard*, U.S. EPA, *available at* https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_1/S4S_Public_Dashboard_1.html (last accessed Aug. 10, 2023). This case provides an ideal

vehicle to adjudicate the meaning of Section 177 for States in full compliance with federal NAAQS.

MADA asks the Court to grant the petition, issue the writ of certiorari, and decide that States like Minnesota cannot use outdated technical nonattainment designations (or maintenance plans) having nothing to do with motor-vehicle emissions to justify adopting California's motor-vehicle emissions rules.

I. The Clean Air Act's "California Waiver" Is a Limited Exception to the Norm of Federal Preemption of Motor-Vehicle-Emissions Regulations Which States Cannot Manipulate to Adopt Stricter Standards.

Under Section 209 of the Clean Air Act, exclusive control over "standards relating to the control of emissions from new motor vehicles" is vested in the federal government, and the states are preempted from regulating in the area. *See* 42 U.S.C. § 7543(a). States may not adopt any other standard unless they are qualified under the Act to do so. The statute provides a single exception for California, the only state that regulated new-vehicle emissions prior to the original Clean Air Act. 42 U.S.C. § 7543(b).

Under that exception, California may adopt and enforce its own new-vehicle emissions standards if it first obtains a waiver from the EPA. *See id.* California alone may apply for such a waiver under the Act.

Section 177 of the Act also contains an "opt-in" provision that allows any other state to "adopt and enforce for any model year standards relating to control of emissions from new motor vehicles" if "such standards are identical to the California standards for which a waiver has been granted for such model year"

and are adopted "at least two years before commencement of such model year." 42 U.S.C. § 7507.

Thus, there are two, and only two, permissible sets of regulations limiting emissions from new cars sold in the United States. There are the California regulations, and there are the federal regulations. The other states must choose between California and federal regulations. 42 U.S.C. §§ 7521, 7543(a). The federal regulation is the norm; the California opt-in regulation is the exception.

On July 26, 2021, Minnesota sought to join the "California states" by enacting rules that adopt the California rules related to Low Emission Vehicles ("LEV") and Zero Emission Vehicles ("ZEV"), "as amended." 46 Minn. Reg. 66. However, at that time, as well as at present, Minnesota's only "nonattainment" area was one location within Eagan, Minnesota, related to lead emissions largely produced by a secondary lead smelter. *Eagan, Minnesota Technical Support Document*, U.S. EPA, at p. 6. That area attained the NAAQS for lead emissions on August 24, 2015. 80 Fed. Reg. 51127. At the time the rules were enacted, and through the present, there have not been any areas in Minnesota which are not attaining all NAAQS.

II. Minnesota and Other States Like It Do Not Qualify to Adopt California's Vehicle-Emission Standards Under Section 177 of the Clean Air Act.

All areas in Minnesota are in complete attainment with federal NAAQS. In other words, Minnesota is not California. It does not have California's smog and air-pollution problems—so long as Canada keeps its forests from burning down. Minnesota cannot escape

federal preemption for new-vehicle-emissions rules under the CAA.

Minnesota has adopted California's new-vehicle-emissions rules for LEV and ZEV pursuant to Section 177 of the CAA anyway. But the text and purpose of Section 177 of the CAA demonstrate that States like Minnesota cannot fail to seek redesignation of NAAQS-compliant areas to attainment status to allow them to adopt harsher restrictions on the sales of motor vehicles in the State.

A. Section 177 of the Clean Air Act Only Allows a State to Make Use of a California Waiver Where the State Has Actual Nonattainment Areas.

The plain meaning of CAA Section 177, 42 U.S.C. § 7507, only allows states with actual nonattainment areas to adopt California's CAA-waiver emissions standards. As this Court pointed out in *King v. Burwell*, "oftentimes the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" 576 U.S. 473, 486 (2015) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)). "So when deciding whether the language is plain, one must read the words 'in their context and with a view to their place in the overall statutory scheme.'" *Id.* (quoting *Williamson Tobacco Corp.*, 529 U.S. at 133).

But even if Section 177 were ambiguous, "statutory titles and section headings are tools available for the resolution of a doubt about the meaning of a statute." *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008). They "'supply cues' as to

what Congress intended." *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883, 893 (2018).

Part D of Subchapter I of the CAA imposes pollution control requirements that apply only to nonattainment areas. A nonattainment area is a geographical region which does not meet a NAAQS for any particular pollutant. *See* 42 U.S.C. §§ 7501(2); 7407(d)(1)(A)(i). The heading of Section 177 identifies the qualification required for opting into the California waiver: "New motor vehicle emission standards *in nonattainment areas*." (emphasis added). Section 177 then states, "any State which has plan provisions approved under this part" may adopt the California waiver allowed under Section 209(a), 42 U.S.C. § 7543(a). The language of Section 177 makes no reference to any "plan provision" other than a "nonattainment plan," as identified in the heading of the section. "Nonattainment plans" by definition exist for certain areas failing to meet any type of NAAQS. 42 U.S.C. § 7502(a). They are also *the* plans "required to be submitted under this part." 42 U.S.C. § 7502(c).

In addition, once a state has no literal nonattainment areas—those areas not complying with federal NAAQS—there is no reason for a California waiver. The only point of a California waiver is to help California and other states reduce criteria pollutant emissions to improve air quality to the level of federal standards. Once that goal is reached, the area is in "attainment," and only "maintenance" is required to keep criteria pollutants under the federal NAAQS.

This is why the EPA, in enacting the now-withdrawn SAFE I Rule in 2019, noted that Section 177 is limited to those states with "plan requirements for *nonattainment areas*." 84 Fed. Reg. 51310, 51350

(Sept. 27, 2019) (emphasis added). The EPA stated that "the text, placement in Title I, and relevant legislative history are all indicative that CAA section 177 is in fact intended for NAAQS *attainment* planning and not to address global air pollution." *Id.* at 51351 (emphasis added).

B. Maintenance Plans Are Not "Plans Approved Under This Part" Which Qualify for the California Waiver.

If a geographical area under a nonattainment plan reaches attainment, under 42 U.S.C. § 7505a, a State may apply to convert the plan into a "maintenance plan," which lasts for essentially 20 years. Section 177 in its heading, of course, only references "nonattainment plans," not "maintenance plans."

A state may request the EPA to *redesignate* an area from nonattainment to attainment status if that area has improved in air quality. *See* 42 U.S.C. § 7407(d)(3)(D). After an area is so redesignated, it no longer need comply with the more stringent air pollution measures that apply only to nonattainment areas. *Cf.* 42 U.S.C. § 7410(a)(2)(I) (requiring plans for nonattainment areas to meet the "applicable requirements of part D"). The responsibility, instead, is on the State to apply the enforcement provisions from its maintenance plan. *See* 42 U.S.C. § 7505a(a) & (d) (requiring maintenance plans that are submitted with redesignation requests to include "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area."); *Wall v. United States EPA*, 265 F.3d 426, 429-30 (6th Cir. 2001).

A "maintenance plan," which was added to the law in 42 U.S.C. § 7505a well after the creation of "nonattainment" areas, results not from an *approval* of a "plan . . . under this part," but rather is allowed after an area has been *redesignated* from "nonattainment" to an "attainment" area. Then, it is not its own "plan"; it is a "revision of" a nonattainment plan. A maintenance plan merely "provide[s] for the maintenance of the national primary ambient air quality standard." 42 U.S.C. § 7505a(a). This comports with the Act's definition of an "attainment" area as "any area [...] that meets the national primary or secondary ambient air quality standard for the pollutant." 42 U.S.C. § 7407(d)(1)(A)(ii). Thus, an area redesignated as "attainment" may have a maintenance plan to ensure that it maintains the national standard it has attained. By definition, the Act does not contemplate a "maintenance" plan for a "nonattainment" area because the latter has not met the national standard so as to be capable of "maintaining" it.

The Clean Air Act preempts any attempt to regulate vehicles differently than its prescriptions. The "California Waiver" cannot be read to apply to nonattainment *and* maintenance plans; doing so would undermine the statute's purpose. If states with only maintenance plans—*i.e.,* states that are maintaining the Federal standard—could opt-in to the California standards, then the provision would cease to be an exception and would swallow the normative principle of federal preemption.

III. Minnesota's Manipulation of Eagan's "Nonattainment" Status Provides a Good Vehicle to Restore the Purpose of the Clean Air Act's California Waiver Provision.

On November 22, 2010, a small slice of Eagan, Minnesota, was designated a "nonattainment" area for failing the 2008 EPA Lead standard. 75 Fed. Reg. 71033, 71042. But then in 2015, the EPA announced that Eagan had attained compliance with the 2008 Lead standard. 80 Fed. Reg. 51127. That notice stated: "[t]his action does not constitute a redesignation of the areas to attainment of the 2008 Pb NAAQS; the areas remain designated nonattainment until such time as EPA determines that the areas meet the CAA requirements for redesignation to attainment and takes action to redesignate the areas." *Id.* at 51129.

Minnesota has neglected to seek redesignation for Eagan since the EPA's 2015 recognition that Eagan meets the standard for lead. Minnesota has been able to apply for redesignation for nearly a decade, and it has chosen not to.

Moreover, Minnesota's only technical nonattainment area, related to lead, has nothing to do with greenhouse gas emissions for new motor vehicles in the United States: "leaded gasoline for use in on-road vehicles was completely phased out as of January 1, 1996." *Gasoline Explained: History of Gasoline*, United States Energy Information Administration, EIA.gov, Nov. 17, 2022, ¶ 3, https://www.eia.gov/energyexplained/gasoline/history-of-gasoline.php (last accessed Aug. 10, 2023). The EPA acknowledged this

when, in 2016, it decided to retain its 2008 NAAQS for lead:

> The major sources of lead air emissions have historically been motor vehicles (such as cars and trucks) and industrial sources. Motor vehicle emissions have been dramatically reduced with the phase-out of leaded gasoline, but lead is still used as an additive in general aviation gasoline and remains a trace contaminant in other fuels.

Fact Sheet, Decision, National Ambient Air Quality Standards for Lead, U.S. EPA, at p. 3 of 4, *available at* www.epa.gov/sites/default/files/2016-09/documents/pb_naaqs_nfr_fact_sheet.pdf (last accessed Aug. 10, 2023).

Thus, Eagan, Minnesota, only technically remains a nonattainment area due to the MPCA's inaction, and its original nonattainment designation in no way relates to motor-vehicle greenhouse gas emissions, the only emissions regulated by the California regulations that Minnesota has opted into under Section 177. Given these circumstances, the MPCA's decision to opt-in to the California standards runs contrary to the plain reading of the CAA. This case provides an ideal vehicle for this Court to adjudicate the meaning of Section 177 for States in full compliance with federal NAAQS.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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