

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-7

DIAMOND ALTERNATIVE ENERGY, LLC, ET AL., PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF THE FEDERAL RESPONDENTS
TO HOLD THE BRIEFING SCHEDULE IN ABEYANCE

Pursuant to Rule 21.1 of the Rules of this Court, the Acting Solicitor General, on behalf of respondents United States Environmental Protection Agency (EPA) and James Payne in his official capacity as the Acting Administrator of EPA, respectfully moves to hold the briefing schedule in abeyance, without prejudice to any party requesting to have the briefing schedule reinstated should the matter not be resolved.* The Court granted the petition for

* Acting Administrator Payne is substituted as a party for his predecessor in office. See Sup. Ct. R. 35.3.

a writ of certiorari on December 13, 2024. Petitioners' opening brief is currently due on January 27, 2025; respondents' briefs are due on February 26, 2025; and the case has not yet been scheduled for argument. Petitioners oppose the motion and plan to file a response; the state respondents do not oppose the motion; and the public interest respondents take no position on the motion.

1. Under the Clean Air Act (Act), 42 U.S.C. 7401 et seq., each State generally has flexibility to determine how it will meet air-quality goals. Pet. App. 3a. For "new motor vehicles," however, the Act directs EPA to prescribe nationwide "standards applicable to the emission of any air pollutant * * * which in [EPA's] judgment cause[s], or contribute[s] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. 7521(a)(1). Section 209(a) of the Act generally preempts any State from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of emissions from new motor vehicles." 42 U.S.C. 7543(a). But Section 209(b) of the Act, 42 U.S.C. 7543(b), requires EPA to "waive application of" Section 209(a) in specified circumstances.

As relevant here, in 2019 EPA withdrew a waiver that it had granted to California in 2013. 84 Fed. Reg. 51,310 (Sept. 27, 2019). The 2013 waiver permitted California to implement certain standards addressing zero-emission vehicles and to set low-emission-vehicle standards for greenhouse gases. EPA reinstated the 2013 waiver in 2022. 87 Fed. Reg. 14,332 (Mar. 14, 2022).

Petitioners sought judicial review of the 2022 reinstatement decision in the D.C. Circuit, arguing that the waiver exceeded EPA's authority under Section 209(b). See Pet. App. 2a-3a. The court dismissed petitioners' claims for lack of Article III standing, concluding that petitioners had not "met their burden of demonstrating that th[eir] injuries are redressable" by a judicial decree holding the challenged EPA decision invalid. Id. at 19a.

On July 2, 2024, petitioners filed a petition for a writ of certiorari, which presents the question whether the court of appeals erred in holding that petitioners lack Article III standing. The certiorari petition also presented a question regarding whether the 2022 reinstatement decision exceeded EPA's authority under Section 209(b). On December 13, 2024, this Court granted the petition limited to the first question presented.

2. After the change in Administration, EPA's Acting Administrator has determined that the agency should reassess the basis for and soundness of the 2022 reinstatement decision. Such a reassessment could obviate the need for this Court to determine whether petitioners had Article III standing to challenge that decision. Accordingly, the federal respondents respectfully request that this Court hold the briefing schedule in abeyance. Petitioners' opening brief is currently due on January 27, 2025; respondents' briefs are due on February 26, 2025; and the case has not yet been scheduled for argument. Given the Acting Administrator's determination, it would be appropriate for the Court to

hold further proceedings in this case in abeyance to allow EPA to reassess the basis for and soundness of the 2022 reinstatement decision. The Court has previously held briefing schedules in abeyance in light of developments arising after the grant of certiorari in other cases. See, e.g., Biden v. Sierra Club, No. 20-138 (Feb. 3, 2021); Mayorkas v. Innovation Law Lab, No. 19-1212 (Feb. 3, 2021). Respondents therefore request an order holding the briefing schedule in abeyance, without prejudice to any party requesting to have the briefing schedule reinstated should the matter not be resolved.

3. We have consulted with counsel for all parties. Petitioners oppose the motion and plan to file a response. The state respondents do not oppose the motion. The public interest respondents take no position on the motion. If this motion is granted, we will advise the Court of material developments that would support further action by the Court.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

JANUARY 2025