

ORAL ARGUMENT NOT YET SCHEDULED

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

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COALITION FOR RESPONSIBLE)	
REGULATION, et al.,)	No. 10-1035
)	Consolidated under
Petitioners,)	09-1322 with:
)	10-1024, 10-1025,
v.)	10-1026, 10-1030,
)	10-1036, 10-1037,
UNITED STATES ENVIRONMENTAL)	10-1038, 10-1039,
PROTECTION AGENCY,)	10-1040, 10-1041,
)	10-1042, 10-1044,
Respondent.)	10-1045, 10-1046,
<hr/>)	10-1049

**NONBINDING STATEMENT OF ISSUES
AND STATEMENT OF INTENT TO USE DEFERRED JOINT APPENDIX**

Pursuant to this Court’s Order of March 15, 2010, this “Nonbinding Statement of Issues” is hereby filed on behalf of Petitioners in Case No. 10-1035 (which has been consolidated with the above-mentioned case): U.S. Representative John Linder (GA-7th); U.S. Representative Dana Rohrabacher (CA-46th); U.S. Representative John Shimkus (IL-19th); U.S. Representative Phil Gingrey (GA-11th); U.S. Representative Lynn Westmoreland (GA-3rd); U.S. Representative Tom Price (GA-6th); U.S. Representative Paul Broun (GA-10th); U.S. Representative Steve King (IA-5th); U.S. Representative Nathan Deal (GA-9th); U.S.

Representative Jack Kingston (GA-1st); U.S. Representative Michele Bachmann (MN-6th); U.S. Representative Kevin Brady (TX-8^h); Southeastern Legal Foundation, Inc.; The Langdale Company; Langdale Forest Products Company; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet – Pontiac, Inc.; Langdale Ford Company; Langboard, Inc. – MDF; Langboard, Inc. - OSB; Georgia Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc; Southeast Trailer Mart, Inc.; and Georgia Agribusiness Council, Inc.

1. Whether the EPA Administrator’s Endangerment Finding is arbitrary, capricious, or otherwise unlawful because it is premised on an improper interpretation of the scope of her discretion under the Clean Air Act and the Supreme Court’s decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007).

2. Whether the EPA Administrator’s Endangerment Finding is arbitrary, capricious, or otherwise unlawful because the Endangerment Finding, in light of its necessary statutory consequences, cannot be made in any manner consistent with the plain text of the Clean Air Act.

3. Whether the EPA Administrator’s Endangerment Finding is unsupported by an adequate and proper administrative record because, *inter alia*: (i) the result of the process was predetermined from the outset, with no meaningful consideration by the Administrator of the facts and arguments submitted; (ii) the

Administrator failed to exercise her own judgment based on an independent analysis, instead adopting uncritically other organizations' findings, (iii) the Administrator failed to consider and/or properly respond to comments made on the record, and (iv) the assertions and rationale presented by the Administrator in support of the finding are so contrary to science and logic as to be outside of the limits of deference normally accorded Agency decisions.

4. Whether the EPA Administrator's Endangerment Finding is arbitrary, capricious, or otherwise unlawful because it is part of a single, coherent program to regulate greenhouse gases ("GHGs"), promulgated in disconnected parts to avoid judicial review of the program's individual components.

5. Whether the EPA Administrator's Endangerment Finding is arbitrary, capricious, or otherwise unlawful because the measures it necessitates, while inordinately costly, will have no effect in terms of the climate issues the Endangerment Finding purports to address, such that the Endangerment Finding is not based on intelligible principles.

STATEMENT OF INTENT TO USE DEFERRED JOINT APPENDIX

Petitioners hereby state their intent to utilize a deferred joint appendix in accordance with the procedure and schedule for briefing as ordered by the Court.

This 15th day of April, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on April 15, 2010, I electronically filed the foregoing “NonBinding Statement of Issues and Statement of Intent to Use Deferred Joint Appendix” using the Court’s ECF system, and thereby caused it to be served by electronic transmission to counsel of record that are registered to use the Court’s CM/ECF system. All counsel not registered with the Court’s CM/ECF system were served via first-class postage paid mail.

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