

**U.S. Department of Justice**

Environment and Natural Resources Division

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Oral argument held on May 11, 2022

July 19, 2022

Via ECF

Clerk of Court
U.S. Court of Appeals for the District of Columbia Circuit
333 Constitutional Avenue N.W.
Washington, D.C. 20001

Re: *Racing Enthusiasts and Suppliers Coalition v. EPA*, No. 16-1447

Dear Mr. Langer:

EPA submits this response to Petitioner's Rule 28(j) letter.

The letter, citing *West Virginia v. EPA*, No. 20-1530 (June 30, 2022), tries to stretch the major-questions doctrine well past its breaking point by contending that it applies to this modest dispute. *See Op.* at 17-19 (limiting doctrine to "certain extraordinary cases" and offering only a handful of examples).

First, this is not an "extraordinary" case. At issue is whether the Clean Air Act prohibits tampering with emissions controls on a narrow category of vehicles: "Converted" motor vehicles that never drive on public roads—not even for quick trips to gas stations and the like. *Opening Br.* at 11-13. There is no evidence that "millions" of these vehicles exist or that they are a "multi-billion dollar" industry. *Id.* at 49. After all, this dispute excludes professional-grade racecars like NASCAR cars. *Id.* at 12-13. It excludes motor vehicles, "converted" or not, that race only part-time or that drive on public roads. *Id.* at 12. And it excludes much of the aftermarket industry, which sells parts to all kinds of motor vehicles and

nonroad vehicles. Even the total number of racecars—a far broader category than the one at dispute—is, Petitioner says, only a “small fraction” of the hundreds of millions of registered vehicles nationwide. *Id.* at 3. This case, in short, presents no questions of deep economic and political significance.

Second, EPA’s position here goes back decades. Since at least 1991, EPA has repeatedly and publicly told Petitioner’s industry and the rest of the public that under the Act, it is illegal to tamper with competition-only motor vehicles. EPA Br. at 10 n.7. That is the opposite of the novel and unprecedented agency assertions of authority in major-questions cases like *West Virginia*. Op. at 12, 17.

In any case, a clear statement from Congress exists. As our brief explains, EPA’s position reflects the Act’s plain text. EPA Br. at 24-31. The major-questions doctrine thus cannot help Petitioner.

Finally, the letter rehashes parts of Petitioner’s faulty standing declaration. Repetition, however, cannot remedy the defects identified at argument.

Sincerely,

/s/ *Sue Chen*

Sue Chen

Certificate of Service

I certify that on July 19, 2022, I filed the foregoing with the Court’s CMS/ECF system, which will notify each party.

/s/ *Sue Chen*

Sue Chen