

ORAL ARGUMENT NOT YET SCHEDULED

24-1376

**United States Court of Appeals
for the District of Columbia Circuit**

AMERICAN WATER WORKS ASSOCIATION,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

On Petition for Review of Final Agency Action of the
United States Environmental Protection Agency

**BRIEF FOR THE STATES OF NEW YORK, ARIZONA,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE,
ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA,
NEVADA, NEW JERSEY, NORTH CAROLINA, RHODE ISLAND,
AND WISCONSIN, AND THE DISTRICT OF COLUMBIA
AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

LETITIA JAMES

*Attorney General
State of New York*

BARBARA D. UNDERWOOD

Solicitor General

JUDITH N. VALE

Deputy Solicitor General

RAYMOND D. MOSS

Assistant Solicitor General

28 Liberty Street

New York, New York 10005

(212) 416-8749

MICHAEL J. MYERS

Senior Counsel

CHANNING WISTAR-JONES

Assistant Attorney General

*Environmental Protection Bureau
of Counsel*

Dated: March 13, 2026

(Additional counsel listed on signature pages.)

**CERTIFICATE AS TO PARTIES,
RULINGS, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), undersigned counsel of record certifies that:

A. Parties and Amici. Except for amici curiae the States of Arizona, Colorado, Delaware, Maine, Nevada, New Jersey, and Rhode Island, all parties, intervenors, and amici appearing in this Court are listed in the Opening Brief for Petitioner American Water Works Association.

B. Rulings Under Review. Reference to the agency action at issue appears in the Opening Brief for Petitioner American Water Works Association.

C. Related Cases. The related case is listed in the Opening Brief for Petitioner American Water Works Association.

TABLE OF CONTENTS

| | Page |
|---|-------------|
| TABLE OF AUTHORITIES..... | iii |
| GLOSSARY | ix |
| INTRODUCTION AND INTERESTS OF AMICI | 1 |
| STATUTES AND REGULATIONS | 3 |
| ARGUMENT | 4 |
| POINT I | |
| THE SAFE DRINKING WATER ACT AUTHORIZES EPA TO REQUIRE REPLACEMENT OF LEAD SERVICE LINES LOCATED ON PRIVATE PROPERTY IF STATE OR LOCAL LAW PROVIDES PUBLIC WATER SYSTEMS CONTROL OF THE LINES FOR THE PURPOSE OF REPLACEMENT | 4 |
| POINT II | |
| AMICI STATES’ EXPERIENCE DEMONSTRATES THAT THE RULE’S TWO-TRACK TIMELINE FOR LEAD SERVICE LINE REPLACEMENTS IS FEASIBLE AND AFFORDABLE | 15 |
| A. Amici States’ Experience with Ongoing Efforts to Replace Lead Service Lines Supports EPA’s Feasibility Determination. | 18 |
| B. Amici States’ Ongoing Experience Further Demonstrates that Lead Service Line Replacement at the Rate Required by the Rule Is Affordable. | 25 |
| POINT III | |
| PETITIONER’S ARGUMENTS, IF ACCEPTED, WOULD UNDERMINE PUBLIC HEALTH AND DISRUPT EFFORTS TO COMPLY WITH THE RULE ... | 28 |
| CONCLUSION..... | 32 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|--|----------------|
| <i>Arizona v. EPA</i> , 77 F.4th 1126 (D.C. Cir. 2023)..... | 6-7 |
| <i>Bass v. Ledbetter</i> , 257 Ga. 738, 363 S.E.2d 760 (1988)..... | 11 |
| <i>City of Portland v. EPA</i> , 507 F.3d 706 (D.C. Cir. 2007)..... | 15 |
| Laws | |
| <i>Federal</i> | |
| 42 U.S.C. | |
| § 300f et seq. | 1 |
| § 300f(4)..... | 2, 4, 13 |
| § 300g | 4 |
| § 300g-1(b)..... | 6, 15 |
| § 300g-2(a)..... | 6 |
| § 300g-3(e)..... | 7 |
| § 300g-6(a)..... | 13 |
| § 300g-8(a)..... | 6 |
| <i>State</i> | |
| Ind. Code § 8-1-31.6-6(a) | 10 |
| N.J. Stat. Ann. § 58:12A-39(a) | 9 |
| Wis. Stat. Ann. § 196.171(1)..... | 8 |

(Table of Authorities continues on next page.)

Administrative Sources Page(s)

Federal

| | |
|---|---|
| National Primary Drinking Water Regulations for Lead and Copper: Improvements, 89 Fed. Reg. 86418 (Oct. 30, 2024)..... | 1, 5, 8, 10-12, 16-17, 19, 23-26, 28-29 |
|---|---|

State & Municipal

| | |
|---|----|
| Mich. Admin. Code R. 325.10604f(5)(g) | 9 |
| Ohio Admin. Code 3745-81-84(C) | 10 |
| 52 Pa. Code § 65.56(b) | 10 |
| Columbus, Ohio, City Code | |
| § 1119.05(B) | 9 |
| § 1119.06(A) | 9 |

Miscellaneous Authorities*

| | |
|--|----|
| Borough of Middletown, Pa., Municipal Water and Wastewater Utility System Concession and Lease Agreement (Sept. 29, 2014), https://middletownborough.com/wp-content/uploads/ 2020/12/Executed-Concession-Agreement-A4495119.pdf | 14 |
| Centers for Disease Control, <i>Creatively Financing Full Lead Service Line Replacement in Green Bay, WI and Spokane, WA</i> (Mar. 11, 2025), https://www.cdc.gov/lead-prevention/ community-stories/green-bay-wi-and-spokane-wa.html | 27 |
| City of Detroit & Great Lakes Water Auth., Summary of Water and Sewer Leases and Service Agreement (n.d.), https://detroitmi.gov/sites/detroitmi.localhost/files/migrated docs/legislative-policy-reports/2015 Report to Council/GLWA Lease Announcement 6-12-2015.pdf | 14 |

*All websites last visited March 13, 2026.

| Miscellaneous Authorities | Page(s) |
|--|----------------|
| City of Detroit, <i>Lead Service Line Replacement Program</i> (updated Feb. 16, 2025), https://detroitmi.gov/departments/water-and-sewerage-department/dwsd-projects/making-detroit-lead-safe/lead-service-line-replacement-program | 21 |
| City of Detroit, Press Release, DWSD Scales Up Lead Service Line Replacement (May 10, 2024), https://detroitmi.gov/news/dwsd-scales-lead-service-line-replacement-8000-year-thanks-85m-egle-grants | 21 |
| City of Rochester, <i>Let's Get the Lead Out Together!</i> (n.d.), https://www.cityofrochester.gov/departments/departments-environmental-services-des/lead-water-safety-lets-get-lead-out-together | 21 |
| City of Trenton, N.J., Press Release, Trenton Water Works Launches New Phases of Lead Service Line Replacements (Jan. 20, 2026), https://www.trentonnj.org/m/newsflash/home/detail/1407 | 20 |
| Danielle Kaeding, <i>Wisconsin Moves to Require Lead Pipes Replaced by 2037</i> , Wisc. Pub. Radio (Dec. 11, 2025), https://www.wpr.org/news/wisconsin-moves-require-lead-pipes-replaced-2037 | 31 |
| DC Water, <i>Lead Free DC Program Status Dashboard</i> (updated Mar. 6, 2026), https://www.dewater.com/LFDCDashboard | 21 |
| DC Water, <i>Lead Service Line Replacement Plan</i> (updated June 2023), https://www.dewater.com/sites/default/files/2023/LFDC Plan FINAL 6.29.2023.pdf | 21 |
| Denver Water, <i>Lead Reduction Program Annual Report - 2025</i> (Feb. 6, 2026), https://www.denverwater.org/sites/default/files/lead-reduction-program-annual-report-2025.pdf | 21 |

| Miscellaneous Authorities | Page(s) |
|---|----------------|
| Ethan Duran, <i>Milwaukee Prepares to Replace Thousands of Lead Service Lines in 2026</i> , Daily Rep. (Dec. 30, 2025), https://dailyreporter.com/2025/12/30/milwaukee-lead-pipe-removals-2026-funding/ | 31 |
| New Jersey Am. Water, Press Release, New Jersey American Water Continues to Lead on Lead Service Line Replacements in 2025 (Feb. 25, 2025), https://www.amwater.com/press-room/press-releases/new-jersey/new-jersey-american-water-continues-to-lead-on-lead-service-line-replacements-in-2025 | 20 |
| New Jersey Board of Pub. Utils., Order Approving an Agreement to Establish a Public-Private Contract Between the Bayonne Municipal Utilities Authority and United Water Joint Venture, LLC, Dkt. No. WM12080777 (Oct. 23, 2012), https://nj.gov/bpu/pdf/boardorders/2012/20121023/10-23-12-5B.pdf | 14 |
| New Jersey Dep't of Env't Prot., <i>Newark Lead Service Line Replacement Compliance Audit</i> (Aug. 2025), https://dep.nj.gov/wp-content/uploads/newarklead/docs/newark-lsl-replacement-audit-summary.pdf | 20 |
| New York Dep't of Pub. Serv., <i>Water Tariffs</i> (n.d.), https://dps.ny.gov/water-tariffs | 8 |
| New York State Dep't of Health, <i>Childhood Lead Poisoning Prevention</i> (revised Nov. 2025), https://www.health.ny.gov/environmental/lead/ | 30 |
| Pittsburgh Water & Sewer Auth., Rates, Rules, and Regulations Governing the Provision of Water Service to the Public in the Territory Described Herein (Supp. No. 15, Dec. 2024), https://www.pgh2o.com/sites/default/files/2024-12/CURRENT - dba Pittsburgh Water Water Tariff Thru Supp 15.pdf | 8 |

| Miscellaneous Authorities | Page(s) |
|--|----------------|
| Planet Detroit, <i>Michigan Lead Service Line Tracker</i> (updated Dec. 2025), https://lead servicelines.planetdetroit.org/ | 22 |
| Rhode Island Infrastructure Bank & R.I. Dep’t of Health, <i>State Fiscal Year (SFY) 2026 Intended Use Plan</i> (2025), https://www.riib.org/wp-content/uploads/2025/08/SFY26-DWSRF-IUP-Final-8-13-25.pdf | 26 |
| Rialto (Cal.) Water Servs., 2015 Annual Drinking Water Quality Report (2016), https://rialtowater.com/wp-content/uploads/2016/06/FINAL-Rialto-Consumer-Confidence-Report-2015.pdf | 14 |
| Town of Kearny, N.J., Ordinance No. 2025-31, Bond Ordinance Statement and Summary (2025), https://www.kearnynj.org/wp-content/uploads/2025/08/BB-2025-O-31-BOND-ORD-2nd-Reading-08.19.25.pdf | 26 |
| U.S. Environmental Prot. Agency, Water Operator Hiring and Contracting Guide (2019), https://www.epa.gov/sites/default/files/2020-03/documents/water_operator_hiring_and_contracting_guide_final_508.pdf | 13 |
| University of the State of N.Y., N.Y. State Educ. Dep’t, <i>Continuum of Special Education Services for School-Age Students with Disabilities</i> (updated Nov. 2013), https://www.nysed.gov/sites/default/files/programs/special-education/continuum-of-special-education-services-for-school-age-students-with-disabilities.pdf | 30 |
| University of the State of N.Y., N.Y. State Educ. Dep’t, <i>Testing Accommodations for Students with Disabilities</i> (updated Sept. 2025), https://www.nysed.gov/sites/default/files/programs/special-education/testing-accommodations-guide.pdf | 30 |
| Village of Palatine, Ill., <i>Lead and Galvanized Steel Water Service Line Replacement Cost Sharing Program</i> (n.d.), https://www.palatine.il.us/878/Lead-Service-Line-Replacement | 26 |

| Miscellaneous Authorities | Page(s) |
|--|----------------|
| West Valley Crystal Water Co., Schedule for Water Service Applicable in Village of West Valley, County of Cattaraugus (1999), https://tinyurl.com/WestValleyCrystalWaterSchedule | 10 |
| WHAM, <i>Rochester City Council Approves Mayor’s \$680 Million Budget</i> (updated June 18, 2025), https://13wham.com/news/ local/rochester-city-council-approves-680m-budget-mayor- malik-evans | 26 |
| Wisconsin Dep’t of Nat. Res., <i>Celebrating the 50th Anniversary of the Safe Drinking Water Act: Success Stories</i> (n.d.), https://dnr.wisconsin.gov/topic/DrinkingWater/SDWA50th.html | 22 |
| Wisconsin Pub. Serv. Comm’n, Number of Service Lines by Material Type for Wisconsin Water Utilities (updated Sept. 5, 2025), https://psc.wi.gov/Documents/water/2024_LSL totals_per_utility_Final.pdf | 22 |

GLOSSARY

| | |
|-----------------------------|--|
| Act | Safe Drinking Water Act, Pub. L. No. 93-522, 88 Stat. 1660 (1974) (codified at 42 U.S.C. § 300f et seq.) |
| Annual Rate | thirty-nine annual replacements per one thousand service connections |
| AWWA Br. | Opening Brief for Petitioner American Water Works Association |
| Chamber Br. | Brief for Amicus Curiae Chamber of Commerce of the United States of America |
| EPA | U.S. Environmental Protection Agency |
| EPA Br. | Brief for Respondent U.S. Environmental Protection Agency |
| lead service lines or lines | pipes containing lead that connect water mains to residences |
| NRDC Br. | Brief for Amicus Curiae Natural Resources Defense Council et al. |
| Rule | National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI), 89 Fed. Reg. 86418 (Oct. 30, 2024) |
| system | public water system |

INTRODUCTION AND INTERESTS OF AMICI

Petitioner the American Water Works Association challenges a rule that respondent the Environmental Protection Agency (EPA) issued under the Safe Drinking Water Act (Act) to protect the public from the severe health hazards caused by lead that leaches into drinking water. *See* National Primary Drinking Water Regulations for Lead and Copper: Improvements, 89 Fed. Reg. 86418 (Oct. 30, 2024) (hereinafter, Rule). *See generally* 42 U.S.C. § 300f et seq. There is no safe level of lead in drinking water. Exposure to lead in drinking water can increase the risk that adults will suffer brain and kidney damage; pregnant women will miscarry; infants will be born with serious birth defects; and children will experience impaired cognitive development. Lead can leach into drinking water when service lines—the pipes that connect water mains to residences—contain lead and corrode. Indeed, where present, lead service lines are the most significant cause of lead contamination in drinking water. *See* 89 Fed. Reg. at 86419 n.3, 86445.

To address the serious health dangers posed by lead service lines, EPA issued the challenged Rule under its authority to regulate any “public water system,” which the Act defines as including water service

lines “under control of” the public water system. *See* 42 U.S.C. § 300f(4)(A). The Rule requires a public water system (system) to replace an entire lead service line, including portions located on private property, when applicable state or local law provides the system access to—and thus “control” of—the lead service line for the purpose of replacement. The Rule establishes a two-track time frame that generally requires systems to replace all lead service lines within ten years as the default deadline, while allowing certain systems with a high percentage of lead service lines additional time to complete replacements, subject to State oversight.

Petitioner seeks to vacate the Rule as unlawful or arbitrary and capricious under the Administrative Procedure Act. Amici the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, Rhode Island, Wisconsin, and the District of Columbia file this brief in support of EPA and the Rule. Amici States have compelling interests in this matter. Many public water systems located in Amici States and their political subdivisions have lead service lines, which were installed decades ago. Amici States have strong interests in protecting their residents from the deleterious health effects posed by these lead

service lines. The Rule helps protect Amici States and their residents from these severe health harms.

Amici States and their political subdivisions also have extensive experience with lead service line replacement efforts and with regulating public water systems—including the degree to which systems have legal access to lead service lines on private property to conduct replacements. That extensive experience supports EPA’s conclusion in the Rule that public water systems exercise control over lead service lines located on private property when state or local law provides the system access to those lines to replace them. Amici States’ ongoing lead service line replacement efforts further demonstrate that the Rule’s two-track time frame is feasible because full replacement within the time frame is both technically possible and affordable.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in separate addenda to briefs for petitioner and respondents.

ARGUMENT

POINT I

THE SAFE DRINKING WATER ACT AUTHORIZES EPA TO REQUIRE REPLACEMENT OF LEAD SERVICE LINES LOCATED ON PRIVATE PROPERTY IF STATE OR LOCAL LAW PROVIDES PUBLIC WATER SYSTEMS CONTROL OF THE LINES FOR THE PURPOSE OF REPLACEMENT

To ensure that safe drinking water is available to the public throughout the nation, the Safe Drinking Water Act empowers EPA to regulate any “public water system.” 42 U.S.C. § 300g. Congress broadly defined “public water system” as a system that distributes drinking water to the public “through pipes or other constructed conveyances” if such system has “at least fifteen service connections or regularly serves at least twenty-five individuals.” *Id.* § 300f(4)(A). As relevant here, regulated public water systems include “any collection, treatment, storage, and distribution facilities *under control of* the operator of such system and used primarily in connection with such system.” *Id.* § 300f(4)(A)(i) (emphasis added).

In the Rule, EPA properly concluded that public water systems exercise such “control” over service lines when state or local law provides to those systems access to the lines *for the purpose of replacing lines that*

contain lead. See 89 Fed. Reg. 86418, 86451. *Contra* Br. of Pet'r Am. Water Works Ass'n (AWWA Br.) at 24, 31; Br. for Amicus Curiae Chamber of Comm. of the U.S.A. (Chamber Br.) at 4, 9, 13 (arguing EPA equated "mere access" with control). EPA and intervenors correctly explain that the ordinary meaning, statutory context, and consistent agency understanding of lead service lines under a public water system's "control" include lines over which the system has the legal authority to access and replace the lines. *See* Br. for Resp't U.S. EPA (EPA Br.) at 20-32; Br. of Intervenors Natural Res. Def. Council et al. (NRDC Br.) at 12-24.

Amici States write to explain that this understanding of the term "control" is further confirmed by the Act's cooperative federalism framework, which preserves state and local authority to regulate the degree to which public water systems are entitled to access and to replace the portion of lead service lines that systems do not own. Put another way, as explained below, Congress understood in enacting the Safe Drinking Water Act that the degree of control that public water systems exercise over water distribution infrastructure, such as service lines, will vary widely based on state and local laws governing the authority that

systems have over different types of lines—many of which lines the public water systems do not own. The Rule properly accounts for that state and local variation, which constitutes a fundamental backdrop to the Act that supports EPA’s understanding of the term “control.”

Public water systems serve millions of people, operating facilities and water service lines in every State and in counties, cities, towns, and other local municipalities. It is thus no surprise that cooperative federalism principles are critical to many aspects of the Act. For instance, the Act requires EPA to “take into account existing State programs” when publishing guidelines for the certification of operators of certain public water systems, 42 U.S.C. § 300g-8(a), and requires “consultation with the States” before EPA promulgates various drinking water regulations, *see id.* § 300g-1(b)(4)(E)(ii)-(iii), (b)(8), (b)(13)(F), (b)(15). The Act also permits States to assume primary responsibility for enforcing the Act and EPA regulations promulgated thereunder. *Id.* § 300g-2(a); *see also Arizona v. EPA*, 77 F.4th 1126, 1128 (D.C. Cir. 2023) (noting that forty-nine States are primary enforcement authorities under the Act). And the Act preserves state and local authority to enact drinking water regulations for their respective jurisdictions that are more stringent than EPA’s

nationwide regulations under the Act. *See* 42 U.S.C. § 300g-3(e); *see also Arizona*, 77 F.4th at 1128.

Most important for this case, the Act expressly preserves state and local authority to regulate public water systems themselves. Specifically, the Act provides that States and their political subdivisions retain authority to “adopt or enforce any law or regulation respecting drinking water regulations *or public water systems*,” so long as such laws or regulations do not “relieve any person of any requirement” applicable under the Act. 42 U.S.C. § 300g-3(e) (emphasis added). Accordingly, the Act contemplates that state and local governments may regulate the degree of control that public water systems exercise over lead service lines that systems do not own, including the ways systems can (or cannot) access such service lines to conduct replacements.

The Rule here accords with the Act’s cooperative framework by interpreting “control” over lead service lines to mean sufficient authority under state or local laws, regulations, or water tariffs to access and

conduct line replacement, which may or may not involve ownership.¹ *See* 89 Fed. Reg. at 86451. This understanding of a public water system’s “control” over lead service lines also fits with Amici States’ experience. States and their political subdivisions have, in fact, taken a wide variety of approaches to regulating public water systems’ ability to legally access and physically replace service lines. Under many of these state and local approaches, public water systems plainly have control over lead service lines that they do not own.

Some jurisdictions, for example, have authorized public water systems to replace service lines that are located on private property. In Wisconsin, a water utility “may enter, at any reasonable time, *any place*” to which the utility supplies water for purposes of “repairing, installing or removing” service lines. Wis. Stat. Ann. § 196.171(1) (emphasis added).²

¹ Terms and conditions of water service are often set out by a utility in a state-reviewed filing referred to as a water tariff. *See, e.g.,* [New York Dep’t of Pub. Serv., *Water Tariffs* \(n.d.\)](#). (For authorities available on the internet, URLs appear in the Table of Authorities. All websites were last visited on March 13, 2026.)

² *See also, e.g.,* [Pittsburgh Water & Sewer Auth., Rates, Rules, and Regulations Governing the Provision of Water Service to the Public in the Territory Described Herein pt. III § B\(12\)\(e\) \(Supp. No. 15, Dec. 2024\)](#) (granting local water utility the right “to make the necessary repair or

(continued on the next page)

In Michigan, a water utility has “control over the entire service line” if it has “legal authority” under local law or contract “to replace, repair, or maintain the service line” or “to set standards for construction, repair, or maintenance of the service line.” Mich. Admin. Code R. 325.10604f(5)(g). And in New Jersey, municipalities may adopt an ordinance that allows a water utility “to enter a property within the municipality to perform a lead service line replacement” upon sufficient notice. N.J. Stat. Ann. § 58:12A-39(a).

In some jurisdictions, public water systems may control service lines through authorized actions that incentivize property owners to grant the systems access to replace service lines. For instance, in Columbus, Ohio, the water utility may discontinue water service if a customer refuses to allow the utility “to access their property to conduct the replacement” and fails to enlist a qualified contractor “to replace the Lead Service Line with non-lead pipe.” *See* Columbus, Ohio, City Code §§ 1119.05(B)(1)-(2), 1119.06(A). In West Valley, New York, the water utility may similarly

replacement” if “the condition of a customer service line” poses “a risk to public health or safety” and the “property Owner fails to take prompt action”).

discontinue water service if a customer fails to “maintain the service pipe . . . on the property of the customer in a condition satisfactory to the company” or fails to provide the utility “reasonable access to the premises.” See West Valley Crystal Water Co., Schedule for Water Service Applicable in Village of West Valley, County of Cattaraugus § 12(A)(2), (4) (1999).

Where a public water system does not believe that state or local law provides sufficient access for the purpose of lead service line replacement, it must report its view to the State. See 89 Fed. Reg. at 86637. Indeed, in some jurisdictions, public water systems may lack legal authority to access and replace lead service lines that they do not own. For example, in Ohio, water utilities are not required to replace the portion of a lead service line located on private property “where the owner chooses not to pay the cost of replacing the privately-owned portion of the line.” Ohio Admin. Code § 3745-81-84(C). And in Indiana, water utilities are not required to replace “the customer owned portion of the lead service line” if there is a “lack of consent” by the customer. Ind. Code § 8-1-31.6-6(a)(8); cf. 52 Pa. Code § 65.56(b)(6)(i). EPA properly acknowledged and accounted for such state and local laws in promulgating the Rule here. Specifically, the Rule

provides that a public water system is not required to replace privately owned lead service lines when, under state or local law, the system lacks access to replace such lines.³ *See* 89 Fed. Reg. at 86452.

In view of the wide variety in state and local regulation in this area, the Rule appropriately declines to address all of the different ways that States and localities might choose to grant or withhold control to a public water system over lead service lines that they do not own. Instead, the Rule maintains the flexibility that the Act's cooperative federalism structure contemplates by requiring public water systems to replace lead service lines—including lines located on private property—when they have the legal authority to do so under state or local law. And to ensure that

³ American Water Work's Association's reliance on *Bass v. Ledbetter*, 257 Ga. 738, 363 S.E.2d 760 (1988), is misplaced. *See* AWWA Br. at 26. The court there stated, without any discussion of state or local law bearing on a public water system's control over service lines that it does not own, that, under Georgia's Safe Drinking Water Act, "[c]learly, the private lines running from the service connections of the distribution facilities into the homes of the residents are not within the control of the operator." 363 S.E.2d at 761. If state and local law in Georgia does not provide public water systems with control over privately owned lead service lines, the Rule here accounts for that scenario. And state and local law in Georgia has no bearing on the state and local laws in other jurisdictions, which laws govern the degree of control that public water systems possess to access and replace privately owned lead service lines.

full lead service line replacements occur to the maximum extent feasible, the Rule appropriately requires public water systems that claim a lack of control over privately owned lead service lines to submit to their State “the reasons that the water system does not have access,” including “any specific laws, regulations, and/or water tariff agreements that affect the water system’s ability to gain access to conduct full replacement.” *See id.* at 86637. Such documentation “provides the information needed for oversight” and “allows States to ensure water systems are replacing lines in which they have access.” *Id.* at 86452.

Petitioner errs in arguing that “control” under the Act means solely property ownership. Petitioner emphasizes that public water systems do not usually own lead service lines located on private property and argues that this lack of ownership must mean that systems cannot control service lines located on private property. *See AWWA Br.* at 18-31. But petitioner’s myopic focus on ownership of service lines located only on private property ignores the fact that public water systems are often operated by entities that do not own *any* of the service lines—including those on public property.

Several provisions of the Act recognize that the owner and the operator of a public water system may be distinct entities. For example, the Act requires each “owner *or operator*” to notify persons that may be affected when lead leaches into a water supply. 42 U.S.C. § 300g-6(a)(2)(ii) (emphasis added). And the Act authorizes EPA to regulate service lines “under control of *the operator*” of a public water system. *Id.* § 300f(4)(A)(i) (emphasis added). *See also* Response to Public Comments at 9-260 (Doc. No. 801). Amici States’ experience further confirms that operators of public water systems are often distinct entities that do not themselves own the service lines—including the portions located on both public and private property. Many state and local governments, for instance, contract with privately owned entities to operate public water systems, while the local government or publicly owned utility retains ownership of the water service lines. *See* [EPA, Water Operator Hiring and Contracting Guide \(2019\)](#). In other instances, municipalities have entered into decades-long concession agreements with private operators under which the municipi-

pality retains ownership of the water distribution infrastructure but leases it for private operation.⁴

Although such operators do not own the service lines located on public property, they nonetheless plainly have control over those service lines because they have legal and physical access to the service lines to operate the system, including by replacing lead service lines. Indeed, petitioner does not dispute (and could not reasonably dispute) that public water systems—including their operators—must replace lead service lines located on public property because operators control those lines. Petitioner, however, fails to explain why operators can control service lines located on public property that they do not own but cannot similarly control lines located on private property that they do not own—even

⁴ See, e.g., Borough of Middletown, Pa., Municipal Water and Wastewater Utility System Concession and Lease Agreement 1 (Sept. 29, 2014) (fifty-year lease); City of Detroit & Great Lakes Water Auth., Summary of Water and Sewer Leases and Service Agreement (n.d.) (forty-year lease); New Jersey Board of Pub. Utils., Order Approving an Agreement to Establish a Public-Private Contract Between the Bayonne Municipal Utilities Authority and United Water Joint Venture, LLC, Dkt. No. WM12080777 (Oct. 23, 2012) (forty-year lease); Rialto (Cal.) Water Servs., 2015 Annual Drinking Water Quality Report p. 2 (2016) (thirty-year lease).

when various state and local laws grant operators authority to access service lines located on private property to replace lead service lines.

Accordingly, by defining “control” to mean legal and physical access to replace the full lead service lines, EPA upheld its statutory obligation to implement a feasible treatment technique within the Safe Drinking Water Act’s cooperative federalism framework. *See City of Portland v. EPA*, 507 F.3d 706, 712 (D.C. Cir. 2007).

POINT II

AMICI STATES’ EXPERIENCE DEMONSTRATES THAT THE RULE’S TWO-TRACK TIMELINE FOR LEAD SERVICE LINE REPLACEMENTS IS FEASIBLE AND AFFORDABLE

When, as here, EPA determines that treatment techniques are necessary to prevent adverse health effects, the Safe Drinking Water Act requires EPA to establish techniques that will “prevent known or anticipated adverse effects on the health of persons to the extent feasible.” *See* 42 U.S.C. § 300g-1(b)(7)(A). The Act defines the term “feasible” as “feasible with the use of the best technology, treatment techniques and other means which . . . are available (taking cost into consideration).” *Id.* § 300g-1(b)(4)(D); *City of Portland*, 507 F.3d at 712 (holding the Act requires “the most stringent feasible” treatment technique that is “tech-

nically possible and affordable”). EPA properly implemented this statutory requirement here in determining the fastest feasible rate, under the Act, at which public water systems can implement the treatment technique of replacing all lead service lines that are under their control.

In determining the fastest feasible replacement rate, EPA conducted a robust and detailed analysis of the rates at which public water systems across the United States—including systems in many Amici States—were replacing lead service lines on their own initiative or as already required by state or local law. *See* 89 Fed. Reg. at 86456-67. This evidence demonstrated that the fastest feasible replacement rate for most systems is thirty-nine annual replacements of lead service lines per one thousand total service connections in a public water system (the “Annual Rate”). *Id.* at 86467. Based on this Annual Rate, EPA established a two-track timeline for replacement in the Rule. First, as a default, public water systems must complete all lead service line replacement within ten years, with the ten-year time period starting in late 2027. Second, if a public water system is unable to complete all replacements within ten years despite making replacements at the Annual Rate (because that system has lead in an unusually large percentage of its service lines), that public

water system may take more than ten years to complete lead service line replacements, with state approval, as long as the system proceeds at the Annual Rate.⁵ *See* 89 Fed. Reg. at 86467, 86467.

As EPA and intervenors correctly explain, EPA reasonably concluded, based on its extensive data analysis, that full lead service line replacement is feasible within the two-track time frame because it is both technically possible and affordable. *See* EPA Br. at 36-50; NRDC Br. at 25-33. Amici States write to emphasize two points that further confirm that EPA's feasibility determination is amply supported: (1) Amici States' experience with ongoing lead service line replacement initiatives within their jurisdictions demonstrates that a ten-year timeline is feasible; and (2) numerous funding sources tapped by Amici States and their municipalities have made these initiatives affordable.

⁵ The Rule also requires States and their municipalities to set shorter replacement deadlines if their public water systems demonstrate, through progress reports, that it is feasible to complete all lead service line replacement faster than the Annual Rate. *See* 89 Fed. Reg. at 86459, 86564-67.

A. Amici States' Experience with Ongoing Efforts to Replace Lead Service Lines Supports EPA's Feasibility Determination.

Petitioner errs in arguing that the Rule's default ten-year replacement timeline is not technically possible for public water systems. *See AWWA Br.* at 45-50. As an initial matter, petitioner's narrow focus on the default ten-year timeline fails to account for the fact that the Rule contains a second track, i.e., a deferred timeline that allows systems to take longer than ten years to complete lead service line replacements where they are continuing to do replacements at the Annual Rate. In creating the deferred timeline, EPA reasonably acknowledged that public water systems that contain an unusually large percentage of lead service lines might not complete full lead service line replacement within ten years, despite doing replacements at the Annual Rate. Indeed, in a footnote, petitioner acknowledges the two-track timeline when it concedes that it was appropriate for EPA to provide public water systems with the deferred deadline and does not argue that the deferred deadline is infeasible. *See id.* at 51 n.20.

When the default ten-year and the deferred deadlines are properly considered together, the Rule's two-track timeline affords public water

systems ample time to complete replacements of lead service lines in their systems—as the administrative record and Amici States’ experience demonstrate. Multiple States—including Illinois, Michigan, New Jersey, and Rhode Island—have enacted their own laws mandating replacement of lead service lines. These four Amici States together contain approximately *one fifth* of lead service lines nationwide, encompassing roughly 1.9 million lead service lines. 89 Fed. Reg. at 89457. And in New Jersey and Rhode Island, public water systems are already required to conduct full lead service replacement within a ten-year time frame. 89 Fed. Reg. at 86457; *see also id.* at 86440 (noting Minnesota’s statewide goal of full replacements within ten years). Public water systems’ ongoing efforts to implement these state-law requirements confirm that the Rule’s two-track timeline is feasible.

For example, the experiences of public water systems in New Jersey support EPA’s finding that it is technically possible to complete replacements under a ten-year deadline. New Jersey’s largest water utility, New Jersey American Water, reported in February 2025 that it was “on pace to meet” the ten-year deadline set by state law, having completed over

12,000 replacements since starting work in 2022.⁶ Trenton Water Works, one of the nation's oldest public water systems, has already replaced over 11,000 lead service lines, and it recently announced its next phase of lead service line replacement in pursuit of its commitment to remove all lead infrastructure from its system by the ten-year deadline.⁷ And the City of Newark, prior to the state mandate, replaced 23,190 lead service lines in under three years, with a state audit finding with “a high degree of confidence” that all such lines in the city are now replaced.⁸ Numerous water systems are similarly conducting replacements across New Jersey, suggesting that full replacement is technically possible for many public water systems within ten years.

Public water systems in other Amici States have also demonstrated substantial progress in replacing lead service lines, further confirming

⁶ [New Jersey Am. Water, Press Release, New Jersey American Water Continues to Lead on Lead Service Line Replacements in 2025 \(Feb. 25, 2025\).](#)

⁷ [City of Trenton, N.J., Press Release, Trenton Water Works Launches New Phases of Lead Service Line Replacements \(Jan. 20, 2026\).](#)

⁸ [New Jersey Dep't of Env't Prot., Newark Lead Service Line Replacement Compliance Audit 3 \(Aug. 2025\).](#)

that the two-track timeline is feasible. The City of Detroit, Michigan, has proceeded with a neighborhood-by-neighborhood approach in removing over 15,800 lead service lines and, in 2024, set a goal to complete the process within ten years.⁹ The District of Columbia has replaced more than a quarter of its lead service lines, with a goal to complete the replacement process well before the Rule's ten-year deadline.¹⁰ The City of Rochester, New York, has increased the rate of its lead service line replacement efforts with a goal to complete the process by 2030.¹¹ And the City of Denver, Colorado, has replaced 36,800 lead service lines between 2020 and 2025.¹²

Small public water systems serving communities of less than 10,000 persons have demonstrated similar success. For example, the City of Mayville, Wisconsin, a small municipality with about 2,000 total

⁹ See [City of Detroit, Press Release, DWSD Scales Up Lead Service Line Replacement \(May 10, 2024\)](#); [City of Detroit, *Lead Service Line Replacement Program* \(updated Feb. 16, 2025\)](#).

¹⁰ See [DC Water, *Lead Free DC Program Status Dashboard* \(updated Mar. 6, 2026\)](#); see also [DC Water, *Lead Service Line Replacement Plan 11* \(updated June 2023\)](#).

¹¹ See [City of Rochester, *Let's Get the Lead Out Together!* \(n.d.\)](#).

¹² See [Denver Water, *Lead Reduction Program Annual Report – 2025*, at 36 \(Feb. 6, 2026\)](#).

service connections, replaced all its lead service lines within a single year.¹³ The City of Ewart, Michigan, a small municipality with an unusually large percentage of lead service lines, was able to conduct replacements at nearly fifty percent faster than the Annual Rate. *See* Technical Support Document at 4 (Doc. No. 2646) (noting rate of fifty-eight annual replacements per one thousand service connections). And numerous other small Michigan localities—including Benton Harbor, McBain, Kingsley, and Marcellus—have completed full lead service line replacements in their communities.¹⁴

Petitioner and its amici attempt to criticize the replacement-rate data analyzed by EPA, but these criticisms are unfounded and contradicted by the replacement efforts within Amici States. For instance, petitioner and its amici emphasize that some state laws permit full replacement to take more than ten years and that some of the replacement efforts that EPA analyzed extended beyond ten years. *See* AWWA

¹³ Wisconsin Dep’t of Nat. Res., *Celebrating the 50th Anniversary of the Safe Drinking Water Act: Success Stories* (n.d.); see also Wisconsin Pub. Serv. Comm’n, *Number of Service Lines by Material Type for Wisconsin Water Utilities 7* (updated Sept. 5, 2025).

¹⁴ *See* Planet Detroit, *Michigan Lead Service Line Tracker* (updated Dec. 2025) (use “Click to show” for “100% replaced (21)” category).

Br. at 47-49; Chamber Br. at 6, 25-26. But those state laws and replacement efforts do not mean that it is *infeasible* for public water systems to complete replacements faster if they are required to do so under the Rule. As EPA properly explained, the dataset it analyzed included public water systems that are *voluntarily* conducting lead service line replacement programs—that is, programs without a mandated completion timeline. *See* 89 Fed. Reg. at 86457. In the absence of any mandatory deadline, the replacement rates of such water systems are based upon policy choices. And the policy choices of state and local governments do not mean that it was *infeasible* to meet a ten-year deadline.

Indeed, several public water systems conducting voluntary replacement programs are on pace to complete replacement in close to ten years and may have acted faster if they had been under a mandatory deadline. For example, Lansing and St. Clair Shores, Michigan, as well as Madison, Wisconsin, have completed or are on pace to voluntarily complete lead service line replacement in close to ten years. *See* Response to Public Comments at 9-97; Technical Support Document at 3. Public water systems within these municipalities may have completed replacements within ten years if they had been subject to a regulatory deadline.

And even if a particular system ultimately needs more than ten years to complete full lead service replacement, the Rule's deferred timeline provides additional time so long as the system is conducting replacements at the Annual Rate. See *supra* at 16-17.

Petitioner also errs in contending that EPA relied on a dataset of replacement rates that is not representative of public water systems nationwide. Petitioner claims that the replacement efforts that EPA analyzed arose from "specific, localized crises where intensive resources were brought to bear on the problem." AWWA Br. at 36; *see also id.* at 43-44. But the dataset that EPA analyzed included a wide range of replacement efforts, including efforts by thirty-two systems serving populations over 50,000 persons and efforts by twelve systems serving between 10,000 and 50,000 persons. *See* 89 Fed. Reg. at 86458; Technical Support Document at 2-4. And the data included many voluntary replacement efforts and some mandatory replacement efforts with deadlines. While some replacements were undertaken in response to local crises, the overwhelming majority of replacement programs were undertaken as voluntary or

state-mandated measures that were *not* in response to an acute crisis.¹⁵

Petitioner thus mischaracterizes the data.

B. Amici States' Ongoing Experience Further Demonstrates That Lead Service Line Replacement at the Rate Required by the Rule Is Affordable.

The experience of Amici States with ongoing lead service line replacements also supports EPA's determination that compliance with the Rule's two-track timeline is affordable. Petitioner and its amici contend that compliance is not affordable because EPA purportedly overestimated the availability of external funding to support systems' lead service line replacement efforts. *See* AWWA Br. at 41-44; Chamber Br. at 25. But in the experience of Amici States, localities committed to replacing lead service lines in their public water systems have been able to find the funding to do so using internal and external funding sources. Some localities—such as Green Bay, Wisconsin, and Grand Rapids, Michigan—have conducted lead service line replacements without substantial exter-

¹⁵ *Compare* Technical Support Document at 2-4 (identifying forty-eight localities in dataset), *with* 89 Fed. Reg. at 86458 (acknowledging replacement efforts in Flint, Michigan, and Newark, New Jersey, as involving potential exceptional circumstances and excluding Newark from the feasibility analysis).

nal funding assistance. *See* Response to Public Comments at 9-97. Many other localities have relied on a variety of federal or state funding sources to provide grants or loans to municipalities or their public water systems.¹⁶ Other localities have issued bonds to raise funds to cover infrastructure improvements like lead service line replacements.¹⁷

In addition, some water utilities have used ratepayer funds to offset replacement costs. *See, e.g.,* [WHAM, Rochester City Council Approves Mayor's \\$680 Million Budget \(updated June 18, 2025\)](#) (average water bills in Rochester, N.Y., increased by less than \$5 to fund infrastructure improvements including lead service line replacement). Still other systems have sought contributions from property owners for the replacement of their lines, a funding mechanism that EPA acknowledges is allowed under the Rule, subject to applicable state and local law.¹⁸ 89 Fed.

¹⁶ *See, e.g.,* [Rhode Island Infrastructure Bank & R.I. Dep't of Health, State Fiscal Year \(SFY\) 2026 Intended Use Plan 7 \(2025\)](#).

¹⁷ *See, e.g.,* [Town of Kearny, N.J., Ordinance No. 2025-31, Bond Ordinance Statement and Summary \(2025\)](#).

¹⁸ *See, e.g.,* [Village of Palatine, Ill., Lead and Galvanized Steel Water Service Line Replacement Cost Sharing Program \(n.d.\)](#) (municipality pays for entire public-side replacement cost and three quarters of private-side cost).

Reg. at 86453-54. While the availability and extent of funding sources vary by State and municipality, in the experience of Amici States, public water systems that are committed to lead service line replacement can turn to a variety of funding sources, often in combination, and enact a workable plan to complete the replacement work needed to protect their residents from the serious health dangers of lead.¹⁹

Turning to petitioner's other arguments, there is no basis to petitioner's speculation that nationwide lead service line replacement will constrain supplies of labor and materials to such a degree that compliance with the Rule is infeasible. *See* AWWA Br. at 45-48. Petitioner cites no evidence—let alone evidence in the administrative record—that any public water system has encountered such constraints in their replacement efforts to date. And Amici States and their localities with replacement mandates or programs are not aware of significant supply constraints having prevented timely replacement work. That awareness includes the five States with ongoing replacement mandates or goals—

¹⁹ *See, e.g., Centers for Disease Control, Creatively Financing Full Lead Service Line Replacement in Green Bay, WI and Spokane, WA (Mar. 11, 2025)* (Green Bay supplemented other funding sources with tax revenue from a football stadium).

Illinois, Michigan, Minnesota, New Jersey, and Rhode Island—which contain over one fifth of lead service lines nationwide. *See* 89 Fed. Reg. at 86457. And some state and local governments—like Rhode Island and Newark, New Jersey—have created workforce development programs such as apprenticeship and training opportunities to ensure that workers are prepared to undertake replacement work. *See id.* at 86469. As for materials, the copper and PVC piping needed for the replacements account for only a small fraction of the domestic supply of those materials. *Id.* at 86468. The absence of material shortages in Amici States is consistent with that data.

POINT III

PETITIONER’S ARGUMENTS, IF ACCEPTED, WOULD UNDERMINE PUBLIC HEALTH AND DISRUPT EFFORTS TO COMPLY WITH THE RULE

Finally, petitioner’s arguments, if accepted by the Court, would significantly undermine public health and disrupt existing efforts in Amici States to prepare for the lead service line replacement efforts that the Rule requires. *See* AWWA Br. at 35-36, 54. Petitioner and its amici do not dispute that lead service lines pose substantial public health hazards or that the Rule will prevent those health harms. Rightly so. In

promulgating the Rule, EPA concluded that the public health benefits of full lead service line replacement overwhelmingly outweigh the costs of such replacement by approximately *tenfold*. *See* 89 Fed. Reg. at 86592 (comparing estimated annualized costs and benefits under low and high scenarios).

Elimination of those harms to public health is imperative for Amici States and our residents, who must bear the severe public health consequences of lead exposure. In adults, lead exposure increases the risk of brain and kidney damage, cardiovascular disease, miscarriage, and birth defects, among other ailments. In children, the adverse health effects are particularly serious, with lead exposure stunting brain development, decreasing cognitive performance, and triggering attention-related behavior disorders. *See* Comments of Attorney General of New York et al. at 4-5 (Doc. No. 31). Underserved communities, including low-income communities and communities of color, bear a disproportionate share of the harm due to outdated and underfunded infrastructure in their communities. *Id.* at 6-7, 29-30; *see also* Economic Analysis, app. D (Doc. No. 708). Lead service line replacement efforts are drastically needed to address these substantial public health harms.

The Rule will also help ameliorate substantial burdens and costs on Amici States and their public health systems. Amici States devote significant resources towards combating the deleterious effects of lead exposure on public health. For example, our States fund and administer healthcare and related programming that provide services for children and others who suffer from conditions linked to lead exposure.²⁰ Our States also make educational accommodations for children who suffer from cognitive and behavioral conditions, including those linked to lead exposure.²¹

Given the significant health benefits and savings associated with full lead service line replacement, many Amici States, as well as their localities and public water systems, are already actively taking steps to increase their rates of lead service line replacement. For instance, the City of Milwaukee, Wisconsin, which contains forty percent of the State's lead service lines, has awarded over \$24.7 million in contracts for lead

²⁰ See, e.g., New York State Dep't of Health, *Childhood Lead Poisoning Prevention* (revised Nov. 2025).

²¹ See, e.g., University of the State of N.Y., N.Y. State Educ. Dep't, *Continuum of Special Education Services for School-Age Students with Disabilities* (updated Nov. 2013); University of the State of N.Y., N.Y. State Educ. Dep't, *Testing Accommodations for Students with Disabilities* (updated Sept. 2025).

pipe removal, and it plans to replace around 5,000 lead service lines in 2026 to assist it in meeting the Rule's ten-year deadline.²² And some States have passed their own regulations to mirror the Rule's requirements.²³ The Court should not disrupt the substantial efforts and investments that Amici States and their localities and public water systems are already undertaking to ensure full lead service line replacement in compliance with the Rule.

²² See [Ethan Duran, Milwaukee Prepares to Replace Thousands of Lead Service Lines in 2026](#), Daily Rep. (Dec. 30, 2025).

²³ See, e.g., [Danielle Kaeding, Wisconsin Moves to Require Lead Pipes Replaced by 2037](#), Wisc. Pub. Radio (Dec. 11, 2025).

CONCLUSION

The Court should deny the petition for review.

Dated: New York, New York
March 13, 2026

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York

By: /s/ Raymond D. Moss²⁴
RAYMOND D. MOSS
Assistant Solicitor General

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
RAYMOND D. MOSS
Assistant Solicitor General
MICHAEL J. MYERS
Senior Counsel
CHANNING WISTAR-JONES
Assistant Attorney General
Environmental Protection Bureau
of Counsel

28 Liberty Street
New York, New York 10005
(212) 416-8749
raymond.moss@ag.ny.gov

(Counsel list continues on next page.)

²⁴ Counsel for the State of New York certifies that the other parties listed in the signature blocks consent to this filing.

KRISTIN K. MAYES
Attorney General
State of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

KWAME RAOUL
Attorney General
State of Illinois
115 S. LaSalle St.
Chicago, IL 60603

ROB BONTA
Attorney General
State of California
1300 I St.
Sacramento, CA 95814

AARON M. FREY
Attorney General
State of Maine
6 State House Sta.
Augusta, ME 04333

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway, 10th Fl.
Denver, CO 80203

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Pl.
Baltimore, MD 21202

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Ave.
Hartford, CT 06106

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Pl., 18th Fl.
Boston, MA 02108

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French St.
Wilmington, DE 19801

KEITH ELLISON
Attorney General
State of Minnesota
445 Minnesota St., Ste. 1800
St. Paul, MN 55101

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th St., NW, Ste. 8100
Washington, D.C. 20001

JENNIFER DAVENPORT
Attorney General
State of New Jersey
25 Market St.
Richard J. Hughes Justice Complex
Trenton, NJ 08625

AARON D. FORD
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701

PETER F. NERONHA
Attorney General
State of Rhode Island
150 S. Main St.
Providence, RI 02903

JEFF JACKSON
Attorney General
State of North Carolina
114 W. Edenton St.
Raleigh, NC 27603

JOSH KAUL
Attorney General
State of Wisconsin
17 W. Main St.
Madison, WI 53703

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Oren L. Zeve, an employee in the Office of the New York State Attorney General, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 6,113 words and complies with the typeface requirements and length limits of Rules 29 and 32(a)(5)-(7) and corresponding local rules.

/s/ Oren L. Zeve