

**No. 19-35461**  
**(Consolidated with Nos. 19-35460 and 19-35462)**  
Oral Argument Held On June 5, 2020  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

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LEAGUE OF CONSERVATION VOTERS, *et al.*,  
*Plaintiffs-Appellees,*

v.

JOSEPH R. BIDEN, in his official capacity as  
President of the United States, *et al.*,  
*Defendants,*

STATE OF ALASKA,  
*Intervenor-Defendant,*

and

AMERICAN PETROLEUM INSTITUTE,  
*Intervenor-Defendant-Appellant.*

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On Appeal From the United States District Court For the District of Alaska  
No. 3:17-cv-00101 (Hon. Sharon L. Gleason)

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**AMERICAN PETROLEUM INSTITUTE'S RESPONSIVE**  
**SUPPLEMENTAL BRIEF**

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## STATEMENT

On March 15, 2021, Intervenor-Defendant American Petroleum Institute (“API”) submitted its Supplemental Brief in response to the Court’s January 27, 2021 Order directing the parties to address the impact of President Biden’s Executive Order 13990 on these consolidated appeals. *See* API Supp. Br. (Dkt. 93). API’s Supplemental Brief advanced two points.

First, API established that Executive Order 13990 moots Plaintiffs’ lawsuit and these resulting consolidated appeals. *See id.* at 3–4. In their respective supplemental briefs, each party agreed that the appeals are moot. *See* Fed. Defs.’ Supp. Br. (Dkt. 88) at 3–9; State of Alaska Supp. Br. (Dkt. 90) at 1–2; Pls.’ Supp. Br. (Dkt. 92) at 2–9. The parties therefore agree that this Court “lacks jurisdiction and must dismiss the appeal[s].” *Pub. Utilities Comm’n of the State of Cal. v. Fed. Energy Regulatory Comm’n*, 100 F.3d 1451, 1458 (9th Cir. 1996).

Second, API established that in light of the mootness of these consolidated appeals, this Court should vacate the district court’s decision below, and remand the case to the district court with directions to dismiss the lawsuit. *See* API Br. at 4–8. Indeed, because API did not cause the mootness, “vacatur is generally automatic.” *NASD Dispute Resolution, Inc. v. Judicial Council of the State of Cal.*, 488 F.3d 1065, 1068 (9th Cir. 2007) (quotation omitted). Federal Defendants and the State of Alaska agreed with this position, and similarly requested vacatur. *See*

Fed. Defs.’ Br. at 9–10; State of Alaska Br. at 2–6. For their part, Plaintiffs did not address vacatur or the impact of appellate mootness on the district court’s decision.

Given the parties’ full agreement on the issue of mootness, and the absence of contrary briefing on the issue of vacatur, there is no argument to which API can respond in this brief.

### CONCLUSION

As detailed in API’s Supplemental Brief, this Court should vacate the district court’s judgment, which has become moot on appeal, and remand to the district court with directions to dismiss the lawsuit.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the page limit established in the Court's January 27, 2021 Order because this brief contains 2 pages.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word using 14-point Times New Roman font.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of March, 2021, a true and correct copy of the foregoing was filed via the Court's CM/ECF system, and served via the Court's CM/ECF system upon all counsel of record.

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