ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1087 (and consolidated cases)

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

COMMONWEALTH OF KENTUCKY, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents,

ENVIRONMENTAL LAW & POLICY CENTER, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA-HQ-OAR-2022-0829)

INITIAL BRIEF FOR PRIVATE PETITIONERS

PAUL D. CLEMENT
C. HARKER RHODES IV
NICHOLAS A. AQUART*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Petitioners in No. 24-1196

JEFFREY B. WALL
MORGAN L. RATNER
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500
wallj@sullcrom.com

Counsel for Petitioners Diamond Alternative Energy, LLC and Valero Renewable Fuels Company, LLC

*Supervised by principals of the firm who are members of the Virginia bar

(Additional counsel listed on next page)

MICHAEL B. BUSCHBACHER
JAMES R. CONDE
BOYDEN GRAY PLLC
800 Connecticut Avenue NW
Suite 900
Washington, DC 20006
(202) 955-0620
mbuschbacher@boydengray.com

Counsel for Petitioners in No. 24-1197

D. JOHN SAUER
JUSTIN D. SMITH
JAMES OTIS LAW GROUP, LLC
13321 North Outer Forty Road,
Suite 300
St. Louis, Missouri 63017
(816) 678-2103
justin.smith@james-otis.com

Counsel for Petitioners in No. 24-1132

ROBERT HENNEKE
THEODORE HADZI-ANTICH
CONNOR MIGHELL
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
tha@texaspolicy.com

Counsel for Petitioners in No. 24-1158

ERIC D. MCARTHUR
DANIEL J. FEITH
JEREMY D. ROZANSKY
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
emcarthur@sidley.com

Counsel for Trade Association Petitioners in No. 24-1195

MATTHEW W. MORRISON
SHELBY L. DYL
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 17th Street NW
Washington, DC 20036
(202) 663-8036
matthew.morrison@pillsburylaw.com

Counsel for Petitioners in No. 24-1206

BRITTANY M. PEMBERTON
BRACEWELL LLP
2001 M Street NW, Suite 900
Washington, DC 20036
(202) 828-5800
brittany.pemberton@bracewell.com

Counsel for Petitioners International Association of Machinists and Aerospace Workers Lodge No. 823, Diamond Alternative Energy, LLC, and Valero Renewable Fuels Company, LLC

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28, petitioners respectfully submit this Certificate as to Parties, Rulings, and Related Cases.

A. Parties

Petitioners in Case No. 24-1087 are the Commonwealth of Kentucky; State of West Virginia; State of Alabama; State of Alaska; State of Arkansas; State of Florida; State of Georgia; State of Idaho; State of Indiana; State of Iowa; State of Kansas; State of Louisiana; State of Mississippi; State of Missouri; State of Montana; State of Nebraska; State of New Hampshire; State of North Dakota; State of Ohio; State of Oklahoma; State of South Carolina; State of South Dakota; State of Utah; Commonwealth of Virginia; and State of Wyoming.

Petitioner in Case No. 24-1100 is the State of Texas.

Petitioners in Case No. 24-1132 are Warren Petersen, President of the Arizona State Senate; Ben Toma, Speaker of the Arizona House of Representatives; and Arizona Trucking Association.

Petitioners in Case No. 24-1158 are Western States Trucking Association, Inc.; and Construction Industry Air Quality Coalition, Inc.

Petitioners in Case No. 24-1195 are American Fuel & Petrochemical Manufacturers; California Asphalt Pavement Association; California Manufacturers & Technology Association; Consumer Energy Alliance; Domestic Energy Producers Alliance; Energy Marketers of America; International Association of Machinists and Aerospace Workers Lodge No. 823; Louisiana Mid-Continent Oil & Gas Association; National Association of Convenience Stores; The Petroleum Alliance of Oklahoma; Texas Oil & Gas Association; and Western States Petroleum Association.

Petitioners in Case No. 24-1196 are American Petroleum Institute; American Farm Bureau Federation; National Corn Growers Association; Baxter Ford, Inc.; Celebrity Motor Cars, LLC; Celebrity Motors of Toms River, LLC; Celebrity of Springfield, LLC; Celebrity of Westchester, LLC; Gates Nissan LLC; AML Automotive Peoria, LLC; Loquercio Automotive, Inc.; Loquercio Automotive GOE, LLC; Loquercio Automotive Goshen, LLC; Loquercio Automotive MCH, LLC; Loquercio Automotive MCK, LLC; Loquercio Automotive South, Inc.; Loquercio Automotive West, LLC; Raecom Holdings, LLC; and Tarver Motor Company, Inc.

Petitioners in Case No. 24-1197 are American Free Enterprise Chamber of Commerce; Clean Fuels Development Coalition; ICM, Inc.; Illinois Corn

Growers Association; Indiana Corn Growers Association; Iowa Corn Growers Association; Kansas Corn Growers Association; Kentucky Corn Growers Association; Michigan Corn Growers Association; Minnesota Corn Growers Association; Missouri Corn Growers Association; Nebraska Corn Growers Association; Ohio Corn and Wheat Growers Association; South Dakota Corn Growers Association; Tennessee Corn Growers Association; Wisconsin Corn Growers Association; Diamond Alternative Energy, LLC; and Valero Renewable Fuels Company, LLC.

Petitioners in Case No. 24-1206 are Renewable Fuels Association and National Farmers Union.

Respondents are the U.S. Environmental Protection Agency and Michael S. Regan in his official capacity as Administrator of the U.S. Environmental Protection Agency.

Intervenors on behalf of respondents are Environmental Law & Policy Center; Ford Motor Company; National Parks Conservation Association; Natural Resources Defense Council, Inc.; Public Citizen, Inc.; Sierra Club; State of Arizona; State of California; State of Colorado; State of Connecticut; State of Delaware; State of Hawaii; State of Illinois; State of Maine; State of Maryland; State of Michigan; State of Minnesota; State of New Jersey; State

of New Mexico; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; State of Washington; State of Wisconsin; Alliance for Automotive Innovation; Alliance of Nurses for Healthy Environments; American Lung Association; American Public Health Association; Appalachian Mountain Club; Center for Biological Diversity; City of Chicago; City of Denver; City of Los Angeles; City of New York; Clean Air Council; Commonwealth of Massachusetts; Commonwealth of Pennsylvania; Conservation Law Foundation; County of Denver; District of Columbia; Environmental Defense Fund; and Zero Emission Transportation Association.

B. Rulings Under Review

Under review is the final action of the Administrator of the United States Environmental Protection Agency, entitled *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, published in the Federal Register at 89 Fed. Reg. 27,842 (Apr. 18, 2024).

C. Related Cases

Eight consolidated cases in the U.S. Court of Appeals for the District of Columbia Circuit involve challenges to the agency action challenged here:

Kentucky v. *EPA*, No. 24-1087; *Texas* v. *EPA*, No. 24-1100; *Petersen* v. *EPA*, No. 24-1132; *Western States Trucking Ass'n, Inc.* v. *EPA*, No. 24-1158; *American Fuel & Petrochemical Manufacturers* v. *EPA*, No. 24-1195; *American Petroleum Institute* v. *EPA*, No. 24-1196; *American Free Enterprise Chamber of Commerce* v. *EPA*, No. 24-1197; and *Renewable Fuels Association* v. *EPA*, No. 24-1206.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, petitioners hereby make the following disclosures:

American Farm Bureau Federation (AFBF) is the largest nonprofit general farm organization in the United States. Representing about six million member families in all 50 States and Puerto Rico, AFBF's members grow and raise every type of agricultural crop and commodity produced in the United States. AFBF's mission is to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers. AFBF has no parent entity, and no publicly held corporation has a 10% or greater ownership stake in AFBF.

American Free Enterprise Chamber of Commerce (AmFree) is a business league organization established in a manner consistent with Section 501(c)(6) of the Internal Revenue Code. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in AmFree.

American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association that represents American refining and petrochemical companies. AFPM has no parent corporation, and no publicly held corporation has a 10% or greater ownership interest in AFPM.

American Petroleum Institute (API) is a national trade association that represents all segments of America's natural gas and oil industry. API's nearly 600 members produce, process, and distribute most of the Nation's energy, and participate in API Energy Excellence, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API has no parent entity, and no publicly held corporation has a 10% or greater ownership stake in API.

AML Automotive Peoria, LLC d/b/a Peoria Ford, is an Illinois-based Ford dealership that sells light-duty vehicles to consumers and businesses. AML Automotive Peoria, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in AML Automotive Peoria, LLC.

Arizona Trucking Association is a trade association that represents its members before legislative, regulatory, and enforcement agencies as the trucking industry's primary voice in Arizona on transportation and other public policy and legal issues. The Arizona Trucking Association has no parent companies, and no publicly held company has a 10% or greater ownership interest in the Arizona Trucking Association.

Baxter Ford, Inc. is a Nebraska corporation that operates a Ford dealership in Nebraska that sells cars, trucks, and SUVs to consumers and businesses. Baxter Ford, Inc. has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Baxter Ford, Inc.

Ben Toma, Speaker of the Arizona House of Representatives is an elected official acting in his official capacity on behalf of the Arizona House of Representatives. Neither Speaker Toma nor the Arizona House of Representatives is a corporate entity, and thus a corporate disclosure statement is not required.

California Asphalt Pavement Association (CalAPA) is a nonprofit trade association established in 1953 that represents the asphalt pavement industry in California, including asphalt producers, refiners, paving contractors, consultants, equipment manufacturers, and other companies that comprise the industry. CalAPA has no parent corporation, and no publicly held company owns ten percent or more of its stock.

California Manufacturers & Technology Association (CMTA) is a nonprofit statewide trade association. Its members are companies engaged in the manufacturing and technology sectors in California who focus on improving and enhancing a strong business climate for California's

manufacturing, processing, and technology-based companies. CMTA has no parent company, and no publicly held company owns ten percent or more of its stock.

Celebrity Motor Cars, LLC d/b/a Lexus of Route 10, is a New Jersey-based Lexus dealership that sells light-duty vehicles and trucks. Celebrity Motor Cars, LLC has no parent corporation and no publicly held corporation has a 10% or greater ownership stake in Celebrity Motor Cars, LLC.

Celebrity Motors of Toms River, LLC d/b/a Celebrity Ford of Toms River, is a New Jersey-based Ford dealership that sells light-duty vehicles and trucks. Celebrity Motors of Toms River, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Celebrity Motors of Toms River, LLC.

Celebrity of Springfield, LLC d/b/a BMW of Springfield, is a New Jersey-based BMW dealership that sells light-duty vehicles and trucks. Celebrity of Springfield, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Celebrity of Springfield, LLC.

Celebrity of Westchester, LLC d/b/a Mercedes Benz of Goldens Bridge, is a New York-based Mercedes Benz dealership that sells light-duty

vehicles and trucks. Celebrity of Westchester, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Celebrity of Westchester, LLC.

Clean Fuels Development Coalition (CFDC) is a business league organization established in a manner consistent with Section 501(c)(6) of the Internal Revenue Code. Established in 1988, CFDC works with auto, agriculture, and biofuel interests in support of a broad range of energy and environmental programs. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in CFDC.

Construction Industry Air Quality Coalition, Inc. (CIAQC) is a nonprofit California trade association representing the interests of other California nonprofit trade associations and their members whose air emissions are regulated by California state, regional, and local regulations, as well as federal regulations. CIAQC has no parent companies, and no publicly held company has 10% or greater ownership in CIAQC.

Consumer Energy Alliance (CEA) is a nonpartisan, nonprofit organization advocating for balanced energy and environmental policies and responsible access to resources. CEA has no parent corporation, and no publicly held corporation has a 10% or greater ownership in CEA.

Diamond Alternative Energy, LLC is a wholly owned direct subsidiary of Valero Energy Corporation, a Delaware corporation whose common stock is publicly traded on the New York Stock Exchange under the ticker symbol VLO.

Domestic Energy Producers Alliance (DEPA) is a nonprofit, nonstock corporation organized under the laws of the state of Oklahoma. DEPA has no parent corporation, and no publicly held company owns 10% or more of its stock.

Energy Marketers of America (EMA) is a federation of 47 state and regional trade associations representing energy marketers throughout the United States. EMA, which is incorporated under the laws of the Commonwealth of Virginia, has no parent corporation, and no publicly held corporation has a 10% or greater ownership in EMA.

Gates Nissan LLC d/b/a Gates Nissan, operates an automobile dealership in Richmond, Kentucky. Gates Nissan LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Gates Nissan LLC.

ICM, Inc. is a Kansas corporation that is a global leader in developing bio-refining capabilities, especially for the production of ethanol. It is a wholly

owned subsidiary of ICM Holdings, Inc., and no publicly held company has a 10% or greater ownership interest in ICM Holdings, Inc.

Illinois Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Indiana Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

International Association of Machinists and Aerospace Workers Lodge No. 823 (IAMAW) is an unincorporated association and is a labor organization. IAMAW has no parent corporation, and no publicly held corporation has a 10% or greater ownership in IAMAW.

Iowa Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Kansas Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Kentucky Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Loquercio Automotive GOE, LLC d/b/a Genesis of Elgin, is an Illinois-based Genesis dealership that sells light-duty motor vehicles to consumers and businesses. Loquercio Automotive GOE, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive GOE, LLC.

Loquercio Automotive Goshen, LLC d/b/a Buick GMC of Goshen, is an Indiana-based Buick and GMC dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive Goshen, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive Goshen, LLC.

Loquercio Automotive MCH, LLC d/b/a Michigan City Hyundai, is an Indiana-based Hyundai dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive MCH, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive MCH, LLC.

Loquercio Automotive MCK, LLC d/b/a Michigan City Kia, is an Indiana-based Kia dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive MCK, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive MCK, LLC.

Loquercio Automotive South, Inc. d/b/a Honda City, is an Illinois-based Honda dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive South, Inc. has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive South, Inc.

Loquercio Automotive West, LLC d/b/a Elgin Chrysler, is an Illinois-based Chrysler dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive West, LLC has no parent corporation, and no publicly held corporation has a 10% or greater ownership stake in Loquercio Automotive West, LLC.

Loquercio Automotive, Inc. d/b/a Elgin Hyundai, is an Illinois-based Hyundai dealership that sells light-duty vehicles to consumers and businesses. Loquercio Automotive, Inc. has no parent corporation, and no publicly held

corporation has a 10% or greater ownership stake in Loquercio Automotive, Inc.

Louisiana Mid-Continent Oil & Gas Association (LMOGA) is a business association representing the interests of the oil and gas industry of the second largest oil producing and fourth largest gas producing state in the nation, Louisiana. The state ranks second in the nation in crude oil refining capacity. LMOGA has no parent corporation, and no publicly held company has a 10% or greater ownership in it.

Michigan Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Minnesota Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Missouri Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

National Association of Convenience Stores (NACS) is an international trade association that represents both the convenience and fuel

retailing industries with more than 1,300 retail and 1,600 supplier company members. The United States convenience industry has more than 152,000 stores across the country, employs 2.74 million people, and had more than $859 billion in sales in 2023, of which more than $532 billion were fuel sales. NACS has no parent corporation, and no publicly held corporation has a 10% or greater ownership in NACS.

National Corn Growers Association (NCGA) is a national trade association that represents nearly 40,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 50 affiliated state associations and checkoff organizations work together to sustainably feed and fuel a growing world by creating and increasing opportunities for corn growers. NCGA has no parent entity, and no publicly held corporation has a 10% or greater ownership stake in NCGA.

National Farmers Union. The Farmers Educational & Cooperative Union of America (d/b/a National Farmers Union) (NFU) is a non-profit trade association within the meaning of Circuit Rule 26.1(b). Its members include farmers who are producers of biofuel feedstocks and consumers of large quantities of fuel. It operates for the purpose of promoting the general

commercial, legislative, and other common interests of its members. It does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Nebraska Corn Growers Association is an agricultural organization. It has no parent company, and no publicly held company has a 10% or greater ownership interest in it.

Ohio Corn and Wheat Growers Association is an agricultural organization. It has no parent company, and no publicly held company has a 10% or greater ownership interest in it.

Raecom Holdings, LLC is a Delaware limited liability company that operates seven automobile dealerships in Texas and Louisiana selling light- and medium-duty vehicles to consumers and businesses. Raecom Holdings, LLC has no parent entity, and no publicly held corporation has a 10% or greater ownership stake in Raecom Holdings, LLC.

Renewable Fuels Association. The Renewable Fuels Association (RFA) is a non-profit trade association within the meaning of Circuit Rule 26.1(b). Its members are ethanol producers and supporters of the ethanol industry. It operates for the purpose of promoting the general commercial, legislative, and other common interests of its members. The Renewable Fuels

Association does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

South Dakota Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Tarver Motor Company, Inc. d/b/a Lake Charles Toyota, is a Louisiana-based corporation that operates a sales and service franchised dealership, facility, and related operations. Tarver Motor Company, Inc. has no parent corporation and no publicly held corporation has a 10% or greater ownership stake in Tarver Motor Company, Inc.

Tennessee Corn Growers Association is an agricultural organization. It has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

Texas Oil & Gas Association (TXOGA) is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90% of Texas' crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2023, the Texas oil and natural gas industry supported over 480,000 direct jobs and

paid $26.3 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders. TXOGA has no parent corporation, and no publicly held company owns 10% or more of its stock.

The Petroleum Alliance of Oklahoma is a not-for-profit trade organization representing more than 1,600 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations working in the MidContinent and other oil and gas producing regions nationwide. Members of The Petroleum Alliance produce, transport, process, and refine the bulk of Oklahoma's crude oil and natural gas. In 2023, the industry was responsible for almost $56 billion in state economic activity, 22% of the total statewide. The Petroleum Alliance of Oklahoma has no parent corporation, and no company has a 10% or greater ownership in the organization.

Valero Renewable Fuels Company, LLC is a wholly owned direct subsidiary of Valero Energy Corporation, a Delaware corporation whose common stock is publicly traded on the New York Stock Exchange under the ticker symbol VLO.

Warren Petersen, President of the Arizona State Senate is an elected official acting in his official capacity on behalf of the Arizona State Senate. Neither President Petersen nor the Arizona State Senate is a corporate entity, and thus a corporate disclosure statement is not required.

Western States Petroleum Association (WSPA) is a nonprofit trade association that represents companies engaged in petroleum exploration, production, refining, transportation and marketing in Arizona, California, Nevada, Oregon, and Washington. The association has no parent company, and no publicly held company has a 10% or greater ownership in it.

Western States Trucking Association, Inc. (WSTA) is a nonprofit California trade association representing the interests of thousands of members in a variety of businesses which own and operate on-road and non-road vehicles, engines, and equipment. WSTA has no parent company, and no publicly held company has a 10% or greater ownership in WSTA.

Wisconsin Corn Growers Association is an agricultural organization. It has no parent company, and no publicly held company has a 10% or greater ownership interest in it.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Congressional Materials

Other Authorities

GLOSSARY

EPA	U.S. Environmental Protection Agency
EPCA	Energy Policy Conservation Act
NHTSA	National Highway Traffic Safety Administration

INTRODUCTION

The current Presidential Administration is on a mission to phase out the internal-combustion engine and electrify the Nation's vehicle fleet. In his first year in office, President Biden announced his Administration's "goal that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles, including battery electric, plug-in hybrid electric, or fuel cell electric vehicles." Executive Order 14,037, 86 Fed. Reg. 43,583, 43,583 (Aug. 5, 2021). Neither market forces nor government incentives alone would produce this massive shift in manufacturer and consumer behavior. That left government mandates.

No law authorizes the federal government to mandate the sale of electric vehicles. So in 2021, EPA began reverse-engineering a *de facto* electric-vehicle mandate. It did so by setting greenhouse-gas emission standards for light-duty vehicles that were so stringent that automakers could meet them only by decreasing production of internal-combustion-engine vehicles and dedicating an increasing percentage of their fleets to electric vehicles (or subsidizing the electric-vehicle production of their competitors through credit purchases). 86 Fed. Reg. 74,434 (Dec. 30, 2021). EPA projected that under those standards, automakers would have to produce 17% electric vehicles by

2026, versus the 7% that they would have produced under the previous standards. A challenge to that rule is still pending in this Court. *See Texas* v. *EPA*, No. 22-1031 (argued Sept. 14, 2023).

Notably, EPA's defense of its 2021 rule was that it had taken just a modest, incremental step over its earlier emission standards. But EPA can no longer pretend that it has taken only a baby step. Although electric vehicles made up only 7.5% of sales in 2022, 89 Fed. Reg. at 27,986, EPA's new standards for light-duty and medium-duty vehicles are so stringent that EPA projects that, by 2032, at least *68%* of America's new vehicles will need to be electric to comply. *Id.* at 28,057. It took a decade for the market share of electric vehicles to grow from virtually nothing to a mere 7.5%. If electric vehicles are going to overtake the internal-combustion-engine vehicle over the next decade, that will be because of EPA's rules, not market forces.

If this play seems familiar, it should. In *West Virginia* v. *EPA*, 597 U.S. 679, 731 n.4 (2022), EPA "announc[ed] what the market share of coal, natural gas, wind, and solar must be, and then require[d] plants to reduce operations or subsidize their competitors to get there." Here, EPA has similarly "announc[ed] what the market share of" electric vehicles "must be, and then require[d]" automakers to meet that target for their fleets "or subsidize their

competitors to get there." *Id.* In both cases, EPA reached its desired result by setting standards beyond what could be achieved with a disfavored power source (there, coal-fired power generation; here, the internal-combustion engine). And in both cases, EPA pushed regulated parties to phase out disfavored technology.

As in *West Virginia*, EPA cannot unilaterally reshape the energy and transportation sectors without clear statutory authority. The question of whether internal-combustion-engine vehicles should be phased out in favor of electric vehicles is hugely consequential: it involves millions of jobs, the restructuring of entire industries, and the Nation's energy independence and relationship with hostile powers. If the federal government is going to effectively require that two-thirds of the Nation's new vehicles be electric by 2032, then a Congress accountable to the American public must say so. It has not.

Indeed, Congress has not authorized any of the steps that EPA has taken to get here. The Clean Air Act does not allow EPA to set emission standards for motor vehicles based on fleetwide averaging. And even if EPA could set average emission targets, it cannot manipulate the averages by treating electric vehicles as having zero emissions and "averaging" in all those

zeros to reach the share of electric vehicles that EPA wants to see. EPA is once again straining statutory text to force a seismic shift in the Nation's energy policy, only this time for automobiles rather than power plants. Here, as in *West Virginia*, EPA's rule is unlawful.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review EPA's *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27,842 (Apr. 18, 2024), under 42 U.S.C. § 7607(b)(1). The rule is a "standard under section 7521," and petitioners timely sought review "within sixty days from the date notice of such promulgation … appear[ed] in the Federal Register." 42 U.S.C. § 7607(b)(1).

STATEMENT OF THE ISSUES

1. Whether, under the major-questions doctrine, EPA lacks statutory authority to effectively mandate a nationwide transition from internal-combustion-engine vehicles to electric ones.

2. Whether Section 202 of the Clean Air Act prohibits EPA from (a) setting fleetwide average standards, and (b) including electric vehicles in calculating those averages.

3. Whether the rule is arbitrary and capricious because EPA failed to (a) adequately consider electric vehicles' lifecycle greenhouse-gas

emissions, (b) consider reasonable alternatives to electrification, and (c) perform an evenhanded cost-benefit analysis.

4. Whether EPA's rule exceeds its authority to regulate an "air pollution agent or combination of such agents." 42 U.S.C. § 7602(g).

STATUTES AND REGULATIONS

Pertinent statutes are set forth in the Addendum.

STATEMENT OF THE CASE

I. Statutory Background

A. EPA's Standard-Setting Authority

Title II of the Clean Air Act sets forth a comprehensive scheme for regulating motor-vehicle emissions. At the center of the scheme is Section 202, which directs the EPA Administrator to

> by regulation prescribe (and from time to time revise) … standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.

42 U.S.C. § 7521(a)(1).[1] "Such standards shall be applicable to such vehicles or engines for their useful life." § 7521(a)(1). The standards may not take

[1] Unless otherwise noted, all statutory citations are to Title 42 of the United States Code.

effect until "after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period." § 7521(a)(2).

Congress specified numerous emission standards for specific pollutants that EPA had to promulgate under Section 202(a). *See, e.g.*, §§ 7521(a)(3)(B)(ii), 7521(b)(1)(A)-(B). Some of those statutorily specified standards provided for phase-in periods during which the standards applied to an increasing percentage of manufacturers' fleets. *See, e.g.*, §§ 7521(g)(1), 7541(c)(4)(A), 7541(c)(5)(A), 7521(g)(2), 7521(j). And to support emission-control technologies like "the catalytic converter and oxygen sensor," Congress required EPA to mandate diagnostic systems that could determine if those technologies were deteriorating or malfunctioning in a way that "could cause or result in failure of the vehicles to comply with emission standards" under Section 202(a). § 7521(m)(1)(A).

B. Compliance, Enforcement, and Remediation

To determine compliance with these standards, EPA "shall test, or require to be tested in such manner as [it] deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer."

§ 7525(a)(1). "If such vehicle or engine" submitted by the manufacturer complies with the standards, EPA "shall issue a certificate of conformity," *id.*, which the manufacturer must "permanently affix[] to such vehicle or engine," § 7541(c)(3)(C).

In addition to this testing, EPA may test or require that the manufacturer test "new motor vehicles" to determine if such vehicles "do in fact conform with the regulations." § 7525(b)(1). If EPA determines that "such vehicle or engine" is not in compliance, EPA "may suspend or revoke" a certificate of conformity. § 7525(b)(2)(A)(ii).

Manufacturers "shall warrant" that "each new motor vehicle and new motor vehicle engine" is "designed, built, and equipped so as to conform at the time of sale with applicable regulations under" Section 202. § 7541(a)(1). Title II gives EPA several remedies when vehicles fail to conform. One is to seek civil penalties from automakers for each individual vehicle they distribute, sell, or offer in commerce without an effective certificate of conformity. §§ 7522(a)(1), 7524(a)-(b). In addition, where "a substantial number of any class or category of vehicles or engines" fail to conform, EPA must "require the manufacturer to submit a plan for remedying the nonconformity of the

vehicles or engines with respect to which such notification is given." § 7541(c)(1).

II. Regulatory Background

A. Greenhouse-Gas Standards

EPA did not regulate motor-vehicle greenhouse-gas emissions until 2010. Following the Supreme Court's decision in *Massachusetts* v. *EPA*, 549 U.S. 497 (2007), EPA first issued an endangerment finding under Section 202(a) for "well-mixed greenhouse gases"—*i.e.*, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. 74 Fed. Reg. 66,496 (Dec. 15, 2009).

EPA then promulgated its initial light-duty vehicle greenhouse-gas emission standards in a joint rulemaking with the National Highway Traffic Safety Administration (NHTSA), which sets corporate average fuel-economy standards under the Energy Policy and Conservation Act. *See* 49 U.S.C. § 32901 *et seq*. As the agencies explained, carbon-dioxide emissions—EPA's central focus in the greenhouse-gas rules—are "essentially constant per gallon combusted of a given type of fuel," so carbon-dioxide emission standards and fuel-economy standards are two sides of the same coin. 75 Fed. Reg. 25,324, 25,327 (May 7, 2010); *see Delta Const. Co.* v. *EPA*, 783 F.3d 1291, 1294 (D.C.

Cir. 2015) ("[A]ny rule that limits tailpipe [greenhouse-gas] emissions is effectively identical to a rule that limits fuel consumption.").

After that initial rulemaking, EPA continued to jointly promulgate its Title II greenhouse-gas emission standards for cars and light-duty trucks with NHTSA. *See* 85 Fed. Reg. 24,174 (Apr. 30, 2020); 77 Fed. Reg. 62,624 (Oct. 15, 2012). Because Congress prohibited NHTSA from considering the fuel economy of electric vehicles in setting fuel-economy standards, *see* 49 U.S.C. § 32902(h)(1), (2), the agencies' jointly promulgated standards could not be so stringent that they effectively required automakers to include electric vehicles in their fleets.[2]

To evade that limitation, EPA recently began issuing standards without NHTSA. In 2021, shortly after President Biden set "a goal that 50 percent of all new passenger cars and light trucks sold in 2030 be zero-emission vehicles," 86 Fed. Reg. at 43,583, EPA issued its first-ever solo greenhouse-gas emission

[2]For simplicity's sake, petitioners use the phrase "electric vehicles" to encompass battery-electric vehicles, fuel-cell vehicles, and plug-in hybrids using electricity derived "from sources that are not onboard the vehicle." 40 C.F.R. § 86.1866-12(a); *id.* § 86.1803-01 (defining terms). While plug-in hybrid electric vehicles have a gas engine, EPA attributes zero carbon-dioxide emissions to plug-in hybrids operating in "charge-depleting mode"—*i.e.*, using electricity derived from an outside source. *See id.* §§ 86.1866-12(a), 600.116-12(c)(1),(2).

standards for cars and light-duty trucks. *See* 86 Fed. Reg. at 74,437. Those standards, applicable to model years 2023 to 2026, were at the time "the most stringent … ever set for the light-duty vehicle sector." *Id.* at 74,435. A challenge to those standards is pending before this Court. *Texas* v. *EPA*, No. 22-1031.

B. The Rule At Issue

The rule at issue escalates EPA's campaign to force electrification of the Nation's vehicle fleet. Again acting without NHTSA, on April 18, 2024, EPA finalized greenhouse-gas standards for light- and medium-duty vehicles for model years 2027 through 2032. 89 Fed. Reg. at 27,842. The rule also sets correspondingly "more stringent emissions standards for criteria pollutants," including non-methane organic gases and nitrogen oxides. *Id.* at 27,857. As with the 2021 rule, EPA acknowledged that its standards would likely drive automakers to "deploy an increasing number" of electric vehicles. *Id.* at 27,898.

Two aspects of EPA's emission standards are key to their operation. First, EPA promulgated standards that automakers can meet on a fleetwide-average basis, rather than an individual-vehicle basis. 89 Fed. Reg. at 27,856, 27,857, 28,198. Second, EPA stipulated that for purposes of determining an

automaker's compliance with the standards, electric vehicles counted and will be treated as producing zero emissions. *Id.*

1. Fleetwide averaging

Instead of issuing emission thresholds that any given *vehicle* must meet, EPA's standards prescribe a formula setting average emission levels for manufacturers' *fleets*. Each manufacturer is held to fleetwide-average standards derived from its annual production—one standard for its fleet of cars, another for its fleet of light-duty trucks, and a third for medium-duty vehicles (*i.e.*, larger pickup trucks and vans). *See* 40 C.F.R. §§ 86.1818-12(c)(1), 86.1819-14(a).

Manufacturers' fleets include multiple vehicle models, each of which is given a carbon-dioxide emission target. For light-duty vehicles, EPA bases these targets on the vehicle's size (or "footprint"). 40 C.F.R. § 86.1818-12(c)(2). A car with the smallest footprint (42 square feet or less) will have a target of 135.9 grams of carbon dioxide emitted per mile traveled (g/mile) in 2027, which drops to 71.8 g/mile by 2032, while a car with the largest footprint (56 square feet or more) will have a target of 145.2 g/mile in 2027 and 75.6 g/mile in 2032. *Id.* § 86.1818-12(c)(2),(h). For medium-duty vehicles, EPA similarly bases

emissions targets on a vehicle's "work factor," which is a function of its towing capability, payload, and drive train. *Id.* § 86.1819-14(a)(1), (k)(4).

EPA does not require individual vehicles to achieve these targets. The targets are instead used as inputs to determine a unique fleetwide-average standard for each manufacturer. That fleetwide average is "production-weighted," meaning it accounts for each vehicle's share of the manufacturer's fleet. 40 C.F.R. §§ 86.1818-12(c)(1), 86.1819-14(a)(3), 86.1865-12(i)(1).

Compliance with the fleetwide average depends on production for the entire year and thus can be determined only once the year ends. At the end of each year, a manufacturer must compare its actual production-weighted fleetwide-average carbon-dioxide emission level to its production-weighted fleetwide standard. 40 C.F.R. § 86.1865-12(j). If the actual average emission level is higher than the standard, the manufacturer will be assessed a deficit in proportion to the disparity between the actual level and the standard. If the actual average emission level is below the standard, the manufacturer will be given a proportional number of "credits," *id.* § 86.1865-12(k)(1), (4), which the manufacturer can "bank" to offset deficits accrued in future years or "trade" to competitors. *Id.* § 86.1865-12(k)(7)(i), (9).

EPA has created other ways to generate credits. The most significant additional credits are offered for the production of electric vehicles. EPA regulations stipulate that, for purposes of calculating fleetwide targets and fleetwide performance, electric vehicles are to be treated as if they emit zero g/mi of carbon dioxide—even when they run on electricity generated by carbon-emitting sources, and despite the higher carbon intensity in manufacturing electric-vehicles. *Id.* § 86.1866-12(a); *see* 89 Fed. Reg. at 27,858 ("We project that … pollutant emissions from [electricity generation] will increase as a result of the increased demand for electricity associated with the final rule … .").

Credits and credit-trading play an important role in EPA's compliance regime. Manufacturers can carry forward a deficit for up to three years before being subject to penalties. 40 C.F.R. §§ 86.1865-12(j), (k)(8); *see id.* § 86.1865-12(k)(8)(ii)-(iii). After that, the only way a manufacturer can avoid penalties for noncompliance is by purchasing credits.

As with carbon-dioxide emissions, EPA has also established fleetwide-average standards for nonmethane-organic gases and nitrogen oxides. *See* 40 C.F.R. §§ 86.1811-27(b)(2), (6), 86.1860-17. For purposes of these standards,

battery-electric vehicles (but not plug-in hybrids) are also assumed to have zero emissions. *See* 89 Fed. Reg. 27,932 n.635, 27,935-27,936.

2. Mandating electric vehicles

The rule's stringent standards are designed to drive manufacturers to produce electric vehicles. To begin, EPA's feasibility determinations all assume a baseline electric-vehicle penetration rate of 5%, corresponding to the percentage of vehicles already present in the 2022 fleet. 89 Fed. Reg. at 28,082. EPA thus has found the rule's standards to be feasible only if manufacturers lock in at least that percentage of electric vehicles in their fleets, despite the fact that market forces could cause manufacturers to lower that percentage if left to their own devices.

More dramatically, no gasoline vehicle—not even a hybrid—meets EPA's emission targets for model year 2032. *See* Valero Energy Corp. Supplemental Comment 4-8, 9-11 (Mar. 11, 2024). The only path forward is thus to sell more and more electric vehicles. EPA predicts that the portion of electric vehicles in a manufacturer's light-duty fleet will more than double over the life of the standards, from 32% of vehicles in 2027 to 68% by 2032. 89 Fed.

Reg. at 28,057.[3] The change is even more drastic for medium-duty vehicles, where EPA predicts a *14-fold* increase in electric-vehicle production—jumping from just 3% in 2027 to 43% by 2032. *Id.* at 28,060.

EPA understood that to comply with its rule while "remain[ing] economically competitive," manufacturers must produce far more electric vehicles than they otherwise would. 89 Fed. Reg. at 28,058. Even accounting for recent federal legislation incentivizing electric-vehicle adoption, EPA estimated that by 2032 its greenhouse-gas standards would increase the light-duty electric-vehicle market share from 47% without EPA's standards to 68% with them. *Id.* at 28,057-28,058. But the disparity will likely be even larger than EPA projects, as automakers have recently reported that they are slowing electric-vehicle production. *See* Neil E. Boudette, *More Gas Cars and Trucks, Fewer E.V.s as Automakers Change Plans*, N.Y. Times (July 18, 2024), https://tinyurl.com/4av42sn4. The disparity for medium-duty vehicles is even more dramatic. Without EPA's standards, EPA projects that electric vehicles would make up just 8% of the medium-duty market by 2032. But to comply with EPA's standards, that market share jumps to *43%*. 89 Fed. Reg.

[3] All projections of future market penetration of electric vehicles are derived from EPA's "central case," in which manufacturers "seek the lowest cost compliance path." 89 Fed. Reg. at 27,844.

at 28,060. EPA's new rule is thus clearly designed to bring about the electrification of the Nation's vehicle fleet.

SUMMARY OF ARGUMENT

I. EPA's unprecedented attempt to phase out the internal-combustion engine addresses a major question and thus requires clear congressional authorization. Because EPA can point to no such authorization in Section 202 of the Clean Air Act, its rule should be reversed.

A. There is no doubt that in forcing the electrification of the Nation's vehicle market, EPA has claimed an authority of "vast economic and political significance." *West Virginia*, 597 U.S. at 716. By the agency's own estimates, the rule will cost manufacturers *$870 billion* by 2055—orders of magnitude more than the Supreme Court has found to be economically significant in other major-question cases. Moreover, the rule's effects will reverberate across industries, threatening millions of jobs both inside and outside the automobile industry, along with the vitality of the entire fuel industry and the American electric grid.

EPA's rule also short-circuits a vibrant and evolving political debate. As in *West Virginia*, the rule preempts active deliberation in Congress and among the States about the future of conventional vehicles. *See* 597 U.S. at

731-732. In this domain EPA is not merely replacing but *overruling* Congress, which has considered and rejected legislation that would achieve EPA's desired electrification ends. EPA cannot go its own way.

EPA's approach is as novel as it is transformative. Just as in *West Virginia*, EPA claims to have "'discover[ed] in a long-extant statute an unheralded power' representing a 'transformative expansion in its regulatory authority.'" *West Virginia*, 597 U.S. at 724 (quotation omitted). This Court should view this sudden discovery of unprecedented power with skepticism.

B. Given the novelty and vast significance of EPA's rule, the agency "must point to 'clear congressional authorization' for the power it claims." *West Virginia*, 597 U.S. at 723. It cannot. EPA relies on its Clean Air Act authorization to prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles." § 7521(a)(1). That decades-old, general standard-setting provision does not qualify as "clear congressional authorization" to force a market-wide transition from internal-combustion-engine vehicles to electric vehicles.

II. Even if there were not a thumb on the scale against EPA's reading, its interpretation of the Clean Air Act is wrong. Section 202(a) does not permit EPA to phase out internal-combustion-engine vehicles. EPA

achieves that result only by setting emission standards on a fleetwide-average basis. But the Clean Air Act requires that emission standards under Section 202(a) apply to all vehicles *individually*, not manufacturers' fleets on *average*. For a given pollutant, EPA must therefore set emission standards that are achievable by individual vehicles on their own.

Even if fleetwide averaging were generally permissible under Section 202(a), the statute forecloses EPA from using fleetwide averaging to effectively mandate electrification. Section 202(a) authorizes EPA to set "standards" for "emission[s]" from "any class or classes of new motor vehicles or new motor vehicle engines, which … cause, or contribute to," potentially harmful air pollution. § 7521(a). But according to EPA, electric vehicles do not actually "emi[t]" carbon dioxide, or nitrogen oxides, or organic gases—the relevant pollutants—or "cause, or contribute to" air pollution. Thus, EPA may set standards for internal-combustion-engine vehicles, but it may not include electric vehicles in the class.

III. Alternatively, EPA's rule must be reversed because it is arbitrary and capricious. In three ways, EPA irrationally and single-mindedly pursued its preferred technology.

A. EPA treats electric vehicles as a pure environmental good that contribute zero emissions. It does so by putting on blinders: focusing arbitrarily only on tailpipe emissions and ignoring other lifecycle emissions. EPA claims to just be treating like vehicles alike, but conventional vehicles are not like electric vehicles because electric vehicles shift emissions upstream to power sources. EPA also says that electric vehicles' lifecycle emissions are supposed to decline in the future, but that does not explain why those emissions should not be taken into account now. Finally, EPA throws up its hands and says that considering non-tailpipe emissions would be "unfair" to manufacturers, when what is unfair is fudging the numbers to reach a preferred outcome.

B. EPA irrationally refused to consider better alternatives: higher-octane gasoline and biofuels. Numerous commenters advanced these superior means of achieving EPA's goals, which could reduce greenhouse-gas emissions as much as 80% compared to gasoline. But EPA arbitrarily ignored this option too, on its drive toward electrification.

C. Finally, EPA's cost-benefit analysis was flawed. EPA estimated implausibly low costs for developing and implementing expensive and novel electric-vehicle technology. And EPA assumed that consumers will realize

trillions of dollars in savings that they are apparently irrationally forgoing without any explanation for the supposed market failure in this area. Consumers are not stupid; they simply do not value fuel economy alone over other benefits currently offered by conventional vehicles.

STANDING

Petitioners include entities that produce or sell liquid fuels and the raw materials used to produce them, along with associations whose members include such entities. By design, EPA's emission standards reduce the demand for liquid fuels and their raw materials by displacing an increasing number of internal-combustion-engine vehicles with electric vehicles. EPA thus projects that this rule will "result in a reduction of U.S. gasoline consumption by 780 billion gallons through 2055." 89 Fed. Reg. at 28,092. As shown in the accompanying declarations, depressing the demand for liquid fuels injures petitioners and petitioners' members financially. This economic injury constitutes injury-in-fact under Article III that is caused by the challenged regulatory action. *See, e.g.*, *American Fuel & Petrochemical Mfrs.* v. *EPA*, 3 F.4th 373, 379-380 (D.C. Cir. 2021). Because vacatur of the rule would "remove a regulatory hurdle" to the sale of petitioners' products and predictably result in at least one vehicle that consumes more liquid fuel,

redressability is also satisfied. *Energy Future Coal.* v. *EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015).

Petitioners also include vehicle dealers. By artificially increasing the supply of electric vehicles beyond market demand, *see, e.g.*, 89 Fed. Reg. at 28,087, the rule will injure dealers by forcing them to either keep unwanted electric vehicles on their lots or sell them at cost or at a loss. And petitioners include trucking and construction contracting associations whose members own and operate a variety of light-duty and medium-duty vehicles that operate on diesel fuels. As explained in those petitioners' declarations, the new standards will limit the vehicles available to conduct their members' businesses, increasing the cost of diesel fuel and decreasing the prevalence of diesel refueling stations.

Petitioners also include the Arizona Legislature's leaders. EPA's emission standards will reduce state road maintenance funds and increase road maintenance costs, thus harming Arizona's Legislature by forcing it to adjust taxes and/or fees. *See* Dkt. 2060179 (Docketing Statement).

The petitioners that are membership associations have associational standing to challenge EPA's decision. *See Hunt* v. *Washington State Apple Advert. Comm'n*, 432 U.S. 333, 342-343 (1977). Their members have standing

to sue in their own right, for the reasons described. The interests petitioners seek to protect are germane to their organizational purposes, which include safeguarding the viability of their members' businesses. And neither the claims asserted nor the relief requested requires the participation of individual members.

STANDARD OF REVIEW

Under the Clean Air Act, this Court shall "reverse" a final rule that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." § 7607(d)(9)(A), (C). This standard is "indistinguishable from the Administrative Procedure Act equivalent." *National Petrochemical & Refiner Ass'n* v. *EPA*, 287 F.3d 1130, 1135 (D.C. Cir. 2002).

ARGUMENT

I. UNDER THE MAJOR-QUESTIONS DOCTRINE, EPA LACKS STATUTORY AUTHORITY TO EFFECTIVELY MANDATE ELECTRIC VEHICLES.

EPA seeks to radically transform the Nation's vehicle fleet by effectively mandating a nationwide transition from internal-combustion-engine vehicles to electric vehicles. That bold assertion of regulatory power vastly exceeds EPA's statutory authority. The Supreme Court has recently

and repeatedly emphasized that courts may not construe a statute to "authoriz[e] an agency to exercise powers of 'vast economic and political significance'" unless the statute does so "clearly." *Alabama Ass'n of Realtors* v. *HHS*, 594 U.S. 758, 764 (2021) (citation omitted). The Clean Air Act does not clearly authorize EPA to force Americans to buy electric vehicles.

A. The Shift To Electric Vehicles Is A Major Question.

This case follows *a fortiori* from *West Virginia*. In *West Virginia*, EPA asserted the "highly consequential power" to "announc[e] what the market share of coal, natural gas, wind, and solar must be, and then requir[e] plants to reduce operations or subsidize their competitors" to shift generation from coal to other energy sources. 597 U.S. at 724, 731 n.4. That claim of "unprecedented power over American industry" required "clear congressional authorization." *Id.* at 728 (quotation omitted).

So too here. Once again, EPA claims a sweeping authority to transform national energy policy—this time not by shifting power plants from coal to renewables, but by shifting vehicles from internal combustion to electricity. And once again, the authority that EPA asserts is indisputably a power of vast economic and political significance, as all the considerations that the Supreme Court found relevant in *West Virginia* confirm. This is no mere incremental

shift. EPA is embracing the full scope of its claimed authority and pushing the country from a 7.5% electric-vehicle market share in 2022 to 68%—more than *two-thirds* of new vehicles—by 2032. EPA needs "clear congressional authorization" before it can assert that sweeping power, 597 U.S. at 732 (quoting *Utility Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 324 (2014)). It has nothing of the sort.

1. EPA claims a power of vast economic significance.

The economic significance of EPA's rule "is staggering by any measure." *Biden* v. *Nebraska*, 143 S. Ct. 2355, 2373 (2023). Given the projected costs and broader impacts of the rule, there can be "no serious dispute" that EPA is claiming "authority to exercise control over 'a significant portion of the American economy.'" *Id.* (quoting *Utility Air*, 573 U.S. at 324).

Direct compliance costs. EPA itself projects that its rule will cost manufacturers *$870 billion* through 2055 (though it tries to claw back $280 billion in supposed "negative costs"), 89 Fed. Reg. at 28,105, 28,108, likely making it the most expensive agency action in the Nation's history. That is more than 17 times the projected $50 billion cost of the eviction moratorium in *Alabama Ass'n of Realtors*, 594 U.S. at 764; more than four times the projected $200 billion cost of the Clean Power Plan in *West Virginia*, 597 U.S.

at 746 (Gorsuch, J., concurring); and nearly double the projected $469 billion to $519 billion cost of the student-debt program in *Nebraska*, 143 S. Ct. at 2373—all of which the Supreme Court concluded would have significant economic impact.

Restructuring of the market. The authority that EPA claims will also fundamentally restructure the vehicle market. EPA believes that the Clean Air Act gives it the power to ban new internal-combustion-engine vehicles in the name of "completely preventing motor vehicle tailpipe pollution." Response to Comments (RTC) 298.

West Virginia confirms that EPA's expansive claim of agency authority presents a major question. There, EPA sought to "substantially restructure the American energy market" by shifting power generation from coal to renewables through standards that it expected would decrease the coal market share from 38% to 27% coal by 2030. 597 U.S. at 724. Here, EPA seeks to restructure the American vehicle market by shifting powertrains from internal combustion to battery-electric, through standards that the agency expects will decrease the market share of non-electric vehicles from over 90% today to just 32% by 2032. *See* 89 Fed. Reg. at 28,057 (projecting that "as the

final standards become more stringent … the penetration of [electric vehicles] increases … to 68 percent of overall vehicle production in MY 2032").

That would transform the Nation's vehicle fleet not only as compared to today's reality, but even as compared to EPA's own (optimistic) assumptions about electric-vehicle sales without government intervention. EPA projects that without its rule, 47% of light-duty vehicles would be electric by 2032. 89 Fed. Reg. at 27,855-27,856, 28,058. That assumption is dubious. From 2012 to 2022, electric vehicles grew from near zero to 7.5% market share. *See* 89 Fed. Reg. at 27,896 n.504, 27,897 n.507. Even that paltry gain was made possible by significant regulatory incentives—which are being challenged elsewhere. It is extraordinarily unlikely that in the next ten-year period electric vehicles would organically balloon to a 47% market share. In fact, recent reports note that "the growth rate of electric vehicle sales has slowed sharply," and automakers are "slowing their investments in electric vehicles." Boudette, *supra*. But even if EPA's baseline projections were correct, EPA predicts a significant increase from the baseline to 68% electrification by 2032 under its rules. Its standards are thus designed to deliberately "accelerate the transition to electric vehicles," by requiring far higher levels of electrification than the market would otherwise demand. EPA Press Office, *Biden-Harris*

Administration Proposes Strongest-Ever Pollution Standards for Cars and Trucks to Accelerate Transition to a Clean-Transportation Future (Apr. 12, 2023), https://tinyurl.com/4cjkz5kr.

Broader economic impacts. EPA's overhaul of the vehicle market would create cascading economic impacts. The domestic automobile industry "supports a total of 9.6 million American jobs and generates more than $1 trillion of economic activity each year." U.S. Chamber of Commerce Comment 2 (July 2023). EPA's rule threatens to destroy tens of thousands of those jobs, as electric-vehicle manufacturing is far more automated and so "requires 30% to 40% less labor." America First Policy Institute Comment 3 (June 30, 2023).

EPA's rule would have equally dramatic effects on the fuel and energy markets, massively "reduc[ing] liquid fuel consumption … while simultaneously increasing electricity consumption." 89 Fed. Reg. at 28,111. Again, the numbers are staggering: EPA projects that its standards "will result in a reduction of *780 billion gallons* of retail gasoline consumption … and an increase of *6,100 Terawatt hours* (TWh) of electricity consumption" through 2055. *Id.* at 28,141-28,142 (emphases added). That forced shift—which equates to trillions of dollars in lost fuel revenues—will wreak havoc on

the oil and gas industry, which "supports nearly 11 million U.S. jobs" and "accounts for approximately 8 percent of U.S. GDP." American Petroleum Institute Comment 1 (July 5, 2023).

The same is true for the biofuel industry and the farmers that support it. *See, e.g.*, Missouri Corn Growers Ass'n Comment 1 (July 5, 2023) (explaining that EPA's rule may cost corn growers "nearly one-billion bushels annually in lost demand"); Declaration of Geoff Cooper, President of the Renewable Fuels Association App. 164a. (predicting 1.7 to 2.5 billion gallon reduction in U.S. ethanol consumption as a result of EPA's rule). Likewise for gas stations, pipelines, asphalt and chemical manufacturers, and countless other industries. *See, e.g.*, 89 Fed. Reg. at 28,129; Valero Energy Corp. Comment 68 (July 5, 2023). The rule would also hugely and artificially increase demand for batteries and their component parts. And it would impose an enormous new strain on the electricity grid—the electricity that the rule demands is enough to power the entire United States for a year and a half. *See* U.S. Energy Info. Admin., *Use of Electricity* (Dec. 18, 2023), https://tinyurl.com/nhfzw97r. If those expansive impacts across multiple industries do not demonstrate economic significance, it is hard to say what would.

2. EPA claims a power of vast political significance.

The political significance of EPA's rule is just as staggering. Here as in *West Virginia*, all of the relevant considerations confirm that EPA cannot claim the sweeping power it asserts without clear congressional authorization.

Ongoing policy debate. Whether to require greater electrification of the vehicle market by government mandate is "the subject of an earnest and profound debate across the country." *West Virginia*, 597 U.S. at 732 (quoting *Gonzales* v. *Oregon*, 546 U.S. 243, 267 (2006)). Some States have taken aggressive (and legally dubious) regulatory measures to accelerate electrification, *see, e.g.*, Cal. Code Regs. tit. 13, § 1962.4 (2022); others have opposed efforts to shift energy investment and generation away from traditional sources, *see, e.g.*, 2022 W. Va. Legis. C. 235. And Congress is still considering the matter, including by instructing various agencies—though not EPA—to study and report on the implications of electrifying the Nation's fleet. *See* Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, §§ 25006, 40435, 40436, 135 Stat. 429, 845-849, 1050 (2021). That makes EPA's "claimed delegation" to effectively mandate electrification "all the more suspect." *West Virginia*, 597 U.S. at 732 (quoting *Gonzales*, 546 U.S. at 267).

Prior rejections by Congress. Congress not only is actively considering the issue, but has already "considered and rejected" legislation similar to EPA's latest rule. *West Virginia*, 597 U.S. at 731 (quoting *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 144 (2000)); *see, e.g.*, Zero-Emission Vehicles Act of 2019, H.R. 2764, 116th Cong. (2019) (rejected bill that would have mandated electric-vehicle penetration roughly equal to the 50%-by-2030 target in EPA's rule); Zero-Emission Vehicles Act of 2018, S. 3664, 115th Cong. (2018); *see also* 116 Cong. Rec. 19238-19240 (1970) (rejected amendment to Title II that would have banned internal-combustion-engine vehicles by 1978). A majority of the Senate recently voted to prohibit EPA from finalizing or enforcing the very rule at issue in this case. *See* S. 4072, 118th Cong. (2023-2024). The Clean Air Act cannot be read to authorize EPA to "enact a program that Congress has chosen not to enact itself." *Nebraska*, 143 S. Ct. at 2373 (quotation omitted).

Conflict with Congress's broader design. EPA's rule is also inconsistent with Congress's broader statutory scheme for addressing vehicle emissions through increases in renewable fuels. Rather than mandate vehicle electrification, Congress has consistently focused on promoting the use of biofuels, which (unlike electric-vehicle components) are in abundant domestic

supply. *See, e.g.*, § 7545(o)(2); 49 U.S.C. § 32905(a) (encouraging "*liquid* alternative fuel") (emphasis added); Inflation Reduction Act of 2022, Pub. L. No. 117-169, §§ 13202, 13404, 22003, 136 Stat. 1818, 1932, 1966-1969, 2020 (2022). And to the extent Congress has sought to promote electrification, it has done so by investing in the needed infrastructure, not by requiring electrification of the vehicle fleet before that infrastructure exists. *See, e.g.*, Fed. Highway Admin., *Charging and Fueling Infrastructure Discretionary Grant Program* (Aug. 26, 2024), https://tinyurl.com/mr2ptnxt; Fed. Highway Admin., *National Electric Vehicle Infrastructure (NEVI) Program* (June 13, 2024), https://tinyurl.com/tsf926a2. This policy debate is thus larger than the (already enormous) issue of whether to shift away from the internal-combustion engine. It involves a fundamental strategic question about how to tackle emissions—by pushing vehicles to use electricity and attempting to lower emissions from power plants, or instead by lowering emissions from liquid fuels directly, such as through renewable-fuel standards.

National policy implications. The Clean Power Plan raised a major question in part because it required EPA to "balanc[e] the many vital considerations of national policy implicated in deciding how Americans will get their energy," including questions far outside the agency's expertise. *West*

Virginia, 597 U.S. at 729. Absent a clear congressional mandate, the Supreme Court refused to assume that Congress would authorize EPA to decide "how much of a switch from coal to natural gas" the power grid could tolerate, or "how high energy prices can go" before becoming "exorbitant"—decisions that "Congress presumably would not task" to an "agency [with] no comparative expertise." *Id.* (quotation omitted).

The same reasoning applies here. As State Petitioners (whose arguments petitioners incorporate) explain in further detail, EPA is again claiming the power to decide "how much of a switch" to electrification the Nation's power grid can be forced to tolerate, and how high vehicle and electricity prices can be forced to go as a result. *West Virginia*, 597 U.S. at 729; *see* State Petitioners' Br. 17-21. Once again, those questions are well outside the agency's "comparative expertise." *West Virginia*, 597 U.S. at 729. While Congress has permitted EPA to consider how its environmental regulations "indirectly impact" the energy market, RTC 320-323, it has not granted EPA the authority to radically transform that market. Instead, the "basic and consequential tradeoffs" involved in that choice "are ones that Congress would likely have intended for itself." *West Virginia*, 597 U.S. at 730.

So too for the substantial national-security issues that EPA's rule implicates. As NHTSA has recognized, the United States "has very little capacity in mining and refining any of the key raw materials" needed for electric vehicles. 86 Fed. Reg. 49,602, 49,797 (Sept. 3, 2021). As a result, electrifying the vehicle fleet will make the American automotive industry dependent on foreign powers, including hostile ones—especially China, which controls "a large portion of processing capacity for mined battery minerals." 89 Fed. Reg. at 28,046; *see* Alliance for Automotive Innovation Comment 21 (July 5, 2023) (noting China's "history of leveraging supply chain[] influences in times of conflict"). EPA posits that domestic processing of battery minerals could be developed further to reduce the national-security impacts of its rule, *see* 89 Fed. Reg. at 28,046, but that unlikely suggestion only underscores how far outside its expertise the agency is reaching.

3. EPA claims an unheralded and transformative power.

In asserting the power to effectively mandate electrification of the Nation's vehicle fleet, EPA claims to have "'discover[ed] in a long-extant statute an unheralded power' representing a 'transformative expansion in its regulatory authority.'" *West Virginia*, 597 U.S. at 724 (quoting *Utility Air*,

573 U.S. at 324). Both the novelty of EPA's approach and its massive expansion of EPA's reach undermine that claim.

Novelty. When an agency relies on decades-old statutory text to assert newfound regulatory authority, courts "typically greet its announcement with a measure of skepticism." *Utility Air*, 573 U.S. at 324; *cf. Loper Bright Enters.* v. *Raimondo*, 144 S. Ct. 2244, 2258 (2024). That skepticism is fully warranted here. In the decades following the enactment of the Clean Air Act, EPA consistently treated electric vehicles as, at most, a compliance "option" or "flexibility," and never claimed the authority to use emission standards to phase out internal-combustion-engine vehicles. *See, e.g.*, 77 Fed. Reg. at 62,917 ("[E]lectrification is an option for compliance but is not required under this rule."). Indeed, using emission standards to push electrification was never on the table, as EPA's standards until 2021 were promulgated jointly with NHTSA—which is prohibited from considering the fuel economy of electric vehicles in setting its fuel-economy standards, *see* 49 U.S.C. § 32902(h)(1), (2).

That changed only three years ago, when EPA first sought to set emissions standards that would effectively require electrification, foreshadowing the even more dramatic shift it has sought to impose here. *See Texas* v. *EPA*, No. 22-1031 (pending challenge to prior standards). That

sudden assertion of newfound power—claiming the authority not just to "reduce pollution by causing the regulated source to operate more cleanly," but to "shift[]" the "polluting activity" from internal-combustion-engine vehicles to electric vehicles, *West Virginia*, 597 U.S. at 725—is a strong clue that EPA is going far beyond what Congress has authorized.

Transformative power. EPA's novel approach also represents a transformative expansion of its asserted regulatory domain. By setting standards that effectively require increasing the market share of electric vehicles (and reducing the share of internal-combustion-engine vehicles), the agency has asserted the power to decide whether new internal-combustion-engine vehicles should be permitted on the roads at all. Indeed, EPA has openly claimed the authority to "completely prevent[] motor vehicle tailpipe pollution," even if that means a flat ban on "the production of vehicles that emit pollutants"—that is, prohibiting new internal-combustion-engine vehicles entirely. RTC 298. It is hard to imagine a more striking example of regulatory overreach. *See West Virginia*, 597 U.S. at 728 (rejecting EPA's apparent view that it could "forc[e] coal plants to 'shift' away virtually all of their generation—i.e., to cease making power altogether").

EPA attempts to downplay the transformative nature of its rule. It says that manufacturers "are not required to use particular technologies to meet [its] standards," and that it is technically possible to comply "without *additional* zero-emission vehicles beyond the volumes already sold today." 89 Fed. Reg. at 27,845, 27,855, 28,087 (emphasis added). Yet even EPA does not think that is how automakers will respond. EPA recognizes that manufacturers are "most likely to comply" with its standards "through increased [battery-powered electric vehicle] production." *Id.* at 27,855. And all of EPA's projected compliance pathways demand massive increases in the production and sale of battery-powered electric vehicles, plug-in hybrid vehicles, or both—depressing the production of other vehicles to *no more than 32% of the market* by 2032 under any of EPA's projections. *Id.* at 27,856. The truth is that *no* manufacturer can meet the 2032 targets without substantial numbers of electric vehicles. Valero Energy Corp. Supplemental Comment 4-8, 9-11 (Mar. 11, 2024) (documenting how EPA's "modeling approach and inputs reveal" that by Model Year 2023 electric vehicles are necessary for "all fleetwide compliance pathways"). There can be no doubt that EPA is attempting to force a shift in the Nation's vehicle fleet.

Even if EPA's rule did not actually force the dramatic shift to electrification that EPA projects, what matters under the major-questions doctrine is the full scope of the authority claimed by the agency. *See West Virginia*, 597 U.S. at 728-729. Here, EPA believes it can use its standard-setting authority to "require the complete elimination of tailpipe pollution from motor vehicles." RTC 298. The "'breadth of the authority that [EPA] has asserted'" thus provides all the more "'reason to hesitate before concluding that Congress' meant to confer such authority." *West Virginia*, 597 U.S. at 721 (quoting *Brown & Williamson*, 529 U.S. at 159-160).

B. EPA Has No Clear Congressional Authorization Here.

Because of the significance and novelty of EPA's claim of the authority to compel vehicle electrification, the major-questions doctrine requires EPA to "point to 'clear congressional authorization' to regulate in that manner." *West Virginia*, 597 U.S. at 732 (quoting *Utility Air*, 573 U.S. at 324). EPA cannot come close.

There is not one word in the Clean Air Act suggesting that Congress authorized EPA to phase out internal-combustion-engine vehicles in favor of electric vehicles. The statutory authority on which EPA relies merely authorizes the agency to prescribe "standards applicable to the emission of

any air pollutant from any class or classes of new motor vehicles." § 7521(a)(1). That standard-setting authority does not afford EPA "clear congressional authorization" to force a market-wide transition from internal-combustion-engines vehicles to electric vehicles, any more than EPA's parallel authority to set emission standards for power plants afforded it clear congressional authorization to force a transition from coal to renewable energy. *West Virginia*, 597 U.S. at 732.

That should be the end of the matter. As explained below, EPA does not have the best reading of the statutory text. But even if the Clean Air Act could be read to give EPA a "colorable textual basis" for the sweeping power it claims, the major-questions doctrine demands far more. *West Virginia*, 597 U.S. at 721-723. EPA's rule therefore exceeds its statutory authority and must be reversed.

II. EPA LACKS STATUTORY AUTHORITY TO SET FLEETWIDE-AVERAGE STANDARDS THAT INCORPORATE ELECTRIC VEHICLES.

Even setting aside the major-questions doctrine, EPA's rule is unlawful under the plain statutory text. To achieve its goal of requiring electrification, EPA takes two statutory steps. First, it sets average emission standards for manufacturers' nationwide fleets, rather than standards for individual

vehicles. Second, it artificially increases the stringency of those standards by "averaging" in more and more zeros to represent the electric vehicles it wants to see in future years. The Clean Air Act does not authorize either step.[4]

A. EPA May Not Set Fleetwide-Average Standards.

To begin, EPA lacks authority to set vehicle-emission standards on a fleetwide-average basis. On the contrary, the text and structure of Title II require that emission standards under Section 202(a) apply to vehicles individually, not manufacturers' fleets on average. On its face, Section 202(a) says nothing about averaging across fleets. And the "broader context of the statute as a whole," *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997), makes clear that Section 202(a) does not permit fleetwide averaging. As the agency itself admitted when it first considered the issue, "the structure of Title II … assume[s] individual vehicle compliance with the applicable standards." 45 Fed. Reg. 14,496, 14,502 (Mar. 5, 1980). Accordingly, EPA must set standards that are technologically feasible for individual internal-combustion-engine vehicles.

[4] EPA's greenhouse-gas and non-methane-organic gas and nitrogen oxide standards all rely on fleetwide averaging and include electric vehicles as part of those averages, and are thus equally unlawful under the Clean Air Act.

1. Title II's compliance and enforcement provisions demonstrate that EPA cannot use fleetwide averaging.

Fleetwide averaging clashes with "the design and structure of [Title II] as a whole." *Utility Air*, 573 U.S. at 321 (quoting *Univ. of Tex. Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 353 (2013)). Title II sets forth a comprehensive, interlocking scheme for enforcing emission standards through testing, certification, warranties, remediation, and penalties. Fleetwide-average standards are incompatible with these provisions, which are "designed to apply to" individual vehicles and "cannot rationally be extended" to fleets. *Id.* at 322.

a. ***Testing and certification.*** Under Title II, EPA must "test, or require to be tested in such manner as [it] deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under [Section 202]." § 7525(a)(1). If the "vehicle or engine conforms to such regulations," EPA must issue the manufacturer a "certificate of conformity." *Id.* EPA may also later test a manufacturer's vehicles and engines, and if "such vehicle or engine does not conform with such regulations and requirements, [EPA] may suspend or revoke such certificate insofar as it applies to such vehicle or engine." § 7525(b)(2)(A)(ii). A manufacturer may

not sell a vehicle or engine not "covered by a certificate of conformity." § 7522(a)(1).

Fleetwide averaging is incompatible with these requirements in at least two respects. First, by using the singular terms "vehicle" and "engine," along with "any" and "such," the statute contemplates that *individual* vehicles may be tested for conformity. If an individual vehicle is determined to "not conform" with the standards, the certificate of conformity may be suspended or revoked "as it applies to such vehicle." § 7525(b)(2)(A)(ii). In a fleetwide-averaging regime, testing an individual vehicle or engine does not enable EPA to determine whether it "conforms with the regulations prescribed under" Section 202, § 7525(a)(1), because conformity turns on the fleet's average performance overall.

Second, fleetwide averaging makes it impossible to determine compliance with applicable emission standards *before* a vehicle is sold, as required to obtain the certificate of conformity needed for such a sale. *See* § 7522(a)(1). As EPA has previously acknowledged, "[b]efore a manufacturer may introduce a new motor vehicle into commerce, the manufacturer must obtain an EPA certificate of conformity indicating compliance with all applicable emissions standards." 71 Fed. Reg. 2,810 (Jan. 17, 2006). Yet under

fleetwide-average standards, a vehicle's "conform[ity] with the regulations prescribed under [Section 202]" cannot be determined until the manufacturer calculates its production-weighted average at "the end of each model year," when the manufacturer knows the quantity and model of "vehicles produced and delivered for sale." § 7525(a)(1). So EPA has by regulation required certificates of conformity at the end of the model year. 40 C.F.R. § 86.1865-12(i)(1), (j)(3), (6). This "need to rewrite clear provisions of [Title II] should have alerted EPA that it had taken a wrong interpretive turn" in adopting averaging. *Utility Air*, 573 U.S. at 328.

b. ***Warranties and remediation.*** Fleetwide-average standards similarly clash with Title II's warranty provisions, which EPA has previously recognized "assume individual vehicle compliance with the applicable standards." 45 Fed. Reg. at 14,502. Under Section 207, a manufacturer must "warrant to the ultimate purchaser and each subsequent purchaser" "*at the time of sale*" that each new vehicle complies with "applicable regulations under [Section 202]." § 7541(a)(1) (emphasis added). Yet, as with certificates of conformity, manufacturers cannot warrant conformity with fleetwide-average emission standards at the time of sale, because compliance can be determined only at the end of the year. *See* 40 C.F.R. § 86.1865-12(i)(1) (requiring

manufacturers to compute their "production-weighted fleet average" by "using actual production" data for the year in question).

Fleetwide-average emission standards are also inconsistent with Title II's remediation and notification provisions. Those provisions state that if EPA "determines that a substantial number of any class or category of vehicles or engines … do not conform to the regulations prescribed under [Section 202]," the manufacturer must remedy "the nonconformity of any such vehicles or engines." § 7541(c)(1). If "a motor vehicle fails to conform," the manufacturer bears the cost. § 7541(h)(1). Further, "dealers, ultimate purchasers, and subsequent purchasers" must be given notice of any nonconformity, § 7541(c)(2), which requires identification of specific nonconforming vehicles. None of this is possible if the nonconformity is tied to a fleet on average.

c. ***Penalties.*** Finally, EPA's fleetwide-averaging regime is inconsistent with the statute's penalty provision. Under Section 205, any violation "shall constitute a separate offense with respect to *each* motor vehicle or motor vehicle engine," with each offense subject to its own civil penalty of up to $25,000. § 7524(a) (emphasis added). Under EPA's approach, however, no individual vehicle or engine violates the applicable standard; only the fleet

as a whole does. The statute provides no method for calculating penalties when a fleet fails to meet its fleetwide-average standard—because it does not authorize fleetwide-average standards.

2. Other provisions in Section 202 confirm that emission standards may not be based on averaging.

a. Specific emission standards prescribed by Section 202 confirm that Section 202(a) does not permit averaging. In Section 202(b), the Act sets forth specific light-duty vehicle emission standards that EPA must promulgate in "regulations under" Section 202(a). § 7521(b). For example, for "light-duty vehicles and engines manufactured during model years 1977 through 1979," the standards must provide that "emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide." § 7521(b)(1)(A).

Those provisions require that the "regulations under [Section 202(a)]" apply to "vehicles and engines," not "vehicles and engines *on an average basis across a fleet*." Construing those provisions to allow averaging would impermissibly add words to the statute that change its meaning. *Cf. Rotkiske* v. *Klemm*, 589 U.S. 8, 13-14 (2019). And supplying the extra words "on average" would have a significant substantive effect: "roller coaster riders

must be 48 inches tall" means something very different from "roller coaster riders must be 48 inches tall *on average*."

The testing requirements accompanying the Section 202(b) standards confirm that those standards apply to all vehicles. EPA must "test any emission control system incorporated in a motor vehicle or motor vehicle engine … to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under [Section 202(b)]." § 7525(a)(2). If the system complies, EPA must issue a "verification of compliance with emission standards for such system." *Id.* Those requirements plainly contemplate standards that apply to individual vehicles. Not only does the statutory text frame the inquiry as whether an individual "vehicle" or "engine" conforms to the emission standards, but the provision's foundational premise—that an emission-control system can enable a vehicle to meet emission standards—depends on individually applied standards.

b. Other parts of Section 202 further demonstrate that emission standards under Section 202(a) cannot rely on averaging. Section 202(b)(3), for example, authorizes EPA to grant waivers from certain nitrogen-oxide emission standards—which, again, are standards "under" Section 202(a), *see* § 7521(b)(1)(B)—for no "more than 5 percent of [a] manufacturer's production

or more than fifty thousand vehicles or engines, whichever is greater." § 7521(b)(3). This provision would be nonsensical under a fleetwide-averaging regime. Under fleetwide averaging, no waiver is needed. Instead, perhaps 50% or more of a manufacturer's fleet effectively has a "waiver" so long as a sufficient number of vehicles outperform the standard.

c. Similarly, under Section 202(m), EPA must require manufacturers to install on "all" new light-duty vehicles and trucks "diagnostic systems" capable of identifying malfunctions that "could cause or result in failure of the vehicles to comply with emission standards established under this section." § 7521(m)(1). In a fleetwide-averaging regime, this requirement would be pointless, as the deterioration or malfunction of an individual vehicle's emissions-related systems would provide virtually no information about whether the fleet as a whole is compliant.

d. EPA's principal response to these provisions is to assert that they have "no bearing on the section 202(a) authority beyond the specific circumstances to which [they] appl[y]." RTC 339. But EPA cannot wave away the significance of the fact that each time Congress directed EPA to issue specific emission standards, it mandated standards applicable to vehicles individually. Just as a general term must be understood in light of the specific

terms that accompany it, *see Paroline* v. *United States*, 572 U.S. 434, 447 (2014), the specific emission standards Congress required illuminate the scope of EPA's general Section 202(a) authority.

EPA has also previously suggested to this Court that because Section 202 directs EPA to regulate with respect to "class or classes," it necessarily permits EPA to "set standards for a group of vehicles—like a fleet." *Texas* v. *EPA*, No. 22-1031, EPA Opening Br. 63. That is circular and wrong. Of course EPA can "set standards for a group of vehicles," but the issue is whether the standards must apply *individually* to each vehicle in the group or collectively, *on average*. The term "class" does not answer that question, but Section 202 does.

3. The broader text and history of Title II confirm that the rule exceeds EPA's authority.

a. Finally, other indicia of statutory meaning demonstrate that the rule exceeds EPA's statutory authority under Section 202(a). Elsewhere in Title II, Congress showed that it knew how to legislate with respect to "average annual aggregate emissions." § 7545(k)(1)(B)(v)(II) (directing EPA to take certain actions if "the reduction of the average annual aggregate emissions of toxic air pollutants in a [designated district] fails to meet" certain standards). Thus, "if Congress had wanted to adopt an [averaging] approach"

for motor-vehicle standards under Section 202(a), "it knew exactly how to do so." *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 365 (2018). It did not choose that approach in Section 202(a).

The Energy Policy Conservation Act (EPCA), enacted just two years before the 1977 Clean Air Act amendments, reinforces that conclusion. There, Congress directed the Secretary of Transportation to issue regulations setting "average fuel economy for passenger automobiles manufactured by any manufacturer" in a given model year—that is, fleetwide-average fuel economy. 49 U.S.C. § 32902(a). That Congress has not used similar language in Section 202(a) of the Clean Air Act is a "telling clue" that the Act does not permit fleetwide averaging. *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 517 (2018).

b. The Clean Air Act's history also reflects Congress's understanding that emission standards would apply to all vehicles individually. Before 1970, EPA relied on testing prototypes, rather than vehicles rolling off the assembly line. But in the 1970 amendments, Congress permitted EPA to test any individual vehicle as it comes off the assembly line. *See* Pub. L. No. 91-604, § 8, 84 Stat. 1676, 1694–1696 (1970). The House Report explained that while some testing of prototypes "will continue," "tests should require each prototype rather than the average of prototypes to comply with regulations

establishing emission standards." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 6 (1970). If Congress forbade averaging across *prototypes*, it certainly did not permit averaging across entire *fleets*.

* * *

For many of these reasons, this Court has previously cast substantial doubt on EPA's authority to set fleetwide-average emission standards. As the Court explained in *Natural Resources Defense Council* v. *Thomas*, 805 F.2d 410 (D.C. Cir. 1986), the "engine specific thrust" of Title II's "testing and compliance provisions" is evident both in Congress's choice to "spea[k] of 'any,' 'a,' or 'such' motor vehicle or engine" in the statute and in the "troubling" legislative history recounted above. *Id.* at 425 n.24. The arguments were not dispositive in *Thomas* only because the parties there had failed to present them. *Id.* They are relevant—and dispositive—here.

B. At A Minimum, EPA May Not Incorporate Electric Vehicles Into Its Fleetwide-Average Standards.

Even if the Clean Air Act permits fleetwide averaging in some circumstances, at a minimum it requires that the vehicles included in such averaging actually emit the relevant pollutant. Here, EPA treats electric vehicles as incapable of emitting greenhouse gases and battery-powered electric vehicles as incapable of emitting relevant criteria pollutants.

40 C.F.R. §§ 86.1803-01, 86.1866-12(a); 89 Fed. Reg. at 29,187; 89 Fed. Reg. at 27,966. Yet it includes those vehicles in its average-emission calculations, counting them as zeros. Averaging in a bunch of zeros allows the agency to set artificially low emission standards that effectively force manufacturers to incorporate an increasing percentage of electric vehicles into their fleets. *See supra*, pp. 13-15. Congress did not authorize EPA to manipulate averaging in that way. Section 202 focuses on vehicles that actually emit relevant pollutants, and the statutory structure, history, and context confirm the plain text.

1. The statutory text focuses on vehicles that emit the relevant pollutant.

Section 202(a)(1) provides that EPA shall prescribe "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in [its] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." § 7521(a)(1). The statute, of course, does not expressly specify which vehicles are to be included in any average emission standard—because, as discussed above, it does not contemplate averaging in the first place. But to the extent averaging is permissible, the text makes clear

that the vehicles included in such averaging must actually emit the relevant pollutant.

To begin, the statute focuses on standards for the "*emission*" of an air pollutant, which immediately indicates Congress's focus on vehicles that actually "emi[t]" the relevant pollutant. § 7521(a)(1) (emphasis added). According to EPA, electric vehicles "have zero [greenhouse-gas] and criteria pollutant emissions from their tailpipes." 88 Fed. Reg. at 29,187. Given the textual focus on harmful emissions, it makes no sense for EPA to include vehicles it deems non-emitting in its calculation of emission standards.

Next, the statute is explicit that the things for which EPA sets standards must "in [EPA's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." § 7521(a)(1). The only textual question is *what* exactly EPA must "judg[e]" to "cause, or contribute to," potentially dangerous air pollution. There are only two plural options: the "new motor vehicles or new motor vehicle engines," or the "class or classes" of those vehicles or engines. And the rule of the last antecedent suggests the former. That rule provides that a "limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U.S. 20, 26 (2003). Here, the

relevant limiting phrase is: "which in [EPA's] judgment cause, or contribute, to air pollution." § 7521(a)(1). And the immediately antecedent phrase is "new motor vehicles or new motor vehicle engines." *Id.* Thus, it is the "*vehicles*" in the class that must "cause, or contribute to," the pollution, not the "class" as a whole.

This Court and others have adopted that natural reading. This Court has observed that Section 202(a) "requires the EPA to set emissions standards for new motor vehicles and their engines *if they emit harmful air pollutants*." *Truck Trailer Mfrs. Ass'n* v. *EPA*, 17 F.4th 1198, 1201 (D.C. Cir. 2021) (emphasis added); *see NRDC* v. *EPA*, 954 F.3d 150, 152 (2d Cir. 2020) (Section 202(a) "requires EPA to regulate emissions from new motor vehicles if EPA determines that *the vehicles* 'cause, or contribute to,' [potentially dangerous] air pollution") (emphasis added) (quoting § 7521(a)(1)). On that correct view, the statute authorizes EPA to set standards *only* for "new motor vehicles or new motor vehicle engines" that the agency deems to cause or contribute to harmful pollution. But electric vehicles, in EPA's tailpipe-focused judgment, do not cause or contribute to greenhouse-gas or criteria pollution.

EPA resists on the theory that the "class or classes" of vehicles must "cause, or contribute to" air pollution. RTC 351. According to EPA, this

means that individual vehicles in that class need not "cause or contribute" to pollution on their own. That is both wrong and irrelevant. It is wrong because the rule of the last antecedent applies even without a "list of terms." RTC 351 n.307; *see Barnhart*, 540 U.S. at 26. EPA also argues that Congress's focus must have been the class because "while an individual vehicle could possibly 'contribute' to dangerous air pollution," one vehicle alone could not solely "cause" such pollution. RTC 351. But that proves too much. Even a class of vehicles does not solely "cause" greenhouse-gas or criteria pollution, which comes from many sources (including other classes of vehicles). Instead, the "cause" and "contribute" terms capture both vehicles that emit substances that themselves qualify as harmful pollution and vehicles that emit substances that are precursors to pollution (*e.g.*, emissions that combine to create smog).

Fundamentally, it does not matter whether it is the "class or classes" of vehicles that must "cause, or contribute to" air pollution. That still would not justify including electric vehicles in the class. When English speakers refer to a class of objects that does something, they ordinarily mean that *all* the members of the class do that thing. For example, when a doctor warns a patient about a "class of medications that cause drowsiness," the class does not include stimulants. And that is the best way to read the statute here: a class

that causes pollution is most naturally defined to include only those vehicles that cause pollution. EPA may have broad leeway to group those pollution-emitting vehicles into classes as it sees fit. *See NRDC* v. *EPA*, 655 F.2d 318, 338 (D.C. Cir. 1981). But it cannot sweep non-emitting vehicles into the class.

2. The statutory structure and history confirm Congress's focus on technologically achievable emission controls.

Several other portions of Section 202 confirm that Congress focused on technologically feasible standards for vehicles that actually emit pollutants that cause or contribute to pollution. Section 202(a)(2) requires EPA to provide manufacturers with lead time to comply with the standards, in order "to permit the development and application of the requisite technology." § 7521(a)(2). That language contemplates that technological feasibility will constrain the emission standards that EPA sets under Section 202(a). Congress's focus on technological feasibility, in turn, evinces a concern for incremental steps to improve vehicles that actually emit the relevant pollutants, rather than wholesale shifts to different types of vehicles.

Other provisions show the type of "technology" that Congress contemplated car manufacturers would develop to meet those standards. Section 202(m) requires EPA to command manufacturers to install on "all" new light-duty vehicles and trucks "diagnostic systems" that identify

"emission-related systems deterioration or malfunction … which could … result in failure of the vehicles to comply with emission standards established under this section." § 7521(m)(1). The required diagnostic systems must monitor, "at a minimum, the catalytic converter and oxygen sensor." *Id.* In other words, to ensure compliance with emission standards under Section 202(a), Congress required "emissions-related systems" and accompanying "diagnostic systems" on each vehicle—again underscoring Congress's view that the vehicles subject to an emission standard actually emit the relevant pollutant.

EPA disagrees, contending that the legislative history demonstrates Congress's commitment to aggressive pollution reduction using "unconventional" power sources, including electric vehicles. 89 Fed. Reg. at 27,893-27,894. Those examples, however, do not suggest that EPA has authority to *require* automakers to shift to novel technologies. Instead, EPA's examples show that Congress has taken a cautious approach to alternative technologies, holding "hearings," instituting pilot programs, and "encourag[ing] Federal purchases" of novel types of vehicles. *Id.* None of that means that Congress has authorized EPA to effectively mandate a wholesale, nationwide shift away from internal-combustion-engine vehicles.

3. Related statutes underscore that Section 202(a) does not authorize averaging of non-emitting electric vehicles.

Other environmental laws confirm the lack of statutory authorization to include electric vehicles in fleetwide-average standards and to use those standards to effectively force electrification.

a. In the Clean Air Act Amendments of 1990, Congress spoke directly to the phase-in of electric vehicles on America's roads. Congress instructed EPA to establish standards for "clean-fuel vehicles" operating on "clean alternative fuel," including "electricity." Pub. L. No. 101-549, § 229, 104 Stat. 2399, 2511-2513 (codified at 42 U.S.C. §§ 7581(2), (7), 7582(a)). Congress required that certain areas of the country with the worst pollution "phase-in" a "specified percentage" of "clean-fuel vehicles" using "clean alternative fuels"—defined to include "electricity"—in certain fleets. § 7586; *see* § 7581(a). The 1990 amendments highlight that Congress knows how to establish standards that apply to electric vehicles, and to directly require that such vehicles be phased into a particular fleet. But Congress chose to do so only on a targeted, regional basis.

b. Other related statutes suggest the same. In EPCA, Congress directed NHTSA to set fuel-economy standards based on averages, but *prohibited* NHTSA from setting fuel-economy standards that average in the

fuel economy of electric vehicles. *See* Pub. L. No. 102-486 §§ 302, 403, 106 Stat. 2776, 2868-2871, 2876-2879 (codified at 49 U.S.C. § 32902(h)). That prohibition bars NHTSA from doing exactly what EPA is doing here.

The absence of a specific prohibition on EPA does not suggest that it has free rein to do what NHTSA cannot. When Congress enacted Section 202(a)(1) in 1977, it had no need to explicitly block EPA from considering electric vehicles, because it did not contemplate that EPA would set emission standards using averaging in the first place. The prohibition on NHTSA thus underscores just how far EPA is reaching here: it is straining statutory language to seize a power that Congress expressly denied to a sister agency that actually *has* authority to promulgate fleetwide-average standards. Moreover, because EPA's reading creates an inconsistency between EPCA and the Clean Air Act, it conflicts with a key premise of *Massachusetts*—that NHTSA and EPA can "administer their obligations and yet avoid inconsistency." 549 U.S. at 532.

Further, petitioners in Case No. 24-1158 preserve the argument that *Massachusetts* should be overruled on the ground that carbon dioxide is not an "air pollution agent or combination of such agents." § 7602(g); *see Massachusetts*, 549 U.S. at 559 (Scalia, J., dissenting). Carbon

dioxide does not "make or render impure or unclean" the air. *Webster's New International Dictionary* 1910 (2d ed. 1949). It is an abundant, naturally occurring gas that exists throughout the atmosphere and that is essential for life on Earth. Subsequent developments merely confirm that *Massachusetts* was wrong on both the facts and the law.

4. EPA's counterarguments lack merit.

EPA has offered several justifications for averaging electric-vehicle "zeros" into its fleetwide standards, but none has merit.

a. EPA argues in the rule's preamble that petitioners' argument is "factually flawed" because electric vehicles actually *do* cause or contribute to pollution. 89 Fed. Reg. at 27,902; *see* 74 Fed. Reg. at 66,496 (finding that air-conditioning emissions contribute to harmful air pollution). That is not the "gotcha" that the agency thinks. In setting these standards, the agency has chosen to deem electric vehicles all to have zero greenhouse-gas emissions and battery electric vehicles as having zero relevant criteria-pollutant emissions. *See supra* p. 9 n.2.[5] Accordingly, EPA's standards reflect the agency's "judgment" that these types of vehicles do not "cause, or contribute

[5] For compliance with the averaging standard for criteria pollutants, plug-in hybrids are run without relying on an outside power source, and are not assumed to emit zero. 40 C.F.R. § 86.1811-27(b)(v); 89 Fed. Reg. at 27,936.

to," the relevant pollution. § 7521(a). If EPA now recognizes that treating these vehicles as "zero-emission" is counterfactual, then its rule premised on that treatment is arbitrary and capricious. *See infra* pp. 62-66. But if EPA stands by its zero-emission designation, then it must abide by the statutory consequences.

b. EPA also contends that excluding electric vehicles from its averaging would be nonsensical. The agency questions why, "given Congress's directive to reduce air pollution," it would have "authorized EPA to consider technologies that achieve 99 percent pollution reduction" but "not 100 percent." 89 Fed. Reg. at 27,893. Setting aside that electric vehicles shift pollution to the power sector, the answer is simple: "[n]o statute pursues a single policy at all costs." *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 81 (2023). In the Clean Air Act, Congress was concerned not only with emission reduction but also with technological feasibility and preserving "some productive economic activity." *Energy Future Coal.*, 793 F.3d at 145. There is nothing nonsensical about allowing EPA to use emission standards to combat pollution within meaningful limits.

EPA similarly contends that it would be "unworkable" to exclude electric vehicles from its averages because it does not know "ex ante" which

vehicles a manufacturer will choose to turn into a non-emitting vehicle. *See* 89 Fed. Reg. at 27,902. But the challenge here is to EPA's standard-setting, not to manufacturers' production of vehicles. There is nothing "unworkable" about telling EPA that when it calculates a technologically feasible emission standard achievable by an emitting class of vehicles, it cannot average in a bunch of zeros to represent non-emitting electric vehicles.

c. Finally, EPA argues that the Clean Air Act affirmatively authorizes it to mandate the production of electric vehicles because it may prescribe pollution-emission controls for vehicles and engines, whether they "are designed as complete systems" or "incorporate devices to prevent or control such pollution." § 7521(a)(1); 89 Fed. Reg. at 27,889. It is worth pausing to note how extreme that argument is: under EPA's view of the statute, the agency has the authority to declare tomorrow that 100% of vehicles manufactured must be battery-powered—without any express word from Congress about electrification.

The statute does not countenance that extraordinary result. Electric vehicles are not "designed as complete systems" to prevent or control air pollution because they do not have "built-in pollution control" or prevention. *Truck Trailer Manufacturers*, 17 F.4th at 1202. To "prevent" something

means to "keep [it] from happening" or "impede" it. *American Heritage Dictionary of the English Language* 1038 (1st ed. 1969). To "control" means to "hold in restraint" or "check." *Id.* at 290. Thus, a vehicle with "built-in pollution control" or prevention is one that has a self-contained mechanism to block or capture pollution that would otherwise be emitted. Electric vehicles, by contrast, are designed to run on an entirely different power system. To draw an analogy, it would not be natural to refer to an iPod as a system that prevents or controls record skips. An iPod is not a record player with some built-in method of reducing record skips; it is a different technology altogether. *Cf. West Virginia*, 597 U.S. at 734 (statutory grant to EPA to design a "system of emission reduction" did not encompass cap-and-trade "system," because a "system of emission reduction" exclusively refers to measures that "improve the pollution performance" of existing sources).

Nor do electric vehicles incorporate "add-in devices for pollution control" or prevention, *Truck Trailer Manufacturers*, 17 F.4th at 1202, as EPA contends. *See* RTC 356. The component parts of electric vehicles, such as their batteries, are not add-ins that block the emission of pollution or minimize pollution that would otherwise occur. They are integral to the basic

functioning of the vehicle, which does not emit the relevant pollutant in the first place.

III. EPA'S RULE IS ARBITRARY AND CAPRICIOUS.

Alternatively, EPA's rule must be set aside because it is arbitrary and capricious in at least three respects. *See* § 7607(d)(9)(A). First, EPA irrationally treats electric vehicles as having "zero emissions," when they generate significant emissions upstream in the production of electric batteries and the electricity that powers them. Second, EPA failed to explain why it refused to consider the cost-effective alternative of encouraging the adoption of renewable fuel. Third, EPA's cost-benefit analysis is flawed on both sides of the ledger. All three defects flow from EPA's single-minded focus on electrifying the Nation's fleet, and each is independently fatal to EPA's rule.

A. EPA Unreasonably Ignores Electric-Vehicle Emissions.

EPA's rule is arbitrary and capricious because it unreasonably treats electric vehicles as though they contribute zero emissions in some contexts, while acknowledging their emissions in other contexts.

For its emission standards, EPA focuses only on emissions from a vehicle's tailpipe. It thus treats electric vehicles as though they produce "zero" emissions, and it allows carmakers to "use 0 g/mile as [the] compliance value" for those vehicles. 89 Fed. Reg. at 27,923, 28,019-28,020. That treatment is

unsupportable. Electric vehicles generate emissions in several ways other than through a tailpipe. Significant emissions are associated with the mining, production, and disposal of the batteries and associated minerals that power the vehicle. *See* Renewable Fuels Association Comment 1-2 (July 5, 2023); America First Policy Institute Comment 1 (June 30, 2023). Generating electricity to charge and power the vehicle also produces significant emissions. *See* 75 Fed. Reg. at 25,435. Indeed, more than 60% of U.S. electricity is generated from fossil fuels that produce greenhouse-gas emissions. Renewable Fuels Association Comment 4 (July 5, 2023). Recent EPA estimates suggest that current electric vehicles generate about 79 grams/mile more upstream emissions than comparable gasoline vehicles, even ignoring their greater manufacturing emissions. The 2023 EPA Automotive Trends Report at E-6, Table E.4 (Dec. 2023) (average of "Tailpipe + Net Upstream CO_2 Avg" values for electric vehicles), https://www.epa.gov/system/files/documents/2023-12/420r23033.pdf. For context, that difference is comparable to the Rule's 2032 targets for tailpipe emissions from the fleet of light-duty vehicles. *See* 89 Fed. Reg. at 27,854 (73 g/mile for cars and 90 g/mile for trucks).

EPA does not dispute that electric vehicles cause emissions. The agency actually included some upstream emissions in its analysis of the rule's costs and benefits. *See* RTC 1063. In fact, EPA previously recognized that upstream emissions should be addressed in emission standards. *See* 77 Fed. Reg. at 62,817. But for its present emission standards, EPA put on blinders, focusing only on the emissions from a vehicle's tailpipe and thus treating electric vehicles as zero-emission.

EPA offers three reasons for its selective focus on tailpipe emissions, but none is reasonable. First, EPA asserts that counting only tailpipe emissions from electric vehicles is justified because it is "consistent with [its] treatment of all other vehicles." 89 Fed. Reg. at 27,923. But electric vehicles are *not* like "all other vehicles," because of the way in which they shift nearly all operational emissions upstream (to the power sector). Congress has recognized as much. It requires EPA to account for "generation and transmission" energy losses when including electric vehicles in a manufacturer's "average fuel economy," 49 U.S.C. § 32904(a)(2), precisely because "an electric vehicle burns its fuel … off-board the vehicle," at a power plant. 65 Fed. Reg. 36,986, 36,987 (June 12, 2000). By lumping together things that are not "similar in all important respects"—here, electric vehicles and

internal-combustion-engine vehicles—EPA acted arbitrarily. *GPA Midstream Ass'n* v. *U.S. Dep't of Transp.*, 67 F.4th 1188, 1199 (D.C. Cir. 2023).

Second, EPA contends that "power sector emissions are expected to decline significantly in the future," so they are apparently not worth considering. 89 Fed. Reg. at 27,923. But the supposed *future* decline of power-sector emissions does not justify ignoring those emissions *today*. Power-sector emissions will not be zero any time soon. In the meantime, as commenters demonstrated, EPA's decision to turn a blind eye to the total lifecycle emissions caused by electric vehicles will cause environmental harm. John German & John D. Graham Comment 37 (July 5, 2023).

Finally, EPA contends that taking into account total lifecycle emissions would be unfair to manufacturers because such emissions are supposedly out of manufacturers' control. 89 Fed. Reg. at 27,923. But EPA nowhere else requires automakers' control over emissions. For example, it makes manufacturers of internal-combustion-engine vehicles responsible for all the carbon-dioxide emissions that result from the carbon-intensity of liquid fuels, which they do not control. *See* 89 Fed. Reg. at 27,911 (dictating the test fuel). EPA's conclusion that it would be unfair to make manufacturers of electric vehicles responsible for the emissions from the fuel used to power their

vehicles, while imposing the same responsibility on manufacturers of internal-combustion-engine vehicles, is the definition of arbitrariness.

B. EPA Failed To Consider The Obvious, Viable Alternative Of High-Octane And Renewable Fuels.

EPA's preference for electric vehicles also led it to arbitrarily refuse to consider "viable" and "obvious alternative[s]." *Nat'l Shooting Sports Found., Inc.* v. *Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013). Here, higher-octane fuels, biofuels, and flex-fuel vehicles are a documented solution to the issue of pollution from vehicle emissions. Indeed, many commenters noted, higher-octane gasoline and renewable fuels could substantially reduce greenhouse-gas emissions as compared to conventional fuel. *See* RTC 47; Renewable Fuels Association Comment 4, 7 (explaining that renewable fuels can reduce greenhouse-gas emissions by 40-80% compared to gasoline). Commenters also noted that flex-fuel vehicles create significant opportunities for increased use of such lower emitting fuels. Renewable Fuels Association Comment 4, 7 (July 5, 2023). Yet EPA refused to even consider renewable fuels as an alternative to its push for electrification, unreasonably deeming those issues outside the scope of its rule. *See, e.g.*, 89 Fed. Reg. at 27,911.

EPA likewise failed to consider how its rulemaking conflicts with Congress's Renewable Fuel Standard. In that program, Congress mandated

that gasoline and diesel sold in the United States must contain a year-over-year increasing amount of renewable fuels, which then shifted to annual volume obligations set by EPA. § 7545(o)(2)(A)(i). EPA's rule thus conflicts with Congress's mandate to increase the Nation's use of renewable fuel. EPA ignored that tension, concluding without explanation that its rule was somehow "compl[e]mentary" with its renewable-fuel rules. 89 Fed. Reg. at 28,115. EPA's failure to grapple with renewable fuels as an alternative—and a congressionally mandated one at that—was thus arbitrary and capricious.

C. EPA's Cost-Benefit Analysis Is Unsound.

EPA's cost-benefit analysis was independently arbitrary and capricious. *See also* State Petitioners' Br. 27-31. When an agency relies "on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable." *Nat'l Ass'n of Home Builders* v. *EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012). EPA's cost-benefit analysis suffers from "serious flaw[s]" with respect to both costs and benefits. *See* 89 Fed. Reg. at 27,860.

On the cost side, EPA's estimate of the technology costs associated with producing electric vehicles is flawed. EPA estimated the cost of manufacturing using a model that analyzed powertrain and vehicle structure

costs. *See* RTC 1793-1794. But as commenters pointed out, EPA's inputs into the model, including the cost of electric-vehicle batteries and motors, were too low. *See, e.g.*, *id.* at 1923-1932. Although EPA responded with minor adjustments, its final results are still divorced from reality. EPA claims that its rule will increase vehicle technology costs by only $2,074 per vehicle in 2032, even though EPA projects the rule will force automakers to produce approximately 1.5 times as many electric vehicles by 2032 as they would absent the rule. 89 Fed. Reg. at 27,861, 27,987, 28,057. In the real world, producing more electric vehicles costs much more than that. For example, in the first quarter of 2023, Ford spent an average of $119,083 per electric vehicle it sold, compared to only $31,871 per conventional vehicle. Clean Fuels Development Coalition Comment 17 (July 5, 2023).

EPA's model bizarrely estimates that some manufacturers' technology costs, including Ford's, will *decline* as a result of the rule. RIA at 12-25, tbl. 12-42. EPA never explained why its cost calculations diverge so substantially from the on-the-ground experience of manufacturers. *Cf. Nat'l Ass'n of Home Builders*, 682 F.3d at 1040; *FCC* v. *Prometheus Radio Project*, 592 U.S. 414, 423 (2021); *Ohio* v. *EPA*, 144 S. Ct. 2040, 2054 (2024).

EPA also inflated the rule's benefits. EPA asserts that the rule will help consumers realize a *trillion* dollars in "pre-tax fuel savings." 89 Fed. Reg. at 27,860, tbl. 8. The agency recognized the tension between its assessment and rational consumer behavior, 89 Fed. Reg. at 28,136-28,137, but it blamed the mismatch on consumers' failure to understand their own best interests. EPA concedes it has no real explanation for the supposed market failure's "existence [or] its magnitude," 89 Fed. Reg. at 28,137, and says "it is not clear" why consumers and manufacturers act the way they do, Regulatory Impact Analysis 4-47. But EPA nevertheless assumed the existence of an enormous market failure, largely because it has done so "in many previous vehicle GHG standards' analyses." 89 Fed. Reg. at 28,136. Those standards, however, have been criticized on the same basis. *See* Brief of Private Petitioners 65-66, *Texas* v. *EPA*, No. 22-1031; *see also* W. Kip Viscusi & Ted Gayer, *Overriding Consumer Preferences with Energy Regulations*, 43. J. of Regul. Econs. 248 (2013). And years later, the agency still has not mustered an evidence-based response. EPA's "lackadaisical response" cannot "justify assuming a purchaser's decisions will not align with its economic interests." *Am. Pub. Gas Ass'n* v. *Dep't of Energy*, 22 F.4th 1018, 1027 (D.C. Cir. 2022).

Nor is there some great mystery behind consumer choice. As commenters noted, mandating greater fuel economy comes at a cost, resulting in cumbersome features like "idle stop-start" functions, 89 Fed. Reg. at 27,846, and fewer performance improvements in horsepower, towing capacity, and other attributes that consumers value, *see* National Automobile Dealers Association, Comment 7-8 (July 5, 2023). In short, consumers and manufacturers are not irrational; they just do not value fuel economy above all else, as EPA apparently thinks they should.

CONCLUSION

For the foregoing reasons, the Court should reverse EPA's rule.

SEPTEMBER 6, 2024

Respectfully submitted,

s/ Jeffrey B. Wall

PAUL D. CLEMENT
C. HARKER RHODES IV
NICHOLAS A. AQUART*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Petitioners in No. 24-1196

*Supervised by principals of the firm who are members of the Virginia bar

JEFFREY B. WALL
MORGAN L. RATNER
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500
wallj@sullcrom.com

Counsel for Petitioners Diamond Alternative Energy, LLC and Valero Renewable Fuels Company, LLC

MICHAEL B. BUSCHBACHER
JAMES R. CONDE
BOYDEN GRAY PLLC
800 Connecticut Avenue NW
Suite 900
Washington, DC 20006
(202) 955-0620
mbuschbacher@boydengray.com

Counsel for Petitioners in No. 24-1197

D. JOHN SAUER
JUSTIN D. SMITH
JAMES OTIS LAW GROUP, LLC
13321 North Outer Forty Road,
Suite 300
St. Louis, Missouri 63017
(816) 678-2103
justin.smith@james-otis.com

Counsel for Petitioners in No. 24-1132

ROBERT HENNEKE
THEODORE HADZI-ANTICH
CONNOR MIGHELL
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
tha@texaspolicy.com

Counsel for Petitioners in No. 24-1158

ERIC D. MCARTHUR
DANIEL J. FEITH
JEREMY D. ROZANSKY
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
emcarthur@sidley.com

Counsel for Trade Association Petitioners in No. 24-1195

MATTHEW W. MORRISON
SHELBY L. DYL
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 17th Street NW
Washington, DC 20036
(202) 663-8036
matthew.morrison@pillsburylaw.com

Counsel for Petitioners in No. 24-1206

BRITTANY M. PEMBERTON
BRACEWELL LLP
2001 M Street NW, Suite 900
Washington, DC 20036
(202) 828-5800
brittany.pemberton@bracewell.com

Counsel for Petitioners International Association of Machinists and Aerospace Workers Lodge No. 823, Diamond Alternative Energy, LLC, and Valero Renewable Fuels Company, LLC

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 32(f) and (g), along with the Court's July 17, 2024 Order because it contains 13,955 words.

This brief also complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in 14-point font using a proportionally spaced typeface.

s/ Jeffrey B. Wall
JEFFREY B. WALL

SEPTEMBER 6, 2024

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of September, 2024, I electronically filed the foregoing Initial Brief for Petitioners with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I certify that service will be accomplished by the CM/ECF system for all participants in this case who are registered CM/ECF users.

s/ Jeffrey B. Wall
JEFFREY B. WALL

SEPTEMBER 6, 2024

ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1087 (and consolidated cases)

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

COMMONWEALTH OF KENTUCKY, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents,

ENVIRONMENTAL LAW & POLICY CENTER, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA-HQ-OAR-2022-0829)

PRIVATE PETITIONERS' ADDENDUM OF STATUTES AND STANDING DECLARATIONS

PAUL D. CLEMENT
C. HARKER RHODES IV
NICHOLAS A. AQUART*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Petitioners in No. 24-1196

*Supervised by principals of the firm who are members of the Virginia bar

JEFFREY B. WALL
MORGAN L. RATNER
SULLIVAN & CROMWELL LLP
1700 New York Avenue NW
Washington, DC 20006
(202) 956-7500
wallj@sullcrom.com

Counsel for Petitioners Diamond Alternative Energy, LLC and Valero Renewable Fuels Company, LLC

(Additional counsel listed on next page)

MICHAEL B. BUSCHBACHER
JAMES R. CONDE
BOYDEN GRAY PLLC
800 Connecticut Avenue NW
Suite 900
Washington, DC 20006
(202) 955-0620
mbuschbacher@boydengray.com

Counsel for Petitioners in No. 24-1197

D. JOHN SAUER
JUSTIN D. SMITH
JAMES OTIS LAW GROUP, LLC
13321 North Outer Forty Road,
Suite 300
St. Louis, Missouri 63017
(816) 678-2103
justin.smith@james-otis.com

Counsel for Petitioners in No. 24-1132

ROBERT HENNEKE
THEODORE HADZI-ANTICH
CONNOR MIGHELL
TEXAS PUBLIC POLICY FOUNDATION
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700
tha@texaspolicy.com

Counsel for Petitioners in No. 24-1158

ERIC D. MCARTHUR
DANIEL J. FEITH
JEREMY D. ROZANSKY
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
emcarthur@sidley.com

Counsel for Trade Association Petitioners in No. 24-1195

MATTHEW W. MORRISON
SHELBY L. DYL
PILLSBURY WINTHROP SHAW PITTMAN LLP
1200 17th Street NW
Washington, DC 20036
(202) 663-8036
matthew.morrison@pillsburylaw.com

Counsel for Petitioners in No. 24-1206

BRITTANY M. PEMBERTON
BRACEWELL LLP
2001 M Street NW, Suite 900
Washington, DC 20036
(202) 828-5800
brittany.pemberton@bracewell.com

Counsel for Petitioners International Association of Machinists and Aerospace Workers Lodge No. 823, Diamond Alternative Energy, LLC, and Valero Renewable Fuels Company, LLC

TABLE OF CONTENTS

PRIMARY STATUTES

A. 42 U.S.C. § 7521 provides in pertinent part:

Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b)—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) In general.—

(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) Revised standards for heavy duty trucks.—

(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) Lead time and stability.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) Rebuilding practices.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and

application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) Motorcycles.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)[1] of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to

[1] Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E), was redesignated section 7525(f) of this title by Pub. L. 101–549, title II, §230(8), Nov. 15, 1990, 104 Stat. 2529.

conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) Onboard vapor recovery.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ("onboard") systems for the control of vehicle refueling emissions, promulgate standards under

this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

Implementation Schedule for Onboard Vapor Recovery Requirements

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

* * *

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),[2] regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain

[2] Paragraph (5) of subsec. (b), referred to in subsec. (b)(1)(A), related to waivers for model years 1981 and 1982, and was repealed by Pub. L. 101–549, title II, §230(3), Nov. 15, 1990, 104 Stat. 2529.

standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year.

If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101–549, title II, §230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)[3] Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

[3] So in original. Probably should be "(4)".

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph[4] granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

* * *

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

[4] So in original. Probably should be "paragraph".

Table G—Emission Standards for NMHC, CO, and NO_x from Light-Duty Trucks of up to 6,000 Lbs. GVWR And Light-Duty Vehicles

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

Implementation Schedule for Table G Standards	
Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

PM Standard for LDTs of up to 6,000 lbs. GVWR	
Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

Implementation Schedule for PM Standards

Model year	Light-duty vehicles	LDTs
1994	40%*	
1995	80%*	40%*
1996	100%*	80%*
after 1996	100%*	100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

* * *

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or

repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

B. 42 U.S.C. § 7522 provides:

Prohibited Acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b));

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C in the case of clean fuel vehicles

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding

sentence, the term "manufacturer parts" means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally

refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

C. 42 U.S.C. § 7524 provides:

Civil penalties

(a) Violations

Any person who violates sections[1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component.

[1] So in original. Probably should be "section".

Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be

assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b).

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a

quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

D. 42 U.S.C. § 7525 provides in pertinent part:

Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis

of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later

model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(5)(A) A motor vehicle engine (including all engine emission controls) may be installed in an exempted specially produced motor vehicle if the motor vehicle engine is from a motor vehicle that is covered by a certificate of conformity issued by the Administrator for the model year in which the exempted specially produced motor vehicle is produced, or the motor vehicle engine is covered by an Executive order subject to regulations promulgated by the California Air Resources Board for the model year in which the exempted specially produced motor vehicle is produced, and—

(i) the manufacturer of the engine supplies written instructions to the Administrator and the manufacturer of the exempted specially produced motor vehicle explaining how to install the engine and maintain functionality of the engine's emission control system and the on-board diagnostic system (commonly known as "OBD"), except with respect to evaporative emissions;

(ii) the manufacturer of the exempted specially produced motor vehicle installs the engine in accordance with such instructions and certifies such installation in accordance with subparagraph (E);

(iii) the installation instructions include emission control warranty information from the engine manufacturer in compliance with section 7541 of this title, including where warranty repairs can be made, emission control labels to be affixed to the vehicle, and the certificate of conformity number for the applicable vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iv) the manufacturer of the exempted specially produced motor vehicle does not produce more than 325 such vehicles in the calendar year in which the vehicle is produced.

(B) A motor vehicle containing an engine compliant with the requirements of subparagraph (A) shall be treated as meeting the requirements of section 7521 of this title applicable to new vehicles produced or imported in the model year in which the exempted specially produced motor vehicle is produced or imported.

(C) Engine installations that are not performed in accordance with installation instructions provided by the manufacturer and alterations to the engine not in accordance with the installation instructions shall—

(i) be treated as prohibited acts by the installer under section 7522 of this title and any applicable regulations; and

(ii) subject to civil penalties under section 7524(a) of this title, civil actions under section 7524(b) of this title, and administrative assessment of penalties under section 7524(c) of this title.

(D) The manufacturer of an exempted specially produced motor vehicle that has an engine compliant with the requirements of subparagraph (A) shall provide to the purchaser of such vehicle all information received by the manufacturer from the engine manufacturer, including information regarding emissions warranties from the engine manufacturer and all emissions-related recalls by the engine manufacturer.

(E) To qualify to install an engine under this paragraph, and sell, offer for sale, introduce into commerce, deliver for introduction into commerce or import an exempted specially produced motor vehicle, a manufacturer of exempted specially produced motor vehicles shall register with the Administrator at such time and in such manner as the Administrator determines appropriate. The manufacturer shall submit an annual report to the Administrator that includes—

(i) a description of the exempted specially produced motor vehicles and engines installed in such vehicles;

(ii) the certificate of conformity number issued to the motor vehicle in which the engine was originally intended or the applicable Executive order number for the engine; and

(iii) a certification that it produced all exempted specially produced motor vehicles according to the written instructions from the engine manufacturer, and otherwise that the engine conforms in all material respects to the description in the application for the applicable certificate of conformity or Executive order.

(F) Exempted specially produced motor vehicles compliant with this paragraph shall be exempted from—

(i) motor vehicle certification testing under this section; and

(ii) vehicle emission control inspection and maintenance programs required under section 7410 of this title.

(G)(i) Except as provided in subparagraphs (A) through (F), a person engaged in the manufacturing or assembling of exempted specially produced motor vehicles shall be considered a manufacturer for purposes of this chapter.

(ii) Nothing in this paragraph shall be construed to exempt any person from the prohibitions in section 7522(a)(3) of this title or the requirements in sections 7542, 7525(c), or 7521(m)(5) of this title.

(H) In this paragraph:

(i) The term "exempted specially produced motor vehicle" means a light-duty vehicle or light-duty truck produced by a low-volume manufacturer and that-

(I) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the exempted specially produced motor vehicle; and

(II) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

(ii) The term "low-volume manufacturer" means a motor vehicle manufacturer, other than a person who is registered as an importer

under section 30141 of title 49, whose annual worldwide production, including by a parent or subsidiary of the manufacturer, if applicable, is not more than 5,000 motor vehicles.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

* * *

E. 42 U.S.C. § 7541 provides in pertinent part:

Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i).

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term "designed for emission control" as used in the preceding sentence means a catalytic converter, thermal

reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

* * *

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and

use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2).

(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

(ii) the Administrator finds that such a waiver is in the public interest.

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) Intermediate in-use standards.—

(A) Model years 1994 and 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in

model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

Table A—Intermediate In-Use Standards LDTS up to 6,000 lbs. GVWR and Light-Duty Vehicles

Vehicle type	NMHC	CO	NO_x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0–3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751–5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) Model years 1996 and thereafter.—

(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

Table B—Intermediate In-Use Standards LDTs More Than 6,000 Lbs. GVWR

Vehicle type	NMHC	CO	NO_x
LDTs (3,751–5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) Useful life.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) Final in-use standards.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty[1] vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

[1] So in original. Probably should be "light-duty".

LDTs up to 6,000 Lbs. GVWR and Light-Duty Vehicle Schedule for Implementation of Final In-Use Standards	
Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

LDTs of More Than 6,000 Lbs. GVWR Implementation Schedule for Implementation of Final In-Use Standards	
Model year	Percent
1998	50
1999	100

(6) Diesel vehicles; in-use useful life and testing.—(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty

vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

* * *

(h) Dealer certification

(1) If at any time during the period for which the warranty applies under subsection (b), a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2)(without regard to subparagraph (C) thereof).

(2) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

F. 49 U.S.C. § 32902 provides in pertinent part:

Average fuel economy standards

(a) Prescription of Standards by Regulation.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles

manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

* * *

(h) Limitations.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of dedicated automobiles;

(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel; and

(3) may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under section 32903.

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF MARK BRUGIONI

I, Mark Brugioni, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Director of Optimization & Planning in the Optimization Planning and Economics division for Valero. In this role, I am responsible for a wide range of planning and economic business matters regarding Valero's operating strategies for its West Coast, Mid-Continent, and North Atlantic refinery assets. My responsibilities include management oversight of the planning and economics teams for these Valero assets, and through my background, I also have significant technical and operational experience from Valero's refineries. I am also generally familiar with the planning, economics, and operations of Valero's Gulf Coast refinery

assets.

2. I am generally aware of the United States Environmental Protection Agency's ("EPA's") issuance of a final rule titled, "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles." 89 Fed. Reg. 27,842 (Apr. 18, 2024). It is my understanding that, according to EPA, the rule will have significant impacts on liquid fuel consumption: EPA expects the rule to "result in a reduction of 780 billion gallons of retail gasoline consumption," including both gasoline and diesel fuels, through 2055 as gasoline- and diesel-powered vehicles are replaced with electric vehicles. 89 Fed. Reg. at 28,141, 28,111.

3. As a result of the projected displacement of liquid fuels, EPA's rulemaking will cause financial injury to Valero's refining business segment, which would otherwise not occur in the absence of the rule.

A. Valero's Overall Business Strategy

4. Valero has twelve U.S. domestic refineries: two on the West Coast in California, three in the Mid-Continent region, and seven in the Gulf Coast region. Unlike some other oil and gas companies, Valero does not explore for or produce crude, i.e., it does not drill for oil. Instead, it purchases crude from third parties.

5. Valero also does not operate any retail motor fuel stations. It sells motor

fuel (i.e., gasoline and diesel) at the wholesale and bulk sale levels. Valero sells motor fuels at the wholesale level under several different channels of trade, including unbranded contract, unbranded "spot," and branded motor fuel sales. Bulk sales are made to clear the remaining refined product length from Valero's refineries to manage inventories.

B. Reduction in Nationwide Fuel Demand

6. A significant reduction in nationwide gasoline demand, as contemplated by EPA's rule, will negatively impact Valero's business and operations. More specifically, the reduction in demand for gasoline and diesel attributable to the projected market share increase of so-called "zero-emission vehicles" will result in the need for refineries to operate at lower capacities and/or to move additional gasoline and/or gasoline components to other markets. The former option naturally has a direct impact on the profitability and long-term viability of such refineries, while the latter is limited to logistical constraints and economic margins.

7. Moreover, because Valero's refineries must maintain a relatively high operating rate to remain stable, a significant reduction in domestic market demand risks potential refinery shutdowns and even permanent closures. In this regard, one need only consider the impact of the COVID-19 pandemic on the refining sector, which experienced negative financial margins and multiple third-party refinery closures due to the reduction in gasoline demand. However, even if operating capacity

is maintained at or above the minimum operating threshold, any reduction in market demand would negatively impact the profitability of Valero's refineries, which are currently operating at close to maximum capacity (outside of required maintenance events).

8. In theory, the impacts of EPA's expected reduction in domestic demand can be mitigated to some extent through exports to Latin America and other foreign markets, but such mitigation efforts come with increased costs, logistical complications, and capacity limitations. In this regard, gasoline sales from Valero's refineries to foreign markets may be possible primarily via the shipping industry, which as an initial matter, requires the incurrence of additional transportation costs. Additionally, not all of Valero's refineries have access to marine docks. Two of Valero's Mid-Continent refineries are entirely landlocked, with limited and/or no access to export markets via pipeline, rail, or trucking. The third Mid-Continent refinery can only be accessed by barge, as opposed to large ocean-going vessels, which limits its export capacity as well. Valero's West Coast operations face similar logistical limitations due to limited dock space, vessel, and permitting constraints.

9. To the extent capital investment might improve such constraints and allow for increased gasoline movements, that would nevertheless require significant expenditures by both Valero and third parties over whom Valero has no control, and would depend on business analyses and forecasts to justify said investment. And

even if, for example, existing third-party pipelines to Valero's Mid-Continent refineries were reverse-engineered so as to allow for product to be transported to the Gulf Coast, there are nevertheless additional costs associated with such pipeline use, as well as scheduling and forecasting complications, including competition with other Mid-Continent refiners for limited transportation throughput capacity.

10. Such exports would also require Valero's West Coast refineries to compete with barrels from the Gulf Coast, the Far East, and Europe, which have lower operating and feedstock costs, and are therefore better equipped to compete in such markets. Additionally, California is one of the most expensive operating environments for refineries, and it is not at all clear these refineries would be competitive in the markets for conventional gasoline blends, as opposed to specialty blends such as CARBOB (California) and AZRBOB (Arizona).

11. Even for Valero's Gulf Coast refineries, which are better equipped and geographically advantaged for exporting product, a large increase in foreign sales to offset domestic demand reduction would still result in logistical and permitting complications, and possibly the incurrence of additional transportation costs depending on the terms of sale. In this regard, it is unclear what the supply of and demand for gasoline and diesel in such foreign markets would look like in the scenario presented by EPA's rule—i.e., a scenario in which the domestic refining industry as a whole is forced to quickly and significantly increase exports. Valero

currently exports, on average, less than ten percent of its domestic gasoline production.

12. Even EPA concluded that the possibility of increased exports would not fully compensate for the "reduced domestic refining" that results from the "reduced domestic liquid fuel demand" caused by its rule. 89 Fed. Reg. at 28,098. In its proposal, EPA estimated that almost all of the reduced liquid fuel demand would result in reduced domestic refining. 89 Fed. Reg. at 28,097 (estimating that "93 percent of the reduced liquid fuel demand resulted in reduced domestic refining"). In its final analysis, EPA speculates that increased exports may offset some of the reduced production that would otherwise result from the reduced demand. Regulatory Impact Analysis at 8-39–8-44. EPA, however, still estimates that "50 percent of reduced domestic liquid fuel demand" from its rule will result in reduced production by domestic refineries, like those owned by Valero. 89 Fed. Reg. at 28,098.

13. In short, EPA projects that the subject rule will force a rapid expansion of the new vehicle market share for electric vehicles and a corresponding reduction in nationwide liquid fuel demand. Such a reduction in demand will negatively impact Valero's business operations and profitability as described herein.

14. These economic impacts are not speculative. Indeed, as stated above, EPA itself projects that "through 2055" the rule "will result in a reduction of 780 billion gallons" of liquid fuel consumption and "reduced domestic refining." 89 Fed.

Reg. at 28,142, 28,098, 28,111.

15. All of these injuries would be substantially ameliorated if EPA's rule were set aside. As EPA's analysis shows, without the rule, manufacturers would produce—and consumers would purchase—a greater share of gasoline- and diesel-powered light- and medium-duty vehicles, mitigating any reduction in liquid fuels demand. 89 Fed. Reg. at 28,057–61.

Dated: September 5, 2024

Mark Brugioni

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF JESSICA JAWALKA

I, Jessica Jawalka, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am a Manager of the Fuels Compliance division servicing Valero Renewable Fuels Company, LLC ("Valero Renewables") and Diamond Alternative Energy, LLC ("Diamond Alternative"). I am responsible for a wide range of compliance and business matters relating to Valero Renewables and Diamond Alternative's production and sale of renewable fuels such as ethanol and renewable diesel. My responsibilities include analyzing impacts of regulatory and statutory changes on the liquid fuels production industry, including the impacts on renewable fuels.

2. I have extensive experience in ensuring the Valero family of companies'

compliance with the requirements of the federal Renewable Fuel Standard ("RFS"), which requires so-called "obligated parties" to blend certain percentages of renewable fuels into transportation fuels or to purchase an equivalent number of "Renewable Identification Numbers" credits, or RINs, to meet an EPA-specified Renewable Volume Obligation. I am likewise familiar with the requirements of the RFS on renewable fuel producers, such as Valero Renewables and Diamond Green Diesel, who are engaged in the program as RIN generators.

3. In addition, I have extensive experience with California's Low Carbon Fuel Standard ("LCFS") program. The LCFS is designed to reduce greenhouse gas emissions by setting a carbon intensity ("CI") benchmark for transportation fuels consumed in the State, which decreases over time. Under this program, each fuel is assigned a CI value based on a model produced by the California Air Resources Board ("CARB"). The CI value is intended to represent the GHG emissions associated with the feedstocks from which the fuel was produced, the fuel production and distribution activities, and the use of the finished fuel. Fuels below the benchmark generate LCFS credits, while fuels above the benchmark generate deficits. The lower the fuel's CI score compared to the benchmark, the greater number of credits generated. Each producer or importer of fuel must demonstrate that the overall mix of fuels it supplies for use in California meets the CI benchmarks for each compliance period. A producer or importer with a fuel mix that is above the CI benchmark

must purchase LCFS credits sufficient to meet the CI benchmark.

4. Valero Renewables is an independent ethanol producer owning and operating 12 ethanol plants with a combined production capacity of around 1.6 billion gallons per year. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating—a measure of a fuel's resistance to "knocking" in an engine—reducing vehicles' fuel usage and net greenhouse gas emissions. Across the United States, refiners add ethanol to gasoline to raise its octane rating to a level suitable for use in most vehicles—with the result that approximately 10% of the final product consists of ethanol—and to meet federal renewable mandates. According to the U.S. Department of Energy, "[t]he U.S. ethanol industry has sufficient capacity to produce more than 17 billion gallons of ethanol and reduce GHG emissions by an estimated 42.7 million metric tons (CO2-eq) per year, which is approximately 2% of total U.S. transportation emissions." Valeri Sarisky-Reed, *Ethanol vs. Petroleum-Based Fuel Carbon Emissions*, DOE Bioenergy Technologies Office (June 23, 2022), https://perma.cc/X564-AX5F. "The United States has more than 200 ethanol plants supporting nearly 70,000 jobs, many in rural areas." *Id.* On average, Valero Renewables sells more than 70 percent of its total ethanol production domestically.

5. Diamond Alternative is a part owner of the Diamond Green Diesel renewable diesel production facilities in St. Charles Parish, Louisiana and Port Arthur,

Texas. Between these two production facilities, Diamond Green Diesel currently produces approximately 1.2 billion gallons of renewable diesel per year, making it the largest renewable diesel producer in North America and the second-largest renewable diesel producer in the world. On average, Diamond Green Diesel sells approximately 65 percent of its total renewable diesel production domestically. Any harm to Diamond Green Diesel is also borne, at least in part, by Diamond Alternative as one of two owners of Diamond Green Diesel.

6. Renewable diesel is made from sustainable low-carbon feedstocks, such as used cooking oil, inedible animal fats derived from processing meat fats, soy bean oil, and inedible com oil. Its chemical composition is nearly identical to that of petroleum-based diesel, making it a "drop-in" fuel that can be stored, distributed, and used interchangeably with petroleum-derived diesel, but its production results in up to 80% fewer greenhouse gas emissions for the finished fuel.

7. I am generally aware of the United States Environmental Protection Agency's ("EPA's") issuance of a final rule titled, "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (Apr. 18, 2024). It is my understanding that, according to EPA, the rule will have significant impacts on liquid fuel consumption: EPA expects the rule to "result in a reduction of 780 billion gallons of retail gasoline consumption" through 2055. 89 Fed. Reg. at 28,141. Because nearly all retail gasoline

in the United States contains 10% ethanol, the decrease in demand for gasoline caused by the rule necessarily leads to a corresponding reduction in demand for the ethanol that Valero Renewables produces, as well as valuable LCFS credits.

8. The rule also will reduce demand for the renewable diesel produced by Diamond Alternative. Indeed, EPA acknowledges that the rule will "reduce the demand for gasoline and diesel for light-duty and medium-duty vehicles domestically and affect the petroleum refining industry." 89 Fed. Reg. at 27,900. Although diesel vehicles make up a relatively small part of the light-duty vehicle market, many medium-duty vehicles subject to the rule are powered by diesel fuels. EPA estimates that between 13 and 15 percent of on-road diesel fuel is consumed by medium-duty vehicles. *See* EPA, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis at 8-44, tbl. 8-21, EPA-420-R-24-004, https://www.regulations.gov/document/EPA-HQ-OAR-2022-0829-5738/attachment_2.pdf.

9. EPA's rule also impacts revenues Valero Renewables and Diamond Alternative obtain through their participation in the LCFS and RFS programs.

10. Ethanol produced by Valero Renewables and renewable diesel produced by Diamond Alternative have CI scores that are lower than traditional petroleum-based transportation fuels. Therefore, these fuels generate LCFS credits that have significant monetary value and are an important part of the business planning and

economics for the renewable fuels facilities, as they generate hundreds of millions of dollars in revenue annually. Both Valero Renewables and Diamond Alternative rely on credit revenue to provide a return on investment, and decreased demand for renewable fuels in the United States would undermine these expectations. By way of example, the economics underlying the significant investment in Diamond Alternative's newest Port Arthur renewable diesel facility were driven, in large part, by the expectation of LCFS credit values.

11. Likewise, Valero Renewables and Diamond Alternative rely on revenue from RIN sales. As demand for liquid transportation fuels decreases domestically, so do the RIN revenues these businesses generate.

12. In theory, the impacts of such reduction in demand can be mitigated to some extent through exports to foreign markets, but such mitigation efforts come with increased costs and capacity limitations, as well as other market complications. As an initial matter, foreign markets are not currently positioned to take on the significant and sudden influx of product from the United States' renewable fuels industry, as a whole, that would be necessary to offset EPA's expected reduction in domestic liquid fuel demand resulting from its rule, which would result in non-economical margins beyond a certain threshold. However, even if foreign markets could take on such increased product supply in its entirety, the movement of such product would nevertheless require companies to incur additional transportation

costs and would also be limited by dock, vessel, rail, and permitting constraints. To the extent that capital investment might improve such constraints and allow for increased product movements, that would require significant expenditures by Valero Renewables, Diamond Alternative, and third parties over whom they have no control, and would further depend on business analyses and forecasts to justify said investment. And the European Renewable Energy Directive requires that renewable fuels be produced from certified feedstocks under an approved, third-party certification scheme, over which Valero Renewables and Diamond Alternative have no control. This restriction, in turn, limits access to the European market for a majority of renewable fuels produced from U.S. feedstocks, including much of the ethanol and renewable diesel produced by Valero Renewables and Diamond Green Diesel, respectively. Moreover, such sales would be ineligible for domestic credits under the RFS and LCFS programs, which as stated above are an integral part of the business planning and economics for these renewable fuels facilities.

13. Even EPA concluded that the possibility of increased exports would not fully compensate for the "reduced domestic refining" that results from the "reduced domestic liquid fuel demand" caused by its rule. 89 Fed. Reg. at 28,098. In its proposal, EPA estimated that almost all of the reduced liquid fuel demand would result in reduced domestic refining. 89 Fed. Reg. at 28,097 (estimating that "93 percent of the reduced liquid fuel demand resulted in reduced domestic refining"). In its final

analysis, EPA speculates that increased exports may offset some of the reduced production that would otherwise result from the reduced demand. Regulatory Impact Analysis at 8-39–8-44. Even so, EPA still estimates that "50 percent of reduced domestic liquid fuel demand" from its rule will result in reduced production by domestic facilities, like those owned by Valero Renewables and Diamond Alternative. 89 Fed. Reg. at 28,098.

14. In short, the subject rulemaking is projected by EPA to force a rapid expansion of the new vehicle market share for electric vehicles and a corresponding reduction in domestic liquid fuel demand. Such a reduction in demand would negatively impact the business operations and profitability of Valero Renewables and Diamond Alternative as described herein.

15. These economic impacts are not speculative. Indeed, as stated above, EPA itself projects that "through 2055" the rule "will result in a reduction of 780 billion gallons" of liquid fuel consumption. 89 Fed. Reg. at 28,142.

16. All of these injuries would be substantially ameliorated if EPA's rule were set aside. As EPA's analysis shows, without the rule, manufacturers would produce—and consumers would purchase—a greater share of gasoline- and diesel-powered light- and medium-duty vehicles, mitigating any reduction in liquid fuels demand. 89 Fed. Reg. at 28,057–61.

Dated: September 5, 2024

Jessica Jawalka

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

No. 24-1087
and consolidated cases

DECLARATION OF DUSTIN MEYER ON BEHALF OF THE AMERICAN PETROLEUM INSTITUTE

I, Dustin Meyer, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Senior Vice President of Policy, Economics and Regulatory Affairs for the American Petroleum Institute ("API").

2. API is a national trade association that represents all segments of America's oil and natural gas industry, which supports more than 11 million jobs in the United States. API's nearly 600 members produce, process, and distribute most of the Nation's energy. API represents companies throughout the entire supply chain of the oil and natural gas industry, including companies that explore and produce crude oil and natural gas; own and operate refineries, pipelines, terminals, ships, barges, and railways that move crude and finished products; supply branded and

unbranded gasoline and diesel fuel; own the brands used to sell retail gasoline and diesel; and own and operate retail gasoline stations. As of 2017, the most recent year for which data is available, API members supplied 51% of all gasoline and 31% of all diesel sold in the United States.

3. As part of my work for API and its members, I am responsible for executive-level management of policies relating to the exploration, production, and movement of crude oil and natural gas, and the refining, movement, and sale of finished products including gasoline, diesel, renewable diesel, natural gas, biodiesel, and renewable natural gas. I am also responsible for analyzing and understanding the impacts of regulatory changes on the industry. I have extensive experience analyzing the oil and gas markets and the impact of regulatory changes on those markets.

4. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

5. Those new standards require automakers to produce vehicle fleets for sale in the United States that will use considerably less fuel on average than their existing vehicle fleets. EPA's new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854

("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average GHG emissions target levels from the existing MY 2026 standards."); *id.* at 27,855 (medium-duty standards "are projected to result in … a reduction of 44 percent [in fleet average GHG emissions] by MY 2032, which represents a reduction of 44 percent compared to the current MY 2026 standards."). And because "[t]he amount of [tailpipe] CO2 emissions is essentially constant per gallon combusted of a given type of fuel," 75 Fed. Reg 25,324, 25,327 (May 7, 2010), "any rule that limits tailpipe CO2 emissions is effectively identical to a rule that limits fuel consumption," *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015); *see also* 89 Fed. Reg. 28,141-42 ("This action reduces CO2 emissions for the light-duty and medium-duty vehicles under revised GHG standards, which will result in significant reductions of the consumption of petroleum ….").

6. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 28,087 (noting that the "model" path of compliance anticipates "68%" electrification by MY 2032); *see also*

id. at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]").

7. API and its members are committed to accelerating safety and environmental progress across their operations while meeting the global demand for affordable, reliable, and cleaner energy. Meeting those goals requires safe and responsible production, transportation, refining and exports managed by a skilled and diverse workforce, and continuous improvement in performance through diverse, new technologies and approaches informed by sound science and data. EPA's new standards will hinder the responsible progress and innovation required to build a strong and sustainable energy future.

8. API and its members are invested in new technologies that reduce greenhouse gas emissions but that will be impeded by EPA's undue emphasis on electrification in its new standards that will manipulate and depress markets in a way that will make reducing emissions more expensive than a market-based, technology-neutral approach. Those emission reduction projects include: 1) stand-alone production and co-processing of bio-feedstocks to make renewable fuels; 2) manufacturing of low-carbon ethanol; 3) manufacturing of renewable natural gas from wastewater, landfill gas, and bio-digesters at farms as fuel for compressed natural gas vehicles; 4) production of lower carbon intensity hydrogen for transportation and stationary applications including building infrastructure; 5) direct

air carbon capture; 6) carbon capture and sequestration of CO2; 7) installation of electric vehicle charging stations; and 8) installation of hydrogen fueling stations.

9. EPA's new standards also fail to appropriately consider the full lifecycle emissions of electric vehicles, including but not limited to emissions from power plants that generate the electricity used to charge the electric vehicles and emissions from the raw material extraction, transport, and processing of minerals needed to manufacture electric vehicle motors and batteries, the manufacturing of the vehicles themselves, and the disposal of the batteries and related components. API and its members support a lifecycle approach to carbon accounting that facilitates informed decision-making throughout the value chain. Carbon data that is consistent, reliable and transparent across sectors, products, and firms of all sizes can be used to understand the carbon intensity associated with a good or service at each stage of the lifecycle, from production to manufacturing to transport to disposal. That is especially important when comparing, for example, emissions from internal-combustion-engine vehicles and electric vehicles.

10. By EPA's own admission, its new standards will significantly depress market demand for oil and gas in the United States. *See, e.g.*, 89 Fed. Reg. at 28,111 (recognizing that EPA's standards "are projected to reduce liquid fuel consumption"); *id.* at 28,129 (similar). Indeed, EPA's standards are *designed* to reduce demand for liquid fuel, by imposing stringent greenhouse gas emissions

standards that will require significantly "reduced fuel consumption." *Id.* at 28,092; *see also id.* at 27,858 (noting "lower demand for liquid fuel associated with the [greenhouse gas] standards."). According to EPA's own projections, the new standards will reduce gasoline consumption in the United States by "780 billion gallons through 2055." *Id.* at 28,092; *see id.* at 27,861 (projecting the rule will reduce consumer spending on fuel by "$57 billion" through 2055); EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis*, EPA-420-R-24-004, 8-43 (March 2024) (finding that final rule will "reduce gasoline and diesel fuel demand by about 40 billion gallons per year toward the end of the analysis period . . . [or] 2.6 million barrels per day").

11. That market manipulation resulting in a massive reduction in sales of liquid fuel will cause API members significant financial injury and force the manufacture of electric vehicles that will reduce consumer choice and still have lifecycle GHG emissions. The capital investments and the revenues of API members like Chevron Corporation ("Chevron"), Marathon Petroleum Corporation ("Marathon"), and others depend in substantial part on the market demand for liquid fuel and related products and services. By artificially reducing market demand for (and consumer spending on) liquid fuel, EPA's new standards will cause API members like Chevron, Marathon, and others direct financial injury by depriving

them of revenues that they would otherwise have obtained in meeting consumers' demand for their products and deprive consumers of products that the EPA predicts they would prefer. *See, e.g.*, 89 Fed. Reg. at 28,111 ("The final standards are projected to reduce liquid fuel consumption (gasoline and diesel) …."); *id.* at 28,129 ("Reduced consumption of petroleum fuel represents … a potential loss in value of output for the petroleum refining industry, fuel distributors, and gas stations, which may result in reduced employment in these sectors. These impacts may also pass up the supply chain to, for example, pipeline construction, operation and maintenance, and domestic oil production.").

12. EPA's new rule will decrease market demand not only for petroleum gasoline and diesel, but also for renewable fuels, undermining programs like the federal Renewable Fuel Standard directed at promoting the increased use of renewable fuels. By reducing market demand for renewable fuels, the standards will cause additional adverse impacts on API members by reducing their sales of renewable fuels and revenue from those sales.

13. All of those injuries will be redressed by a favorable decision from this Court, as market demand for liquid fuel (and thus for API members' products and services) will increase if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to API members. Indeed, EPA's own projections confirm that the injury to API members is

redressable if EPA's new standards are vacated, as they demonstrate that market demand for liquid fuel will be substantially higher if the standards, which are not technology neutral, are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,858, 27,861, 28,092, 28,111, 28,129; *Regulatory Impact Analysis*, *supra*, at 8-43.

Date: 9/5/24

Dustin Meyer

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

COMMONWEALTH OF KENTUCKY, ET AL., Petitioners, v. ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondents, ENVIRONMENTAL LAW & POLICY CENTER, ET AL., Intervenors.	Case No. 24-1087 and consolidated cases

DECLARATION OF SUSAN W. GRISSOM

I, Susan W. Grissom, declare under penalty of perjury that the following is true and correct, to the best of my knowledge:

1. I am the Chief Industry Analyst for American Fuel & Petrochemical Manufacturers ("AFPM"), responsible for analyzing market and economic impacts of regulatory and statutory changes on the refining and petrochemical manufacturing industries. I have extensive experience analyzing and directing the analysis of energy markets.

2. AFPM is a national trade association representing nearly all American refining and petrochemical companies. Our 25 refining company members own and operate about 88% of U.S. domestic petroleum refining capacity. Many of them also produce biofuels. These companies provide jobs, contribute to economic and national security, and enable the production of products used by families and businesses throughout the United States.

3. The refining industry supports nearly 3 million jobs in all 50 States, plus the District of Columbia. All told, the refining industry contributes $688 billion to the United States economy.

4. EPA recently promulgated a rule establishing new light-duty vehicle (LDV) and medium-duty vehicle (MDV) greenhouse-gas and criteria-pollutant emission standards for model years 2027 and later. *See* 89 Fed. Reg. 27,842 (April 18, 2024). EPA's rule requires automobile manufacturers to produce vehicle fleets for sale in the United States that, on average, use considerably less gasoline and diesel fuel than they otherwise would.

5. EPA's standards limit the amount of carbon dioxide that automakers' fleets may emit. *See id.* at 27,907 ("The projected MY 2032

combined fleet target of 85 g/mile is 49 percent lower than that of the MY 2026 standards."). And because "[t]he amount of [tailpipe] CO_2 emissions is essentially constant per gallon combusted of a given type of fuel," 75 Fed. Reg 25,324, 25,327 (May 7, 2010), "any rule that limits tailpipe CO_2 emissions is effectively identical to a rule that limits fuel consumption," *Delta Const. Co.* v. *EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015). Indeed, EPA explains that this rule, like previous rules that "achieved very significant reductions of GHGs," will have "significant anticipated impacts on liquid fuel consumption." 89 Fed. Reg. at 27,845.

6. Further, the rule will cause automakers to produce and sell more vehicles that use no liquid fuel at all than they otherwise would. According to EPA, for light-duty vehicles, "as the final standards become more stringent over MYs 2027 to 2032, the penetration of PEVs [*i.e.*, battery-powered electric vehicles (BEVs) and plug-in hybrid electric vehicles] increases by 36 percentage points over this 6-year period, from 32 percent in MY 2027 to 68 percent of overall vehicle production in MY 2032." *Id.* at 28,057.

7. EPA compared those projections for light-duty vehicles to projections under a "No Action" scenario, in which it applied "the same technical, economic, and consumer inputs" but assumed that instead of the rule, "the MY 2026 standards would carry forward indefinitely into future years." *Id.* at 27,986. According to EPA, "the level of PEVs under the No Action case are projected to reach 47 percent in" MY 2032, which is 21 percentage points less than under EPA's rule. *Id.* at 28,057; *see also id.* at 28,079 (For MY 2032, BEVs would have 56 percent market penetration under the rule compared to only 35 percent in the No Action scenario). Similarly, for medium-duty vehicles, EPA projects that "the projected penetration of PEVs ... increases from 3 percent in MY 2027 to 43 percent of overall MDV production in MY 2032." *Id.* at 28,060. That contrasts with only 8 percent PEVs of overall MDV production in MY 2032 under the No Action scenario. *Id.*

8. EPA also modeled the light-duty vehicle market penetration rate for PEVs under various sensitivities, including scenarios with higher or lower battery costs or more states' adoption of California's Advanced Clean Cars II policy. EPA found that under the range of variables, PEVs would constitute between 62 percent and 70 percent of light-duty fleets

in MY 2032 if the rule goes into effect. *Id.* at 28,057. By contrast, if the rule does not go into effect (the "No Action" scenario), the PEV penetration rate would range from just 18 percent of the market to 60 percent. *Id.*

9. For example, if battery costs are low, EPA projects a 70 percent PEV penetration rate under the final standards but only a 50 percent rate in the No Action scenario. *Id.* at 28,070 (Table 123); *see also id.* at 28,071 (rule would cause PEV penetration rate to increase by 29 points if battery costs are high); *id.* at 28,072 (rule would cause PEV penetration rate to increase by 6 points under optimistic assumptions about consumer demand for BEVs); *id.* at 28,073 (rule would cause PEV penetration rate to increase by 29 points if consumer acceptance of BEVs is "slower"). In other words, even accounting for a range of other variables that could increase EV market penetration, the rule would cause an independent increase in the market penetration of such vehicles.

10. EPA's rule depresses the demand for petroleum and renewable liquid fuels in the United States and thereby harms AFPM's member companies such as Cenovus Energy, Flint Hills Resources, Hunt Refin-

ing, Marathon Petroleum, PBF Energy, Placid Refining, and Valero Energy. A refining company's bottom line depends on the market's demand for transportation fuel. AFPM's members suffer economic injury, therefore, when EPA imposes emission standards that result in vehicles using less fuel per mile or force greater adoption of vehicles that do not operate on gasoline, diesel, or renewable liquid fuel at all.

11. These economic harms are not speculative. EPA itself estimated that its rule "is projected to result in a reduction of U.S. gasoline consumption by 780 billion gallons through 2055." *Id.* at 28,092; *see also id.* at 28,111; EPA, Multi-Pollutant Emissions Standards for Model years 2027 and Late Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis (RIA) 4-40 (Mar. 2024). According to EPA's own projections, the rule "is estimated to reduce gasoline and diesel fuel demand by about 40 billion gallons per year toward the end of the analysis period, which equates to 2.6 million barrels per day." RIA 8-43.

12. The reduced demand for transportation fuels caused by EPA's rule results in lost sales for AFPM member companies and requires them to expend resources changing feedstock and product slates, diverting fuel to other markets, and remedying supply-chain distortions.

13. In 2020, for example, when demand for finished motor gasoline declined by 14% due to the COVID-19 pandemic, AFPM members suffered financial hardship. *See, e.g.*, Valero Energy, 2020 Fourth Quarter Earnings Release (losses of $1.4 billion in 2020).

14. Similar harms will flow from EPA's rule. Indeed, EPA specifically projects that the reduced demand for transportation fuel caused by the rule will affect U.S. refinery production, estimating that "the reduction in crude oil refining would amount to 1.3 million [fewer] barrels per day" at U.S. refiners, most of which are members of AFPM. *Id.*

15. For these reasons, EPA's rule financially injures AFPM's members that produce gasoline, diesel, and renewable liquid fuels that are blended into gasoline and diesel for sale in the U.S., and a judicial decision setting the rule aside would redress those injuries by allowing automakers to produce a fleet of vehicles that consume more liquid fuel.

Dated: 9/5/2024

Susan W. Grissom

Susan W. Grissom

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF JOE GILSON ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

I, Joe Gilson, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am a Director of Government Affairs for the American Farm Bureau Federation ("AFBF").

2. AFBF was formed in 1919 and is the largest nonprofit general farm organization in the United States. Representing about six million member families in all fifty States and Puerto Rico, AFBF's members grow and raise every type of agricultural crop and commodity produced in the United States. AFBF's mission is to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers.

3. As part of my work for AFBF and its members, I am responsible for the management of policies relating to various agricultural crop and commodity cultivation, production, transportation, and sale in the United States. I am also responsible for and have experience analyzing and understanding the impacts of changes in the industry and in related industries, like the oil and gas market, that impact the livelihoods of American farmers and ranchers.

4. AFBF members have for years supported America's energy market by growing crops necessary for alternative and renewable fuels. One such renewable fuel is ethanol, which many AFBF member farmers and ranchers help produce through their growth and sale of corn all across the United States. Ethanol is the second largest component of the fuel that powers the Nation's vehicle fleet, as refiners across most of the United States add ethanol to gasoline in order to (among other things) raise its octane rating to a level suitable for use in most vehicles.

5. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

6. Those new standards require automakers to produce vehicle fleets for sale in the United States that will use considerably less fuel on average than their existing vehicle fleets. EPA's new standards significantly limit the average amount

of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards."). And because "[t]he amount of [tailpipe] CO2 emissions is essentially constant per gallon combusted of a given type of fuel," 75 Fed. Reg 25,324, 25,327 (May 7, 2010), "any rule that limits tailpipe CO2 emissions is effectively identical to a rule that limits fuel consumption," *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015), *see also* 89 Fed. Reg. 28,141-42 ("This action reduces CO2 emissions for the light-duty and medium-duty vehicles under revised [greenhouse gas] standards, which will result in significant reductions of the consumption of petroleum ….").

7. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. *See, e.g.*, 89 Fed. Reg. at 28,087 (noting that the "model" path of compliance anticipates "68%" electrification by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]").

8. As EPA has recognized, its new standards will significantly depress the demand for liquid fuel in the United States. *See, e.g.*, 89 Fed. Reg. at 28,111

(recognizing that EPA's standards "are projected to reduce liquid fuel consumption"); *id.* at 28,129 (similar). Indeed, EPA's standards are *designed* to reduce demand for liquid fuel, by imposing stringent greenhouse gas emissions standards that will require significantly "reduced fuel consumption." *Id.* at 28,092; *see also id.* at 27,858 (noting "lower demand for liquid fuel associated with the [greenhouse gas] standards.").

9. According to EPA's own projections, the new standards will reduce gasoline consumption in the United States by "780 billion gallons through 2055." *Id.* at 28,092; *see id.* at 27,861 (projecting the rule will reduce consumer spending on fuel by "$57 billion" through 2055); EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis*, EPA-420-R-24-004, 8-43 (March 2024) (finding that final rule will "reduce gasoline and diesel fuel demand by about 40 billion gallons per year toward the end of the analysis period . . . [or] 2.6 million barrels per day"). And because ethanol is blended into nearly every gallon of gasoline sold in the United States, EPA's new rule will reduce ethanol consumption by tens of millions of gallons.

10. That massive reduction in demand for ethanol will cause AFBF members significant financial injury. The revenues of numerous AFBF members depend in substantial part on the market demand for corn, which in turn depends in substantial part on the market demand for ethanol for use in liquid fuel.

11. For instance, AFBF member Cordt Holub of Iowa grows and sells approximately 220,000 bushels of corn each year for use in ethanol production. Depending on the year, approximately 75% to 100% of Mr. Holub's corn is sold for ethanol production, and corn represents approximately 45% of Mr. Holub's revenue. AFBF member Lance Atwater in Nebraska grows and sells approximately 25,000 to 30,000 bushels of corn each year for use in ethanol production; in addition, the ethanol market affects the futures price of corn, which then affects all other corn commodities Mr. Atwater sells, such as white corn and popcorn. Approximately 10% to 15% of Mr. Atwater's revenues come from corn sales for ethanol, and 60% of his overall revenues come from corn. By reducing demand for (and consumer spending on) liquid fuel, EPA's new standards will reduce demand for ethanol, and deprive AFBF members like Mr. Holub and Mr. Atwater of revenues that they would otherwise have obtained through sale of their corn for use in ethanol production.

12. That injury will be redressed by a favorable decision from this Court, as the demand for liquid fuel (and thus the demand for corn to make ethanol) will increase if EPA's new standards are invalidated, eliminating or at least reducing the financial injury that the standards would otherwise cause to AFBF and its members. Indeed, EPA's own projections confirm that the injury to AFBF and its members is redressable if EPA's new standards are vacated, as they demonstrate that the demand for liquid fuel will be substantially higher if the standards are not in effect. *See, e.g.*,

89 Fed. Reg. at 27,858, 27,861, 28,092, 28,111, 28,129; *Regulatory Impact Analysis*, *supra*, at 8-43.

Date: ____09/03/2024_____ Joe Gilson

Joe Gilson

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF MICKEY ANDERSON ON BEHALF OF BAXTER FORD, INC.

I, Mickey Anderson, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the President of Baxter Ford, Inc., a Nebraska corporation that operates a Ford dealership in the State of Nebraska that sells light-duty and medium-duty cars, trucks, and SUVs to consumers and businesses.

2. As the President of Baxter Ford, Inc., I am responsible for maintaining the company's operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032 that significantly limit the average amount of carbon dioxide that automakers' fleets may

emit. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles.

4. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm Baxter Ford, Inc. Consumer interest in electric vehicles remains limited, and has even shown recent signs of declining. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including Baxter Ford, Inc.) to a skewed market in which the supply of electric vehicles exceeds demand.

5. That market distortion will impose concrete financial harms on Baxter Ford, Inc., forcing it to either keep unwanted electric vehicles on its lot or to sell those vehicles at cost (or at a loss) to make room for vehicles that its customers actually want, and potentially forcing it to increase its prices for other vehicles in order to cover the resulting additional costs. Baxter Ford, Inc. will accordingly suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

6. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory

pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to Baxter Ford, Inc. from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to Baxter Ford, Inc. is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect.

Date: Sept. 3, 2024

Mickey Anderson

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF THOMAS MAOLI ON BEHALF OF CELEBRITY MOTOR CARS, LLC, CELEBRITY MOTORS OF TOMS RIVER, LLC, CELEBRITY OF SPRINGFIELD, LLC, AND CELEBRITY OF WESTCHESTER, LLC

I, Thomas Maoli, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am a Member of Celebrity Motor Cars, LLC, dba Lexus of Route 10, which is a New Jersey-based Lexus dealership that sells light-duty vehicles and trucks; Celebrity Motors of Toms River, LLC, dba Celebrity Ford of Toms River, which is a New Jersey-based Ford dealership that sells light-duty vehicles and trucks; Celebrity of Springfield, LLC, dba BMW of Springfield, which is a New Jersey-based BMW dealership that sells light-duty vehicles and trucks; and Celebrity of Westchester, LLC, dba Mercedes Benz of Goldens Bridge, which is a New York-

based Mercedes Benz dealership that sells light-duty vehicles and trucks (collectively, "the Celebrity Dealerships").

2. In my role as Member, I am responsible for maintaining the Celebrity Dealerships' operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

4. Those new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards.").

5. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 27,856 (noting that EPA's "central analysis case" anticipates 56% battery-powered

electric vehicles and 13% plug-in hybrid vehicles by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"); *see also id.* at 28,087 (projecting that manufacturers "could choose to meet the standards … by using 68 percent [plug-in electric vehicles] in MY 2032").

6. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm the Celebrity Dealerships. Consumer interest in electric vehicles remains limited, and has even shown recent signs of declining. *See, e.g.*, Neal Bouddette, *Ford Plans More Gas Truck, Less EVs*, https://tinyurl.com/4av42sn4 (July 18, 2024) (noting the "shift in consumer sentiment" regarding electric vehicles and how "car buyers have balked at the high prices of electric cars and trucks and the hassles of charging them"); Lawrence Ulrich, *Corvette Bucked A Sports Cars Decline. Can It Thrive In An E.V. Era?* (July 21, 2024) (56% of surveyed drivers in 2024 were "'absolutely not interested' in an electric vehicle, up from 51% in 2023"); Jeff Arnold, *Nearly Half of US EV Owners Would Switch To Normal Cars*, https://tinyurl.com/yc9dahun (June 27, 2024) (46% of surveyed owners of electric vehicles would switch back to conventional vehicles); Kaya Ginsky, *Many Early-Adopting EV Owners Around the World Want To Gas Up Again*, https://tinyurl.com/yc46zwk6 (June 25, 2024) (describing additional polls and surveys showing a decline in "EV adoption").

7. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including the Celebrity Dealerships) to a skewed market in which the supply of electric vehicles exceeds demand. That market distortion will impose concrete financial harms on the Celebrity Dealerships, forcing them to either keep unwanted electric vehicles on their lots or to sell those vehicles at cost (or at a loss) to make room for vehicles that their customers actually want, and potentially forcing them to increase their prices for other vehicles in order to cover the resulting additional costs. The Celebrity Dealerships will accordingly suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

8. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to the Celebrity Dealerships from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to the Celebrity Dealerships is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,854, 27,861, 28,087.

Date: 9/3/24

Thomas Maoli

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF STEPHEN GATES ON BEHALF OF GATES NISSAN LLC

I, Stephen Gates, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Managing Member of Gates Nissan LLC, dba Gates Nissan, which operates a Nissan dealership in Richmond, Kentucky that sells light-duty vehicles.

2. As the Managing Member of Gates Nissan LLC, I am responsible for maintaining the company's operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See*

EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

4. Those new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards.").

5. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 27,856 (noting that EPA's "central analysis case" anticipates 56% battery-powered electric vehicles and 13% plug-in hybrid vehicles by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"); *see also id.* at 28,087 (projecting that manufacturers "could choose to meet the standards … by using 68 percent [plug-in electric vehicles] in MY 2032").

6. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm Gates Nissan LLC. Consumer interest in electric vehicles remains limited, and has even shown recent

signs of declining. *See, e.g.*, Neal Bouddette, *Ford Plans More Gas Truck, Less EVs*, https://tinyurl.com/4av42sn4 (July 18, 2024) (noting the "shift in consumer sentiment" regarding electric vehicles and how "car buyers have balked at the high prices of electric cars and trucks and the hassles of charging them"); Lawrence Ulrich, *Corvette Bucked A Sports Cars Decline. Can It Thrive In An E.V. Era?* (July 21, 2024) (56% of surveyed drivers in 2024 were "'absolutely not interested' in an electric vehicle, up from 51% in 2023"); Jeff Arnold, *Nearly Half of US EV Owners Would Switch To Normal Cars*, https://tinyurl.com/yc9dahun (June 27, 2024) (46% of surveyed owners of electric vehicles would switch back to conventional vehicles); Kaya Ginsky, *Many Early-Adopting EV Owners Around the World Want To Gas Up Again*, https://tinyurl.com/yc46zwk6 (June 25, 2024) (describing additional polls and surveys showing a decline in "EV adoption").

7. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including Gates Nissan LLC) to a skewed market in which the supply of electric vehicles exceeds demand. That market distortion will impose concrete financial harms on Gates Nissan LLC, forcing it to either keep unwanted electric vehicles on its lot or to sell those vehicles at cost (or at a loss) to make room for vehicles that its customers actually want, and potentially forcing it to increase its prices for other vehicles in order to cover the resulting additional costs. Gates Nissan LLC will accordingly

suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

8. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to Gates Nissan LLC from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to Gates Nissan LLC is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,854, 27,861, 28,087.

Date: 9/3/24

Stephen Gates

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF ROBERT P. LOQUERCIO ON BEHALF OF AML AUTOMOTIVE PEORIA, LLC, LOQUERCIO AUTOMOTIVE INC., LOQUERCIO AUTOMOTIVE GOE, LLC, LOQUERCIO AUTOMOTIVE GOSHEN, LLC, LOQUERCIO AUTOMOTIVE MCH, LLC, LOQUERCIO AUTOMOTIVE MCK, LLC, LOQUERCIO AUTOMOTIVE SOUTH, INC., AND LOQUERCIO AUTOMOTIVE WEST, LLC

I, Robert P. Loquercio, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the President and CEO of AML Automotive Peoria, LLC, dba Peoria Ford, which is an Illinois-based Ford dealership that sells light-duty vehicles to consumers and businesses; Loquercio Automotive, Inc., dba Elgin Hyundai, which is an Illinois-based Hyundai dealership that sells light-duty vehicles to consumers and businesses; Loquercio Automotive GOE, LLC, dba Genesis of Elgin, which is an Illinois-based Genesis dealership that sells light-duty vehicles to

consumers and businesses; Loquercio Automotive Goshen, Inc., dba Buick GMC of Goshen, which is an Illinois-based Buick and GMC dealership that sells light-duty vehicles to consumers and businesses; Loquercio Automotive, MCH, LLC, dba Michigan City Hyundai, which is an Indiana-based Hyundai dealership that sells light-duty vehicles to consumers and businesses; Loquercio Automotive MCK, LLC, dba Michigan City Kia, which is an Indiana-based Kia dealership that sells light-duty vehicles to consumers and businesses; Loquercio Automotive South, Inc., dba Honda City, which is an Illinois-based Honda dealership that sells light-duty vehicles to consumers and businesses; and Loquercio Automotive West, LLC, dba Elgin Chrysler, which is an Illinois-based Chrysler dealership that sells light-duty vehicles to consumers and businesses (collectively, "the Loquercio Dealerships").

2. In my role as President and CEO, I am responsible for maintaining the Loquercio Dealerships' operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

4. Those new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The

standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards.").

5. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 27,856 (noting that EPA's "central analysis case" anticipates 56% battery-powered electric vehicles and 13% plug-in hybrid vehicles by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"); *see also id.* at 28,087 (projecting that manufacturers "could choose to meet the standards … by using 68 percent [plug-in electric vehicles] in MY 2032").

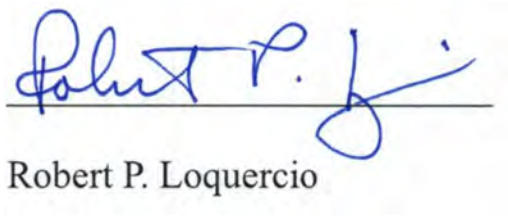
6. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm the Loquercio Dealerships. Consumer interest in electric vehicles remains limited, and has even shown recent signs of declining. *See, e.g.*, Neal Bouddette, *Ford Plans More Gas Truck, Less EVs*, https://tinyurl.com/4av42sn4 (July 18, 2024) (noting the "shift in consumer sentiment" regarding electric vehicles and how "car buyers have balked at the high prices of electric cars and trucks and the hassles of charging them");

Lawrence Ulrich, *Corvette Bucked A Sports Cars Decline. Can It Thrive In An E.V. Era?* (July 21, 2024) (56% of surveyed drivers in 2024 were "'absolutely not interested' in an electric vehicle, up from 51% in 2023"); Jeff Arnold, *Nearly Half of US EV Owners Would Switch To Normal Cars*, https://tinyurl.com/yc9dahun (June 27, 2024) (46% of surveyed owners of electric vehicles would switch back to conventional vehicles); Kaya Ginsky, *Many Early-Adopting EV Owners Around the World Want To Gas Up Again*, https://tinyurl.com/yc46zwk6 (June 25, 2024) (describing additional polls and surveys showing a decline in "EV adoption").

7. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including the Loquercio Dealerships) to a skewed market in which the supply of electric vehicles exceeds demand. That market distortion will impose concrete financial harms on the Loquercio Dealerships, forcing them to either keep unwanted electric vehicles on their lots or to sell those vehicles at cost (or at a loss) to make room for vehicles that their customers actually want, and potentially forcing them to increase their prices for other vehicles in order to cover the resulting additional costs. The Loquercio Dealerships will accordingly suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

8. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to the Loquercio Dealerships from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to the Loquercio Dealerships is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,854, 27,861, 28,087.

Date: September 3, 2024



Robert P. Loquercio

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF ROGER A. ELSWICK ON BEHALF OF RAECOM HOLDINGS, LLC

I, Roger A. Elswick, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Manager of Raecom Holdings, LLC, a Delaware limited liability company that operates seven automobile dealerships in Texas and Louisiana selling light- and medium-duty vehicles to consumers and businesses.

2. As the Manager of Raecom Holdings, LLC, I am responsible for maintaining the company's operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See*

EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

4. Those new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards.").

5. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 27,856 (noting that EPA's "central analysis case" anticipates 56% battery-powered electric vehicles and 13% plug-in hybrid vehicles by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"); *see also id.* at 28,087 (projecting that manufacturers "could choose to meet the standards … by using 68 percent [plug-in electric vehicles] in MY 2032").

6. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm Raecom Holdings, LLC. Consumer interest in electric vehicles remains limited, and has even shown

recent signs of declining. *See, e.g.*, Neal Bouddette, *Ford Plans More Gas Truck, Less EVs*, https://tinyurl.com/4av42sn4 (July 18, 2024) (noting the "shift in consumer sentiment" regarding electric vehicles and how "car buyers have balked at the high prices of electric cars and trucks and the hassles of charging them"); Lawrence Ulrich, *Corvette Bucked A Sports Cars Decline. Can It Thrive In An E.V. Era?* (July 21, 2024) (56% of surveyed drivers in 2024 were "'absolutely not interested' in an electric vehicle, up from 51% in 2023"); Jeff Arnold, *Nearly Half of US EV Owners Would Switch To Normal Cars*, https://tinyurl.com/yc9dahun (June 27, 2024) (46% of surveyed owners of electric vehicles would switch back to conventional vehicles); Kaya Ginsky, *Many Early-Adopting EV Owners Around the World Want To Gas Up Again*, https://tinyurl.com/yc46zwk6 (June 25, 2024) (describing additional polls and surveys showing a decline in "EV adoption").

7. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including Raecom Holdings, LLC) to a skewed market in which the supply of electric vehicles exceeds demand. That market distortion will impose concrete financial harms on Raecom Holdings LLC, forcing it to either keep unwanted electric vehicles on its lots or to sell those vehicles at cost (or at a loss) to make room for vehicles that its customers actually want, and potentially forcing it to increase its prices for other vehicles in order to cover the resulting additional costs. Raecom Holdings, LLC will

accordingly suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

8. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to Raecom Holdings, LLC from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to Raecom Holdings, LLC is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,854, 27,861, 28,087.

Date: 9/3/24

Roger A. Elswick

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

No. 24-1087
and consolidated cases

DECLARATION OF PHILLIP TARVER ON BEHALF OF TARVER MOTOR COMPANY, INC.

I, Phillip Tarver, declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the owner and Chief Executive of Tarver Motor Company, Inc., dba Lake Charles Toyota, which is a Louisiana-based corporation that operates a sales and service franchised Toyota dealership, facility, and related operations.

2. As the owner and Chief Executive of Tarver Motor Company, Inc., I am responsible for maintaining the company's operations and have extensive experience dealing with matters of supply and demand in the automobile market.

3. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See*

EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

4. Those new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards.").

5. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles. Although EPA's rule claims to be technology neutral, its practical effect is to require a significant increase in the manufacturing and sale of electric vehicles. *See, e.g.*, 89 Fed. Reg. at 27,856 (noting that EPA's "central analysis case" anticipates 56% battery-powered electric vehicles and 13% plug-in hybrid vehicles by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"); *see also id.* at 28,087 (projecting that manufacturers "could choose to meet the standards … by using 68 percent [plug-in electric vehicles] in MY 2032").

6. That artificial increase in the supply of electric vehicles—driven not by consumer demand, but by regulatory fiat—will directly harm Tarver Motor Company, Inc. Consumer interest in electric vehicles remains limited, and has even

shown recent signs of declining. *See, e.g.*, Neal Bouddette, *Ford Plans More Gas Truck, Less EVs*, https://tinyurl.com/4av42sn4 (July 18, 2024) (noting the "shift in consumer sentiment" regarding electric vehicles and how "car buyers have balked at the high prices of electric cars and trucks and the hassles of charging them"); Lawrence Ulrich, *Corvette Bucked A Sports Cars Decline. Can It Thrive In An E.V. Era?* (July 21, 2024) (56% of surveyed drivers in 2024 were "'absolutely not interested' in an electric vehicle, up from 51% in 2023"); Jeff Arnold, *Nearly Half of US EV Owners Would Switch To Normal Cars*, https://tinyurl.com/yc9dahun (June 27, 2024) (46% of surveyed owners of electric vehicles would switch back to conventional vehicles); Kaya Ginsky, *Many Early-Adopting EV Owners Around the World Want To Gas Up Again*, https://tinyurl.com/yc46zwk6 (June 25, 2024) (describing additional polls and surveys showing a decline in "EV adoption").

7. By forcing automakers to produce more electric vehicles than consumer demand warrants, EPA's new standards will subject automobile dealers (including Tarver Motor Company, Inc.) to a skewed market in which the supply of electric vehicles exceeds demand. That market distortion will impose concrete financial harms on Tarver Motor Company, Inc., forcing it to either keep unwanted electric vehicles on its lots or to sell those vehicles at cost (or at a loss) to make room for vehicles that its customers actually want, and potentially forcing it to increase its prices for other vehicles in order to cover the resulting additional costs. Tarver Motor

Company, Inc. will accordingly suffer direct economic injury from EPA's new standards and the resulting excess supply of electric vehicles as compared to consumer demand.

8. That injury will be redressed by a favorable decision from this Court. If EPA's new standards are invalidated, it will eliminate the artificial regulatory pressure to produce and sell more electric vehicles than consumer demand warrants, eliminating or at least reducing the financial injury to Tarver Motor Company, Inc. from that artificial oversupply. Indeed, EPA's own projections confirm that the injury to Tarver Motor Company, Inc. is redressable if EPA's new standards are vacated, as they demonstrate that the expected market share of electric vehicles (the share warranted by consumer demand, without regulatory intervention) will be markedly lower if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,854, 27,861, 28,087.

Date: 9/3/24

Phillip Tarver

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF NEIL CASKEY ON BEHALF OF THE NATIONAL CORN GROWERS ASSOCIATION

I declare under penalty of perjury that I am over 18 years of age and that the following is true and correct, to the best of my knowledge:

1. I am the Chief Executive Officer for the National Corn Growers Association ("NCGA").

2. NCGA is a national trade association that represents nearly 40,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 50 affiliated state associations and checkoff organizations work together to sustainably feed and fuel the world by creating and increasing opportunities for corn growers.

3. Because of my work for NCGA and its members, I am familiar with the domestic market for corn and products, such as ethanol, that are made using the corn

grown by our members. I also have experience analyzing and understanding the impacts of changes in the industry and in related industries, like the oil and gas market, that impact the livelihoods of our many members.

4. More than a third of the corn that NCGA members grow is sold to be used for ethanol production. Ethanol is a renewable fuel that forms the second-largest component of the liquid fuel that powers the Nation's vehicle fleet. Across most of the United States, refiners add ethanol to gasoline in order to (among other things) raise its octane rating to a level suitable for use in most vehicles.

5. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

6. Those new standards require automakers to produce vehicle fleets for sale in the United States that will use considerably less fuel on average than their existing vehicle fleets. EPA's new standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit. *See, e.g.*, 89 Fed. Reg. at 27,854 ("The standards are projected to result in an industry-wide average target for the light-duty fleet of 85 grams/mile (g/ mile) of CO2 in MY 2032, representing a nearly 50 percent reduction in projected fleet average [greenhouse gas] emissions target levels from the existing MY 2026 standards."). And because "[t]he amount of

[tailpipe] CO2 emissions is essentially constant per gallon combusted of a given type of fuel," 75 Fed. Reg 25,324, 25,327 (May 7, 2010), "any rule that limits tailpipe CO2 emissions is effectively identical to a rule that limits fuel consumption," *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1294 (D.C. Cir. 2015); *see also* 89 Fed. Reg. at 28,141-42 ("This action reduces CO2 emissions for the light-duty and medium-duty vehicles under revised [greenhouse gas] standards, which will result in significant reductions of the consumption of petroleum ….").

7. To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less or no liquid fuel at all. *See, e.g.*, 89 Fed. Reg. at 28,087 (noting that the "model" path of compliance anticipates "68%" electrification by MY 2032); *id.* at 27,861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]").

8. As EPA has recognized, its new standards will significantly depress the demand for liquid fuel in the United States. *See, e.g.*, 89 Fed. Reg. at 28,111 (recognizing that EPA's standards "are projected to reduce liquid fuel consumption"); *id.* at 28,129 (similar). Indeed, EPA's standards are *designed* to reduce demand for liquid fuel, by imposing stringent greenhouse gas emissions standards that will require significantly "reduced fuel consumption." *Id.* at 28,092;

see also id. at 27,858 (noting "lower demand for liquid fuel associated with the [greenhouse gas] standards.").

9. According to EPA's own projections, the new standards will reduce gasoline consumption in the United States by "780 billion gallons through 2055." *Id.* at 28,092; *see id.* at 27,861 (projecting the rule will reduce consumer spending on fuel by "$57 billion" through 2055); EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis*, EPA-420-R-24-004, 8-43 (March 2024) (finding that final rule will "reduce gasoline and diesel fuel demand by about 40 billion gallons per year toward the end of the analysis period . . . [or] 2.6 million barrels per day"). And because ethanol is blended into nearly every gallon of gasoline sold in the United States, EPA's new rule will reduce ethanol consumption by tens of millions of gallons.

10. That massive reduction in demand for ethanol will cause NCGA members significant financial injury. The revenues of NCGA members depend in substantial part on the market demand for corn, which in turn depends in substantial part on the market demand for ethanol for use in liquid fuel. The production of ethanol will use an estimated 36% of the corn produced in 2024, contributing over one-third of the value of corn revenues for U.S. farmers. *See* U.S. Dep't of Agric., *World Agricultural Supply and Demand Estimates*, at 12 (Aug. 12, 2024).

11. The EPA's projected reductions in gasoline use in its final rule will be translated into reductions in corn use. From 2027 to 2032, U.S. corn growers would lose more than 550 million bushels of demand as compared to the baseline, with annual demand loss exceeding 1 billion bushels per year by 2041. *See* Krista Swanson, *Corn Demand Takes a Hit in EPA's New Tailpipe Rule*, https://tinyurl.com/5n7dypz2 (Apr. 8, 2024). At today's corn prices, that is over $4 billion in lost revenue for U.S. corn growers—and losses could be several billion dollars higher in a higher-corn-price environment.

12. In short, by reducing demand for (and consumer spending on) liquid fuel, EPA's new standards will reduce demand for ethanol, and deprive corn growers of revenue that they would otherwise have obtained through sale of their corn for use in ethanol production. For instance, NCGA member Kelly Nieuwenhuis grows and sells 100% of his corn each year for use in ethanol production. By reducing demand for (and consumer spending on) liquid fuel, EPA's new standards will reduce demand for ethanol, and deprive NCGA members like Kelly Nieuwenhuis of revenues that they would otherwise have obtained through the sale of their corn for use in ethanol production.

13. That injury will be redressed by a favorable decision from this Court, as the demand for liquid fuel (and thus the demand for corn to make ethanol) will increase if EPA's new standards are invalidated, eliminating or at least reducing the

financial injury that the standards would otherwise cause to NCGA and its members. Indeed, EPA's own projections confirm that the injury to NCGA and its members is redressable if EPA's new standards are vacated, as they demonstrate that the demand for liquid fuel will be substantially higher if the standards are not in effect. *See, e.g.*, 89 Fed. Reg. at 27,858, 27,861, 28,092, 28,111, 28,129; *Regulatory Impact Analysis*, *supra*, at 8-43.

Date: September 4, 2024

Neil Caskey

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF JOHN MARTINI

I, John Martini, declare under penalty of perjury that the following is true and correct, to the best of my knowledge:

1. I am the Manager of Corporate Policy for Chevron Corporation ("Chevron"), which is an energy company specializing in oil and gas and renewable fuels exploration, production, refining, distribution, and marketing. Chevron's subsidiary Chevron U.S.A. Inc. is a major refiner of petroleum products in the U.S. Chevron's subsidiary Renewable Energy Group, Inc. produces renewable transportation fuels, and it is developing innovative renewable fuel technologies. Chevron's subsidiaries also market petroleum products and biofuels in the U.S., including liquid transportation fuels.

2. As part of my work for Chevron, I am familiar with Chevron's analyses of the impacts of various policies and market scenarios on Chevron's subsidiaries, including regulatory changes, on the transportation fuels market.

3. Chevron is a member of the American Petroleum Institute ("API"), and Chevron's subsidiary Chevron U.S.A. Inc. is a member of the American Fuel & Petrochemical Manufacturers ("AFPM").

4. EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years 2027 through 2032. *See* Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles, 89 Fed. Reg. 27842 (April 18, 2024) ("Standards"). EPA's new Standards directly affect Chevron subsidiaries' transportation fuel businesses and customers.

5. As stated in Chevron's 2023 Climate Change Resilience Report,[1] Chevron believes that the future of energy is lower carbon. Chevron continues to take actions that attempt to help lower the carbon intensity of its operations while meeting the world's demand for energy. Chevron believes that many of the potential pathways to achieving the goals of the Paris Agreement include the continued use of oil and gas.

[1] Chevron, Advancing Energy Progress: 2023 Climate Change Resilience Report, https://www.chevron.com/-/media/chevron/sustainability/documents/climate-change-resilience-report.pdf.

6. Chevron also supports well-designed climate policy. As stated in Chevron's comment letter for the rulemaking on the Standards, it believes that broad, market-based mechanisms are the most efficient approach to addressing greenhouse gas (GHG) emission reductions, and any direct regulations should be narrowly and efficiently targeted to enable cost-effective lower carbon opportunities not addressed by carbon pricing or innovation policies. In the transportation sector, Chevron supports technology neutral policies that cost-effectively drive GHG emission reductions, rather than policies that artificially pick winners and losers among various technology options.

7. EPA's Standards significantly limit the average amount of carbon dioxide that automakers' fleets may emit, which necessarily require automobile manufacturers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets.

8. To reach the new Standards, EPA itself has recognized that automobile manufacturers must dramatically increase the proportion of their fleets made up of electric vehicles which use significantly less liquid fuel or no liquid fuel at all. *See, e.g.*, 89 Fed. Reg. at 28087 (noting that "model" path of compliance anticipates "68%" electrification by MY 2032); *id.* at 27861 (projecting that "the MY 2032 fleet will be made up of a larger share of [electric vehicles]"). EPA projected that electric vehicles would constitute a much smaller percentage of the market in the "no action"

scenario without these Standards. *See id.* at 28,087 (predicting 47% electrification by MY 2032).

9. By EPA's own admission, the Standards are designed to reduce demand for gasoline and diesel in light- and medium-duty vehicles, causing significantly "reduced fuel consumption." *See, e.g.*, 89 Fed. Reg. at 27900 ("[T]his rule may reduce the demand for gasoline and diesel for light-duty and medium-duty vehicles domestically and affect the petroleum refining industry . . . ."); *id.* at 28092. Reports cited in EPA's Regulatory Impact Analysis estimate that the Standards will "reduce gasoline and diesel fuel demand by about 40 billion gallons per year toward the end of the analysis period . . . [or] 2.6 million barrels per day." EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles: Regulatory Impact Analysis*, EPA-420-R-24-004, 8-43 (March 2024). According to EPA's own projections, the rule will reduce U.S. gasoline consumption by "780 billion gallons through 2055." 89 Fed. Reg. at 28092; *see also id.* at 27861 (projecting the rule will reduce consumer spending on fuel by "$57 billion" through 2055). By artificially reducing demand for liquid transportation fuels, EPA's Standards will have a direct financial impact on Chevron by skewing the market and reducing the sales that Chevron, through its subsidiaries, would otherwise have made.

10. Chevron's subsidiary Chevron U.S.A. Inc. operates five wholly owned refineries in the United States and has a total crude refining capacity in the U.S. of over one million barrels per day.[2] As EPA explains, its new Standards will directly impact domestic refining, as "93 percent of the reduced liquid fuel demand [will] result[] in reduced domestic refining." 89 Fed. Reg. at 28101.

11. Chevron's subsidiary Renewable Energy Group, Inc. (CREG) also provides liquid transportation fuels, including bio-based renewable diesel and biodiesel, and operates multiple active biorefinieries in the U.S. These fuels can generally be used in a wide range of diesel engines. EPA's Standards would artificially reduce demand for these fuels.

12. These harms will be redressed by a favorable decision from this Court, as the projected impacts on domestic marketing and refining of liquid fuels will not occur if the Standards are invalidated. *See, e.g.,* 89 Fed. Reg. at 28092 (estimating a reduction in gasoline consumption of "780 billion gallons through 2055"); *see also, e.g.*, *id.* at 28111.

13. EPA's Standards also harm Chevron subsidiaries' efforts to develop creative and effective ways to meet the world's energy needs. By forcing the shift

[2] Chevron, Delivering Higher Returns: 2023 Supplement to the Annual Report 21, https://www.chevron.com/-/media/shared-media/documents/2023-chevron-annual-report-supplement.pdf (noting United States-Consolidated refinery capacities of 1,059,000 barrels per day at year-end 2023).

towards electric vehicles, EPA disincentivizes other lower-carbon innovations to fuel existing light-duty and medium-duty vehicles that could help achieve the policy goal of reduced GHG emissions. For example, Chevron's subsidiaries are developing and testing blends of lower carbon intensity renewable gasoline. With supportive policies, these renewable gasoline blends could be used to lower the lifecycle carbon emissions of existing cars on the road. Instead, EPA's new Standards disincentivize those innovations which, in Chevron's view, will be needed along with electric vehicles to achieve the policy goal of reduced GHG emissions.

14. Chevron believes an approach that embraces all forms of technologies and solutions is critical to achieving climate and air quality policy goals with transportation options that are affordable and accessible to everyone. EPA's Standards are contrary to that approach and deeply flawed. Among other things, EPA's Standards fail to properly account for the true emissions of electric vehicles. As Chevron noted in its comment letter, a lifecycle approach to carbon accounting would have facilitated informed decision making throughout the value chain. Carbon data that is consistent, reliable, and transparent across sectors, products, and firms of all sizes can be used to understand the carbon performance associated with a good or service at each stage of the lifecycle, from production to manufacturing to transport.

15. Unfortunately, EPA declined to conduct this lifecycle emissions comparison, instead electing to force adoption of a single technology (electric vehicles) at a rate that would require wholesale transformation of electric energy generation and distribution infrastructure on an unprecedented, abbreviated time scale. On the other hand, a market-based approach allowing multiple technologies to compete would allow battery-powered and lower-carbon intensity fueled vehicles (including hybrids at rates beyond the Standards) to attempt to achieve GHG reduction targets in a cost-effective manner.

16. Finally, the EPA Standards force a single technology that does not appear to be adequately supported by consumer demand on pace with EPA's Standards or by sufficient nationwide charging infrastructure.[3]

Dated: 9/5/24

John Martini

[3] *See, e.g.,* Ellen R. Delisio, *Consumer Interest in EVs Is Declining*, AAA (June 25, 2024), https://ev.aaa.com/articles/consumer-interest-in-evs-is-declining-surveys-show/ (reporting that only 18% of U.S. adults indicated that they were likely to buy an EV); Am. Transp. Research Inst., *Charging Infrastructure Challenges for the U.S. Electric Vehicle Fleet* (Dec. 2022), https://truckingresearch.org/2022/12/charging-infrastructure-challenges-for-the-u-s-electric-vehicle-fleet-december-2022-full-report/.

No. 24-1158
(Consolidated with 24-1087, 24-1100, 24-1132, 24-1195, 24-1196, 24-1197, and 24-1206)

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

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0829; FRL-8953-04-OAR

DECLARATION OF LEE BROWN

I, Lee Brown, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Western States Trucking Association, Inc. ("WSTA"), formerly known as California Dump Truck Owners Association, a

named petitioner in the above-captioned suit. Our organization's articles of incorporation, and subsequent amendments, are attached herein as Exhibits A–C.

3. WSTA is a nonprofit corporation formed for the general purpose of "protect[ing] the interests of the owners and operators of trucks using the highways of the State of California." Exhibit A at 1 (WSTA articles of incorporation). We additionally "conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of the shipping public, and those engaged in the transportation business . . . ." *Id.* at 1–2. WSTA's purpose is also, in part, "to sue and be sued" in the interest of its members. *Id.* at 2. In short, we represent the interests of multiple member trucking companies that transport cargo and goods within the state of California and beyond.

4. WSTA's purpose is generally to support its trucking company members in all aspects of their businesses, including but not by way of limitation, the ability of their members to maintain their trucks for their full useful lives and to purchase replacement trucks at reasonable cost that will not adversely impact their businesses.

5. On April 18, 2024, the Environmental Protection Agency ("EPA") promulgated a final regulation entitled "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles" ("LD and MD Regulations"). *See* 89 Fed. Reg. 27842 *et seq.* (Apr. 18, 2024).

6. The LD and MD Regulations establish new, more stringent emission standards for criteria pollutants and greenhouse gases for light-duty and Class 2b and 3 medium-duty vehicles that will be phased in over model years 2027 through 2032. *Id.*

7. WSTA and its members have advocated against overly stringent EPA light-duty and medium-duty vehicle emissions regulations.

8. WSTA's members include Santoro Transportation, Inc. ("Santoro Transportation"), whose CEO is Thomas Santoro. The contents of Thomas Santoro's declaration are hereby incorporated herein in their entirety.

9. Members of WSTA, in addition to Santoro Transportation, are also injured by EPA's LD and MD Regulations, and WSTA has instituted this lawsuit on behalf of all of our members.

10. As detailed in the declaration of Thomas Santoro, WSTA members will be injured by the LD and MD Regulations, which will directly affect their profitability, market share, and overall economic stability.

11. The LD and MD Regulations will limit the types of vehicles available that are necessary to conduct WSTA members' business activities, making them choose between purchasing costly and unreliable vehicles and losing significant profits.

12. By unnecessarily increasing the stringency of emissions requirements for light-duty and medium-duty vehicles the LD and MD Regulations limit the vehicles that can be sold to and operated by WSTA's members. Because several of WSTA's members, including Santoro Transportation, own fleets of light-duty and medium-duty vehicles, they will be forced to purchase expensive vehicles that meet the requirements of the LD and MD Regulations to continue operating their businesses, thereby losing revenue.

13. The LD and MD Regulations limit the availability of vehicles needed for WSTA members to profitably conduct their businesses. The sales limitations that the LD and MD Regulations impose increase market scarcity of reliable and cost-effective diesel-powered light-duty and medium-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

14. As fewer diesel-powered light-duty and medium-duty vehicles remain on the road thanks to the knock-on effects of the LD and MD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

15. If WSTA's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such

vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

16. EPA promulgated these regulations knowing full well that their approval would cause businesses like those represented by WSTA to purchase electric trucks or lose significant business. These regulations will increase WSTA member costs by a significant amount.

17. In summary, due to existing externalities, including a lack of nationwide or statewide charging infrastructure, reliability problems with existing electric light-duty and medium-duty vehicles, and the higher cost of new light-duty and heavy-duty vehicles when compared to traditional diesel models, multiple WSTA members may not be able to continue running their businesses profitably now that the agency action under review has taken effect.

18. But for EPA's decision to promulgate the LD and MD Regulations, the businesses of many WSTA members would not suffer economic injury. As WSTA's members are directly affected by EPA's decision in a manner that will negatively impact their businesses, WSTA may stand in the shoes of its members and "sue" on their behalf, as is its associational purpose. Exhibit A at 2.

19. The Court can redress WSTA members' injuries by setting aside these EPA regulations, preventing these job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, Lee Brown, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 3rd day of September, 2024, in Upland, in the State of California.

LEE BROWN
Executive Director
Western States Trucking Association, Inc.

EXHIBIT A

ARTICLES OF INCORPORATION

of

CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION

(A California non-profit corporation)

Know all men by these presents that we, the persons whose names are signed hereto, have associated ourselves together, to become incorporated under the laws of the State of California, for the transaction of business in said state, and for such purpose we adopt the following articles of incorporation:

ARTICLE I.

The name of this corporation is:

California Dump Truck Owners Association.

It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

ARTICLE II.

The purposes for which this corporation is formed are:

(a) Generally to protect the interests of the owners and operators of trucks using the highways of the State of California.

(b) To conduct public educational campaigns for the purpose of preventing legislation adverse to the interests of

the shipping public, and those engaged in the transportation business, and particularly those engaged in the dump trucking business.

(c) To educate the producer and shipping business in general regarding the many advantages of using independent dump trucking operators.

(d) To promote general safety and to prove to the public that the truckmen are highly efficient, safe drivers, and gentlemen of the highways.

(e) To teach the public that the trucks owned and operated by the members of this association are reliable equipment, manned by competent, safe operators, and that the trucks are capable of carrying the loads that they are designed to carry anywhere, any time, and on time at reasonable prices.

(f) To sue and be sued.

(g) To contract and be contracted with.

(h) To receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and to otherwise acquire and hold all property, real or personal, including shares of stock, bonds and securities of other corporations.

(i) To act as trustee under any trust incidental to the principal objects of the corporation, and to receive, hold, administer, and expend funds and property subject to such trust.

(j) To convey, exchange, lease, mortgage, encumber,

transfer upon trust or otherwise dispose of all property, real or personal.

(k) To borrow money, contract debts, and issue bonds, notes and debentures, and secure the same.

(l) To do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

(m) And incidental to the main purposes of this non-profit corporation to carry on any business whatsoever which this corporation may deem proper or convenient in connection with any of the foregoing purposes or otherwise, or which may be calculated directly or indirectly to promote the interests of this non-profit corporation or to enhance the value of its property; to conduct its business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries.

The foregoing statement of purposes shall be construed as a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in nowise limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be regarded as independant purposes.

ARTICLE III.

The existence of this corporation is to be perpetual.

ARTICLE IV.

The county in this state where the principal office

for the transaction of the business of this non-profit corporation is to be located is the county of Los Angeles.

ARTICLE V.

The names and addresses of the persons who are to act in the capacity of directors until the selection of their successors and who shall be known as directors, are:

NAMES:	ADDRESSES:
Freasie Jones	1718 E. Plymouth, Long Beach
Frank Heidlebaugh	3125 E. 11th St. Long Beach
J. A. Frethiem	800 Edgewood, Inglewood
Barney Bryce	1111 Raymond Ave., Long Beach
E. T. Seibert	Box 62, Route 3, Santa Ana
E. M. Balcom	5632 Lankershim Blvd., No. Hollywood
Leonard F. Schempp	5128 S. Gramercy, L.A.
H. J. Gebbin	1002 Glickman Ave., El Monte
H. L. Willingham	2103 Pontius, West L.A.
T. E. Milligan	645 E. 79th St., L.A.
Edw. Davis	6316 11th Ave., L.A.
George Harrop	1381 No. Catalina St., Burbank

The number of directors shall remain at twelve until changed by an amendment to the by-laws adopted pursuant to this authority.

ARTICLE VI.

The authorized number and qualifications of the members of this organization, the different classes of membership, the property, voting and other rights, and privileges of each class of membership, and the liability of each or all classes, to dues or assessments and the method of collection thereof, may be set forth in the by-laws of this corporation, except that

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia F. Runyon
Notary Public in and for the County of Los Angeles, State of California

(Notarial Seal)

My Commission Expires Dec. 4, 1944

We, the undersigned, desiring to associate with the first directors for the purpose of forming California Dump Truck Owners Association , a California non-profit corporation, have subscribed our names to these articles of incorporation, have subscribed our names to these articles of incorporation.

MEMBERS

NAMES:	ADDRESSES:
Ed. W. Davis	6316 11th Ave. L.A.
Barney J. Bryce	1111 Raymond Ave. L.B.
Frank Heidlebaugh	3125 E. 11th St. L.B.
T. E. Milligan	64[illegible] 79 St., L.A.
E. M. Balcom	5632 Lankershim Blvd. No.Ho.
George Harrop	1381 No. Catalina St. Burbank
E. T. Seibert	Box 62 Route #3, Santa Ana
H. L. Wellingham	2103 Pontius West L.A.
H. J. Gebelin	1002 Glickman Ave. El Monte
A and W Trucking Service (By J. Abromson)	1180 So. Boyle Ave. L.A.
Leonard F. Schempp	5128 So. Gramercy Pl. L.A.
J. P. Gross	5821 Priory Bell
Rudolph Tenold	6019 So. Hilton Pl L.A.
J. P. Tutor	127 E. Ave. 39 L.A.
J.C.C. Verst	271 [illegible] L.A.

voting rights or privileges shall be restricted to regular members as defined in the by-laws.

We, the persons who are to act in the capacity of first directors, hereby subscribe to the foregoing articles in the corporation of California Dump Truck Owners Association this 13th day of June, 1941.

Frank Heidlebaugh
Barney Bryce

E. T. Seibert

E. M. Balcom

Leonard F. Schempp

H. J. Gebelin

H. L. Willingham

T. E. Milligan

Ed. W. Davis

George Harrop

Freasie Jones
J. A. Frethiem

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 13th day of June, in the year one thousand nine hundred and forty-one, before me Virginia F. Runyon a Notary Public in and for said county of Los Angeles, state of California, residing therein, duly commissioned and sworn, personally appeared the above twelve (12) incorporators, Frank Heidlebaugh, Barney Bryce, E. T. Seibert, E. M. Balcom, Leonard F. Schempp, H. J. Gebelin, H. L. Willingham, T. E. Milligan, Ed. W. Davis, Freasie Jones, George Harrop, J. A. Frethiem,

known to me to be the persons whose names are subscribed to the foregoing articles of incorporation, and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Virginia E. Runyon
Notary Public in and for the county of Los Angeles, State of California
My Commission expires Dec. 4, 1944

(Notarial Seal)

EXHIBIT B

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

The undersigned certify that:

1. They are the president and the secretary, respectively, of California Dump Truck Owners Association, a California corporation.

2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

   The name of this corporation is:
   California Construction Trucking Association.
   It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 01/05/12 _____
Fred Martin, President

DATE: 01/05/12 _____
Mary Proctor, Secretary

EXHIBIT C

NGTO

A0772453

0180202

CERTIFICATE OF AMENDMENT OF
ARTICLES OF INCORPORATION

FILED
Secretary of State
State of California
JUL 07 2015

The undersigned certify that:

1. They are the president and the secretary, respectively, of California Construction Trucking Association, a California corporation.

2. Article I of the Articles of Incorporation of this corporation is amended to read as follows:

   The name of this corporation is:
   Western States Trucking Association.
   It is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of the members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: 7-1-2015 Susan Jones

Susan Jones, President

DATE: 6/30/2015

Mary Proctor, Secretary

No. 24-1158
(Consolidated with 24-1087, 24-1100, 24-1132, 24-1195, 24-1196, 24-1197, and 24-1206)

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

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0892; FRL-8953-04-OAR

DECLARATION OF MICHAEL LEWIS

I, Michael Lewis, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the executive director of Construction Industry Air Quality Coalition ("CIAQC"). Our organization's articles of incorporation are attached hereto as Exhibit A.

3. CIAQC is a nonprofit California trade association representing the interests of other California non-profit trade associations and their members whose air emissions are regulated by California state, regional, and local regulations, as well as federal regulations.

4. CIAQC's specific purpose is "to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies." Exhibit A at 1 (CIAQC articles of incorporation). To those ends, CIAQC may "engage in any lawful act or activity for which a corporation may be organized under [applicable California law]." *Id.* This includes bringing legal challenges on behalf of its members. We represent the interests of multiple member construction companies that transport cargo and goods within the state of California and beyond in connection with construction activities.

5. On April 18, 2024, the Environmental Protection Agency ("EPA") promulgated a final regulation entitled "Multi-Pollutant Emissions Standards for

Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles" ("LD and MD Regulations"). *See* 89 Fed. Reg. 27842 *et seq.* (Apr. 18, 2024).

6. The LD and MD Regulations establish new, more stringent emission standards for criteria pollutants and greenhouse gases for light-duty and Class 2b and 3 medium-duty vehicles that will be phased in over model years 2027 through 2032. *Id.*

7. CIAQC's members are injured by EPA's LD and MD Regulations, and CIAQC has instituted this lawsuit on behalf of its members.

8. The LD and MD Regulations will limit the types of vehicles available that are necessary to conduct CIAQC members' business activities, making them choose between purchasing costly and unreliable vehicles required by the regulations and losing significant profits.

9. By unnecessarily increasing the stringency of emissions requirements for light-duty and medium-duty vehicles the LD and MD Regulations limit the vehicles that can be sold to and operated by CIAQC's members., which will be forced to purchase expensive vehicles that meet the requirements of the LD and MD Regulations to continue operating their businesses, thereby losing revenue.

10. The LD and MD Regulations limit the availability of vehicles needed for CIAQC members to profitably conduct their businesses. The sales limitations that the LD and MD Regulations impose increase market scarcity of reliable and

cost-effective diesel-powered light-duty and medium-duty vehicles, parts, and supplies necessary to maintaining a profitable fleet.

11. As fewer diesel-powered light-duty and medium-duty vehicles remain on the road thanks to the knock-on effects of the LD and MD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease.

12. If CIAQC's members wish to continue operating, these regulations will eventually force them to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. Their employees will lose valuable time and be made to risk their lives due to these regulations.

13. But for EPA's decision to promulgate the LD and MD Regulations, the businesses of many CIAQC members would not suffer economic injury. As CIAQC's members are directly affected by EPA's decision in a manner that will negatively impact their businesses, CIAQC may stand in the shoes of its members for purposes of this litigation.

14. CIAQC's members frequently operate in locations where there is no power because CIAQC members are installing power at that specific location, which only further complicates the use of all-electric vehicles.

15. The Court can redress CIAQC members' injuries by setting aside these EPA regulations, preventing these job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, Michael Lewis, declare under penalty of perjury that the foregoing is true and correct.

Executed on the 2 day of September, 2024, in Los Angeles County, in the State of California.

Michael W. Lewis

MICHAEL LEWIS
Executive Director
Construction Industry Air Quality Coalition, Inc.

EXHIBIT A

1954125

FILED
in the office of the Secretary of State
of the State of California

NOV 17 1995

BILL JONES, Secretary of State

ARTICLES OF INCORPORATION OF CONSTRUCTION INDUSTRY AIR QUALITY COALITION

I.
NAME

The name of the corporation is Construction Industry Air Quality Coalition.

II.
PURPOSES

2. (A) This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

(B) The specific purpose of this corporation is to obtain and provide information to its members concerning environmental regulatory issues affecting the members, assist in the development of environmental regulatory strategies and legislation that will balance the goals of a healthy environment and a healthy local economy, act as a conduit for information from members to regulatory agencies and legislators concerning the effect of proposed regulations and legislation on its members, and to cooperate with other persons and associations in the development of reasonable and effective environmental improvement strategies.

III.
AGENT FOR SERVICE OF PROCESS

The name and address in the State of California of this corporation's initial agent for service of process is: Michael Lewis, 1330 South Valley Vista Drive, Diamond Bar, California 91765.

IV.
OTHER PROVISIONS

A. An existing unincorporated association, Construction Industry Air Quality Coalition, is being incorporated by the filing of these articles.

B. The Bylaws may provide for two classes of membership: general and associate.

C. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

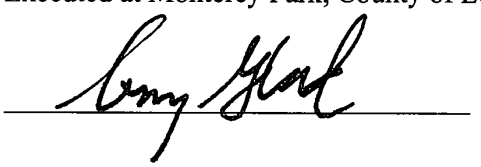
Dated: September 5, 1995

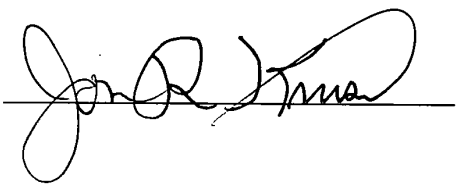
Amy Glad

Jon R. Kruse

Amy Glad and Jon R. Kruse declare under penalty of perjury under the laws of the State of California that they are two of the Board Members of Construction Industry Air Quality Coalition, the subject of the Articles of Incorporation attached to this declaration, and further declare that Construction Industry Air Quality Coalition has duly authorized and approved its incorporation by means of the attached Articles in accordance with its rules and procedures.

Executed at Monterey Park, County of Los Angeles, California, on September 5, 1995





STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 1286
RANCHO CORDOVA, CA. 95741-1286

November 17, 1995

In reply refer to
340:G :PTS

CONSTRUCTION INDUSTRY AIR QUALITY
COALITION
1330 SOUTH VALLEY
VISTA DRIVE
DIAMOND BAR CA 91765

Purpose	:	BUSINESS LEAGUE
Code Section	:	23701e
Form of Organization	:	Corporation
Accounting Period Ending	:	December 31
Organization Number	:	

You are exempt from state franchise or income tax under the section of the Revenue and Taxation Code indicated above.

This decision is based on information you submitted and assumes that your present operations continue unchanged or conform to those proposed in your application. Any change in operation, character, or purpose of the organization must be reported immediately to this office so that we may determine the effect on your exempt status. Any change of name or address also must be reported.

In the event of a change in relevant statutory, administrative, judicial case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your application upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes should they occur. This paragraph constitutes written advice, other than a chief counsel ruling, within the meaning of Revenue and Taxation Code Section 21012 (a)(2).

You may be required to file Form 199 (Exempt Organization Annual Information Return) on or before the 15th day of the 5th month (4 1/2 months) after the close of your accounting period. See annual instructions with forms for requirements.

You are not required to file state franchise or income tax returns unless you have income subject to the unrelated business income tax under Section 23731 of the Code. In this event, you are required to file Form 109 (Exempt Organization Business Income Tax Return) by the 15th day of the 5th month (4 1/2 months) after the close of your annual accounting period.

November 17, 1995
CONSTRUCTION INDUSTRY AIR QUALITY
Page 2

If the organization is incorporating, this approval will expire unless incorporation is completed with the Secretary of State within 60 days.

Exemption from federal income or other taxes and other state taxes requires separate applications.

A copy of this letter has been sent to the Office of the Secretary of State.

P SHEK
EXEMPT ORGANIZATION UNIT
CORPORATION AUDIT SECTION
Telephone (916) 845-4171

EO :
cc: CURTIS L. COLEMAN

COPY

No. 24-1132

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

WARREN PETERSEN, President of the Arizona State Senate,

BEN TOMA, Speaker of the Arizona House of Representatives, and

ARIZONA TRUCKING ASSOCIATION,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and

MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency,

Respondents.

DECLARATION OF ANTHONY BRADLEY

I, Anthony Bradley, declare as follows:

1. I am President and Chief Executive Officer at the Arizona Trucking Association. I have served in these positions for more than 10 years. This experience has provided me with a deep understanding of the Arizona Trucking Association, its members, and the transportation industry.

2. The Arizona Trucking Association was founded in 1937.

3. It is the Arizona Trucking Association's mission to represent its members before legislative, regulatory and enforcement agencies, to serve as the trucking industry's primary voice on transportation and other public policy issues and to provide members with cost-effective services that can help them comply with all relevant laws and regulations.

4. Based on my experience and knowledge of the Arizona Trucking Association and its members, as well as interactions with individual members, I am aware of how the Final Rule is expected to impact Arizona Trucking Association members.

5. Arizona Trucking Association members purchase and use light- and medium-duty vehicles that are subject to the Final Rule, such as light trucks, large pickups, and vans.

6. The Arizona Trucking Association projects that several of its members will be forced to purchase and use electric light- and medium-duty vehicles as a result of the Final Rule.

7. Higher upfront costs to purchase electric vehicles and necessary equipment will impact Arizona Trucking Association members because of issues relating to cash flow, time-value of money, and other business considerations.

8. Arizona Trucking Association members will suffer even greater financial harm if EPA's cost estimates are incorrect.

9. The lack of sufficient public charging, the time spent waiting for a charger to become available, and the time spent waiting for a vehicle to be fully charged will disrupt business activities by Arizona Trucking Association members.

10. The Arizona Trucking Association's mission is to represent its members and serve as their voice on public policy issues impacting the transportation industry, which is why the Arizona Trucking Association has brought this challenge.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 17, 2024

/s/ Anthony Bradley
ANTHONY BRADLEY

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF JOSH ROE OF KANSAS CORN GROWERS ASSOCIATION

I, Josh Roe, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Chief Executive Officer of the Kansas Corn Growers Association, a nonprofit trade association based in Kansas with a membership of corn farmers, as well as their supporters and members of corn farming-related industries. We operate to promote the general commercial, legislative, and other common interests of our members.

2. I am familiar with all aspects of the Association's work and with the market for corn and products, such as ethanol, that are made using the corn grown by our members.

3. Kansas is one of the nation's leading corn producing states, with a net production of more than 600 million bushels of corn. The majority of this corn is used as a feedstock for ethanol production.

4. The ethanol industry supports nearly 400,000 jobs in more than 24 states. Ethanol contributes more than $54 billion to the national GDP and profitably processed approximately 5.3 billion bushels of corn in 2023.

5. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating—a measure of a fuel's resistance to "knocking" in an engine—reducing vehicles' fuel usage, net greenhouse gas emissions, and the emission of toxic chemicals such as benzene. Across most of the United States, refiners add 10% ethanol to gasoline in part to raise its octane rating to a level suitable for use in most vehicles. In 2022, alone, the use of ethanol reduced greenhouse gas emissions by more than 50 million metric tons, equivalent to the savings of turning off 133 natural gas-fired power plants. *See* EPA, *Greenhouse Gas Equivalencies Calculator* (Aug. 30, 2024), https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

6. The United States Environmental Protection Agency promulgated a final agency action entitled *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27,842 (Apr. 18, 2024). The final rule sets increasingly stringent greenhouse-gas standards for light-

and medium-duty vehicles for model years beginning with 2027. *Id.* at 27,854–55. Automakers cannot feasibly comply with the standards unless they dramatically increase their production of electric vehicles and decrease the production of conventional vehicles which consume liquid fuels. *See, e.g., id.* at 28,057–61.

7. By design, EPA's emission standards will reduce the demand for liquid fuels and their components by displacing an increasing number of combustion-engine vehicles with electric and hybrid vehicles that use little to no liquid fuel. *See id.* at 28,141 ("through 2055 these standards will result in a reduction of 780 billion gallons of retail gasoline consumption"). Because ethanol is blended into nearly every gallon of gasoline sold in the United States, this rule will reduce ethanol consumption by tens of billions of gallons.

8. While these standards are in effect, they will drive down demand for ethanol.

9. This demand destruction harms the Kansas Corn Growers Association and its members by decreasing demand for the corn they grow.

10. These financial harms affect our members and also redound to the Association itself, which will lose funding it uses to pursue its mission of advocating for the interests of its members.

11. All these injuries would be substantially ameliorated if EPA's decision

were set aside. As EPA's analysis shows, without the rule, automakers would produce more gasoline-powered light- and medium-duty vehicles, mitigating any reduction in gasoline and ethanol consumption. *Id.* at 28,057–61.

Dated: September 3, 2024

Josh Roe

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF DAVE LOOS OF ILLINOIS CORN GROWERS ASSOCIATION

I, Dave Loos, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Director of Biofuels and Research of the Illinois Corn Growers Association, a nonprofit trade association based in Illinois with a membership of over 4,000 corn farmers, as well as their supporters and members of corn farming-related industries. We operate to promote the general commercial, legislative, and other common interests of our members.

2. I am familiar with all aspects of the Association's work and with the market for corn and products, such as ethanol, that are made using the corn grown by our members.

3. Illinois is one of the nation's leading corn producing states, with a net production of more than 2 billion bushels of corn. The majority of this corn is used as a feedstock for ethanol production.

4. The ethanol industry supports nearly 400,000 jobs in more than 24 states. Ethanol contributes more than $54 billion to the national GDP and profitably processed approximately 5.3 billion bushels of corn in 2023.

5. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating—a measure of a fuel's resistance to "knocking" in an engine—reducing vehicles' fuel usage, net greenhouse gas emissions, and the emission of toxic chemicals such as benzene. Across most of the United States, refiners add 10% ethanol to gasoline in part to raise its octane rating to a level suitable for use in most vehicles. In 2022, alone, the use of ethanol reduced greenhouse gas emissions by more than 50 million metric tons, equivalent to the savings of turning off 133 natural gas-fired power plants. *See* EPA, *Greenhouse Gas Equivalencies Calculator* (Aug. 30, 2024), https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

6. The United States Environmental Protection Agency promulgated a final agency action entitled *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27,842 (Apr. 18, 2024). The final rule sets increasingly stringent greenhouse-gas standards for light-

and medium-duty vehicles for model years beginning with 2027. *Id.* at 27,854–55. Automakers cannot feasibly comply with the standards unless they dramatically increase their production of electric vehicles and decrease the production of conventional vehicles which consume liquid fuels. *See, e.g., id.* at 28,057–61.

7. By design, EPA's emission standards will reduce the demand for liquid fuels and their components by displacing an increasing number of combustion-engine vehicles with electric and hybrid vehicles that use little to no liquid fuel. *See id.* at 28,141 ("through 2055 these standards will result in a reduction of 780 billion gallons of retail gasoline consumption"). Because ethanol is blended into nearly every gallon of gasoline sold in the United States, this rule will reduce ethanol consumption by tens of billions of gallons.

8. While these standards are in effect, they will drive down demand for ethanol.

9. This demand destruction harms the Illinois Corn Growers Association and its members by decreasing demand for the corn they grow.

10. These financial harms affect our members and also redound to the Association itself, which will lose funding it uses to pursue its mission of advocating for the interests of its members.

11. All these injuries would be substantially ameliorated if EPA's decision

were set aside. As EPA's analysis shows, without the rule, automakers would produce more gasoline-powered light- and medium-duty vehicles, mitigating any reduction in gasoline and ethanol consumption. *Id.* at 28,057–61.

Dated: September 3, 2024

Dave Loos

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF LANE HOWARD OF MISSOURI CORN GROWERS ASSOCIATION

I, Lane Howard, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Director of Market Development of the Missouri Corn Growers Association, a nonprofit trade association based in Missouri with a membership of corn farmers, as well as their supporters and members of corn farming-related industries. We operate to promote the general commercial, legislative, and other common interests of our members.

2. I am familiar with all aspects of the Association's work and with the market for corn and products, such as ethanol, that are made using the corn grown by our members.

3. Missouri is one of the nation's leading corn producing states, with a net production of more than 560 million bushels of corn. The majority of this corn is used as a feedstock for ethanol production.

4. The ethanol industry supports nearly 400,000 jobs in more than 24 states. Ethanol contributes more than $54 billion to the national GDP and profitably processed approximately 5.3 billion bushels of corn in 2023.

5. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating—a measure of a fuel's resistance to "knocking" in an engine—reducing vehicles' fuel usage, net greenhouse gas emissions, and the emission of toxic chemicals such as benzene. Across most of the United States, refiners add 10% ethanol to gasoline in part to raise its octane rating to a level suitable for use in most vehicles. In 2022, alone, the use of ethanol reduced greenhouse gas emissions by more than 50 million metric tons, equivalent to the savings of turning off 133 natural gas-fired power plants. *See* EPA, *Greenhouse Gas Equivalencies Calculator* (Aug. 30, 2024), https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

6. The United States Environmental Protection Agency promulgated a final agency action entitled *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27,842 (Apr. 18, 2024). The final rule sets increasingly stringent greenhouse-gas standards for light-

and medium-duty vehicles for model years beginning with 2027. *Id.* at 27,854–55. Automakers cannot feasibly comply with the standards unless they dramatically increase their production of electric vehicles and decrease the production of conventional vehicles which consume liquid fuels. *See, e.g., id.* at 28,057–61.

7. By design, EPA's emission standards will reduce the demand for liquid fuels and their components by displacing an increasing number of combustion-engine vehicles with electric and hybrid vehicles that use little to no liquid fuel. *See id.* at 28,141 ("through 2055 these standards will result in a reduction of 780 billion gallons of retail gasoline consumption"). Because ethanol is blended into nearly every gallon of gasoline sold in the United States, this rule will reduce ethanol consumption by tens of billions of gallons.

8. While these standards are in effect, they will drive down demand for ethanol.

9. This demand destruction harms the Missouri Corn Growers Association and its members by decreasing demand for the corn they grow.

10. These financial harms affect our members and also redound to the Association itself, which will lose funding it uses to pursue its mission of advocating for the interests of its members.

11. All these injuries would be substantially ameliorated if EPA's decision

were set aside. As EPA's analysis shows, without the rule, automakers would produce more gasoline-powered light- and medium-duty vehicles, mitigating any reduction in gasoline and ethanol consumption. *Id*. at 28,057–61.

Dated: September 03, 2024

Lane Howard

ORAL ARGUMENT NOT YET SCHEDULED

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioner,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondent.*	Nos. 24-1087 (and consolidated cases)

DECLARATION OF RYAN SAUER OF IOWA CORN GROWERS ASSOCIATION

I, Ryan Sauer, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am Vice President of Market Development of the Iowa Corn Growers Association, a nonprofit trade association based in Iowa with a membership of corn farmers, as well as their supporters and members of corn farming-related industries. We operate to promote the general commercial, legislative, and other common interests of our members.

2. I am familiar with all aspects of the Association's work and with the market for corn and products, such as ethanol, that are made using the corn grown by our members.

3. Iowa is the nation's leading producer of corn, with a net production of around 2.4 billion bushels. The majority of this corn is used as a feedstock for ethanol production.

4. The ethanol industry supports nearly 400,000 jobs in more than 24 states. Ethanol contributes more than $54 billion to the national GDP and profitably processed approximately 5.3 billion bushels of corn in 2023.

5. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating—a measure of a fuel's resistance to "knocking" in an engine—reducing vehicles' fuel usage, net greenhouse gas emissions, and the emission of toxic chemicals such as benzene. Across most of the United States, refiners add 10% ethanol to gasoline in part to raise its octane rating to a level suitable for use in most vehicles. In 2022, alone, the use of ethanol reduced greenhouse gas emissions by more than 50 million metric tons, equivalent to the savings of turning off 133 natural gas-fired power plants. *See* EPA, *Greenhouse Gas Equivalencies Calculator* (Aug. 30, 2024), https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator.

6. The United States Environmental Protection Agency promulgated a final agency action entitled *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles*, 89 Fed. Reg. 27,842 (Apr. 18, 2024). The final rule sets increasingly stringent greenhouse-gas standards for light-

and medium-duty vehicles for model years beginning with 2027. *Id.* at 27,854–55. Automakers cannot feasibly comply with the standards unless they dramatically increase their production of electric vehicles and decrease the production of conventional vehicles which consume liquid fuels. *See, e.g., id.* at 28,057–61.

7. By design, EPA's emission standards will reduce the demand for liquid fuels and their components by displacing an increasing number of combustion-engine vehicles with electric and hybrid vehicles that use little to no liquid fuel. *See id.* at 28,141 ("through 2055 these standards will result in a reduction of 780 billion gallons of retail gasoline consumption"). Because ethanol is blended into nearly every gallon of gasoline sold in the United States, this rule will reduce ethanol consumption by tens of billions of gallons.

8. While these standards are in effect, they will drive down demand for ethanol.

9. This demand destruction harms the Iowa Corn Growers Association and its members by decreasing demand for the corn they grow.

10. These financial harms affect our members and also redound to the Association itself, which will lose funding it uses to pursue its mission of advocating for the interests of its members.

11. All these injuries would be substantially ameliorated if EPA's decision

were set aside. As EPA's analysis shows, without the rule, automakers would produce more gasoline-powered light- and medium-duty vehicles, mitigating any reduction in gasoline and ethanol consumption. *Id.* at 28,057–61.

Dated: September 6th, 2024

Ryan Sauer

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, ET AL. Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 24-1087 (and consolidated cases)

DECLARATION OF GEOFF COOPER

1. My name is Geoff Cooper. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge, published data, and studies and information developed by the Renewable Fuels Association ("RFA"). I am submitting this Declaration on behalf of the Petitioners' opening brief in the above-captioned matter.
2. Since 1981, RFA has served as a non-profit, national trade association and voice for the United States' ethanol industry both domestically and internationally. Ethanol is a renewable fuel produced from plant-based feedstocks, including grains like field corn and sorghum. The members of RFA include companies that manufacture ethanol fuel and market it to blenders and marketers of gasoline, as well as companies that provide goods

and services (such as process technologies and raw feedstocks) to ethanol producers. RFA's members operate facilities across the United States, from California to New York, and are responsible for a substantial share of the nation's ethanol production. Among RFA's purposes is representing its members in lawsuits affecting the ethanol industry.

3. I am currently the President and CEO of RFA and have served in that capacity since 2018. I have been employed with RFA since 2008, when I was hired as the organization's director of research and analysis. I have served in various capacities throughout my tenure, most recently as Executive Vice President. Prior to serving as CEO, I led RFA's regulatory activities, oversaw the group's research and technical initiatives, supported public and media relations efforts, assisted with legislative initiatives and managed the Renewable Fuels Foundation. Prior to RFA, I worked on ethanol issues for the National Corn Growers Association and served as a captain in the U.S. Army, where I specialized in bulk petroleum product logistics. Throughout my 16 years working for RFA and years of prior work experience, I have developed an in-depth understanding of the business and operations of the members of RFA, and the market for ethanol fuel in the United States.

4. RFA's members primarily produce corn-based ethanol, a type of renewable

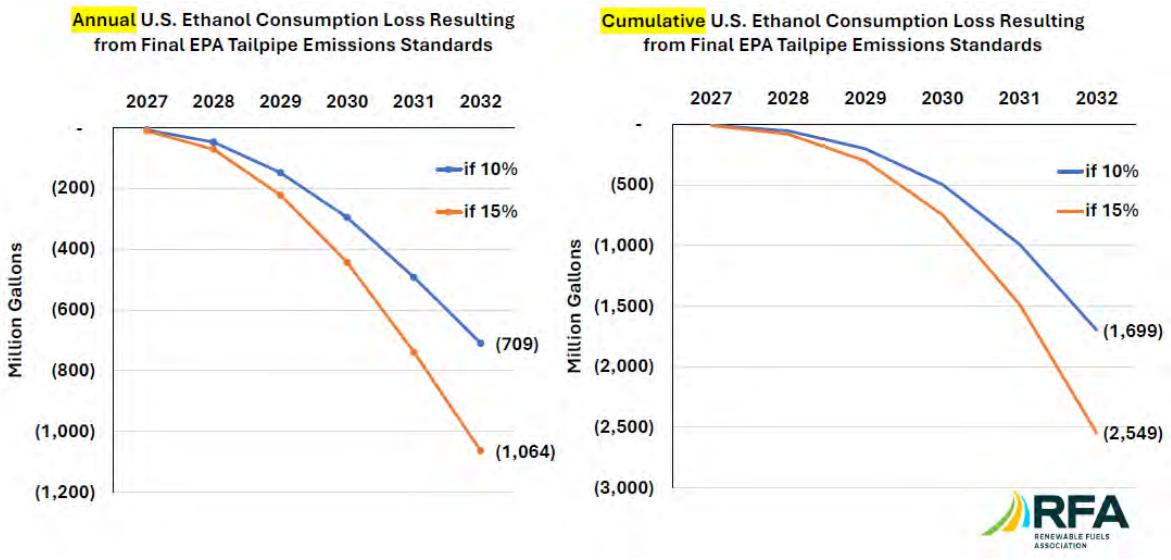
fuel. Some RFA members also produce small volumes of biomass-based diesel, renewable diesel, or cellulosic ethanol.

5. Ethanol is the second-largest component of the fuel that powers the United States' vehicle fleet. Ethanol provides a low carbon source of energy and octane rating-the measure of a fuel to resist "knocking" in an engine—reducing vehicles' fuel usage and net GHG emissions. Refiners add ethanol to gasoline to raise its octane rating to a level suitable for use in most vehicles and to meet federal renewable mandates.

6. I submit this declaration in support of RFA's challenge to the U.S. Environmental Protection Agency's ("EPA's") final rule, "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," published at 89 Fed. Reg. 27842 (Apr. 18, 2024).

7. The emissions standards for light-duty vehicles established in EPA's final rule can only be met by averaging emissions from internal combustion engine vehicles with the emissions from zero-emission vehicles that do not run on liquid fuels. Therefore, this rule will reduce the demand for all liquid fuels, including renewable fuels, which will in turn reduce the demand for the feedstocks used to produce renewable fuels, such as ethanol.

8. RFA's studies project that that the emissions standards will cause U.S. ethanol consumption to fall by 1.7-2.5 billion gallons between 2027-2032, an average reduction of 283-425 million gallons per year.



9. Reduced demand for ethanol would result in great economic harm to RFA's members, as it would undermine their ability to sell the ethanol they produce.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct based on my personal knowledge.

Date: September 6, 2024

Respectfully submitted,

Geoff Cooper

President and CEO of the Renewable Fuels Association

No. 24-1158
(Consolidated with 24-1087, 24-1100, 24-1132, 24-1195, 24-1196, 24-1197, and 24-1206)

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

WESTERN STATES TRUCKING ASSOCIATION, INC., ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.
Respondents.

On Appeal from the Environmental Protection Agency
EPA-HQ-OAR-2022-0829; FRL-8953-04-OAR

DECLARATION OF THOMAS SANTORO

I, Thomas Santoro, hereby declare as follows:

1. I am over the age of eighteen (18) and am competent to testify in this matter. I have personal knowledge of the following facts and if called upon to do so could competently testify to them under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I am the CEO of Santoro Transportation, Inc. ("Santoro Transportation"), an interstate authorized trucking company that is a member of Western States Trucking Association, Inc. ("WSTA"), a named petitioner in the

above-captioned suit. WSTA represents the interests of Santoro Transportation in this lawsuit.

3. My company, which is based in Salinas, California, transports interstate domestic cargo using seventeen heavy-duty trucks.

4. On April 18, 2024, the Environmental Protection Agency ("EPA") promulgated a final regulation entitled "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles" ("LD and MD Regulations"). *See* 89 Fed. Reg. 27842 *et seq.* (Apr. 18, 2023).

5. The LD and MD Regulations establish new, more stringent emission standards for criteria pollutants and greenhouse gases for light-duty and Class 2b and 3 medium-duty vehicles that will be phased in over model years 2027 through 2032. *Id.*

6. Santoro Transportation uses light- and medium-duty vehicles in its business operations. Specifically, Santoro Transportation owns and operates a red GMC 2500HD diesel-powered service truck (VIN #1GTHK23UX1F182764). Santoro Transportation uses this truck to assist its heavy-duty vehicles when they break down throughout California and neighboring states, sometimes in remote locations.

7. The LD and MD Regulations will limit the types of vehicles available that are necessary to conduct Santoro Transportation's business activities, eventually

requiring it to purchase a costly and unreliable electric service truck required by the LD and MD Regulations. These regulations will force my company to purchase unreliable electric vehicles that often break down or catch fire. There is no nationwide charging infrastructure yet available for such vehicles. My employees will lose valuable time and be made to risk their lives due to these regulations.

8. Due to limited electric charging infrastructure in many locations where Santoro Transportation operates, as well as the limited range of electric vehicles, an electric service truck would be unable to reach heavy-duty vehicle drivers in need of critical assistance, leaving them stranded on the side of remote roads in unsafe conditions.

9. The sales limitations that the LD and MD Regulations impose will create market scarcity of reliable and cost-effective parts and supplies necessary to maintaining my service truck. As fewer diesel-powered light-duty and medium-duty vehicles remain on the road thanks to the knock-on effects of the LD and MD Regulations, the cost of diesel fuel will increase and the prevalence of diesel refueling stations will decrease. Additionally, the parts needed to repair an electric truck cost more than those needed to repair Santoro Transportation's current diesel-powered service truck. The higher costs associated with repairing and operating an electric service vehicle would impose a significant financial burden on Santoro Transportation.

10. Santoro Transportation will likely be unable to recharge an electric service truck at its current place of business due to grid limitations. The costs necessary to install electric infrastructure to charge an electric service vehicle would likely force Santoro Transportation out of business.

11. But for EPA's decision to promulgate the LD and MD Regulations, Santoro Transportation would not suffer economic injury. The Court can redress Santoro Transportation's injuries by setting aside these EPA regulations, preventing these job-killing regulations from going into effect.

Pursuant to 28 U.S.C. § 1746, I, Thomas Santoro, declare under penalty of perjury that the foregoing is true and correct.

Executed this 1 day of SEPT, 2024, in Salinas, in the State of California.

THOMAS SANTORO
CEO
P.O. Box 6166, Salinas, CA 93912

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

COMMONWEALTH OF KENTUCKY, et al., *Petitioners,* v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents.*	No. 24-1087 (and consolidated cases)

DECLARATION OF REGINALD MODLIN

I, Reginald Modlin, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I have over forty years of experience in the automobile industry. From 1972 through 2015 I served in various roles at FCA NA Corporation ("Chrysler"). From 1992 to 1998 in my role as a manager for vehicle environmental affairs I directed design and development of automobiles at Chrysler, focusing on the requirements of established emissions and fuel economy regulations. I also worked with national and state regulatory agencies on developing and understanding their emissions and fuel economy requirements.

2. From 1998 to 2015 I served as the Director of Regulatory Affairs at Chrysler. In that capacity, I ensured the compliance of Chrysler's North American

products with all applicable environmental and safety regulations, including the National Highway Traffic Safety Administration's Corporate Average Fuel Economy standards, the Environmental Protection Agency's ("EPA's") federal tailpipe emission standards, and California's regulations. I also worked with national, state, and local legislatures and agencies in developing legislation and regulations regarding transportation emissions, fuel economy and safety performance, including participating in the evolution of California's vehicle emission regulations such as Advanced Clean Cars I.

3. During the course of my career I also actively engaged in numerous private and public partnerships seeking to identify and pursue alternative fuel options for automobiles, such as the California Fuel Cell Partnership (formed by the California Air Resources Board, the South Coast Air Quality Management District, and the California Energy Commission), the Michigan Governor's Alternative Fuel Advisory Council (under then-Governor Jennifer Granholm), the United States Council for Automotive Research, the Future Fuels Coalition, 25 X 25, and other regional and state organizations.

4. I am aware of EPA's issuance of a final rule titled, "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles." 89 Fed. Reg. 27,842 (Apr. 18, 2024). It is my understanding that according to EPA, the rule will significantly affect the technology mix of light- and

medium-duty vehicles that automobile manufacturers produce. For example, EPA projects that under the rule, 68% of light-duty vehicles will be plug-in electric vehicles in 2032, compared to 47% without the rule. 89 Fed. Reg. at 28,057. EPA also projects that under the rule, 43% of medium-duty vehicles will be plug-in electric vehicles in 2032, compared to 8% without the rule. *Id*. at 28,060. These projections were made based on EPA's estimates of future technology costs and consumer acceptance of different technologies, and without considering announced manufacturer plans or state policies meant to incentivize electric vehicles (e.g., California's Advanced Clean Cars II). *Id*. at 27,986.

5. It is also my understanding that EPA projects that the rule will result in increased production of plug-in electric vehicles, even when different technology costs, consumer acceptance rates, and state incentives are considered. For example, EPA presented results from various "sensitivity analyses" that examined different scenarios, including lower or higher electric vehicle battery costs, faster or slower consumer acceptance of electric vehicles, and adoption of state-level electric vehicle mandates. *Id*. at 28,068–77. In all of the scenarios presented, EPA projects that the rule will increase the production of light-duty plug-in electric vehicles and decrease the production of conventional internal-combustion-engine vehicles in 2032, compared to a baseline without the rule. *Id*. Whether making optimistic or pessimistic projections, therefore, EPA's regulations will increase the market share of plug-in

electric vehicles, reduce the market share of conventional internal-combustion-engine vehicles, and also reduce consumer demand for liquid fuels. *See id.* at 28,111–12, Tbl. 216 (projecting consumer savings of gasoline and diesel through model year 2055).

6. EPA's regulation increases the market share of plug-in electric vehicles in the fleet primarily, but not only, through two regulatory mechanisms: (1) the carbon dioxide (CO_2) fleet-average standards, and (2) the non-methane organic gas and nitrogen oxide (NMOG + NO_X) fleet-average standards. Other regulations included in the Final Rule, such as the particulate matter standards for gasoline vehicles, will predictably increase the cost of gasoline vehicles and therefore also encourage electric vehicles, but the fleet-average CO_2 and NMOG + NO_x standards encourage increased electrification by design.

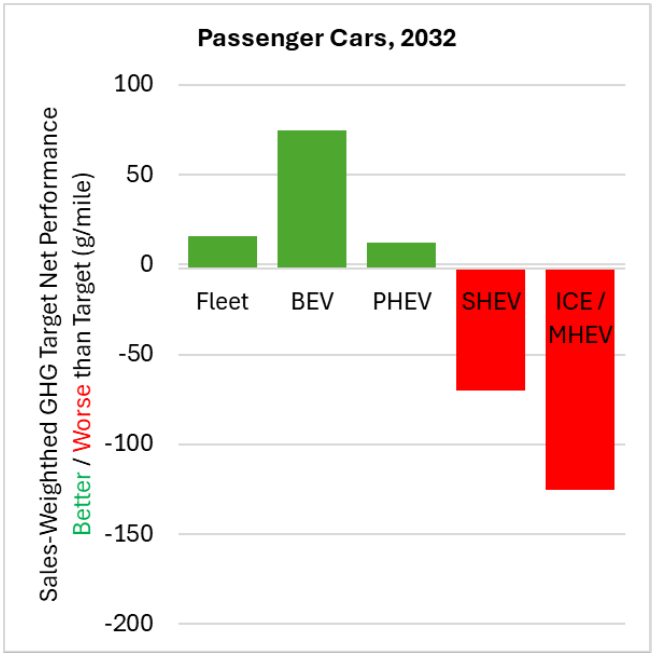
7. The CO_2 standards work by setting attribute-based "targets" for vehicle carbon-dioxide emissions. For cars and light trucks, these targets depend on the vehicle's size as determined by its "footprint" (the area between the wheels). For medium-duty vans and pickups, the targets depend on a vehicle's "work factor," a measure that accounts for the vehicle's payload capacity, towing capacity, and four-wheel drive. *Id.* at 27,883–86. Manufacturers with a fleet of cars, light trucks, or medium-duty vans and pickups that exceeds the attribute-based targets for the fleet receive CO_2 credits, whereas manufacturers that fall below their targets incur a CO_2

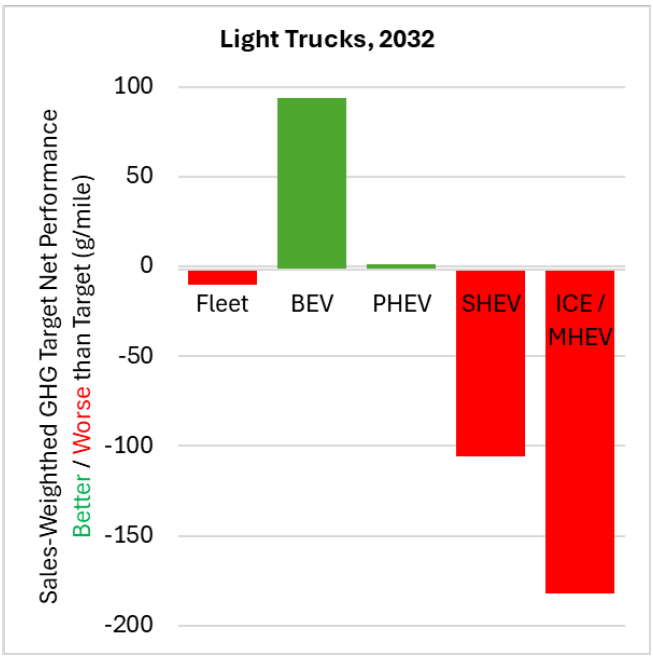
deficit they must make up by depleting their credit bank or purchasing corresponding credits from rival manufacturers. Alternatively, they can pay significant civil penalties.

8. An important consideration for manufacturers when complying with these fleet-average standards is that EPA attributes zero CO_2 emissions to plug-in battery-electric vehicles ("BEVs") and zero CO_2 emissions to plug-in hybrid electric vehicles ("PHEVs") when operating in charge-depleting mode, even though generating electricity to power the vehicles generates considerable CO_2 emissions. This means that plug-in electric vehicles can vastly exceed their attribute-based targets in the real-world, but still generate significant credits for fleets.

9. EPA has designed its CO_2 standards so that manufacturers cannot meet them without producing a significant share of electric vehicles. EPA's CO_2 target for passenger cars is between 71.6 and 75.6 g/mile in model year 2032, depending on the footprint. *Id.* at 27,906, Tbl. 17 (MAX and MIN). EPA predicts the national fleet average target will be 73 g/mile. *Id.* at 27,908, Tbl. 19. EPA's CO_2 footprint target for light-duty trucks in model year 2032 is between 75.7 and 110.1 g/mile in model year 2032, depending on the footprint. *Id.* at 27,906, Tbl. 18 (MAX and MIN). EPA predicts that the national fleet average target will be 90 g/mile. *Id.* at 27,908, Tbl. 19. EPA predicts that the work-factor target for the fleet of medium-duty vans and pickups in model year 2032 is 274 g/mile. *Id*. at 27,915, Tbl. 26.

10. Manufacturers cannot meet these targets unless they manufacturer plug-in electric vehicles assigned zero emissions. As shown in the figure below, EPA's OMEGA model, used during the rulemaking, shows that cars and light trucks with conventional internal-combustion engines ("ICEs"), strong hybrids ("SHEVs"), and mild hybrids ("MHEVs") will fall way below their targets and generate significant deficits, whereas plug-in electric vehicles (BEVs and PHEVs) will generate credits. Therefore, to comply, manufacturers must offset sales of conventional internal combustion engine, and strong and mild hybrid, vehicles with more and more sales of plug-in electric vehicles.[1]





[1] OMEGA, 2024_02_27_16_06_31_LDV_central_to2055_20240227_Final_vehicles.csv" available at: https://www3.epa.gov/otaq/ld/2024-02-27-16-06-31-LDV-central-to-2055-20240227.zip.

11. Another way to demonstrate the need to comply by producing plug-in electric vehicles is to compare the targets to the performance of current non-plug-in vehicles in the fleet. Valero's analysis demonstrates that even a highly efficient hybrid vehicle, such as a Toyota Prius, would not meet the model year 2032 targets. Valero Energy Corp. Supplemental Comment 4–6, 9–11 (Mar. 11, 2024), *available at* https://downloads.regulations.gov/EPA-HQ-OAR-2022-0829-5125/attachment_1.pdf (no liquid fueled vehicles meet the target in "Alternative 3" finalized by EPA, which ends up in the same place as the proposed target). The same is true for medium-duty pickups and vans. *Id.* at 6–8.

12. The NMOG + NO_x fleet-average standard operates in a similar manner, with some differences. One important difference is that while BEVs are also assumed to have zero NMOG + NO_x emissions, PHEV emissions are based only on the vehicle's emissions in "charge-sustaining mode." 89 Fed. Reg. at 27,936, 27,970. In that mode, the grid energy stored in the battery has been depleted, and the engine is operating. *Id*. at 27,970. Therefore, unlike under the CO_2 standards, PHEVs do not get NMOG + NO_x credit for having a battery that can use electricity from the grid. For this reason, the NMOG + NO_x standard biases compliance heavily in favor of BEVs. Manufacturers must design a fleet that can comply with all the standards simultaneously, so the bias in the NMOG + NO_x standard predictably encourages manufacturers to comply by producing BEVs over PHEVs or other

technologies. That is why manufacturers, such as Stellantis, have called EPA's criteria pollution standards a "[d]e facto" plug-in electric vehicle "mandate" intended to attain specific BEV market shares. *Id.* at 27,935; Stellantis Comment 16 (July 5, 2023), *available at* https://downloads.regulations.gov/EPA-HQ-OAR-2022-0829-0678/attachment_1.pdf; *see also* Am. Petrol. Inst. Comment 8–9 (July 5, 2023), *available at* https://downloads.regulations.gov/EPA-HQ-OAR-2022-0829-0641/attachment_1.pdf ("EPA has not demonstrated a technologically feasible path for OEMs to meet NMOG + NO_x standards with a mixed vehicle fleet comprised of large and small light-duty vehicles with ICE technologies. … EPA instead anticipates and sets the standard to require the use of BEVs").

13. In model year 2032, light-duty vehicles and medium-duty passenger vehicles regulated by the rule must meet a fleet average of 15 mg/mi of NMOG + NO_x, down from 30 mg/mi in model year 2026, a 50% reduction. *Id.* at 27,935, Tbl. 39. According to EPA, only 39 models with internal-combustion engines complied with the standard, and practically all of them are either strong or mild hybrids, or PHEVs. Regulatory Impact Analysis 3-53, 3-54, Tbl. 3-19, *available at* https://downloads.regulations.gov/EPA-HQ-OAR-2022-0829-5738/attachment_2.pdf. Most of these vehicles would barely meet the new standard. Manufacturers must ensure significant compliance headroom (30 to 40 percent) to avoid compliance risk, so they typically aim to overperform the standards. *Id.* at 3-55. EPA asserts that the standard

may be met "with BEV penetrations as low as 35 percent," *id.* at 3-53, an implicit admission that the NMOG + NO_x standard will guarantee a market-share for—and predictable increases in—BEV production in all plausible scenarios modeled by the agency.

14. For medium-duty vans and pickups, the story is much the same. For model year 2032, the fleet average NMOG + NO_x standard is 75 mg/mile. 89 Fed. Reg. at 27,937, Tbl. 42. That is far below the median for current medium-duty gasoline pickups (approximately 100 g/mile), and below the lowest value reported for current medium-duty diesel vans and pickups. Regulatory Impact Analysis 3-55, Fig. 3-17. To account for the "30 to 40 percent compliance headroom" that manufacturers aim for to avoid compliance risk, manufacturers will predictably meet the standards through "the introduction of an increasing number of [plug-in electric vehicles] into the fleet average." *Id.* at 3-55.

15. EPA's conclusion that automobile manufacturers can, and will, adapt their production to respond to changes in federal regulations is consistent with my experience in the automobile industry. In particular, based on my over forty years of experience at Chrysler and working with automobile trade groups, if EPA's greenhouse gas or NMOG + NO_x standards were vacated or made less stringent automobile manufacturers could, and at least some likely would, change their production and/or pricing plans to increase sales of internal-combustion-engine

vehicles, or strong or mild hybrid vehicles, which yield greater profit per vehicle.

16. This is true even if the regulatory changes are made once a manufacturer has begun production for that model year. Automakers can, and often do, adapt their production plans for a particular model year, even well into the corresponding calendar year. Based on my experience, if EPA's greenhouse gas or NMOG + NO_x standards were vacated or made less stringent automobile manufacturers could, and at least some likely would, change their production and/or pricing plans for a model year as late as December of that year, but at a minimum well into the corresponding calendar year. They have done so in the past in response to changing market and/or regulatory compliance conditions.

17. First, with regard to production decisions, automobile manufacturers do make automobile production plans years in advance, but those plans are adjustable. For example, if EPA's new greenhouse gas or NMOG + NO_x emissions standards were altered during model year 2027 automobile manufacturers could adjust the production volumes of electric, internal-combustion-engine, or strong or mild hybrid vehicles to reflect market demand as opposed to government mandates. Automobile manufacturers could increase their production of internal combustion engine, or strong and mild hybrid, vehicles for model year 2027 up until the last month of the model year's production, which often runs through the summer of the subject year, but could run through December 31, 2027.

18. Second, pricing in the automobile industry is updated on a continuous basis and price changes can be made up until the end of the applicable calendar year, e.g., the end of calendar year 2027 for model year 2027. For example, toward the end of a model year, manufacturers may lower prices on certain vehicles in over supply. Accordingly, if EPA's greenhouse gas or NMOG + NO_x standards were altered automobile manufacturers could quickly change prices in response. Automobile manufacturers could lower the price of internal-combustion-engine vehicle, or strong or mild hybrid vehicles, in oversupply, or they could raise prices on electric vehicles to reflect the true cost of manufacturing those vehicles, resulting in greater internal-combustion-engine, or hybrid, vehicle sales.

19. Automobile manufacturers also could, and at least some likely would, change their production and/or pricing plans in response to a change in EPA's rule even if those manufacturers have announced plans or committed resources to increase future plug-in electric vehicle production.

20. First, production plans are adjustable. Automobile manufacturers can—and historically, do—change production targets and timing in response to market demand or other changed conditions, including changed regulations. For example, Ford and General Motors previously announced plans to transition a significant portion of their fleet to plug-in electric powertrains. However, both companies have more recently canceled or delayed plug-in electric vehicle production in response to

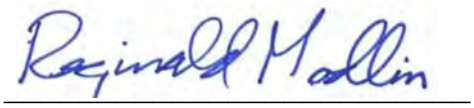
changed market conditions. *See, e.g.*, Mike Colias, *Ford Shrinks Its EV Rollout Plans as Demand Lags*, Wall St. J. (Aug. 21, 2024) (Ford cancels plans for large electric SUV); Christopher Otts, *GM Delays Indiana Battery Factory in Latest EV Pullback*, Wall St. J. (Aug. 27, 2024); Kalea Hall, *Barra: GM still planning to be all-electric by 2035*, The Detroit News (Dec. 4, 2023) (GM "still has a plan in place to be all electric by 2035, but will adapt based on customer demand, CEO Mary Barra said"). If EPA's greenhouse gas or NMOG + NO_x standards were vacated or made less stringent automobile manufacturers could, and likely would, adjust production to increase production of internal-combustion-engine vehicles, or strong or mild hybrid vehicles, and/or adjust vehicle pricing to reflect market demand and maximize profit.

21. Second, even automobile manufacturers who have announced plans or committed resources to increase future plug-in electric vehicle production still have a substantial knowledge base and production capability in internal-combustion-engine technology. If EPA's greenhouse gas or NMOG + NO_x standards were vacated or made less stringent automobile manufacturers could, and at least some likely would, leverage existing engineering teams to accelerate development and increase production of internal-combustion-engine vehicles, or strong or mild hybrid vehicles, to reflect market demand and maximize profit.

22. Any one of the foregoing changes would likely result in more internal-

combustion-engine vehicle sales, or more strong or mild hybrid vehicle sales, in the United States, thereby resulting in increased domestic demand for liquid fuels.

Dated: September 5, 2024



Reginald Modlin

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al., *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, et al., *Respondents*.	No. 24-1087 and consolidated cases

DECLARATION OF WALTER KREUCHER

I, Walter Kreucher, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I have more than thirty years of experience overseeing vehicle regulatory and legislative issues in the automobile industry, including issues related to fuel economy, fuel quality, compliance, and alternative fuels.

2. I began working for Ford in 1973 and helped Ford create its first Preliminary Corporate Average Fuel Economy Compliance program in the mid-1970s. Eventually, I took over as vehicle energy planning manager at Ford Motor Company in Dearborn, Michigan. In that capacity, I managed compliance with NHTSA's Corporate Average Fuel Economy (CAFE) standards and negotiated CAFE regulatory and legislative matters with the federal government. I also

monitored Ford's vehicle certification testing and helped develop Ford's CAFE reporting procedures. Furthermore, I provided technical support on all fuel economy and fuel quality matters for Ford, including serving as lead negotiator for fuel economy, fuel quality, and other related standards issued by California and the federal government.

3. Since leaving Ford in 2004, I have served as an outside consultant on automobile regulatory matters, including for NHTSA, for the Department of Transportation's John A. Volpe National Transportation Systems Center (Volpe Center), which builds, maintains, and runs NHTSA's CAFE modeling program, for the Environmental Defense Fund, and for Ford. I have also done some pro-bono work on the CAFE program for the Government Accountability Office.

4. I am aware that EPA recently promulgated a rule establishing new light-duty and medium-duty vehicle emission standards for model years ("MYs") 2027 through 2032. *See* EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles*, 89 Fed. Reg. 27,842 (April 18, 2024).

5. Those new standards require automakers to produce vehicle fleets for sale in the United States that will use considerably less liquid fuel on average than their existing vehicle fleets. *See, e.g.*, *id.* at 28,092 (projecting that the new standards will reduce gasoline consumption in the United States by "780 billion gallons

through 2055"). To meet the new standards, automakers will have to dramatically increase the proportion of their fleets made up of electric vehicles, which use significantly less liquid fuel or no liquid fuel at all.

6. According to EPA, "as the final standards become more stringent over MYs 2027 to 2032, the penetration of PEVs [i.e., battery-powered electric vehicles ("BEVs") and plug-in hybrid electric vehicles] increases by 36 percentage points … from 32 percent in MY 2027 to 68 percent of overall vehicle production in MY 2032." *Id.* at 28,057. That is markedly higher than EPA's projection for a "no action" scenario in which "the MY 2026 standards would carry forward indefinitely into future years." *Id.* at 27,986. In that "no action" scenario, according to EPA, "the level of PEVs … [is] projected to reach 47 percent" in MY 2032, which is 21 percentage points less than under EPA's rule. *Id.* at 28,057; *see also id.* at 28,079 (projecting that BEVs would have 56% market penetration under EPA's rule, as compared to only 35% in the "no action" scenario). Similarly, for medium-duty vehicles, EPA projects that "the projected penetration of PEVs … increases from 3 percent in MY 2027 to 43 percent of overall [medium-duty vehicle] production in MY 2032," as contrasted with only 8% of overall medium-duty vehicle production in MY 2032 under the "no action" scenario. *Id.* at 28,060.

7. Based on my experience in the automobile industry and my review of EPA's projections, I agree with EPA that its standards will have at least some effect

on the Nation's vehicle fleet, and will cause at least some automobile manufacturers to produce fleets that include more electric vehicles and that on average consume less liquid fuel than they would absent the standards. While some automobile manufacturers have indicated that they intend to move toward electrification of their fleets in the future, that approach has not been uniform across the entire industry, and recent trends have shown slowing investment in electric vehicles. *See, e.g.*, Neal E. Boudette, *More Gas Cars and Trucks, Fewer E.V.s as Automakers Change Plans*, N.Y. Times (July 18, 2024), https://tinyurl.com/4av42sn4. Especially given those trends, it is overwhelmingly likely that absent EPA's new standards, at least some automobile manufacturers would produce fleets that would include fewer electric vehicles and that would consume more liquid fuel than they will with the new standards in effect, and that the overall impact of the new standards will be to substantially increase the market penetration of electric vehicles and decrease liquid fuel consumption. *See* 89 Fed. Reg. at 28,057, 28,079, 28,092.

8. It is also overwhelmingly likely that vacating the standards will cause at least some automobile manufacturers to shift their production and pricing strategies back toward a fleet that includes a lower percentage of electric vehicles and that consumes more liquid fuel on average. Based on my experience in the automotive industry and in particular my decades of compliance work for Ford and on compliance-related work for federal agencies, including NHTSA and the Volpe

Center, automobile manufacturers can and often do adapt their plans for a particular model year well into that model year. Indeed, automobile manufacturers have done so in the past to take advantage of a model year's less stringent vehicle emission standards before subjecting themselves to more stringent standards applicable to subsequent model years. And notably, it is generally easier for automobile manufacturers to immediately adapt their plans in response to the relaxing of vehicle emission standards, as opposed to when standards are made more stringent, which requires more lead time.

9. As a result, if EPA's new standards were to be vacated now (or at any time before MY 2027), automobile manufacturers could and likely would respond by changing their production or pricing strategies as described above for the model years covered by those standards. Indeed, even if the new standards were vacated as late as December 2032, automobile manufacturers still could and likely would respond by changing their production or pricing plans for MY 2032. That is, vacating the standards at any time before December 2032 would likely have at least some real-world impact on the fleets that automobile manufacturers would produce and sell, and on the amount of liquid fuel that those fleets would consume.

10. With regard to production decisions, automobile manufacturers discuss and amend their fleet production mix continually throughout a model year, adjusting to real world consumer demand and sales as opposed to sales forecasts. For example,

if the new standards here were to be vacated as late as December 2032, automobile manufacturers could decrease electric vehicle production or move some of their electric vehicle production for the rest of MY 2032 to a subsequent year, and could also increase their production of internal combustion engine vehicles or strong and mild hybrid vehicles for MY 2032.

11. So too for pricing. Pricing decisions in the automobile industry are made dynamically, and price changes can be made until the end of a given calendar year—e.g., the end of 2032 for MY 2032. For example, toward the end of a model year, manufacturers may raise prices on certain vehicles in low supply. As such, if the new standards here were to be vacated, automobile manufacturers could quickly change prices in response. Automobile manufacturers could provide additional incentives to purchase internal combustion engine vehicles by lowering the prices for those vehicles, or they could raise prices on electric vehicles to reflect the true cost of manufacturing those vehicles. Any one of the foregoing changes would likely result in more sales of internal combustion engine vehicles, leading to increased liquid fuel consumption.

Date: September 4, 2024

Walter Kreucher