ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1129 (and consolidated cases)

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

STATE OF NEBRASKA, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents,

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA–HQ–OAR–2022–0985)

INITIAL BRIEF FOR STATE PETITIONERS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. Parties and Amici

Petitioners in Case No. 24-1129 are the State of Nebraska, 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, Commonwealth of Kentucky, State of Louisiana, State of Mississippi, State of Missouri, State of Montana, State of Oklahoma, State of South Carolina, State of South Dakota, State of Tennessee, State of Texas, State of Utah, Commonwealth of Virginia, State of West Virginia, and State of Wyoming (collectively, "State Petitioners").

Petitioners in Case No. 24-1133 are Warren Petersen, President of the Arizona State Senate; Ben Toma, Speaker of the Arizona House of Representatives; and the Arizona Trucking Association.

Petitioners in Case No. 24-1157 are the Western States Trucking Association, Inc. and Construction Industry Air Quality Coalition, Inc.

Petitioners in Case No. 24-1207 are the American Fuel and 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, Petroleum Alliance of Oklahoma, Texas Oil & Gas Association, and Western States Petroleum Association.

Petitioners in Case No. 24-1208 are the American Petroleum Institute, American Farm Bureau Federation, National Corn Growers Association, and Owner-Operator Independent Drivers Association.

Petitioners in Case No. 24-1209 are the American Free Enterprise Chamber of Commerce; Diamond Alternative Energy, LLC; ICM, Inc.; Indiana Soybean Alliance; Iowa Soybean Association; Minnesota Soybean Growers Association; North Dakota Soybean Growers Association; Ohio Soybean Association; and South Dakota Soybean Association.

Petitioner in Case No. 24-1210 is the Clean Fuels Alliance America.

Petitioner in Case No. 24-1214 is the Transport Project.

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

Intervenors on behalf of Respondents are (1) the Alliance of Nurses for Healthy Environments, American Lung Association, American Public Health Association, Appalachian Mountain Club, Clean Air Council, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, and Sierra Club; (2) the State of Arizona, State of Colorado, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Maine, State of

Maryland, Commonwealth of Massachusetts, 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, Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, State of Washington, and State of Wisconsin; the District of Columbia; the City and County of Denver; and the Cities of Chicago, Los Angeles, and New York; (3) the Center for Community Action and Environmental Justice and Rio Grande International Study Center; (4) Ford Motor Company; (5) CALSTART; and (6) Zero Emission Transportation Association.

II. Ruling Under Review

The ruling under review is "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3," published at 89 Fed. Reg. 29,440 (April 22, 2024) ("the rule").

III. Related Cases

This Court has consolidated the following cases with Case No. 24-1129: *Petersen, et al. v. EPA*, No. 24-1133; *Western States Trucking Ass'n, et al. v. EPA*, No. 24-1157; *American Fuel & Petrochemical Manufacturers, et al. v. EPA*, No. 24-1207; *American Petroleum Institute, et al. v. EPA*, No. 24-1208; *American Free Enterprise Chamber of Commerce, et al. v. EPA*, No. 24-1209; *Clean Fuels Alliance America v. EPA*, 24-1210; *The Transport Project v. EPA*, No. 24-1214.

/s/ Eric J. Hamilton
ERIC J. HAMILTON

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GLOSSARY

EPA	U.S. Environmental Protection Agency
IPM	Integrated Planning Model
RIA	Regulatory Impact Analysis
RTC	Response to Comments
TEIS	U.S. Dep't of Energy, *Multi-State Transportation Electrification Impact Study* (March 2024).
The rule	*Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3*, 89 Fed. Reg. 29,440 (Apr. 22, 2024).

INTRODUCTION

Today, something other than an internal-combustion engine powers just one tenth of one percent of all heavy-duty vehicles. EPA wants to increase that figure exponentially in the next seven years. Under the rule challenged here, electric trucks would make up 45 percent of all heavy-duty vehicles sold by 2032. *Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3*, 89 Fed. Reg. 29,440, 29,568 (Apr. 22, 2024). The rule's electrification of the Nation's trucking fleet decides a major question. Accordingly, the rule is lawful only if Congress clearly authorized EPA to suppress the production of internal-combustion vehicles in favor of electric ones. No statute gives EPA that highly consequential power, and EPA has never claimed the power to require companies to sell electric heavy-duty vehicles. This forced transition to electric trucks will increase transportation costs, hike prices for basic goods, and strain the electric grid. It will also increase the cost of procuring the trucks that State Plaintiffs need to carry out essential state services like plowing snow and repairing roads. This Court should reverse EPA's rule.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the rule under 42 U.S.C. § 7607(b)(1). The rule is a "standard under section 7521." 42 U.S.C. § 7607(b)(1). State Petitioners petitioned for review on May 13, 2024,

which was "within sixty days" of the rule's publication in the *Federal Register*. *Id.*

STATEMENT OF ISSUES

The issues presented are:

1. Whether the rule exceeds EPA's statutory authority.
2. Whether the rule is arbitrary and capricious.

STATUTES AND REGULATIONS

All relevant statutes are included in the addendum to this brief.

STATEMENT OF THE CASE

The Clean Air Act empowers EPA to set "standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles" that "cause, or contribute to, air pollution" and may "endanger public health or welfare." 42 U.S.C. § 7521(a)(1). Since *Massachusetts v. EPA*, 549 U.S. 497 (2007), EPA has, on three occasions, used this authority to set standards for greenhouse-gas emissions that heavy-duty vehicles emit from their tailpipes. Heavy-duty vehicles cover a wide range of vehicles that exceed 8,500 pounds based on gross vehicle weight rating and include vocational vehicles (e.g., snowplows and concrete mixers), shuttle busses, and other vehicles, all the way up to semi-trucks. 89 Fed. Reg. at 29,444.

The two previous rules decreased greenhouse-gas emissions by requiring heavy-duty vehicles to be more fuel efficient. Vehicles that

travel more miles per gallon burn less fuel and therefore emit less carbon dioxide. *See* 76 Fed. Reg. at 57,124–25. The rule here differs significantly because improved fuel-efficiency is not enough to comply. *See Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3*, 89 Fed. Reg. 29,440 (Apr. 22, 2024). Instead, companies must make vehicles with "zero tailpipe emissions" powered by an electric battery or fuel cell. *Id.* at 29,444 n.24. The standards take effect in 2027 for some vehicles. *Id.* at 29,451.

EPA outlines two pathways to comply with the new standards. The first assumes that electric vehicles will account for up to 60 percent of some lighter heavy-duty vehicles by 2032, *id.* at 29,452, and 45 percent of all heavy-duty vehicles sold that same year, *id.* at 29,568. The second pathway outlines a mix of powertrain technologies a manufacturer could use to comply with the rule that does not include additional battery-electric vehicles. *Id.* at 29,453. But that pathway assumes the availability of a hydrogen-powered engine that EPA admits does not "exist today." *Id.* at 29,452. EPA did not even consider the cost of complying with the second pathway because it is unrealistic. That is why EPA assumes the first pathway will be pursued—i.e., that the rule is an electric-vehicle mandate.

SUMMARY OF THE ARGUMENT

No statute gives EPA the power to electrify the Nation's trucking fleet. In *West Virginia v. EPA*, the Supreme Court struck down EPA's attempt to "substantially restructure the American energy market." 597 U.S. 697, 724 (2022). EPA tries again here, this time targeting the logistics industry. If it stands, EPA's rule would disrupt a heavy-duty trucking industry that moves over $30 billion in freight every day. It would jeopardize electric-grid stability. And it would short circuit the lively debate over vehicle electrification playing out in Washington and the States.

For these and other reasons, the rule implicates a major question. That requires EPA to point to clear congressional authorization to electrify the Nation's heavy-duty vehicle fleet. *See id.* at 732. EPA does not come close. Its authority to set standards for vehicles that emit air pollutants gives it power to "set emissions standards for new motor vehicles" only "if they emit harmful air pollutants." *Truck Trailer Mfrs. Ass'n v. EPA*, 17 F.4th 1198, 1201 (D.C. Cir. 2021). Yet the entire premise of EPA's rule is that electric vehicles are "zero-emission" vehicles. As such, regulating—indeed, mandating—electric vehicles exceeds EPA's statutory power.

The rule is also arbitrary and capricious for its unexplained and flawed methodologies, unexplained assumptions, and flawed cost-benefit analysis. It assumes that the electric grid will meet increased demand,

that new technologies will have wide-spread existence, that the rule will mitigate weather-related grid disruptions, and that past reliability of the grid will continue. Not to mention, the rule relies on dubious metrics such as the "social cost" of greenhouse gases that inflate the purported benefits of the rule. The downplayed costs and overplayed benefits related to those assumptions and metrics belie EPA's cost-benefit analysis.

STANDING

State Petitioners have standing to challenge EPA's rule. They suffer multiple injuries-in-fact that are traceable to the rule and would be redressed by the rule's reversal. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The rule harms State Petitioners in at least five ways. *First*, the rule will increase the cost of the internal-combustion vehicles that State Petitioners purchase and use to provide state services like plowing snow and repairing roads. State Petitioners own and purchase new heavy-duty vehicles of the type covered by the rule.[1] Many State Petitioners plan to buy only internal-combustion trucks.[2] Under the rule, manufacturers

[1] *E.g.*, Beach Decl. para. 4; Carlton Decl. paras. 4–5; Cobb. Decl. paras. 4–6; Glass Decl. paras. 4–7; Gregg Decl. para. 3; Kerttula Decl. paras. 4–6; Oliver Decl. paras. 4–5; Syslo Decl. paras. 4–8; Wiggins Decl. para. 4; Wilkinson Decl. paras. 7–10; Zycher Decl. paras. 5, 7, 17.

[2] *See, e.g.*, Carlton Decl. paras. 7–8; Cobb. Decl. para. 7; Glass Decl. 8–9; Kerttula Decl. paras. 8–13; Oliver Decl. paras. 8–11; Syslo Decl. 8–13; Wilkinson Decl. paras. 7–10.

will make fewer vehicles with internal-combustion engines. 89 Fed. Reg. at 29,452–53; *see* Zycher Decl. paras. 10–11. The decrease in supply and generally unchanged demand for internal-combustion trucks "will increase the cost of procuring heavy-duty trucks"—both those "powered with internal-combustion engines" as well as those "powered with electric, hydrogen, and hybrid technologies." Zycher Decl. para 5. And increased prices for goods and services are "certainly an injury-in-fact." *Competitive Enter. Inst. v. Fed. Commc'ns Comm'n*, 970 F.3d 372, 383 (D.C. Cir. 2020).

Second, the decrease in internal-combustion vehicles caused by the rule will limit State Petitioners' choice as consumers. Many State Petitioners prefer and plan to buy only internal-combustion heavy-duty vehicles. *See* p. 5 n.2, *supra*. Because the rule will limit the availability of internal-combustion vehicles, 89 Fed. Reg. at 29,452–53; *see* Zycher Decl. paras. 10–11, State Petitioners will have less choice in procuring the internal-combustion vehicles they prefer. This "lost opportunity to purchase vehicles of choice is sufficiently personal and concrete to satisfy Article III requirements." *Competitive Enter. Inst. v. Nat'l Highway Traffic Safety Admin.*, 901 F.2d 107, 113 (D.C. Cir. 1990); *see Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 793 F.2d 1322, 1324 (D.C. Cir. 1986).

Third, the rule will force State Petitioners to spend tens of billions of dollars to build out their electric grids. *See* 89 Fed. Reg. at 29,520;

Daimler Truck N. Am. LLC Comment App. C, at 3 (June 2023); Am. Fuel & Petrochemical Mfrs. Comment at 20 (June 16, 2023); *see also* Watts Decl. paras. 13–14 (additional charging stations). By increasing the use of electric heavy-duty vehicles, the rule will boost demand for electricity beyond what the grid can handle now. *See* 89 Fed. Reg. 29,521; Clean Fuels Dev. Coal. Comment at 30 (June 16, 2023). The increased grid-related expenditures that will be borne by the States are "attributable to the HD Phase 3 rule itself." 89 Fed. Reg. 29,516.

Fourth, the rule will make road maintenance more expensive for State Petitioners. State Petitioners are responsible for maintaining roads in their States. *E.g.*, Neb. Rev. Stat. § 39-2105(1); Mont. Code Ann. §§ 60-2-203, 60-2-204. Electric vehicles are significantly heavier than comparable internal-combustion vehicles. *See* 89 Fed. Reg. at 29,538–41; Response to Comments ("RTC") at 635. Electric trucks, for example, are 2,100 to 13,800 pounds heavier than comparable internal-combustion vehicles. Western States Trucking Ass'n Comment at 14 (June 16, 2023). In general, heavier vehicles cause greater wear and tear to roads than lighter vehicles. *See* Anderson Decl. paras. 6–13; Jackson Decl. paras. 5–31; Syslo Decl. paras. 33–54; Watts Decl. paras. 8–12. Because the rule will place more electric trucks on State Petitioners' roads, *see* 89 Fed. Reg. at 29,452, those roads will degrade at an accelerated rate. That will

force State Petitioners to spend more to maintain roads.[3] Anderson Decl. para. 12; Jackson Decl. para. 31; Syslo Decl. paras. 53–54; Watts Decl. para. 10.

Fifth, at the same time the rule creates new costs for State Petitioners, the rule will decrease state fuel tax revenues. State Petitioners levy a tax on purchases of gasoline, diesel, and biofuels. As explained, the rule will reduce the number of vehicles powered by gasoline, diesel, and biofuels on State Petitioners' roads. *See* 89 Fed. Reg. at 29,452–53; *see* Zycher Decl. paras. 10–11. This will lower State Petitioners' fuel tax revenues. *E.g.*, McCray Decl. paras. 2–9; Nawrocki Decl. paras. 5–8; Tolman Decl. paras. 4–10; *see also* Miller Decl. paras. 18–19, 22 (loss of tax revenue from energy-sector revenues). This too is a legally cognizable injury in fact. *See Wyoming v. Oklahoma*, 502 U.S. 437, 448–51 (1992).

Each of State Petitioners' injuries is traceable to EPA's rule and would be redressed by a judicial decision reversing the rule. The rule targets vehicles with model years as far as eight years away, giving manufacturers ample time to respond to the rule's reversal. 89 Fed. Reg.

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[3] The heaviest heavy-duty electric trucks may need to seek overweight permits to comply with federal on-road weight limits. If they do, the rule will cause State Petitioners to spend more time and money issuing those permits. *See* Gregg Decl. para. 5; Marten Decl. paras. 15–24; Syslo Decl. paras. 25–32.

at 29,451; *cf. Ohio v. EPA*, 98 F.4th 288, 302 (D.C. Cir. 2024) (rule affected model year cars at most three years away). And EPA itself projects that the rule "*will* lead to an increase in [heavy-duty zero-emission vehicles] relative to our reference case (*i.e.,* without the rule)." 89 Fed. Reg. at 29,455. Without the rule, there would be no such increase. State Petitioners' injuries caused by that increase "would be reduced to some extent" if the rule were reversed, making those injuries redressable. *Massachusetts*, 549 U.S. at 526.

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." 42 U.S.C. § 7607(d)(9)(A), (C). This standard is "indistinguishable from the Administrative Procedure Act equivalent." *Nat'l Petrochemical & Refiner Ass'n v. EPA*, 287 F.3d 1130, 1135 (D.C. Cir. 2002).

ARGUMENT

I. The Rule Exceeds EPA's Statutory Authority.

EPA's rule is invalid because it decides a "major question" that Congress has not authorized the agency to rule on. *See West Virginia v. EPA*, 597 U.S. 697, 723 (2022). Congress must "speak clearly when authorizing an agency to exercise powers of 'vast "economic and political

significance."'" *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (per curiam) (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). EPA's decision to force manufacturers to make fewer internal-combustion vehicles and more electric vehicles satisfies this significance standard. No statute contains a clear statement permitting EPA's rule. *See* Ariz. Legislature Comment at 3–7 (June 16, 2023).

A. Forced electrification of heavy-duty vehicles is a major question.

An agency decides a "major question" when it asserts a "highly consequential power beyond what Congress could reasonably be understood to have granted." *West Virginia*, 597 U.S. at 724. Rules that decide issues of "economic and political significance" involve major questions. *Id.* (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). "[T]he 'history and the breadth of the authority that [the agency] has asserted'" is also relevant in identifying a major question. *Id.* (quoting *Brown & Williamson*, 529 U.S. at 159–60).

1. The rule is economically significant.

a. Two years ago, the Supreme Court held that an EPA rule aimed at "substantially restructur[ing] the American energy market" presented a major question. *West Virginia*, 597 U.S. at 724. The *West Virginia* rule capped power plant emissions, "'shift[ing]' polluting activity 'from dirtier to cleaner sources.'" *Id.* at 725 (quoting 80 Fed. Reg. 64,662,

64,726). In essence, the rule "simply announc[ed] what the market share of coal, natural gas, wind, and solar must be" for all power plants. *Id.* at 731 n.4.

EPA's heavy-duty vehicles emissions rule puts the *West Virginia* rule on wheels. Like the *West Virginia* rule, this rule caps emissions and forces changes in technology. *See* 89 Fed. Reg. at 29,559–61. The rule makes manufacturers cut internal-combustion-vehicle production and start making vehicles with alternative powertrains. *See id.* at 29,452–53. And as its sales projections show, EPA is "simply announcing what the market share of" "zero-emission" heavy-duty vehicles should be. *West Virginia*, 597 U.S. at 731 n.4; *see* 89 Fed. Reg. at 29,452–53. The specific type of energy produced (*West Virginia*) and heavy-duty vehicles sold (here) are both economically significant questions.

The almost nonexistence of "zero-emission" heavy-duty vehicles heightens the rule's economic significance. Today, internal-combustion engines power almost every heavy-duty vehicle in America. In 2023, only 750 of the more than 731,000 heavy-duty vehicles sold had something other than an internal-combustion engine. *See* Regulatory Impact Analysis ("RIA") at 20, Tbl. 1-4. Battery-electric, hybrid, and fuel-cell heavy-duty vehicles made up one tenth of one percent of all heavy-duty sales. EPA envisions its rule will induce exponential increases to these alternative technologies' market share. The agency projects that by 2032, 60 percent of light heavy-duty vehicles sold (e.g., urban delivery trucks

and shuttle buses) and 25 percent of sleeper-cab trucks sold will be powered by a battery or hydrogen fuel cell. 89 Fed. Reg. at 29,452, Tbl. ES-3. In total, under its "lowest cost" pathway to compliance, EPA predicts that 45 percent of all heavy-duty vehicles sold in 2032 will be electric. *Id.* at 29,567; *see id.* at 29,484. A slighter market change satisfied the economic significance factor in *West Virginia*. *See* 597 U.S. at 714 (agency projected 11 percent decrease in coal's market share over 16 years).

b. This market transformation will affect "a significant portion of the American economy." *Util. Air*, 573 U.S. at 324. "Practically every" American consumes goods delivered by truck. *Biden v. Nebraska*, 143 S. Ct. 2355, 2373 (2023). Trucks move over 70 percent of the Nation's freight, and over 80 percent of U.S. communities "rely *exclusively* on trucking" to receive freight. Am. Trucking Ass'ns, *supra*, App. 2, at 3. EPA estimates that heavy-duty trucks move 33 million tons of freight worth $30 billion *every single day*. RIA at 5. No other mode of transportation comes close to moving the amount of cargo that trucks do—and the share of the transportation market dominated by trucks is projected to increase. *Id.* at 5–6. There can be "no serious dispute" that the rule attempts to exercise control over a major driver of the American economy. *Nebraska*, 143 S. Ct. at 2373; *see West Virginia*, 597 U.S. at 744 (Gorsuch, J., concurring).

Given the trucking industry's broad reach, disruptions to the transportation industry will have drastic downstream supply chain effects. Truck purchasers will pay up to three times more for battery-electric trucks and up to seven times more for fuel-cell trucks than they would for comparable internal-combustion trucks. Am. Trucking Ass'ns, *supra*, at 10. And one recent study finds that switching to a battery-electric sleeper cab would increase operation costs by as much as 114 percent per year. *See* Petition for Reconsideration, The Transport Project at 3 (June 21, 2024). Not only that, the decreased payload capacity of battery-electric trucks, *see* RTC at 634–37, and ten-hour charging stops will weaken critical supply chains and slow down the swift movement of goods that keeps the economy humming. Valero Energy Corp. Comment at 23–25, 31–32 (Apr. 27, 2023).

These costs and delays will ultimately be borne by consumers in the form of higher prices for goods and services that depend on the logistics industry. This means more expensive products that travel on trucks: from food to furniture to fuel. *See, e.g.*, Am. Trucking Ass'ns, *supra*, App. 2, at 4; Ariz. Legislature, *supra*, at 26; Valero, *supra*, at 37, 54. It also means higher costs for services, like truck rentals for moves. Finally, as Private Petitioners underscore, the rule would crimp the oil and gas industry, as well as disrupt the biofuel sector and farmers who support it. Private Petitioners Br. 22. On their own, the compliance,

infrastructure, and indirect costs of the rule are enormous. Combined, they plainly make the rule one of vast economic significance.

c. The rule will also require state and local governments to spend significant sums to expand electric grid capability. EPA concedes that this anticipated electric grid demand "is attributable to the HD Phase 3 rule itself." 89 Fed. Reg. 29,516. One study estimates that the rule requires $30 billion for charging equipment and installation and another $36 billion for electric grid updates. Daimler, *supra*, App. C, at 3. Another predicts that the "total investment cost could range from $15 to $100 billion, not including up to an additional $80 billion for [electricity] storage." Am. Fuel & Petrochemical Mfrs., *supra*, at 20. A Department of Energy study reports that $12 billion in grid infrastructure and charging stations is needed by 2032. U.S. Dep't of Energy, *Multi-State Transportation Electrification Impact Study* viii (Mar. 2024) ("TEIS"); *see* 89 Fed. Reg. at 29,520. But that study represents the capital costs of only *five States*. TEIS at v.

Any of these grid-buildout cost estimates alone land EPA's rule in major-questions territory. Even the most conservative estimate—a combined $66 billion investment—exceeds the projected $50 billion cost of the eviction moratorium vacated in *Alabama Association of Realtors*, 594 U.S. at 764. The costlier estimates approach the $200 billion price tag of the power plant rule struck down in *West Virginia*, 597 U.S. at 746 (Gorsuch, J., concurring). Both of those rules were economically

significant. *See Ala. Ass'n of Realtors*, 594 U.S. at 764; *West Virginia*, 597 U.S. at 728–29. This rule is too.

2. The rule is politically significant.

The rule also has a major question's political significance. Electric-vehicle mandates are the subject of an "'earnest and profound debate' across the country." *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 735 (1997)). For example, State Petitioners and State Intervenors strongly disagree on whether governments should create electric-vehicle mandates. *E.g.*, *Iowa v. EPA*, No. 23-114 (D.C. Cir) (19-State challenge to California electric-truck mandate); *Nebraska v. Cliff*, No. 2:24-cv-1364 (E.D. Cal.) (17-State challenge to California ban on internal-combustion trucks). And one of the candidates for President is campaigning on a "promise[]" to "cancel the electric vehicle mandate" at issue here. *See Agenda 47*, Donald J. Trump, https://perma.cc/EM9V-S6JT (Sept. 24, 2024).

EPA's rule is also politically significant because it threatens electric grid reliability. "[E]lectricity is a necessity with few ready substitutes." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 269 (2016). Heating, lighting, air conditioning, office equipment, kitchen appliances, and, of course, electric vehicles all need a reliable supply of electricity. And that supply is increasingly interrupted by blackouts. *See* Clean Fuels Dev. Coal., *supra*, at 30. Given modern demands, policies that threaten grid reliability are strongly disfavored and are against the public interest.

See, e.g., *Benton Cnty. Wind Farm LLC v. Duke Energy Ind., Inc.*, 843 F.3d 298, 299 (7th Cir. 2016); *Sierra Club v. Ga. Power Co.*, 180 F.3d 1309, 1311 (11th Cir. 1999); *Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc.*, 805 F.2d 351, 357–58 (10th Cir. 1986).

Agency action threatening grid reliability also presents a major question because it "significantly alter[s] the balance between federal and state power." *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 622 (2020)). EPA does not dispute that its rule will artificially increase the demand for electricity. *See* 89 Fed. Reg. at 29,514–18. States, not the federal government (nor EPA), have primary control over electricity generation. *See* 16 U.S.C. § 824(b). The "[n]eed for new power facilities, their economic feasibility, and rates and services, are areas that have been characteristically governed by the States," and "in great detail." *PG&E v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205, 206 (1983). EPA flips that tradition upside down, arrogating to itself the power to dictate a massive increase in electricity production across the country. Both the federalism canon and the major-questions doctrine require clear congressional approval before EPA exercises such consequential authority. *See Ala. Ass'n of Realtors*, 594 U.S. at 764; *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991).

Finally, EPA's rule is politically significant because it makes America's logistics industry dependent on critical minerals controlled by foreign adversaries. *E.g.*, Am. Fuel & Petrochemical Mfrs., *supra*, at 36–

40; Ariz. Legislature, *supra*, at 31–33; Valero, *supra*, at 27–30. Two "key" minerals used in electric vehicles are graphite and cobalt, which the United States does not supply. 89 Fed. Reg. at 29,495. China does. It produces over 60 percent of the world's graphite, and the Democratic Republic of the Congo mines over 70 percent of the world's cobalt—half of which is controlled by China. *Id.* at 29,511; RTC at 1669–70. EPA acknowledges that China already limits its critical-mineral exports. 89 Fed. Reg. at 29,501. That supports the inference that Congress did not intend EPA to weigh "the many vital considerations of national policy" that come with electrifying the Nation's heavy-duty fleet. *West Virginia*, 597 U.S. at 729.

3. The rule vastly expands the agency's power.

The final consideration in a major-question analysis is the "breadth of the Government's claimed authority." *Id.* Recent major-question cases have considered whether upholding a particular regulation could sanction even more significant claims of authority in the future. In *West Virginia*, for example, the Court noted that if EPA could shift energy production from one source to another, then "it could go further, perhaps forcing coal plants to 'shift' away virtually all of their generation—*i.e.*, to cease making power altogether." 597 U.S. at 728. And in *Nebraska*, the Court worried that the Secretary of Education "would enjoy virtually unlimited power to rewrite the Education Act" if it agreed with "the Government's reading of the HEROES Act." 143 S. Ct. at 2373;

see also Ala. Ass'n Realtors, 594 U.S. at 764–65. In both cases, the sweeping future implications of a presently claimed authority added one more "'reason to hesitate before concluding that Congress' meant to confer such authority." *Nebraska*, 143 S. Ct. at 2372 (quoting *West Virginia*, 597 U.S. at 721).

EPA's theory of its authorizing statute likewise warrants hesitation here. If EPA's rule stands, EPA could likely ban the sale of all internal-combustion vehicles. If EPA can enact a partial electric-vehicle mandate, then "it could go further, perhaps forcing" manufacturers to "'shift' away virtually all" internal-combustion vehicle production—"*i.e.*, to cease making [traditional vehicles] altogether." *West Virginia*, 597 U.S. at 728. The 1970 Congress that passed the statute on which EPA relies would be surprised to learn that it delegated the power to ban nearly every vehicle then in existence. EPA only recently set emission standards that require electrification. *See Texas v. EPA*, No. 22-1031 (D.C. Cir.). And this rule is its first attempt to electrify heavy-duty vehicles, making its claim of authority novel and all the more suspect. *See West Virginia*, 597 U.S. at 725; *Util. Air*, 573 U.S. at 324.

Upholding EPA's electric-vehicle mandate would allow it to wield "extravagant statutory power over the national economy" through a future ban on internal-combustion vehicles. *Util. Air*, 573 U.S. at 324. Under the major-questions doctrine, such a vast expansion of regulatory

power should be met with "skepticism." *Id.* That is especially true where, as here, the rule under review is economically and politically significant.

B. EPA lacks clear congressional authorization.

Because EPA's rule is economically and politically significant and strikingly expands EPA's authority, the agency must point to "clear congressional authorization" for the rule. *West Virginia*, 597 U.S. at 732 (quoting *Util. Air*, 573 U.S. at 324). It has not done so. No statute gives EPA the power to force manufacturers to make heavy-duty vehicles with specific powertrains. Nor does any statute allow EPA to impose a cap on the number of internal-combustion vehicles that can be sold.

EPA attempts to justify the rule based on its power to set "standards applicable to the emission of any air pollutant" for "classes" of those new motor vehicles. 42 U.S.C. § 7521(a)(1); *see* 89 Fed. Reg. at 29,459–61. But that authority would be an "oblique or elliptical" way for Congress to empower EPA to suppress the production of internal-combustion vehicles. *West Virginia*, 597 U.S. at 723. Under its statutory power to "establish[] standards of performance" for power plants, EPA cannot "direct existing [power plants] to effectively cease to exist." *Id.* at 728 n.3. So too here. EPA's authority to set "standards applicable to the emission of any air pollutant from . . . new motor vehicles" does not allow it to direct manufacturers to cease making internal-combustion vehicles. 42 U.S.C. § 7521(a)(1). Because EPA lacks clear congressional authorization to phase out internal-combustion vehicles in favor of

electric ones, that consequential decision "rests with Congress itself." *Id.* at 735.

Even if the rule did not implicate a major question, it still exceeds EPA's statutory authority. The statute allows EPA to set "standards applicable to the emission of any air pollutant." 42 U.S.C. § 7521(a)(1). As this Court has explained, EPA can "set emissions standards for new motor vehicles . . . if they emit harmful air pollutants." *Truck Trailer Mfrs. Ass'n v. EPA*, 17 F.4th 1198, 1201 (D.C. Cir. 2021). Accordingly, if a vehicle does not emit a harmful air pollutant, EPA cannot set emission standards for it.

Yet that is exactly what EPA's rule does. The premise of the rule is that battery-electric and fuel-cell vehicles, "by definition, emit zero tailpipe emissions." 89 Fed. Reg. at 29,706. The rule's use of fleetwide averaging—which is itself contrary to the statute, *see* Private Petitioners Br. 32–50— applies the emission standards to all heavy-duty vehicles, including battery-electric and fuel-cell ones. *See id.* at 29,460. By including these purportedly non-emitting vehicles in the class of vehicles subject to the rule, EPA exceeded its statutory authority to set standards for vehicles that "emi[t]" air pollutants. 42 U.S.C. § 7521(a)(1).

EPA's prior emission standards for heavy-duty vehicles did not regulate non-emitting vehicles. Under the Phase 1 and Phase 2 rules, "electrification [was] an option for compliance but [was] not required." 77 Fed. Reg. at 62,917. Neither rule was "premised on the application of

[zero-emission vehicle] technologies." 89 Fed. Reg. at 29,483. The rule here abandons those previous limitations and requires the production (or creation) of new powertrains. By overtly regulating heavy-duty vehicles that EPA assumes do not "emi[t] any air pollutant" EPA has exceeded its statutory authority to limit the tailpipe emissions of new motor vehicles. 42 U.S.C. § 7521(a)(1).

* * *

Nothing in the Clean Air Act authorizes EPA to mandate electric vehicles or suppress the production of internal-combustion vehicles. EPA therefore exceeded its statutory authority, and this Court should reverse the rule.

II. The Rule Is Arbitrary and Capricious.

This Court should also "reverse" this final rule because it is arbitrary and capricious. 42 U.S.C. § 7607(d)(9)(A). Agencies must engage in reasoned decision-making. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). Thus, an agency action is arbitrary and capricious if it relies on unsupported assumptions, *Small Ref. Lead Phase-Down Task Force v. EPA*, 705 F.2d 506 (D.C. Cir. 1983), ignores important aspects of the problem, *Ohio v. EPA*, 144 S. Ct. 2040, 2053 (2024), considers impermissible factors, *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983), or relies on a flawed cost-benefit analysis, *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012). This rule does all the above.

A. EPA ignored significant harms to the electric grid's reliability.

As explained, by forcing exponential increases to the number of heavy-duty battery-electric vehicles on State Petitioners' roads, EPA's rule will increase electricity demand. *See* p. 16, *supra*. This jeopardizes the stability of State Petitioners' electric grids. The agency's contrary conclusions that the rule is "unlikely" to harm, and might "benefit[]," the electric grid are wrong. 89 Fed. Reg. at 29,521–22. They also are not sufficiently supported. Because the agency "has no expertise on grid reliability," EPA "must support its arguments [regarding grid reliability] more thoroughly." *Texas v. EPA*, 829 F.3d 405, 432 (5th Cir. 2016).

To begin, EPA used a sleight of hand by focusing on "grid reliability in the sense of adequacy." 89 Fed. Reg. at 29,524. But adequacy assumes reliability, the very thing EPA uses adequacy to prove. To illustrate, take the central tool EPA used: the Integrated Planning Model ("IPM"). *See* TEIS at 10; EPA, *Resource Adequacy Analysis: Final Rule Technical Memorandum* 3, 9 (Mar. 2024), https://perma.cc/LCP8-759T. That tool makes an unwarranted presumption; it "assumes that adequate transmission capacity *exists* to deliver any resources." *Resource Adequacy Analysis*, *supra*, at 9 (emphasis added). Thus, the model adds enough new resources to ensure there is sufficient electric generating capacity in the future to "*meet* its total demand." RIA, at 561–62. But it does not prove that the future resources added by EPA's model will or can be built within

the required timeframe. *See EPA's Power Sector Modeling Platform 2023 Using IPM* at 4-1 (Apr. 25, 2024), https://perma.cc/ZNL7-DJLE. Models like this allow the modeler to obtain almost any desired result because key inputs can be chosen arbitrarily. Ariz. Legislature, *supra*, at 21. And whether the grid has adequate generation resources does not answer whether the system can reliably serve the unique demands of non-existent infrastructure.

Next, EPA assumed that just because the grid has been reliable, it will "continue[] to be very reliable." 89 Fed. Reg. at 29,524; *see id.* at 29,521. Assuming the future will be the same as the past is not analysis. Nor is it clear that it is correct or that the present will be comparable to the future in all relevant respects. *See* Valero, *supra*, at 23. Not to mention, it is questionable that the grid is reliable considering multiple already-existing grid reliability issues unaddressed by EPA. *See id.* at 37–43; Ariz. Legislature, *supra*, at 28–29.

EPA also assumed that because utilities have "routinely upgrade[d]" the power system to meet demands for air conditioners, data centers, and cryptocurrency mining operations, they will also meet future demand in the required timeframe, *see* 89 Fed. Reg. at 29,522 n.466, despite the multiple changes on the demand and supply sides of electricity generation and distribution. *See* Daimler, *supra*, at 47 (noting data centers, and the like, were greenfield projects). EPA ignored all the comments that raised concerns over the many changes on the supply and

demand sides of electric energy that preexist and result from EPA's other regulations. *See, e.g.*, Am. Fuel & Petrochemical Mfrs., *supra*, at 21; Ariz. Legislature, *supra*, at 30. And it skirted concerns related to interconnection backlogs, supply-chain shortages, and labor shortages for existing projects. *See* Am. Fuel & Petrochemical Mfrs., *supra*, at 22.

Finally, EPA made other unfounded assumptions about grid reliability. It cited various technologies that could be used to increase reliability and assumes that they will be used—and used at such a scale as to have a meaningful effect. EPA's statements regarding bidirectional charging, 89 Fed. Reg. at 29,521, onsite renewable generation, RIA at 130, and vehicle to grid technology, *id.* at 125, relied on the unexplained assumption that they will actually be used on a widespread scale. Valero, *supra*, at 39; Daimler, *supra*, at 68. Furthermore, EPA never explained the feasibility of off-peak charging, RIA at 125—especially given off-peak charging often relies on the same "baseload fossil fuels" that EPA is targeting for elimination. Most new renewable energy sources are weather-dependent, intermittent, and are not suitable for generating baseload power, while EPA's several other recent rulemakings phase out reliable fossil fuel energy generation. *See* Ariz. Legislature, *supra*, at 30.

And EPA assumed the rule's purported global greenhouse gas reductions will decrease weather-related grid disruptions. *See* 89 Fed. Reg. at 29,524. Yet it never provided facts supporting that claim. It even acknowledged that it "did not conduct modeling" on certain weather-

changes that it claims might affect grid reliability. *Id.* at 29,675. The use of the social cost of greenhouse gases is no substitute because it provides no information on such weather-changes.

Most of EPA's analysis of grid reliability depended on inapt statistics that assume EPA's best case—that the grid will be reliable. All the rest of EPA's analysis relied on assumptions on various aspects of the electric grid and unsupported assertions that the rule will decrease weather-related grid disruptions. That analysis is hardly "thorough[]." *Texas*, 829 F.3d at 432.

B. EPA improperly analyzed the "social cost of greenhouse gases."

The rule is also fatally flawed because of its reliance on the social cost of greenhouse gases. EPA describes the social cost of greenhouse gases as "the monetary value of the net harm to society associated with a marginal increase in [greenhouse-gas] emissions in a given year, or the net benefit of avoiding that increase." 89 Fed. Reg. at 29,708.

In the first place, EPA's justification for relying on a "social cost" of greenhouse gas emissions does not withstand scrutiny. EPA's predictions are "subject to the restraints of reasonableness" and cannot "open the door to 'crystal ball' inquiry." *Int'l Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 629 (D.C. Cir. 1973). But that defines EPA's analysis of this intangible harm. Ariz. Legislature, *supra*, at 16. The inputs into its models purport to monetize the effect of a discrete amount of greenhouse

gas emissions on global wars, famines, technological developments, and other unknowable future events—out to the year 2300. *Id.*

Even if EPA could reasonably rely on that metric, it must be limited to the domestic effect of the social cost of greenhouse gas emissions. The agency erred by going beyond the Nation's borders to credit the *global* benefits from the reduction of greenhouse gas emissions. RIA at 758; Office of Management & Budget, *Circular No. A-4* (Nov. 9, 2023). The Clean Air Act is legislation, and "Congress generally legislates with domestic concerns in mind." *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 336 (2016) (quoting *Smith v. United States*, 507 U.S. 197, 204, n.5 (1993)); Clean Fuels Dev. Coal., *supra*, at 37. Congress declared that one of the Act's "purposes" is "to protect and enhance the quality of *the Nation's* air resources so as to promote the public health and welfare and the productive capacity of *its population*." 42 U.S.C. § 7401(b)(1) (emphasis added). The statute says nothing of extraterritorial impacts or those on the residents of foreign countries. Considering the global social cost of greenhouse gases, thus, is reliance on a factor that "Congress has not intended" EPA to consider. *State Farm*, 463 U.S. at 43.

Including global benefits also creates an apples-and-oranges problem because the rule did not calculate the global effects of the rule on, for example, the electric grid. The rule acknowledged increased demands on the domestic electric grid and need for domestic grid upgrades. *See, e.g.,* 89 Fed. Reg. at 29,521–22. But it did not acknowledge

the same effects in Mexico, Canada, and other countries where American trucking companies operate. *See id.* EPA never addressed why it makes sense to include benefits for noncitizens who do not pay for compliance or enforcement costs in a cost-benefit analysis. As commenters pointed out, it exaggerates the rule's benefits while diluting its costs. Ariz. Legislature, *supra*, at 2, 9–22. Adding noncitizens to one side of the cost-benefit analysis and not the other skews the results, allowing regulators to consider the regulatory benefits to billions of noncitizens while considering costs imposed on only U.S. residents burdened by the rule.

Next, the rule is arbitrary and capricious because EPA changed positions without "display[ing] awareness" that it was doing so, much less providing the requisite "reasoned explanation" for its change. *Navarro*, 579 U.S. at 222. The 2003 version of Circular A-4 that governs cost-benefit analyses considered domestic, not global, benefits, and used a higher discount rate. *See* Office of Management & Budget, *Circular No. A-4* (Sept. 17, 2003). Yet EPA never explained its switch.

The unreasoned transition to an unrealistic discount rate only compounds the inflated social benefits related to reduction in global greenhouse gas emissions. A discount rate is simply how much to value present costs to future benefits. Higher discount rates give less present value to benefits or costs that are assumed to occur in the future, and lower discount rates give more present value. Future benefits should be discounted to a present value using a reasonable, realistic rate. The 2003

Circular A-4 framework used 3 and 7 percent discount rates. *See id.* Without explanation, the rule uses a 2-percent discount rate to costs and benefits, which causes a gross overestimation of the rule's benefit and harm related to climate change. RIA at 660, 668. Put another way, EPA's new methodology causes a multiplied increase in the alleged "benefit" of its new rule, all based on speculative and unreasonable assumptions. *See* Ariz. Legislature, *supra*, at 16–18.

C. EPA's cost-benefit analysis is flawed.

A "serious flaw" in an agency's cost-benefit analysis can make a rule unreasonable. *Nat'l Ass'n of Home Builders*, 682 F.3d at 1040. Here, EPA said the rule's costs and benefits related to the electric grid were "reasonable," 89 Fed. Reg. at 29,520, and greenhouse gas emissions were "[a]n essential factor" supporting the rule, *id.* at 29,591. Yet EPA's analysis embraces multiple serious flaws.

1. EPA downplayed several grid reliability costs. The rule, for example, fails to consider who will pay for grid improvements and how much those improvements will cost. *See* Nat'l Rural Elec. Coop. Ass'n Comment at 3 (Jun. 19, 2023); Schneider Nat'l, Inc. Comment at 2 (Jun. 16, 2023). The answer is fleets, States, and Americans. Daimler, *supra*, at 34, 45–52; *see* pp. 14–15, *supra*. Costs related to a forced shift in electricity generation coupled with increased demand for electricity will be passed down to the end user. *See* p. 13, *supra*. EPA failed to account for this shift. EPA also failed to consider the costs of all the technology it

lauds. *See, e.g.,* 89 Fed. Reg. at 29,521; RIA at 125. And EPA tiptoed past costs of basic aspects of infrastructure to ensure grid reliability. *See* Edison Elec. Inst. Comment at 17 (Jun. 15, 2023). The EPA did not sufficiently consider supply and labor shortages. *Id.* at 15. Nor did it sufficiency consider permitting issues. *Id.* at 15–16.

2. EPA downplayed costs and overplayed benefits associated with the social cost of greenhouse gases. EPA revised greenhouse gas cost estimations to include global, not just domestic, benefits and modified its discount rate, resulting in a stunning exaggeration of the rule's projected "benefits." 89 Fed. Reg. at 29,456, 29,710 & n.1364. Indeed, including global impacts produces drastically different calculations. Considering global effects puts the social cost of greenhouse gases between $35 and $41 per ton. *See* Ariz. Legislature, *supra*, App. at 9. But the former administration, which factored in only domestic damages and used a higher discount rate, puts costs at around $7 per ton. *See id.* EPA failed to address that massive disparity. Indeed, the basic premise underlying the use of a "discount rate" is that the more speculative a prediction, the higher the discount rate to account for that risk. But EPA selected an extremely low two-percent discount rate that cannot reflect such speculative estimates related to the global effect of human migration, wars, natural disasters, mitigation of purported consequences of climate change, and technological development over the next 300 years. *Id.* at 2, 9–22.

Furthermore, EPA's cost-benefit analysis is "internally inconsistent." *ANR Storage Co. v. FERC*, 904 F.3d 1020, 1028 (D.C. Cir. 2018) (vacating agency order as arbitrary and capricious). Although EPA used the new discount rates and global focus for assessing the costs of greenhouse gases, the rest of its cost-benefit analysis employed the old Circular A-4 methodology. *See* RIA at 754, 760. This inconsistency resulted in another comparison of apples (the costs of greenhouse gases) to oranges (the costs and benefits of the other aspects of EPA's analysis). *See* 89 Fed Reg. at 29,457.

CONCLUSION

The Court should reverse EPA's rule.

Dated: October 16, 2024

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,990 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word (the same program used to calculate the word count).

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CERTIFICATE OF SERVICE

On October 16, 2024, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that the document has been scanned for viruses and is free of viruses.

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ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1129 (and consolidated cases)

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

STATE OF NEBRASKA, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents,

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA–HQ–OAR–2022–0985)

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TABLE OF CONTENTS

PRIMARY STATUTE

A. Section 202(a) of the Clean Air Act, 42 U.S.C. § 7521(a) provides, in relevant 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.

[Remainder of subsection omitted.]

No. 24-1129 (and consolidated cases)

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

STATE OF NEBRASKA, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ET AL.,
Respondents.

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA–HQ–OAR–2022–0985)

DECLARATION OF BENJAMIN ZYCHER, PH.D.

I, Benjamin Zycher, having personal knowledge and being duly sworn declares that:

1. I am currently a senior fellow at the American Enterprise Institute, where my expertise is energy and environmental policy. I am also a member of the board of trustees of the Foundation for Research in Economics Education at the University of California, Los Angeles and a member of the editorial advisory board of the journal *Regulation*. I have held research and teaching roles in academia and private research institutions, and served for two years in the White House, with the Council of Economic Advisers (1981-83), and in the State Department, with the Office of Economic Analysis, Bureau of Intelligence and Research (2010-12).

2. I hold a Ph.D. in economics from the University of California, Los Angeles, and a master's degree in public policy, from the University of California, Berkeley.

3. This declaration is done in my personal capacity and reflects neither the views of the American Enterprise Institute nor any current or previous employer or organization with which I have been affiliated, including those listed above.

4. I have reviewed the Final Rule issued by the Environmental Protection Agency on April 22, 2024 that is the subject of this litigation.

5. **Summary**. The Environmental Protection Agency "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3" Final Rule will impose substantial net costs on purchasers and operators of heavy-duty vehicles and vehicle fleets, including the State of Nebraska. The Final Rule will increase the cost of procuring heavy-duty trucks and fleets, both conventional types powered with internal-combustion engines and unconventional types powered with electric, hydrogen, and hybrid technologies. It is likely also to yield a decline in the quality of transportation services provided by heavy-duty vehicles. The very fact that the Final Rule has been promulgated proves that the intended shift toward unconventional heavy-duty trucks will increase the prices of conventional heavy trucks: Without the Final Rule, purchasers of heavy-duty trucks and fleets cannot be induced *at competitive market prices* to purchase a fleet with the mandated fleet CO_2 standards per ton-mile.

6. Instead, vehicle manufacturers forced to achieve the respective CO_2 emission standards for vocational vehicles and tractors can do

so only by raising the prices of conventional heavy-duty trucks, or by reducing the prices of unconventional heavy-duty trucks, or both, so as to induce a sales shift toward the latter.

7. Because states must utilize heavy-duty vehicles in the production of state services, states will bear non-trivial costs as a result of the Final Rule. Among other effects, these costs will take the form of higher acquisition costs for vehicles and a likely increase in the size of the fleets of heavy-duty trucks needed to provide the aggregate amount of the relevant state services.

8. **Introduction**. This declaration outlines in summary fashion important economic costs to be borne by the State of Nebraska and similarly situated states as a result of the Environmental Protection Agency "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3" Final Rule.[1] The emphasis here is on the increase in vehicle acquisition costs.

9. **Section II: Vehicle Acquisition Costs**. The very fact that increased sales of unconventional heavy-duty trucks powered with electric, hydrogen and hybrid systems — satisfying the fleet CO_2 emissions standards — must be mandated as in the Final Rule demonstrates that they do not satisfy consumer preferences as fully as conventional (inter-

[1] See Environmental Protection Agency, "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3" Final Rule, April 22, 2024, at https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-06809.pdf. The EPA has published the Regulatory Impact Analysis at https://www.epa.gov/system/files/documents/2024-03/420r24006.pdf.

nal-combustion) vehicles in terms of initial cost, operating cost, performance characteristics, and all other parameters shaping consumer vehicle choices.[2]

10. In the Final Rule, EPA publishes two sets of projections for the shift in market shares over model years 2027-2032 for conventional and unconventional heavy-duty vocational and tractor vehicles.[3] As a rough generalization, the EPA projections are for an increase in the market shares of zero-emissions vocational and tractor vehicles from roughly 6 percent to 17 percent in the earlier model years to 25 percent to 60 percent by MY 2032. The analogous figures for conventional heavy-duty vocational and tractor vehicles are 83 percent to 94 percent in the earlier model years to 40 percent to 75 percent by MY 2032.

11. The immediate corollary is that such increased market shares for unconventional heavy-duty trucks cannot be achieved under competitive market conditions. Instead, Instead, achievement of the fleet-average CO_2 emissions per ton mile as promulgated in the final rule will require manufacturers to raise prices on conventional heavy-duty trucks in order to subsidize the sales of unconventional ones.

12. Because of consumer unwillingness to pay prices for unconventional heavy-duty trucks that would reflect the costs of producing them — again, the very fact that a mandate is required to achieve a given

[2] Note that the EPA in its *Proposed Rule to Revise Existing National GHG Emissions Standards for Passenger Cars and Light Trucks Through Model Year 2026* simply ignores this, assuming that the fuel savings are both gross and net benefits, that is, that there are no adverse cost and performance parameters attendant upon an increase in the mileage standards required by federal regulations. An ancillary assumption is that consumers are too myopic or unperceptive to recognize such tradeoffs. See my discussion at https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0208-0254, p. 5-6

[3] See Tables ES-3 and ES-4 in the Final Rule, at pp. 29452-29453.

market share for such vehicles demonstrates that they do not satisfy consumer preferences as fully as conventional heavy-duty trucks in terms of initial cost, operating cost, performance characteristics, and all other parameters shaping consumer vehicle choices — the mandated market shares can be achieved only with the incorporation of explicit or implicit subsidies for those purchasing unconventional heavy-duty trucks.[4] Such subsidies would take the form in particular of increases in prices for conventional trucks combined with reductions in prices for unconventional ones, with the former increases used to subsidize the latter reductions so as to allow the vehicle manufacturers to earn competitive returns (that is, to cover their costs) over the time horizon relevant for ongoing capital investment.

13. The price differences are not trivial. A recent analysis from the Department of Energy reports representative vehicle costs as summarized in the following table for conventional (diesel) trucks, battery electric trucks, plug-in hybrid trucks, and fuel-cell electric (hydrogen) trucks.[5]

[4] Note that the manufacturers have incentives to price all vehicles at long-run marginal cost (equal to average cost in the likely case that the long-run supply function is flat) in order to drive sales toward the long-run profit-maximizing level.

[5] See U.S. Department of Energy, "2022 Incremental Purchase Cost Methodology and Results for Clean Vehicles," December 2022, Table 2, at https://www.energy.gov/sites/default/files/2022-12/2022.12.23%202022%20Incremental%20Purchase%20Cost%20Methodology%20and%20Results%20for%20Clean%20Vehicles.pdf.

U.S. Department of Energy Representative Vehicle Costs, 2022

(thousands of U.S. dollars)

Representative Vehicle	Conventional	BEV	PHEV	FCEV
Class 4-6 Box Truck	72.5	107	100.5	113.5
Class 7 Daycab	117.5	211	183.5	198
Class 8 Longhaul	160	457.5	324	265.5

14. A recent analysis published by *Statistica* projects purchase costs for electric heavy-duty trucks in 2025 and 2030 at $277,000 and $177,000, respectively.[6] For heavy-duty diesel trucks, the 2025 and 2030 projections are $105,000 and $108,500. The differences are comparable to those in the DOE analysis. Note that the *Statistica* analysis does not present direct support for its projection of a sharp decline in the purchase costs for electric heavy-duty trucks; that decline simply is assumed, presumably on the basis of a projected achievement of scale economies (declining average costs) as production increases. But any such scale economies are crucially dependent upon the prices of important inputs as production rises; the increasing prices of lithium, nickel, and other important minerals are good examples in the context of the large batteries needed in electric heavy-duty trucks.[7]

15. A review of the literature shows that most analyses predicting lower or equal "total cost of ownership" for unconventional heavy-duty trucks relative to conventional heavy-duty trucks, despite substantially higher purchase costs, by 2040 fail to apply a discount factor to the

[6] See *Statistica*, May 11, 2023, at https://www.statista.com/statistics/1230087/heavy-duty-truck-purchase-costs-by-fuel-type/.

[7] See the recent analysis from the International Energy Agency, May 2022, at https://www.iea.org/commentaries/critical-minerals-threaten-a-decades-long-trend-of-cost-declines-for-clean-energy-technologies.

stream of future operational and maintenance cost savings asserted as economic benefits of the unconventional technologies.[8] The number of alternative combinations of assumptions on crucial underlying parameters is very large, and it is far from obvious that operations and maintenance costs in reality would prove lower for the unconventional heavy truck technologies.[9] The ICCT analysis does discount the future costs streams correctly, and in its analysis the cost advantage of diesel technologies over battery-electric technologies grows monotonically from 2028 through 2040.

16. Accordingly, the available data and analyses demonstrate that future discounted streams of operations and maintenance savings, if assumed to exist, will not offset the higher acquisition costs for unconventional heavy-duty trucks.

17. The Nebraska state Department of Transportation certifies in an affidavit that it must replace "approximately 41 plow trucks annually." In a similar affidavit, the Nebraska State Department of Correctional Services certifies that it "utilizes 25 vehicles that are heavier than 8,500 pounds by gross vehicle weight rating" and that "The Department will need to replace [those] vehicles … in the future." The cost data sum-

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[8] See, e.g., the analysis reported by the National Renewable Energy Laboratory at https://www.nrel.gov/news/program/2024/study-examines-cost-competitiveness-of-zero-emission-trucks.html.

[9] On the parameters that must be assumed, see the International Council on Clean Transportation, "Total Cost of Ownership of Alternative Powertrain Technologies for Class 8 Long-Haul Trucks in the United States," April 2023, Table 9, at https://theicct.org/wp-content/uploads/2023/04/tco-alt-powertrain-long-haul-trucks-us-apr23.pdf. That analysis (Figure 19) predicts total cost of ownership per ton-mile uniformly higher for battery-electric technologies than for diesel technologies after 2028, with a discount rate of 7 percent.

marized above in paragraphs 13-16 demonstrate that it is incontrovertible that the State of Nebraska would bear significant costs as a result of enforcement of the EPA Final rule.

18. **Section III: Conclusion**. The central issue addressed here is whether the EPA Final Rule will harm the economic interests of Nebraska by increasing the costs of procuring heavy-duty trucks. The incontrovertible answer is yes.

DATED: October 9, 2024

Respectfully submitted,

BENJAMIN ZYCHER

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF MICK SYSLO IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Mick Syslo, hereby declare as follows:

1. My name is Mick Syslo and I currently serve as Deputy Director of Operations within the Nebraska Department of Transportation (NDOT).

I have a Civil Engineering Degree from the University of Nebraska in Lincoln Nebraska and have over 30 years of experience in the transportation field working for the NDOT. I am over the age of eighteen and competent to testify about the matters in this declaration based on my

personal knowledge, my education, my experience with the Department, and information provided to me by Department personnel.

2. I am providing this declaration in support of the Commonwealth of Kentucky's petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. The Department's Heavy-Duty fleet

3. Among my duties as Deputy of Operations is the responsibility of overseeing the management the Department's motor vehicle fleet. NDOT's heavy-duty fleet is assigned to NDOT staff performing field operations throughout the State of Nebraska. A large portion of these field operations occur in rural areas. NDOT is responsible for the operation and maintenance of the 10,000-miles of Nebraska's State Highway System.

4. NDOT currently owns approximately 1,100 heavy-duty vehicles; including plow trucks, loaders, motor graders, and industrial snow blower machines. An estimated 799 of these vehicles are 60,000 pounds or greater gross vehicle weight rating ("GVWR") plow trucks that would be included in the NAICS 336120 vehicle codes used for highway maintenance operations, including snow plowing and distributing anti-icing materials.

5. Many of the Department's heavy vehicles are currently eligible for replacement. Currently, the Department maintains about an annual budget of $12,000,000 just to procure the new snowplow class of heavy vehicles. On average a diesel snowplow truck costs $293,000. The Department typically purchases new vehicles and plans to only purchase new vehicles.

II. Impact of the EPA Rule on the Department

6. The Department currently replaces approximately 41 plow trucks annually. Following this schedule, the Department will replace

around 246 plow trucks over the six-year period from 2027 to 2032. These replacements will be directly impacted by the EPA's new rule.

7. The EPA's rule, which mandates an increased production of electric vehicles, will likely limit the availability of new internal combustion engine (ICE) models. This limited supply is expected to result in higher prices for ICE vehicles.

8. Should the EPA's rule effectively phase out ICE models in the heavy-duty truck category, the Department's budgetary needs will rise significantly. Currently, an electric version of a heavy-duty class truck (on a semi-truck frame) costs approximately 2.8 times more than its diesel counterpart.

9. In addition to higher vehicle costs, the Department will need to invest in infrastructure to support an electric vehicle (EV) fleet. This includes the installation of electric vehicle charging stations at all 119 maintenance facilities across the state, which currently offer fueling options for traditional vehicles.

10. If the EPA's rule leads to the elimination of ICE models, the Department will need to increase the number of snowplow vehicles in its fleet. Currently, electric heavy-duty trucks have a range of about 60% compared to their diesel counterparts, necessitating a large increase in fleet size to cover the Department's snow plowing of the State Highway System. Furthermore, EVs require several hours of charging between uses, making it essential to have additional vehicles to maintain continuous snow removal operations during winter storms.

11. The Department will also face increased facility budget requirements. At present, the Department operates with an annual budget of $8,000,000 for capital improvements across its 800 buildings. A significant portion of the current heavy-duty fleet is stored outdoors. However, electric vehicles will require indoor, heated storage to ensure proper operation during the cold winter months.

12. The EPA's rule suggests that the listed vehicle class codes are not exhaustive but are provided as a guide to potential impacts. If the

North American Industry Classification System (NAICS) codes are expanded to include the 333120 series of vehicles, the construction industry's heavy-duty fleets will face similar challenges as outlined above.

13. The EPA's rule will directly result in substantial cost increases for the Department, including in infrastructure, fleet acquisition, and operational productivity. The Department does not currently own or operate any electric heavy-duty vehicles. Given the current state of the electric vehicle technology, the Department does not plan to purchase any electric heavy-duty vehicles because of many reasons including those listed above.

III. Overweight and Over-Dimensional Permitting

14. Loaded or unloaded Vehicles that exceed certain weight and dimension limits must receive an overweight or over-dimensional permit from NDOT to operate in Nebraska. *See* Neb. Rev. Stat. § 60-6,298.

15. Generally, an overweight or over-dimensional permit is necessary for any load that has any of the following characteristics:

a. Total vehicle weight of greater than 80,000 lbs. on the interstate, and greater than 94,000 lbs. on U.S. and State highways; *or*

b. The carrier is over legal axel weight, which means:

c. Greater than 20,000 lbs. for a single axel; or

d. Greater than 34,000 lbs. for a tandem axel; or

e. Found to not satisfy the federal bridge formula for legal axel weights governing triple or quad axel configurations; *or*

f. Any vehicle or load combination wider than 8'6" wide or 14'6" tall; *or*

g. Any vehicle towing a trailer or load combination longer than 53'.

16. To apply for an overweight or over-dimensional permit, the applicant (or permit application company hired by the applicant) uses the NDOT online permitting system built and supported by Bentley to enter requisite contact, vehicle, load, and route characteristics.

17. If all the data is within certain parameters, and thus receives no flags, then the permit self-issues through an automized system.

18. If flags are triggered by the applicant's data, then the permit moves to NDOT's permit staff for review.

19. At that point, NDOT's permit staff follow up with the applicant and ask detailed questions about the application. The more detailed questions can include the completion of a route survey provided by the carrier to verify the load can travel through the proposed route..

20. Depending on the circumstances, coordination with the permit staff, bridge structural review team, district management, and Nebraska State Patrol for escorts may be required.

21. The time that NDOT employees must spend to issue an overweight or over-dimensional permit varies by request.

22. A request for an overweight or over-dimensional permit without any flags made through NDOT's online permitting system is issued immediately through the system.

23. A request for an overweight or over-dimensional permit with some flags, but requiring no additional coordination from NDOT, takes NDOT up to one hour to process.

24. The time necessary for a request for an overweight or over-dimensional permit with flags that requires additional coordination varies depending on the steps needed for the requisite coordination as follows:

a. If the bridge structural review team is needed, add 10 working days;

b. If district management is needed, add 5 working days;

c. If a private route survey is needed, add 2 working days;

d. If a state patrol escort is needed, add 7 working days;

e. If utility coordination is needed, add 10 working days.

25. For every permit that NDOT issues, NDOT incurs cost based on employees' time spent for coordination and for the software that supports the online permitting system.

26. The average hourly rate of the NDOT permitting team is $20 per hour.

27. The average per permit cost of the online permitting system is $5.

28. The average hourly rate of the bridge survey team is $40 per hour.

29. The average hourly rate of the district management team is $45 per hour.

30. The following is the estimated costs to NDOT for permits of varying complexity:

NDOT Cost Per Permit (Estimated)	
Self-issued permit	$5
Permit Staff Permit flags no coordination	$25
Permit Staff, Bridge	$125
Permit Staff, District	$90
Permit Staff, Bridge, District	$190
Permit Staff, Bridge, District, Route Survey	$230
Permit Staff, Bridge, District, Route Survey, State Patrol	$450
Permit Staff, Bridge, District, Route Survey, State Patrol, Utilities	$470
Permit Staff, Bridge, District, Route Survey, Utilities	$250

31. Generally, Neb. Rev. Stat. § 60-6,294 sets out the various vehicle weights and axle configuration weights allowed on Nebraska's State highways based on the Bridge Formula..

32. Assuming the values in the Bridge Formula remain the same, and given electric vehicles are heavier when compared to petrol-based vehicles, and assuming that commercial carriers will not wish to carry smaller amounts of cargo in commercial electric vehicles, NDOT anticipates there will be an increase the number of overweight permits that NDOT issues on an annual basis.

IV. Effect of Axle Weight on Pavement Fatigue

33. In general, heavier vehicles cause greater wear and tear to roads and highways than lighter vehicles.

34. Because of their relative weight, commercial vehicles (i.e., trucks) bring about substantially more wear and tear on pavement than passenger vehicles do.

35. Given that they cause more wear and tear than passenger vehicles, commercial vehicles are the primary consideration when designing the specifications of highway pavements.

36. The standard method for pavement design is to use axle configurations and weight to determine a vehicle's effect on the pavement.

37. The Bridge Formula codified at Neb. Rev. Stat. § 60-6,294 controls axle configurations, and the projected traffic data for the amount and type of vehicles for a particular roadway are used to project axle load impacts to the pavement.

38. Pavement damage comes from the amount of "axle loading" the pavement is subjected to over time.

39. An "axle load" is total weight bearing of a wheeled vehicle on the road for all wheels attached to a given axle.

40. For pavement design purposes, all legal truck weights, trailer weights, and axle configurations are converted to a "standard axle" known as an Equivalent Single Axle Load or ESAL.

41. As each load or axle travels over a roadway it causes the underlying pavement to flex or compress ever so slightly.

42. As thousands of loads go over the pavement throughout the year, then fatigue (damage) begins to develop in the form of microcracks.

43. The pavement is designed to handle a large number of loaded trucks over several years. Each pass of the loaded truck fatigues the pavement. If the load weights or the number of loads increase, then the

pavement fatigues faster than what was originally planned and it will need to be repaired sooner than anticipated.

44. Further, some pavements do not accommodate increased loads as well as other pavements. The subgrades under flexible pavements are more susceptible to damage from heavy loads than are rigid pavements.

45. NDOT projects that even small increases in weight can rapidly increase the rate of pavement fatigue, as the rate of fatigue increases not proportionately but exponentially.

46. All vehicles, both electric and non-electric, need to conform to the axle configurations in Neb. Rev. Stat. § 60-6,294, with a few statutorily exempted vehicles.

47. If Bridge Formula axle configurations were adjusted to allow more weight per axle, then the pavement would be damaged much more quickly than at current weight per axle configurations.

48. Damage done to the pavement from truck axle loads increases at an exponential rate as the load weight increases.

49. This expontial rate can be modeled using what is lnown as a power 4 formula. One example of this calculation is as follows:

a. One standard axle load for a single axle is 18,000 lbs. = 1.0 ESAL

b. If the load increase 10% to 19,800 lbs., then the damage is to a magnitude of 4:

c. (19,800 lbs. / 18,000 lbs.)4 = (1.1) 4 = (1.1)x(1.1)x(1.1)x(1.1)=1.5 ESALs

d. If the load is doubled on that single axle to 36,000 lbs., then the damage would be:

e. (36,000 lbs. / 18,000 lbs.) 4 = (2.0) 4 = (2.0)x(2.0)x(2.0)x(2.0)=16 ESALs, so not just double.

50. NDOT projects that doubling the axle load would result in approximately 16-times the damage of the present axle load.

51. With this example, NDOT projects that if the axle load on a 5-axle semi-truck is increased 10 percent, then the damage done to the pavement is about 1.5-times as much as the present legal load.

52. The current roadway under this scenario was designed to handle 8,030,000 ESALs over 20 years. If allowed to overload by an additional 10 percent, then the roadway would have 8,657,800 ESALs over 20 years. At that increased rate, the roadway would reach its design life ESALs (8,030,000 ESALs) in 18.5 years instead of 20 years. That is a 7.5 percent loss in investment for that pavement.

53. As shown in this example, NDOT would project that a 10 percent increase in axle load weight could reduce the pavement life by 7.5 percent, or in other words, require an additional $6,000,000 to $10,300,000 annual investment into the State's pavements.

54. Local County Highway Superintendents, who are responsible for local non-state highway roadways, have informed NDOT that their current paved roadways are about 6" in thickness, which is about 2" to 4" thinner than most State highways. Because the local-paved-rural roadways are thinner than State highways, the impacts to the local system would be even greater than those expressed above for the State system.

For these reasons, the EPA's rule will directly result in substantial cost increases for the Department, including in infrastructure, fleet acquisition, and operational productivity.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 20th day of September 2024, at Lincoln, Nebraska.

Mick Syslo, P.E.

Subscribed and sworn to me on September 20, 2024, by the above-named Mick Syslo, known by me to be the person named as the affiant in the above affidavit.

GENERAL NOTARY - State of Nebraska
TARA KAY MILLSTEAD
My Comm. Exp. June 14, 2028

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF DENZIL COBB IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Denzil Cobb, hereby declare as follows:

1. My name is Denzil Cobb and I currently serve as Material Control Manager within Nebraska's Department of Correctional Services. I have served in this role since 2008.

2. I have 16 years' experience in public fleet management. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge and experience with the Department.

3. I am providing this declaration in support of the State of Nebraska's petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3," published at 89 Fed. Reg. 29,440 (Apr. 22, 2024).

4. Our agency currently utilizes 226 vehicles. Of these, excluding pickup trucks and vans, our agency utilizes 25 vehicles that are heavier than 8,500 pounds by gross vehicle weight rating ("GVWR"). They include: 15 straight trucks, 6 busses, 2 delivery trucks, 1 garbage truck, and 1 dump truck. All 25 vehicles are agency-owned.

5. The Department does not have a separate budget set aside for vehicle replacements. These funds come out of facility operating budgets/capital outlay when needed. The Department will need to replace the vehicles identified in paragraph 4 in the future. The Department purchases both new and used vehicles.

6. The Department will be impacted by the EPA's Rule if the Department is unable to purchase vehicles with internal-combustion engines. The Department-owned vehicles are only replaced when wrecked and/or no longer feasible to fix. Currently, electric vehicles have been more costly when it comes to repairs. There are also limited vendors who service electric vehicles, which does not allow for competitive bidding on repairs.

7. Given the potential higher purchasing and repair costs of electric vehicles, the Department prefers and plans to purchase only heavy-duty vehicles with internal-combustion engines at this time.

8. Nebraska Department of Corrections does not have charging sites to charge an electric vehicle. If the Department is required to purchase electric vehicles, we would then have to install charging infrastructure to support these vehicles.

9. For all these reasons, the EPA's Rule will result in significant cost increases to the Department in terms of charging infrastructure and vehicle acquisition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 30th day of September, 2024, at Lincoln, Nebraska.

/s/ Denzil Cobb

State of Nebraska
County of Lancaster
Subscribed and sworn before me on September 30, 2024, by the above-named Denzil Cobb, known by me to be the person named as the affiant in the above affidavit.

GENERAL NOTARY - State of Nebraska
BETTY JO WILLIAMS
My Comm. Exp. August 4, 2025

Notary Public
My Commission expires: 08-04-2025

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF JESSICA NAWROCKI IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Jessica Nawrocki, hereby declare as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. I am employed by the Nebraska Department of Revenue (DOR) at its office in Lincoln, Nebraska.

3. The title of my position within DOR is Director of Compliance.

4. As a part of my position, I oversee all areas of the compliance division including the Excise Tax and Compliance (ETAC) unit. ETAC is responsible for overseeing compliance with the motor fuels tax.

5. The State of Nebraska imposes a motor fuels tax on the selling price of every gallon of motor fuel sold in this State under Neb. Rev. Stat. § 66-486.

6. For fiscal year 2022–2023, the motor fuel tax generated a total of $380,950,786 in tax revenues for the State of Nebraska.

7. The motor fuel tax generated $138,634,414 in tax revenues for undyed diesel alone.

8. If there is a decrease in vehicles that require motor fuels to operate this will in turn decrease the motor fuels sold in the State of Nebraska, resulting in a decrease in the motor fuels tax collected by the State of Nebraska.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 8th day of October, 2024, at Lincoln, Nebraska.

/s/ Jessica Nawrocki

Jessica Nawrocki

State of Nebraska
County of Lancaster

Subscribed and sworn before me on October 8th, 2024, by the above-named Jessica Nawrocki, known by me to be the person named as the affiant in the above affidavit.

GENERAL NOTARY - State of Nebraska
RHONDA R. WALLER
My Comm. Exp. January 23, 2025

Rhonda R. Waller
Notary Public
My Commission expires: 1/23/25

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF STANFORD DUNE CARLTON IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Stanford Dune Carlton, hereby declare as follows:

1. My name is Stanford Dune Carlton, and I currently serve as Bureau Chief of the Bureau of Equipment, Procurement and Services within the Alabama Department of Transportation (ALDOT).

I have over 30 years of experience in the transportation field working for the ALDOT. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge,

my education, my experience with the Department, and information provided to me by Department personnel.

2. I am providing this declaration in support of the Commonwealth of Kentucky's petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. The Department's Heavy-Duty fleet

3. As Chief of ALDOT's Bureau of Equipment, Procurement and Services, I am responsible for the management of the Department's equipment operations, including passenger automobiles, trucks and construction equipment. My Bureau also oversees all procurement activities for the department, including the purchase of vehicles and equipment, repair parts and services, and equipment service facility assets. We also manage land and building projects, including construction of equipment service facilities.

4. ALDOT's Revolving Fund Rental Fleet currently has an inventory of 3,098 active assets; including heavy duty trucks, utility trucks, crew cab trucks, tractors, and passenger vehicles. Under the Environmental Protection Agency (EPA) definition in the Proposed Rule, 1,557 of these assets would qualify as a Medium- Duty Vehicle (MDV), and subject to their recommendations.

5. Currently, the Department has a specific life cycle designations for our active assets, ranging from 4 years / 50,000 miles for passenger sedans to 4 years/ 300,000 miles for utility trucks. Many of the Department's heavy vehicles are currently eligible for replacement. The Department typically purchases new vehicles and plans to only purchase new vehicles.

II. Impact of the EPA Rule on the Department

6. The Department uses a revolving fund to replace our active assets on a 1-for-1 basis when the life cycle of an active asset expires. Following this schedule, the Department will replace around 1,500 to

1,800 active MDV assets over the six-year period from 2027 to 2032. These replacements will be directly impacted by the EPA's new rule.

7. The EPA's rule, which mandates an increased production of electric vehicles, will likely limit the availability of new internal combustion engine (ICE) models. This limited supply is expected to result in higher prices for ICE vehicles.

8. Should the EPA's rule effectively phase out ICE models in the MDV truck category, the Department's budget will rise to reflect the shortage and additional costs required to produce ICE vehicles due to the EPA's rule.

9. In addition to higher vehicle costs, the Department will need to invest in infrastructure to support an electric vehicle (EV) fleet. To my knowledge, the Department has not allocated capital funds for the necessary infrastructure improvements to convert to electric vehicles due to the additional costs. In many of the Department's District offices, the existing electric grid does not have the capacity to accommodate multiple Level 2 and Level 3 EV charging stations. The electric service supplier in those locations would have to install additional electric service to allow for the installation of charging stations. This upgrade would require the Department to invest an estimated $15,000,000.00 to 18,000,000.00 for generators and/or electrical upgrades for EVs.

10. The EPA's rule will directly result in substantial cost increases for the Department, including in infrastructure, fleet acquisition, and operational productivity. The Department does not currently own or operate any electric heavy-duty vehicles. Given the current state of the electric vehicle technology, the Department does not plan to purchase any electric heavy-duty vehicles because of many reasons including those listed above.

For these reasons, the EPA's rule will directly result in substantial cost increases for the Department, including in infrastructure, fleet acquisition, and operational productivity.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 26th day of September 2024, at Montgomery, Alabama.

Stanford Dune Carlton
Bureau Chief

DECLARATION OF WILLIAM N. WATTS, JR., P.E.

1. My name is William N. Watts, Jr., I am over the age of 18 and am fully competent and duly authorized to make this declaration.

2. I serve as the Assistant Secretary of Engineering and Operations for the Florida Department of Transportation (FDOT), an executive agency of the State of Florida.

3. I am a licensed professional engineer registered in the State of Florida, with more than 24 years of experience in the transportation industry.

4. In my capacity as the Assistant Secretary, I oversee numerous program areas critical to the delivery of Florida's state transportation program, including the Offices of Environmental Management, Safety, Design, Traffic Operations, Program Management, Construction, Materials, Maintenance, Right of Way, Emergency Management and Chief Engineer.

5. The mission of FDOT is to provide a safe statewide transportation system that promotes the efficient movement of people and goods, supports the state's economic competitiveness, prioritizes Florida's environment and natural resources, and preserves the quality of life and connectedness of the state's communities.

6. FDOT manages approximately 123,652 centerline miles of public roads, 12,121 centerline miles of State Highways, and 4,351 centerline miles of Strategic Intermodal System. *Florida Moves: Annual Report 2021/2022*, FDOT at 9, https://online.flippingbook.com/view/7637116/ (last accessed May 10, 2024). Florida is home to 22 million residents and welcomes more than 122 million visitors each year who collectively drive more than 332 million vehicle miles per day on the state highway system. *Id.*

7. The acceleration and widespread adoption of electric vehicles, including heavy-duty vehicles imposes significant pocketbook costs on Florida and its taxpayers. As explained in more detail below, these costs include (1) additional expenditures to maintain roads and public infrastructure as well as to replace FDOT's fleet of vehicles, (2) expenditures to plan for the installation of electric vehicle charging stations, (3) increased electricity rates for Florida ratepayers, including the state of Florida, and (4) increased expenditures to plan for the impact of electric vehicles on disaster preparedness.

8. **Electric vehicles accelerate road wear and will result in additional expenses.** Due to their heavy lithium-ion batteries, electric vehicles are, on average, twenty percent heavier than their gasoline and diesel-powered counterparts.[1]

[1] Sang-Hee Woo, et al., *Comparison of Total PM Emissions Emitted from Electric and Internal Combustion Engine Vehicles: An Experimental Analysis,* 842 Sci. Total Environment (Oct. 10, 2022), https://doi.org/10.1016/j.scitotenv.2022.156961.

9. Heavier vehicles accelerate road wear. According to a widely-used rule-of-thumb established by the American Association of State Highway Officials, "increased axle weight increases road damage by the ratio of the increased weight to the fourth power," so that "a 30% increase in axle load is likely to increase repair costs by 185% (nearly tripled)."[2] Applying the same rule, a twenty percent increase in vehicle weight is likely to increase repair costs by 107% (*more than double*).

10. Transitioning to more heavy-duty electric vehicles in the U.S. will increase road wear and require additional expenditures to adapt public infrastructure for heavier vehicles. Also, there has been insufficient real-world testing to understand the impact of electric vehicles on current highway guardrails.[3]

11. Further, FDOT currently maintains its own significant fleet of heavy-duty vehicles. FDOT employees depend upon a reliable fleet of these heavy-duty vehicles to perform their job duties. FDOT replaces its vehicles as needed and as funds allow. FDOT anticipates purchasing multiple new heavy-duty vehicles that will have model years 2027 through 2032. Because the EPA's Rule will require manufacturers to increase production of heavy-duty electric vehicles, the supply of new internal combustion models will decrease and result in increased prices for those models.

12. The increase in electric vehicle adoption predicted—and intended—to result from EPA's Rule can thus be expected to increase Florida DOT's expenditures on public infrastructure, including the increased cost of maintaining roads that wear more quickly under use by electric vehicles and the additional cost to repair and adapt public infrastructure to accommodate heavier vehicles. FDOT will also have to invest in additional infrastructure to support its own electric vehicle fleet. In addition, if FDOT has to replace its heavy-duty fleet vehicles with electric vehicles, FDOT's work in rural areas and its work responding to emergencies could be hampered if access to charging stations and electricity is limited.

13. **Electric vehicles require additional public charging stations.** Adding additional electric vehicles requires the installation of public charging stations. A much more robust network of charging stations will be required if an increased share of heavy-duty vehicles are electric. In addition, if FDOT must purchase heavy-duty electric vehicles, FDOT will have to invest in its own charging stations for its own fleet of vehicles.

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[2] James McDonald, et al., *Engineering Infrastructure to Support Societal Resiliency*, STRUCTURE Magazine (Jan. 2024), https://www.structuremag.org/?p=26208; *see also* FWHA, *Exploring Vehicle Size and Weight Solutions*, Public Roads May/Jun 2009, FHWA-HRT-09-004, https://highways.dot.gov/public-roads/mayjun-2009/exploring-vehicle-size-and-weight-solutions (applying the fourth power rule).

[3] *Nebraska experts weigh highway safety and electric vehicles*, Nebraska Today (Jan. 31, 2024), https://news.unl.edu/newsrooms/today/article/nebraska-experts-weigh-highway-safety-and-electric-vehicles/.

14. Planning for how to expand this charger network already represents a significant expense for FDOT and accelerating the adoption of heavy-duty electric vehicles would add to this expense.

15. **Increasing the number of electric vehicles increase rates for Florida ratepayers and the state of Florida.** Increased electric vehicle adoption in Florida leads to increased electricity consumption, which raises electricity prices for Florida ratepayers, including the state of Florida. According to the Bureau of Labor and Statistics, U.S. electricity prices rose 5 percent over the 12 months prior to March 2024, outstripping the broader inflation rate of 3.5 percent.[4] While rising electricity rates are a result of several contributing factors, increasing demand is a leading factor.[5]

16. According to DOE's National Renewable Energy Laboratory, "[electric vehicles] are expected to be the largest source of electricity demand growth, and will require investments in generation, transmission, and distribution systems."[6]

17. The faster demand grows, the more utilities will be forced to rely on high-cost generation resources, and the more dramatically consumer prices will rise. A director at Southern California Edison, a large electric utility company that serves southern California, explained that the utility is already "seeing long lead times and *exponentially higher costs* for critical equipment that support grid stability and [electric vehicle] infrastructure."[7] A rational utility has no alternative but to pass these higher costs onto ratepayers in the form of higher electricity prices.

18. These higher electricity prices affect not only Florida residents, but also the state of Florida directly, which owns and maintains countless buildings that obtain electricity from utilities. FDOT also uses electricity on its highways, including powering traffic signals, highway and sign lighting, electronic toll equipment and traffic cameras. When electricity rates increase as a result of the increased demand from heavy-duty electric vehicles, the cost to Florida of obtaining electric service will increase, as well.

19. **Electric vehicles require new disaster preparedness plans.** Florida is the state with the most hurricanes making landfall and FDOT plays a significant role in responding to these disasters and assisting communities recover. FDOT employees depend upon a fleet of heavy-duty vehicles in order to successfully respond. Transitioning to heavy-duty electric vehicles will present

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[4] Consumer Price Index Summary, U.S. Bureau of Labor Statistics (Apr. 10, 2024), https://www.bls.gov/news.release/cpi.nr0.htm.
[5] Robert Walton, *EVs Will Bring 'Unprecedented' Power Demand, but Their Flexibility Can Improve Grid Reliability, Utilities Say*, Utility Dive (July 25, 2023), https://www.utilitydive.com/news/ZETA-evs-will-bring-unprecedented-new-electric-demand/688850.
[6] Matteo Muratori, *Transforming Energy Through Sustainable Mobility,* National Renewable Energy Laboratory (Feb. 8, 2024), www.nrel.gov/docs/fy24osti/88775.pdf.
[7] *Id*. (emphasis added).

significant challenges to FDOT when responding to emergencies in communities that are rural and without widely available charging stations and those that are without power after hurricanes.

20. Further, according to the North American Electric Reliability Corporation, much of the country is already at elevated or high risk of electricity shortfalls, in part because of growing electricity demand.[8] To the extent this growing electricity demand leads to brownouts or blackouts in Florida, this presents safety concerns on roads as traffic signals and highway lighting would be without power. This risk is even greater during hurricane evacuations if there is an even greater demand from electric vehicles. Planning for such an eventuality will represent a significant expense.

21. In sum, Florida will face significant financial impact by the acceleration of the adoption of heavy-duty electric vehicles.

22. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/15/2024 | 1:00 PM EDT.

DocuSigned by:
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William N. Watts, Jr., P.E.

[8] *2023 Long-Term Reliability Assessment*, North American Electric Reliability Corporation (Dec. 2023).

I, Jeff McCray, in accordance with the requirements of 28 U.S.C. § 1746 declare:

1. I am the Chairman of the Idaho State Tax Commission ("Tax Commission"). I have held this position since October of 2020. I have personal knowledge to testify to the issues asserted in this Declaration.
2. Pursuant to Chapter 24, Title 63, Idaho Code, the Tax Commission collects a fuels tax of $0.32 per gallon from distributors of motor fuel in Idaho. This tax is paid by distributors and is due and payable when a distributor receives the motor fuel. Distributors are authorized to pass the cost of this tax on to the purchaser of the fuel by including the tax amount in the selling price of the fuel sold by the distributor.
3. Often, a purchaser of the fuel uses the fuel in heavy-duty vehicles.
4. The State of Idaho uses revenues generated by the collection of the fuels tax to build and maintain highways in Idaho and to support infrastructure for aircraft and boats in Idaho.
5. In 2023, the total amount of fuels tax collected by the Tax Commission was $393,773,684.
6. The amount of fuel received by distributors in Idaho is dependent, in part, on the number of heavy-duty vehicles driven on roads in Idaho. A reduction in the number of heavy-duty vehicles driven in Idaho will reduce the amount of

fuel received by distributors in Idaho, which, in turn, will reduce the amount of fuels tax revenue the State of Idaho will receive.

7. Pursuant to Chapter 26, Title 63, Idaho Code, the Tax Commission also collects a sales tax of six percent of the sales price of retail sales in Idaho, including the retail sale of motor fuel used in heavy-duty vehicles. In each transaction, the retailer computes the amount of sales tax and collects the tax from the consumer. The retailer then remits the collected sales tax to the Tax Commission.

8. Sales tax revenue, including the revenue generated from the sale of motor fuel used in heavy-duty vehicles, is distributed pursuant to Section 63-3638, Idaho Code, to a broad range of State and local funds. Sales tax revenue is used to support a variety of environmental, social, educational, infrastructure, public defense, and other governmental programs.

9. The amount of motor fuel sold for use in heavy-duty vehicles via retail transactions depends on the number of heavy-duty vehicles used in Idaho. A reduction in the number of heavy-duty vehicles will reduce the amount of motor fuel sold to consumers, which will decrease the amount sales tax revenue the Tax Commission receives and distributes to the programs described in paragraph 8 of this Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of October, 2024.

State of Idaho
Tax Commission

JEFF MCCRAY
Chairman

I, David Tolman, declare under penalty of perjury that the following is true and correct:

1. My name is David Tolman. I am over 21 years of age and am fully competent and duly authorized to make this declaration on behalf of the Idaho Transportation Department (ITD).

2. ITD is the transportation agency for the State of Idaho. ITD's mission is to improve highway safety, foster mobility, and enhance economic development for Idaho's citizens and for all travelers on Idaho roads.

3. I am ITD's Chief Administrative Officer (CAO). As CAO, my responsibilities include oversight of the Department's finances, including its various revenue sources.

4. A key revenue source for ITD is a portion of the State fuel tax collected on each gallon of purchased fuel for heavy duty (HD) vehicle highway users. To the extent emissions are reduced through various technologies, ITD anticipates that fuel tax revenues received and used by ITD will be correspondingly reduced.

5. As of the end of 2023, Idaho had 84,281 commercial and farm trucks with registered weights between 8,000 and 60,000 lbs generating fuel tax of approximately $50,000,000 per year.

6. I am familiar with the EPA's Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3 (announced March 9, 2024, and effective June 21,

2024). This Final Rule seeks to establish new emission standards for heavy-duty (HD) vehicles. Decreasing the emissions of these vehicles through various technologies is the recognized method to reduce emissions and is encouraged by the Final Rule.

7. As of the end of 2023, registered electric vehicles were less than ½ of one percent of the total vehicles registered in Idaho (0.00439 of total vehicle registrations). The Final Rule could result in reduced fuel usage of 60% of light duty vocational vehicles (registered weights between 8,000 and 16,000 lbs); 40% of fuel in medium duty vocational vehicles (registered weights between 16,001 and 30,000 lbs); and 40% of heavy duty vocational vehicles (registered weights between 30,001 and 60,000)

8. Idaho's state fuel tax rate is 32 cents per gallon ($0.32/gallon). The collected fuel tax revenue is split with sixty percent (60%) going to ITD, and forty percent (40%) going to local governmental entities with ownership/jurisdiction over local roads. Fuel tax revenues contribute to Idaho's road construction and highway maintenance.

9. A reasonable estimate of average fuel used each year by Idaho registered commercial truck is 2,000 gallons and a farm truck of 670 gallons.

10. If Idaho loses the fuel tax revenue on the trucks registered between 8,000 and 60,000 lbs based on the reduced emission standard, it would amount to

approximately $23,000,000 per year. This does not consider trucks registered at 60,001 lbs and above because the vast majority of such vehicles are registered via the International Registration Plan (IRP) and operate in multiple states and perhaps Canadian provinces. The $23,000,000 amount exceeds nineteen percent (19%) of the total diesel fuel tax collected by Idaho on an annual basis. This reduction would thereby impact ITD's revenue stream on an ongoing basis, and impede the Department's efforts to improve highway safety, foster mobility, and enhance economic development.

David Tolman
Chief Administrative Officer
Idaho Transportation Department

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF NATHAN OLIVER IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Nathan Oliver, hereby declare as follows:

1. My name is Nathan Oliver and I currently serve as Director of Fleet Services for the Indiana Department of Administration (IDOA). I have served in this role since January 2024. Before working for the State of Indiana I was a Regional Director for Maintenance at 10 Roads Express. While at 10 Roads Express I was responsible for five shop locations and the maintenance of the vehicles assigned to each of those loca-

tions and the staff. Before working at 10 Roads Express I was the Director of Transportation for Monroe County Community School Corporation in Bloomington, Indiana. While at Monroe County Community School Corporation I researched EV school buses, and the infrastructure needed to operate those vehicles. Not only did I make the recommendation to purchase a specific make and model of EV buses, but I also helped to design the layout and specs for their infrastructure. Before that I was at Richland Bean Blossom School Corporation, Carmichael Truck & Automotive, Monroe County Highway Department, Skirvin Trucking, and Stan's Truck Shop. I have over 30 years of experience in vehicle maintenance and management.

I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my experience with IDOA, and information provided to me by IDOA personnel.

2. I am providing this declaration in support of the State of Nebraska's petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. IDOA's Heavy-Duty fleet

3. IDOA's Fleet Services Division provides cost effective and efficient vehicle procurement, administration, and servicing for State agencies. The agencies rely on IDOA to provide reliable vehicles and efficient service to complete their job duties.

4. IDOA currently owns approximately 1,239 heavy-duty vehicles; including plow trucks, loaders, motor graders, and industrial snow blower machines. An estimated 1,086 of these vehicles are 60,000 pounds or greater gross vehicle weight rating ("GVWR") plow trucks that would be included in the NAICS 336120 vehicle codes used for highway maintenance operations, including snow plowing and distributing anti-icing materials.

5. As heavy-duty vehicles are retired, IDOA replaces them with new vehicles. When IDOA replaces vehicles, it does so with a new vehicle

in like kind. So IDOA anticipates that it will purchase new vehicles from model years 2027 to 2032, all of which will be impacted by the EPA's Rule. The Indiana Department of Transportation (INDOT) alone purchases 30 new tandem and 6 new tri-axle heavy-duty vehicles per year. Having to purchases electric, instead of diesel, vehicles, could increase INDOT's annual budget for replacement vehicles over $3.6 million to $9 million per year.

II. Impact of the EPA Rule on the Department

6. IDOA manages several different types of heavy-duty vehicles that will be affected by this rule. One example is INDOT's snowplow fleet however, the Indiana Department of Homeland Security, the Indiana Department of Corrections and the Indiana Department of Natural Resources all use vehicles that will be affected by this rule.

7. Over the past few years, INDOT has replaced many of its snowplows with tandem plow trucks with a towable plow trailer. This allows one driver to plow two lanes at once. These more-efficient snowplows are essential for clearing Indiana roads.

8. Ordinarily, these trucks run on diesel engines, which gives them the range necessary to clear Indiana roads.

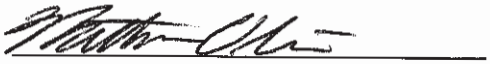
9. Electric tandem plow trucks do not have the same hours of service abilities as their diesel counterparts due to their increased weight and increased power necessary to run the power take off. The extra load on the electric tandem plow truck can reduce its range drastically, possibly as far as only half of a comparable diesel tandem plow.

10. To maintain the same hours of service to plow roads, INDOT would have to double its plow fleet size. Drivers could then use one electric plow truck while the other is charging. The cost to double the fleet with new, electric plow trucks, could cost between $387.8 million and $554 million dollars.

11. INDOT will also have to prepare adequate charging stations for new electric snowplows. The average cost for the infrastructure is

$22,000 per cord. Given INDOT's current fleet of 1,108 plow trucks, it could eventually spend over $24 million for chargers for its larger fleet. If any upgrades to the existing grid are needed to support these chargers, there could be extended delays in implementation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 7th day of October, 2024, at Indianapolis, Indiana.



Nathan Oliver

ORAL ARGUMENT NOT YET SCHEDULED
No. 24-1129 (and consolidated cases)

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

STATE OF NEBRASKA, ET AL.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
Respondents,

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA–HQ–OAR–2022–0985)

DECLARATION OF LEE WILKINSON IN SUPPORT OF PETITIONER STATE OF IOWA'S PETITION FOR REVIEW

I, Lee Wilkinson, hereby declare as follows:

1. My name is Lee Wilkinson and I currently serve as Director of the Administrative Services Division of the Iowa Department of Transportation ("Department"). I have served in that role since 2006 and have been with the DOT since 1996. I have a bachelor's degree in public administration from the University of Northern Iowa. I am over the age

of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my experience with the Department, and information provided to me by Department personnel.

2. I am providing this declaration in support of the State of Iowa and other States' petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. The Department's heavy-duty vehicle fleet

3. Within my purview as the Administrative Services Division Director is the responsibility of managing the Department's motor vehicle fleet, and the Procurement of all goods and services. Approximately 80% of the Department's vehicle fleet is assigned to staff performing field operations throughout the State of Iowa. The vast majority of these field operations occur in rural areas. As such, Department employees depend on a reliable vehicle fleet to perform their job duties. The Administrative Services Resources and Acquisitions staff and I are responsible for ensuring proper maintenance and procurement of vehicles that will keep Department employees safe and capable of performing their important work.

4. The Department currently owns 2,347 vehicles. Of these, 1,092 are heavy-duty vehicles, which are over the 60,000 pounds or greater gross vehicle weight rating ("GVWR"); including plow trucks, paint trucks, curb marking, sweeper, snooper, loaders, motor graders, Semi trucks, high reach trucks, and industrial snow blowers.

5. Although the Department procures its own fleet, its procurement guidelines are governed by the same regulations promulgated by the Department of Administrative Services for all State-owned vehicles. Currently, the criteria for considering replacement of heavy-duty vehicles is that the vehicle is 12-years old. A study was completed and determined that 12 years is the maximum vehicle use before repairs become too costly.

6. Many of the Department's vehicles are currently eligible for replacement. However, supply chain issues that arose during the pandemic constrained the Department's procurement ability. In FY24, the Department had a budget of approximately $23,664,667to maintain and procure new vehicles for the Department's heavy duty vehicle fleet.

II. The Rule's Impact on the Department

7. The Department currently replaces approximately 75 snowplows annually. Maintaining this practice will result in the Department continuing to replace heavy-duty vehicles every year between 2027 and 2032 at an elevated cost. Because the Department replaces each vehicle with a new vehicle of like kind, the Department anticipates purchasing approximately 75 new plows in each model years 2027 through 2032, meaning approximately 450 plows, all of which will be impacted by the EPA's Rule.

8. Because the EPA's Rule will require manufacturers to increase production of electric vehicles, this will limit the availability of new internal combustion engine ("ICE") models, and the price of all vehicles will increase.

9. The current infrastructure is not in place throughout the State of Iowa for electric vehicle charging stations, especially in rural areas. This, coupled with cold winter temperatures makes an electric fleet not a viable option for the Department.

10. The Department's employees, travel out into rural areas daily during the winter to keep the roads safe and clear of snow and ice. There

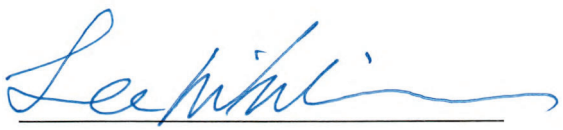
would be a significant amount of time added to their trips to stop and charge given the distances that are traveled. Additionally, there are concerns tied to the performance of batteries in the cold weather conditions plows are operating in.

11. If the EPA's rule leads to the elimination of ICE models, the Department will need to increase the number of snowplow vehicles in its fleet. Currently, electric heavy-duty trucks have a range of about 140 miles in optimal weather conditions, which is significantly less as compared to their diesel counterparts with 100-gallon tanks at 6 mpg get 600 miles per tank of gas. Additionally, when snowplows are fully loaded and clearing snow the required energy output is significantly increased to accomplish the task, resulting in approximately a 50% decreased millage for ICE or EV. A switch to EV plows would necessitate a large increase in fleet size to cover the Department's snow plowing of the State Highway System. Furthermore, EVs require several hours of charging between uses, making it essential to have additional vehicles to maintain continuous snow removal operations during winter storms, to ensure the safety of the traveling public.

12. If the EPA's Rule has its intended effect of nearly eliminating all internal combustion models from the automobile market, the Department will also have to invest in additional infrastructure to support an electric vehicle fleet. The Department anticipates it will have to install its own electric vehicle charging station at all the Department's locations throughout the state including 100 Maintenance Facilities, 6 District offices and at the Department's headquarters. The charging stations will be needed for all heavy-duty vehicles.

13. For all these reasons, the EPA's Rule will result in significant cost increases to the Department in terms of infrastructure and decreases in employee productivity given the increased logistical problems that are directly traceable to the rule.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 15th day of October, 2024, at Ames, Iowa.



Lee Wilkinson

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF STUART ANDERSON IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

AFFIDAVIT OF STUART ANDERSON

STATE OF IOWA)
) ss.
COUNTY OF STORY)

I, Stuart Anderson, being duly sworn upon oath, state as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this Declaration.

2. I am employed by the Iowa Department of Transportation (Iowa DOT) at its office in Ames, Iowa.

3. The title of my position within Iowa DOT is Director of the Transportation Development Division.

4. As a part of my position, I lead and manage the division that is responsible for the long-range planning, transportation project programming, and transportation project development for Iowa's multimodal transportation system. This includes areas that are responsible for forecasting future freight flows on Iowa's transportation system and designing pavements and bridges on Iowa's state-jurisdiction highway system.

5. It is Iowa DOT's understanding that, given the state of current engineering, battery-electric powered trucks are heavier as compared to petroleum-fueled vehicles. Due to federal and state laws defining maximum vehicle weights on highway systems, the heavier battery-electric powered trucks can carry fewer pounds of cargo than petroleum-fueled vehicles. For example, if a battery-electric powered truck weighs 5,000 pounds more than a petroleum-based truck, the battery-electric powered truck can haul 5,000 pounds less cargo than the petroleum-fueled vehicle. The impact of this is that more battery-electric powered trucks are required to carry the same amount of cargo as petroleum-fueled vehicles.

Effect of Increased Weights and Number of Commercial Trucks on the Highway System

6. In general, heavier vehicles cause greater wear and tear to roads and hihgways than lighter vehicles.

7. Because of their relative weight, commercial vehicles (i.e., trucks) bring about substantially more wear and tear on pavement and bridges than passenger vehicles do.

8. Given that they cause more wear and tear than passenger vehicles, commercial vehicles are the primary consideration when designing pavements and bridges.
9. An increase in the weight and/or number of commercial vehicles would increase the damage on Iowa's pavements and bridges.
10. In general, commercial trucks cause bigger negative impacts than passenger vehicles on the maximum volume of traffic highways can efficiently service because commercial trucks are larger and have less acceleration and deceleration capability creating gaps in the traffic stream.
11. An increase in the number of commercial vehicles would reduce the maximum volume of traffic highways can efficiently service.
12. Iowa DOT thus projects that an increase in the weight and/or number of commercial vehicles would require additional expenditures of funds on Iowa's public roadway system to address the increased damage to pavements and bridges and to address the reduced volume of traffic highways can efficiently serve.
13. To better quantify the impacts on Iowa's public roadway system, Iowa DOT would need to conduct a study assessing the impacts in more detail. This study would come at a cost of Iowa DOT existing resources.

Further affiant sayeth not.

[name]

Subscribed and sworn to me on October 11, 2024, by the above-named [name], known by me to be the person named as the affiant in the above affidavit.

Notary Public

PEGGY L. RIECKEN
Commission Number 194435
My Commission Expires
January 21, 2025

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

DECLARATION OF JASON GLASS IN SUPPORT OF PETITIONER STATE OF NEBRASKA'S PETITION FOR REVIEW

I, Jason Glass, hereby declare as follows:

1. My name is Jason Glass and I currently serve as Director of the Regulation and Inspection Division within Kentucky's Department of Agriculture ("Department"). I have served in that role since 2018.

I have a bachelor's degree in agriculture economics from the University of Kentucky. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my experience with the Department, and information provided to me by Department personnel.

2. I am providing this declaration in support of the State of Nebraska's petition for review of the Rule issued by the EPA entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. The Department's Heavy-Duty vehicle fleet

3. Among my duties as Director is the responsibility of managing the Department's motor vehicle fleet. Approximately 80% of the Department's vehicle fleet is assigned to staff performing field operations throughout the Commonwealth. The vast majority of these field operations occur in rural areas. As such, Department employees depend on a reliable vehicle fleet to perform their job duties. My staff and I are responsible for ensuring proper maintenance and procurement of vehicles that will keep Department employees safe and capable of performing their important work.

4. The Department currently owns eight heavy-duty vehicles weighing more than 8,500 pounds by gross vehicle weight rating ("GVWR") that would be impacted by the Rule. They include one Class 3 one-ton flatbed truck (Ram 3500); four Class 5 trucks (three Ram 5500s and one International TerraStar 5500); and three Class 8 straight box trucks.

5. Although the Department procures its own fleet, its procurement guidelines are governed by the same regulations promulgated by the Finance and Administration Cabinet for all Commonwealth-owned vehicles. Specifically, 200 Ky. Admin. Reg. 40:020 § 4(3) provides in relevant part that a vehicle shall be considered for replacement if it: (a) is 7 years old; (b) has been driven 140,000 miles; (c) is inoperable; (d) is unsafe; or (e) is in need of extensive repair that would not be economically feasible.

6. Currently, the Department maintains an annual budget of $750,000 to maintain and procure new vehicles for the Department's vehicle fleet.

II. The Rule's Impact on the Department

7. All four of the Department's Class 5 trucks will be replaced within the next five to ten years, meaning at least one will be replaced between the years 2027 and 2032. The Class 8 trucks have a 15 to 20 year replacement cycle and at least two of them will likely be replaced between 2027 and 2032. Because the Department replaces each vehicle with a new vehicle of like kind, the Department anticipates purchasing new vehicles in model years 2027 through 2032, all of which will be impacted by the EPA's Rule.

8. Because the EPA's Rule will require manufacturers to increase production of electric vehicles, the supply of new internal combustion models will likely be more limited. A smaller supply of internal combustion models will result in increased prices for those models.

9. The Department's responsibilities under state law, coupled with Kentucky's current infrastructure for charging electric vehicles, means that electric vehicles are not a viable alternative to internal combustion models for the Department. As of August 28, 2024, there are ap-

proximately 333 electric vehicle charging stations in the Commonwealth.[1] Although the Kentucky Department of Transportation intends to increase the supply of electric vehicle charging stations, the plan calls for most chargers to be installed along Kentucky's parkways and interstate highway sections.[2] Moreover, this plan is contingent on incentivizing private parties to build charging stations because Kentucky does not plan to own the charging stations. Overall, the plan is for charging stations to be installed every 50 miles along Kentucky's parkways and interstate sections.

10. The Department's employees, however, must spend significant time driving in rural areas away from the parkways and interstates. For example, the Department's Class 8 straight box trucks are currently used by the Department's Weights and Measurements Division to inspect large capacity commercial scales (*i.e.*, scales capable of weighing more

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[1] *Alternative Fueling Station Locator*, U.S. DEPT. OF ENERGY, available at https://afdc.energy.gov/stations#/analyze?country=US&region=US-KY&tab=fuel&fuel=ELEC&ev_levels=all (last accessed August 28, 2024).

[2] *Kentucky's Electric Vehicle Infrastructure Deployment Plan.* KY. DEPT. OF TRANSP. (Sept. 2023). https://kyevcharging.com/application/files/4916/9660/7455/2023KY_EV_StatewideNEVIPlan.pdf

than 3,000 lbs.). Because of the weight of the specialty equipment necessary to conduct these inspections, the Department cannot perform this task with a vehicle with GVWR below 60,000 lbs.

11. Of Kentucky's 120 counties, 114 contain at least one large capacity commercial scale requiring inspection. Many such scales are in rural areas, such as large capacity scales stationed at Kentucky's coal mines. Because the Department possesses only three vehicles capable of carrying out these inspections, the vehicles must travel several hundred miles per day. Further, these vehicles must remain idle during inspections for the power take-off (PTO) device to operate hydraulic pumps that will lift the inspection equipment in and out of the vehicle.

12. While these Class 8 vehicles will travel along interstates and parkways for part of their trips to inspection sites, the last leg of the journey and the idle time spent during the inspection to operate the PTO require significant energy. Given the limited range of electric vehicles, the Department would likely require the use of a gasoline powered mobile generator to maintain sufficient electrical supply to the vehicle during an inspection. Presumably, the use of a gasoline powered mobile generator

during an inspection would undercut any emissions savings resulting from using an electric vehicle to arrive at the inspection site.

13. Replacing the Department's Class 3 Ram 3500 and four Class 5 vehicles with electric vehicles will also burden the Department. The Class 3 Ram 3500 is permanently stationed at the Department's headquarters in Frankfort. It is currently used as an ad hoc towing vehicle that can be dispatched to any location in the Commonwealth to pick up Department vehicles that break down. It is also used each year to transport equipment from Frankfort to Louisville, a 110-mile round trip, for the Kentucky State Fair.

14. The four Class 5 vehicles are used to tow equipment and displays for various educational programs throughout the Commonwealth. One program educates local farmers about farm safety (*e.g.*, what to do in the event a tractor rolls) and the other program is a mobile agricultural science event conducted at Kentucky's high schools. All of the Class 5 vehicles used for these programs are currently stationed at employees' homes.

15. If the EPA's Rule has its intended effect of nearly eliminating all internal combustion models from the automobile market, the Department will also have to invest in additional infrastructure to support an electric vehicle fleet. The Department anticipates it will have to install its own electric vehicle charging station at the Department's headquarters to charge the vehicles permanently stationed there. Further, for the Class 5 vehicles currently stationed at employees' homes, the Department will be required to either install charging equipment in their homes for overnight charging or incur the cost of employees' time spent at a charging station before or after work hours. It is not possible to relocate those vehicles to the Department's headquarters because they are used in the far west and far east regions, which are more than 200 miles from the Department's central headquarters, located in Frankfort, Kentucky. As such, the Department must also either install a separate meter at the employees' homes to determine electrical usage or use some other reimbursement method for the increase in the employees' electrical bill if charging equipment is installed. Regardless, EPA's Rule will result in significant costs.

16. For all these reasons, the EPA's Rule will result in significant cost increases to the Department in terms of infrastructure and decreases in employee productivity given the increased logistical problems that are directly traceable to the significant increase in electric vehicles that will result from EPA's Rule.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 27th day of September, 2024, at Frankfort, Kentucky.

Jason Glass

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

AFFIDAVIT OF BRAD MARTEN IN SUPPORT OF PETITIONER STATE OF MONTANA'S PETITION FOR REVIEW

I, Brad Marten, hereby declare as follows:

1. My name is Brad Marten and I currently serve as Motor Carrier Services Administrator within the Montana Department of Transportation (MDT).

I have a Master's Degree from George Mason University in Transportation, Policy, Operations and Logistics and have over 26 years of experience in the transportation field working for MDT. I am over the age

of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my education, my experience in the industry, and my experience working at MDT.

2. As a part of my position, I am responsible for several trucking industry programs such as size and weight enforcement, oversize and overweight permitting, and the International Registration Plan. Additionally, I currently serve as the Commercial Vehicle Safety Alliance Chair on the Size and Weight Committee and was formerly Chair for the Western Association of State Highway Officials Subcommittee on Highway Transport.

3. I am providing this declaration in support of Case No. 24-1129's petition for review of the Rule issued by the U.S. Environmental Protection Agency entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

4. It is MDT's understanding that, given the state of current engineering, electric vehicles are generally heavier than comparably styled petroleum-fueled vehicles.

Overweight Permitting

5. Loaded or unloaded vehicles that exceed certain weight limits must receive an overweight permit from MDT Motor Carrier Services (MCS) to operate in Montana.

6. Generally, overweight permit fees are necessary for non-divisible loads that have any of the following characteristics:

a. The vehicle exceeds legal axle weight, which means:

i. Greater than 11,000 lbs. for single axle with a single tire; or

ii. Greater than 20,000 lbs. for a single axle with dual tires; or

iii. Greater than 34,000 lbs. for a tandem axle; or

iv. Found to not satisfy the federal bridge formula for legal bridge weights governing triple, quad axle, or any other axle group configurations.

7. Generally, overweight permits are not issued to divisible loads.

8. To apply for an overweight permit, the applicant uses the MCS online permitting system built and supported by I3 Verticals to enter requisite contact, vehicle, load, and route characteristics.

9. If all the data is within certain parameters, and thus receives no flags, then the permit self-issues through an automated system.

10. If flags are triggered by the applicant's data, then the permit moves to MCS's permit staff for review.

11. At that point, MCS's permit staff follow up with the applicant and asks detailed questions about the application. The more detailed questions can include the completion of a route survey provided by the carrier to verify the load can travel through the proposed route as well as a route analysis.

12. Depending on the circumstances, coordination with the permit staff, bridge structural review team, district management, and any effected utilities may be required.

13. The time that MCS employees must spend to issue an overweight permit varies by request depending on the unique characteristics of each application.

14. A request for an overweight without any flags made through MCS's online permitting system is issued immediately through the system.

15. A request for an overweight permit with some flags, but requiring no additional coordination from MDT's Bridge Bureau, takes MCS up to one hour to process.

a. Requests for overweight permits that exceed 175,000 pounds for non-interstate or 250,000 pounds for interstate routes or otherwise exceed the bridge centerline conditions based of the configuration are considered "Superloads" which require MDT Bridge Bureau approval. These permits can take up to 5 days to receive an approval or denial.

16. For every permit that MCS issues, MDT incurs cost based on employees' time spent for coordination and for the software that supports the online permitting system.

17. The average rate of the MCS permitting team for the current fiscal year is $42.22 per hour.

18. The average per permit cost of the online permitting system for the current fiscal year is $2.40.

19. A typical rate for an MDT Bridge Bureau engineer for the current fiscal year is $63.63 per hour.

20. The rate for the Superload Coordinator for the current fiscal year is $63.48 per hour.

21. A typical rate for a District Maintenance Chief for the current fiscal year is $87.36 per hour.

22. The following is the estimated costs to MDT for permits of

varying complexity:

MDT Cost Per Permit (Estimated)	
Self-issued permit	$2.40
Permit Staff	$42.22
Permit Staff, Superload Coordinator	$105.70
Permit Staff, Superload Coordinator, Bridge Engineer	$169.33
Permit Staff, Superload Coordinator, Bridge Engineer, Maintenance Chief	$256.69

23. Generally, Mont. Code Ann. § 61-10-107 sets out the various vehicle weights and axle configuration weights allowed on Montana's highways.

24. Assuming the values in the Bridge Formula remain the same, and given electric vehicles are heavier when compared to petroleum-based vehicles, and assuming that commercial carriers will not wish to carry smaller amounts of cargo in commercial electric vehicles, MDT anticipates there will be an increase in the number of overweight permits that MCS issues on an annual basis.

Effect of Axle Weight on Pavement Fatigue

25. In general, heavier vehicles cause greater wear and tear to roads and highways than lighter vehicles.

26. Because of their relative weight, commercial vehicles (i.e., trucks) bring about substantially more wear and tear on pavement than passenger vehicles do.

27. Given that they cause more wear and tear than passenger vehicles, commercial vehicles are the primary consideration when designing the specifications of highway pavements.

28. The standard method for pavement design is to use axle configurations and weight to determine a vehicle's effect on the pavement.

29. The Bridge Formula codified at Montana Code Ann. § 61-10-107 controls axle configurations, and the projected traffic data for the amount and type of vehicles for a particular roadway are used to project axle load impacts to the pavement.

30. Pavement damage comes from the amount of "axle loading" the pavement is subjected to over time.

31. An "axle load" is total weight bearing of a wheeled vehicle on the road for all wheels attached to a given axle.

32. For pavement design purposes, all legal truck weights, trailer weights, and axle configurations are converted to a "standard axle" known as an Equivalent Single Axle Load or ESAL.

33. As each load or axle travels over a roadway it causes the underlying pavement to flex or compress ever so slightly.

34. As thousands of loads go over the pavement throughout the year, then fatigue (damage) begins to develop in the form of microcracks.

35. The pavement is designed to handle a large number of loaded trucks over several years. Each pass of the loaded truck fatigues the pavement. If the load weights or the number of loads increase, then the pavement fatigues faster than what was originally planned and it will need to be repaired sooner than anticipated.

36. Further, some pavements do not accommodate increased loads as well as other pavements. The subgrades under flexible pavements are more susceptible to damage from heavy loads than are rigid pavements.

37. MDT projects that even small increases in weight can rapidly increase the rate of pavement fatigue, as the rate of fatigue increases not proportionately but exponentially.

38. All vehicles, both electric and non-electric, need to conform to the axle configurations in Mont. Code Ann. § 61-10-107, with a few statutorily exempted vehicles.

39. If Bridge Formula axle configurations were adjusted to allow more weight per axle, then the pavement would be damaged much more quickly than at current weight per axle configurations.

40. Damage done to the pavement from truck axle loads increases at an exponential rate as the load weight increases.

Safety Uncertainty

41. Montana belongs to the Commercial Vehicle Safety Alliance (CVSA). The CVSA has a standing policy regarding commercial vehicle size and weight limits. The policy does not support increases to existing size and weight limits unless certain criteria such as design, maintenance, safety performance, and infrastructure impacts are considered. Additionally, the policy advises consideration to whether a minimum set of performance requirements should be established for subject vehicles such as braking distance attributed to heavier weights.

42. Given an undetermined amount of additional weight for electric commercial motor vehicle tires, regulations exist that regulate tire ratings. 49 CFR § 393.75(g) prohibits vehicles from being operated with tires that carry a weight greater than that marked on the sidewall of a tire unless operations are under the terms of a special permit and at a reduced speed.

43. The load index or tire rating gives a numerical value for the maximum weight the tire can handle when inflated to the recommended air pressure. Increased weights exceeding tire ratings have a negative affect on tire longevity, longer stopping distance, increased heat generation leading to higher rates of flat tire occurrences, and drawbacks from additional wear on all other load bearing components.

For these reasons, the EPA's rule will directly result in substantial cost increases for MDT.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 30th day of September, 2024, at Helena, Montana.

Brad Marten

Subscribed and sworn to me on September 30, 2024, by the above-named Brad Marten, known by me to be the person named as the affiant in the above affidavit.

Kendra Carter 9.30.24

KENDRA C. WHITAKER
NOTARY PUBLIC for the
State of Montana
Residing at East Helena, Montana
My Commission Expires
January 19, 2027

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

AFFIDAVIT OF WALT KERTTULA IN SUPPORT OF PETITIONER STATE OF MONTANA'S PETITION FOR REVIEW

I, Walt Kerttula, hereby declare as follows:

1. My name is Walt Kerttula and I currently serve as Equipment Bureau Chief within the Montana Department of Transportation (MDT).

I have a bachelor's degree from Carroll College in Business Administration and have over 26 years of experience in the transportation field working for MDT. I have spent 15 years in fleet management at MDT. I am over the age of eighteen and competent to testify about the matters

in this declaration based on my personal knowledge, my education, my experience in the industry, and my experience working at MDT.

2. I am providing this declaration in support of Case No. 24-1129's petition for review of the Rule issued by the U.S. Environmental Protection Agency entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

I. MDT's Heavy-Duty fleet

3. Among my duties as Equipment Bureau Chief is the responsibility of overseeing the management of MDT's motor vehicle and heavy-duty equipment fleet. MDT's heavy-duty fleet is assigned to field operation sections and districts throughout Montana. A large portion of these field operations occur in rural, remote, and mountainous locations. MDT is responsible for the operation and maintenance of 25,000 lane-miles of Montana highways and roadways.

4. MDT currently owns approximately 1,700 heavy-duty pieces of equipment; including plow trucks, loaders, motor graders, and industrial snow blower machines. The heavy-duty fleet contains 600 snowplow trucks. An estimated 475 of these trucks have a 58,000 pounds or greater gross vehicle weight rating ("GVWR") that would be included in the NAICS 336120 vehicle codes used for highway maintenance operations, including snow plowing and distributing anti-icing materials.

5. Many of MDT's heavy pieces of equipment are currently eligible for replacement. Currently, MDT maintains an annual budget of approximately $6,500,000 to procure cab and chassis trucks and components from which it assembles new snowplow trucks. On average a fully dressed diesel snowplow single wing truck costs $225,000. MDT typically purchases new trucks and components and plans to continue that practice.

II. Impact of the EPA Rule on MDT

6. MDT currently replaces approximately 23 plow trucks annually. Following this schedule, MDT will replace around 138 plow trucks over the six-year period from 2027 to 2032. These replacements are directly impacted by the EPA's new rule.

7. The EPA's rule, which mandates an increased production of electric vehicles, will likely limit the availability of new internal combustion engine (ICE) models. This limited supply is expected to result in higher prices for ICE vehicles.

8. Should the EPA's rule effectively phase out ICE models in the heavy-duty pieces of equipment category, MDT's budgetary needs will rise significantly. Currently, an electric version of a heavy-duty class truck (on a semi-truck frame) costs approximately 2.8 times more than its diesel counterpart.

9. In addition to higher vehicle costs, MDT will need to invest in infrastructure to support an electric vehicle (EV) fleet. This includes the installation of electric vehicle charging stations at all 125 maintenance facilities across the State, which currently offer fueling options for traditional vehicles.

10. If the EPA's rule leads to the elimination of ICE models, MDT will need to increase the number of snowplow vehicles in its fleet. Currently, electric heavy-duty trucks have a range of about 300 miles maximum between charging compared to their diesel counterparts which have a range of 900- 2,000 miles between fuel ups depending on fuel tank size. This lack of driving range in electric heavy trucks would necessitate a large increase in fleet size to cover MDT's snow maintenance across the State. Furthermore, EVs require from several days to at least several hours of charging between uses and have reduced operating ranges in severe winter weather making it essential to have additional plowing equipment to maintain continuous snow removal operations during winter storms and severe winter weather.

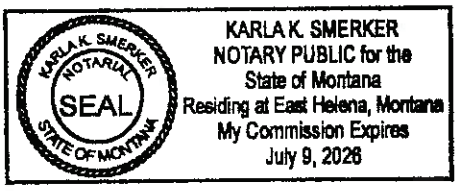
11. MDT will also face increased facility budget requirements. At present, MDT operates with an average annual budget of $8,500,000 for capital improvements across its 125 locations. A significant portion of the current heavy-duty fleet is stored outdoors. However, electric vehicles will require indoor, heated storage to ensure proper operation during the cold winter months.

12. The EPA's rule suggests that the listed vehicle class codes are not exhaustive but are provided as a guide to potential impacts. If the North American Industry Classification System (NAICS) codes are expanded to include the 333120 series of vehicles, the construction industry's heavy-duty fleets will face similar challenges as outlined above.

13. The EPA's rule will directly result in substantial cost increases for MDT, including infrastructure, fleet acquisition, and operational productivity. MDT does not currently own or operate any electric heavy-duty vehicles. Given the current state of the electric vehicle technology, MDT does not plan to purchase any electric heavy-duty vehicles because of many reasons including those listed above.

For these reasons, the EPA's rule will directly result in substantial cost increases for MDT, including in infrastructure, fleet acquisition, and operational productivity.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 1st day of October, 2024, at Helena, Montana.



Walt Kerttula

Walt Kerttula

Subscribed and sworn to me on October 1, 2024, by the above-named Walt Kerttula, known by me to be the person named as the affiant in the above affidavit.

Karla K. Smerker

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

Petitioners,

v.

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

Respondents.

AFFIDAVIT OF JEFF JACKSON IN SUPPORT OF PETITIONER STATE OF MONTANA'S PETITION FOR REVIEW

I, Jeff Jackson, hereby declare as follows:

1. My name is Jeff Jackson and I currently serve as Geotechnical and Pavement Bureau Chief within the Montana Department of Transportation (MDT).

I have a Bachelor of Science Degree from the University of Utah in civil engineering and have over 20 years of experience in the transporta-

tion field working for MDT and an additional 8 years of engineering experience in private industry. I am currently licensed as a professional engineer in the state of Montana with licensure originally received in 2001. I am over the age of eighteen and competent to testify about the matters in this declaration based on my personal knowledge, my education, my experience in the industry, and my experience working at MDT.

2. As a part of my position, I oversee Bureau operations and activities related to the development of professional geotechnical subsurface investigations, engineering analysis, and design; evaluating project plans; overseeing the operation of MDT's Pavement Management System, Surfacing Design, and pavement condition data collection operations; establishing guidelines, procedures, and parameters for various projects and activities; planning and overseeing a variety of investigation, sampling, and analytical projects; providing advanced technical assistance to a variety of individuals and agencies involved with ongoing road construction projects; and performing a variety of other duties in support of MDT goals and Division objectives.

3. I am also involved in setting and maintaining the policies and procedures for geotechnical engineering and pavement management strategies at MDT.

4. I am providing this declaration in support of Case No. 24-1129's petition for review of the Rule issued by the U.S. Environmental Protection Agency entitled "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3" published at 89 Fed. Reg. 29,440 (April 22, 2024).

5. It is MDT's understanding that, given the state of current engineering, electric vehicles are generally understood to be heavier as compared to comparably styled petrol-fueled vehicles. Commercial Class 9 electric vehicles are generally known to weigh 5,000 to 18,000 pounds heavier than standard petrol-fueled commercial vehicles.

6. In general, heavier vehicles cause greater wear and tear to roadways and highways than lighter vehicles.

7. Because of their relative weight, commercial vehicles (i.e., trucks) bring about substantially more wear and tear on pavement than passenger vehicles do.

8. Given that they cause more wear and tear than passenger vehicles, commercial vehicles are the primary consideration when designing the specifications of highway pavements.

9. The standard method for pavement design is to use axle configurations and weight to determine a vehicle's effect on the pavement.

10. The Bridge Formula codified at Montana Code Ann. § 61-10-107 controls axle configurations, and the projected traffic data for the amount and type of vehicles for a particular roadway are used to project axle load impacts to the pavement.

11. Pavement damage comes from the amount of "axle loading" the pavement is subjected to over time.

12. An "axle load" is total weight bearing of a wheeled vehicle on the road for all wheels attached to a given axle.

13. For pavement design purposes, all legal truck weights, trailer weights, and axle configurations are converted to a "standard axle" known as an Equivalent Single Axle Load or ESAL.

14. As each load or axle travels over a roadway it causes the underlying pavement to flex or compress ever so slightly.

15. As thousands of loads go over the pavement throughout the year, then fatigue (damage) begins to develop in the form of load related cracking and rutting.

16. Pavement is designed to handle a large number of loaded trucks over several years.

17. Each pass of the loaded truck fatigues the pavement.

18. If the load weights or the number of loads increase, then the pavement fatigues faster than what was originally planned, and it will need to be repaired and replaced sooner than anticipated.

19. Further, some pavements do not accommodate increased loads as well as other pavements.

20. The subgrades under flexible pavements are more susceptible to damage from heavy loads than are rigid pavements.

21. MDT projects that even small increases in weight can rapidly increase the rate of pavement fatigue.

22. All vehicles, both electric and non-electric, need to conform to the axle configurations in Mont. Code Ann. § 61-10-107, with a few statutorily exempted vehicles.

23. If Bridge Formula axle configurations were adjusted to allow more weight per axle, then the pavement would be damaged much more quickly than at current weight per axle configurations.

24. Damage done to the pavement from truck axle loads increases at an exponential rate as the load weight increases.

25. This exponential rate can be modeled using Load Equivalency Factors found in the 1993 AASHTO Guide For Design of Pavement Structures.

26. MDT evaluated a range of increased axle loading for varying percentages of overweight Class 9 electric commercial vehicles on a typical segment of Montana Interstate Highway.

a. Batteries for electric commercial vehicles weigh between 5,000 and 18,000 lbs. All additional battery weight is assumed to be carried on tandem tractor axles.

b. An estimated five (5) to fifty (50) percent of electric commercial vehicles will be overweight when carrying an equitable load of comparable petrol-fueled commercial vehicles at maximum legal weight on MDT roadways.

c. Under MDT's Pavement Design Manual, the standard pavement design life is 20 years.

27. MDT projects a reduction in pavement life due to overweight Class 9 electric vehicles carrying 5,000 pounds of battery will range from 1.2 to 7.7 years.

28. MDT projects a reduction in pavement life due to overweight Class 9 electric vehicles carrying 18,000 pounds of battery will range from 3.1 to 12.9 years.

29. MDT estimates an increase equivalent annual uniform cost due to overweight Class 9 electric vehicles carrying 5,000 pounds of battery to range between 5% and 50%.

30. MDT estimates an increased equivalent annual uniform cost due to overweight Class 9 electric vehicles carrying 18,000 pounds of battery to range between 15% and 150%.

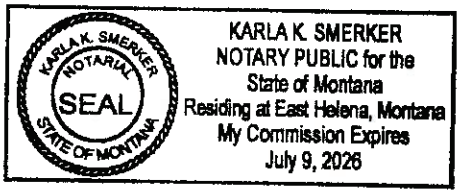
31. MDT estimates the total annual impact to the interstate highway system in Montana will range between $17,000,000.00 and $500,000,000.00 depending on the weight of the battery and percentage of overweight Class 9 electric vehicles.

For these reasons, the EPA's rule will directly result in substantial cost increases for MDT.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 2nd day of October, 2024, at Helena, Montana.

Jeff Jackson

Subscribed and sworn to me on October 2nd, 2024, by the above-named Jeff Jackson, known by me to be the person named as the affiant in the above affidavit.



Karla K Smerker

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

STATE OF NEBRASKA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 24-1129
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF JAMES P. BEACH

I, James P. Beach, hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Director of the Supply & Equipment Division at the South Carolina Department of Transportation (SCDOT). I have held this position for 5 years. My responsibilities include providing senior level oversight and planning of vehicle and equipment management for the agency and its large vehicle and equipment fleet, to include development of policies and procedures, methods, systems, replacement, operations, and maintenance. Supervise the four operating organizations of the

division, including the Supply and Equipment Office, Equipment Depot, Supply Depot and Radio Communications.

3. EPA regulations define a "heavy-duty vehicle" as "any complete or incomplete motor vehicle rated at more than 8,500 pounds [gross vehicle weight rating]. Heavy-duty vehicle also includes incomplete vehicles that have a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet." 40 C.F.R. § 86.1803-01; *see also* 40 C.F.R. § 1037.801 ("Heavy-duty vehicle means any motor vehicle that has a GVWR above 8,500 pounds. An incomplete vehicle is also a heavy-duty vehicle if it has a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet."); *see also* 40 C.F.R. § 1036.801 ("Heavy-duty vehicle means any motor vehicle above 8,500 pounds GVWR. An incomplete vehicle is also a heavy-duty vehicle if it has a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet.").

4. During the last eight years, SCDOT has purchased an average of approximately 60 heavy-duty vehicles per year. SCDOT currently owns approximately 1,147 heavy-duty diesel vehicles and 218 heavy-duty gas-powered vehicles.

5. If the cost of heavy-duty diesel- or gas-powered vehicles increases, it will hurt SCDOT's ability to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on 10/03/2024

JAMES P. BEACH, PE
Director, Supply & Equipment

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

STATE OF NEBRASKA, *et al.*	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 24-1129
	)	
EPA, *et al.*	)	
	)	
Respondents.	)	

DECLARATION OF NOLAN L. WIGGINS, JR.

I, Nolan L. Wiggins, Jr., hereby declare as follows:

1. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

2. I am the Director of the Division of State Agencies Support Services, which includes the office of State Fleet Management, at the South Carolina Department of Administration. I have held this position for seven (7) years. My responsibilities include overseeing State Fleet Management, which I have done for approximately twelve (12) years.

3. EPA regulations define a "heavy-duty vehicle" as "any complete or incomplete motor vehicle rated at more than 8,500 pounds

[gross vehicle weight rating]. Heavy-duty vehicle also includes incomplete vehicles that have a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet." 40 C.F.R. § 86.1803-01; *see also* 40 C.F.R. § 1037.801 ("Heavy-duty vehicle means any motor vehicle that has a GVWR above 8,500 pounds. An incomplete vehicle is also a heavy-duty vehicle if it has a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet."); *see also* 40 C.F.R. § 1036.801 ("Heavy-duty vehicle means any motor vehicle above 8,500 pounds GVWR. An incomplete vehicle is also a heavy-duty vehicle if it has a curb weight above 6,000 pounds or a basic vehicle frontal area greater than 45 square feet.").

4. During the last ten years, South Carolina's State Fleet Management has purchased approximately 18 heavy-duty vehicles, as defined above. State Fleet Management currently owns approximately 18 heavy-duty vehicles.

5. If the cost of heavy-duty vehicles increases, it will hurt the State's ability to purchase those vehicles.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge.

Executed on Oct. 2, 2024

Nolan L. Wiggins, Jr.

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

STATE OF NEBRASKA, *et al*., *Petitioners*,	§	
v.	§	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al*., *Respondents*.	§	Case No. 24-1129

DECLARATION OF MURL E. MILLER

I, Murl E. Miller, declare as follows:

1. I am Murl E. Miller. I am over the age of 18 and a U.S. citizen. I make this Declaration supporting State Petitioners' lawsuit. I could competently testify as to the contents of this Declaration if called upon to do so.

2. I am Chief Counsel at the office of the Texas Comptroller of Public Accounts ("CPA"), where I have worked for over 14 years. My role with the CPA includes or has included tax policy, tax litigation, and general litigation. As the Anti-Fraud Coordinator for the agency, I am aware of the nature and impact that motor fuels revenues have upon the state fisc, and the priority of our criminal investigation division in protecting that stream of revenue. I also work with numerous divisions within the CPA, including our revenue estimating division and the statewide procurement division. I work daily with personnel from these divisions that include attorneys, analysts, accountants, auditors, and economists.

3. The CPA is primarily tasked with collecting all state tax revenue and estimating the tax and other revenue available to the Texas Legislature for appropriation.

4. I am aware of the Final Rule at issue in this case, and its subsequent correction.[1] I have reviewed them both. These regulations will limit the availability

[1] "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3", 89 Fed. Reg, 29,440 (April 22, 2024) (hereinafter "Final Rule"); "Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3 Correction", 89 Fed. Reg, 51,234 (June 17, 2024).

of motor vehicles to Texas consumers based of the type of fuel and engine propelling the motor vehicle.[2]

5. The Final Rule establishes new greenhouse gas emission standards to reduce air pollutant emissions from model year ("MY") 2032 and later heavy-duty highway vehicles that phase-in starting as early as MY 2027 for certain vehicle categories.[3] The new standards are applicable to heavy-duty vocational vehicles and heavy-duty semi or tractor-trailer vehicles.[4] The Final Rule also clarified its impact on the heavy-duty vehicle averaging, banking, and trading program.[5] The tacit purpose of the Final Rule, however, is to rapidly accelerate the Nation's comprehensive transition to zero emission heavy-duty vehicles, primarily electric heavy-duty vehicles.

6. The Final Rule unreasonably interferes with Texas's autonomy to balance Congress's environmental goals with the economic impacts caused by those goals, particularly given Texas's unique economic and industrial base. This Final Rule overreaches federal authority by infringing on the Texas's sovereignty, including its rights to set its own environmental policy, regulate its own economic activities, and effectively manage the state's fiscal affairs. The Final Rule also ignores the continuing improvements and innovations being made to internal combustion engine technology to reduce carbon dioxide ("CO_2")") emissions.

7. The EPA's reliance on subsidies have added to the National debt, and specific assumptions mask certain real-world realities. Heavy-duty electric trucks can cost up to three times more to purchase than comparable diesel trucks. A recent study showed that the average cost for an electric heavy-duty semi-truck exceeds $400,000, while a comparable diesel Class 8 heavy-duty truck costs around $180,000—an average price difference of approximately $220,000.[6] Loans for the heavy-duty zero emission/electric heavy-duty vehicles will require substantial down payments and excellent cash-flow to qualify at a high market rate.

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[2] Final Rule, 89 Fed. Reg. at 29,483.
[3] *Id*. at 29,440.
[4] *Id.* at 29,482–83.
[5] *Id*. at 29,484.
[6] Claire Buysee, *How Much Does an Electric Semi Really Cost?*, International Council on Clean Transportation (Feb. 24, 2022) https://tinyurl.com/34a75reh.

8. Insurance for a heavy-duty electric truck will likely cost more than a comparable conventional vehicle. [7] As demonstrated above, electric trucks cost are more expensive and, generally, higher-priced vehicles cost more to insure due to increased replacement and repair costs. If an electric vehicle is involved in an accident, it is typically more expensive to repair than a conventional gas-powered vehicle an electric vehicles unique parts are expensive to replace. For example, if the battery pack is damaged, catches fire, or explodes, unique protocols are often necessary, adding increasing emergency costs and repair bills. There are not as many repair shops with technicians trained to fix electric heavy-duty vehicles, requiring a dealership or a specialized shop to repair the vehicle. These facilities typically charge more for repairs than independent repair shops working on internal combustion engine vehicles because of their specialized training and equipment. Furthermore, the risk of a heavy-duty electric vehicle's batteries, which are located low on the chassis, colliding with another vehicle at high speeds present an increased risk of catastrophic injury, further increasing insurance costs.[8]

9. Additionally, a heavy-duty electric truck owner who needs fast charging capabilities would be required to purchase specialized charging stations, which can cost up to $200,000 per charger.[9] Heavier batteries in heavy-duty electric vehicles will likely reduce payload capabilities and decrease profitability as owners will generally carry less to stay within weight limits. This will require more trucks and personnel to transport the same amount of goods when transporting large or heavy shipments. Conventional heavy-duty trucks can travel up to 2,000 miles without refueling, while electric heavy-duty semi-trucks can travel up to approximately 500 miles before recharging.[10] And unlike conventional vehicles, which can be fully refueled in approximately 10 minutes, electric heavy-duty vehicles require extended charge times ranging between 30 minutes and over 2 hours for an approximate 80% charge, depending on battery capacity and capability of the

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[7] *See, e.g.,* Derek San Filippo, *Why is Car Insurance for Electric Cars Expensive?,* Smart Financial (Nov. 20, 2023) https://tinyurl.com/326ek6h7*; Electric Vehicle Insurance Rates*, National Association of Insurance Commissioners (Feb. 27, 2024) https://tinyurl.com/rsm3b2kw.

[8] Tom Krisher, *US official warns of risks posed by heavy electric vehicles*, Associated Press (Jan. 11, 2023) https://tinyurl.com/3sknakxu; *see also Electric Vehicles May Drive Up Truckers' Insurance Premiums*, CoreMark Insurance Services, Inc. (Sept. 1, 2023) https://tinyurl.com/mrfjwyxw.

[9] *EV Charging Station Infrastructure Costs and Breakdown*, SparkCharge (last accessed Oct. 3, 2024) https://tinyurl.com/3hsyeyeh.

[10] Shreya Agrawal, *Fact Sheet | The Future of the Trucking Industry: Electric Semi-Trucks (2023)*, Environmental and Energy Study Institute (May 11, 2023) https://tinyurl.com/4xus4dj3.

charging unit.[11] Further, drivers of electric heavy-duty vehicles may experience extended travel delays due to lost time waiting for an available public charger.[12]

10. The Final Rule's dire economic impacts are easily demonstrable by looking to Texas industries. For example, Texas farmers, ranchers, agricultural industry writ large will be negatively impacted by the Final Rule. Texas farmers and ranchers depend on heavy-duty vehicles to deliver their products, timely and efficiently, at the lowest possible cost. Texas is the country's sixth largest agricultural exporting state, shipping $8.5 billion in domestic agricultural exports abroad in 2022.[13] Texas leads the United States in the number of farms and ranches with approximately 250,000 farms and ranches covering approximately 125 million acres.[14] Ninety-three percent of these farms and ranches are family-owned and operated.[15] And one in every seven working Texans work in an agriculture-related job.[16] The Final Rule will cause Texas farmers and ranchers to pay higher prices for necessary equipment and will increase transportation costs, ultimately resulting in tighter profit margins.[17] The Final Rule will also impact a substantial number of small family farmers and ranchers who use trucking income to remain profitable.

11. The Final Rule also directly impacts rural Texas by imposing its regulatory regime upon the heavy-duty vocational vehicles and tractor-trailer vehicles that distribute goods and services throughout the State's 260,000 square miles of variegated terrain. Texas is largely a rural state. 133 of the 254 counties (52%) in Texas are rural, with 62 of those counties qualifying as "frontier" having less than seven people per square mile.[18] Rural small businesses make up 24% of all business in Texas and contribute more than 20% of the State's economic output.[19] Rural Texas businesses rely significantly on heavy-duty vocational vehicles, including short- and long-haul trucks, to provide goods and service essential to support their local economy and to transport locally grown or manufactured products to market or for export. The Final Rule will hamper these rural businesses as they

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[11] *Id*.
[12] *See id.* ("There are 6,700 public DC (direct current) fast-charging stations in the United States, but most only serve passenger vehicles. The absence of a widespread heavy-duty truck charging network limits electric trucks primarily to regional hub-and-spoke routes with centralized private chargers at warehouses and other trucking depots.")
[13] *Annual State Agricultural Exports Interactive Chart*, USDA (Nov. 16, 2023) https://tinyurl.com/5n77xzxm.
[14] *Fact Sheet: Texas Agriculture*, Tex. Dep't of Agriculture, (last accessed Oct. 3, 2024) https://tinyurl.com/yj7v5kbr.
[15] *Id*.
[16] *Id*.
[17] Daniel Munch, *Agriculture in the Red: Net Farm Income Drops Again in 2024 Forecast*, American Farm Bureau Federation (Sept. 5, 2024) https://www.fb.org/market-intel/agriculture-in-the-red-net-farm-income-drops-again-in-2024-forecast.
[18] https://govinfo.library.unt.edu/chc/resources/slide/parisi_rural_tx_fastfacts.html
[19] https://texas2036.org/future-of-rural/

will be forced to pay more for transportation, thereby increasing the cost of goods sold to customers. In turn, these additional fixed costs will force the business owners to make necessary adjustments to their investments in their operations, facilities, and employee training to address the Final Rule's economic impact. The Final Rule will also leave rural communities scrambling to support the expense of purchasing more expensive electric heavy-duty vocational and truck vehicles (and the associated charging infrastructure) with limited ranges. Rural entrepreneurship and wage growth generally do not have the elasticity of urban business opportunities and wages, thus leading to greater risk of a reduction in rural business development, business terminations, and job losses due to increased insolvency risks.[20]

12. The Final Rule will also directly impact the cost to export Texan goods. For the last 22 years, Texas has been the largest exporting state in the Nation.[21] In 2023, Texas exported $444.6 billion in goods, accounting for 17.3% of the State's GDP. And in 2021, exports supported an estimated 3.6 million Texan jobs.[22] Exporting sustains thousands of Texas businesses, most of which are small and medium sized business enterprises with fewer than 500 employees.[23] A total of 40,451 companies exported from Texas locations in 2022, with of those 37,305 (92%) being small and medium enterprises that generated 43.9% percent of Texas's total exports.[24] The export market is very price sensitive.[25] The price of goods includes the cost of transporting the goods from the location of manufacture or sale to the export terminal, and then to the location of delivery This movement of goods throughout the supply chain is largely accomplished by vocational and commercial trucks. For example, exports to Mexico—Texas's largest trading partner[26]—are substantially transported by heavy-duty trucks.[27] The increased transportation

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[20] *See, e.g.*, Lee, Jungho, *Why do businesses grow faster in urban areas than in rural areas*, Regional Science and Urban Economics, Vol. 81 (March 2020) https://tinyurl.com/mtyf379s; Ma, Liyuan, Orazem, Peter, Chen, Yulong, *Minimum Wages and Rural and Urban Firm Entry and Exit*, Iowa St. Univ., Agricultural Policy Rev. (Winter 2021) https://tinyurl.com/28e5uazw; Hyunjeog, Joo, *Comparative Analysis of Rural and Urban Start-Up Entrepreneurs*, Univ. of Ky. (Apr. 5, 2012) https://tinyurl.com/5n8vz3z2.

[21] *Texas: Facts and Figures*, U.S. Global Leadership Coalition (last accessed Oct. 4, 2024) https://tinyurl.com/4amacvj2; *see also Trade and Export*, Office of the Texas Governor (last accessed Oct. 4, 2024) https://tinyurl.com/yck2ncv8.

[22] *Texas: Facts and Figures*, U.S. Global Leadership Coalition (last accessed Oct. 4, 2024) https://tinyurl.com/4amacvj2.

[23] *Texas Exports & Foreign Investment*, Office of the United States Trade Representative (last accessed Oct. 4, 2024) https://tinyurl.com/yd2sbmbj.

[24] *Id.*

[25] *Id.*

[26] *International trade and border planning*, Tex. Dep't of Transportation (last accessed Oct. 4, 2024) https://tinyurl.com/3m8h56zd.

[27] *See* Marvin David Bernstein & Ernst C. Griffin, *Trade of Mexico*, Encyclopedia Britannica (last updated Oct. 3, 2024) https://tinyurl.com/4x55r52c.

expenses caused by the Final Rule will negatively impact Texas's competitive position in the export markets.

13. The Final Rule will similarly impact the cost of Texas's imported goods. Texas is the second largest importing State, totaling $384 billion.[28] Because it has the most petroleum refining capacity than any other state,[29] Texas is a major importer of energy-related products, including crude oil, natural gas, and petroleum products.[30] Texas also imports electrical and industrial machinery, motor vehicles, and auto parts.[31] The majority of imported goods transported into and through Texas primarily travel on the I-35 Corridor.[32] Imports are frequently transported traditional heavy-duty vehicles using diesel that, under the Final Rule, would be replaced by electric heavy-duty vehicles. The increased transportation expenses caused by the Final Rule will negatively impact Texas' competitive position for transporting imported goods and negatively increase the cost of goods sold for those businesses receiving the imports.

14. The Final Rule will also negatively impact the small, independent truckers, trucking companies, and truck dealerships throughout the state. These small transportation businesses will most likely find themselves unable to economically complete in this market space that is rapidly requiring them to transition to electric or hydrogen powered heavy-duty vehicles. thus, effectively forcing them into consolidation or out of business.

15. The Final Rule's impacts will trickle down to everyday Texans. The Final Rule will necessarily increase the cost of goods, which will then be likely passed onto consumers in the form of higher grocery prices, higher retail good prices, and the increased cost of some of the impacted vocational services. Further, the additional infrastructure required by the Final Rule (and other the EPA's other electrification efforts) will require Texas utility providers and local communities to upgrade their electrical grid networks to meet the demands the needs of electric

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[28] *Texas*, Observatory of Economic Complexity (last accessed Oct. 4, 2024) https://tinyurl.com/28t4fued; *Texas Global Trade Data*, Tendata (Sept. 19, 2023) https://tinyurl.com/4a3u2yxh.

[29] *Oil and petroleum products explained – Top 10 U.S. refineries operatable capacity*, Energy Information Administration ("EIA") (June 17, 2023) https://tinyurl.com/2b8bwxxz.

[30] *Texas*, Observatory of Economic Complexity (last accessed Oct. 4, 2024) https://tinyurl.com/28t4fued; *Texas Global Trade Data*, Tendata (Sept. 19, 2023) https://tinyurl.com/4a3u2yxh.

[31] *Id*.

[32] *I-35 Statewide Corridor Plan: A Path to 2040*, Tex. Dep't of Transportation, 1–2 (Oct. 2016) https://tinyurl.com/8taxs32m.

heavy-duty vehicles.[33] These costs will be passed onto the Texas consumers in the form of increased utility costs.[34]

16. The Texas economy is intricately linked to energy production. The Final Rule, which explicitly aims to reduce the demand for petroleum-based fuels, disproportionately impacts Texas more than other states, threatening Texas' jobs, revenues, and overall economic stability.

17. Texas's economic structure is distinct among the states, ranking first in overall energy consumption and expenditures, industrial and transportation-related petroleum consumption, as well as industrial electric power and total natural gas consumption.[35] Texas's economy requires twice or more petroleum and natural gas as California, the second-largest U.S. consumer, due to the Texas' geography and the nature of its industrial base.[36] In 2022, Texas expended $138.7 billion on petroleum fuels and $29.2 billion on natural gas, according to the Energy Information Administration.[37] However, Texas's expenditures were only 11% higher than those of California, despite Texas consuming about twice as much, because California's energy prices for petroleum fuels and natural gas averaged over 70% and 90% higher, respectively, than those in Texas. The Federal imposition of a California-style approach under the Final Rule would be untenable for Texas' economy.

18. Importantly, Texas is the Nation's top producer and refiner/processor of both oil and natural gas, supplying virtually all its own energy and adding value through the supply chain.[38] [39] This advantage attracts and enables the production of fuels, petrochemicals, and energy-advantaged manufacturing. In the first quarter of 2024, the oil and natural gas industry directly employed 494,593 Texans and paid $20.8 billion in wages [40]The industry also contributed $26.3 billion in state and local taxes and state royalties during the 2023 fiscal year-an amount exceeding the total

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[33] *See* Roland Berger, *Forecasting a Realistic Electricity Infrastructure Buildout for Medium- & Heavy-Duty Battery Electric Vehicles,* Clean Freight Coalition (Mar. 19, 2024) https://tinyurl.com/3chttw3v.
[34] *Id*. at 11 and 13.
[35] *Profile Data*, EIA (updated Sept. 19, 2024) https://tinyurl.com/nhvmcubx.
[36] *Texas Oil and Natural Gas Industry Direct Employment and Wages See Continued Growth in 2024*, Texas Oil & Gas Association (August 29, 2024) https://tinyurl.com/yjuw9fc9.
[37] *Table F17: Total petroleum price and expenditure estimates, 2022*, EIA (last accessed Oct. 4, 2024) https://tinyurl.com/37ha8skb; *Table F22: Natural gas price and expenditure estimates, 2022*, EIA (last accessed Oct. 4, 2024) https://tinyurl.com/2b97p9pc.
[38] *Crude Oil Production*, EIA (last accessed Oct. 4, 2024) https://tinyurl.com/yckbfa33.
[39] Natural gas liquids (NGLs) extracted from Texas' natural gas stream have added up to 3.8 million barrels per day on top of the record-high 5.7 million barrels per day of crude oil production as May 2024. *See Natural Gas Plant Field Production*, EIA (last accessed Oct. 4, 2024) https://tinyurl.com/4v5bpcb3.
[40] *Texas Oil and Natural Gas Industry Direct Employment and Wages See Continued Growth in 2024*, Texas Oil & Gas Association (August 29, 2024) https://tinyurl.com/mtut4wft.

tax receipts of 36 other states.[41] Texas's leadership in energy is therefore critical to its economy as well as the Nation's economic and energy security. The Final Rule undermines this leadership.

19. Economic leakage occurs when industries relocate or scale back operations in one region due to stringent regulations, shifting economic activity and benefits to other regions with less stringent rules. This results in job losses, reduced tax revenues, and a decline in regional economic activity. If the Final Rule, acting in concert with the EPA's rules on light- and medium-duty vehicles, succeeds in curtailing the use of petroleum-based fuels, it will directly reduce the demand for Texas-produced oil and refined products. Based on data from 2022, Texas's oil and natural gas industry directly contributed $360.7 billion to Texas' economy and supported a total $751.3 billion of economic activities through the value chain, including direct, indirect, and induced activities.[42]

20. Instead of petroleum-based fuels, the EPA's promotion of transportation that relies mainly on rare earth minerals, semiconductors, and electrical components often produced in countries with less stringent environmental and labor regulations could shift manufacturing and production away from Texas and to regions offering lower compliance costs and fewer restrictions on production and emissions. The Final Rule could, therefore, damage the product markets that Texas currently serves using its unique resource endowment and infrastructure. The economic benefits that Texas enjoys today from the oil and natural gas industry such as jobs, tax revenues, and multiplicative economic effects across related industries would diminish as EPA's mandate shifts demand away from Texas, diminishing Texas' scale economies and raising industry costs. Consequently, with reduced global competitiveness, Texas' production and manufacturing could also relocate to other regions or countries.

[41] *Texas Oil and Natural Gas Industry Pays History-Making $26.3 Billion in State and Local Taxes, State Royalties*, Texas Oil & Gas Association (Jan. 30, 2024) https://tinyurl.com/bdhexnyk (hereinafter, "TXOGA Report").
[42] *See id*.

21. This phenomenon can be seen in California, which has chosen (as *its* sovereign prerogative) to transition away from the fossil fuel dominated energy systems to zero emission vehicles by 2035,[43] and dropping motor fuel consumption 94 percent by or before 2045.[44] California's Advanced Clean Truck regulations requires manufacturers to increase zero-emission semi-truck sales by 75%.[45] The significant changes that have occurred in California's commute patterns and adoption of zero emission vehicles in the past several years have resulted in Californians consuming nearly two billion fewer gallons of gasoline in 2022 and 2023 than in 2019.[46] The California Energy Commission's August 2024 Transportation Fuels Assessment[47] is one component of SB X1-2. In the Assessment, the California Energy Commission acknowledges that the continuing permanent declines in demand for motor fuels will have unknown effects on the few petroleum refineries left in the state.[48]

22. It is possible that more refineries will close or convert to producing renewable fuels, decreasing the resiliency of motor fuel supply to the California market, which could lead to price spikes.[49] The Assessment identifies policy options and methods that could be followed to ensure a "reliable supply of affordable and safe transportation fuels," that include the marine importation of refined petroleum fuels and blending components[50] and "state-owned refineries."[51] The Assessment suggests that the scope of this state-owned refinery initiative "could range from one refinery to all refineries in the state."[52] Thus, the Final Rule, similar in nature to California's zero-emissions-driven mandate, is highly likely to harm not just Texas's economy but the State's tax receipts based on oil and products produced therefrom.

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[43] *See Advanced Clean Cars II*, California Air Resources Board ("CARB") (last accessed Oct. 4, 2024) https://tinyurl.com/ynxna7ps ("By 2035 all new passenger cars, trucks and SUVs sold in California will be zero emissions.").
[44] Press Release, *California Releases World's First Plan to Achieve Net Zero Carbon Pollution*, Governor Gavin Newsome (Nov. 16, 2022) https://tinyurl.com/43bewavv.
[45] *See Advanced Clean Trucks Fact Sheet*, CARB (Aug. 20, 2021) https://tinyurl.com/3rnaax5p.
[46] *See 2024 Review of the Price of Gasoline in California and Related Impact on State Revenues*, California Energy Commission & California Dep't of Tax and Fee Administration, 7, Fig. 2 (May 2024) https://tinyurl.com/mt3x9wvx. (hereinafter
[47] Quentin Gee, *et al.*, *Transportation Fuels Assessment: Policy Options for a Reliable Supply of Affordable and Safe Transportation Fuels in California*, California Energy Commission, ii (Aug. 15, 2024) https://tinyurl.com/3jbjp8he.
[48] *Id*. at 23.
[49] *Id*.
[50] *Id*. at 6.
[51] *Id.* at 74.
[52] *Id.*

I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the preceding is true and correct.

Executed in Austin, Texas on this 5th day of October 2024.

BY: _____
Murl E. Miller

No. 24-1129

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

STATE OF NEBRASKA, 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, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, STATE OF TENNESSEE, STATE OF TEXAS, STATE OF UTAH, COMMONWEALTH OF VIRGINIA, STATE OF WEST VIRGINIA, AND STATE OF WYOMING,

***Petitioners*,**

v.

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

***Respondents*.**

DECLARATION OF E. KEVIN GREGG IN SUPPORT OF PETITIONER COMMONWEALTH OF VIRGINIA'S PETITION FOR REVIEW

I, E. Kevin Gregg, hereby declare as follows:

1. My name is E. Kevin Gregg and I currently serve as Chief of Maintenance and Operations for the Virginia Department of Transportation ("VDOT"). I am over eighteen years of age and am competent to testify as to the matters set forth in this Declaration based

on my personal knowledge, my experience, and information provided to me by VDOT personnel. The facts in this Declaration are true and correct to the best of my personal knowledge. I have worked at VDOT over 30 years. In my current role as Chief of Maintenance and Operations, I oversee VDOT's Maintenance and Operations programs, where the Maintenance Division and its Equipment programs reside. I have served in this capacity since July 2019. Prior to this position, I served several different roles at VDOT including Deputy District Administrator and Maintenance Division Administrator.

2. I am providing this Declaration in support of the Commonwealth of Virginia's petition for review of the Rule issued on April 22, 2024 by the Environmental Protection Agency ("EPA") entitled the "*Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles – Phase 3"* published at 89 Fed. Reg. 29,440 (April 22, 2024)("Final Rule").

3. The Final Rule requires more stringent greenhouse gas emission standards that phase in over model years ("MY") 2027 through 2032, mandating an increased production of electric vehicles ("EV"). Such standards would likely limit the availability of new internal combustion

engine ("ICE") models. This limited supply is expected to result in higher prices for VDOT for the purchase of ICE vehicles.

4. In addition to higher ICE vehicle costs, VDOT will need to invest in infrastructure to support an EV fleet. This includes the installation of electric vehicle charging stations at all 254 maintenance facilities across the state, which currently offer fueling options for traditional vehicles.

5. There will be additional administrative effort needed to process the additional Overweight and Over-Dimensional Permits needed for EV heavy-duty vehicles. Generally, an overweight or over-dimensional permit is necessary for any load that has any of the following characteristics:

a. Total vehicle weight of greater than 80,000 lbs.;

b. The carrier is over legal axle weight, meaning: (1) greater than 20,000 lbs. for a single axle; (2) greater than 34,000 lbs. for a tandem axle; or (3) found to not satisfy the federal bridge formula for legal axle weights governing triple or quad axel configurations;

c. Any vehicle or load combination wider than 8'6" wide or 13'6" tall; or

d. Any vehicle towing a trailer or load combination longer than 48' (53' on the interstate).

6. The Final Rule presents administrative, financial, and time burdens upon VDOT, as it attempts to incorporate additional responsibilities into its highway maintenance and operations obligations within the Commonwealth of Virginia.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge. Executed on this 10th day of October, 2024.

E. Kevin Gregg

Chief of Maintenance and Operations

Dated: October 16, 2024

Respectfully submitted.

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CERTIFICATE OF SERVICE

On October 16, 2024, this addendum was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that the document has been scanned for viruses and is free of viruses.

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