

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF TEXAS, et al.,

*Petitioners,*

v.

NATIONAL HIGHWAY TRAFFIC  
SAFETY ADMINISTRATION; et al.,

*Respondents.*

Case Nos. 22-1144 and 22-1145  
(consolidated with 22-1080)

**MOTION OF NATIONAL COALITION FOR ADVANCED  
TRANSPORTATION AND ZERO EMISSION TRANSPORTATION  
ASSOCIATION TO INTERVENE AS RESPONDENTS**

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## INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the National Coalition for Advanced Transportation and Zero Emission Transportation Association (collectively “Transportation Coalitions”) respectfully move to intervene in case 22-1144, filed by Texas and ten other states, and case 22-1145, filed by American Fuel & Petrochemical Manufacturers,<sup>1</sup> in support of Respondents, the National Highway Traffic Safety Administration (“NHTSA”), and Steven Cliff, Administrator, as well as the U.S. Department of Transportation, and Pete Buttigieg, Secretary. NHTSA has statutory responsibility under the Energy Policy and Conservation Act, amended by the Energy Independence and Security Act, to establish Corporate Average Fuel Economy standards setting a “maximum feasible average fuel economy level” for each model year. 49 U.S.C. § 32902(a). NHTSA fulfilled that responsibility by promulgating fuel economy standards for passenger cars and light trucks for model years 2024 through 2026 (“the Standards”). 87 Fed. Reg. 25,710 (May 2, 2022).

Petitions 22-1144 and 22-1145 challenge the Standards. Movant Intervenor Transportation Coalitions participated in the proceedings leading to the actions

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<sup>1</sup> Natural Resources Defense Council previously filed a petition seeking review of NHTSA’s final rule (case No. 22-1080). Transportation Coalitions are not seeking intervention in case 22-1080, although Transportation Coalitions recognize that the Court may not make a distinction under Circuit Rule 15(b).

challenged in this case, including by filing comments on NHTSA's proposed fuel economy standards. And the Transportation Coalitions have an unambiguous interest in defending the legality of the Standards. The Transportation Coalitions include companies and non-profit organizations that support robust state and federal standards that incentivize the transition of the transportation sector to electric vehicle and other advanced transportation technologies.<sup>2</sup> The Transportation Coalitions' members include electric vehicle manufacturers, power companies, and electric vehicle charging infrastructure companies. The Transportation Coalitions' vehicle manufacturer members earn tradeable credits from over-performance of the Standards. Moreover, the Transportation Coalitions' members collectively have invested and committed to investing hundreds of millions of dollars to build infrastructure to support increased electric vehicle deployment and are engaged in proceedings for integrating electric vehicle load to the electric grid. For all these

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<sup>2</sup> The National Coalition for Advanced Transportation's membership currently includes Constellation Energy Corporation, Edison International, EVgo, Exelon Corporation and its affiliate operating companies (Atlantic City Electric, Baltimore Gas & Electric, Commonwealth Edison Company, Delmarva Power, PECO, and PEPCO), Lucid USA, Inc. ("Lucid"), Pacific Gas and Electric Company, Plug In America, Portland General Electric, Rivian Automotive ("Rivian"), Sacramento Municipal Utility District, and Tesla, Inc. ("Tesla"). National Coalition for Advanced Transportation member Center for Climate and Energy Solutions is not participating in this litigation as this organization does not participate in litigation as a matter of general practice. The Zero Emission Transportation Association's membership is listed at <https://www.zeta2030.org/members>.

reasons, the Transportation Coalitions have a direct and immediate interest in this matter and satisfy every factor for intervention as of right under Rule 15(d) and this Circuit’s precedents. *See, e.g., Crossroads Grassroots Policy Strategies v. Fed. Elec. Comm’n*, 788 F.3d 312, 316, 320 (D.C. Cir. 2015) (addressing factors for “intervention as of right”). The Transportation Coalitions thus seek to intervene as of right to defend the Standards as consistent with both the applicable legal requirements and the extensive technical record before the agency. Alternatively, the Transportation Coalitions meet the requirements for permissive intervention.

Counsel for the Transportation Coalitions has conferred with counsel for Respondents and Petitioners. Respondents do not oppose a timely motion to intervene. The Petitioners Texas *et al.* do not oppose and Petitioner American Fuel & Petrochemical Manufacturers takes no position.

### **BACKGROUND**

The Energy Policy and Conservation Act Section 32902(a) directs NHTSA to promulgate “maximum feasible” standards—setting the average fuel economy level for each model year. 49 U.S.C. § 32902(a). In setting these standards, NHTSA must consider four factors: (1) “technical feasibility;” (2) “economic practicability;” (3) “the effect other Government motor vehicle standards have on fuel economy;” and (4) “the need of the United States to conserve energy.” 49 U.S.C. § 32902(f). NHTSA must weigh these factors in a manner consistent with the overarching



purpose of the Energy Policy Conservation Act—energy conservation. *Ctr. For Biological Diversity v. NHTSA*, 538 F.3d 1172, 1197-98, 1205 (9th Cir. 2008) (finding that it would “clearly be impermissible for NHTSA to rely on consumer demand to such an extent that it ignored the overarching goal of fuel conservation”) (quoting *Ctr. For Auto Safety v. NHTSA*, 793 F.2d 1322, 1340 (D.C. Cir. 1986)).

In 2012, NHTSA issued a final rule, based on a robust technical record, setting fuel economy standards for model years 2017-2021 and augural standards for model years 2022-2025 (“2012 Rule”). Following the change in Administration, however, NHTSA reconsidered these standards. 83 Fed. Reg. 42,986 (Aug. 24, 2018). In 2020, NHTSA finalized a rule that both revised its 2012 rule setting standards for model years 2017-2021 and set standards for model years 2022-2026 (“2020 Rule”). These standards were significantly less stringent than the 2012 Rule. Shortly after NHTSA’s 2020 Rule was finalized, the National Coalition for Advanced Transportation, along with multiple groups of stakeholders—including States, air districts, public interest organizations, and other industry stakeholders—challenged NHTSA’s actions in the 2020 Rule as arbitrary and capricious and unlawful. *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (D.C. Cir.) (consolidated cases). Before that litigation reached final conclusion, in 2021, NHTSA proposed revising its model year 2024-2026 standards to restore a portion of the stringency reduced in its 2020 Rule. 86 Fed. Reg. 49,602 (Sept. 3, 2021). Among other things, NHTSA

appropriately recognized that the statutory factor—“the effect of other motor vehicle standards of the Government on fuel economy”— properly accounts for both the U.S. Environmental Protection Agency’s greenhouse gas emissions standards for light duty vehicles under Clean Air Act Section 202(a) and zero emissions vehicle mandates that California and other states have adopted, and received a waiver from federal preemption under Clean Air Act Section 209(b). *Id.* at 49,622, 49,745. The Transportation Coalitions commented in support of the proposed rule and this legal interpretation of the Energy Policy and Conservation Act. In 2022, NHTSA fulfilled its statutory obligation by finalizing these standards. 87 Fed. Reg. 25, 710 (May 2, 2022).

### LEGAL STANDARD

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene “must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” Appellate courts refer to Federal Rule of Civil Procedure 24 when reviewing motions to intervene in administrative review petitions like this one. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965) (Fed. R. Civ. P. 24 policies “may be applicable in appellate courts”); *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (same). An applicant is

entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) if it satisfies five conditions. First, the applicant must demonstrate that it has Article III standing. *See Crossroads*, 788 F.3d at 316. The Court then applies a four-factor test, requiring that: (1) the motion to intervene be timely; (2) the applicant claims a legally protected interest; (3) the action, as a practical matter, impairs or impedes that interest; and (4) the potential intervenor's interest cannot adequately be represented by another party to the action. *See id.* at 320. Alternatively, under Federal Rule of Civil Procedure 24(b)(1)(B), “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.”

## **ARGUMENT**

Because the Transportation Coalitions satisfy all of the requirements for intervention, this motion should be granted.

### **I. THE TRANSPORTATION COALITIONS HAVE ARTICLE III STANDING**

“The standing inquiry for an intervening-defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability.” *Crossroads*, 788 F.3d at 316 (citation omitted); *see also Sierra Club v. EPA*, 292 F.3d 895, 898-99 (D.C. Cir. 2002). An association has constitutional standing on behalf of its members if (1) at least one member would have standing in its own right, (2) “the interests the association seeks to protect are germane to its purpose,”

and (3) “neither the claim asserted nor the relief requested requires that an individual member of the association participate in the lawsuit.” *Id.* at 898. As demonstrated below, the Transportation Coalitions have standing to intervene as respondents in this case.

At least one of each Transportation Coalitions’ members has standing to be a party in its own right. The Standards incentivize and support investment in the development and deployment of electric vehicles and the infrastructure needed to support these vehicles given that more stringent standards provide a mechanism by which manufacturers that deploy innovative technologies and outperform the standards can earn and sell tradeable compliance credits. Transportation Coalitions’ members Tesla, Lucid, and Rivian manufacture all-electric vehicles that are sold throughout the United States and thus earn tradeable credits from the Standards that these Petitioners challenge. *See* Declaration of Joseph Mendelson, III (“Mendelson Decl.”) ¶ 8; Declaration of O. Kevin Vincent (“Vincent Decl.”) ¶ 8.

The interests the Transportation Coalitions seek to protect in this suit are germane to their purpose. The Standards at issue here are a factor that is incentivizing the transition to electric and other advanced vehicle technologies. Transportation Coalitions’ members collectively have invested and committed to investing hundreds of millions of dollars to build infrastructure to support increased electric vehicle deployment. The interests the Transportation Coalitions seek to

protect here are directly relevant to the organizations' purpose of promoting policies to foster electric vehicle and other advanced transportation technologies and related infrastructure. Indeed, the Transportation Coalitions and their members participated in the proceedings leading to the actions challenged in this case, including by filing comments with the agencies. *See* 87 Fed. Reg. 25,710, 25,900, 26,004 (May 2, 2022) (citing Transportation Coalitions' comments on NHTSA's proposed rule); Mendelson Decl. ¶ 12; Vincent Decl. ¶ 6. The Transportation Coalitions would suffer injury if Petitioners succeed in vacating NHTSA's Standards. The Standards, which require passenger car and light truck manufacturers to produce vehicles with improved fuel economies, reward the production of vehicles that outperform the minimum standards and play a critical role in driving investments in zero or low greenhouse gas emissions vehicles and related infrastructure. *See* Mendelson Decl. ¶¶ 9-10. Vacating the Standards would implicate potential credit generation, undermine the regulatory drivers for vehicle electrification, and would threaten the Transportation Coalitions' benefits of their investments. *See* Mendelson Decl. ¶ 15; Vincent Decl. ¶ 9. These type of economic injuries constitute cognizable harm sufficient to demonstrate constitutional standing. *See Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017) ("Economic harm to a business clearly constitutes an injury-in-fact. And the amount is irrelevant."). And the claims and

relief requested do not require any individual member of the Transportation Coalitions to participate in the litigation.

Petitioners' challenge to the Standards is the cause of the potential harm to these Transportation Coalitions' members, and a decision in Respondents favor would redress the potential injury to the Transportation Coalitions' members. Because the Transportation Coalitions' members meet the injury-in-fact requirement, they necessarily meet the causation and redressability requirements for standing. Where a suit challenges an agency decision that was in the movant intervenor's favor, "it rationally follows [that] the injury is directly traceable to [plaintiff's] challenge." *Crossroads*, 788 F.3d at 316. In such cases, the causation and redressability requirements for standing are met. *Id.* The same is true here where Petitioners seek to vacate the Standards, directly threatening the hundreds of millions of dollars that Transportation Coalitions' members have invested in the development and deployment of electric vehicles. *See Mendelson Decl.* ¶ 13.

## **II. THIS MOTION IS TIMELY**

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene in a proceeding for judicial review of an administrative agency action must be filed within 30 days after the petition is filed. That requirement has been met here given that the petitions in 22-1144 and 22-1145 were filed on June 30, 2022 and the deadline to file a motion to intervene is August 1, 2022.

### III. THE TRANSPORTATION COALITIONS HAVE PROTECTABLE INTERESTS AT ISSUE

This Court has held that the existence of constitutional standing suffices to show a legally protected interest for purposes of Rule 24. *See Crossroads*, 788 F.3d at 320 (“[S]ince [the proposed defendant-intervenor] has constitutional standing, it *a fortiori* has ‘an interest relating to the property or transaction which is the subject of the action.’” (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003))); *see also Jones v. Prince George’s Cnty., Md.*, 348 F.3d 1014, 1018-19 (D.C. Cir. 2003). As explained in Section I above, the Transportation Coalitions have protectable interests: Transportation Coalitions’ members have financial interests in the Standards that Petitioners challenge in these consolidated cases and have invested hundreds of millions of dollars in the development and deployment of electric vehicles. *See Nat’l Parks Conservation Ass’n v. EPA*, 759 F.3d 969, 976 (8th Cir. 2014) (permitting industry group to intervene where relief would result in expenses for members of the group); *N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of N.Y.*, 516 F.2d 350, 351-52 (2d Cir. 1975) (pharmacists’ financial stake in upholding a regulation was sufficient to support intervention as of right). For all of these reasons, the Transportation Coalitions satisfies the significant protectable interest requirement.

#### **IV. THE RELIEF SOUGHT WOULD IMPAIR THE TRANSPORTATION COALITIONS' ABILITY TO PROTECT THEIR INTERESTS**

To satisfy the third part of the Rule 24(a)(2) test, the Transportation Coalitions need only show that an unfavorable disposition of this action “may as a practical matter impair or impede” its ability to protect its interests. Fed. R. Civ. P. 24(a)(2).

Petitioners' request that this Court review and vacate the Standards substantially endangers the Transportation Coalitions' interests, because as explained in Section I, the Transportation Coalitions' members earn tradeable compliance credits from the Standards and have significant financial interests in the Standards. Under Rule 24(a), impairment of interests refers to “the ‘practical consequences’ of denying intervention, even where the possibility of future challenge to the regulation remain[s] available.” *Fund For Animals*, 322 F.3d at 735 (citation omitted). If the task of reestablishing a prior regulation in separate litigation will be “difficult and burdensome,” then a movant intervenor's interests are sufficiently threatened to justify present intervention. *Id.*

#### **V. THE TRANSPORTATION COALITIONS' INTERESTS ARE NOT ADEQUATELY REPRESENTED BY THE EXISTING PARTIES**

As this Court has explained, “a movant ‘ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation.’” *Crossroads*, 788 F.3d at 321 (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d



1285, 1293 (D.C. Cir. 1980)). This requirement is “not onerous” and represents a “low” threshold. *Id.* (quoting *Fund for Animals*, 322 F.3d at 735, 736 n.7).

The Transportation Coalitions’ interests in this action are not adequately represented by federal respondents. Transportation Coalitions have a significant interest in protecting their financial interests in the Standards. *See supra* Section I. Federal respondents’ “general interest” in seeing their decision upheld “does not mean [the parties’] particular interests coincide so that representation by the agency alone is justified.” *Am. Horse Prot. Ass’n v. Veneman*, 200 F.R.D. 153, 159 (D.D.C. 2001). To the contrary, federal respondents’ interests, as regulatory agencies and officials, differ from those of regulated private parties. *See, e.g., Crossroads*, 788 F.3d at 321 (“[W]e look skeptically on government entities serving as adequate advocates for private parties.”).

This Court has long recognized that the government does not adequately represent the specific, narrower economic and other interests of private parties that may be affected by the litigation. *See, e.g., Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 n.41 (D.C. Cir. 1977). That is particularly true when a private-party intervenor asserts a “financial stake in the outcome” of the action. *Dimond*, 792 F.2d at 192. While the government has a duty to represent the interests of the public at large, private parties “seek[] to protect a narrow and ‘parochial’ financial interest not

shared” by the general public. *Id.* at 193; *see also Fund for Animals*, 322 F.3d at 736-37 & n.9 (collecting cases recognizing that “governmental entities do not adequately represent the interests of aspiring intervenors”).

Nor can states or other public interest group movant intervenors represent the Transportation Coalitions’ unique interests in the litigation. The Transportation Coalitions represent the interests of private sector businesses in promoting electric vehicles and related infrastructure development and deployment. The Transportation Coalitions’ interests are therefore distinct and different from the interests of potential state and local governments and public interest group movant-intervenors. *See WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 17-18 (D.D.C. 2010) (permitting intervention where other industry parties did not represent particular interests of proposed intervenor).

## **VI. THE TRANSPORTATION COALITIONS ALSO SATISFY THE STANDARDS FOR PERMISSIVE INTERVENTION**

“On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). An applicant for permissive intervention should present the Court with “(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action.” *EEOC v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042,

1046 (D.C. Cir. 1998) (citation omitted). The Transportation Coalitions also satisfy this standard for permissive intervention.

*First*, this Court has an independent basis for subject matter jurisdiction over the defenses that the Transportation Coalitions will advance. Because Petitioners' claims arise under the laws of the United States—the Energy Policy and Conservation Act and the Administrative Procedure Act—and the Transportation Coalitions have Article III standing, *see supra* Section I, this Court has original jurisdiction. *Second*, as explained above, this motion is timely. *See supra* Section II. Intervention at this early stage of litigation will not delay the proceeding, and the Transportation Coalitions are prepared to meet any schedule set by this Court. *Third*, because the Transportation Coalitions will raise defenses directly responsive to Petitioner's claims, they necessarily will assert a claim or defense in common with the main action and satisfy the “common question of law or fact” requirement.

As such, the criteria for permissive intervention likewise support the Transportation Coalitions' motion to intervene.

### **CONCLUSION**

For the foregoing reasons, the Transportation Coalitions respectfully request that this Court grant their motion to intervene.

Date: August 1, 2022

Respectfully submitted,

/s/ Stacey L. VanBellegem

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**CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 27(a)(2)(b) and 32, this document contains 3,113 words, as determined by the word-count function of Microsoft Word.

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

Date: August 1, 2022

*/s/ Stacey L. VanBelleghem*  
Stacey L. VanBelleghem

*Counsel for the National Coalition for  
Advanced Transportation and Zero  
Emission Transportation Association*

## CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), I certify that the parties including intervenors and amici curiae—are set forth below.

**Petitioners:** For Case No. 22-144, Commonwealth of Kentucky, State of Arkansas, State of Indiana, State of Louisiana, State of Mississippi, State of Montana, State of Nebraska, State of Ohio, State of South Carolina, State of Texas and State of Utah, and for Case No. 22-145, American Fuel & Petrochemical Manufacturers. These cases are consolidated with Case No. 22-1080, a petition for review of the same agency action filed by Natural Resources Defense Council, but the National Coalition for Advanced Transportation and Zero Emission Transportation Association are not seeking intervention in that case.

**Respondents:** The National Highway Traffic Safety Administration and Steven Cliff, in his official capacity as Administrator of the National Highway Traffic Safety Administration, the United States Department of Transportation, and Pete Buttigieg, in his official capacity as Secretary of the United States Department of Transportation.

**Movant Intervenors for Petitioners:** Clean Fuels Development Coalition, Diamond Alternative Energy, LLC, ICM, Inc., Illinois Corn Growers Association, Kansas Corn Growers Association, Kentucky Corn Growers Association, Michigan Corn Growers Association, Minnesota Soybean Growers Association, Missouri

Corn Growers Association, Texas Corn Producers Association, Wisconsin Corn Growers Association, and Valero Renewable Fuels Company, LLC.

**Movant Intervenors for Respondents:** National Coalition for Advanced Transportation and Zero Emission Transportation Association.

**Amici Curiae:** None at this time.

Date: August 1, 2022

Respectfully submitted,

*/s/ Stacey L. VanBellegem*

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Emission Transportation Association*

## **RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioner National Coalition for Advanced Transportation states as follows:

The National Coalition for Advanced Transportation is a coalition of companies and non-profit organizations that supports electric vehicle and other advanced transportation technologies and related infrastructure, including business leaders engaged in energy supply, transmission and distribution; vehicle and component design and manufacturing; and charging infrastructure production and implementation, among other activities. The National Coalition for Advanced Transportation is an unincorporated association and does not have a parent corporation. No publicly-held entity owns 10% or more of the National Coalition for Advanced Transportation.

The National Coalition for Advanced Transportation currently has the following members<sup>1</sup>:

- Atlantic City Electric
- Baltimore Gas and Electric Company
- Commonwealth Edison Company
- Constellation Energy Corporation

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<sup>1</sup> National Coalition for Advanced Transportation member Center for Climate and Energy Solutions is not participating in this litigation as this organization does not participate in litigation as a matter of general practice.



- Delmarva Power
- Edison International
- EVgo
- Exelon Corporation
- Lucid USA, Inc.
- Pacific Gas and Electric Company
- PECO
- PEPCO
- Plug In America
- Portland General Electric
- Rivian Automotive
- Sacramento Municipal Utility District
- Tesla, Inc.

The Zero Emission Transportation Association states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Zero Emission Transportation Association has no parent corporation, and no publicly held company has 10% or greater ownership in the Zero Emission Transportation Association.

Dated: August 1, 2022

Respectfully submitted,

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Emission Transportation Association*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of August, 2022, I caused the foregoing Motion to be electronically filed with the Clerk of the Court via the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

Date: August 1, 2022

*/s/ Stacey L. VanBelleghem*  
Stacey L. VanBelleghem

*Counsel for the National Coalition for  
Advanced Transportation and Zero  
Emission Transportation Association*

## ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF TEXAS, et al.,

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NATIONAL HIGHWAY TRAFFIC  
SAFETY ADMINISTRATION; et al.,*Respondents.*Case Nos. 22-1144 and 22-1145  
(consolidated with 22-1080)**DECLARATION OF JOSEPH MENDELSON, III**

I, Joseph Mendelson, III, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information, and belief:

1. I am Senior Counsel, Public Policy and Business Development at Tesla, Inc. (“Tesla”). I am responsible for Tesla’s relations with federal agencies related to the National Highway Traffic Safety Administration’s (“NHTSA”) Corporate Average Fuel Economy standards. I managed Tesla’s participation in the regulatory process, including drafting and submitting written comments on NHTSA’s proposed fuel economy standards for passenger cars and light trucks for model years 2024 through 2026 (“the Standards”).

2. Tesla is a member of the National Coalition for Advanced Transportation and the Zero Emission Transportation Association.

3. Tesla is a publicly traded corporation, incorporated in the State of Delaware on July 1, 2003, with headquarters located at 1 Tesla Road, Austin, Texas 78725.

4. Tesla's mission is to accelerate the world's transition to sustainable energy. Moreover, Tesla believes the world will not be able to solve the climate change crisis without directly reducing air pollutant emissions—including carbon dioxide and other greenhouse gases—from the transportation and power sectors.

5. To accomplish its mission, Tesla designs, develops, manufactures, and sells high-performance fully electric vehicles and energy generation and storage systems, installs and maintains such systems, and sells solar electricity. Tesla currently produces and sells four fully electric vehicles: the Model S sedan, the Model X sport utility vehicle, the Model 3 sedan, and the Model Y mid-sized SUV. In 2022, the Tesla Model Y ranked as the most American made car, based on overall contributions to the U.S. economy, and the Model Y ranked just below as the second most American made car on the market.<sup>1</sup> Tesla's Model 3 is now the world's best-

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<sup>1</sup> Cars.com, [Cars.com's American-Made Index Adds Tesla to Exclusive List of Multiyear Chart-Toppers, Model Y Nabs No. 1](#) (June 21, 2022); *see also* American University, Kogod School of Business, [Made in America Auto Index](#) (finding each of Tesla's vehicles - the Model S, 3, X and Y - has ranked in the top 10 for multiple

selling premium sedan and the Model Y has become one of the top selling SUVs in the country.<sup>2</sup> Tesla vehicles have also received a number of distinctions, including over the past year the Model 3 being included in Consumer Reports' 2020 "Top Picks" List and the Model S being named Motor Trend's Ultimate Car of the Year.

6. Tesla has made significant investments to establish, and continues to grow, a large network of retail stores, vehicle service centers, and electric vehicle charging stations to accelerate and support the widespread adoption of its vehicle products.

7. In the United States, Tesla conducts vehicle manufacturing and assembly operations at its facilities in Fremont, California and Austin, Texas, and produces electric drive trains and manufactures advanced battery packs, as well as Tesla's energy storage products, at its Gigafactory Nevada in Sparks. It also builds and services highly automated, high-volume manufacturing machinery at its facility in Brooklyn Park, Minnesota, and operates a tool and die facility in Grand Rapids, Michigan. Tesla produces its solar energy and vehicle charging products at its Gigafactory New York in Buffalo. Tesla's U.S. supply chain spans across more than 40 states.

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years and Tesla was the only manufacturer to have representation from its entire portfolio in the top 10).

<sup>2</sup> See, e.g., CleanTechnica, [Tesla Model Y — 2nd Best Selling SUV In California, & Model 3 The 5th Best Selling Car](#) (Aug. 28, 2021).

8. Tesla's American-manufactured electric vehicles are sold nation-wide and Tesla earns tradeable compliance credits under the Standards. Tesla's required, public SEC filings regularly report quarterly revenue derived from automotive regulatory credit sales, including those earned under the Standards.

9. Moreover, the regulatory certainty facilitated by the Standards have contributed to market conditions that have supported billions of dollars in manufacturing investments by Tesla. Tesla has expanded direct investment in its cutting-edge auto manufacturing, to develop innovative new sustainable energy technologies and products, and to invest in new electric vehicle charging and support infrastructure throughout the United States. Indeed, Tesla continues to make significant investments in advancing electric vehicle, solar, and battery storage technology with over \$1.1 billion dedicated to research and development (R&D) in 2021 alone.<sup>3</sup> A recent analysis found that Tesla's R&D investment triples that per vehicle compared to other manufacturers.<sup>4</sup> For example, in the summer of 2020, Tesla began construction of its newest vehicle and advanced battery manufacturing

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<sup>3</sup> See Tesla, [SEC Form 10-K](#) (Jan. 26, 2022) at 39; See also, InsideEVs, [Tesla Spends Least On Ads, Most On R&D: Report](#) (Mar. 25, 2022)(reporting that Tesla spends \$2,984 per car on R&D and that such spending is three times the industry average and higher than Chrysler, Ford, and GM's R&D budgets combined).

<sup>4</sup> See Visual Capitalist, [Comparing Tesla's Spending on R&D and Marketing Per Car to Other Automakers](#) (Oct. 11, 2021) (Tesla is spending an average of \$2,984 per car sold on R&D—often triple the amount of other traditional automakers.)

facility in Austin, Texas. The project will invest over \$10 billion in factory development and create 10,000 new jobs.<sup>5</sup> In the spring of 2022, Gigafactory Texas began production of Tesla's Model Y crossover and is expected to produce its new Cybertruck. Tesla has continued to innovate with respect to vehicle design to improve the efficiency of its all-electric vehicles, including through significant mass reduction, increased drive unit efficiency, maximizing regenerative braking, and more aerodynamic wheels and tires.<sup>6</sup>

10. The regulatory certainty embodied in the Standards has also driven Tesla's investment in charging infrastructure. In 2013, Tesla had 8 Supercharger (DC fast charging) stations in North America. Tesla's North American network has grown to include over 3,900 Supercharger Stations with over 36,000 individual charging stalls.<sup>7</sup> In 2021, Tesla opened 912 new Supercharger locations around the world – an average of two and half new locations every day.<sup>8</sup> Tesla's charging investment also includes a network of over 14,000 Destination Charging locations

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<sup>5</sup> See, e.g., [Elon Musk says hiring for Tesla's Austin factory could hit 10,000 workers](#), Austin American-Statesman (Mar. 31, 2021); Reuters, [Musk says Tesla's Texas factory is \\$10 bln investment over time](#) (Dec. 15, 2021).

<sup>6</sup> Tesla, Model S Long Range Plus: Building the First 400-Mile Electric Vehicle (June 15, 2020), <https://www.tesla.com/blog/model-s-long-range-plus-building-first-400-mile-electric-vehicle>.

<sup>7</sup> See Tesla, [Supercharger](#); see also Tesla, [Q2 2022 Update](#) (July 20, 2022) at 6.

<sup>8</sup> See InsideEVs, [Tesla: In 2021 Supercharging Uptime Improved To 99.96%](#) (May 10, 2022).



that replicate the convenience of home charging by providing hotels, resorts, and restaurants with Tesla Wall Connectors.<sup>9</sup> Additionally, at its facility in Buffalo, New York, Tesla employs over 1,600 people and manufactures power electronics equipment for its global Supercharger vehicle charging network, including the North American charging network.

11. In 2020, NHTSA finalized standards that were significantly less stringent than prior standards. Tesla opposed those standards and, as a member of the National Coalition for Advanced Transportation, challenged NHTSA's actions in the 2020 rule as arbitrary and capricious and unlawful. *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (D.C. Cir.) (consolidated cases).

12. When NHTSA initiated its reconsideration of the 2020 standards, Tesla commented individually and through the National Coalition for Advanced Transportation and Zero Emission Transportation Association in support of NHTSA's proposal to adopt more stringent standards.<sup>10</sup>

13. In May 2022, NHTSA finalized the Standards.<sup>11</sup> If Petitioners succeed in obtaining vacatur of NHTSA's Standards, this will upset the regulatory certainty

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<sup>9</sup> See Tesla, On the Road, <https://www.tesla.com/supercharger>.

<sup>10</sup> See 87 Fed. Reg. 25,710, 25,900, 26,004, 26,007 (May 2, 2022) (citing comments of National Coalition for Advanced Transportation, Zero Emission Transportation Association, and Tesla).

<sup>11</sup> 87 Fed. Reg. 25,710 (May 2, 2022).

on which Tesla and other manufacturers have based their significant investment in electric vehicle manufacturing and infrastructure.

14. The challenged Standards meaningfully advance Tesla's ability to fulfill its corporate mission of transitioning the world's car fleet to electric vehicles, and Tesla's business interests in marketing electric vehicles would be harmed by any decision overturning the Standards.

15. Tesla earns tradable compliance credits under the Standards. If Petitioners are successful in their challenge, it will deprive Tesla of these tradeable compliance credits and associated revenues.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed this 1st day of August, 2022.



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Joseph Mendelson, III

## ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF TEXAS, et al.,

*Petitioners,*

v.

NATIONAL HIGHWAY TRAFFIC  
SAFETY ADMINISTRATION; et al.,*Respondents.*Case Nos. 22-1144 and 22-1145  
(consolidated with 22-1080)**DECLARATION OF O. KEVIN VINCENT**

I, O. Kevin Vincent, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information, and belief:

1. I am Associate General Counsel, Regulatory & Vehicle Safety at Lucid USA, Inc. (“Lucid”). In that role, I am responsible for regulatory compliance, including complying with federal standards and regulations, such as the National Highway Traffic Safety Administration (“NHTSA”) Corporate Average Fuel Economy Standards.

2. Lucid is a member of the National Coalition for Advanced Transportation and the Zero Emission Transportation Association.

3. Lucid's mission is to inspire the adoption of sustainable energy by creating the most captivating electric vehicles, centered around the human experience. The company's first car, the Lucid Air, is a state-of-the-art luxury sedan with a California design underpinned by race-proven technology. The Lucid Air features a luxurious full-size interior space in a mid-size exterior footprint. Customer deliveries of the Lucid Air began in 2021.

4. Lucid's state-of-the-art AMP-1 (Advanced Manufacturing Plant) factory in Casa Grande, Arizona started production in 2021 and already employs over 1,000 people. Every Lucid employee receives stock in the company and competitive compensation. For example, the average Lucid employee at the Casa Grande, Arizona facility earns 160% of the median income in the Casa Grande area.

5. Lucid supports the Administration's goals to electrify the transportation sector and supports NHTSA's fuel economy standards for passenger cars and light trucks for model years 2024 through 2026 ("the Standards"). Lucid strongly supports the increase in stringency of the Standards compared to the prior standards set by the previous administration.

6. Lucid participated in NHTSA's regulatory process for the Standards, including submitting comments on the proposed rule.<sup>1</sup> In particular, Lucid

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<sup>1</sup> See NHTSA-2021-0053-1584 (Lucid's comments to NHTSA on its proposed rule).

advocated for more stringent standards and advocated a different value for rebound effect analysis.

7. In May 2022, NHTSA finalized the Standards<sup>2</sup> that are substantially more stringent than prior standards.<sup>3</sup> These more stringent Standards will incentivize electric vehicle sales in the United States, including Lucid's American-manufactured electric vehicles.

8. Lucid sells its American-manufactured electric vehicles in the U.S. and Lucid benefits from tradable compliance credits as a result of the Standards.

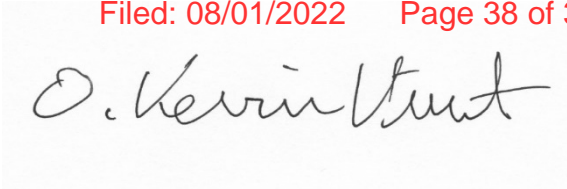
9. Any attempt to vacate the Standards will impair Lucid's interest in stringent motor vehicle greenhouse gas emissions standards.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on August 1, 2022.

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<sup>2</sup> 87 Fed. Reg. 25,710 (May 2, 2022).

<sup>3</sup> The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (Apr. 30, 2020) (EPA amended its existing Model Year 2021 through 2025 Standards and NHTSA amended its existing Model Year 2021 Standards and Model Year 2022 through 2025 augural Standards).

A handwritten signature in black ink on a light-colored background. The signature is written in a cursive style and reads "O. Kevin Vincent".

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O. Kevin Vincent