

ORAL ARGUMENT NOT YET SCHEDULED
No. 22-1080 (and consolidated cases)

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

NATURAL RESOURCES DEFENSE COUNCIL, ET AL.,
Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ET AL.
Respondents,

On Petition for Review OF ACTION OF THE
NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION

BRIEF OF *AMICI CURIAE*
THE TWO HUNDRED FOR HOMEOWNERSHIP
AND THE 60 PLUS ASSOCIATION

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Except for those listed in the Interests section below, all parties, intervenors, and *Amici curiae* appearing in this case are listed in the two briefs of the Petitioners. References to the rulings under review and related cases appear in the briefs of the Petitioners.

**STATEMENT REGARDING BRIEFING,
AUTHORSHIP, AND MONETARY CONTRIBUTIONS**

Amici curiae, The Two Hundred for Homeownership and The 60 Plus Association, file this separate brief in compliance with the court's order of September 22, 2022. (Dkt. Entry 1965622) *See* Fed. R. App. P. 29(a)(5), 32(a)(7)(B)(i). *Amici curiae* concurrently filed a motion for leave to file this brief.

Under Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici curiae* state that no party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person – other than the *Amici curiae* or their counsel – contributed money intended to fund the preparation or submission of this brief.

CORPORATE DISCLOSURE STATEMENT

The undersigned counsel for *Amici curiae* The 200 for Homeownership and the 60 Plus Association certifies that each of *Amici curiae* have never issued stock, and each of *Amici curiae* do not have a parent company whose ownership interest is 10 percent or greater.

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GLOSSARY

EPA

United States Environmental Protection Agency

NHTSA

National Highway Traffic Safety Administration

INTRODUCTION

Like California's original Advanced Clean Cars regulation, the National Highway Safety Administration ("NHTSA") Corporate Average Fuel Economy Standards¹ at issue in this case have a twisted and winding history. In 2008, during the George W. Bush administration, the United States Environmental Protection Agency ("EPA") denied a waiver requested by California under Clean Air Act § 209, 42 U.S.C. § 7543(b) for the first time. The Obama administration EPA subsequently reversed that decision. The Obama administration then negotiated with California and developed a set of unified greenhouse gas and tailpipe standards for other pollutants applicable to both California and the federal motor vehicle emission control program. California retained authority to develop more stringent emission standards, but not to mandate a single, one-size-fits-all, vehicular engine technology. In 2013, EPA granted a waiver for the greenhouse gas standards and zero-emission vehicle mandates that are part of the Advanced Clean Cars regulation that had been adopted by California's state-wide air regulator, the California Air Resources Board. In 2019, the Trump administration EPA withdrew the 2013 waiver as part of its promulgation of a joint EPA and NHTSA rulemaking. The rule effectuating this withdrawal is known as Part 1 of

¹ Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25,710 (May 2, 2022) (effective date July 1, 2022).

the of the Safer Affordable Fuel-Efficient Vehicles Rule, which established “One National Program” (covering fuel efficiency and greenhouse gas standards).² The One National Program was intended to eliminate California's separate standards and establish one federally preemptive set of standards for all vehicles sold nationally. In 2022, EPA rescinded the 2019 withdrawal of the waiver and withdrew its legal interpretation from the Part 1 rule that contended states could not adopt the California greenhouse gas standards under Clean Air Act § 177 even when California had a valid waiver. In January 2021, following his inauguration, President Biden promulgated an Executive Order outlining a climate program. In that Executive Order, among other things, he targeted EPA's vehicle emission standards for review and ordered that EPA and NHTSA coordinate with each other and California to ensure that 50 percent of all new passenger car and light trucks sold in 2030 and after be zero-emission vehicles. EPA responded, for the first time acting without NHTSA, by promulgating vehicle emission standards so stringent that they effectively mandate increasing market shares of electric vehicles (EPA Standards). In a subsequent rule making, EPA granted California a waiver from federal preemption to allow it (and other states that adopt its standards) to mandate sales of only new zero emission vehicles. Following these EPA actions, NHTSA

² The Safer Affordable Fuel-Efficient Vehicles Rule Part One: One National Program, 83 Fed. Reg. 42986 (September 27, 2019)(codified at 40 C.F.R. pts. 85 and 86 and at 49 C.F.R. pts. 531 and 533).

promulgated new corporate average fuel economy standards that take account of the vehicles that NHTSA contends will exist as a result of other federal and state requirements ("NHTSA Standards"). It is these NHTSA Standards that are at issue in this case.

STATEMENT OF INTEREST OF THE AMICI CURIAE

Amicus curiae, The Two Hundred For Homeownership, is a California-based unincorporated association of community leaders, opinion makers, and advocates working in California and elsewhere on behalf of low-income minorities who are affected by California's housing crisis and increasing wealth gap. The Two Hundred For Homeownership is committed to increasing the supply of housing to levels that support its affordability to California's hardworking families, and to restoring and enhancing home ownership by minorities so that minority communities can also benefit from the family stability, enhanced educational attainment over multiple generations, and improved family and individual health outcomes that white homeowners have long taken for granted. The Two Hundred For Homeownership includes civil rights advocates who each have four or more decades of experience in protecting the civil rights of our communities against unlawful conduct by government agencies and businesses.

For many decades, the Two Hundred For Homeownership have watched with dismay decisions by government bureaucrats that discriminate against and

disproportionately harm minority communities. The Two Hundred For Homeownership and The 60 Plus have battled this discrimination for entire careers. In litigation and political action, The Two Hundred For Homeownership have worked to force government bureaucrats to reform policies and programs that included blatant racial discrimination – by, for example, denying minority veterans college and home loans and benefits that were available to white veterans, and promoting housing segregation as well as preferentially demolishing homes in minority communities. The Two Hundred For Homeownership have also learned the hard way that California's and EPA's purportedly liberal, progressive environmental regulators and environmental advocacy group lobbyists are as oblivious to the needs of minority communities, and are as supportive of ongoing racial discrimination in their policies and practices, as many of their banking, utility and insurance bureaucratic peers.

Most relevant to the present matter, The 200 For Homeownership have in recent years been forced to confront the reality that California's state-wide air pollution regulator, the Air Resources Board is pursuing approaches that discriminate against California's low-income and minority communities – purportedly in service of addressing climate change. Unfortunately, EPA's rule-making at issue here expands that discrimination across the nation. The 200 For

Homeownership support the quality of the environment and the need to protect and improve public health in our communities.

Amicus curiae, the 60 Plus Association, founded in 1992, is a non-partisan senior's advocacy group with a free enterprise, less government, less taxes approach to senior's issues. The 60 Plus has spent the past 30 years building a network of more than 10 million senior activists nationwide with particular efforts to educate them on issues that affect them, their children and grandchildren.

The *Amici* do not and never have dismissed the importance of climate change. The *Amici* are not opposed to Zero-Emission Vehicles. *Amici* take the position that waivers should be granted to California under Clean Air Act § 209(b), 42 U.S.C. § 7543(b) in appropriate circumstances. For example, the waiver should allow the Air Resources Board to adopt more stringent criteria pollutant standards to address “compelling and extraordinary conditions” such as severe smog. *Amici* also agree that other states should be able to implement those standards when EPA grants waivers, under Clean Air Act § 177, 42 U.S.C. § 7507. Indeed, *Amici* are keenly aware that waivers granted to California in the past have resulted in extraordinary progress against pollution problems in California that once seemed intractable.

Until the past decade, those California regulatory efforts blazed a trail followed by California and the many states that have followed its lead under Clean

Air Act § 177, as well as EPA in setting federal vehicle emission standards, and NHTSA in setting corporate average fuel economy standards that incrementally, but very successfully, addressed air pollution emissions without unduly burdening vehicle manufacturers, and more importantly for present purposes, consumers. Unfortunately, recent efforts by the Air Resources Board, and now EPA and NHTSA, have strayed far from that path. As discussed below, NHTSA's promulgation of the NHTSA Standards, like California's adoption of the Advanced Clean Cars regulation, failed to address its discriminatory effects and was thus arbitrary and capricious. EPA's grant of a Clean Air Act § 209 waiver for California's Advanced Clean Cars regulation perpetuates that discrimination as does NHTSA's promulgation of the NHTSA standards. In fact, EPA's most recent waiver decision, like the related decisions that came before it and the NHTSA rule-making at issue here, fundamentally ignores the very principles and policies of environmental justice that these federal agencies consistently purport to set forth. Despite EPA's efforts to establish and implement environmental justice policies that support, in the words of EPA, "fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income,"³ these efforts have been woefully insufficient to address the scale and severity of disproportionate

³ U.S. EPA, *Environmental Justice*, <https://www.epa.gov/environmentaljustice> (last updated Sept. 30, 2022).

environmental impact in the United States. This rule-making is yet another example of blatant disregard for fair treatment and equity in the implementation of environmental policies. Thus, the Court should vacate the NHTSA Standards.

ARGUMENT

I. THE NHTSA STANDARDS IMPOSE DISPARATE CONSEQUENCES ON LOW-INCOME COMMUNITIES AND COMMUNITIES OF COLOR.

As documented by United Ways of California, the Public Policy Institute of California, and several other impartial research institutions, California has an acute poverty and housing crisis which disproportionately impacts our communities of color.⁴ Of course, obtaining housing requires income. Obtaining income requires a job. Keeping a job requires showing up regularly and on time. Low-income workers need and use cars to get to work, even in transit-served areas like Los Angeles, where 33 *times* more jobs can be accessed by car in 30 minutes than can be accessed by a 30 minute transit ride.⁵ In the vast majority of California communities, cars are the only practical transportation option to get to work on time. Anything that affects the availability of affordable and reliable (or at least

⁴ See e.g., Peter Manzo et al., *Struggling to Move Up: The Real Cost Measure in California 2021*, United Ways of California, July 2021, <https://www.unitedwaysca.org/realcost>.

⁵ Michael Manville et al., *Vehicle access and falling transit ridership: evidence from Southern California*. TRANSPORTATION, February 3, 2022, at Table 2.

repairable) cars causes a detrimental impact on the ability of low-income and minority community members to obtain and maintain jobs. Like the Advanced Clean Cars regulation, the EPA Standards represent an attack on exactly those lower cost (and low emission) personal vehicles.

Many low-income families and seniors cannot afford electric vehicles. As a memo from Capitol Matrix Consulting notes, the incremental cost for a zero emission vehicle compared to a vehicle with an internal combustion engine is well over \$10,000 for smaller vehicles and well over \$20,000 for high end sedans, sport utility vehicles, and pickup trucks.⁶ Stillwater Associates similarly observed that low-income families purchase far fewer new cars, because it is less expensive to repair used cars when needed.⁷ They also concluded that as new cars become more expensive, low-income families will be priced out of the market.⁸

⁶ “Today, the incremental cost for a ZEV compared to an ICE vehicle with similar features, capabilities, and range is well over \$10,000 for small vehicles, and well over \$20,000 for high-end sedans, SUVs, and pickup trucks.” *Impact of the Advanced Clean Cars II (Internal Combustion Engine Ban) Regulation on California Businesses*, Capitol Matrix Consulting, May 17, 2022, at 3, <https://www.arb.ca.gov/lists/com-attach/477-accii2022-AHcAdQBxBDZSeVc2.pdf> (Exhibit E of *Comments on Advanced Clean Cars II Regulation Initial Statement of Reasons (ISOR) Documents by Western States Petroleum*).

⁷ *Possible Market Implications of California’s Efforts to Ban Internal Combustion Engines (ICE)*, Stillwater Associates, February 9, 2022, at 31, <https://stillwaterassociates.com/wp-content/uploads/2022/06/Stillwater-ICE-Ban-Analysis-Final-PUBLIC.pdf>.

⁸ *Id.*

Despite these facts, the NHTSA Standards effectively mandate sales of increasing percentages of costly electric (mostly) and other “zero” emission vehicles, which for most affected low-income, senior, and minority community members would be impractical even if they were affordable.⁹ There are several reasons for this:

First, residential electricity prices in California are already almost double the national average and projected to rise.¹⁰ Low-income, senior, and disadvantaged communities already spend a disproportionate amount of their income on essential utilities, including electricity. In its 2019 Annual Affordability Report, the

⁹ Similarly, California's Advanced Clean Cars regulation, for which EPA granted a Clean Air Act waiver, mandates that a minimum of 35% of vehicles sold in California must be “zero” emission by model year 2026. Were that the end of the story, the situation might not be catastrophic. Unfortunately, we now know it was only the opening salvo in the Air Resources Board’s war on vehicles with internal combustion engines. Subsequent to the adoption of the Advanced Clean Cars regulation, California Governor Gavin Newsom signed Executive Order N-79-20 mandating a complete ban on vehicles with internal combustion engines by 2035. Executive Order N-79-20, September 23, 2020. This is despite the fact that the legislature had already rejected such a ban that would have started in 2040. *See* Assembly Bill 1745: Clean Cars 2040 Act (2017-2018). The Air Resources Board dutifully followed the Governor's lead and included a complete ban on vehicles with internal combustion engines in its Advanced Clean Cars II regulation and climate change Scoping Plan. State of California Air Resources Board Advanced Clean Cars II Regulations, Resolution 22-12, August 25, 2022. The NHTSA Standards are no less a harbinger of a complete ban on vehicles with internal combustion engines.

¹⁰ In February 2022, the average residential electricity rate in California was \$0.2559 per kilowatt-hour, versus a national average of \$0.1383. U.S. Energy Information Administration, *Electric Power Monthly*, February 2022, https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a.

California Public Utilities Commission, the state's utility regulator, reported that "13 percent of households in the state are located where low-income households pay more than 15 percent of their disposable income on electricity service."¹¹ In addition, several areas in the state, including Los Angeles, Chico, parts of the San Joaquin Valley, and parts of the San Francisco Bay Area, spend significantly higher amounts "indicating that low-income households in these areas spend a very large percentage of their non-disposable income on electricity."¹² Indeed, a recent analysis conducted and published by economists at the UC Berkeley Energy Institute at the Haas School of Business concluded that California's electric rate structure that adds variable costs to electricity rates for things like compensating victims of wildfires and alleviating the burdens of high electricity prices on low-income residents results in adding a "tax" of about \$600 to the annual cost of operating an electric vehicle.¹³ Of course, this "tax" falls most heavily on California's lowest-income households.¹⁴

¹¹ California Public Utilities Commission, *2019 Annual Affordability Report*, April 2021, at 11, <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/reports/2019-annual-affordability-report>.

¹² *Id.*

¹³ Severin Borenstein et al., *Paying for Electricity in California: How Residential Rate Design Impacts Equity and Electrification*, NEXT10, ENERGY INSTITUTE AT HAAS, September 2022, <https://www.next10.org/sites/default/files/2022-09/Next10-paying-for-electricity-final-comp.pdf>.

¹⁴ *Id.* at p. 5, Figure ES 1 (showing that the lowest income families must pay the highest percentage of their annual income for electricity, compared to higher income families).

Increasing electrification of the transportation sector will require significant infrastructure to support increased electricity demands and deploy charging facilities. The California Public Utilities Commission estimates that meeting additional demand alone will require an investment of \$49 billion in resources, which will be recovered through further increases in the already high utility rates.¹⁵ As a result, the cost of electricity alone could make electric vehicles impractical for low-income, senior, and minority community members, even with rebates for purchase of the vehicles and expanded charging infrastructure.

Second, the NHTSA standards do not take account of, or provide mitigations for, the significantly limited access to charging stations for low-income and senior community members, many of whom will need access to public charging stations because they may not have the space or permission from a landlord necessary to install an electric vehicle charger in their home or apartment. Without access to an adequate supply of public charging stations, no amount of rebates to assist with purchases of electric vehicles will be sufficient.

¹⁵ California Public Utilities Commission, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes, Decision Adopting 2021 Preferred System Plan, Decision No. 22-02-004*, Feb. 10, 2022, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M451/K412/451412947.PDF>.

As more electric vehicles are deployed, building sufficient chargers to support them will require substantial additional investments. In addressing the similar California Advanced Clean Cars regulation, the California Energy Commission has reported that charging infrastructure buildout to support the Advanced Clean Cars regulation zero emission vehicle mandate has already fallen well behind the pace needed to meet the 2025 target of 240,000 chargers.¹⁶

Beyond the issue of general charger availability, studies have shown that disadvantaged and low-income communities do not enjoy the same access to electric vehicle charging infrastructure, exacerbating economic and practical burdens for these vulnerable groups. The California Energy Commission's 2020 *Senate Bill 1000 Report on Equitable Distribution of Charging Infrastructure* found that public vehicle chargers are unevenly distributed across the state's air quality control districts, noting that relatively more chargers appear in census tracts

¹⁶ California Energy Commission, *2021–2023 Investment Plan Update for the Clean Transportation Program*, December 17, 2021, <https://www.energy.ca.gov/publications/2021/2021-2023-investment-plan-update-clean-transportation-program#:~:text=This%202021%E2%80%932023%20investment%20plan%20establishes%20funding%20allocatio%20ns%20based%20on,by%20the%20COVID%2019%20pandemic.>

with low population density, and that low-income communities on average have the fewest public Level 2 chargers and other chargers per capita.¹⁷

Many individuals, and in particular senior and low-income populations, who are unable to charge vehicles at their homes – for example, those residing in apartment complexes, multi-family homes, or homes that otherwise only have street parking – will have to rely on publicly available Level 2 and DC fast chargers. It is the members of these communities that will have to travel disproportionately long distances to use such chargers.

Of the 80,000 public and shared private electric vehicle chargers in California, 90 percent are Level 2 chargers.¹⁸ In order to travel 120 miles, a driver of a 2021 Nissan Leaf would need to charge for over 6 hours at a Level 2 public charging station. This could cost between \$15.78 and \$29.54 (\$0.13 and \$0.25/mi, respectively), depending on time of use and location within the state. By comparison, at a gasoline price of \$6 per gallon, the same driver would spend fewer than 5 minutes and \$0.18/mi to fuel a 2021 Toyota Corolla.¹⁹ The popular

¹⁷ California Energy Commission, *California Electric Vehicle Infrastructure Deployment Assessment: Senate Bill 1000 Report Increasing Access to Electric Vehicle Infrastructure for All*, December 2020.

¹⁸ California Energy Commission, *Electric Vehicle Chargers in California Dashboard*, <https://www.energy.ca.gov/data-reports/energy-almanac/zero-emission-vehicle-and-infrastructure-statistics/electric-vehicle>.

¹⁹ The 2021 Toyota Corolla has a combined fuel economy of 33 miles per gallon. U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy,

sentiment, that electric vehicles are less expensive to own and drive, clearly is not true for drivers that lack access to home chargers. Even were public chargers readily available in disadvantaged communities, the time and cost burdens of using them render electric vehicles an impractical alternative for community members that must rely on Level 2 chargers.

Additionally, DC Fast Charging Stations do not present a better solution for low-income and disadvantaged communities. Members of these communities have some of the longest drive times from community centers to the nearest publicly-accessible DC Fast Charging Station.²⁰ These chargers also tend to be more expensive to use and degrade batteries at an increased rate.

Third, California, at least, continues to confront electrical grid reliability issues. The state has faced and will continue to face outages caused by extreme heat, wildfires, and drought. With increasing reliance on renewable generation, especially wind and solar, California also faces reliability issues due to power inverters that serve solar and wind farms not being able to “ride-through” short

Fuel Economy Landing Page for 2021 Toyota Corolla,

https://www.fueleconomy.gov/feg/bymodel/2021_Toyota_Corolla.shtml.

²⁰ California Energy Commission, 2021–2023 Investment Plan Update for the Clean Transportation Program, December 17, 2021, 42-44,

<https://www.energy.ca.gov/publications/2021/2021-2023-investment-plan-update-clean-transportation-program#:~:text=This%202021%E2%80%932023%20investment%20plan%20establishes%20funding%20allocatio%20ns%20based%20on,by%20the%20COVID%2D19%20pandemic>.

term disturbances such as those that occurred on four separate occasions in 2021.²¹ For community members with electric vehicles that lack back-up power, a loss of electricity means a loss of personal mobility and an inability to get to and from work or school, secure food or obtain medical attention.

Fourth, as deployment of electric vehicles increases, demand for vehicle fuels sold at gas stations will significantly decrease, likely causing many to close. This will result in fewer fueling stations for owners of vehicles with internal combustion engines, who are more likely to be low-income,²² and will cause such vehicle owners to drive further in search of fuel. Boston Consulting Group has estimated that a rapid market uptake of electric vehicles could cause up to 80

²¹ See Peter Behr and Jason Plautz, *Grid monitor warns of U.S. blackouts in 'sobering report,'* E&E NEWS, May 19, 2022, <https://www.eenews.net/articles/grid-monitor-warns-of-u-s-blackouts-in-sobering-report/> and 2022 *Summer Reliability Assessment*, North American Electric Reliability Corporation, May 2022, https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_SRA_2022.pdf.

²² *Possible Market Implications of California's Efforts to Ban Internal Combustion Engines (ICE)*, Stillwater Associates, February 9, 2022, at 31, <https://stillwaterassociates.com/wp-content/uploads/2022/06/Stillwater-ICE-Ban-Analysis-Final-PUBLIC.pdf>; see also *Impact of the Advanced Clean Cars II (Internal Combustion Engine Ban) Regulation on California Businesses*, Capitol Matrix Consulting, May 17, 2022, at 3, <https://www.arb.ca.gov/lists/com-attach/477-accii2022-AHcAdQBxBDZSeVc2.pdf> (Exhibit E of *Comments on Advanced Clean Cars II Regulation Initial Statement of Reasons (ISOR) Documents by Western States Petroleum*).

percent of the retail fuel market to become unprofitable by 2035.²³ If these trends continued, many of the 100,000 gas stations throughout the nation would be at risk of going out of business.²⁴ Low-income rural areas, which already have fewer gas stations and longer drives to reach them than urban areas, will likely be most negatively impacted.

Fifth, declining fuel sales will result in the loss of high-wage industry jobs in the fuels sector. A 2019 report found that the oil and gas sector supports nearly 366,000 jobs and paid workers nearly \$26 billion in wages in California alone.²⁵ Additionally, in rural areas the oil and gas industry can contribute substantially to the local economy. For example, in California's Modoc County, the oil and gas industry contributed \$2.5 million to the local economy in 2017.²⁶ Although California officials have committed to address these employment and economic impacts, it does not appear any progress has yet been made.

²³ Mirko Rubeis et al., *Is There A Future For Service Stations?*, Boston Consulting Group, July 12, 2019, <https://www.bcg.com/publications/2019/service-stations-future>.

²⁴ See *U.S. Convenience Store Count*, National Association of Convenience Stores, January 19, 2022, <https://www.convenience.org/Research/FactSheets/IndustryStoreCount>.

²⁵ *Oils and Gas in California: The Industry, Its Economic Contribution and User Industries at Risk in 2017*, Los Angeles County Economic Development Corporation, July 2019, at 84, <https://laedc.org/2019/08/27/oil-and-gas-industry-in-california-2019-report/>.

²⁶ *Id.* at 50.

The NHTSA Standards do not consider, much less address these clearly disparate and discriminatory impacts on low-income, senior, and minority community members. Rather than promote more affordable vehicle alternative technologies, such as hybrids that offer substantial opportunities for more cost-effective greenhouse gas emission reductions that work in the current vehicle fleet, the NHTSA Standards effectively mandate increasing market share of electric vehicles with the result that at least millions of dollars of legacy technology and infrastructure will go to waste. The NHTSA Standards regulatory process entirely failed to account for substantial economic impacts to individuals in general and to vulnerable communities in particular that will result from accelerated vehicle fleet electrification. This failure renders the adoption of the NHTSA Standards arbitrary and capricious.

CONCLUSION

For the foregoing reasons, *Amici curiae* urge this Court to vacate the NHTSA Standards.

Dated: December 1, 2022

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CERTIFICATE OF COMPLIANCE

This Brief complies with Federal Rule of Appellate Procedure 32(f) and (g), along with the Court's September 2, 2022 Order because it contains less than 6,500 words at 3,708.

This Brief also complies with the requirements of Federal Rule of Appellate Procedure 27(d)(1)(E), 32(a)(5) and (6) because it was prepared in 14-point font using a proportionally spaced typeface.

/s/ Rafe Petersen
Rafe Petersen

December 1, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of December, 2022, I electronically filed the foregoing Brief of Amici Curiae with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I certify that service will be accomplished by the CM/ECF system for all participants in this case who are registered CM/ECF users.

/s/ Rafe Petersen
Rafe Petersen

December 1, 2022

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