July 5, 2023

Docket ID No. EPA–HQ–OAR–2022–0829

Multi-Pollutant Emission Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles Proposed Rule, 88 FR 29184, May 5, 2023

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Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA's) proposed greenhouse gas (GHG) emission standards for model years (MYs) 2027-2032 passenger cars, light trucks, and medium-duty trucks.[1]

I. Summary of argument

- The proposed standards are de facto electric vehicle (EV) mandates. Automakers cannot comply without rapidly phasing out internal combustion engine (ICE) vehicles and rapidly increasing sales of battery electric vehicles (BEVs), plug-in hybrid electric vehicles (PHEVs), and fuel cell vehicles, or, for simplicity's sake, electric vehicles (EVs). The proposed standards are projected to increase EV market share from 39 percent in 2032 under the current policy baseline to 67 percent.

- The proposal will restrict consumer choice, further cartelize the auto industry, make automakers increasingly dependent on corporate welfare, and make new cars increasingly unaffordable to middle-income households. Forced vehicle electrification will impose disproportionate burdens on low-income, single-car households.

- The proposal flouts the Supreme Court's major-questions doctrine. The EPA attempts to settle major questions of public policy and assume the powers of an industrial policy czar without a clear authorization from Congress, as it did when promulgating the Clean Power Plan, which the Court vacated in *West Virginia v. EPA*.

- The EPA touts the 2021 Bipartisan Infrastructure Bill (BIL) and 2022 Inflation Reduction Act (IRA) as "pivotal milestones" in the transition to a "clean transportation" future. Sen. Tom Carper (D-Del.) and others try to spin the IRA as a "clear statement" in favor of GHG regulation. That rhetorical sleight-of-hand neglects to mention that the IRA promotes EVs through subsidies, not mandates—carrots, not sticks.

[1] EPA, Multi-Pollutant Emission Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles, Proposed Rule, 88 FR 29184-29446, May 5, 2023, https://www.govinfo.gov/content/pkg/FR-2023-05-05/pdf/2023-07974.pdf.

- The proposed standards are fleet-average standards. However, Title II emission standards apply to individual vehicles, not to fleets on average. Thus, the agency's tailpipe GHG standards are also unlawful on statutory grounds.

- The only agency Congress has authorized to set fleet-average standards is the National Highway Traffic Safety Administration (NHTSA), and Congress prohibits NHTSA from making CAFE standards so stringent that automakers cannot comply without increasing sales of alternative vehicles, such as EVs. That is a further reason why the EPA, which has no power to establish fleet-average standards, may not lawfully compel electrification.

- The MY 2023-2026 standards establishing the current policy baseline are also unlawful EV mandates, albeit less aggressive than those proposed. Moreover, much of the recent growth in EV sales is driven by State zero-emission vehicle (ZEV) programs, which the EPA approved in January 2013 and March 2022. State ZEV mandates are substantially "related to" fuel economy standards and, thus, are preempted by the Energy Policy Conservation Act (EPCA). The proposed standards are the latest phase of an unlawful agenda of market-rigging interventions.

I. The Proposed Standards Are Electric Vehicle Mandates

The EPA protests that, unlike California's motor vehicle program, which officially bans the sale of gasoline-powered cars by 2035,[2] "the GHG program in this proposal is performance-based and not a ZEV mandate."[3] In fact, like the California program, the EPA program compels automakers to manufacture and sell increasing percentages of ZEVs, only at a slower pace. It does this by establishing fleet-average GHG emission standards that automakers can meet only by phasing out gasoline-powered vehicles. The EPA's program is not a bare-naked EV mandate, but almost.

The evidence is palpable. According to the EPA, in 2022, EVs accounted for 5.8 percent of new light-duty passenger vehicle sales.[4] Under the policy baseline established by the EPA's MY 2023-2026 GHG emission standards, EV market share in 2032 is projected to reach 39 percent.[5] Under the proposed standards, EV market share in 2032 is projected to reach 67 percent[6]—two-thirds of all new light-duty vehicles sold. The California Air Resources Board may be in the fast

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[2] California Air Resources Board, "California moves to accelerate to 100% new zero-emission vehicle sales by 2035, Press Release, August 25, 2022, https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035. The release explains: "The rule establishes a year-by-year roadmap so that by 2035 100% of new cars and light trucks sold in California will be zero-emission vehicles, including plug-in hybrid electric vehicles. The regulation realizes and codifies the light-duty vehicle goals set out in Governor Newsom's Executive Order N-79-20."

[3] 88 FR 29255.

[4] 88 FR 29189.

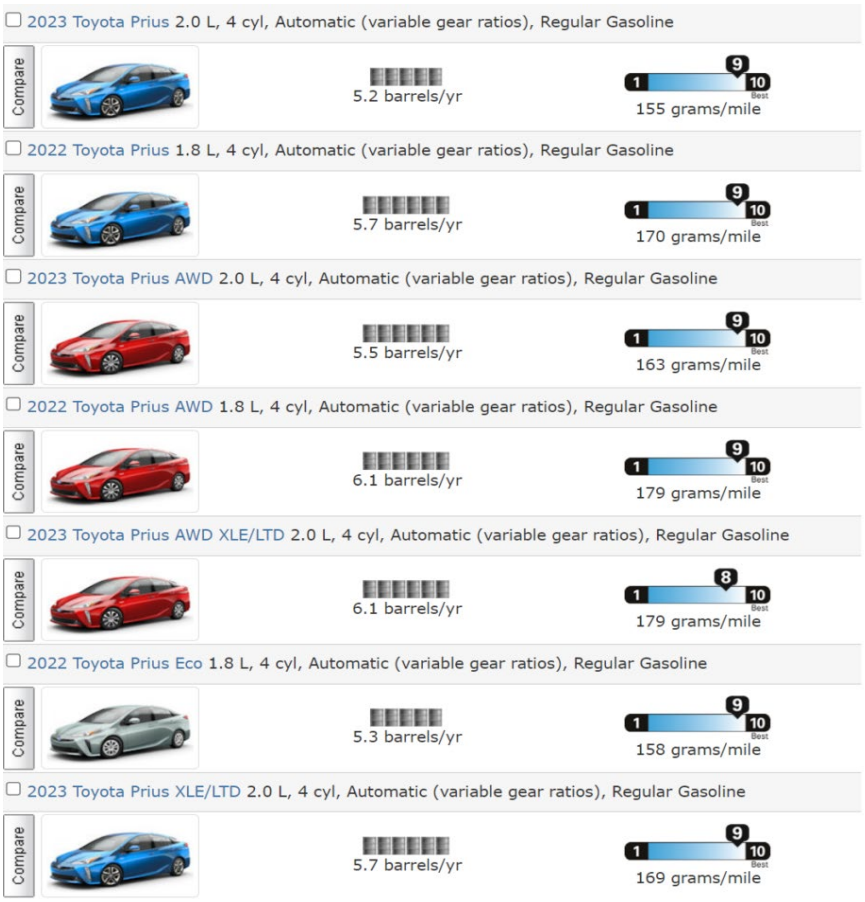
[5] 88 FR 29296.

[6] 88 FR 29329.

lane, but the EPA is driving down the same regulatory freeway and with no plan to stop before the final destination.

Here's an easy way to visualize the substance of the EPA's proposal. The Toyota Prius is the most popular hybrid car. In terms of fuel efficiency and GHG emissions, the Prius is the best-in-class gasoline-powered car on the market.[7] Could Toyota comply with the EPA's proposed standards in 2032 if all its light-duty vehicles were hybrids matching today's Prius in fuel economy and GHG emissions per mile? No, far from it.

The EPA's GHG standards are calibrated in grams per mile (g/mi) of carbon dioxide (CO_2). According to the EPA, "for passenger cars, the proposed MY 2032 standards are projected to result in CO_2 fleet-average levels of 73 g/mi in MY 2032, which is 52 percent lower than that of the (adjusted) MY 2026 standards."[8] The MY 2032 standard is less than half the CO_2 emissions per mile of MY 2023 Toyota Prius hybrids, which range from 155 g/mi to 179 g/mi.[9]



Source: *FuelEconomy.Gov*

[7] TrueCar, Hybrids with Best Gas Mileage, https://www.truecar.com/best-cars-trucks/fuel-hybrid/by-gas-mileage/ (accessed June 27, 2023).
[8] 88 FR 29239.
[9] Fueleconomy.gov, Accessed June 26, 2023.

To comply with the proposed standards, the fleet-average CO_2 emissions of Toyota passenger cars in MY 2032 will have to be 52 to 60 percent lower than that of an MY 2023 Prius. To reach those targets, Toyota will have to rapidly increase the percentage of ZEVs it sells—and rapidly reduce the percentage of hybrids it sells. Toyota will have to do so regardless of whether most consumers can afford or want to buy ZEVs.

Even the EPA's previous (December 2021) rule establishing tailpipe GHG standards for MY 2023-2026 motor vehicles is functionally a ZEV mandate, although less ambitious, and therefore less conspicuous.

The MY 2023-2026 standards are estimated to increase EV market penetration "from about 7 percent market share in MY 2023 (including both fully electric vehicles (EVs) and plug-in hybrid vehicles (PHEVs)) up to about 17 percent in MY 2026."[10] The EPA acknowledges that the standards coerce increased EV sales, as that is the only way automakers can comply: "Compliance with the final standards *will necessitate* greater implementation and pace of technology penetration through MY 2026 using existing GHG reduction technologies, including further deployment of BEV and PHEV technologies."[11]

II. The Proposed Standards Imperil Consumer Choice, Vehicle Affordability, and Market Liberty

EPA's proposal will restrict consumers' freedom to choose which types of vehicles they want to buy.[12] As the EPA acknowledges, Congress is already providing tens of billions of dollars in EV-related subsidies, such as the IRA's $7,500 tax credit, "effectively making some BEVs more affordable to buy and operate today than comparable ICE vehicles."[13] The only purpose for heaping EV mandates on top of EV subsidies is to eliminate choices consumers would otherwise make.

EVs have several well-known drawbacks that regulatory mandates do not remove but rather intensify by restricting the supply of ICE vehicles available for purchase. Those disadvantages

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[10] EPA, Revised 2023 and Later Model Year 2023 Greenhouse Gas Emission Standards, Final Rule, 86 FR 74434, 74438, December 30, 2021, https://www.govinfo.gov/content/pkg/FR-2021-12-30/pdf/2021-27854.pdf.

[11] 86 FR 74493 (emphasis added). See also 86 FR 74484 ("This is a greater penetration of BEVs and PHEVs than projected in the proposed rule, and is driven by several factors, including the increased stringency of our final standards….") and 86 FR 74485 ("Our updated analysis projects that the final rule can be met with a fleet that achieves a gradually increasing market share of EVs and PHEVs….")

[12] Diana Furchtgott-Roth, "Biden's Plan to Phase Out Gas-Powered Cars Is All Pain for Consumers and No Gain," *The Hill*, June 12, 2023, https://www.heritage.org/government-regulation/commentary/bidens-plan-phase-out-gas-powered-cars-all-pain-consumers-and-no.

[13] 88 FR 29190.

include the high purchase price,[14] price volatility due to supply-chain bottlenecks,[15] range anxiety[16] (especially in towing mode),[17] long recharging times,[18] reduced performance in extreme heat and cold,[19] and less reliability during blackouts from hurricanes and other disasters.[20]

The proposed standards would impose disproportionate burdens on low-income, single-vehicle households. My colleague Ben Lieberman explains:

> The higher purchase price of an EV is prohibitive enough, but it is only part of the story. Fully one-third of American households are single-vehicle households, including many low-income ones.[21] However, the limitations of EVs make them impractical as a household's one and only vehicle. This includes long charging times (especially inconvenient for renters who are less likely to be able to charge at home) as well as limited range. Indeed, nearly 90 percent of EVs currently in use are part of wealthier multi-car households that include one or more gas-powered vehicles.[22] Thus, the EV

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[14] For example, in 2022, the initial purchase price of a conventional Ford F-150 was $40,960, that of the electric Ford-150 Lightning was $54,769. Roberto Baldwin, Sasha Richie, and Dave Vanderwerp, "EV vs. Gas: Which Cars Are Cheaper to Own?" *Car and Driver*, October 28, 2022, https://www.caranddriver.com/shopping-advice/a32494027/ev-vs-gas-cheaper-to-own/. The authors conclude that overall EV ownership costs are lower than those for gasoline powered vehicles (factoring in expenses for maintenance and fuel). Nonetheless, the higher EV purchase is a disadvantage that undoubtedly matters to many consumers.

[15] Mark P. Mills, Testimony, "Exposing the Environmental, Human Rights, and National Security Risks of the Biden Administration's Rush to Green Policies," Subcommittee on Environment, Manufacturing, and Critical Materials, U.S. House Committee on Energy and Commerce, April 26, 2023, https://media4.manhattan-institute.org/wp-content/uploads/Testimony_House_Energy_Mills_4-26-2023.pdf; Institute for Energy Research, "Transition Mineral Prices Are Soaring and the Industry Is Short of Workers," June 9, 2023, https://www.instituteforenergyresearch.org/uncategorized/transition-mineral-prices-are-soaring-and-the-industry-is-short-of-workers/.

[16] Analytics Team, "Survey: Price and Range, Not Gas Prices, Dominate Worries about EVs," Autolist.Com, July 20, 2022, https://www.autolist.com/news-and-analysis/2022-survey-electric-vehicles.

[17] Alex Knizek, "How Well Can an Electric Pickup Tow?" *Consumer Reports*, April 21, 2023, https://www.consumerreports.org/cars/hybrids-evs/how-well-can-an-electric-pickup-truck-tow-a1149286680/: "As capable and smooth as the EVs are, they simply cannot match the heavy long-distance towing capabilities of gas, hybrid, and diesel-powered trucks. This is primarily due to the severely limited range, and the amount of time that would be required for charging during the trip. Accessing a public charger with a trailer in tow also presents potentially significant logistical challenges."

[18] Ronald Montoya, "How Long Does It Take to Charge an Electric Car?" Edmunds.Com, March 7, 2023, https://www.edmunds.com/electric-car/articles/how-long-does-take-charge-electric-car.html

[19] Steve Hanley, "Electric Cars, Winter Driving, Range Anxiety, and You," *CleanTechnica*, February 25, 2022, https://cleantechnica.com/2022/02/25/electric-cars-winter-driving-range-anxiety-you/.

[20] Shawn A. Adderly, Daria Manukian, Timothy D. Sullivan, and Mun Son. 2018. Electric vehicles and natural disaster policy implications. *Energy Policy* 212: 437-448, https://www.sciencedirect.com/science/article/abs/pii/S0301421517305906; Diana Furchtgott-Roth, "Electric Vehicles Powerless During Hurricanes," *Forbes*, September 5, 2021, https://www.forbes.com/sites/dianafurchtgott-roth/2021/09/05/electric-vehicles-powerless-during-hurricanes/?sh=107d1bfe48da.

[21] The Geography of Transport Systems, Percentage of Households by Number of Vehicles, 1960-2020, https://transportgeography.org/contents/chapter8/urban-transport-challenges/household-vehicles-united-states/ (accessed July 5, 2023).

[22] Lucas W. Davis. 2019. How much are electric vehicles driven? *Applied Economics Letters*, Vol. 26, No. 18, 1497-1502, https://faculty.haas.berkeley.edu/ldavis/Davis%20AEL%202019.pdf.

agenda not only involves the higher sticker price relative to gasoline-powered vehicles, but also the additional cost of a conventional vehicle to back it up.[23]

Government's cartelization of the auto industry via regulations and preferential subsidies poses an insidious threat to consumer welfare. The IRA and the EPA's mandates increase automakers' dependence on political subventions while preventing both industry incumbents and new entrants from competing on price, range, and ease-of-fueling by selling gasoline-powered cars. Energy analyst Robert Bryce recently reported that Ford loses $64,466 on every EV it sells, "and isn't making up for it in volume."[24] Bryce cautions that "if a business isn't profitable, it isn't sustainable."

III. The Proposed Standards Trigger the Major Questions Doctrine

West Virginia v. EPA

The EPA's plan to drive gasoline-powered cars out of the marketplace is highly controversial and sure to be litigated. In fact, as the agency knows, plaintiffs in *State of Texas v. Environmental Protection Agency*, who include the Competitive Enterprise Institute (CEI) among other private petitioners, are suing to overturn the agency's milder electrification mandates for MY 2023-2026 motor vehicles.[25]

Private petitioners' initial brief[26] and initial reply brief,[27] which have been submitted to the U.S. Court of Appeals for the D.C. Circuit, are pertinent to the current rulemaking. As the briefs explain, the EPA's proposal triggers the major-questions doctrine that was the basis of the Supreme Court's decision, in *West Virginia v. EPA*,[28] to vacate the Obama administration's Clean Power Plan (CPP).

The major-questions doctrine is a jurisprudence of political accountability. Under Article I, Section 1, all legislative powers granted by the Constitution are vested in Congress. Accordingly, agencies have only such rulemaking power as Congress delegates to them. The major-questions doctrine focuses judicial (and public) attention on the big picture through a set of interrogatories.

- Does the agency's rulemaking affect a significant portion of the U.S. economy?
- Does it have significant political implications?
- Does it attempt to settle an issue Congress is still debating?
- Does it adopt a policy Congress has considered and rejected?

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[23] Ben Lieberman and Donna Jackson, "Costlier cars help the poor, according to EPA," Open Market, June 26, 2023, https://cei.org/blog/costlier-cars-help-the-poor-according-to-epa/.
[24] Robert Bryce, "Ford Is Losing $64,446 on Every EV It Sells," Substack, May 3, 2023, https://robertbryce.substack.com/p/ford-is-losing-66446-on-every-ev.
[25] *Texas v. EPA*, Docket Numbers: 22-1031, 22-1032, D.C. Cir., http://climatecasechart.com/case/texas-v-epa-2/.
[26] Initial Brief for Private Petitioners, Texas v. EPA, November 3, 2022, http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2022/20221103_docket-22-1031_brief-2.pdf (hereafter "Petitioners' Initial Brief").
[27] Initial Reply Brief for Private Petitioners, *Texas v. EPA*, April 18, 2023, https://cei.org/wp-content/uploads/2022/09/Filestamped-Texas-v.-EPA-Private-Pet-Reply-Br-1.pdf (hereafter "Petitioners' Reply Brief").
[28] *W. Virginia v. EPA*, 142 S. Ct. 2587 (2022).

- Does it entail a "transformative expansion" of the agency's power?

If the answer to one or more of those queries is "yes" (it is "yes" to all five queries for both the CPP and the EPA's proposal), a final interrogatory is considered: Does the agency's purported statutory authority clearly authorize the rule?

If there is no "clear statement" of congressional authorization, the agency's action is very likely unlawful.

The CPP was a plan to restructure a significant portion of the U.S. economy—the electric power sector. The CPP established CO_2 performance standards for existing coal and natural gas combined cycle (NGCC) power plants that none could meet via affordable modifications made at and by the regulated facilities. A coal or NGCC power plant could comply only by averaging its emissions with those of lower- or non-emitting power plants elsewhere on the grid to which it cedes production and market share. For example, the owner of a coal power plant could buy power from an NGCC power plant, invest in renewables, or buy emission credits from lower- or non-emitting facilities in a carbon cap-and-trade program.

The EPA claimed that such "generation shifting" is the adequately demonstrated "best system of emission reduction" (BSER), and encouraged States to establish or join cap-and-trade programs as the most efficient way to implement generation shifting. The CPP was fundamentally a plan to herd States into the sorts of carbon cap-and-trade programs Congress had debated for years and declined to enact. No clear statement authorizing such a plan could be found in CAA Section 111(d), the CPP's putative statutory basis.

More fundamentally, the CPP would make the EPA a de-facto industrial policy czar for electricity, coercing a national shift from fossil to renewable generation despite States' traditional authority over electricity fuel mix within their borders. Congress was still debating how to tackle climate change, and much of the country did not support regulating or taxing fossil generation out of existence. A clear statement authorizing the EPA to take charge of the nation's electric grid and resolve the climate policy debate was also nowhere to be found in CAA Section 111(d).

West Virginia should be the starting point for all subsequent EPA climate policy planning. Yet the words "major questions" and "West Virginia" occur nowhere in the proposal's 225-page preamble.

West Virginia applies directly to the current rulemaking. Once again, the EPA seeks to regulate a "significant portion of the American economy." Indeed, the EPA projects the vehicle technology investments required to meet the proposed MY 2027 and later standards will cost $280 billion by 2055, with annual costs rising from $6.8 billion in 2028 to $22 billion in 2035.[29] Those

[29] 88 FR 29365.

expenditures are substantially larger than the CPP's projected compliance costs (estimated at up to $3.0 billion in 2025 and up to $8.4 billion in 2030).[30]

Like the CPP, the proposed standards would settle energy and climate policy issues Congress is still debating. The EPA would once again wield the powers of an industrial policy czar, "restructuring" the automotive sector with huge knock-on effects for the U.S. oil, gas, and biofuel industries,[31] as well as for the electric power sector.[32] As private petitioners in *Texas v. EPA* put it:

> Just as in *West Virginia*, EPA is claiming the power to shift the Nation's energy policy by reverse-engineering its preferred balance of technologies through emission standards. In *West Virginia*, it attempted to force a shift from coal-fired plants to wind- and solar-powered plants; here, it attempts to force a shift from liquid-fuel vehicles to electric vehicles.[33]

The EPA is even using the same CPP regulatory tactic—setting standards the targeted vehicles cannot meet except by averaging their emissions with those of non-emitting vehicles, to which they must cede market share.

Congress has considered legislation to compel vehicle electrification. Such proposals have garnered far less support than cap-and-trade. For example, a bill introduced in the 116th Congress, H.R. 2764, the Zero-Emission Vehicles Act of 2019, would establish a national ZEV mandate requiring 50 percent of all new vehicles sold to be EVs by 2030. The House Energy and Commerce Committee took no action on the bill beyond referral to the appropriate subcommittee.[34]

Most critically, private petitioners observe, "Congress nowhere provided clear authorization for EPA to effectively mandate electrification of the Nation's vehicles." Hence, they conclude, the

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[30] EPA Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, Final Rule, 80 FR 64662, 64679, October 23, 2015, https://www.govinfo.gov/content/pkg/FR-2015-10-23/pdf/2015-22842.pdf.

[31] Petitioners' Initial Brief, pp. 25-29.

[32] "Assuming an immediate scenario of 100% EV usage and projecting electricity requirements, the U.S. electricity grid would need to generate 33%, or 1.4 trillion kWhs, more of electricity," according to the Energy Policy Research Foundation (EPRINC). The impacts of the EPA's mandates on utilities, reliability, and ratepayers could be severe, EPRINC cautions: "Historically, U.S. electricity generation has grown at an annualized rate of 0.4% over the last ten years. At this rate, it would require 79.8 years to accommodate a full EV transition of the U.S. fleet." The historic growth rate must increase rapidly to accommodate vehicle electrification on the EPA's schedule. Yet, at the same time, the EPA is proposing GHG standards for power plants projected to retire 42 gigawatts of coal generation capacity and 37 percent less generation from natural gas. See Max Pyziur, EPRINC Chart of the Week, #2023-2026 EV Electricity Requirements and EPA's Changing Rules, July 5, 2023, https://fxc6e4.p3cdn1.secureserver.net/wp-content/uploads/2023/07/EPRINC-Chart2023-26-EVElectricityRequirementsAndChallengingEPARules-Version1.pdf.

[33] Petitioners' Reply Brief, p. 13.

[34] H.R. 2764, Zero-Emission Vehicles Act of 2019, https://www.congress.gov/bill/116th-congress/house-bill/2764/all-actions?overview=closed#tabs.

MY 2023-2026 standards "cannot stand."[35] The same reasoning applies to the more aggressive standards the EPA now proposes.

The EPA claims the 2021 rule raises no major questions requiring clear direction from Congress because it "broke no new legal ground." Rather, the rule merely "tighten[ed] existing emission standards under its longstanding and oft-invoked authority."[36] Private petitioners rebut that claim:

> Before the [2021] rule, EPA set greenhouse gas vehicle emission standards for vehicles, and some automakers chose to comply in part by producing electric vehicles. Now, EPA has set standards that—by design— "[d]rive" electric-vehicle production and promote a market penetration rate double what it would be without the rule…. Petitioners do not argue that EPA can require some, but lower, electric-vehicle penetration; they challenge EPA's authority to set standards that, for the first time, require the substitution of electric vehicles for liquid-fuel vehicles—a difference in kind, not degree.[37]

The EPA denies there is any such qualitative difference. Mandating electric vehicles is just another way to prescribe emission controls, whether "designed as complete systems" or "devices to prevent or control such pollution," the agency argues.[38] But that is tantamount to saying that an EV is a pollution control device for gasoline-powered vehicles, which is nonsensical. Petitioners explain:

> The component parts of an electric vehicle, such as their batteries, are not add-in devices that block the emission of pollution or minimize pollution that would otherwise occur. They are integral to the basic functioning of the vehicle, which does not emit the relevant pollutant in the first place.[39]

Although not mentioned by petitioners, the claim that EVs are pollution control devices for gasoline-powered vehicles bears a striking resemblance to the EPA's claim in 2012 that natural gas combined cycle (NGCC) power plants are the "best system of emission reduction" (BSER) for coal power plants. Based on that determination, the EPA proposed to establish CO_2 emission standards that no commercially-viable coal power plant could meet.[40]

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[35] Petitioners' Initial Brief, p. 17.
[36] EPA's Answering Brief, February 24, 2023, p. 48, http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2023/20230224_docket-22-1031_brief.pdf (hereafter "EPA's Answering Brief").
[37] Petitioners' Reply Brief, pp. 13-14.
[38] EPA's Answering Brief, p. 40.
[39] Petitioners' Reply Brief, pp. 28-29.
[40] EPA, Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, Proposed Rule, 77 FR 22392, April 13, 2012, https://www.govinfo.gov/content/pkg/FR-2012-04-13/pdf/2012-7820.pdf. For new coal power plants, the EPA proposed "a standard of 1,000 pounds of CO_2 per megawatt-hour (lb. CO_2/ MWh), based on the performance of widely used natural gas combined cycle (NGCC) technology." The emission rate of new efficient ("supercritical") coal power plants was much higher—1,800 lbs. CO_2/MWh (77 FR 22394). New coal plants could comply only by installing carbon capture and storage (CCS) technology. However, the levelized cost of a new coal power plant was already higher than that of a new NGCC unit (77 FR 22413). The standards seemed contrived to render new coal generation uneconomic.

The EPA had to drop that proposal because it effectively banned investment in new coal generation—a policy Congress had not approved and which would have been dead on arrival if proposed in legislation. Classifying EVs as pollution control devices for gasoline-powered cars is as contorted as classifying NGCC power plants as emission reduction systems for coal power plants.

The IRA Does Not Override West Virginia

One week after President Biden signed the IRA,[41] Senate Environment and Public Works Chairman Tom Carper (D-Del.), Harvard Law professor Jody Freeman, and other unnamed "experts" told the *New York Times* that "Democrats designed" certain IRA provisions to undercut *West Virginia*. Supposedly, those provisions supply "clear" language authorizing "aggressive" GHG regulations, including California's ZEV mandates.[42]

To its credit, the proposal does not affirm that viewpoint, but perhaps because it says nothing about *West Virginia*. The proposal details the "clean vehicle" "incentives" in the BIL[43] and IRA, and touts those statutes as "pivotal milestones in the creation of a broad-based infrastructure instrumental to the expansion of clean transportation, including light- and medium-duty zero-emission vehicles."[44] Careless readers may infer that the EPA is simply proposing to effectuate congressional intent.

For the record, the BIL and IRA do not enlarge the scope of the EPA's regulatory authorities under the Clean Air Act. The BIL mentions the Clean Air Act three times:

- BIL Section 11115 establishes a "Congestion mitigation and air quality improvement program" (CMAQI) and stipulates that eligible projects must use "verified technologies" as "defined in section 216 of the Clean Air Act."

- BIL Section 11516 requires the Comptroller General to report on the CMAQI program's progress with "respect to attainment or maintenance of national ambient air quality standards under section 109 of the Clean Air Act."

- BIL Section 71101 amends the 2005 Energy Policy Act's Clean School Bus program to define a zero-emission school bus as one that has zero exhaust emissions of "any air pollutant that is listed pursuant to section 108(a) of the Clean Air Act (42 U.S.C. 7408(a)) (or any precursor to such an air pollutant.)"

Clearly, the BIL does not amend the Clean Air Act.

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[41] Public Law 117–169, August 16, 2022, https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf.
[42] Lisa Friedman, "Democrats Designed the Climate Law to be a Game Changer. Here's How," *New York Times*, August 22, 2022, https://www.nytimes.com/2022/08/22/climate/epa-supreme-court-pollution.html,
[43] Public Law 117–58, November 15, 2021, https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf.
[44] 88 FR 29196.

Six IRA provisions expressly amend the Clean Air Act, lending a superficial plausibility to Carper's theory. However, all those provisions are fiscal in nature; none expands or otherwise modifies existing CAA regulatory authority:

- IRA Section 60101 establishes a "Clean heavy-duty vehicles" program, authorizing up to $600 million in grants, rebates, and contracts for zero-emission heavy-duty vehicles, infrastructure, and workforce training.

- IRA Section 60102 authorizes grants to reduce air pollution at ports—up to $2.25 billion through 2027 for the purchase and installation of zero-emission port equipment.

- IRA Section 60103 establishes a "Greenhouse gas reduction fund," authorizing billions of dollars in support for States, municipalities, and tribal governments to "deploy or benefit from zero-emission technologies, including distributed technologies on residential rooftops, and to carry out other greenhouse gas emission reduction activities."

- IRA Section 60107 establishes a Low Emission Electricity Program, authorizing $17 million in grants and technical assistance to each of four groups—households, low-income communities, industries, and State and Tribal governments—for the purpose of reducing electricity-related emissions. The provision also authorizes $1 million for program monitoring, and $18 million for EPA efforts to ensure reductions are achieved.

- IRA Section 60113 establishes the "Methane emissions reduction program," authorizing up to $850 million in "grants, rebates, contracts, loans, and other activities of the Environmental Protection Agency for the purposes of providing financial and technical assistance to owners and operators of applicable facilities."

- IRA Section 60114 authorizes billions of dollars in "greenhouse gas air pollution planning grants" to state governments.

- IRA Section 60201 authorizes billions of dollars in "environmental and climate justice block grants."

In short, where the IRA amends the CAA, it authorizes subsidies, not mandates. The amending provisions create new carrots, but no new sticks.[45]

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[45] For example, the IRA Low Emission Electricity Program is a non-regulatory substitute for policies President Biden could not persuade Congress to enact: a national clean energy standard, mandating a nationwide transition to 100 percent zero-emission electricity, and a Clean Electricity Performance Program, imposing tax penalties on utilities that fail to decarbonize according to a national schedule. See Ashley J. Lawson, "Clean Energy Standards: Selective Issues for the 117th Congress," Congressional Research Service, November 2, 2021, https://crsreports.congress.gov/product/pdf/R/R46691, and Ben Adler, "Biden's emission pledge hanging by a thread after Manchin's climate budget cut," October 21, 2021, Yahoo News, https://news.yahoo.com/biden-emissions-pledge-hanging-by-a-thread-after-manchins-climate-change-budget-cut-090056653.html.

Sen. Carper, Prof. Freeman, and the other "experts" interviewed by the *Times* surely know that post-enactment elucidation of a statute's meaning carries little to no weight in ascertaining congressional intent.[46] As it happens, the actual legislative history Carper made on August 6, 2022 when debating the IRA on the Senate floor before passage, contradicts the post-hoc spin he later shared with the *Times*.

Only once during the day-long Vote-A-Rama, in a two-minute exchange between Sens. Shelley Capito (R-W.Va.) and Carper, did senators debate the IRA's potential impact on *West Virginia v. EPA*. The exchange occurs on page 4178 of the *Congressional Record*.[47]

Sen. Capito offered an amendment to strike what was then IRA Sec. 60105(g), which would appropriate $45 million for the EPA "to carry out" CAA Section 111 and eight other sections "with respect to greenhouse gases." Here is the text:

> (g) OTHER ACTIVITIES.—In addition to amounts otherwise available, there is appropriated to the Administrator of the Environmental Protection Agency for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, $45,000,000, to remain available until September 30, 2031, to carry out, with respect to greenhouse gases, sections 111, 115, 165, 177, 202, 211, 213, 231, and 612 of the Clean Air Act (42 U.S.C. 7411, 7415, 7475, 7507, 7521, 7545, 7547, 7571, and 7671k).

Capito warned that Sec. 60105(g) would create talking points for EPA lawyers and environmental groups "when they try and convince courts to uphold future overreaching climate regulations," such as the CPP. Sen. Carper countered that Section 60105(g) "would fund the EPA to use its existing *narrow* Clean Air Act authorities to address greenhouse gas emissions."[48]

In short, before passage, Sen. Carper effectively denied Sec. 60105(g) would reverse or undercut *West Virginia*. Rather, the IRA language would fund the EPA's use of "existing narrow" CAA authorities.

Although Capito's amendment lost on a 50-50 vote, Section 60105(g) was later deleted on a point of order. That means the final IRA does not even contain a section authorizing the EPA to use "existing narrow" regulatory authorities with respect to greenhouse gases. And, as noted

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[46] "And whatever interpretive force one attaches to legislative history, the Court normally gives little weight to statements, such as those of the individual legislators, made *after* the bill in question has become law." *Barber v. Thomas*, 560 U.S. 474, 486 (2010). "The Court has previously found the post-enactment elucidation of the meaning of a statute to be of little relevance in determining the intent of the legislature contemporaneous to the passage of the statute." *Edwards v. Aguillard*, 482 U.S. 578, 596 n.19 (1987). "This is a good example of why floor statements by individual legislators rank among the least illuminating forms of legislative history." *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 137 S. Ct. 929, 943 (2017).

[47] *Congressional Record*, Senate, August 6, 2022, p. 4178, https://www.congress.gov/117/crec/2022/08/06/168/133/CREC-2022-08-06-senate.pdf.

[48] Emphasis added.

above, all the CAA amendments in the IRA are fiscal policy provisions, which as such cannot create or expand any CAA regulatory authority.

IV. The Proposed Standards Are Unlawful as a Matter of Statutory Law

Fleet Average Standards Are Incompatible with CAA Title II

Unlike emission standards that apply to individual vehicles, the EPA's GHG standards are fleet-average standards. That has been the case since 2010, when the EPA first promulgated GHG motor vehicle standards. The EPA's reliance on fleet-average standards was inevitable for two main reasons.

First, CO_2 emissions from motor fuel consumption constitute more than 95 percent of all tailpipe GHG emissions, and no practical onboard CO_2 filtration or capture technology has ever been invented.[49] That means the only feasible method of reducing tailpipe CO_2 emissions per mile is to reduce fuel consumption per mile—in other words, boost fuel economy.[50]

Second, the Supreme Court in *Massachusetts v. EPA* (2007) directed the EPA and the National Highway Traffic Safety Administration (NHTSA) to "avoid inconsistency" between future corporate average fuel economy (CAFE) standards and GHG motor vehicle standards.[51] Accordingly, in 2010, 2012, 2016, and 2020, the EPA and NHTSA engaged in joint rulemakings, simultaneously promulgating coordinated fleet-average GHG and fuel economy standards. Coordination is readily achieved because fleet-average tailpipe CO_2 emissions and fuel economy standards are mathematically convertible. For example, NHTSA's CAFE standards are calibrated in both miles per gallon and grams of CO_2 per mile:[52]

Table II-4 – Estimated Average of CAFE Levels (mpg) Required Under Final Rule

Fleet	2024	2025	2026	2027	2028	2029
Passenger Cars	49.2	53.4	59.4	59.4	59.3	59.3
Light Trucks	35.1	38.2	42.4	42.4	42.4	42.4
Overall Fleet	40.6	44.2	49.1	49.1	49.2	49.3

[49] NHTSA, Average Fuel Economy Standards for Light Trucks Model Years 2008-2011, Final Rule, 71 FR 17566, 17670, https://www.govinfo.gov/content/pkg/FR-2006-04-06/pdf/FR-2006-04-06.pdf.
[50] EPA and Department of Transportation, Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule, 75 FR 25324, 25327, May 7, 2010, https://www.govinfo.gov/content/pkg/FR-2010-05-07/pdf/2010-8159.pdf.
[51] *Massachusetts v. E.P.A.*, 549 U.S. 497, 532 (2007).
[52] NHTSA, Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 87 FR 25710, 25735-25736, May 2, 2022, https://www.govinfo.gov/content/pkg/FR-2022-05-02/pdf/2022-07200.pdf.

Table II-6 – Estimated CO_2 Levels Equivalent to Average of CAFE Levels Required Under Final Rule (Gram per Mile CO_2 Levels)

Fleet	2024	2025	2026	2027	2028	2029
Passenger Cars	181	166	150	150	150	150
Light Trucks	253	233	210	210	210	210
Overall Fleet	219	201	181	181	181	180

As the EPA and NHTSA's proposed 2018 joint rulemaking put it, "Basic chemistry makes fuel economy and tailpipe CO_2 emissions two sides of the same coin."[53]

Although the agencies no longer conduct joint rulemakings, they profess a continuing "commitment" to coordinate their respective standards.[54] The seriousness of that commitment may well be questioned. NHTSA's passenger car target in 2029 is 150 grams CO_2 per mile. The EPA's target for 2029 is 99 grams CO_2 per mile[55]—51 percent more stringent.

TABLE 8—COMPARISON OF PROPOSED CAR STANDARDS TO ALTERNATIVES

Model year	Proposed stds CO_2 (g/mile)	Alternative 1 CO_2 (g/mile)	Alternative 2 CO_2 (g/mile)	Alternative 3 CO_2 (g/mile)
2026 adjusted	152	152	152	152
2027	134	124	144	139
2028	116	106	126	126
2029	99	89	108	112

Apparently, the EPA got it right when it told the Court in *Massachusetts v. EPA* (2007) that motor vehicle GHG standards would either uselessly duplicate or supplant NHTSA's CAFE standards.[56] In any event, the EPA's GHG standards are fleet-average standards.

That is a major problem, private petitioners in *Texas v. EPA* contend, because the Clean Air Act "unambiguously precludes fleetwide-average emission standards under Section 202(a)."[57] Nor is that all:

> Fleetwide averaging also clashes with "the design and structure of [Title II] as a whole." *Utility Air*, 573 U.S. at 321 (citation omitted). Title II sets forth a comprehensive, interlocking scheme for enforcing emission standards through testing, certification, warranties, remediation, and penalties. Fleetwide-average standards are incompatible

[53] NHTSA and EPA, The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for 2021-2026 Passenger Cars and Light Trucks, 83 FR 42937, 43209, 43327, August 24, 2018, https://www.govinfo.gov/content/pkg/FR-2018-08-24/pdf/2018-16820.pdf.
[54] 86 FR 74434, 74457; 87 FR 25710, 25730.
[55] 88 FR 29201.
[56] *Massachusetts v. EPA*, 549 U.S. 497, 513 (2007).
[57] Petitioners' Initial Brief, p. 38.

> with these provisions, which are "designed to apply to" individual vehicles and "cannot rationally be extended" to fleets. *Id.* at 322.[58]

My comments will now excerpt and briefly summarize petitioners' groundbreaking argument on this critical matter.

To begin with, CAA Section 202(a), the EPA's putative statutory authority "says nothing about averaging across fleets."[59] Moreover, 202(a) specifies that the standards apply "to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification)." Useful life and certification are legal concepts that apply to individual vehicles, not fleets on average.

Certification and testing are addressed more broadly in CAA Section 206, hence the full meaning of 202(a) depends on the whole of interrelated parts to which it belongs.[60]

CAA 202(a) is explicitly linked to CAA 202(b), which "sets forth specific light-duty vehicle emission standards that EPA must promulgate in 'regulations under' Section 202(a)."[61] Such standards, which are required for carbon monoxide, hydrocarbons, and oxides of nitrogen, "necessarily apply to vehicles individually, not to fleets on average."[62] For example:

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

There is no room in such language for averaging. Congress did not intend to allow automakers to produce some vehicles that emit more than the standard as long as other vehicles emit less.

Section 202(b) testing requirements confirm that those standards apply to individual vehicles, petitioners contend:

> In particular, EPA must "test any emission control system incorporated in a motor vehicle or motor vehicle engine . . . to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under [Section 202(b) of the Act]." 42 U.S.C. § 7525(a)(2). If the system complies, EPA must issue a "verification of compliance with emission standards for such system."[63]

Petitioners draw the only reasonable conclusion:

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[58] Petitioners' Initial Brief, pp. 43-44.
[59] Petitioners' Initial Brief, p. 39.
[60] Under the "whole-text cannon," provisions should be read in the context of other provisions to which they are linked. See Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, pp. 145-149, https://jm919846758.files.wordpress.com/2020/09/rlilt.pdf.
[61] Petitioners' Initial Brief, p. 40.
[62] Petitioners' Initial Brief, p. 40.
[63] Petitioners' Initial Brief, p. 41.

> Those requirements plainly contemplate standards that apply to individual vehicles and their emission-control systems. Not only does the statutory text frame the inquiry as whether an individual "vehicle" or "engine" conforms to the emission standards, but the provision's foundational premise—that an emission-control system can enable a vehicle to meet emission standards—depends on individually applied standards.[64]

Other parts Section 202 further demonstrate that emission standards under Section 202(a) cannot rely on averaging, petitioners argue:

> Section 202(b)(3), for example, authorizes EPA to grant waivers from certain nitrogen-oxide emission standards—which, again, are standards "under" Section 202(a), see 42 U.S.C. § 7521(b)(l)(B)—for no "more than 5 percent of [a] manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater." Id. § 7521(b)(3). This provision would be nonsensical under a fleetwide-averaging regime. It contemplates a default under which every vehicle meets a standard, then gives manufacturers a waiver from that default for up to 5% of the fleet. But under fleetwide averaging, no waiver is needed. Instead, a vast proportion of a manufacturer's fleet—perhaps 50% or more effectively has a "waiver" so long as a sufficient number of vehicles outperform the standard. Likewise, Section 202(g), which specifies an increasing "percentage of each manufacturer's sales volume" of each model year's vehicles that must comply with specified emission standards, is fundamentally incompatible with averaging. Id. § 7521(g)(l).[65]

The same conclusion follows from Section 202(m), under which the EPA must require manufacturers to install on "all" new light-duty vehicles and trucks "diagnostic systems" capable of identifying malfunctions that "could cause or result in failure of the vehicles to comply with emission standards established under this section." Id. § 7521(m)(l). Petitioners comment:

> As this requirement makes clear, individual vehicles must "comply with emissions standards established under [Section 202]." Id. Otherwise, requiring diagnostic equipment on "all" vehicles makes no sense. In a fleetwide-averaging regime, this requirement would be pointless, as the deterioration or malfunction of an individual vehicle's emission-related systems would provide virtually no information about whether the fleet as a whole is compliant.[66]

Petitioners go on to explain that "Title II sets forth a comprehensive, interlocking scheme for enforcing emission standards through testing, certification, warranties, remediation, and penalties," and that "fleetwide-average standards are incompatible with these provisions, which are 'designed to apply to' individual vehicles and 'cannot rationally be extended' to fleets." A few excerpts must here suffice.

Under Section 206, EPA must "test, or require to be tested in such manner as [it] deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to

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[64] Petitioners' Initial Brief, p. 42.
[65] Petitioners' Initial Brief, p. 42.
[66] Petitioners' Initial Brief, p. 43.

determine whether such vehicle or engine conforms with the regulations prescribed under [Section 202]." 42 U.S.C. § 7525(a)(l).” Petitioners comment:

> Fleetwide averaging is incompatible with these requirements in at least two respects. First, by using the singular terms “vehicle” and “engine,” along with “any” and “such,” the statute contemplates that individual vehicles may be tested, determined to “not conform” with the standards, and have their certificates of conformity suspended or revoked. In a fleetwide-averaging regime, testing an individual vehicle or engine does not enable EPA to determine whether it “conforms with the regulations prescribed under [Section 202],” 42 U.S.C. § 7525(a)(l), because conformity turns not on an individual vehicle's emissions but on the fleet's average performance overall. Second, fleetwide averaging also makes it impossible to determine compliance with applicable emission standards before a vehicle is sold, as required to obtain the certificate of conformity needed for a sale. See 42 U.S.C. § 7522(a)(l) … Simply put, an after-the-fact compliance regime is incompatible with the Act’s testing and certification scheme.[67]

Fleetwide-average standards similarly clash with Section 207 warranty provisions. Petitioners explain:

> Under Section 207, a manufacturer must “warrant to the ultimate purchaser and each subsequent purchaser” “*at the time of sale*” that each new vehicle complies with applicable regulations under [Section 202]. 42 U.S.C. § 7541(a)(l) (emphasis added). Yet, as with certificates of conformity, manufacturers cannot warrant conformity with fleetwide-average emission standards at the time of sale, because compliance can be determined only at the end of the year. See 40 C.F.R. § 86.1865-12(i)(l) (requiring manufacturers to compute their “production weighted fleet average” by “using actual production [data]” for the year in question).[68]

Fleetwide-average emission standards are also inconsistent with Section 207 remediation and notification provisions. Petitioners explain:

> Those provisions state that if EPA “determines that a substantial number of any class or category of vehicles or engines . . . do not conform to the regulations prescribed under [Section 202],” the manufacturer must remedy “the nonconformity of any such vehicles or engines.” 42 U.S.C. § 7541(c)(l). If “a motor vehicle fails to conform,” the manufacturer bears the cost. Id. § 7541(h)(l). Further, “dealers, ultimate purchasers, and subsequent purchasers” must be given notice of any nonconformity, id. § 7541(c)(2), which requires identification of specific nonconforming vehicles. None of this is possible where the nonconformity is tied to a fleet on average.[69]

Finally, fleetwide averaging is inconsistent with Section 205 penalty provisions. Petitioners explain:

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[67] Petitioners’ Initial Brief, pp. 45-46.
[68] Petitioners’ Initial Brief, p. 46.
[69] Petitioners’ Initial Brief, pp. 46-47.

> Under Section 205, any violation "shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine," with each offense subject to its own civil penalty of up to $25,000. 42 U.S.C. § 7524(a) (emphasis added). Under EPA's approach, however, no individual vehicle or engine violates the applicable standard, only the fleet as a whole. The statute provides no method for calculating penalties when a fleet fails to meet its fleetwide-average standard—because it does not authorize fleetwide-average standards.[70]

Congress Prohibits NHTSA, the Only Agency Authorized to Establish Fleetwide-Average Standards, from Regulating Gasoline-Powered Vehicles Out of the Market.

In 1992, Congress prohibited NHTSA from considering the fuel economy of EVs and other alternative vehicles when promulgating CAFE standards. The clear intent was to ensure that NHTSA does not set fleet-average standards that no gasoline-powered vehicle can meet. Petitioners explain:

> In the Energy Policy Act of 1992, Congress directed NHTSA to set fuel-economy standards based on averages, but prohibited NHTSA from setting fuel-economy standards that average in the fuel economy of electric vehicles. See Pub. L. No. 102-486 §§ 302,403, 106 Stat. 2776, 2870-2871, 2876 (later codified at 49 U.S.C. § 32902(h)).

Petitioners spotlight the key point:

> This prohibition bars NHTSA from doing exactly what EPA is doing here: misusing its regulatory authority to force a transition from conventional vehicles to electric vehicles by artificially tightening the "average" standard a fleet must meet. Of course, when Congress finalized the language of Section 202(a)(l) in 1977, it had no need to explicitly block EPA from considering electric vehicles, because it did not contemplate that EPA would set emission standards using averaging in the first place (or that EPA would be setting standards for greenhouse gases). The prohibition on NHTSA nevertheless underscores just how far EPA is reaching here: it is straining statutory language to seize a power that Congress expressly denied to a sister agency that actually has authority to promulgate fleetwide-average standards.[71]

V. Conclusion

The EPA observes that the "levels of stringency in this proposal continue the trend of increased emissions reductions which have been adopted by prior EPA rules."[72] However, that does not rescue the proposal from legal peril. If petitioners' argument is correct, the EPA's MY 2023-2026 standards are also de-facto EV mandates, which as such trigger the major questions doctrine. Moreover, the proposed standards, being fleetwide-average standards, are impermissible under the Clean Air Act.

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[70] Petitioners' Initial Brief, p. 47.
[71] Petitioners' Initial Brief, pp. 61-62.
[72] 88 FR 29188.

The proposal purports to give automakers a nudge in the direction the market is already going. However, political coercion is a major factor driving the trend. As the EPA acknowledges:

> In 2022, California finalized the Advanced Clean Cars II rule that will require, by 2035, all new light-duty vehicles sold in the state to be zero-emission vehicles, with New York, Massachusetts, and Washington state following suit, likely to be followed by Oregon and Vermont as well. Several other states may adopt similar provisions as members of the International Zero-Emission Vehicle Alliance.[73]

Consumers now face the real risk that much of the new-car market will be off-limits to gasoline-powered vehicles in the near future. The EPA does not merely ride the EV wave. It launched the wave in January 2013 by withdrawing Clean Air Act preemption of California's ZEV program,[74] propelled it forward by repealing preemption in March 2022.[75]

In so doing, the EPA ignored the Energy Policy and Conservation Act's preemption of State laws or regulations "related to" fuel economy standards. ZEV mandates are substantially related to fuel economy standards. As ZEV mandates tighten, fleetwide-average fuel economy increases. Conversely, as the current rulemaking demonstrates, at a certain level of stringency, fleet-average CO_2 standards, which are fuel economy standards by another name, function as ZEV mandates.

The proposed rule is the latest phase of a longstanding unlawful agenda of market-rigging interventions. It should be withdrawn.

Sincerely,

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[73] 88 FR 29188.

[74] EPA, California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years, 78 FR 2112, January 9, 2013, https://www.govinfo.gov/content/pkg/FR-2013-01-09/pdf/2013-00181.pdf.

[75] EPA, California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision, 87 FR 14332, March 14, 2022, https://www.govinfo.gov/content/pkg/FR-2022-03-14/pdf/2022-05227.pdf.