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

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

MOTION OF ZERO EMISSION TRANSPORTATION ASSOCIATION FOR LEAVE TO INTERVENE AS RESPONDENT

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the Zero Emission Transportation Association ("ZETA") respectfully moves for leave to intervene in support of Respondents in the above-captioned cases, and in "all [other] cases before this court involving the same agency action or order, including later filed cases."[1] Circuit Rule 15(b). Petitioners challenge a final rule issued by the Environmental Protection Agency ("EPA") entitled "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (April 18, 2024) (the "Final Rule").

[1] The above-captioned cases include Nos. 24-1100, 24-1132, 24-1158, 24-1195, 24-1196, 24-1197, and 24-1206.

Petitioners in the lead case, No. 24-1087, filed their petition for review of the Final Rule on April 18, 2024. (Doc. 2050292). Additional petitions for review were filed on April 29, 2024 (Doc. 2052005, No. 24-1100), May 15, 2024 (Doc. 2054838, No. 24-1132), May 23, 2024 (Doc. 2056007, No. 24-1158), June 13, 2024 (Doc. 2059581, No. 24-1195; Doc. 2059597, No. 24-1196; Doc. 2059625, No. 24-1197), and June 17, 2024 (Doc. 2060434, No. 24-1206). The later-filed cases were consolidated with the lead case by orders dated April 30, 2024 (Doc. 2052011, No. 24-1100), May 16, 2024 (Doc. 2054846, No. 24-1132), May 23, 2024 (Doc. 2056013, No. 24-1158), June 13, 2024 (Doc. 2059653, Nos. 24-1195, 24-1196, and 24-1197), and June 18, 2024 (Doc. 2060444, No. 24-1206).

This motion is timely because it is filed within 30 days of the petitions for review in No. 24-1158, which was filed on May 23, 2024; Nos. 24-1195, 24-1196, and 24-1197, which were filed on June 13, 2024; and No. 24-1206, which was filed on June 18, 2024. *See* Fed. R. App. P. 15(d); Circuit Rule 15(b).

Counsel for ZETA is authorized to state that (1) Petitioner State of Texas does not oppose this motion, (2) Petitioners Kentucky et al., Petersen et al., Western States Trucking Association et al., American Fuel & Petrochemical Manufacturers et al., American Petroleum Institute et al., American Free Enterprise Chamber of Commerce et al., and Renewable Fuels Association et al. take no position on this motion, (3) Respondent EPA does not oppose this motion, (4) Respondent-

Intervenors State & Local Governments and Alliance for Automotive Innovation do not oppose this motion, and (5) Respondent-Intervenors Public Interest Organizations and Ford consent to this motion.

SUMMARY OF ARGUMENT

The Court should grant ZETA's motion to intervene because ZETA satisfies all of the applicable requirements. ZETA is a coalition of several dozen member companies who span the entire electric vehicle supply chain—including vehicle manufacturers, charging infrastructure manufacturers and network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers, among others. ZETA advocates on behalf of its members for the enactment of policies that drive electric vehicle adoption and thereby create hundreds of thousands of jobs, dramatically improve public health, and significantly reduce emissions.

The Final Rule at issue in these cases adopts new standards for emissions of greenhouse gases and other pollutants from light- and medium-duty vehicles for model years 2027–2032. 89 Fed. Reg. 27,842. Many of ZETA's members are directly regulated by the Final Rule, including vehicle manufacturers and battery manufacturers. *See, e.g.*, 89 Fed. Reg. at 27,901−02 (explicitly finding that battery-powered electric vehicles are part of the class of motor vehicles that are regulated by the Final Rule); *id.* at 27,965 (finalizing battery durability requirements). Additionally, the Final Rule directly affects ZETA's members by shaping the

incentives for the development and deployment of electric vehicles and supporting infrastructure. The stringency of the standards adopted by EPA in the Final Rule will have a significant effect on the demand for electric vehicles, the value of credits generated by manufacturers of zero-emission vehicles, and the scale of investment in electric vehicles and supporting infrastructure, all of which directly impact ZETA's members. Those interests are sufficient to meet the requirements for intervention under Federal Rule of Appellate Procedure 15(d) and applicable precedent.

Moreover, ZETA was an active participant throughout the rulemaking process. ZETA's comments shared its members' experiences to inform EPA of how the thriving electric vehicle market is contributing to a cleaner environment while creating American jobs, and highlighted the industry's capabilities to meet increased future demand for electric vehicles.[2] ZETA expressed its support for EPA's proposal and offered detailed suggestions as to how the Final Rule could be strengthened to further protect public health and the environment while promoting enhanced economic growth. Now, ZETA respectfully requests that this Court allow ZETA to intervene to continue to protect those interests.

[2] *See* Comments of Zero Emission Transportation Association (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0638.

BACKGROUND

These consolidated cases concern EPA's regulation of the emissions of greenhouse gases and other pollutants from light-duty and medium-duty vehicles under the Clean Air Act. A "primary goal" of the Clean Air Act is "pollution prevention." 42 U.S.C. § 7401(c). To that end, Congress granted the Administrator of the EPA the authority to prescribe "standards applicable to the emission of any air pollutant" from motor vehicles. *Id.* § 7521(a)(1). Indeed, as EPA has noted, "[s]ince the earliest days of the [Clean Air Act], Congress has also emphasized that the goal of section 202 is to address air quality hazards from motor vehicles, not to simply reduce emissions from internal combustion engines to the extent feasible." 89 Fed. Reg. at 27,894.

Consistent with that directive, EPA has promulgated emissions standards for air pollutants from motor vehicles for over fifty years, since the Agency's creation by President Nixon in 1970. *See, e.g.*, 36 Fed. Reg. 12,657 (July 2, 1971) (setting standards for emissions of nitrogen oxides from light-duty vehicles beginning in model year 1975). In 2009, after the Supreme Court held that greenhouse gases fall within the Clean Air Act's definition of "air pollutant," *Massachusetts v. EPA*, 549 U.S. 497, 528−29 (2007), EPA concluded that greenhouse gas emissions from motor vehicles endanger public health and welfare, *see* 74 Fed. Reg. 66,496 (Dec. 15, 2009). Consistent with its mandate under the Clean Air Act, EPA subsequently

began prescribing standards for emissions of greenhouse gases from light- and medium-duty vehicles, in addition to other pollutants that were regulated previously. *See, e.g.*, 75 Fed. Reg. 25,324 (May 7, 2010) (establishing standards for model years 2012−16); 77 Fed. Reg. 62,624 (Oct. 15, 2012) (establishing standards for model years 2017−25).

In 2020, EPA issued a new rule that softened emissions standards for model years 2021−25 and established similarly relaxed standards for model year 2026. 85 Fed. Reg. 24,174 (April 30, 2020). Several petitioners challenged those standards in this Court. *See Competitive Enterprise Institute. v. EPA*, No. 20-1145 (D.C. Cir.). Those consolidated cases were held in abeyance after a new presidential administration directed EPA to reconsider the 2020 standards. *See* Doc. 1892931, *Competitive Enterprise Institute*, No. 20-1145 (D.C. Cir. Apr. 2, 2021).

In 2021, EPA published revised light-duty vehicle greenhouse gas emissions standards for model years 2023 through 2026. 86 Fed. Reg. 74,434 (Dec. 30, 2021). Those rules were also challenged before this court. This Court heard oral argument in those cases on September 15, 2022, and took the matter under submission. *See Texas v. EPA*, No. 22-1031 (D.C. Cir.).

Most recently, in May 2023, EPA proposed new standards for emissions of greenhouse gases and other harmful pollutants, including nitrogen oxides and particulate matter, from light- and medium-duty vehicles for model years 2027 and

later. 88 Fed. Reg. 29,184 (May 5, 2023) (the "Proposed Rule"). ZETA commented on behalf of its members in support of many aspects of the Proposed Rule and advocated for more stringent standards. *See* Comments of Zero Emission Transportation Association (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0638.

On April 18, 2024, EPA published the Final Rule at issue here. The Final Rule will meaningfully reduce emissions of criteria pollutants and greenhouse gases: The model year 2032 greenhouse gas emissions standards represent a nearly 50% reduction in projected fleet average greenhouse gas emissions levels for light-duty vehicles as compared to the existing model year 2026 standards, and a 44% reduction in projected fleet average emissions target levels for medium-duty vehicles as compared to the existing model year 2026 standards. *Id.* at 27,854–55. Although the Final Rule does not create a mandate for manufacturers to adopt any particular technologies, EPA projects that electric vehicles could make up more than fifty percent of new vehicle sales by model year 2032 under the Final Rule. *Id.* at 27,856.

ARGUMENT

This motion should be granted for two principal reasons. *First*, the motion is timely filed and meets all the other requirements of Federal Rule of Appellate Procedure 15(d). *Second*, ZETA has associational standing and therefore satisfies the additional requirements for intervention established by this Court's precedent.

I. ZETA Satisfies All Requirements of Rule 15(d).

Rule 15(d) establishes a minimal set of criteria for intervention:

> Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion—or other notice of intervention authorized by statute—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.

This motion satisfies Rule 15(d)'s criteria. ZETA is a "person" as defined in the Clean Air Act, *see* 42 U.S.C. § 7602(e), and therefore is entitled to seek intervention. The Clean Air Act does not provide "another method" for intervention, and this motion has been duly filed with the Circuit clerk and served on all parties. Further, the motion is timely because it is filed within 30 days of the petitions for review in Nos. 24-1158, 24-1195, 24-1196, 24-1197, and 24-1206. *See* Circuit Rule 15(b) ("A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.").

As to ZETA's interest and the grounds for intervention, the analysis is straightforward. The Final Rule at issue here directly regulates some of ZETA's members and plays a significant role in incentivizing the transition to electric vehicle

technologies. Collectively, ZETA's members have invested and committed to investing billions of dollars toward building the infrastructure, supply chain, and capabilities necessary to support increased deployment of electric vehicles. The degree of return on those investments—and, in turn, the success of the transition to clean transportation in the United States—will depend on the stringency of the standards adopted in the Final Rule.

The interests that ZETA seeks to protect here are essential to its core mission of supporting policies that drive the adoption of electric vehicles, create jobs, improve public health, and reduce emissions of greenhouse gases and other harmful pollutants. Accordingly, ZETA participated in the rulemaking process that led to the final agency action being challenged in this case. ZETA described how its members would be affected by the Final Rule, explained how the vehicles and infrastructure developed by its members could support the increased demand for electric vehicles that would follow from the Final Rule, and advocated for EPA to adopt more stringent standards. *See* Comments of Zero Emission Transportation Association (July 5, 2023), Docket ID No. EPA-HQ-OAR-2022-0829-0638.

ZETA and its members would be injured if Petitioners were successful in their attempts to vacate or weaken EPA's Final Rule. The Final Rule requires manufacturers to produce light- and medium-duty vehicles that meet increasingly stringent emissions standards over time, rewarding production of vehicles that meet

or exceed the minimum standards. That creates incentives that drive investments in zero emission vehicles, their components, and related infrastructure. Mendelson Decl., ¶¶ 11−12; Vincent Decl. ¶ 7; Nevers Decl. ¶ 7. A ruling in favor of Petitioners would also implicate EPA's credit regime and directly harm a revenue stream for ZETA members that manufacture credit-generating vehicles. Mendelson Decl., ¶ 12; Vincent Decl. ¶ 8; Nevers Decl. ¶ 9. Vacating the Final Rule would undermine regulatory drivers for vehicle electrification, reduce credit revenues, and threaten the ability of ZETA's members to realize the full benefits of their investments.

This Court has previously granted ZETA leave to intervene to defend fuel economy standards for passenger cars and light trucks. *See* Order, *Texas v. NHTSA*, No. 22-1144 (Aug. 1, 2022). That is consistent with this Court's practice of granting motions from other associations representing electric vehicle manufacturers that have sought to intervene in earlier challenges to EPA's regulation of mobile source emissions. *See, e.g.*, Order, *Ohio v. EPA*, No. 22-1081 (June 30, 2022) (granting motion for intervention by the National Coalition for Advanced Transportation, whose members included ZETA members Tesla, Lucid, and Rivian); Order, *Texas v. EPA*, No. 22-1031 (April 20, 2022) (same).

To the extent that the considerations in Federal Rule of Civil Procedure 24(a) inform the Court's analysis, *see Int'l Union, U.A.W. v. Scofield*, 382 U.S. 205, 216 n.10 (1965), ZETA meets the requirements for intervention of right because it

"claims an interest relating to the . . . [rulemaking] transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede [ZETA's] ability to protect its interest," Fed. R. Civ. P. 24(a). *See also United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980) (explaining that intervention is intended to protect a party that would "gain or lose by the direct legal operation and effect of the judgment" (quotation marks omitted)). The exception for instances in which the "existing parties adequately represent" the movant's interest, Fed. R. Civ. P. 24(a)(2), is inapplicable here because ZETA's members are not currently represented by any other party to these cases.[3] And in addition to vehicle manufacturers, ZETA represents private companies in other industries that will be affected by the Final Rule who are not currently before the court, including battery manufacturers, electricity providers, charging infrastructure manufacturers, critical mineral producers, and battery recyclers. In any event, the interests outlined above establish that ZETA also meets the lower threshold for permissive intervention. *See* Fed. R. App. P. 24(b) (permitting intervention where party "has a claim or defense that shares with the main action a common question of law or fact").

[3] EPA cannot adequately represent the private-sector interests of ZETA and its member companies. *See, e.g.*, *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736–37 (D.C. Cir. 2003).

II. ZETA Has Article III Standing.

To the extent that ZETA must demonstrate Article III standing, it is able to satisfy that requirement. *See Ala. Mun. Distribs. Grp. v. FERC*, 300 F.3d 877, 879 n.2 (D.C. Cir. 2002) (holding that "[a]n intervenor must . . . satisfy the requirements of Article III standing imposed on petitioners"); *cf. Town of Chester, N.Y. v. Laroe Estates, Inc*., 581 U.S. 433, 440 (2017) ("[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing."). The "irreducible constitutional minimum" for standing is (i) a concrete injury (ii) that is fairly traceable to the challenged conduct and (iii) that will likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). An association such as ZETA meets these criteria when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

ZETA's members have standing under *Hunt* because their businesses are directly affected by EPA's Final Rule. Some ZETA members are directly regulated by the rule and others provide the infrastructure critical to its implementation. *See Wynnewood Refin. Co. v. EPA*, 77 F.4th 767, 777 (D.C. Cir. 2023) ("'[T]here is

ordinarily little question' that a regulated entity has standing to challenge a rule under which it is regulated." (quoting *Lujan*, 504 U.S. at 560–61)). As discussed above, vacating the Final Rule would undermine regulatory drivers for vehicle electrification, reduce credit revenues, threaten the ability of ZETA's members to realize the full benefits of their investments, and compromise the regulatory stability necessary for continued confidence in making bold investments. Those types of economic injuries are sufficient to show cognizable harm that demonstrates constitutional standing. *See Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (2017) ("Economic harm to a business clearly constitutes an injury-in-fact. And the amount is irrelevant.").

ZETA also easily satisfies the other two elements of associational standing. For the reasons discussed above, the challenges to the Final Rule are germane to ZETA's purpose of advocating on behalf of its members for policies that promote electrification of motor vehicles. And, because Petitioners seek only equitable relief, there is no need for direct participation by ZETA's members. *See United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 546 (1996) (reiterating that "individual participation is not normally necessary when an association seeks prospective or injunctive relief for its members.").

CONCLUSION

For the foregoing reasons, ZETA's motion for leave to intervene should be granted. Pursuant to Circuit Rule 15(b), the Court should also grant ZETA intervention in "all cases before this court involving the same agency action or order, including later filed cases."

Respectfully submitted,

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June 20, 2024

IN THE UNITED STATES COURT OF APPEALS
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COMMONWEALTH OF KENTUCKY et al., *Petitioner*, v. ENVIRONMENTAL PROTECTION AGENCY, et al. *Respondent*.	No. 24-1087 (and consolidated cases)

CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to Circuit Rules 27(a)(1)(4) and 28(a)(1)(A), Movant-Intervenor Zero Emission Transportation Association submits the following Certificate as to Parties and Amici Curiae.

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

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

The Petitioners in No. 24-1132 are Warren Petersen; Ben Toma; and Arizona Trucking Association.

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

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

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

Loquercio Automotive MCK, LLC; Loquercio Automotive South, Inc.; Loquercio Automotive West, LLC; Raecom Holdings, LLC; and Tarver Motor Company, Inc.

The Petitioners in 24-1197 are American Free Enterprise Chamber of Commerce; Clean Fuels Development Coalition; ICM, Inc.; Illinois Corn Growers Association; Indiana Corn Growers Association; Kansas Corn Growers Association; Kentucky Corn Growers Association; Michigan Corn Growers Association; Minnesota Corn Growers Association; Missouri Corn Growers Association; Nebraska Corn Growers Association; Ohio Corn and Wheat Growers Association; South Dakota Corn Growers Association; Tennessee Corn Growers Association; Wisconsin Corn Growers Association; Diamond Alternative Energy, LLC; and Valero Renewable Fuels Company, LLC.

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

The Respondents in Nos. 24-1087, 24-1100, 24-1132, 24-1158, 24-1195, 24-1196, 24-1197, and 24-1206 are the U.S. Environmental Protection Agency and Michael S. Regan, Administrator of the U.S. Environmental Protection Agency.

The Respondent-Intervenors in Nos. 24-1087, 24-1100, 24-1132, 24-1158, 24-1195, 24-1196, 24-1197, and 24-1206 are State of California; State of Arizona; State of Colorado; State of Connecticut; State of Delaware; State of Hawaii; State of Illinois; State of Maine; State of Maryland; State of Michigan; State of Minnesota;

State of New Mexico; State of New Jersey; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; State of Washington; State of Wisconsin; Commonwealth of Massachusetts; Commonwealth of Pennsylvania; District of Columbia; City and County of Denver; City of Chicago; City of Los Angeles; City of New York; Alliance of Nurses for Healthy Environments; American Lung Association; American Public Health Association; Appalachian Mountain Club; Center for Biological Diversity; Clean Air Council; Conservation Law Foundation; Environmental Defense Fund; Environmental Law & Policy Center; National Parks Conservation Association; Natural Resources Defense Council; Public Citizen; Sierra Club; Alliance for Automotive Innovation; and Ford Motor Company.

There are no amici at this time.

Respectfully submitted,

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June 20, 2024

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioner Zero Emission Transportation Association ("ZETA") states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. ZETA has no parent corporation, and no publicly held company has 10% or greater ownership in ZETA. ZETA is a "trade association" within the meaning of Circuit Rule 26.1. ZETA is a continuing association operating for the purpose of advocating for policies that promote the adoption of electric vehicles on behalf of its members, which span the entire electric vehicle supply chain, including vehicle manufacturers, charging infrastructure manufacturers and network operators, battery manufacturers and recyclers, electricity providers, and critical minerals producers.

Respectfully submitted,

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June 20, 2024

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2) because it contains 2,882 words, excluding the portions of the motion (and associated certificates, etc.) exempted by Rule 27(a)(2)(B). This motion complies with the typeface and type style requirements of Rule 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font.

/s/ Gary S. Guzy
Gary S. Guzy

CERTIFICATE OF SERVICE

I certify that on this 20th day of June 2024, I caused the foregoing motion (and supporting papers) to be electronically filed with the Clerk of the U.S. Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Gary S. Guzy
Gary S. Guzy

IN THE UNITED STATES COURT OF APPEALS
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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"). In that role, I am responsible for Tesla's relations with federal agencies, including with respect to the final rule issued by the Environmental Protection Agency ("EPA") entitled "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (April 18, 2024) (the "Final Rule"). I managed Tesla's participation in the regulatory process, including drafting and submitting written comments on EPA's

proposed emissions standards for model years 2027 through 2032 light- and medium-duty vehicles.

2. Tesla is a member of the Zero Emission Transportation Association.

3. 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.

4. 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. Consistent with this effort, Tesla was recently ranked as the world leader in the transition to vehicle electrification.[1]

5. Tesla currently produces and sells four fully electric, zero emissions light-duty vehicles: the Model S sedan, the Model X sport utility vehicle ("SUV"), the Model 3 mid-sized sedan, and the Model Y mid-sized SUV. As the EPA recognized in its *2023 Automotive Trends Report*, Tesla had by far the lowest carbon

[1] *See* ICCT, The Global Automaker Rating 2023: Who Is Leading the Transition to Electric Vehicles? (May 30, 2024) *available at* https://theicct.org/global-automaker-rating-2023/.

dioxide emissions (0 grams per mile) and highest fuel economy (120 miles per gallon) of all large vehicle manufacturers in model year 2022.[2]

6. Tesla is also deeply committed to ensuring the U.S. remains a leader in advanced manufacturing. All Tesla vehicles sold in the U.S. are manufactured in the U.S. In 2023, the Tesla Model Y was the world's best-selling car[3] and ranked as the most American-made car, based on overall contributions to the U.S. economy; the Model 3 ranked just below, as the second-most American-made car on the market; and the Model X and Model S followed as numbers three and four, respectively.[4] The National Highway Traffic Safety Administration similarly confirms that 100% of the vehicle, engine, and transmission assembly in each Tesla vehicle sold in the U.S. occurs in the U.S.[5] In addition, Tesla's U.S. supply chain

[2] EPA, The 2023 EPA Automotive Trends Report, Greenhouse Gas Emissions, Fuel Economy, and Technology Since 1975, at 11−14 (Dec. 2023) *available at* https://www.epa.gov/automotive-trends/download-automotive-trends-report#Full%20Report.

[3] JATO, Tesla Model Y secures position as world's best-selling car in 2023 (June 13, 2024) *available at* https://www.jato.com/resources/media-and-press-releases/tesla-model-y-worlds-best-selling-car-2023.

[4] *See* Cars.com, 2023 Cars.com American-Made Index: Which Cars Are the Most American? (June 21, 2023) *available at* https://www.cars.com/articles/2023-cars-com-american-made-index-which-cars-are-the-most-american-467465/.

[5] *See* NHTSA, Technical Support Document: Proposed Rulemaking for Model Years 2024-2026 Light Duty Vehicle Corporate Average Fuel Economy Standards, at 96, Table 2-6 (Aug. 2021) *available at* https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-08/CAFE-NHTSA-2127-AM34-TSD-Complete-web.pdf.

continues to expand and spans across more than 40 states, including Alabama, Georgia, Ohio, Indiana, and Michigan.[6]

7. Importantly, Tesla is not only a manufacturer but is also continuing to grow its large network of retail stores, vehicle service centers, and electric vehicle charging stations to accelerate and support the widespread adoption of electric vehicles. Tesla operates the country's largest and most reliable public electric vehicle charging network. Since 2012, Tesla has invested heavily in siting, building, and operating charging infrastructure. In 2013, Tesla had just eight Supercharger Stations in North America. Today, Tesla owns and operates the largest Direct Current Fast Charging ("DCFC") network in the world, known as the Tesla Supercharging network.[7] The Tesla Supercharger network reliably serves quick charging needs to drivers of battery-powered electric vehicles on road trips with limited time to charge, and without access to charging at home or at the workplace.

8. As of the end of 2023, there are more than 5,900 Supercharger locations and almost 55,000 Supercharger stalls globally.[8] In the U.S., there are over 2,150 Supercharger locations and more than 24,000 Supercharger stalls capable of charge

[6] *See e.g.*, AutoNews, Suppliers Starting to Set Stage for Tesla in Texas (Sept. 6, 2021) *available at* https://www.autonews.com/suppliers/tesla-suppliers-starting-set-stage-texas-gigafactory.

[7] *See*, Tesla, Supercharger available at https://www.tesla.com/supercharger.

[8] Tesla. Shareholder Deck, at 8 (Jan. 24, 2024) *available at* https://digitalassets.tesla.com/tesla-contents/image/upload/IR/TSLA-Q4-2023-Update.pdf.

rates up to 250 kW. Superchargers are located in all fifty States, the District of Columbia, and Puerto Rico, representing approximately 60% of the DCFC plugs operational today in the U.S. In February 2023, in conjunction with the White House, Tesla announced it will open at least 3,500 Superchargers in the U.S. to non-Tesla vehicles. Since this announcement, every major auto company has adopted the North America Charging Standard ("NACS") which will allow their vehicles to utilize the Tesla Supercharger network.[9]

9. Tesla supports the Administration's goals to electrify the transportation sector and supports EPA's "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (April 18, 2024) (the "Final Rule"). Tesla strongly supports the stringency of the greenhouse gas emissions standards set by the Final Rule.

10. Tesla participated in EPA's regulatory process that led to the Final Rule by submitting comments on the proposed rule and engaging in the interagency review process under Executive Order 12866.[10] In particular, Tesla welcomed EPA's proposal to reduce greenhouse gas emissions standards and advocated for EPA to adopt even more stringent standards that would set the pathway for even more widespread deployment of electric vehicles fleetwide.

[9] EV Station, Tesla NACS Charger Adoption Tracker *available at* https://evstation.com/tesla-nacs-charger-adoption-tracker/.

[10] *See* Comments of Tesla, Inc. (July 5, 2023), EPA-HQ-OAR-2022-0829-0792.

11. In April 2024, EPA published the Final Rule, adopting emissions standards for model years 2027–32 that will significantly reduce greenhouse gas emissions fleet-wide. EPA projects that, under the Final Rule, electric vehicles could make up more than fifty percent of new vehicle sales by model year 2032. The stringent emissions standards established by the Final Rule will incentivize electric vehicle sales in the United States, including Tesla's American-manufactured electric vehicles.

12. As embodied in the Final Rule, EPA's emission standards have helped drive investment in electric vehicle manufacturing and technology because those performance standards incentivize manufacturing vehicles with lower carbon emissions. EPA's standards also reward vehicle manufacturers that deploy innovative technologies and outperform requirements in a given model year by providing tradeable compliance credits. Tesla's public U.S. Securities and Exchange Commission filings regularly report annual revenue derived from automotive regulatory credit transactions, including those taking place under the EPA's compliance program. For example, in 2023 Tesla recognized $1.790 billion in revenue from trading earned regulatory credits, a large portion of which were attributable to Tesla's overcompliance with the existing EPA emission standards. The regulatory certainty provided by robust EPA's Final Rule will continue to

contribute to market conditions supporting billions of dollars of additional manufacturing investments by Tesla throughout the United States.

13. Any attempt to vacate or weaken the Final Rule will impair Tesla'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 June 18, 2024.

Respectfully submitted,

Joseph Mendelson, III

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

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

DECLARATION OF CHRISTOPHER NEVERS

I, Christopher Nevers, 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 the Senior Director of Public Policy at Rivian Automotive, LLC ("Rivian"). In that role, I am responsible for environmental, battery, and charging policy, which include informing Rivian's compliance with federal standards and regulations, such as the emissions standards set by the Environmental Protection Agency ("EPA") for light-duty and medium-duty vehicles and overseeing related regulatory compliance credit trading.

2. Rivian is a member of the Zero Emission Transportation Association.

3. Founded in 2009, Rivian is an independent U.S. company headquartered in California. With approximately 14,000 employees across the globe, Rivian's mission is to Keep the World Adventurous Forever. Rivian's focus is the design, development, manufacture, sale, and distribution of all-electric adventure vehicles, specifically pickups, sport utility vehicles ("SUVs"), and commercial vans.

4. Rivian brought the first modern electric pickup to market in 2021 when it launched the R1T, followed shortly thereafter by the R1S SUV and the all-electric commercial van for Amazon, all of which are built at Rivian's manufacturing facility in Normal, Illinois. The R1T and R1S—both medium-duty passenger vehicles—provide all-electric options in segments where added utility is a necessity. The R1T and R1S both have EPA estimated ranges exceeding 400 miles. The R1T also features 11,000 pounds of towing capacity, while the R1S is a seven-passenger full-sized SUV. Both are well-equipped for off-roading in a variety of climates. Separately, our Class 2b and 3 commercial vans eliminate tailpipe emissions from last-mile delivery. Rivian is committed to producing 100,000 vans for our launch customer, Amazon, which currently operates over 18,000 electric Rivian produced vans across the United States.

5. Rivian supports the Administration's goals to electrify the transportation sector and supports EPA's "Multi-Pollutant Emissions Standards for

Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (April 18, 2024) (the "Final Rule"). A program of achievable, yet ambitious, greenhouse gas regulation in the transportation sector is core to our values and our vision for the world. Given transportation's role as the country's number one source of greenhouse gas emissions and the urgency of the climate crisis, EPA's action is necessary. Rivian strongly supports the stringency of the greenhouse gas emissions standards set by the Final Rule.

6. Rivian participated in EPA's regulatory process that led to the Final Rule by providing testimony at a public hearing and submitting comments on the proposed rule.[1] Rivian advocated for EPA to adopt the most stringent alternative and to consider changes that would strengthen the standards even further. In particular, Rivian encouraged EPA to update the baseline fleet, phase out off-cycle crediting by model year 2027, evaluate stricter medium-duty vehicle emissions standards, and begin phasing out advanced technology vehicle multipliers in model year 2025. Additionally, Rivian encouraged EPA to update its analysis to include Rivian's production, as Rivian's sales could have a material effect on EPA's feasibility findings.

[1] *See* Comments of Rivian Automotive, LLC (July 5, 2023), EPA-HQ-OAR-2022-0829-0653.

7. In April 2024, EPA published the Final Rule, adopting emissions standards for vehicle model years 2027–32 that will significantly reduce greenhouse gas emissions fleet-wide. EPA projects that, under the Final Rule, electric vehicles could make up more than fifty percent of new vehicle sales by model year 2032. The emissions standards established by the Final Rule will incentivize electric vehicle sales in the United States, including Rivian's American-manufactured electric vehicles.

8. Rivian is directly regulated by the Final Rule because it manufactures medium-duty electric vehicles that are part of the class of motor vehicles that fall within the scope of the rule.

9. Rivian sells its American-manufactured electric vehicles in the U.S. and benefits from tradable compliance credits as a result of the Final Rule.

10. Any attempt to vacate or weaken the Final Rule will impair Rivian'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 June 18, 2024.

Respectfully submitted,

Christopher Nevers

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

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

DECLARATION OF 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 emissions standards set by the Environmental Protection Agency ("EPA") for light-duty and medium-duty vehicles.

2. Lucid is a member of the Zero Emission Transportation Association.

3. Lucid was founded in 2016 with a clear vision to advance the state-of-the-art of electric vehicles and electric propulsion systems to a whole new level in order to truly accelerate the transition to sustainable mobility. 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. Lucid already employs over 2,000 people in Arizona and more than 6,000 people nationwide. Every Lucid employee receives stock in the company and competitive compensation.

5. Lucid supports the Administration's goals to electrify the transportation sector and supports EPA's "Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles," 89 Fed. Reg. 27,842 (April 18, 2024) (the "Final Rule"). Lucid strongly supports the stringency of the greenhouse gas emissions standards set by the Final Rule.

6. Lucid participated in EPA's regulatory process that led to the Final Rule by providing testimony at a public hearing and submitting comments on the

proposed rule.[1] In particular, Lucid advocated for EPA to adopt the most stringent alternative, expressed its support for EPA's proposed new medium-duty passenger vehicle classification, and encouraged EPA to create incentives that encourage manufacturers to prioritize the efficient use of electricity and resources.

7. In April 2024, EPA published the Final Rule, adopting emissions standards for model years 2027–32 that will significantly reduce greenhouse gas emissions fleet-wide. EPA projects that, under the Final Rule, electric vehicles could make up more than fifty percent of new vehicle sales by model year 2032. The stringent emissions standards established by the Final Rule will incentivize electric vehicle sales in the United States, including Lucid's American-manufactured electric vehicles.

8. Lucid is directly regulated by the Final Rule because it manufactures light-duty electric vehicles that are part of the class of motor vehicles that fall within the scope of the rule.

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

10. Any attempt to vacate or weaken the Final Rule will impair Lucid's interest in stringent motor vehicle greenhouse gas emissions standards.

[1] *See* Testimony of Lucid Group (May 9, 2023), EPA-HQ-OAR-2022-0829-0463; Comments of Lucid Group (July 5, 2023), EPA-HQ-OAR-2022-0829-0664.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on June 18, 2024.

Respectfully submitted,

O. Kevin Vincent