

ORAL ARGUMENT NOT YET SCHEDULED

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

No. 22-1031 (and consolidated cases)

STATE OF TEXAS, *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petition for Review of Final Action of the
Environmental Protection Agency
86 Fed. Reg. 74,434 (December 30, 2021)

**BRIEF OF SENATOR THOMAS R. CARPER AND
REPRESENTATIVE FRANK PALLONE, JR.
AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

All parties, intervenors, and other *amici* appearing in this case are listed in the brief for Respondent Environmental Protection Agency. References to the rulings under review and related cases also appear in the brief for petitioners.

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici* state that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

RULE 29 STATEMENTS

Pursuant to D.C. Circuit Rule 29(d), counsel for *amici* states that he is aware that other *amicus* briefs may be filed on behalf of Respondents in this case. Separate briefing is necessary because none of the other *amicus* briefs will address the unique perspectives and expertise of *amici* as members of Congress with direct experience regarding the legislation and agency actions at issue in this case, including leadership of Senate and House committees with jurisdiction over such actions and direct involvement in the drafting and passage of the Infrastructure Investment and Jobs Act of 2021 and Inflation Reduction Act of 2022. *Amici* are uniquely positioned to aid the Court in understanding the legislative intent behind the statutory provisions at the center of this case.

Under Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no party's counsel authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel contributed money that was intended to fund preparation or submission of the brief.¹

¹ Counsel provides his institutional affiliation solely for purposes of identification and does not imply any institutional endorsement of the views expressed here.

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GLOSSARY

“Act”	Clean Air Act
“EPA” or “Agency”	United States Environmental Protection Agency
“Rule”	Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74,434 (December 30, 2021)

INTEREST OF AMICI CURIAE

Amicus Thomas R. Carper is a United States Senator for Delaware and the current Chair and a 20-year member of the Senate Environment and Public Works Committee. *Amicus* Frank Pallone, Jr. is a member of the United States House of Representatives for New Jersey and the former Chair, current Ranking Member, and a 30-year member of the House Energy and Commerce Committee. *Amici* write in support of the Environmental Protection Agency's ("EPA") authority to promulgate protective regulations of air pollutants from mobile sources under the Clean Air Act, 42 U.S.C. §§ 7401 et seq. (the "Act").

Amici have a strong interest, based on their leadership of committees with jurisdiction over the Act and EPA, in ensuring the proper interpretation of the Act and the mobile source provisions of Section 202(a), 42 U.S.C. § 7521(a). Through these provisions EPA has for decades issued standards, such as the motor vehicle emissions standards at issue in this case, that have fulfilled congressional intent by protecting public health and welfare while "stimulat[ing] the development of a broad set of advanced automotive technologies." 86 Fed. Reg. 74,434, 74,451 (December 30, 2021).

Amici also have a strong interest, as members of Congress, in ensuring the continued ability of Congress to delegate authority to expert agencies, such as EPA, to promulgate effective regulations that advance broad statutory commands while

accounting for highly complex considerations of technological effectiveness, feasibility, safety, cost, and market impacts.

In addition, *amici* have a strong interest in ensuring the proper interpretation of the Infrastructure Investment and Jobs Act of 2021, P.L. 117-58 (2021) and the Inflation Reduction Act of 2022, P.L. 117-169 (2022), based on *amici*'s leadership roles in drafting and enacting these laws. These laws are designed to promote significant investment in electric vehicle infrastructure and adoption, reinforce EPA's authority to regulate greenhouse gas emissions, and facilitate the Nation's transition to zero-emission vehicles in furtherance of the clear public health and welfare mandates of the Act.

Amici submit this brief in support of Respondent EPA and of clean air regulation that adequately meets the call of the enacting Congress for EPA to protect the Nation's public health and welfare from air pollution.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners challenge EPA’s Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74,434 (December 30, 2021) (“Rule”), claiming that it “strain[s] statutory text to force a seismic shift in the Nation’s energy policy” and violates the major questions doctrine. Priv. Pet. Br. at 4. This argument misunderstands the Act, the Rule, and the major questions doctrine.

The Act directs EPA to protect public health and welfare by addressing emissions of dangerous air pollutants, including through emission standards for motor vehicles that drive technological innovation while accounting for feasibility, lead time, and cost of compliance. 42 U.S.C. § 7521(a). The Rule is the most recent step in EPA’s decades-long effort to deliver on this mandate, setting light-duty emission standards that will achieve substantial environmental, health, and consumer benefits through accelerated deployment of technologies that are already gaining market share; the major questions doctrine has no application where a federal agency action rests fully within express congressional authorization and follows a longstanding regulatory approach.

In addition, the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022 demonstrate Congress’ intent to accelerate zero-emission vehicle sales and use, through funding for electric vehicle infrastructure investment and market development; continuing support for technology-based EPA

rulemaking that advances the Nation's air quality, environmental, and public health goals; and endorsement of EPA's authority to issue standards that contemplate compliance through vehicle electrification. These provisions contradict Petitioners' assertion that Congress is in mere "factfinding" mode on its support for the transition to zero-emission vehicles and refute Petitioners' claim that EPA lacks authority to predicate emission standards on the emission reduction potential of electrified vehicles. Petitioners' position would deny the Nation's air quality regulator its congressionally provided authority to further those goals through reasonable regulations.

ARGUMENT

I. THE RULE FALLS SQUARELY WITHIN EPA'S CORE STATUTORY AUTHORITY TO ISSUE TECHNOLOGY-BASED EMISSIONS STANDARDS FOR MOTOR VEHICLES

EPA adopted the Rule as a “step to reduce the impacts of climate change on public health and welfare ... [and] achieve reductions in emissions of some criteria pollutants and air toxics that will achieve benefits for public health and welfare.” 86 Fed. Reg. at 74,493. As EPA wrote, “the purpose of adopting standards under [Section 202(a)] is to address air pollution that may reasonably be anticipated to endanger public health and welfare ... [r]educing air pollution” is “the appropriate, central consideration” of the section. *Id.* at 74,436-74,437. The Rule addresses this consideration through targets that anticipate a “modest” and “feasible” increase, “consistent with current trends and market forces,” in the use of technologies “that are already in use in today’s vehicles.” *Id.* at 74,484-74,485. Section 202’s mandate to address air pollution from motor vehicles is explicit, and the Rule falls squarely within it.

A. Section 202 Creates Broad Regulatory Authority over Motor Vehicle Emissions

Section 202 is the cornerstone of the Act’s federal air pollution reduction program for motor vehicles, constituting the sole federal motor vehicle emission standard provision. Congress designed Section 202 as a comprehensive provision to grant EPA explicit, broad authority to “protect and enhance the quality of the

Nation’s air resources” in the face of “mounting dangers to the public health and welfare” that has been “brought about” in major part by “the increasing use of motor vehicles.” 42 U.S.C. §§ 7401(a)(2), (b)(1).

Within this framework, Congress issued a straightforward directive to EPA to address motor vehicle air pollution that the Administrator has found to endanger public health or welfare: “The Administrator shall by regulation prescribe ... standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines.” 42 U.S.C. § 7521(a)(1). Section 202 does not specify a particular type of emissions control device or strategy that EPA must employ to address vehicle emissions—it refers simply to “standards” applicable to “new motor vehicles or new motor vehicle engines ... whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.” *Id.* “Motor vehicle” is defined to include “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2). And a provision protecting against other public health or safety risks anticipates that manufacturers could comply with motor vehicle standards using means as varied as an “emission control device, system, or element of design.” 42 U.S.C. § 7521(a)(4)(A); *see generally* EPA Br. at 40-43.

Nothing in the section prescribes the types of technologies EPA may consider in designing standards, so long as they address emissions of air pollutants from

motor vehicles or motor vehicle engines. Indeed Congress, anticipating in the text that the standards would require “the development” of technology, 42 U.S.C. § 7521(a)(2), intentionally designed EPA’s authority to proactively advance technology:

The [Administrator] is expected to press for the development and application of improved technology rather than be limited by that which exists. In other words, standards should be a function of the degree of control required, not the degree of technology available today.

S. Rept. 91-1196 at 24. The only stated limitations on this broad authority are that regulations may take effect only after a period “the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance,” and they must not “cause or contribute to an unreasonable risk to public health, welfare, or safety.” 42 U.S.C. §§ 7521(a)(2), (a)(4). Congress was explicit in defining the considerations required of EPA in the Section 202 standard-setting process, directing EPA to consider “technological feasibility, compliance cost, and lead time,” 86 Fed. Reg. at 74,436—a standard the agency clearly met in the Rule’s robust analysis of these and other related factors.

B. The Rule’s Reasonable, Feasible Standards Accord with Section 202

Section 202’s instruction to EPA and explicit vesting of broad regulatory authority in the agency—bounded by the requirement that the Administrator provide

the time “necessary” for technology development and consider the cost of compliance—has sparked decades of agency rulemaking that has driven and built upon steady improvements to motor vehicle emissions while vehicle performance has generally improved. 2022 EPA Automotive Trends Report at 10-23, 25-28. The Rule, which builds on EPA standards that began in the mid-1970s and extend to the first greenhouse gas-focused rule in 2010, 75 Fed. Reg. 25,324 (May 7, 2010), is “best understood in the context of the decade-long ... program in which the auto industry has developed and introduced on an ongoing basis ever more effective [greenhouse gas]-reducing technologies.” 86 Fed. Reg. at 74,493. The Rule’s “modest” increase in already-occurring electric vehicle market penetration—which is “commensurate” with market projections based on recent trends and automaker announcements—continues a longstanding trend of feasible, accelerated technological development driven by Section 202. *Id.* at 74,438.

The Rule establishes greenhouse gas emission standards for motor vehicles that EPA states “can be met with gradually increasing sales of plug-in electric vehicles in the U.S.” which are “reasonable” based on current rapid growth in electric vehicle market share. *Id.* As EPA noted in the Rule, these standards are feasible since the anticipated compliance technologies “have gradually entered the

light-duty vehicle fleet over the past decade and [] are already in use in today's vehicles." *Id.* at 74,485.²

Petitioners claim that the Rule's likely effect of accelerating industry's electrification plans constitutes exercise of an "awesome power" "to make the internal-combustion engine go the way of the horse and carriage" and that "EPA has purported to discover in the Clean Air Act the authority to force manufacturers to cease making a particular type of energy altogether." Priv. Pet. Br. at 52 (internal quotation marks and citations omitted). As a factual matter, this is inaccurate—even with the Rule in place, EPA projects that 83 percent of new light-duty sales in model year 2026 would use internal-combustion engines. 86 Fed. Reg. at 74,484. More fundamentally, this argument grossly misunderstands the core goal of Section 202 and of the Act, which is to reduce emissions of air pollutants that harm public health and welfare—a goal the Rule faithfully pursues.

The Rule does not mandate a particular technology; it sets performance standards that "can be met" in "multiple ways" "given the wide range of technologies at reasonable cost." *Id.* at 74,497. Manufacturers have made ambitious voluntary commitments to increasingly zero-emission fleets, and they have identified

² Major manufacturers are committing to substantially or all-electric vehicle light-duty fleets in the coming decades. For example, in 2021, Ford announced that 40 percent of sales would be all-electric by 2030, while General Motors announced a plan to shift all light-duty vehicle manufacturing to zero-emissions by 2035. 86 Fed. Reg. at 74,486.

electrification as one of the most cost-effective technologies to achieve emission reduction goals. *See id.* at 74,486. The standards anticipate “continued adoption of advanced [internal combustion] technologies already existing in the market” and “moderate levels of electrification” as means of compliance. *Id.* at 74,492. They also will result in “net savings to consumers,” and “will achieve benefits for public health and welfare.” *Id.* at 74,493. It would subvert Congress’ intention, as expressed in the Act and as interpreted by courts and EPA for five decades, to preclude a standard with “a strong potential for dramatic reductions” of air pollution that builds on “the current momentum and direction of technological innovation in the automotive industry.” *Id.*

In Section 202, Congress explicitly directed EPA to set standards for motor vehicles that achieve the central statutory goal of reducing motor vehicle air pollution, while allowing for the time “necessary” for technology development including consideration of compliance costs; in the Rule, EPA precisely followed that direction by crafting standards that will substantially reduce emissions and can be achieved through feasible and cost-effective acceleration of existing market trends.

The Rule’s use of fleetwide averaging to achieve the Act’s goal of cost-effectively reducing emissions also falls well within EPA’s traditional approach and the Act’s plain text. *See generally* EPA Br. at 62-75. As Respondent EPA notes,

“EPA has consistently used fleet-average standards and averaging, banking, and trading provisions in multiple prior rules.” *Id.* at 63-64. This longstanding practice originates in Congress’ instruction to EPA to set standards for any “class or classes of new motor vehicles”—a clear reference to groups of vehicles—and its deliberate “decision not to specify the appropriate form of standards.” *Id.* at 63.

As Private Petitioners admit, Priv. Pet. Br. at 38, EPA’s fleetwide averaging dates to the 1980s, when the agency sought to encourage “greater flexibility ... so long as average emissions comply with standards,” 48 Fed. Reg. 33,456 (July 21, 1983), relying on its “broad authority to promulgate regulations covering manufacturers’ compliance with Section 202” and the fact that Congress “gave the agency wide discretion, within the certification framework, to design a compliance program.” *Id.* at 33,458. The practice continued through EPA’s use of an “averaging, banking, and trading” program in the 2000 “Tier 2” light-duty vehicle standards, which EPA credited with “reduc[ing] the cost and improv[ing] the technological feasibility” of compliance as well as “provid[ing] manufacturers with additional product planning flexibility.” 65 Fed. Reg. 6,698, 6,744 (February 10, 2000). When undertaking significant amendments to the Act in 1990, 2007, and 2022—with both *amici* in office in each case—Congress took no action to block the practice of averaging under Section 202. The Rule’s averaging provisions, far from “defying clear statutory text,” as Private Petitioners claim, Priv. Pet. Br. at 39, instead

continue a decades-long practice—which Congress authorized in 1970 and has accepted across multiple amendments—of providing manufacturers more compliance flexibility to advance the goals of the Act while “tailor[ing] standards for different pollutants and vehicle classes and model years to be as effective as possible.” EPA Br. at 65.

II. THE MAJOR QUESTIONS DOCTRINE IS NOT PROPERLY APPLIED HERE AND WOULD NOT INVALIDATE THE RULE EVEN IF APPLIED

Petitioners claim that the Rule should be set aside under the major questions doctrine because “Congress did not clearly authorize EPA’s approach.” Priv. Pet. Br. at 21-22. Petitioners’ argument misconstrues both the major questions doctrine and the Rule. Petitioners effectively ask this Court to invalidate Section 202’s explicit direction to EPA to promulgate motor vehicle emission standards that protect public health and welfare while accounting for feasibility and cost, and to institute an approach to “major questions” that would severely limit the ability of Congress itself to craft effective legislation.

A. Petitioners Misapply the Major Questions Doctrine to Section 202 Rulemaking and to the Rule

As articulated by the Supreme Court, the major questions doctrine applies when an agency action represents “a transformative expansion in [its] regulatory authority.” *West Virginia v. EPA*, 142 S. Ct. 2587, 2610 (2022) (citations and internal quotation marks omitted). According to the Court, the regulation at issue in

that case—greenhouse gas standards for existing power plants—“effected a fundamental revision of the statute, changing it from [one sort of] scheme of ... regulation” into an entirely different kind. *Id.* at 2612 (citations and internal quotation marks omitted). But Congress deliberately afforded EPA expansive, technology-based rulemaking authority when it crafted Section 202, and the Rule fundamentally fits the congressionally authorized scheme.

Whether an agency action constitutes a “transformative expansion” or a “fundamental revision” of its statutory authority depends in large part on the extent of Congress’ grant of that authority. In Section 202, the authority could not be clearer: EPA shall “by regulation prescribe ... standards applicable to the emission of any air pollutant from ... new motor vehicles or motor vehicle engines.” 42 U.S.C. § 7521(a)(1). Federal courts have long understood this authority to be technology-driving. *See NRDC v. EPA*, 655 F.2d 318, 328 (D.C. Cir. 1981) (“Congress intended the agency to project future advances in pollution control capability. It was expected to press for the development and application of improved technology rather than be limited by that which exists today”) (citations and internal quotation marks omitted); *see generally International Harvester v. Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973).

While Congress imbued this authority with a careful consideration of feasibility factors, including cost and timing, *see* 86 Fed. Reg. at 74,452, it did not

limit the type of emission reduction technologies EPA could consider in setting these standards. Doing so would have limited the statute's effectiveness under future circumstances and the agency's ability to "press for the development and application of improved technology." S. Rept. 91-1196 at 24. To the contrary, Congress demonstrated its intent that EPA have significant latitude in identifying and evaluating technologies, including technologies involving changes in system design, when it stated that the standards would apply "whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution." 42 U.S.C. § 7521(a)(1). Equally important is the fact that Congress defined "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway," 42 U.S.C. § 7550(2), with no reference to particular propulsion technologies.

Just as the Supreme Court has held that Section 202 is "unambiguous" in its coverage of greenhouse gases as air pollutants, *Massachusetts v. EPA*, 549 U.S. 497, 529, it is unambiguous that Congress designed Section 202 to give EPA the authority necessary to address air pollution from motor vehicles:

While the Congresses that drafted § 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete.

Id. at 532. This provision clearly focuses on achieving health- and welfare-protecting emission reductions from the covered sector via standards that feasibly can be met through technologies suited to the task: “standards should be a function of the degree of control required, not the degree of technology available today.” S. Rept. 91-1196 at 24. In Section 202, Congress created a comprehensive rulemaking authority for EPA to address motor vehicle emissions, demonstrating “clear congressional authorization” for EPA to set standards that advance the development and use of effective emission control technologies.

These technologies now unquestionably include powertrain electrification. The “rapidly growing shift ... toward high levels of electrification” across a range of automakers is a multi-year industry response to global market, policy, and technology developments that enables EPA to “take critical steps to continue the trajectory of transportation emission reductions needed to protect public health and welfare.” 86 Fed. Reg. at 74,486-74,487.

Far from being based on a “newfound power,” *West Virginia*, 142 S. Ct. at 2610, the Rule is part of a “decade-long light-duty vehicle [greenhouse gas] emission reduction program in which the auto industry has introduced a wide lineup of ever more fuel-efficient, [greenhouse gas]-reducing technologies that are already present in much of the fleet.” 86 Fed. Reg. at 74,438. EPA’s Section 202 rules have helped drive technological developments that have produced a nearly 60 percent decrease

in greenhouse gas emissions per mile across the U.S. light-duty vehicle fleet since 1975. 2022 EPA Automotive Trends Report at 6, 11. Petitioners’ interpretation of the major questions doctrine—effectively barring EPA from setting emissions standards that accelerate ongoing technological advances—would have negated much of this progress (as well as progress in limiting criteria pollutant emissions) over the past five decades. As EPA stated, the Rule “accurately reflect[s] the current momentum and direction of technological innovation in the automotive industry”—building on this legacy of iterative rulemaking based on technological improvements. 86 Fed. Reg. at 74,486.

While the *West Virginia* Court struggled to find “clear congressional authorization” for generation-shifting in Section 111’s reliance on a “best system of emission reduction,” Section 202’s clear instruction to “prescribe ... standards” applicable to “any class or classes of new motor vehicles or new motor vehicle engines ... whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution,” accounting for technological feasibility, with its 50-year track record of technology-advancing implementation, raises none of the issues that concerned the Court in *West Virginia*.

B. Petitioners’ Economic Claims Do Not Implicate the Major Questions Doctrine

In support of their assertion that the Rule violates the major questions doctrine, Private Petitioners point to EPA’s estimated direct compliance costs, the

supposed “transformation” of the vehicle market, and potential impacts to jobs. Priv. Pet. Br. at 24-28. Even if the major questions doctrine were properly applied in this case, these claims would offer nothing of merit. While Private Petitioners note that EPA estimates hundreds of billions of dollars in manufacturer costs over the next 28 years as a result of the Rule, 86 Fed. Reg. at 74,509, they ignore EPA’s estimated fuel-expenditure savings, non-emission, air quality, and climate benefits, which will exceed compliance costs by tens to hundreds of billions of dollars over the same period. *Id.* at 74,443, 74,510-74,511. They also omit the crucial contextual fact that U.S. manufacturers sell approximately 15 million new light-duty vehicles each year, 2022 EPA Automotive Trends Report at 8-9, meaning any Section 202 standard is mathematically likely to result in manufacturer costs in the billions of dollars over decades—and the fact that leading manufacturers have already announced zero-emission vehicle plans that would meet or exceed the Rule’s ambition.

In addition to mischaracterizing the economic significance of the shift to electric vehicles, Private Petitioners appear to confuse the Rule’s means with its ends. Private Petitioners claim that the Rule “effectively mandates that a decreasing percentage of the fleet be gasoline-powered, and an increasing percentage be electric,” making it “even more economically significant,” and that EPA is “using greenhouse-gas standards to require electric-vehicle penetration rates at whatever level EPA believes feasible,” Priv. Pet. Br. at 24-26. But the Rule does no such thing,

instead setting feasible greenhouse gas emission standards for which increased manufacturing of electric vehicles is one of the most feasible and cost-effective, but by no means the only, compliance option. As EPA noted, “[t]he standards are performance-based and do not mandate any specific technology for any manufacturer or any vehicles,” 86 Fed. Reg. at 74,484, and “a shift to zero-emission vehicle technologies is well underway” in the market, with an array of regulated manufacturers having publicly committed to zero-emission vehicle production goals that far exceed those of the Rule with target dates between 2025 and 2040. *Id.* at 74,486. Private Petitioners’ means-end confusion may explain their “major questions” confusion. The Rule hardly represents the “staggering” attempt to “‘substantially restructure’ the American vehicle market” that Private Petitioners argue raises a “major questions” issue. Priv. Pet. Br. at 24-25 (quoting *West Virginia*, 142 S. Ct. at 2610). It is a mechanism to reduce vehicle emissions through feasible, cost-effective, and commercially available technologies.

C. Petitioners’ Policy and Political Claims Do Not Implicate the Major Questions Doctrine

In addition, State Petitioners argue that the Rule falls outside EPA’s authority under a “major questions” analysis because “[n]othing in Section 202 permits EPA to take action with this drastic an impact on the electric grid.” State Pet. Br. at 20-21. According to State Petitioners, since “nothing in Clean Air Act section 202 even mentions the electric grid” and “Congress has separately expressed a national policy

in affirmatively *promoting* grid reliability,” EPA has no legal authority to issue regulations that would result in more vehicles reliant on the grid for power. *Id.* at 20-22 (emphasis in original). As Respondent EPA notes, however, “the record contains no evidence of that kind of impact” and “studies ... show that “sufficient excess capacity exists for the levels of fleet penetration anticipated in [the Rule].” EPA Br. at 57-58. And while a reliable supply of electricity is relevant to vehicle electrification, State Petitioners misidentify grid concerns as a “major question” for the purpose of motor vehicle emission standards.

State Petitioners frame the Rule as an “[a]gency action diminishing grid reliability” that “significantly alter[s] the balance between federal and state power,” State Pet. Br. at 17 (internal quotation marks and citation omitted), but the Rule does not do this. The Rule simply assesses the level of emission reduction that can be achieved at reasonable cost through the application of existing and increasingly mainstream technologies, including but not limited to electrification, while recognizing that manufacturers will determine their ultimate compliance pathway. As with all Section 202 rulemakings, the Rule focuses on vehicle manufacturing, not fuel supplies—one of many potential “broad effects” that “Congress contemplated” in the context of Section 202 regulation. EPA Br. at 57. And the fact that Congress has separately legislated to promote grid reliability—including by promoting vehicle-grid applications and research in the Inflation Reduction Act—demonstrates

that Congress is well aware of this germane but distinct issue, relevant to legislators' policy decisions but not a "major question" with respect to EPA's regulatory decisions under the Act.

Petitioners also argue that national security questions inherent in the supply chain for battery minerals have "major questions" implications for the Rule. *See* State Pet. Br. at 22-24, Priv. Pet. Br. at 29-31. As with Petitioners' grid claims, these claims are inflated and disregard EPA's well-supported findings in the record that address these potential concerns. *See* EPA Br. at 58-59. Moreover, reliance on international supply chains is so pervasive in modern commerce that practically any policy that assumes compliance through use of modern technologies would have "major questions" implications under this analysis. *See* EPA Br. at 57 ("Many (perhaps even most) regulations have indirect effects that ripple across the economy.... Were those effects enough, the major-questions doctrine would apply to *every* Section 7521 rule....") (emphasis in original). Forcing all regulatory initiatives through "major questions" analysis on the basis of such concerns could effectively prohibit EPA and fellow agencies from developing many of the regulations Congress has directed them to issue, dooming all efforts to an endless loop of second- and third-order implications within the jurisdiction of other agencies and subverting Congress' crucial ability to rely on expert agencies for highly technical policy development.

Finally, Private Petitioners argue that the Rule’s “political significance,” resulting from “earnest and profound debate” regarding vehicle electrification and “climate change more generally” and some States’ opposition to climate mitigation policies, causes it to fail a “major questions” analysis. Priv. Pet. Br. at 28 (internal quotation marks omitted). As evidence, Private Petitioners claim that “Congress has yet to reach an answer and remains in fact-finding mode as it considers the benefits and risks of electrification.” *Id.* at 29. This argument subordinates the clearly stated and enacted goal of the Act to an ongoing policy debate regarding one of the anticipated means of compliance with the Rule. It is also manifestly incorrect. Congress reached a definitive answer about air pollution from mobile sources over 50 years ago—and unambiguously empowered EPA to “promote the public health and welfare” through air quality protection programs including those created by Section 202. 42 U.S.C. § 7401(b)(1). And as *amici* have both experienced in their combined 60 years of service in Congress and respective Chairmanships of the Senate Environment and Public Works Committee and House Energy and Commerce Committee, even the most bedrock clean air and environmental protections are the subject of congressional debate and fact-finding. To deem ongoing debate and fact-finding a basis for courts to engage “major questions” scrutiny would severely hinder Congress’ ability to delegate legislative authority or legislate effectively at all.

Moreover, even if vehicle electrification were deemed to pose a politically significant “major question,” it is one that Congress has amply addressed in the Act, in other legislation, and most recently in the 2021 Infrastructure Investment and Jobs Act and the 2022 Inflation Reduction Act. These measures have long included federal tax credits for purchases of electric and fuel cell vehicles, P.L. 110-343, Div. B., § 205(a) (2008), 26 U.S.C. § 30D; and in the two most recent laws, they include billions of dollars for electric vehicle charging investments, expanded tax incentives for electric vehicles, and funding for States to adopt California’s greenhouse gas and zero-emission vehicle standards under Section 177 of the Act.

III. THE INFLATION REDUCTION ACT AND INFRASTRUCTURE INVESTMENT AND JOBS ACT DEMONSTRATE CONGRESSIONAL SUPPORT FOR THE RULE

Congress passed, and President Biden signed, the Infrastructure Investment and Jobs Act in November 2021 and the Inflation Reduction Act in August 2022. P.L. 117-58 (2021), P.L. 117-169 (2022). The Infrastructure Investment and Jobs Act includes multiple provisions that fund investments in the electric vehicle battery supply chain, charging infrastructure, and grid support. The Inflation Reduction Act includes a suite of investment and tax measures that promote clean energy in general and vehicle electrification in particular; it also includes the first wide-ranging amendments to the Clean Air Act in over 30 years. *Amici*, as Chairs of the Senate Environment and Public Works Committee and the House Energy and Commerce

Committee, were intimately involved in the drafting and negotiation of both bills. These recently enacted laws are a clear signal of Congress' intent to support vehicle electrification and robust EPA authority to accelerate it, and a clear rebuttal of Petitioners' claims that Congress has not demonstrated support for the transition to zero-emission vehicles.³

A. The Infrastructure Investment and Jobs Act and Inflation Reduction Act Demonstrate Congress' Support for Vehicle Electrification through Landmark Investments in Infrastructure and Incentives

The Infrastructure Investment and Jobs Act and the Inflation Reduction Act demonstrate Congress' clear intent to accelerate development of the electric vehicle market and support network. These provisions—signed the month before and nine months after EPA finalized the Rule, respectively—underscore Congress' intent for electrification to play an increasing role in the Nation's future vehicle fleet and refute Petitioners' major questions doctrine claims.

In the Infrastructure Investment and Jobs Act, Congress made unprecedented new investments in electric vehicle-related infrastructure. These landmark programs include \$5 billion under the Highway Infrastructure Program for States to deploy

³ Representative Pallone stated in contemporaneous floor remarks that:

The [Inflation Reduction Act] contains the most important and far-reaching amendments to the [Act] in more than a generation. EPA's responsibility to address GHG air pollution under the [Act] is longstanding and time tested. By passing the [Inflation Reduction Act], Congress underscores and reinforces that responsibility. 168 Cong. Reg. at E868 (Statement of Rep. Frank Pallone, Jr., August 12, 2022).

charging infrastructure (P.L. 117-58, Div. J. Tit. VIII), \$2.5 billion for publicly accessible advanced fueling infrastructure including electric vehicle charging (P.L. 117-58 § 11401), and an update of the existing Surface Transportation Block Grant Program to cover electric vehicle charging and vehicle-to-grid installations (P.L. 117-58 § 11109). The law also invests heavily in the domestic electric vehicle battery supply chain, allocating \$3 billion for battery material processing projects and \$3 billion for battery manufacturing and recycling projects (P.L. 117-58 § 40207). In addition, the law invests in grid resilience by updating the Smart Grid Investment Matching Program to cover projects that support the ability of the grid to meet increased demand from electric vehicles (P.L. 117-58 § 40107) and through a demonstration project for used vehicle batteries to provide grid services (P.L. 117-58 § 40112). And the law invests in agency coordination and data efforts such as a Joint Office to plan and implement vehicle charging initiatives across the Departments of Energy and Transportation (P.L. 117-58 Div. J Tit. VIII), an interagency working group to develop electric vehicle adoption and development recommendations (P.L. 117-58 § 25006), and reporting on electric vehicle-grid data and electric vehicle environmental impacts (P.L. 117-58 §§ 40414, 40435).

With the knowledge that EPA had already promulgated the Rule, Congress further built on these electric vehicle investments and programs in the Inflation Reduction Act. The law refines federal tax credits for electric vehicle purchases and

eliminates individual manufacturer caps that had previously rendered some of the most popular models ineligible (P.L. 117-169 § 13401), expands the tax credits to cover used vehicle purchases (P.L. 117-169 § 13402), creates a new tax credit for commercial vehicle purchases (P.L. 117-169 § 13403), and expands property tax credits for alternative fueling infrastructure including electric vehicle charging (P.L. 117-169 § 13404). It also provides \$3 billion to support domestic zero-emission vehicle manufacturing facilities (P.L. 117-169 § 50142), \$2 billion for grants to support domestic zero-emission vehicle production (P.L. 117-169 § 50143), and \$27 billion to fund state and local investments in greenhouse gas emission reduction activities including electric vehicles and infrastructure (P.L. 117-169 § 60103).

In short, the Infrastructure Investment and Jobs Act and the Inflation Reduction Act evince Congress' sustained ambition to expand the manufacture, sales, and use of electric vehicles in the United States. *Amici*, who played pivotal roles in developing the laws, attest that these investments are designed to shepherd resources across battery supply chains, charging infrastructure, the electric grid, consumer incentives, and research to enable levels of electric vehicle sales that anticipate and exceed what EPA projects under the Rule and help meet national climate goals. Far from "waving its wand over motor vehicles" in the Rule, Priv. Pet. Br. at 23, EPA took modest regulatory steps that complement Congress' otherwise comprehensive approach to deploying advanced clean vehicle technologies.

B. Congress Intended That the Inflation Reduction Act Reinforce EPA’s Regulatory Authority over Greenhouse Gas Emissions from Mobile Sources and Support Zero-Emission Vehicle Standards

In addition to incentives and tax credits designed to accelerate vehicle electrification, the Inflation Reduction Act also amends the Clean Air Act in ways that underscore EPA’s centrality in the Nation’s greenhouse gas emission reduction effort.⁴ These amendments provide funding for grant and rebate programs for zero-emission heavy-duty vehicles and port equipment (P.L. 117-169 §§ 60101, 60102; 42 U.S.C. §§ 7432, 7433) and new education, outreach, assessment, and regulatory development programs (P.L. 117-169 § 60107, 42 U.S.C. § 7435), among others. By incorporating these new programs into the Act’s existing air pollution control framework, Congress clearly demonstrated that clean energy and zero-emission vehicle programs are central to the Act’s implementation going forward. These amendments “rely upon existing provisions of the Act,” from rulemaking to enforcement authority, that will be “useful, and likely in some respects essential, for the implementation” of new investments and programs. Greg Dotson and Dustin J.

⁴ The law’s grant and incentive programs complement and support EPA’s regulatory authority. In contemporaneous floor remarks, Representative Pallone noted that new grant funds that “promote innovative technology to reduce [greenhouse gases]” are “consistent” with “Congress’ understanding that the existing [Act] authorities give EPA broad authority to promulgate innovative and impactful regulations.” 168 Cong. Reg. at E868 (Statement of Rep. Frank Pallone, Jr., August 12, 2022).

Maghamfar, “The Clean Air Act Amendments of 2022: Clean Air, Climate, and the Inflation Reduction Act,” 53 *Envtl. L. Rep.* 10017, 10022 (2023). They “confirm[] that reduction of [greenhouse gases] is a core goal of the [Act and] that the funding provided by the Inflation Reduction Act should allow EPA to increase the ambition of its [Act] rulemakings.” *Id.* at 10018.

Moreover, Congress appropriated funds for states to “adopt and implement greenhouse gas and zero-emission standards for mobile sources pursuant to section 177” of the Act. P.L. 117-169 § 60105(g). By funding such activities, Congress endorsed state adoption under the Act of standards that can accelerate electrification, “affirm[ing] EPA’s current and longest-standing legal interpretations of how the [Act] governs state and federal regulation of [greenhouse gas] emissions from mobile sources.” Dotson and Maghamfar, *supra*, at 10030; *Ex parte Endo*, 323 U.S. 283, 303 n.24 (1944) (Congress can ratify executive authority through appropriation if “the appropriation . . . plainly show[s] a purpose to bestow the precise authority which is claimed.”).

This section of the Inflation Reduction Act provides funding for states to enact “greenhouse gas and zero-emission standards” via the Act’s Section 209 and 177 process, whereby California and other qualifying states can adopt “standard[s] relating to the control of emissions from new motor vehicles or new motor vehicle engines” that are “at least as protective” as federal standards, subject to certain

statutory requirements. 42 U.S.C. §§ 7543, 7507. Congress’s explicit endorsement of states’ use of Section 177 to enact “greenhouse gas and zero-emission standards” clearly demonstrates its comfort with and support for state and federal standards that contemplate compliance through zero-emission vehicle manufacturing. *See generally* Dotson and Maghamfar, *supra*, at 10030-10032.

The context in which the new support for state adoption of greenhouse gas and zero-emission vehicle standards was enacted reinforces this conclusion. In April 2022, the California Air Resources Board proposed the Advanced Clean Cars II regulations, setting accelerated state greenhouse gas and zero-emission vehicle requirements for manufacturers through 2035. *See* ACC II Proposal. The Board issued final standards including the same requirements in July 2022 and formally approved them in August 2022, days after President Biden signed the Inflation Reduction Act. *See* CARB Resolution. These standards call for steady increases in zero-emission vehicle sales in California, including from 4.5 percent in 2018 to 35 percent in 2026. They are the most recent in a decades-long line of standards that California and a group of 16 other states, collectively representing over one-third of the U.S. vehicle market, have adopted under the Act. Congress’ express support of state adoption of “greenhouse gas and zero-emission standards” in this context demonstrates its endorsement of standards that contemplate compliance in part through zero-emission vehicles, including modest vehicle electrification. In

contemporaneous floor remarks, Representative Pallone emphasized “the transition to low- and zero-emission vehicles, including fuel-cell and battery-powered electric vehicles” as a key component of reducing greenhouse gas emissions and stated Congress’ expectation that “future EPA regulations will increasingly rely on and incentivize zero-emission vehicles as appropriate.” 168 Cong. Reg. at E880 (Statement of Rep. Frank Pallone, Jr., August 12, 2022). This expectation aligns with the Rule’s contemplation of zero-emission technologies, including electrification, as one means of compliance with emission standards. In the Inflation Reduction Act, Congress crafted “measures that necessarily depend upon and approve existing regulatory understandings that both EPA and California may control emissions of [greenhouse gases] and other pollutants by reliance on zero emissions technologies.” Dotson and Maghamfar, *supra*, at 10031. As with the Act itself, this endorsement demonstrates Congress’ commitment to improving air quality by advancing clean vehicle technologies.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is printed in 14-point font and contains 6,460 words exclusive of the certificate as to parties, rulings and related cases; Rule 29 statements; table of contents; table of authorities; glossary; signature lines; and certificates of compliance and service.

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, which served a copy of the document on all counsel of record in the case.

Dated: March 2, 2023

Respectfully submitted,

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