ARGUED SEPTEMBER 15, 2023
No. 22-1081 (and consolidated cases)

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

STATE OF OHIO, ET AL.,
Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY AND MICHAEL S. REGAN, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents,

ADVANCED ENERGY ECONOMY, ET AL.,
Intervenors.

On Petition for Review from the United States Environmental Protection Agency
(No. EPA-HQ-OAR-2021-0257)

PROPOSED SUPPLEMENTAL BRIEF FOR PRIVATE PETITIONERS

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GLOSSARY

ACC	Advanced Clean Cars
EPA	U.S. Environmental Protection Agency
ICE	Internal Combustion Engine
NHTSA	National Highway Traffic Safety Administration

INTRODUCTION AND SUMMARY OF ARGUMENT

At oral argument, counsel for the state and local government intervenors argued for the first time that private petitioners lack standing because automakers can no longer change their plans for any future years covered by California's preemption waiver. *See* Oral Arg. 1:10:54-1:11:50; *id.* at 1:09:14 ("There just isn't any time left."); *id.* at 1:10:56 ("[T]hey would need evidence that manufacturers are going to change their product lines and sell different vehicles in Model Year 2025, which starts as early as January 1st of next year."). That argument is not actually about standing, but mootness. It addresses not whether California's standards caused redressable injury at the time petitioners filed this suit, but whether it is possible for this Court to order effective relief now.

The argument is new. The intervenors argued in their brief that manufacturers had made plans in reliance on the waiver and on consumer demand. *See* State Resp. Br. 13-15. Intervenors' point was that private petitioners had not shown causation for purposes of Article III standing, because their injury could not be traced to EPA's decision to reinstate California's waiver. *See id.* at 13 ("Petitioners provide *no* evidence that the Restoration Decision is the cause of the allegedly injurious manufacturer

decisions about which vehicles to offer, much less that vacatur would change those decisions."); *id.* at 14-15 (same); *but see* Pet. Reply Br. 3-5 (explaining why California's standards injure fuel producers). Intervenors did not argue that manufacturers *could not* change plans, and thus that a decision from this Court withdrawing the waiver could not possibly provide any relief.

Intervenors' new argument fails. Intervenors "bear[] the burden to establish that a once-live case has become moot." *West Virginia* v. *EPA*, 142 S. Ct. 2587, 2607 (2022); *see Zukerman* v. *United States Postal Serv.*, 961 F.3d 431, 441 (D.C. Cir. 2020) ("[T]he party urging mootness . . . bears the heavy burden of establishing that the case is moot.") (internal quotation marks omitted). To meet that burden, intervenors must show that "it is *impossible* for [this Court] to grant any effectual relief." *United States* v. *Washington*, 142 S. Ct. 1976, 1983 (2022) (emphasis added) (internal quotation marks omitted). Here, there is no evidence in the record that the plans of all of the automakers who sell cars and trucks in use are irrevocably fixed through the end of Model Year 2025. To the contrary, as petitioners' declarants explain, manufacturers can change their production, distribution, and pricing plans well into a given model year. Manufacturers could and likely would do so were

the prevailing regulatory landscape to change. Accordingly, this case is not moot.

ARGUMENT

I. Petitioners Have Established Their Standing To Sue.

Although EPA has not contested private petitioners' Article III standing to challenge the waiver, petitioners have nonetheless established it. California's standards reduce the demand for petitioners' products by requiring manufacturers to sell vehicles that use less fuel or no fuel at all. *See Dep't of Commerce* v. *New York*, 139 S. Ct. 2551, 2566 (2019) (endorsing standing based "on the predictable effect of Government action on the decisions of third parties"); *Energy Future Coal.* v. *EPA*, 793 F.3d 141, 144 (D.C. Cir. 2015). California urged EPA to reinstate the waiver precisely so that it could target fuel consumption and thereby reduce emissions. *See*, *e.g.*, J.A. 197, 236, 267. It is implausible for California to now say that those standards actually have no real-world effect on liquid fuel use and thus have never caused so much as a "single dollar['s]" worth of injury to petitioners. *Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 801 (2021).

Intervenors' new argument appears to be that automobile manufacturers could not change their production, distribution, or pricing

plans through the end of Model Year 2025. That argument does not go to petitioners' standing, which is assessed as of the filing of this suit in May 2022. *Carney* v. *Adams*, 141 S. Ct. 493, 499 (2020). It would be incredible to claim that at that time—fewer than two months after EPA had reinstated California's waiver—every automaker had irrevocably committed to manufacturing and pricing decisions through the end of Model Year 2025, such that setting aside California's emissions standards would not make any real-world difference. Some automakers carefully say that they "have no *plans*" to change their commitments to electric vehicles, Industry Resp. Br. 12 (emphasis added), but they do not say that no automaker possibly could or would have changed its manufacturing or pricing decisions if California's waiver had been vacated in May 2022.

II. Intervenors' New Mootness Argument Fails.

A. Intervenors Have Failed To Carry Their Burden Of Establishing That This Case Is Moot.

At oral argument, intervenors appeared to endorse the notion that this Court cannot enter relief now that would possibly make any difference. *See, e.g.*, Oral Arg. 1:06:40-1:06:51 (arguing that petitioners have not shown "redressability" because "petitioners [have] provided no evidence about *current* market conditions") (emphasis added). It is "the doctrine of *mootness*,

not standing," that addresses whether the passage of time has "deprived the plaintiff of a personal stake in the outcome of a lawsuit." *West Virginia*, 142 S. Ct. at 2607 (quotation marks omitted). "The distinction matters" because it is *intervenors* who "bear[] the burden to establish that a once-live case has become moot." *Id.*

Intervenors have not carried that burden on this record. As a threshold matter, EPA has not established that California's standards will expire in Model Year 2025. In 2013, EPA approved California's waiver request "to enforce its ACC emission regulations," 78 Fed. Reg. 2,112, 2,145 (Jan. 9, 2013), and at that time the ACC regulations covered Model Years 2015 to 2025 "*and subsequent*." R-7 (2012 ACC Waiver Request) at 22, https://www.regulations.gov/document/EPA-HQ-OAR-2012-0562-0004 (emphasis added). Last fall, after this lawsuit was filed, California amended its ACC I zero-emission-vehicle mandate to run only through Model Year 2025. *See* CARB Final Regulation Order, Amendments to Section 1962.2, Title 13, California Code of Regulations, https://bit.ly/3ILFKOM. But California has not amended its ACC I greenhouse-gas standards; they still apply to Model Years "2025 *and subsequent*." Cal. Code Regs. Tit. 13, § 1961.3(a)(1)(A) (emphasis added). If California's current waiver covers years "subsequent" to 2025, thereby setting

separate greenhouse-gas emissions standards, intervenors' new argument fails out of the gate.*

Even assuming California's waiver only runs through Model Year 2025, this record does not establish that automakers cannot or would not make changes during that period. As the panel explored at argument, a commenter on EPA's proposed rule stated that automakers generally plan their fleet compositions years in advance. J.A. 477. But the question is not whether automakers generally plan in advance (which, like most businesses, they assuredly do); it is whether those plans are so inflexible that vacating California's waiver could not possibly make any difference for any automaker. On that issue, intervenors have not pointed to any evidence that automobile manufacturers have irrevocably committed to a fleet composition and pricing in California through the end of Model Year 2025. If anything, Toyota's statement in its July 2021 comment letter that "some manufacturers may have already begun production of 2022 model year vehicles," J.A. 477, indicates that

* While the reinstatement at times frames the decision as covering Model Years 2015 through 2025, EPA has historically required California to seek a new waiver only when it wished to impose new, more stringent standards and deeming smaller changes to existing standards to be "within the scope" of the prior waiver. *See* 78 Fed. Reg. at 2,118-2,119 (describing EPA's historical practice).

production often occurs less than a year in advance and thus that as of now automakers have not irrevocably committed to a fleet composition through Model Year 2025.

In intervenors' expert declaration, there is a single sentence asserting that automakers' "pricing decisions for" Model Years 2024 and 2025 have "likely" been made. State and Local Br. Add. 96. The speculation that all pricing decisions are likely already set through the end of 2025—more than two years from now—is wrong. *See infra*, pp. 9-10. But again, the relevant question is whether intervenors have established that those pricing decisions cannot be affected by vacating California's waiver. Intervenors have not submitted any evidence on that. Moreover, even if it were true that pricing decisions have been made for future model years, pricing is distinct from automakers' production and distribution of vehicles. Intervenors' expert says nothing about production. At bottom, to carry their burden, intervenors must show that a decision from this Court could not affect pricing, production, or distribution. They have not established any of that, and this case is therefore not moot.

B. Petitioners' Declarants Establish That This Case Is Not Moot.

In any event, intervenors' mootness argument is wrong. Petitioners' two supplemental declarants have over 70 combined years of experience in the vehicle-emissions compliance space. They agree that if California's emission standards were eliminated, "automobile manufacturers could and likely would change their production, pricing, and/or distribution plans for Model Year 2025 as late as December 2025, but at a minimum well into 2025." Kreucher Decl. ¶ 5; *see* Modlin Decl. ¶ 5 (similar). Automakers have made such adjustments "in the past in response to changing market or regulatory conditions." Modlin Decl. ¶ 5. The withdrawal of California's waiver "would likely result in more ICE vehicle or mild or strong hybrid vehicle sales in California and/or other Section 177 states," which would result in "increased consumer demand for liquid fuels in those States." Kreucher Decl. ¶ 9; *see* Modlin Decl. ¶ 9. It is therefore not "impossible for [this] court to grant any effectual relief whatever" to petitioners. *Zukerman*, 961 F.3d at 442 (internal quotation marks omitted).

First, automakers can and do change their production decisions well into a given model year, and it is certainly not too late today to influence production decisions for Model Year 2025. That is because automobile manufacturers

"discuss and amend their fleet production mix continually throughout the year." Kreucher Decl. ¶ 6. Walter Kreucher managed Ford's compliance with NHTSA's fuel-economy standards and California's fuel-quality standards for decades, and he explains that if California's greenhouse-gas and zero-emission-vehicle standards were eliminated or altered during Model Year 2025, automakers could "increase their production of internal combustion engine (ICE) vehicles, or strong and mild hybrid vehicles for Model Year 2025 up until the last month of the model year's production, which often runs through the summer of the subject year," and "can even be extended through December." Kreucher Decl. ¶ 6. Petitioners' other declarant, Reginald Modlin served as the Director of Regulatory Affairs at Chrysler from 1998 to 2015, including overseeing Chrysler's compliance with NHTSA's fuel-economy standards, EPA's federal tailpipe-emission standards, and California's Advanced Clean Cars I program at issue here. Mr. Modlin agrees that automakers could change their production decisions in response to the Court's decision. *See* Modlin Decl. ¶¶ 2, 6.

Second, automakers' pricing determinations are subject to change throughout a given model year. Abundant real-world evidence bears out that common-sense proposition. *See, e.g.*, Shivani Tanna & Shubham Kalia, *Tesla*

Raises U.S. Prices For All Its Vehicles Except Model 3, Reuters (May 12, 2023), http://www.reuters.com/business/autos-transportation/teslaraisesprices-all-vehicles-except-model-3-us-2023-05-12 (explaining that Tesla had "slashed prices" six times in the United States since January). Both Mr. Kreucher and Mr. Modlin explain that pricing "is updated on a continuous basis and price changes can be made up until the end of the applicable calendar year." Modlin Decl. ¶ 7; *see* Kreucher Decl. ¶ 7 (similar). Thus, if California's greenhouse-gas or zero-emission-vehicle standards were eliminated or altered, automobile manufacturers could quickly change prices in response. For example, manufacturers could "lower the price of ICE vehicles in oversupply in California or Section 177 States" or "raise prices on electric vehicles to reflect the true cost of manufacturing those vehicles," because they would no longer be subject to California's 22% zero emission vehicle mandate. Modlin Decl. ¶ 7; *see* Kreucher Decl. ¶ 7.

Third, in terms of distribution, automobile manufacturers can and have allocated portions of their fleets dynamically and could respond immediately to changes in emission standards. *See, e.g.*, Vince Bond, *Stellantis Stops Stocking Gasoline Vehicles In 14 States*, Automotive News (June 16, 2023), https://www.autonews.com/sales/stellantis-limits-gasoline-vehicles-dealers-14-

states (describing automaker's decision not to allocate "gasoline-only Wranglers" to a dealership in Pennsylvania, a state that has adopted California's standards through Section 177, "following emissions guidelines set by [California] that exceed national standards"). Mr. Kreucher and Mr. Modlin attest that if California's vehicle-emission standards were eliminated or altered, automobile manufacturers could immediately "re-route ICE vehicles or hybrid vehicles to California and Section 177 States, depending on market demand and without having to take into account California's 22% zero emission vehicle mandate." Kreucher Decl. ¶ 8; *see* Modlin Decl. ¶ 8.

Although intervenors and EPA have argued that increasing market demand for electric vehicles would disincentivize manufacturers from changing their production, pricing, and distribution plans for electric, ICE, or hybrid vehicles even absent California's standards, that is not so. Again, they have not put forth sufficient evidence as to future market demand for electric vehicles. *See supra*, pp. 3-4. Nor does real-world evidence indicate that a swift increase in electric-vehicle consumption is inevitable. *See* Paul Linert & Joseph White, *Analysis: Tesla's Rivals Scrap for Thin Slices of U.S. EV Sales*, Reuters (Sept. 27, 2023), https://www.reuters.com/business/autos-

transportation/teslas-rivals-scrap-thin-slices-us-ev-sales-2023-09-27/ ("Ford's decision to pause work on a $3.5 billion electric vehicle battery plant … comes as some analysts question whether the U.S. EV market will grow fast enough to support all the new battery and assembly operations launched or under construction.").

Finally, "market demand varies by manufacturer, meaning that even if demand for electric vehicles is higher than 22% as a whole in California, it likely will not be at that level for every single manufacturer." Modlin Decl. ¶ 8; *see* Kreucher Decl. ¶ 8. Indeed, "the overall electric vehicle market data is skewed due to all-electric manufacturers, such as Tesla, that dominate the electric vehicle market." Kreucher Decl. ¶ 9. Intervenors' vague gesturing at general market trends in California in no way establishes that every automobile manufacturer is irrevocably committed to keeping steady or increasing the respective sales of electric, ICE, and hybrid vehicles in California and the Section 177 States.

C. Even If Intervenors Had Demonstrated That Automakers Cannot Adjust Their Behavior, An Exception To Mootness Would Apply.

Even if intervenors had shown that automakers cannot change their production, distribution, or pricing plans, the case would still be live because

it would qualify for an exception to the mootness doctrine. Petitioners immediately petitioned for review following EPA's waiver reinstatement. If the Court were to find that the challenge is nonetheless moot, then the complained-of error here is capable of repetition but evading review. *United Bhd. of Carpenters & Joiners of Am., AFL-CIO* v. *Operative Plasterers' & Cement Mason' Int'l Ass'n of U.S. & Canada, AFL-CIO*, 721 F.3d 678, 687 (D.C. Cir. 2013) (internal quotation marks omitted). So long as EPA grants a waiver for only a few Model Years at a time, petitioners will never be able to obtain review. To be sure, EPA sometimes grants waivers of longer duration, but even those waivers are often subject to a mid-term review or other event that effectively shortens the waiver period. If petitioners' challenge is moot, the waiver grant process may be "incapable of surviving long enough to undergo Supreme Court review." *Id.* at 688.

CONCLUSION

For the foregoing reasons, the Court should reject intervenors' mootness argument.

SEPTEMBER 29, 2023

Respectfully submitted,

s/ Jeffrey B. Wall

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume requirements of Federal Rule of Appellate Procedure 32(a) because it contains 2,566 words.

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

s/ Jeffrey B. Wall
JEFFREY B. WALL

SEPTEMBER 29, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of September, 2023, I electronically filed the foregoing brief with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I certify that service will be accomplished by the CM/ECF system for all participants in this case who are registered CM/ECF users.

s/ Jeffrey B. Wall
JEFFREY B. WALL

SEPTEMBER 29, 2023

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

State of Ohio, *et al.*, *Petitioners*, v. U.S. Environmental Protection Agency, *et al.*, *Respondents*.	Case No. 22-1081

DECLARATION OF WALTER KREUCHER

I, Walter Kreucher, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I have more than thirty years of experience overseeing vehicle regulatory and legislative issues in the automobile industry, including issues related to fuel economy, fuel quality, compliance, and alternative fuels.

2. I began working for Ford in 1973 and helped Ford create its first Preliminary Corporate Average Fuel Economy Compliance program in the mid-1970s. Eventually, I took over as vehicle energy planning manager at Ford Motor Company in Dearborn, Michigan. In that capacity, I managed compliance with NHTSA's Corporate Average Fuel Economy (CAFE) standards and negotiated CAFE regulatory and legislative matters with the federal government. I also monitored Ford's vehicle certification testing and helped develop Ford's CAFE reporting procedures. Furthermore, I provided technical support on all fuel economy and fuel

quality matters for Ford, including serving as lead negotiator for fuel economy, fuel quality, and other related standards issued by California and the federal government.

3. Since leaving Ford in 2004, I have served as an outside consultant on automobile regulatory matters, including for NHTSA, for the Department of Transportation's John A. Volpe National Transportation Systems Center (Volpe Center), which builds, maintains, and runs NHTSA's CAFE modeling program, for the Environmental Defense Fund, and for Ford. I have also done some pro-bono work on the CAFE program for the Government Accountability Office.

4. I understand that in this case, at least one party has argued that rescinding EPA's Clean Air Act preemption waiver for California's Advanced Clean Cars I program and thereby eliminating California's greenhouse gas (GHG) and zero emission vehicle (ZEV) standards will not influence current automobile manufacturer behavior because it is too late for manufacturers to change their production, pricing, and distribution plans for Model Year 2025.

5. This is incorrect. Based on my experience in the automotive industry and in particular my decades of compliance work for Ford and on compliance-related work for federal agencies, including NHTSA and the Volpe Center, automakers can, and often do, adapt their plans for a particular model year well into a given model year. Based on my experience, if California's vehicle GHG emission and ZEV standards were to be eliminated or made less stringent, automobile manufacturers could and likely would change their production, pricing, and/or distribution plans for Model Year 2025 as late as December 2025, but at a minimum well into 2025. Indeed,

they have done so in the past to take advantage of a model year's less stringent vehicle emission standards before subjecting themselves to more stringent standards applicable to subsequent model years.

6. First, with regard to production decisions, automobile manufacturers discuss and amend their fleet production mix continually throughout a model year, adjusting to real world consumer demand and sales as opposed to sales forecasts. Automobile manufacturers could therefore change their fleet composition for Model Year 2025 throughout 2025. For example, if California's GHG emission and ZEV standards were eliminated or altered during Model Year 2025, automobile manufacturers could decrease electric vehicle production or move some of their electric vehicle production for Model Year 2025 to a subsequent year. They could also increase their production of internal combustion engine (ICE) vehicles or strong and mild hybrid vehicles for Model Year 2025 up until the last month of the model year's production, which often runs through the summer of the subject year—and again, can even be extended through December.

7. Second, pricing decisions in the automobile industry are made dynamically, and price changes can be made until the end of a given calendar year—*e.g.*, the end of 2025 for Model Year 2025. For example, toward the end of a model year, manufacturers may raise prices on certain vehicles in low supply. If California's GHG emission and ZEV standards were eliminated or altered, automobile manufacturers could quickly change prices in response. To adjust for the fact that they would no longer be subject to California's 22% zero emission vehicle mandate,

automobile manufacturers could provide additional incentives to purchase ICE vehicles in California or Section 177 States by lowering the prices for those vehicles, or they could raise prices on electric vehicles to reflect the true cost of manufacturing those vehicles.

8. Third, because most automobiles are now "50 state certified" under federal and California vehicle emission standards, automobile manufacturers can also change their distribution plans throughout the applicable calendar year. If California's GHG emission and ZEV standards were eliminated or altered, automobile manufactures could re-route ICE vehicles or hybrid vehicles to California and Section 177 States, depending on market demand and without having to take into account California's 22% zero emission vehicle mandate. Notably, market demand varies by manufacturer, meaning that even if demand for electric vehicles is higher than 22% as a whole in California, it likely will not be at that level for every single manufacturer. The overall electric vehicle market data is skewed due to all-electric manufacturers, such as Tesla, that dominate the electric vehicle market.

9. Any one of the foregoing changes would likely result in more ICE vehicle or mild or strong hybrid vehicle sales in California and/or other Section 177 states, thereby resulting in increased consumer demand for liquid fuels in those States.

10. In general, it is easier for automobile manufacturers to immediately adapt their plans in response to the relaxing of vehicle emission standards, as opposed to when standards are made more stringent, which requires more lead time.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28 day of September, 2023
Oakland County, Michigan

Walter Kreucher

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

State of Ohio, *et al.*, *Petitioners,* v. U.S. Environmental Protection Agency, *et al.*, *Respondents.*	Case No. 22-1081

DECLARATION OF REGINALD MODLIN

I, Reginald Modlin, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I have over forty years of experience in the automobile industry. From 1972 through 2015 I served in various roles at FCA NA (Chrysler) Corporation. From 1992 to 1998 in my role as a manager for vehicle environmental affairs I directed design and development of automobiles at Chrysler, focusing on the requirements of established emissions and fuel economy regulations. I also worked with national and state regulatory agencies on developing and understanding their emissions and fuel economy requirements.

2. From 1998 to 2015 I served as the Director of Regulatory Affairs at Chrysler. In that capacity, I ensured the compliance of Chrysler's North American products with all applicable environmental and safety regulations, including NHTSA's Corporate Average Fuel Economy (CAFE) standards, EPA's federal tailpipe emission standards, and California's Advanced Clean Cars I (ACC I) program. I also worked with national, state, and local legislatures and agencies in developing legislation and regulations regarding transportation emissions, fuel economy and safety performance, including participating in the evolution of California's vehicle emission regulations such as ACC I.

3. During the course of my career I also actively engaged in numerous private and public partnerships aimed at the identification and pursuit of alternative fuel options for automobile manufacturer compliance and innovation, such as the California Fuel Cell Partnership (formed by the California Air Resources Board, the South Coast Air Quality Management District, and the California Energy Commission), the Michigan Governor's Alternative 4 Fuel Advisory Council (under then-Governor Jennifer Granholm), the United States Council for Automotive Research, the Future Fuels Coalition, 25 X 25, , and other regional and state organizations.

4. I understand that in this case, at least one party has argued that rescinding EPA's Clean Air Act preemption waiver for California's ACC I

program and thereby eliminating California's greenhouse gas (GHG) and zero emission vehicle (ZEV) standards will not influence current automobile manufacturer behavior because it is too late for manufacturers to change their production, pricing, and distribution plans for Model Year 2025.

5. Based on my experience in the automobile industry and in particular my over forty years of experience at Chrysler and working with automobile trade groups, automakers can and often do adapt their production plans for a particular model year well into the corresponding calendar year. Based on my experience, if California's vehicle GHG emission and ZEV standards were to be eliminated or made less stringent, automobile manufacturers could and at least some likely would change their production, pricing, and/or distribution plans for Model Year 2025 as late as December 2025, but at a minimum well into 2025. They have done so in the past in response to changing market and/or regulatory compliance conditions.

6. First, with regard to production decisions, automobile manufacturers do make automobile production plans years in advance, but those plans are adjustable. If California's vehicle GHG emission and ZEV standards were eliminated or altered during Model Year 2025, automobile manufacturers could adjust the production volumes of electric, internal combustion engine (ICE), or strong and mild hybrid vehicles to reflect market

demand as opposed to government mandates. Automobile manufacturers could increase their production of internal combustion engine (ICE) vehicles, or strong and mild hybrid vehicles for Model Year 2025 up until the last month of the model year's production, which often runs through the summer of the subject year, but could run through December 31, 2025.

7. Second, pricing in the automobile industry is updated on a continuous basis and price changes can be made up until the end of the applicable calendar year—*e.g.*, the end of 2025 for Model Year 2025. For example, toward the end of a model year, manufacturers may lower prices on certain vehicles in over supply. Accordingly, if California's GHG emission and ZEV standards were eliminated or altered, automobile manufactures could quickly change prices in response. To adjust for the fact that they would no longer be subject to California's 22% zero emission vehicle mandate, automobile manufacturers could lower the price of ICE vehicles in oversupply in California or Section 177 States thereby increasing demand, or they could raise prices on electric vehicles to reflect the true cost of manufacturing those vehicles.

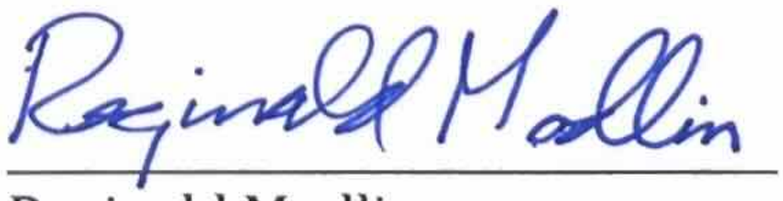
8. Third, automobile manufacturers can also change—and historically have changed—their distribution plans across the country throughout the applicable calendar year. Distribution plans can be changed so

long as re-routed automobiles are "50 state certified," which many automobiles are. If California's GHG emission and ZEV standards were eliminated or altered, automobile manufactures could re-route ICE vehicles or hybrid vehicles to California and Section 177 States, depending on market demand and without having to take into account California's 22% zero emission vehicle mandate. Notably, market demand varies by manufacturer, meaning that even if demand for electric vehicles is higher than 22% as a whole in California, it likely will not be at that level for every single manufacturer.

9. Any one of the foregoing changes would likely result in more ICE vehicle or mild or strong hybrid vehicle sales in California and/or other Section 177 states, thereby resulting in increased consumer demand for liquid fuels in those States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of September, 2023
Riverside County, California



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