

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

AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS,

Petitioner,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,

Respondent.

Case No. 22-1145

PETITIONER'S NONBINDING STATEMENT OF ISSUES

Pursuant to this Court's order of July 1, 2022, petitioner American Fuel & Petrochemical Manufacturers (AFPM) submits this Nonbinding Statement of Issues in the consolidated cases challenging the final action of the National Highway Traffic Safety Administration (NHTSA) entitled Corporate Average Fuel Economy Standards for Model Years 2024–2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25710 (May 2, 2022).

The issues presented are (1) whether NHTSA exceeded its statutory authority under the Energy Policy and Conservation Act (EPCA) and acted arbitrarily and capriciously by considering the fuel economy of electric vehicles (EVs) in setting corporate average fuel economy standards, despite the express statutory prohibition on such

consideration, *see* 49 U.S.C. § 32902(h)(1), despite the fact that EPCA preempts state EV mandates, *see id.* § 32919(a), and despite the fact that NHTSA lacks clear authority from Congress to make changes carrying vast political and economic significance; (2) whether NHTSA's promotion of EVs conflicts with and frustrates the purpose of the Renewable Fuel Standard, 42 U.S.C. § 7545(o); and (3) whether NHTSA violated the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

Dated: August 1, 2022

Respectfully submitted,

/s/ Eric D. McArthur

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on August 1, 2022, which will send notice of such filing to all registered CM/ECF users.

/s/ Eric D. McArthur
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