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United States Senate

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LILA HELMS, MAJORITY STAFF DIRECTOR
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May 1, 2023

Ms. Ann Carlson
Acting Administrator / Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Ms. Carlson:

Following California's extreme push to ban gas-powered vehicles, the Environmental Protection Agency (EPA) recently proposed emissions standards for new vehicles that are so stringent they effectively mandate automakers produce electric vehicles (EV) even if Americans do not want them. The EPA projects these standards would result in two-thirds of all new passenger car and light truck sales being EVs by 2032, even though EVs account for just six percent of new vehicle sales today.¹ Based on your record, we are deeply concerned that the National Highway Traffic Safety Administration (NHTSA) will follow the EPA's lead and propose similarly radical vehicle fuel economy standards that run contrary to the law, diminish vehicle choice, impose higher costs on American families, and undermine our national and energy security all while benefitting China. As NHTSA finalizes a proposal for new fuel economy standards for model years 2027 to 2032, we urge you to reject the EPA's economically destructive regulatory overreach.

There is nothing in federal law that authorizes NHTSA to set fuel economy standards that effectively mandate the production of EVs in order to force gas-powered vehicles out of existence. Such an EV mandate would appear to violate the Supreme Court's major questions doctrine as articulated in *West Virginia v. EPA* because using fuel economy standards to force automakers to electrify vehicles would have "vast economic and political significance" and thus require "clear congressional authorization."² NHTSA not only lacks such "clear congressional authorization," it is specifically prohibited by federal law from considering the fuel economy of EVs when setting fuel-economy standards.³ Yet that is precisely what NHTSA did last year

¹ The EPA projects that nearly half of new large pickup truck and van sales would be EVs under the rule.

² *West Virginia v. EPA*, 142 S. Ct. 2587, 2605, 2609 (2022).

³ 49 U.S.C. § 32902(h)(1) states that NHTSA "may not consider the fuel economy of dedicated automobiles" in setting fuel economy standards. A "'dedicated automobile' means an automobile that operates only on alternative fuel." 49 U.S.C. § 32901(a)(8). "[E]lectricity" is one "alternative fuel" the law lists. 49 U.S.C. § 32901(a)(1)(J).

when setting 2024-26 fuel economy standards and would do so again if it follows the EPA's lead.

Your work at NHTSA and past career suggest NHTSA intends to mimic the EPA's draconian EV mandate. According to the White House, while serving as NHTSA's chief counsel, you "oversaw the issuance"⁴ last year of NHTSA's controversial 2024-26 fuel economy standards.⁵ That rulemaking led West Virginia, Montana, and multiple other states to allege in a lawsuit that NHTSA exceeded its statutory authority in issuing those standards by impermissibly taking into consideration EVs. As chief counsel, you had a responsibility to ensure that NHTSA's proposed regulations complied with the law. However, you instead took actions that were consistent with your long career as an environmentalist without traffic safety experience. In fact, as you told colleagues, the Biden administration recruited you to join NHTSA explicitly to advance its "whole of government" climate change agenda.⁶

A de facto EV mandate from NHTSA would not only be contrary to law, it would limit consumers' vehicle choices and impose higher costs on American families at a time of crushing inflation. In March 2023, the average price of an EV was \$61,800, which is about \$16,200 more than the average price for vehicles with internal combustion engines. EVs come with other significant costs that make them less appealing to consumers, including higher insurance costs, lengthy charging times, limited and often broken charging stations, and shorter driving ranges than gas-powered vehicles. As automakers are forced to produce more EVs, the supply of affordable new and used gas-powered vehicles will shrink at a time when demand for them is likely to increase. The result will be higher prices for gas-powered vehicles, placing a substantial burden on middle class and lower income Americans.

National and energy security will also suffer if NHTSA uses fuel economy standards to effectively impose an ever-expanding EV mandate on automakers. The United States is heavily dependent on China for many of the minerals and other materials needed to produce EV batteries. Forcing increased production of EVs would undermine national security by making us more reliant on China for these materials at a time when the Chinese Communist Party is increasingly hostile to the United States. Moreover, an EV mandate would undermine our energy security by significantly increasing the consumption of electricity. This rise in electricity

⁴ The White House, President Biden Announces Key Nominees, Feb. 13, 2023, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/13/president-biden-announces-key-nominees-37/>.

⁵ Corporate Average Fuel Economy Standards for Model Years 2024-2026 Passenger Cars and Light Trucks, 87 Fed. Reg. 25710 (proposed May 2, 2022).

⁶ In an email to your colleagues at UCLA about your appointment as NHTSA's chief counsel, you stated: "The agency is in charge of climate standards for cars and trucks, which is why they have recruited me for the position." Government Accountability & Oversight, A.Carlson-Emails-Batch-2-21-8746.pdf, p. 5, available at <https://govoversight.org/wp-content/uploads/2023/03/A.Carlson-Emails-Batch-2-21-8746.pdf>. In a separate email to board members of UCLA's Emmett Institute on Climate Change & the Environment, where you served as faculty director, you stated: "I view my appointment (and a number of others) as evidence that the Biden Administration is truly committed to a 'whole of government' approach to addressing climate change." *Id.* at p. 516.

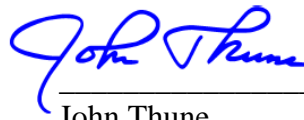
consumption will put an added strain on the country's already vulnerable power grid. The last thing Americans need is a less reliable power grid that results in more rolling blackouts and outages, especially in the summer heat and winter cold.

We strongly urge NHTSA to reject the EPA's attempt at central planning and not proceed with a wholesale remake of the auto sector. NHTSA must not write radical regulations that are contrary to the law, harmful to American families, and undermine our national and energy security while benefitting China.

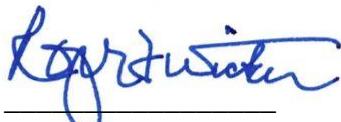
Sincerely,



Ted Cruz
United States Senator



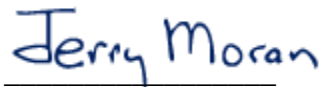
John Thune
United States Senator



Roger F. Wicker
United States Senator



Deb Fischer
United States Senator



Jerry Moran
United States Senator



Dan Sullivan
United States Senator



Marsha Blackburn
United States Senator



Todd Young
United States Senator



Ted Budd
United States Senator



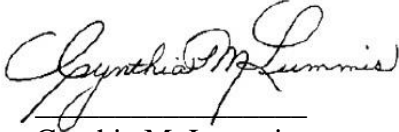
Eric Schmitt
United States Senator



JD Vance
United States Senator



Shelley Moore Capito
United States Senator



Cynthia M. Lummis
United States Senator