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RE: Illinois Corn Grower Association Comments on Case # R2024-017, Proposed Clean Car and Truck Standards: Proposed Section 35 Ill. Admin. Code 242

The Illinois Corn Growers Association (IL Corn) appreciates the opportunity to submit these comments in response to the Illinois Pollution Control Board's (Board's) consideration of the proposal by several Environmental Groups (Proponents) that the Board adopt California's Advanced Clean Cars II (ACC II), Advanced Clean Trucks (ACT), and Heavy-Duty Low NO_x Omnibus (Omnibus) Rules, starting in approximately model year 2029.[1]

IL Corn represents the interests of the over 50,000 family corn farmers from every county in Illinois. Agriculture, and corn specifically, is essential for the food security and economic prosperity of Illinois residents. Ninety-six percent of IL corn farms are family owned, and those families support approximately 1.9 million jobs in the agricultural industry across the state, generating 1 out of every 10 dollars in Illinois. The economic success of corn production is inextricably linked with the success of rural Illinois communities, many of which are teetering on the brink of collapse from decades of disinvestment. These rural communities face existential challenges, including high transportation costs, population loss, and lack of access to affordable housing and broadband.

[1] At the time of the proposal, the Proponents claimed that the rules "could be enforced beginning in 2027, which is vehicle model year (MY 2028)." Doc. 110497, at 11 (Proposal). Now, however, the earliest the Rules could be adopted and enforced in Illinois under the Clean Air Act is model year 2029, which begins as early as January 2, 2028. 40 C.F.R. §§ 85.2302–04; *see* 42 U.S.C. § 7507(2) (states must adopt California standards "at least two years before commencement of [the] model year").

Adopting California's Rules would add to those challenges by dramatically increasing the cost and complexity of transportation. ACC II would ban sales of new gasoline- and diesel-powered passenger cars and light trucks in under a decade. Cal. Code Regs. tit. 13, § 1962.4(c)(1)(B). ACT would dramatically curtail sales of new gasoline- and diesel-powered trucks over the same impractical timeframe. *Id.* § 1963.1(b). And the Omnibus Rule would set tailpipe emissions standards for medium- and heavy-duty engines below what is practically achievable for manufacturers, effectively eliminating internal-combustion engines and significantly increasing costs for rural Illinoisans. *Id.* § 1956.8.

IL Corn has serious concerns about the sprawling impact that adopting California's Rules would have both on farmers and on the economic viability of rural Illinois, as a whole. Rules that effectively ban new gas and diesel cars and trucks risk leaving rural Illinoisans behind, since electric vehicles don't meet the needs of rural life. The comparatively more expensive electric cars and trucks the Rules require simply can't currently support the long distances regularly travelled in rural areas of the state—which lack the necessary charging infrastructure—or the varied demands of farm life—which require medium- and heavy-duty vehicles for specialty tasks. And the Rules' ambitious deadlines do not account for how long it will take for electric vehicle technology to adapt to rural needs or for sufficient infrastructure to be implemented.

Increasing transportation costs for rural families will have knock-on effects for all Illinoisans—increasing the costs of everyday goods, like dogfood and diapers, and industrial goods, like tools and machines—that are not justified by the small and uncertain benefits the Rules promise. And adopting California's Rules without a plan for how rural communities can meet their standards will only usher in a further hollowing-out of small-town Illinois.

IL Corn also has concerns about the uncertainty these Rules will create. California has already promised truck manufacturers it will amend the Omnibus Rule, but has yet to provide updated regulatory text; the continuing validity of the Rules' waivers under the federal Clean Air Act is in question; and ACC II and ACT are likely preempted by other federal law, making them vulnerable to legal challenge and likely unenforceable by the State. Given their enormous cost, their small and uncertain benefit, and the regulatory uncertainty, adopting California's Rules now would be entirely "unreasonable." *See Wells Mfg. Co. v. Pollution Control Bd.*, 73 Ill.2d 226, 234–35 (1978) (Board's rulemaking functions subject to "arbitrary, unreasonable, or capricious standard of review").

IL Corn has been part of the solution to lowering transportation-related greenhouse gas emissions across the United States since the creation of the Renewable Fuel Standard in 2005. Indeed, roughly 30% of corn grown in Illinois goes into ethanol production, lowering the carbon intensity of all sorts of vehicle emissions. While IL Corn believes in the need to reduce carbon emissions—and works hard to achieve that goal by advocating for climate-smart agricultural practices and other conservation measures that impact emissions and other environmental indicators—we believe solutions must bring along rural communities, not leave them behind.

We urge the Board to reject the proposal and chart a better course for Illinois, one that benefits all Illinoisans—including its rural communities.

I. Whether To Phase Out Internal-Combustion Vehicles Should Be Left To Elected Representatives

Adopting ACC II, ACT, and the Omnibus Rule would transform rural life in Illinois, where gasoline- and diesel-powered vehicles are the lifeblood of personal and commercial transport. A decision to implement change this sweeping—which will ultimately affect every Illinois resident, and particularly rural Illinoisans—more properly belongs to the Illinois General Assembly, not the Board.

The California Rules require a radical change in how Illinois residents travel. In 2024, around 7.8% of new passenger car sales in Illinois were plug-in electric vehicles.[2] ACC II would require that to jump to 59% by model year 2029, the first year the mandate could be enforced in the State. Cal. Code Regs. tit. 13, § 1962.4(c)(1)(B). That's an approximately seven-and-a-half-fold increase in sales and would require sustained year-over-year growth of nearly 50% for the next five years. Such growth would be unprecedented—and likely unfeasible. Nationwide, year-over-year growth in electric car market share has decreased every year since at least 2020, and reached *zero* in Illinois last year—that is, the share of new electric cars purchased in Illinois didn't increase at all from 2023 to 2024.[3] Keeping up with ACC II's proportional targets will thus require manufacturers to significantly curtail new gasoline car sales in Illinois, meaning those rural residents for whom electric cars aren't a viable option will have to hold onto their old gasoline cars longer. That would

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[2] All. for Auto. Innovation, *Get Connected Electric Vehicle Quarterly Report, Fourth Quarter, 2024* 9 (Mar. 26, 2025), https://perma.cc/3Z7M-DVZM (light duty electric vehicle sales of 7.76% for 2024 in Illinois).

[3] All. for Auto. Innovation, *Get Connected Electric Vehicle Quarterly Report, Fourth Quarter, 2024* 2 (national year-over-year growth); *id.* at 11 (change in light-duty electric vehicle market share from 2023 to 2024 in Illinois was 0.0%).

drive-up costs in the used car market and leave older, more-polluting older cars on Illinois roads longer—undermining the emissions reductions that IL Corn supports and that ACC II purports to aim to achieve.

California's Rules also require a wholesale transformation of the Illinois heavy-duty vehicle sector—including the trucks that move more than $1 trillion in freight through the State annually.[4] According one estimate, there were virtually no electric heavy-duty vehicle sales in Illinois in 2023.[5] But ACT would require that 25% of sales of new Class 2b-3 trucks and 40% of sales of new Class 4-8 trucks—including 25% of new Class 7-8 trucks—be plug-in electric (or offset by other electric vehicle sales) in model year 2029. Cal. Code Regs. tit. 13, § 1963.1(b). IL Corn is concerned that to meet these targets, manufacturers will have to curtail sales of diesel engines, as they have in other states. And electric trucks simply are not a viable option for many rural Illinoisans: as described below, they cost much more to purchase, they have limited range and payload, and Illinois as a whole—and rural Illinois, in particular—doesn't have a robust infrastructure for charging them.

The Omnibus Rule exacerbates the problems caused by ACT. The Omnibus Rule requires that the decreasing share of gasoline- and diesel-powered trucks that can be purchased under ACT meet nitrogen oxide (NO_x) emissions standards that aren't commercially practicable. Indeed, California has already had to rework the Omnibus Rule, allowing manufacturers to sell diesel-powered vehicles that don't meet the standards if manufacturers commit to selling additional electric vehicles in the future. *See id.* § 1956.8(a)(2)(C)(3).[6] But even with these flexibilities, the Omnibus Rule has "contributed to product shortages and rationing, resulting in market disruption and uncertainty."[7] Only a handful of Omnibus-compliant Class 8 engine models have been announced, and California dealers are rationing sales of even non-

[4] TRIP, *America's Rolling Warehouses: Opportunities and Challenges on the Nation's Freight Delivery System* 4 (Dec. 2023), https://perma.cc/3WV5-XULQ (value of truck-carried freight in 2022).

[5] Spencer Burget, Atlas Pub. Pol'y, *Illinois Medium- and Heavy-Duty Vehicle Electrification, Market Overview and Policy Landscape* 7 (Oct. 17, 2023), https://perma.cc/M5EL-7PDW.

[6] *See* CARB, *Clean Air Act § 209(b) Waiver Request Support Document* 4–6 (July 8, 2024), https://perma.cc/TGV6-4N3W (explaining 2023 amendments to ACT extending compliance flexibilities for legacy engines).

[7] Am. Truck Dealers, Press Release, *ATD Releases Statement on Issuance of CARB Omnibus NOx Waiver* (Dec. 20, 2024), https://perma.cc/GJ5S-MFNT.

compliant engines because they can't sell enough electric vehicles to offset them.[8] Illinois could face the same fate, or worse, given the minimal market demand for electric trucks in the state thus far.

A change of the magnitude that California's Rules would usher in—one which would touch every Illinois resident and radically change the way they move and work—should be in the hands of the People's elected representatives: the Illinois General Assembly. "[A]ll the legislative power inherent in the people of the state of Illinois has been vested in the General Assembly." *People ex rel. Thomson v. Barnett*, 344 Ill. 62, 66 (1931). "[I]t alone has the power … [and] the duty" to legislate—a "power it may not delegate to any other officers or persons or groups of persons." *Id.* Regardless of whether the Board has the legal authority to adopt the Rules unilaterally, we believe doing so would be imprudent. Such a major policy shift should be enacted, if at all, by the individuals Illinoisans elected to represent them.

II. California's Rules Will Harm Illinois Families And Businesses

Illinois families and business, especially those in rural communities, will bear the cost of California's Rules, and that cost could be enormous.

ACC II would make travel more expensive, not only for rural Illinoisans, but for Illinoisans of all stripes, because electric cars are more expensive to purchase than gasoline-powered cars. According to recent data, battery-electric cars cost, on average, 42% more to purchase than comparable gasoline-powered cars.[9] The delta is even higher for popular compact SUVs, where battery-electric vehicles command an approximately 58.5% premium.[10] Unfortunately, this isn't likely to improve anytime soon. The perennial predictions that electric cars will become more affordable as sales volumes increase simply haven't borne out: over "the past three years, despite increasing [electric vehicle] sales, the price gap between electric and gas cars has remained fairly stable."[11] Moreover, it's not only buyers of *electric* cars that wind up paying the price. Because the cost of manufacturing electric cars is more than consumers are willing to pay, automakers cross-subsidize their sales of electric cars

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[8] Lucas Deal, *California Dealers Struggle To Withstand CARB Sales Regulations, Offer Warning To Opt-in States*, Trucks, Parts, Serv. (updated Mar. 11, 2025), https://perma.cc/VL6H-8LGF.

[9] John O'Dell, *Big Gap Remains in Average Price of Electric Car vs. Gas Car*, Edmunds (May 8, 2024), https://archive.ph/uAQbq.

[10] *Id.*

[11] *Id.*

(mandated by government programs like ACC II) by increasing the price of gasoline-powered cars to make up for the losses.[12] The retail price of electric cars is therefore misleading low, even if still higher than the price of gasoline cars. Data from Ford's electric-vehicle unit, for example, shows that the company lost over $52,000 for each electric vehicle sold last year.[13]

Electric cars also cost more to insure,[14] and a growing body of evidence indicates that electric car owners are unlikely to save on maintenance costs, either, since, at present, electric cars tend to have more problems than gasoline-powered cars[15] and cost more (and take longer) to repair.[16]

Illinois businesses that rely on trucks that are subject to ACT and Omnibus, including Illinois family farms, face even starker increases in up-front costs to go electric. An electric tractor trailer can cost two to four times that of a new diesel truck—a difference of hundreds of thousands of dollars for a single truck.[17] Recent changes in federal policy mean that those deltas may no longer be cushioned by

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[12] Isaac Orr, *Electric Vehicle Costs Fall, But They're Still Unprofitable*, Ctr. of the Am. Experiment (June 10, 2020), https://perma.cc/6YNK-A7GC.

[13] Robert Bryce, *Ford Loses Another $5.1B On EVs*, Substack (Feb. 8, 2025), https://archive.ph/F2lPX.

[14] *Electric Vehicle Insurance Rates*, Nat'l Ass'n of Ins. Comm'rs (last updated Feb. 27, 2024), https://perma.cc/JY7D-XWXX ("On average, EVs cost up to $44 more to insure per month than gas-powered vehicles").

[15] Keith Barry, *EVs Are Getting More Reliable, but They Still Lag Behind Hybrids and Gas-Only Cars*, Consumer Reps. (updated Dec. 5, 2024), https://perma.cc/968E-9F8U ("On average, EVs from the past three model years have had 42 percent more problems than gas-only cars").

[16] *Will Electric Vehicle Regulations Continue to Force Change?*, CCC Intelligent Sols. (July 11, 2023), https://perma.cc/8WPP-KLJD, figs. 8, 15 (in 2022, the average total cost of repairs for electric cars was $6,587 and the average time to repair was 57.6 days, compared to $4,215 and 45 days for non-electric cars).

[17] *See* Hoyu Chong & Edward Rightor, Info. Tech. & Innovation Found., *Closing the Trucking Gaps: Priorities for the Department of Energy's RD&D Portfolio* 12 (June 2023), https://perma.cc/773E-VVDR (diesel tractor day cab costs around $90,000, while comparable battery-electric truck costs around $230,000); Am. Transp. Rsch. Inst., *Understanding the CO2 Impacts of Zero-Emission Trucks* 13 (May 2022), https://perma.cc/G7CG-VY5Z (Class 8 diesel tractor costs roughly $135,000 to $150,000, while comparable battery-electric truck costs as much as $450,000).

federal tax credits.[18] And studies show that higher electric truck costs—coupled with the additional labor costs associated with operating them—are likely to ripple through the supply chain, increasing the total cost to transport goods of all types. For example, transportation and logistics company Ryder concluded that, for both small and large trucks, and on both coasts, the total cost of transporting goods is higher using electric transport.[19] Ryder concluded that using an electric Class 6 truck (short and medium hauls of 100 to 230 miles) would increase the total cost to transport goods 22% compared to using an internal-combustion truck in California, and 28% in Georgia.[20] Using electric Class 8 semi-trucks for long hauls would increase transport costs an astonishing 94% in California and 114% in Georgia.[21] As a result, Ryder estimated that going all-electric could increase overall inflation by 0.5% to 1%.[22]

But the costs of purchasing and operating electric vehicles are not the only reason their sales have recently stalled in the state.[23] Although satisfactory for some applications, electric vehicles simply don't perform as well as gasoline- and diesel-powered vehicles for other uses. This includes many tasks rural Illinois residents and farmers have to perform on a daily basis, like long-distance travel and heavy farmwork. Electric vehicles have a shorter range than gasoline- and diesel-powered vehicles, and so cannot travel as far before stopping to refuel.[24] Charging an electric vehicle battery also takes much longer than filling a gas tank, adding inconvenience and delaying arrival. And unlike liquid-fueled vehicles, electric vehicle ranges depend

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[18] *See, e.g.*, ELITE Vehicles Act, S. 541, 119th Cong. (introduced Feb. 12, 2025), https://www.congress.gov/bill/119th-congress/senate-bill/541 (repealing the qualified commercial clean vehicle credit under IRC 45W).

[19] Ryder, *Charged Logistics: The Cost of Electric Vehicle Conversion for U.S. Commercial Fleets* 9 (May 2024), https://perma.cc/S3KQ-9AGL.

[20] *Id.* at 5.

[21] *Id.* at 6.

[22] *Id.* at 8–9.

[23] *See supra*, note 3.

[24] *FOTW #1221, January 17, 2022: Model Year 2021 All-Electric Vehicles Had a Median Driving Range about 60% That of Gasoline Powered Vehicles*, Vehicle Techs. Off., U.S. Dep't of Energy (Jan. 17, 2022), https://perma.cc/FL6W-C3RM (median electric car range of 234 miles compared to median gasoline-powered car range of 403 miles); *FOTW #1375, December 30, 2024: Median EV Range in Model Year 2024 Reached a Record High of 283 Miles per Charge*, Vehicle Techs. Off., U.S. Dep't of Energy (Dec. 30, 2024), https://perma.cc/T3HM-ES89 (median electric car range had risen only to 283 miles by 2024).

on the weather—with high and low temperatures decreasing range by up to 40%[25]—which is problematic in a state like Illinois, where the temperature can vary by over 90°F throughout the year.[26] Not only do batteries drain faster in the cold, charging times are prolonged, which can leave electric cars stranded in dire conditions, as some Chicago-area Tesla drivers learned last year.[27] Moreover, the large, heavy lithium-ion batteries of electric trucks limit the maximum payload, and electric truck range can be dramatically reduced when towing.[28] Although electric vehicles can work great for short, daily commutes or for urban deliveries, they just aren't yet appropriate for cross-state trips on I-57 or I-74, rural delivery routes, or the heavy farm work that are part of daily life for many rural Illinois families and businesses.

Unfortunately, the Rules are also unlikely to bring the economic benefits to Illinois that Proponents speculate. Indeed, Proponents' projections have already been undercut by events that have transpired since the proposal was submitted. For example, Proponents cited the opening of "the largest all-electric, commercial medium- and heavy-duty vehicle factory in America" in Joliet, IL by Lion Electric in 2023" and Stellantis's plans to "reopen[] its Belvidere, IL factory with a focus on EV production."[29] But since the proposal was submitted, Lion entered bankruptcy and suspended all production in Joliet,[30] and Stellantis announced it would produce midsize pickup trucks in Belvidere and indefinitely delay opening a lithium-ion

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[25] AAA, *AAA Electric Vehicle Range Testing* 3–4, 51–52 (Feb. 2019), https://perma.cc/76AM-BLMN.

[26] *Climate of Illinois*, Ill. State Climatologist, https://perma.cc/4Z6D-KDTC (visited Mar. 12, 2025).

[27] Steffanie Dupree, *Tesla Owners Run Into Battery Charging Trouble In Chicago's Bitter Cold*, CBS News (Jan. 19, 2024), https://perma.cc/J6UT-BB5V ("Tesla batteries died in Chicago's sub-zero temperatures, leaving the cars askew and immobile in the parking lot" of a charging station; at least ten cars were towed).

[28] Dave VanderWerp, *Tested: How Towing Affects Electric Pickups—Hummer EV, Rivian R1T, and Ford F-150 Lightning*, Car & Driver (Aug. 18, 2022), https://archive.ph/LdTqk ("The range for all three trucks when towing was less than half as far as when cruising lightly loaded at 75 mph"); Alex Knizek, *How Well Can An Electric Pickup Truck Tow?*, Consumer Reps. (Apr. 21, 2023), https://perma.cc/PKC6-DNMN.

[29] Proposal at 12.

[30] Ryan Gray, *Updated: Lion Electric Suspends Manufacturing Operations at Joliet Plant*, Sch. Transp. News (Dec. 5, 2024), https://perma.cc/ZYW3-BDDS.

battery facility there.[31] Given the fast-moving commercial landscape, the significant capital expense of switching to electric vehicle production, the waning growth in electric vehicle market share, and the industry's heavy dependence on ephemeral government subsidies, predictions of economic gain in Illinois from the rules are, regrettably, simply unreliable. Nor is Proponents' consultant's analysis more reasonable. It assumes "that all incremental spending on [electric vehicle] batteries and electric drivetrain components would be in the United States, with no imported content."[32] But, as the consultant admits, "many components used in electric [vehicles]—most notably batteries, but also many electric drivetrain components—are manufactured outside the United States." *Id.*

Proponents argue that the ACT and Omnibus Rule standards "are plainly achievable," because the requirements "phase-in gradually and contain numerous compliance flexibilities."[33] But under the federal Clean Air Act, Illinois can't adopt or enforce the Rules' standards until model year 2029, meaning there is virtually no phase-in in the state. And as California has seen, even with "compliance flexibilities," ACT and the Omnibus Rule have disrupted supply chains and caused vehicle shortages, with manufacturers struggling to comply.[34] Compliance is likely to be more difficult in Illinois, since some of those Rules' "flexibilities" are California-specific and therefore not available in Illinois.[35]

Unfortunately, purchasing electric cars and trucks that meet their needs isn't the only challenge rural Illinoisans face from the proposal: Illinois, in general—and rural Illinois, in particular—simply doesn't have the electric vehicle charging

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[31] Jeff Kolkey, *Here's What We Know About The New Truck That Will Be Built In Belvidere*, Rockford Reg. Star (Jan. 23, 2025), https://perma.cc/QDH5-ZLDA; Eric Walz, *Stellantis Reverses Plans, Will Reopen Belvidere Assembly Plant*, Auto. Dive (Jan. 23, 2025), https://perma.cc/FF5S-MWDS.

[32] Proposal at 92.

[33] Proposal at 14.

[34] Am. Truck Dealers, *supra* note 7 ("California's aggressive emissions standards for heavy-duty diesel engines have contributed to product shortages and rationing, resulting in market disruption and uncertainty"); Eric Miller, *CARB Rules Seen As Hindrance To Obtaining New Diesel Vehicles*, Transp. Topics (Nov. 14, 2024), https://perma.cc/3AGF-7B5Y ("Both the Advanced Clean Trucks and low NOx Omnibus regulations are severely limiting the availability of new trucks in California and California opt-in states.").

[35] Cal. Code Regs. tit. 13, § 1956.8(a)(2)(C)(3)(b)(iii)(3) (allowing manufacturers to offset sales of legacy engines under the Omnibus Rule by performing "projects targeted at *California* disadvantaged communities" (emphasis added)).

infrastructure needed to support the wholesale transportation transformation that California's Rules require. Proponents estimate that ACC II will require nearly 680,000 Level 2 home chargers and well over 2,000 public DC fast chargers in Illinois by 2035, at cost of more than $1.5 billion in public and private spending.[36] ACT requires an additional nearly 8,000 depot chargers and more than 300 high power (500 kW) public DC fast chargers in the same timeframe, costing another $220 million.[37] That represents a massive—and almost certainly unrealistic—expansion of current infrastructure.

This is especially true for electric truck charging. According to the Charging Station Locator maintained by the Department of Energy, at present, there are zero public DC fast charging stations that provide 500 kW and are accessible to medium- or heavy-duty vehicles.[38] Even considering lower power levels (and so much longer charging times), there are only four stations in the state that can provide lower power to these larger vehicles—and then, only to medium-duty Class 3 through 6 trucks.[39]

There are zero public charging options—of any power—in Illinois for larger Class 7 through 8 trucks.[40] Indeed, there are only eight stations in the entire United States that can accommodate these largest vehicles—and only two outside California[41]—despite the "significant investments in recent years in light- medium- and heavy-duty charging infrastructure by the federal government, state of Illinois, and regulated utilities" that Proponents cite.[42] With further federal funding in doubt, it is unrealistic to expect that Illinois will be able to expand its heavy-duty vehicle

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[36] Proposal at 150 (ACC II Full beginning with MY 2029).

[37] Proposal at 139 (ACT Rule beginning with MY 2029).

[38] *Electric Vehicle Charging Station Locations*, Alt. Fuels Data Ctr., U.S. Dep't of Energy, https://perma.cc/UK3L-AP7U (medium-duty vehicles) (last visited Apr. 17, 2025); *Electric Vehicle Charging Station Locations*, Alt. Fuels Data Ctr., U.S. Dep't of Energy, https://perma.cc/2CDY-HARL (heavy-duty vehicles) (last visited Apr. 17, 2025).

[39] *Electric Vehicle Charging Station Locations*, Alt. Fuels Data Ctr., U.S. Dep't of Energy, https://perma.cc/8VS2-8QHG (last visited Apr. 1, 2025).

[40] *Electric Vehicle Charging Station Locations*, Alt. Fuels Data Ctr., U.S. Dep't of Energy, https://perma.cc/5LZ3-WPWU (last visited Apr. 10, 2025).

[41] *Electric Vehicle Charging Station Locations*, Alt. Fuels Data Ctr., U.S. Dep't of Energy, https://perma.cc/5LZ3-WPWU (last visited Apr. 17, 2025).

[42] Proposal at 19–20.

charging network at a rate necessary to support the electric truck penetration required by California's Rules.

In sum, California's Rules will impose significant costs on all Illinois families and businesses. Rural Illinois communities would be among the hardest hit, since electric vehicles don't yet meet their range and performance needs and rural Illinois doesn't yet have the charging infrastructure necessary to support electric transport. Given the minimal and uncertain benefit from California's Rules (as explained next), adopting those Rules under these circumstances would be unreasonable.

III. California's Rules Won't Help The Climate Or Local Air Quality

IL Corn is also concerned that, despite their promise, California's Rules are unlikely to have any discernible effect on the global climate or on Illinois air quality. There is thus no rational reason for the Board to adopt them.

A. Proponents Inflate The Rules' Emissions Impact

As an initial matter, Proponents exaggerate the potential effect of California's Rules by referring to unrealistic scenarios that do not reflect how the Rules' will actually be implemented.[43] Throughout the Proposal, Proponents cite projected emissions reductions that would occur if (1) the Rules were adopted beginning with model year 2028, (2) Illinois decarbonizes its grid ahead of schedule and "reaches 100 percent clean generation by 2040," and (3) manufacturers choose to forego use of flexibilities built-in to the Rules and instead fully meet the Rules' electric vehicle targets.[44] None of these assumptions are reasonable.

First, as explained above, the earliest that the Rules could apply in Illinois is model year 2029.[45] Estimates relying on model year 2028 enforcement are thus inappropriate.

Second, Illinois will not have a carbon-free grid by 2040. As of 2023, just over half (54.89%) of Illinois' electric power was generated by nuclear sources; about one third

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[43] For example, Proponents claim that adopting ACC II in Illinois will "avoid up to 180 million metric tons of cumulative GHG emissions by 2050", Proposal at 35, which is the consultants' estimate were ACC II effective starting in model year 2028, Illinois achieves a carbon-free grid ahead of schedule in 2040, and manufacturers forego legal compliance flexibilities, *id.* at 145 (ACC II Full + Clean Grid scenario).

[44] Proposal at 35 n.143 (Proposal "reports results for the ACC II Full + Clean Grid scenario"); *id.* at 107 (explaining the "ACC II Full + Clean Grid" scenario); *id.* at 78 (explaining the "100 x 40 ZEV + Clean Grid" scenario).

[45] *See supra* note 1.

(31.58%) was generated by fossil fuels; and the remaining approximately one sixth (13.53%) was generated by renewable sources, primarily wind.[46] This is only a small change from the grid mix decades earlier: in 1990, 55.56% of Illinois' power was nuclear, 44.21% was from fossil fuels, and 0.23% was from renewable sources.[47] Thus, in the 33 years since 1990, Illinois has increased renewable energy capacity to account for about 13% of the statewide total. But achieving a carbon-free grid by 2040 would require Illinois to build enough renewable capacity to increase that share by more than twice that amount in less than half the time.[48] There is no realistic path for Illinois to do so, especially as electricity demands skyrocket from the proliferation of data centers and other electricity-hungry industries.

The Illinois General Assembly acknowledged as much when it enacted what has been called "one of the nation's most ambitious climate laws."[49] In 2021, the Assembly passed and Governor Pritzker signed into law the Climate and Equitable Jobs Act, which, among other things, made it a goal of the state to "transition to 100% clean energy by *2050*"—ten years later than Proponents' assume.[50] And Illinois is already falling behind its targets, in part because of a drop-off in wind projects, which form the bulk of Illinois' renewable sources.[51] Indeed, "Illinois has a long history of setting ambitious climate goals—only to miss them by wide margins."[52] Proponents' assumption that Illinois will achieve a carbon-free grid even earlier than the state's own goal is thus unreasonable.

Third, it is unreasonable to assume that manufacturers will not take advantage of legal flexibilities built into the Rules, especially when electric vehicle uptake in Illinois significantly lags the Rules' requirements.[53] Indeed, the flexibilities are an

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[46] *Electricity Generation Mix*, Ill. Clean Energy Dashboard, Illinois.gov, https://perma.cc/562A-VCHW (last visited Apr. 17, 2025).

[47] *Id.*

[48] Reasonably assuming that Illinois does not increase nuclear power generation.

[49] Nara Schoenberg, *Illinois Passed An Ambitious Climate Act 3 Years Ago. But It's Struggling To Meet Clean Energy Goals*, Chi. Trib. (Oct. 20, 2024), https://perma.cc/293N-CH5A.

[50] 20 ILCS 3855/1-5(1.5) (emphasis added).

[51] Juanpablo Ramirez-Franco, *The Odds Are Illinois Won't Hit Its 2030 Climate Goals*, Grist (Feb. 7, 2025), https://perma.cc/Q8W9-JRED.

[52] Schoenberg, *supra* note 4949.

[53] *See supra* Part I.

implicit acknowledgement by California regulators that the Rules' electric vehicle penetration targets are unachievable, even in California. At present, Illinois has only a fraction of the electric vehicles that California has. Manufacturers selling cars and trucks in Illinois will thus have no choice but to rely heavily on those flexibilities for compliance. Proponents have provided no reason why rational manufacturers would, in the face of an unfavorable market and high compliance costs, over-comply by foregoing these flexibilities.

Accordingly, where we reference Proponents' projections in this Comment, we cite estimates for the scenario in which the Rules are effective in Illinois starting in model year 2029, a business-as-usual Illinois grid is assumed, and manufacturers make reasonable use of compliance flexibilities.[54] As explained below, these estimates are also flawed, but are nonetheless more reasonable than those Proponents cite in the proposal.

B. Proponents Do Not Account for Lifecycle Emissions

Proponents also overstate the effects of the Rules by undercounting the greenhouse gas impact of electric vehicles. Most notably, they ignore manufacturing-related emissions, which are substantially more for electric cars and trucks than for their gasoline- and diesel-powered counterparts, and understate upstream emissions due to electricity generation.[55] When considered on a lifecycle basis, other transportation technologies—notably high-octane ethanol containing fuels made from the corn grown right here in Illinois—can have an even greater impact on reducing greenhouse gas emissions at a far lower cost.[56]

California labels battery-electric cars and trucks as "zero" emission vehicles, but battery-electric vehicles generate emissions in several ways other than through a tailpipe. Significant emissions are associated with the mining, production, and disposal of the batteries and associated minerals that power the vehicle. Producing a

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[54] *See* Proposal Ex. 3 (ACT Update) and Ex. 4 (ACC II Update).

[55] *See* ERM, Clean Trucks Analysis Technical Report—Methodologies & Assumptions 5 (June 2021), https://perma.cc/S6T9-NDPD ("Climate and air quality impacts … include both tailpipe emissions and 'upstream' emissions from production of the transportation fuels used in each scenario," including "petroleum fuels … and the electricity and hydrogen used by ZEVs"); ERM, *State Advanced Clean Cars II Programs* 12 (Feb. 2023), https://perma.cc/GDK4-DNAH ("As with estimated GHG emissions, estimated NOx and PM emissions include tailpipe emissions from gasoline and diesel vehicles and upstream emissions from these fuels, as well as generation and delivery of electricity to charge ZEVs").

[56] *See infra* Part V.

full-size electric car generates 40% to 100% more greenhouse gas emissions than a comparable gasoline-powered car.[57] And that delta nearly doubles if the electric car requires a battery replacement during its lifetime, which is likely. According to one report, producing a typical electric car battery generates the same amount of greenhouse gas emissions as driving a gasoline-powered car for 8.2 years.[58]

Generating electricity to charge and power the vehicle also produces significant emissions. Approximately 60% of U.S. electricity is generated from fossil fuels that produce greenhouse-gas emissions.[59] Proponents' consultant nominally accounts for the upstream impacts due to electricity generation, but Proponents undermine this accounting by referencing projections based on an unrealistic carbon-free grid.[60]

California's Rules dramatically overvalue the emissions reductions achieved by battery-electric vehicles when more appropriately considered on a lifecycle basis, since vehicle manufacturing and energy production emissions far higher for battery-electric vehicles than for internal-combustion engine vehicles, as illustrated by this chart from a peer-reviewed study:[61]

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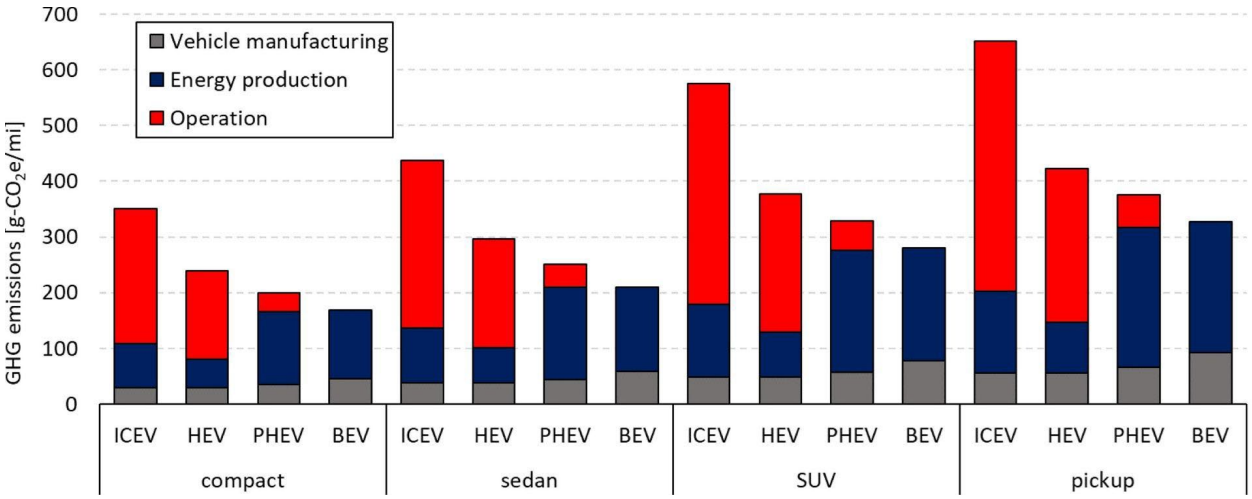
[57] *See, e.g.*, Kearny, *Polestar and Rivian Pathway Report* 10 fig. 7, https://perma.cc/CRA2-GSM3; (14 tons CO_2 equivalent are generated in vehicle and battery manufacturing for a medium battery electric vehicle, which is 40% more than the 10 tons CO*2* equivalent generated in manufacturing a medium internal combustion engine vehicle); McKinsey & Co., *The Race to Decarbonize Electric-Vehicle Batteries* (Feb. 23, 2023), https://perma.cc/5SFE-WVAW ("An EV has roughly double the production footprint of a typical internal-combustion-engine (ICE) vehicle"); Union of Concerned Scientists, *Cleaner Cars from Cradle to Grave* 3 (2015), https://perma.cc/E8QA-WNZR (manufacturing a full-size battery electric car "increases manufacturing emissions by 68 percent over the gasoline version").

[58] Johannes Buberger et al., Renewable & Sustainable Energy Revs. 159 112158, *Total CO2-Equivalent Life-Cycle Emissions from Commercially Available Passenger Cars* 2 (2022), https://perma.cc/STW2-YYRT.

[59] *Frequently Asked Questions (FAQs): What is U.S. Electricity Generation by Energy Source?*, U.S. Energy Info. Admin. (last updated Feb. 29, 2024), https://perma.cc/J53A-WCM4.

[60] *See supra* Part III.A.

[61] F. Poursadegh et al., Sci. Direct, *Least-Cost Light-Duty Vehicle Fleet Decarbonization and the Electric Vehicle Conundrum* 7, 14 fig. 5, Transp. Rsch. Part D: Transp. and Env't 104473, vol. 137, (Dec., 2024), https://perma.cc/VA2Q-8JJK.



Data from government agencies shows the same. A 2020 report by the Department of Energy found that the combined production/disposal and upstream emissions of electric SUVs (operated on a generic U.S. electricity mix) are nearly twice as high as that for gasoline- and diesel-powered SUVs.[62] Recent EPA estimates similarly suggest that current battery-electric vehicles generate about 79 grams/mile more upstream emissions than comparable gasoline vehicles, even ignoring their greater emissions required to manufacture these vehicles, assuming the national-average grid.[63] In Illinois, those upstream emissions will be even worse, given that its regional grid has more coal than average—EPA calculates emissions rates for the region at 911 pounds per megawatt-hour, compared to a national average of 771.5 pounds per megawatt-hour.[64] As a result, in Illinois, battery-electric vehicles can generate around 183 grams/mile more upstream CO_2 emissions than comparable gasoline vehicles.[65] And these upstream calculations ignore the marginal emissions of adding electric vehicles to the grid, which are even higher since charging generally occurs

[62] A. Elgowainy et al., U.S. Dep't of Energy Rec. #21003, *Life Cycle Greenhouse Gas Emissions for Small Sport Utility Vehicles* 8 (Nov. 1, 2020), https://perma.cc/3DUM-B4WN (compare combined vehicle cycle (blue) and well-to-pump (orange) emissions for 300- and 400-mile electric SUVs operating on the US electricity mix to ICE gasoline and diesel).

[63] EPA, *The 2023 EPA Automotive Trends Report* E-6, Table E.4 (Dec. 2023), https://perma.cc/8NQY-YZCH (average of "Tailpipe + Net Upstream CO_2 Avg" values for electric vehicles).

[64] EPA, *Power Profiler*, https://perma.cc/8GGM-PKR6 (visited Apr. 20, 2025).

[65] *The 2023 EPA Automotive Trends Report*, *supra* note 63 (average of "Tailpipe + Net Upstream CO_2 High" values for electric vehicles, where "High" values represent greenhouse gas emissions from "part of the Midwest" including "Illinois and Missouri", *id.* at E-5–E-6).

overnight, when renewable power sources like solar and wind provide little power. Once marginal emissions are accounted for, there is little evidence that battery-electric vehicles are better than, say, gasoline hybrids which are far more cost-effective to produce and more acceptable to consumers.[66]

C. California's Rules Will Have No Discernible Impact On Global Greenhouse Gas Emissions Or The Climate

Even crediting Proponents' flawed projections, adopting California's Rules in Illinois will likely have no discernible impact on global greenhouse gas concentrations or the climate. There is thus no rational reason for the Board to adopt them.

According to their 2024 updated analysis, Proponents estimate that with the Rules first effective in model year 2029 and assuming a business-as-usual Illinois grid, ACC II and ACT will result in a decrease of 151 million metric tons of cumulative CO_2-equivalent emissions by 2050, or approximately 6.86 million metric tons annually.[67] But that's merely a drop in the ocean—or about 0.01%—of global anthropogenic greenhouse gas emissions, which amount to nearly 59 *billion* tons CO_2-equivalent each year.[68] The tiny decrease Proponents attribute to California's Rules will have no discernible impact on global climate or on Illinois weather patterns. Indeed, EPA has previously concluded that emissions reductions more than five times greater would "result in an indistinguishable change in global temperatures and … likely no change in temperatures or physical impacts resulting from anthropogenic climate change."[69]

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[66] T. Burton et al., SAE Int'l 14-12-01-0006, *A Data-Driven Greenhouse Gas Emission Rate Analysis for Vehicle Comparisons* (Apr. 12, 2022), https://perma.cc/U4DG-FCHV ("We find that currently there is no evidence to support the idea that [battery-electric vehicles] lead to a uniform reduction in vehicle emission rates in comparison to [hybrids] and in many scenarios have higher GHG emissions."); *see also* Steffen Mueller, Energy Res. Ctr., *High Octane Low Carbon Fuels: The Bridge To Improve Both Gasoline and Electric Vehicles* (Mar. 22, 2021), https://perma.cc/8HKZ-QD56.

[67] *See* Proposal at 135 (18 million metric ton reduction, ACT beginning with MY 2029); *id.* at 145 (133 million metric ton reduction, ACC II Flex beginning with MY 2029).

[68] IPPC, *Climate Change 2023: Synthesis Report* 44 (2023), https://perma.cc/V7C6-PVQM (estimated 2019 global emissions).

[69] 84 Fed. Reg. 51,310, 51,341 (Sept. 27, 2019); *id.* at 51,329 n.210 (estimating that ACC I in California would reduce CO_2 emissions by more than 850 million metric tons over the life of the regulation).

D. California's Rules Won't Improve Air Quality In Illinois

IL Corn is also concerned that California's Rules, despite their expense, won't meaningfully improve Illinois' air quality. This is for several reasons.

First, Proponents did not provide updated emissions analyses for the Omnibus Rule, but given that California has committed to align the Omnibus NO_x standards with the federal standards beginning in model year 2027,[70] that Rule will provide no additional emissions benefits if it were adopted in Illinois for model year 2029.[71]

Second, Proponents project that ACC II will reduce NO_x emissions by approximately 38,000 metric tons and particulate matter ($PM_{2.5}$) emissions by approximately 3,800 metric tons cumulative through 2050, or about 1,727 tons NO_x and 173 tons $PM_{2.5}$, annually.[72] While that may sound like a lot, it's a tiny fraction of overall emissions in the state—only 0.67% of NO_x and 0.22% of $PM_{2.5}$ emissions, respectively.[73]

ACT will have even less of an impact: Proponents project emissions reductions of approximately 16,570 metric tons NO_x and 307 metric tons $PM_{2.5}$ through 2050, or about 753 tons NO_x and 14 tons $PM_{2.5}$ annually.[74] That's a mere 0.29% and 0.02% of Illinois annual NO_x and $PM_{2.5}$ emissions.[75] As Proponents' own analysis shows, under the most realistic scenario they model—where the standards apply starting in model year 2029 and a business-as-usual grid is assumed (dashed yellow line)—ACT has effectively no impact on NO_x or $PM_{2.5}$ emissions in the state compared to the baseline (gray line):[76]

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[70] *See infra* Part IV.A.

[71] *See* Proposal at 61.

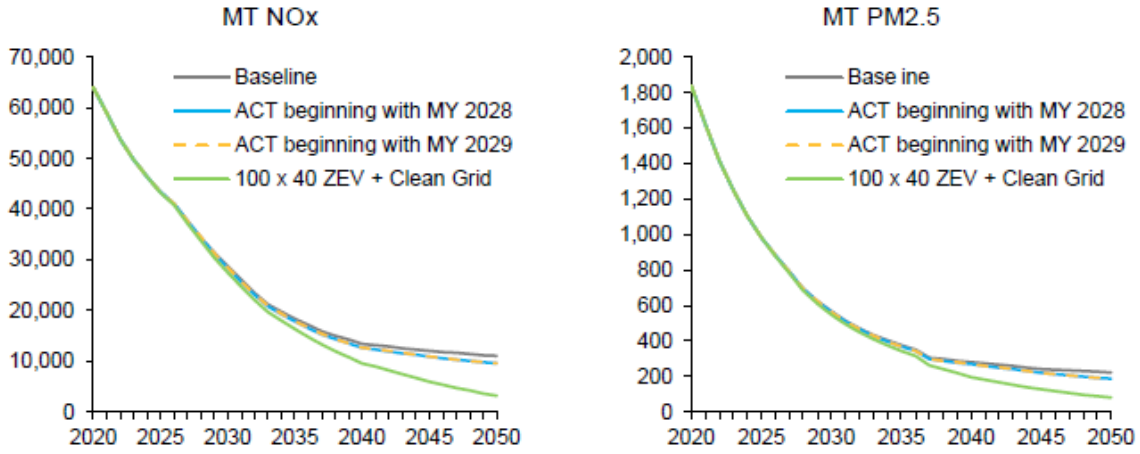
[72] Proposal at 145 (ACC II Flex beginning with MY 2029).

[73] Based on Illinois statewide estimated 2022 emissions of 259,164 tons NO_x and 80,447 tons $PM_{2.5}$. *See* Div. of Air Pollution Control, Ill. Env't Prot. Agency, *Five-Year Progress Report* 15, Tbl. 13 (Dec. 2024),https://perma.cc/LT2J-22PW.

[74] Proposal at 135 (ACT beginning with MY 2029).

[75] *See supra* note 73.

[76] Proposal at 135.



And third, even these tiny changes overstate the Rules' impact because Proponents—like California and EPA before them—did not consider the increase in *non-exhaust* particulate matter emissions from sources like tire and road wear that results from putting more electric vehicles on the road.[77]

It's well-established that heavier vehicles generate more airborne particulate matter ($PM_{2.5}$) from faster wear of tires and the road, as well as from resuspended road dust. Non-exhaust $PM_{2.5}$ emissions roughly scale with vehicle weight: according to real-world driving measurements by a U.K.-based analytics firm, an electric car that weighs approximately 32% more than a comparably sized car with a gasoline engine generates approximately 26% more non-exhaust $PM_{2.5}$ emissions due to tire wear.[78] Peer-reviewed reports have shown the same.[79]

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[77] In ACC II, California "assume[d] similar [PM] tire wear" for gasoline-powered cars and battery-electric vehicles. CARB, *ACC II Initial Statement of Reasons App. D* 15 (Apr. 12, 2022), https://perma.cc/5KAM-4RXG. As explained above, this assumption is wrong. In ACT, California didn't consider non-exhaust PM emissions at all. CARB, *Appendix F Emissions Inventory Methods and Results for the Proposed Advanced Clean Trucks Regulation* 5 (Oct. 22, 2019), https://perma.cc/Q9FG-RPGT ("Tire wear emissions were not included in this analysis").

[78] See *Do No Harm,* Emissions Analytics, https://perma.cc/3QBV-8SQT (visited Sept. 6, 2024).

[79] V. Timmers & P. Achten, *Non-exhaust PM Emissions from Electric Vehicles*, 134 Atmospheric Env't 10, 15 tbl. 6 (June 2016), https://perma.cc/B5EY-SM24 (PM2.5 emissions due to tire wear for electric cars are approximately 27% greater than for gasoline- and diesel-powered cars); Y. Liu et al., *Exhaust and Non-exhaust Emissions from Conventional and Electric Vehicles: A Comparison of Monetary Impact Values*, 331 J. Cleaner Prod. 129965 2–6 & fig. 2, tbl. 3 (Jan. 10, 2022), https://perma.cc/CED4-Z8QG (non-exhaust, road wear, and

Electric cars and trucks weigh *much* more than their gasoline- and diesel-powered counterparts, mostly due to their very heavy lithium-ion batteries, which weigh thousands of pounds. Electric passenger cars typically weigh 15% to 35% more than gasoline- and diesel-powered cars.[80] The delta for heavy-duty trucks is similar.[81] And so the non-exhaust $PM_{2.5}$ emissions of battery-electric vehicles will also be *much* higher.

Proponents don't account for the increased non-exhaust $PM_{2.5}$ emissions that will inevitably accompany California's Rules, which require replacing gasoline- and diesel-powered vehicles with heavier battery-electric ones. And because non-exhaust particulate matter emissions dwarf exhaust emissions in modern vehicles,[82] battery-electric cars and trucks likely emit *more* $PM_{2.5}$, overall than comparable gasoline- and diesel-powered vehicles and so could actually *worsen* Illinois air quality.

So, even crediting Proponents' analysis, California's Rules will cost a great deal, but do nearly nothing to improve Illinois air quality. But Proponents' analysis shouldn't be credited because it ignores the significant effect of electric vehicle's greater non-exhaust emissions from road and tire wear, which *increase* airborne particulate matter and so may worsen air quality. Adopting costly California's Rules in these circumstances—given their small and uncertain air quality benefits and

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resuspension PM emissions factors are higher for electric vehicles); S.-H. Woo et al., *Comparison of Total PM Emissions Emitted from Electric and Internal Combustion Engine Vehicles: An Experimental Analysis* 8–9, tbls. 5 & 6, Sci. of the Total Env't 842 156961 (2022), https://perma.cc/2GQW-F8PD (same).

[80] *See* Timmers, *supra* note 79, at 13, tbl. 2.

[81] ICCT, *E-Truck Virtual Teardown Study Final Report* 5 (June 11, 2021), https://perma.cc/7A2V-J82Q (diesel day cab weighs 16,500 lbs, while battery-electric day cab weighs 21,800 lbs, an increase of 32%).

[82] Studies confirm that for gasoline cars, non-exhaust contributions make up the majority of PM emissions. *See Gaining Traction, Losing Tread Pollution From Tire Wear Now 1,850 Times Worse than Exhaust Emissions*, Emissions Analytics, https://perma.cc/WNV4-WKKT (visited Sept. 6, 2024); Timmers, *supra* note 79, at 14 (in 2016 "non-exhaust emissions currently account for more than … 85% of PM2.5 emissions from traffic"). The same is true for modern diesel trucks equipped with diesel particulate filters, which can actually clean the air by removing more ambient particles than the vehicle emits. *See Tyres Not Tailpipe*, Emissions Analytics (Jan. 29, 2020), https://perma.cc/NN26-K6NP; Diesel Tech. F., *Environmental Benefits of Medium- and Heavy-Duty Zero Emission Vehicles Compared with Clean Bio- & Renewable-Fueled Vehicles 2022–2032* 9 (July 19, 2022), https://perma.cc/8MHF-YQ97.

without properly accounting for their predictable particulate matter emissions increases—would be unreasonable.

IV. California's Rules Cause Regulatory Uncertainty

IL Corn also believes the Board should reject Proponents' proposal for another reason: the content of California's Rules is in flux and there are serious questions surrounding their current and future enforceability. Some of the questions may be settled in the coming months, but others may take years to resolve. Adopting California's Rules now would subject Illinois families and businesses—including Illinois farmers—to needless regulatory uncertainty that could ripple through the Illinois economy for years to come.

A. California's Commitment To Amend The Omnibus Rule Creates Regulatory Chaos

California adopted the Omnibus Rule in 2021, imposing not only stringent NO_x standards for medium- and heavy-duty engines but also creating a complex web of new testing and warranty requirements. In 2023, after being sued by the Truck and Engine Manufacturers Association, California committed to making several changes to the Rule in exchange for manufacturers' agreement not to mount further challenges. Most notably, California agreed to (1) expand flexibilities so that manufacturers can sell additional legacy engines that do not meet the Rule's NO_x standards and (2) generally align model year 2027 and later NO_x standards with federal standards.[83]

In 2024, California amended the Rule to fulfil the first of these commitments, and those amendments were included within EPA's waiver of Clean Air Act preemption. However, California has yet to amend the Rule to address the second commitment, despite entering into a legally binding agreement to do so. Nor has California set a firm timeline for doing so—its last public step towards amendment occurred more than a year ago.[84] Moreover, even once California amends the Rule, those changes require EPA approval before taking effect, which could take months if not years. As a result, truck and engine manufacturers are in a quandary: based on the agreement, the Omnibus Rule should be relaxed for model year 2027 and beyond—which will

[83] *See* CARB, *EMA and CARB Agreement*, Agreement ¶ 1, App. A, App. B(July 5, 2023), https://perma.cc/QPE7-KP9Q.

[84] *See Clean Truck Partnership Commitments- Status and Outcome*, CARB (last updated Dec. 6, 2024), https://perma.cc/7UXJ-TNY8 (last action was a workshop, completed March 20, 2024).

first be available for purchase less than two years from now—but California has dragged its feet and there is no guarantee that EPA (who was not a party to the agreement) will approve; in the meantime, the Omnibus Rule's onerous requirements for model years 2027 and later remain on the books and so remain the law of the land, at least in California.

That regulatory uncertainty is untenable for manufacturers of medium- and heavy-duty engines, and for the Illinois farmers and business owners who buy their products. Manufacturing and design cycles for these engines are far longer than two years, which is why the Clean Air Act requires emissions regulations provide four model years of lead time and three model years of stability. 42 U.S.C. § 7521(a)(3)(C). Moreover, it's unclear whether EPA even can approve changes to the Omnibus Rule for the 2027 model year at this point, since they violate that lead time requirement. *Id.* § 7543(b)(1)(C) (EPA can only approve a waiver for state standards that are "consistent with section 7521(a)"). As a result, there's no telling when—or if—the Omnibus Rule will be realigned to federal standards. If California delays too long, it will be in breach of its agreement, and the Rule will almost certainly be subject to additional litigation.

Nor is it clear how new Omnibus Rule amendments would be implemented in Illinois. Proponents say that if California takes action, they "intend to update this proposal."[85] But given California's snail's pace, any amendments are likely to be made after the Omnibus Rule is adopted in Illinois (were the Board to choose that unfortunate course). Presumably Proponents would need to submit a new proposal (or the Board could propose action on its own), and the Board would need to provide another opportunity for public notice and comment. That could take a year or more. Illinois would also need to wait for EPA to approve the amendments, something that is by no means certain under the current Administration, which has already indicated its reluctance to expand California's regulatory authority.[86] And even once the Board adopts the amendments (if it does so), federal law requires Illinois to wait at least two years before it can enforce them. 42 U.S.C. § 7507(2) (state must "adopt … standards at least two years before commencement of [the] model year"). In the meantime, Illinois likely couldn't enforce the original Omnibus Rule, either, since federal law bars enforcement of state emissions standards unless they "are identical to the California standards for which a waiver has been granted." *Id.* § 7507(1).

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[85] Proposal at 60.

[86] *See infra* Part IV.B.

All of this creates needless regulatory uncertainty for manufacturers and purchasers of medium- and heavy-duty vehicles. Adopting the Rule now will import this uncertainty to the state, subjecting Illinois businesses and farmers to needless regulatory confusion. We urge the Board not to invite such chaos.

B. ACC II, ACT, and The Omnibus Rule Waivers Are In Question

California and other states can only enforce ACC II, ACT, and the Omnibus Rule if EPA grants the Rules waivers of Clean Air Act preemption. *See* 42 U.S.C. §§ 7507, 7543. Although the Biden EPA granted those waivers their continuing validity is in serious question. If the waivers are not invalidated or rescinded in the near future, they will likely be mired in litigation for years. IL Corn urges the Board to make the prudent choice and reject the proposal to keep Illinois out of this legal quagmire.

First, there is a high likelihood that the waivers will be invalidated by Congress. In February 2025, EPA submitted the waivers to Congress for review under the Congressional Review Act (CRA). Under the CRA, Congress can invalidate an agency action by passing a resolution of disapproval using expedited Senate procedures that bypass the filibuster. 5 U.S.C. § 802. Once signed by the President, the resolution prevents an agency action from taking effect, or continuing in effect, and bars an agency from reissuing the action "in substantially the same form" unless "specifically authorized" by later law. *Id.* § 801(b)(2). Resolutions of disapproval for all three waivers have been introduced in both the House of Representatives and the Senate, and it appears likely that those resolutions will pass and be signed by President Trump. If the CRA resolutions are enacted, ACC II, ACT, and the Omnibus Rule will be unenforceable—by California or any other state.

Second, if Congress does not pass CRA resolutions, the Trump EPA will likely move to rescind the waivers. EPA rescinded an earlier Clean Air Act waiver during President Trump's first term, 84 Fed. Reg. 51,310 (Sept. 27, 2019), and President Trump pledged on Inauguration Day to "eliminate the 'electric vehicle (EV) mandate,'" which necessarily requires rescinding these waivers.[87]

Third, even if the Trump EPA doesn't rescind the waivers, all three waivers are subject to ongoing litigation. The ACT waiver was challenged in 2023; that case has been held in abeyance pending the resolution of other cases. *See W. States Trucking Ass'n v. EPA* (No. 23-1143 D.C. Cir.) and consolidated cases. The ACC II and Omnibus Rule waivers were challenged in early 2025; proceedings have also been stayed while

[87] President Trump, *Unleashing American Energy*, Exec. Order No. 14154, 90 Fed. Reg. 8353, 8353 (Jan. 29, 2025).

EPA reconsiders the waivers. *See, e.g.*, *Am. Free Enter. Chamber of Com. v. EPA* (No. 25-89 9th Cir.) (Omnibus); *Am. Free Enter. Chamber of Com. v. EPA* (No. 25-106 9th Cir.) (ACC II). There are strong legal arguments that the Biden EPA exceeded its authority in issuing the waivers. This litigation, if unpaused, will likely stretch on for years.

Were any of these paths successful, Illinois would be barred from enforcing California's Rules. That could happen next month (if a CRA resolution is passed), next year (if the Trump EPA rescinds the waivers), or several years from now (if the waivers are judicially invalidated). That legal uncertainty is compounded by the risk of tariffs and escalating trade tensions which may add additional barriers to growth in the electric vehicle market. The legal and practical uncertainty surrounding Illinois' ability to enforce the Rules strongly counsels against adopting them now.

C. States Are Opting-Out of California's Rules

The Board should also heed the example of other states, which have recently reconsidered their commitments to California's Rules.

After adopting ACC I in 2021, Virginia announced in 2024 that it would not be following ACC II come 2025. As Virginia's Attorney General explained, "EV mandates like California's are unworkable and out of touch with reality … California does not control which cars Virginians buy and any thoughts that automobile manufacturers should face millions of dollars in civil penalties rather than allowing our citizens to choose their own vehicles is completely absurd."[88] In late 2023, Connecticut's Governor withdrew a proposal to adopt ACC II and recently confirmed that he would not be renewing it.[89] And at least eight other states have considered or introduced legislation that blocks, repeals, or delays implementation of California's Rules.[90]

ACT and the Omnibus Rule have fared even worse. Far fewer states have adopted those Rules, and those that have are quickly backtracking. All five states where ACT

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[88] Governor Glenn Youngkin & Attorney General Jason Miyares, Press Release, *Viriginia Will Exit California Electric Vehicle Mandate at End of Year* (June 5, 2024), https://perma.cc/YTP2-UG8P.

[89] John Moritz, *Ned Lamont Won't Revive Effort to Adopt Stricter Electric Vehicle Rules*, CT Mirror (Feb. 3, 2025), https://perma.cc/2KDJ-JEXN.

[90] *See* Emily Apadula, *The Advanced Clean Cars II Controversy: Where are States Adopting or Blocking California's Zero-Emission Vehicle Rules?*, NC Clean Energy Tech. Ctr. (June 14, 2024), https://perma.cc/GB5K-Z4VW (Alaska, Kentucky, Louisiana, Maryland, Minnesota, New Mexico, Washington, Wyoming).

was set to take effect in 2025 have introduced bills to delay implementation, as has Maryland, where ACT is slated to take effect in 2027.[91]

Rather than place Illinois in the difficult position these states face—attempting to make California's unworkable Rules manageable or rescind them—we urge the Board to decline to adopt California's Rules in the first place and instead look toward other alternatives—like encouraging the use of renewable liquid fuels—that have the potential to reduce greenhouse gas emissions without limiting consumer choice and while supporting the Illinois economy.

D. California's Standards Are Preempted By Federal Law

ACC II and ACT are also likely preempted by federal law. It would be unwise for the Board to adopt Rules that will require considerable state resources to defend in court and which are ultimately likely unenforceable in any event.

1. ACC II Is Preempted By EPCA

First, ACC II is likely preempted by the Energy Policy and Conservation Act (EPCA).

Recognizing the need for a "*national* energy policy," Congress passed EPCA in 1975. H.R. Rep. No. 94-340, at 1, 19–20 (1975) (emphasis added); *see* Pub L. No. 94-163 § 301, 89 Stat. 871, 901–18 (Dec. 22, 1975). A key component of that policy was the establishment of *federal* average fuel economy standards for passenger cars, applicable to manufacturers that produce vehicles for sale in the United States. 49 U.S.C. § 39202(b).

Under EPCA, the federal National Highway Traffic and Safety Administration (NHTSA) sets nationally uniform fuel-economy standards through the Corporate Average Fuel Economy (CAFE) program. *See* 49 C.F.R. Part 531. The federal CAFE standards do not apply to individual vehicles or models, but to each manufacturer's entire national fleet of cars and light trucks, on a fleetwide-average basis. 49 U.S.C. § 32904. As a result, a manufacturer can produce and sell any combination of vehicles that the market will bear, as long as the fuel economy of its fleet, as a whole, meets or exceeds NHTSA's standards.

Congress directed that national fuel-economy standards be set at the "maximum feasible" level, *id.* § 32902(a), after considering "technological feasibility," "economic

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[91] *Latest on CARB's Advanced Clean Truck Rule And Impact In Other States*, RV Indus. Ass'n, (Apr. 8, 2025), https://perma.cc/H8N99PRJ.

practicability," "the effect of other motor vehicle standards of the Government," and "the need of the United States to conserve energy," *id.* § 32902(f). As a result, NHTSA must weigh competing interests when setting CAFE standards: the need for fuel economy improvements on one hand, and other factors—including the economic burden that more aggressive standards will place on manufacturers, related industries, and consumers—on the other. Indeed, lawmakers emphasized that the national fuel economy program must "be carefully drafted" so as not to "impos[e] impossible burdens" on the automotive industry or "unduly limi[t] consumer choice." H.R. Rep. No. 94-340, at 87. The federal fuel-economy standards thus reflect the careful balance struck by NHTSA after considering the statutory factors. *See, e.g.*, 87 Fed. Reg. 25,710, 25,967–94 (May 2, 2022).

Making clear its intent to establish a *unified national framework* for setting fuel-economy standards, Congress expressly provided that EPCA preempts state rules: no state or locality "may … adopt or enforce" any "law or regulation related to fuel economy standards or average fuel economy standards." 49 U.S.C. § 32919(a). The use of the phrase "relate to" in § 32919(a) reflects Congress's "broad preemptive purpose." *Morales v. Trans World Airlines*, 504 U.S. 374, 383 (1992). Unlike Clean Air Act preemption, no federal statute authorizes waiver of EPCA preemption under any circumstances.

ACC II's electric car sales mandates are "related to … average fuel economy standards," and so are expressly preempted by EPCA. *Id.* § 32919(a). Specifically, ACC II requires manufacturers to sell a specified minimum share of automobiles that "produce zero exhaust emissions of any … greenhouse gas," which includes carbon dioxide. Cal. Code Regs. tit. 13, § 1962.4(b). And there is a "scientific relationship between fuel consumption and carbon emissions": as carbon emissions go down, fuel economy necessarily goes up. 71 Fed. Reg. 17,566, 17,659 (Apr. 6, 2006). As a result, electric cars have very high equivalent fuel economies. Congress has expressly directed automakers to include electric vehicles when calculating their fleet average fuel economy for purposes of the federal CAFE standards, 49 U.S.C. §§ 32904(a)(2), 32905, and so ACC II's requirement that automakers sell a certain percentage electric cars will have a direct and substantial effect on those manufacturers' CAFE compliance and are thus preempted. *See, e.g.*, *Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 157 (2d Cir. 2010) (New York's hybrid taxi mandate is preempted because EPCA displaces state regulations that "make fuel economy standards essential to the operation of those rules"); *Ophir v. Boston*, 647 F. Supp. 2d 86, 94 (D. Mass 2009) (similar).

ACC II's electric car sales mandates are also impliedly preempted by EPCA because they "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 406 (2012) (citation omitted). Congress charged NHTSA with setting nationally uniform fuel-economy standards at the "maximum feasible" level, after considering a list of enumerated statutory factors. 49 U.S.C. § 32902(a), (f). And Congress determined that the "maximum feasible" fuel-economy standard should be set without regard to electric and other alternative-fueled vehicles. *See id.* § 32902(h)(1). That is, Congress expressly forbade NHTSA from imposing round-about electric vehicle mandates by making CAFE standards so stringent that they can only be met if manufacturers dedicate a portion of their fleets to electric cars. The requirement of vehicle-neutral fuel economy standards reflects Congress's deliberate intent to provide manufacturers flexibility in determining how to meet the CAFE standards. *See, e.g.*, *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 878 (2000). Allowing states to countermand that determination by requiring manufacturers to meet their CAFE obligation, at least in part, with electric cars undoes Congress's careful approach to fuel economy regulation and necessarily interferes with NHTSA's balancing of the statutory factors in establishing "maximum feasible" fuel economy standards. 49 U.S.C. § 32902(a). NHTSA has affirmed on multiple occasions that EPCA expressly and impliedly preempts state regulations related to CO_2 emissions, including electric automobile mandates. *See, e.g.*, 84 Fed. Reg. at 51,311–20; 73 Fed. Reg. 24,352, 24,478 (May 2, 2008). That preemption continues to hold true today.

2. ACT Is Preempted By EISA

Second, ACT is likely preempted by the Energy Independence and Security Act of 2007 (EISA).

In EISA, Congress directed the establishment of "a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement." 49 U.S.C. § 32902(k)(2); *see* Pub. L. N. 110-140 § 102(b), 121 Stat. 1492, 1500 (Dec. 19, 2007). To that end, NHTSA must "adopt and implement … fuel economy standards" for medium- and heavy-duty vehicles "that are appropriate, cost-effective, and technologically feasible." 49 U.S.C. § 32902(k)(2).

Consistent with this obligation, NHTSA has set mandatory federal fuel-consumption standards for medium- and heavy-duty vehicles, beginning with model year 2016. *See* 76 Fed. Reg. 57,106 (Sept. 15, 2011); 49 C.F.R. Part 535. Like CAFE standards, NHTSA's medium- and heavy-duty vehicle fuel consumption standards

apply on a fleet-average basis, and there are different standards for different types of vehicles (i.e., heavy-duty pickup trucks and vans, tractors, etc.). 49 C.F.R. § 535.5. Moreover, recognizing that the appropriate maximum fuel economy may vary with a vehicle's size and intended purpose, NHTSA's standards are "attribute-based." For example, the fuel-consumption target for heavy-duty pickup trucks and vans depends on a "work factor" that accounts for the vehicle's payload and towing capacity. *Id.* § 535.5(a)(2)(ii).

The structure and design of the federal program make clear Congress's intent to establish a *single, nationally uniform system* to improve the fuel economy of medium- and heavy-duty vehicles, while accounting for the varied—and sometimes demanding—performance required by these vehicles and relying on market mechanics for cost-effective implementation. ACT, which requires that at least a minimum share of new medium- and heavy-duty vehicles be electric, "stands as an obstacle to the accomplishment and execution of th[ese] … purposes and objectives," at least because it "interfere[s] with the careful balance struck by Congress." *Arizona*, 567 U.S. at 406 (2012). Congress directed that federal fuel economy standards be "designed to achieve the *maximum* feasible improvement," while being "appropriate, cost-effective, and technologically feasible" for medium- and heavy-duty vehicles. 49 U.S.C. § 32902(k)(2) (emphasis added). "The term 'maximum' ordinarily means the upper limit of a range, the greatest quantity possible or permissible." *United States v. Fountain*, 83 F.3d 946, 952 (8th Cir. 1996) (quoting *United States v. Hernandez*, 79 F.3d 584, 596 (7th Cir. 1996)). NHTSA is therefore tasked with achieving a prescriptive, golden mean—to reduce fuel consumption as far as possible, within the bounds of what is technologically feasible, cost-effective, and generally reasonable for manufacturers and the public.

But ACT represents California's different balance of these factors. NHTSA has long—if unphysically—deemed electric vehicles to consume "zero" fuel. *See* 49 C.F.R. § 535.6(a)(3)(iii) (heavy-duty pickups and vans); *id.* § 535.6(d)(2)(iv) (heavy-duty engines). As a result, ACT replaces NHTSA's determination with California's own conclusion that for some portion of the medium- and heavy-duty vehicles fleet, the "maximum" technologically feasible, cost-effective, and reasonable fuel consumption is "zero," and so interferes with Congress's "considered judgment" and "deliberate choice" that NHTSA determine the optimal balance. *Arizona*, 567 U.S. at 405; *see also Norfolk S. Ry. Co. v. Shanklin*, 529 U.S. 344, 359 (2000) (Breyer, J., concurring) (distinguishing "minimum" standards, which may not have pre-emptive effect, and "adequate" or optimal standards, which do).

ACT's selection of a single compliance pathway—electric vehicles[92]—thwarts congressional intent in another way: it is "an obstacle to the variety and mix of [technologies] that the federal regulation" seeks. *Geier*, 529 U.S. at 881. Elsewhere in EISA, Congress directed technology-specific transportation spending and programs.[93] But the fuel efficiency improvement program does not contain any technology prescription. *See* 49 U.S.C. § 32902(k). NHTSA therefore has long claimed to set technology-neutral fuel consumption standards that "deliberately provide[] … manufacturer[s] with a range of choices" for complying cost-effectively. *Geier*, 529 U.S. at 875.[94] ACT undermines this federal scheme by dictating a preferred technology rather than relying on market dynamics to determine the most cost-effective technologies for fuel efficiency improvements.

3. ACC II and ACT Are Preempted By The RFS

Third, ACC II and ACT are also likely preempted by the Renewable Fuel Standard Program (RFS).

The RFS "requires that increasing volumes of renewable fuel be introduced into the Nation's supply of transportation fuel each year." *Americans for Clean Energy v. EPA*, 864 F.3d 691, 697 (D.C. Cir. 2017). "Renewable fuels" are fuels—like ethanol and biodiesel—that are "produced from renewable biomass" and that "replace or reduce the quantity of fossil fuel present in transportation fuels" used to power motor vehicles. 42 U.S.C. § 7545(o)(1)(J); *see also id.* § 7545(o)(1)(L) (defining "Transportation fuel"). The RFS requires certain parties—currently refiners and importers—to introduce a specified volume of renewable fuel into the transportation fuel (typically gasoline or diesel) that they produce or import each year. *Americans for Clean Energy*, 864 F.3d at 697; 40 C.F.R. § 80.1406(a)(1).

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[92] ACT's "zero emission" vehicle mandate is, in practice, an electric vehicle mandate, since electric powertrains are the only commercially feasible "zero emission" technology for medium- and heavy-duty fleets. *See* Cal. Code Regs. tit. 13, § 1956.8(j)(27) ("'Zero-emission powertrain' means an all-electric or hydrogen fuel-cell powertrain assembly").

[93] *See, e.g.*, Pub. L. No. 110-140 § 131, 121 Stat. 1508–11 (2007), (electric vehicle program); *id.* § 132, 121 Stat. 1511, (manufacturing grants for hybrid and advanced diesel vehicles); *id.* §§ 201–204, 121 Stat. 1519–29, (renewable fuel standard program); *id.* §§ 221–234, 121 Stat. 1533–38, (biofuels research and development).

[94] *See also, e.g.*, 89 Fed. Reg. 52,540, 52,783, n.993 (June 24, 2024) (NHTSA's heavy-duty pickup truck and van "standards themselves are performance-based and not [particular technology] mandates").

A "conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy," and so result in preemption. *Arizona*, 567 U.S. at 406 (cleaned up); *see Geier*, 529 U.S. at 881. Congress intended the RFS to "'move the United States toward greater energy independence and security' and 'increase the production of clean renewable fuels.'" *Americans for Clean Energy*, 864 F.3d at 697 (quoting EISA, Pub. L. No. 110-140, §§ 201–202). ACC II and ACT interfere with these twin aims.

First, the express purpose of ACC II and ACT is to phase out new gasoline and diesel internal-combustion vehicles.[95] Eliminating those vehicles will substantially depress demand for transportation fuels and the renewable fuels required under the RFS. The resulting downward price pressure threatens the viability of renewable fuel producers, undermining the RFS's goal to "increase the production of clean renewable fuels." *Americans for Clean Energy*, 864 F.3d at 697 (cleaned up).

Second, forcing electrification of cars and trucks makes the nation less energy independent by increasing our reliance on foreign nations for the critical minerals necessary to manufacture the batteries that power all electric vehicles. Lithium-ion batteries require significant quantities of specialty minerals like lithium, cobalt, and graphite, none of which the United States produces in sufficient quantities to meet the electric vehicle growth that ACC II and ACT mandate. Instead, automakers must source those minerals from countries half-way around the globe. Nearly half of the world's lithium is produced in Australia and another nearly third comes from Argentina and Chile; almost three-quarters of the world's cobalt is mined in the Democratic Republic of the Congo; and China produces more than three-quarters of the world's graphite.[96] There is no viable path for domestic production on the scale and timeframe necessary to support ACC II and ACT.[97]

Unlike renewable fuels, Congress has never included electric-vehicle mandates in its energy security plans and has instead rejected several bills that would have

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[95] *See* Proposal at 18–19 (adopting ACC II and ACT is "the most viable path to achieving net-zero climate emissions in the transportation sector" by "end[ing] … new sales of internal combustion engine vehicles").

[96] *See* USGS, *Mineral Commodity Summaries 2024* 110 (2024), https://perma.cc/3CGG-A6XE (visited Feb. 26, 2024).

[97] *See* Tsisilile A. Barlock et al., Argonne Nat'l Lab'y Rep. ANL-24/06, *Securing Critical Materials for the U.S. Electric Vehicle Industry*, at viii, ix, 46–59 (Feb. 2024), https://perma.cc/FKD9-JHA5.

imposed such mandates.[98] State electric-vehicle mandates like ACC II and ACT wreak havoc on Congress's carefully crafted scheme in favor of an option that Congress has consistently rejected. *Cf. West Virginia v. EPA*, 597 U.S. 697, 731–32 (2022).

Because ACC II and ACT "stand[] as an obstacle to the accomplishment and execution of [Congress's] full purposes and objectives" for the RFS Program, they are preempted and so cannot be lawfully enforced by Illinois. *Arizona*, 567 U.S. at 406.

V. Biofuels Are A Better Solution For Illinois

IL Corn is also concerned that the California Rules' narrow focus on tailpipe greenhouse gas emissions inherently biases them in favor of battery technologies that shift greenhouse gas emissions upstream, to coal and gas plants and the industrial sector. This thumb-on-the-scale disadvantages other fuels and technologies that could benefit the climate and environment, at a lower cost. One of these fuels is home-grown biofuels, such as ethanol, grown by farmers in Illinois and across the Midwest.

E15, which is already commercially available in all states except California, has a potential to reduce carbon-dioxide emissions over the next few decades by up to 29 million tons annually, while delivering cost savings to consumers.[99] Although estimates vary, the Argonne National Laboratory in Illinois has consistently found that ethanol has a significantly lower carbon intensity than petroleum-based gasoline, and lifecycle emissions have continued to improve due to improving yields and increased efficiency.[100] These greenhouse gas benefits could be even greater if mid-level ethanol blends become available in Illinois, or if sales of ethanol fuel (commercialized as E85) increase. As shown in the graph below, when coupled with fuel-efficient technologies like hybrid drivetrains, high-octane ethanol-containing fuels enable substantially lower carbon emissions than electric vehicles operating in Illinois and other midwestern states:[101]

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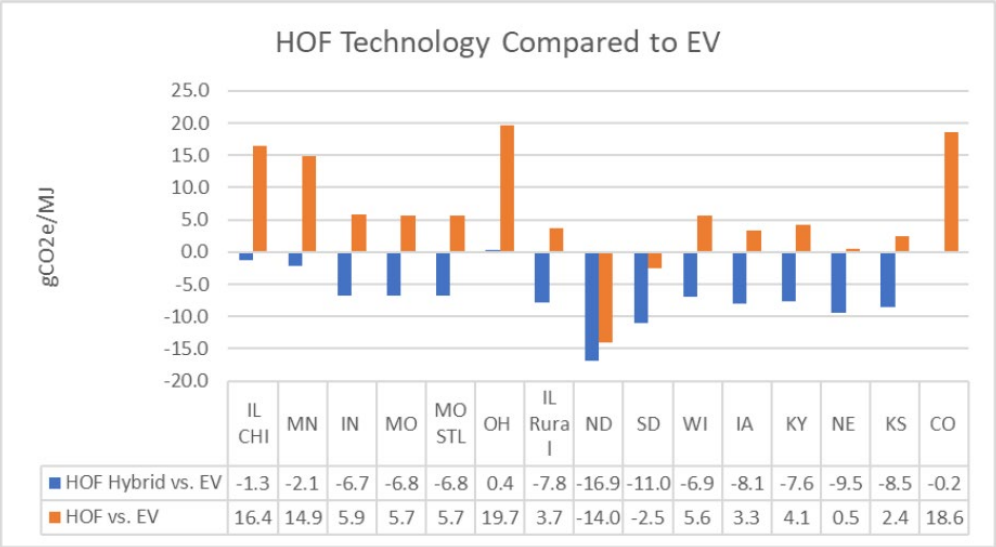
[98] *See, e.g.*, *Zero-Emission Vehicles Act of 2019*, H.R. 2764, 116th Cong. (2019*); Zero-Emission Vehicles Act of 2018*, S. 3664, 115th Cong. (2018).

[99] Thomas G. Leone, Sw. Rsch. Inst., *Future Scenarios for E15 in the U.S.* 21–22 (June 19, 2024), https://perma.cc/P2JP-547D.

[100] *Id.* at 17–19.

[101] Mueller, *supra* note 66, at 9 fig. 4.



	IL CHI	MN	IN	MO	MO STL	OH	IL Rural	ND	SD	WI	IA	KY	NE	KS	CO
HOF Hybrid vs. EV	-1.3	-2.1	-6.7	-6.8	-6.8	0.4	-7.8	-16.9	-11.0	-6.9	-8.1	-7.6	-9.5	-8.5	-0.2
HOF vs. EV	16.4	14.9	5.9	5.7	5.7	19.7	3.7	-14.0	-2.5	5.6	3.3	4.1	0.5	2.4	18.6

Illinois legislators are already considering Low Carbon Fuel Standard legislation that would encourage fuels with a lower carbon intensity, including home-grown ethanol from corn.[102] That would be far better policy than tilting the market to produce electric vehicles, as California's Rules do. A Low Carbon Fuel Standard would be performance-based and would reward all fuels that can reduce the carbon intensity of transportation fuel, not just electric utilities.

Coupled with, or independently from, a Low Carbon Fuel Standard, Illinois should also undertake efforts to ensure that outdated restrictions or infrastructure barriers do not impede the sale of E15, to encourage flex-fuel vehicles and alternative fuels, and to encourage federal legislators and regulators to allow the sale of high-octane mid-level blends such as E25 or E30 that could decarbonize gasoline at very low cost. The federal Next Generation Fuels Act, introduced in the 118th Congress and supported by our Association, would reduce greenhouse gas emissions while boosting the rural economy of Illinois, a win-win that may be necessary to preserve our rural Illinois communities.

VI. Conclusion

Rural communities in Illinois already face existential challenges. Adopting California's Rules would add to those challenges by dramatically increasing the cost and complexity of transportation. The electric vehicles the Rules mandate simply don't meet the needs of many rural Illinois families and farmers, and the Rules'

[102] Ill. SB0041, *Clean Transportation Standard Act* (introduced Jan. 13, 2025), https://perma.cc/FH9K-95K8.

significant direct and indirect costs, as well as the uncertainty surrounding their enforceability, will harm these communities' already fragile economies.

The Illinois Corn Growers Association urges the Board to reject the proposal, with its significant costs and its small and uncertain benefits. The Board should instead embrace other approaches—like high-octane ethanol-containing fuels—that provide proven environmental benefits at far lower cost and without limiting vehicle choice, while supporting the Illinois economy. That's a course that will benefit *all* Illinoisans.

Sincerely,

Garrett Hawkins

President, Illinois Corn Growers Association