

ARGUED SEPTEMBER 14, 2023
No. 22-1080 (and consolidated cases)

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

NATURAL RESOURCES DEFENSE COUNCIL,
Petitioners,

CLEAN FUELS DEVELOPMENT COALITION, ET AL.,
Intervenors for Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, ET AL.,
Respondents,

CITY AND COUNTY OF DENVER, COLORADO, ET AL.,
Intervenors for Respondents.

On Petition for Review from the
National Highway Traffic Safety Administration
(No. NHTSA-2021-0053)

**SUPPLEMENTAL REPLY BRIEF FOR INTERVENORS
IN SUPPORT OF PETITIONERS**

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GLOSSARY

Biofuel Int. Reply Br. Final Reply Brief for Intervenors in Support of Petitioners (Doc. 2000127)

NHTSA National Highway Traffic Safety Administration

NHTSA Supp. Br. Supplemental Brief for Respondents (Doc. 2070812)

ARGUMENT

The responses confirm that this Court’s decision in *Ohio v. EPA*, 98 F.4th 288 (2024), is irrelevant here. No one seriously challenges the biofuel intervenors’ Article III standing. The federal government has “not argued in this case that petitioners do not have standing,” nor have they made that argument about the biofuel intervenors. NHTSA Supp. Br. 3. Only the state intervenors mention the biofuel intervenors’ standing, in a single footnote. They contend (at 3 n.2) that the biofuel intervenors have not established their standing to challenge “the state zero-emission-vehicle standards at issue in *Ohio*” as “preempted by the fuel-economy statute.” But the biofuel intervenors are not challenging state electrification standards in this case; they are challenging NHTSA’s standards. See Biofuel Int. Reply Br. 5. It is true that one of the grounds for their challenge to NHTSA’s standards involves NHTSA’s consideration of preempted state statutes. But the relief that the biofuel intervenors are seeking is the vacatur of NHTSA’s standards, and no one has disputed that they have standing to seek that relief. This Court’s decision in *Ohio* does not change the analysis.

As for *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), no respondent has addressed the biofuel intervenors' specific statutory arguments. The biofuel intervenors accordingly adopt the discussion of *Loper Bright* in the fuel petitioners' supplemental reply.

CONCLUSION

This Court should set aside NHTSA's rule.

Respectfully submitted,

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AUGUST 29, 2024

CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 32(f) and (g), along with the Court's order of July 29, 2024, because it contains 230 words.

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

/s/ Jeffrey B. Wall

JEFFREY B. WALL

AUGUST 29, 2024

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of August, 2024, I electronically filed the foregoing supplemental reply brief with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I certify that service will be accomplished by the CM/ECF system for all participants in this case who are registered CM/ECF users.

/s/ Jeffrey B. Wall

JEFFREY B. WALL

AUGUST 29, 2024