September 15, 2025

Nicholas J. Schilling, Jr.
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Re: Prime Mover Institute's Comment on the Department of Justice's Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce, 90 Fed. Reg. 39,427 [DOJ-OLP-2025-0169] (Aug. 15, 2025).

Dear Mr. Schilling:

The Prime Mover Institute is a new public interest organization dedicated to advancing energy dominance in America. We work with coalition partners to engage in rulemaking processes with technical information and legal arguments, calling attention to the impacts regulation has on citizens, energy policy, and the rule of law.

Prime Mover Institute offers the following comments in response to the Department of Justice's (DOJ) Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce, 90 Fed. Reg. 39,427 (Aug. 15, 2025).

An increasing number of states are adopting so-called "low carbon fuel standards" (LCFS). These states claim their standards reduce the carbon intensity of on-road and off-road motor fuels by requiring fuel suppliers to meet the standards by supplanting gasoline and diesel fuel with electricity, hydrogen or biofuels, or by purchasing credits from other producers of fuels with state-determined carbon intensity scores at or below the mandated levels. To date, these standards have been adopted by California, Oregon, Washington and New Mexico. CAL. HEALTH & SAFETY CODE § 38500 *et seq.*; CAL. CODE REGS. tit. 17, § 95480 *et seq.*; OR. REV. STAT. § 468A.266 *et seq.* (2026); WASH. REV. CODE § 70A.535.025 *et seq.*; N.M. STAT. ANN. §§ 74-1-3, 7(A)(15), 8(A)(15), 18.

Meanwhile, many other states are considering similar requirements, including Vermont, New York, New Jersey, Minnesota, Michigan, Massachusetts, Illinois and Hawaii. For the programs currently being implemented, there is a clear trend evolving: state LCFS mandates are intended to become the equivalent of electric vehicle (EV) mandates. In other words, these state policies are predominantly transferring wealth from drivers of gasoline and diesel vehicles to manufacturers of

EVs, drivers of EVs and suppliers of electricity and EV charging services. This occurs as the compliance costs of gasoline and diesel fuel suppliers, through the purchase of LCFS credits, are passed along to drivers at the pump. Fortunately, there are actions that the federal government can take to protect consumers in these states, lower the cost of transportation fuel and energy costs, and bolster the overall U.S. economy.

Clean Air Act (CAA) § 211 gives the Environmental Protection Agency (EPA) broad authority to control the manufacturing and sale of fuel and fuel additives. *See* 42 U.S.C. § 7545. In fact, state low-carbon fuel standards, other than California's, are eligible to be preempted under CAA § 211(c)(4), as long as EPA makes a finding that such standards are not necessary. Such a finding, if done correctly, would survive legal scrutiny and would save consumers in those states billions of dollars at the pump. This would be consistent with the President's pledge to lower energy costs for Americans. *See* Executive Order 14154, 90 Fed. Reg. 8,353 (Jan. 29, 2025) (Unleashing American Energy).

Specifically, under CAA § 211(c)(4), EPA may find that state low-carbon fuel standards are not "necessary" to promote air quality and, accordingly, may publish a rule in the *Federal Register* expressly preempting state low-carbon fuel standards in all states but California, which has a unique preemption carveout under section 211(c)(4)(B).

To fall within section 211(c)(4), a state regulation must be (1) a "control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine," and (2) "for the purpose of motor vehicle emission control." All of the state low-carbon fuel standards qualify under this provision.

EPA must trigger the prohibition by making a finding that state low-carbon fuel standards are not "necessary," and publish that finding in the *Federal Register*. The purpose of any federal or state fuel standards is primarily to comply with National Ambient Air Quality Standards (NAAQS). *See id.* § 7545(c)(4)(C). There are no NAAQS for greenhouse gases—so a state LCFS created for the purpose of reducing greenhouse gas emissions is not necessary. Moreover, a growing body of evidence demonstrates that electric vehicles significantly increase emissions of particulate matter, for which there are NAAQS, meaning that the state standards are not only not necessary, they run counter to the purpose of protecting air quality. *See* Michael Buschbacher & Taylor Myers, *Electric Cars Emit More Particulate Pollution*, WALL ST. J., Mar. 3, 2024.

In addition, although California has received a unique carveout under section 211(c)(4)(B), it is worth pointing out that its program isn't working as intended and imposes huge costs on consumers. Instead of driving a switch from combustion vehicles to zero-emitting alternatives, 80% of the LCFS credits issued as of 2024 went to combustion-based biofuels. Danny Cullenward, *California's Low Carbon Fuel Standard*, KLELNMAN CTR. FOR ENERGY POL'Y AT THE UNIV. OF PA., Oct. 7, 2024, at 7. Rather than reducing emissions, this policy driver creates competition with food production, driving up food costs. *Id.* at 12. And the LCFS is incredibly expensive: the policy could inflate the cost of gasoline by $0.65 in the near term and nearly $1.50 by 2035. *Id.* at 18.

EPA, with support from DOJ to respond to the inevitable challenges from the states that have adopted these mandates, should take action to protect consumers, air quality, and meet the President's pledge to lower energy costs.

Thank you for the opportunity to comment.

Respectfully submitted,

/Russell Greene/
Russell Greene
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