

The Honorable Tana Lin

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, STATE OF
COLORADO, STATE OF CALIFORNIA, STATE
OF ARIZONA, STATE OF DELAWARE,
DISTRICT OF COLUMBIA, STATE OF HAWAI'I,
STATE OF ILLINOIS, STATE OF MARYLAND,
STATE OF MINNESOTA, STATE OF NEW
JERSEY, STATE OF NEW MEXICO, STATE OF
NEW YORK, STATE OF OREGON, STATE OF
RHODE ISLAND, STATE OF VERMONT, STATE
OF WISCONSIN,

Plaintiffs,

and

SIERRA CLUB, NATURAL RESOURCES
DEFENSE COUNCIL, CLIMATE SOLUTIONS,
SOUTHERN ALLIANCE FOR CLEAN ENERGY,
CLEANAIRE NC, WEST END REVITALIZATION
ASSOCIATION, PLUG IN AMERICA,

Plaintiff-Intervenors,

v.

U.S. DEPARTMENT OF TRANSPORTATION,

SEAN DUFFY, in his official capacity as Secretary
of the U.S. Department of Transportation,

Case No. 2:25-cv-00848-TL

[PROPOSED]
COMPLAINT-IN-
INTERVENTION OF
PUBLIC INTEREST
ORGANIZATIONS

COMPLAINT OF PUBLIC
INTEREST ORGANIZATIONS
CASE NO. 2:25-CV-00848-TL

*Earthjustice
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1 FEDERAL HIGHWAY ADMINISTRATION, and
2 GLORIA M. SHEPHERD, in her official capacity as
3 Executive Director and Acting Administrator of the
4 Federal Highways Administration,
5 *Defendants.*

INTRODUCTION

1
2 1. This suit challenges Defendants’ unlawful actions to indefinitely freeze billions of
3 dollars that Congress appropriated for the National Electric Vehicle Infrastructure (“NEVI”)
4 Formula Program.

5 2. Congress established the NEVI Formula Program through the bipartisan
6 Infrastructure Investment and Jobs Act of 2021, appropriating \$5 billion for the 50 States, Puerto
7 Rico, and the District of Columbia (“States”) to build a nationwide network of fast, reliable
8 electric vehicle (“EV”) charging stations along designated “Alternative Fuel Corridors.”

9 3. These corridors span most major highways in the United States and were
10 designated by Defendants at the direction of Congress to support mobility for drivers of
11 alternative fuel vehicles, including EVs. 23 U.S.C. § 151(a); (d). When complete, this
12 Alternative Fuel Corridor network will allow EV drivers to travel freely, safely, and reliably
13 across the country—removing a major barrier to EV adoption and dramatically improving long-
14 distance travel for current EV drivers.

15 4. NEVI is a formula program. As mandated by Congress, NEVI funds must be
16 distributed to the States each year using a fixed statutory formula and, once made available,
17 remain available until spent. The law grants no discretion to the Executive Branch to override or
18 suspend this process based on changing policy priorities.

19 5. On February 6, 2025, Defendants issued a letter (“February 6 Letter”) directing
20 States to halt all new obligations of their available NEVI formula funds for fiscal years 2022-
21 2025—effectively freezing more than \$2.74 billion. Defendants claimed this freeze was
22 necessary to align the NEVI Formula Program with “current U.S. DOT policy and priorities.”
23

6. The February 6 Letter rescinded all prior NEVI guidance documents issued by Defendants and, on that sole basis, nullified more than 150 previously approved State implementation plans and prohibited any new commitments, or “obligations,” of NEVI funds. As a direct result, States were forced to suspend their NEVI programs.

7. Defendants’ indefinite freeze of NEVI funds is unlawful. By blocking the distribution of formula funds in direct contravention of congressional directives, Defendants have violated the Administrative Procedure Act, the constitutional separation of powers, the Executive Branch’s duty to faithfully execute the laws, and have acted *ultra vires*.

8. Plaintiff-Intervenors are nonprofit public interest organizations with a direct and substantial interest in the lawful implementation of the NEVI Formula Program. Their members seek to travel in EVs reliably and confidently across the country using Alternative Fuel Corridors. They also have direct and protectable interests in the economic, consumer, recreational, health, environmental, and equity benefits that flow from NEVI-funded infrastructure—such as cleaner air, improved energy resilience, fair and inclusive public investment, reduced transportation costs, and new economic opportunities in their communities.

9. Defendants’ actions thwart the development of the robust and reliable EV charging network that Congress intended NEVI to create, inflicting harm on Plaintiff-Intervenors and their members, who are among the program’s intended direct beneficiaries. By reducing access to reliable public charging, Defendants’ actions restrict Plaintiff-Intervenors’ members’ ability to travel and use their EVs, increase their fuel costs, delay EV purchases, worsen health impacts from vehicle pollution, and deprive their communities of promised public investment.

10. To prevent further harm, Plaintiff-Intervenors seek vacatur of Defendants’ actions, as well as declaratory and injunctive relief to end the unlawful freeze and compel

1 Defendants' compliance with Congress's binding directive to distribute NEVI formula funds to
2 the States.

3 JURISDICTION AND VENUE

4 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because
5 this action arises under federal law, specifically, the United States Constitution and the
6 Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* The Court has further remedial authority
7 under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202.

8 12. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
9 § 1391(e) because Plaintiff-Intervenor Climate Solutions is headquartered in this district and a
10 substantial part of the events or omissions giving rise to the claim occurred in this district.

11 PARTIES

12 Plaintiff-Intervenors

13 13. Sierra Club is a nonprofit membership organization incorporated in California
14 with headquarters in Oakland. Sierra Club has over 600,000 members nationwide who are
15 dedicated to exploring, enjoying, and protecting the natural environment. Sierra Club is
16 committed to protecting its members from the harms of climate change and air pollution,
17 including pollution from the transportation sector. To that end, Sierra Club advocates to reduce
18 harmful emissions from vehicles and to accelerate the adoption and use of zero-emission EVs.
19 This advocacy includes support for policies and programs that lower barriers to EV use—such as
20 improving access to reliable EV charging infrastructure.

21 14. Natural Resources Defense Council ("NRDC") is a 501(c)(3) nonprofit
22 environmental and public health organization with several hundred thousand members. NRDC
23 engages in research, advocacy, media, and litigation related to protecting public health and the

environment. To this end, NRDC advocates for building a more resilient transportation system with zero emission vehicles to create healthier and more resilient communities, improve affordability, and generate high-quality careers. NRDC is based in New York, New York.

15. Climate Solutions is a regional 501(c)(3) non-profit organization, headquartered in Seattle, Washington with satellite offices in Olympia, WA and Portland, OR. Climate Solutions is focused on creating a thriving, equitable Northwest, powered by clean energy, inspiring the transition to sustainable prosperity across the nation and beyond. Its mission is to accelerate clean energy solutions to the climate crisis. As a Northwest-based clean energy economy nonprofit, Climate Solutions works to: (1) champion transformational policies and market-based innovations; (2) catalyze powerful partnerships and a diverse movement for action and accountability; and (3) communicate a bold vision for solutions at scale required by climate science. Climate Solutions is funded entirely through charitable contributions from supporters, donors, and volunteers, who include individuals, businesses, other charitable organizations, and grant-making organizations.

16. The Southern Alliance for Clean Energy (“SACE”) is a nonprofit membership organization based in Knoxville, Tennessee, dedicated to promoting responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeastern United States, including North Carolina, South Carolina, Florida, Tennessee, and Georgia. Founded in 1985, SACE advocates for policies that address climate change and protect regional quality of life. SACE’s Clean Transportation program supports the rapid decarbonization of transportation systems, recognizing that the transportation sector is now the largest contributor to greenhouse gas emissions in the U.S. Through its “Electrify The South” initiative, SACE works to accelerate the transition to electric transportation by promoting clean, electric vehicles and

1 improving EV charging infrastructure. SACE focuses on equitable infrastructure investment,
2 ensuring that underserved communities benefit from the transition to clean transportation.

3 17. CleanAIRE NC is a nonprofit membership organization based in Charlotte, North
4 Carolina, focused on advocating for health and environmental equity by addressing climate
5 change and air pollution. Originally founded in 2002 as Clean Air Carolina, the organization
6 expanded its mission in 2021 to include broader climate solutions and health equity. Through its
7 Clean Transportation program, CleanAIRE NC works to reduce transportation-related emissions,
8 promote low- and zero-emission vehicles, and expand clean transportation infrastructure in
9 collaboration with local governments. Committed to environmental justice, CleanAIRE NC
10 ensures that its solutions do not disproportionately affect underserved communities, empowering
11 individuals through education, advocacy, and partnerships to engage in climate action for
12 healthier, more sustainable environments.

13 18. The West End Revitalization Association (“WERA”) is a nonprofit organization
14 based in Mebane, North Carolina, focused on promoting environmental justice and equitable
15 infrastructure in historically underserved communities. Founded in 1994, WERA advocates for
16 essential public amenities—like clean water, sewage systems, and paved roads—in five
17 predominantly Black communities in Alamance County, North Carolina, settled by formerly
18 enslaved people. These communities have long been denied services and have been at risk of
19 displacement due to highway projects and suburban growth. As a community-led organization,
20 WERA empowers locals to address systemic racism and environmental disparities. WERA is
21 working to ensure the transition to electric vehicles benefits underserved communities by
22 advocating for equitable EV charging infrastructure. In addition to enhanced access to charging,
23

its members will also benefit from the growth of the EV industry through the recent siting of new local manufacturing facilities, which will create jobs and generate revenue for the area.

19. Plug In America is a national nonprofit organization committed to accelerating the transition to plug-in electric vehicles powered by clean, affordable, domestic electricity. Founded in 2005 by a coalition of EV advocates, the organization is a prominent voice in promoting sustainable transportation. Plug In America focuses on consumer education, policy advocacy, and research to reduce dependence on fossil fuels and improve air quality. Through initiatives like the PlugStar Program and EV Support Program, it provides resources to help consumers across the country choose suitable EVs, understand charging options, and navigate incentives. Additionally, it organizes events such as National Drive Electric Month and Drive Electric Earth Month to raise awareness and encourage EV adoption nationwide.

Defendants

20. Defendant Sean Duffy is the Secretary of the United States Department of Transportation (“USDOT”). He is USDOT’s highest-ranking official and is charged with supervision and management of the agency and its decisions and actions. 49 U.S.C. § 102(b). He is sued in his official capacity.

21. Defendant USDOT is a cabinet department of the Executive Branch of the federal government.

22. Defendant Gloria M. Shepherd is the Executive Director and Acting Administrator of the Federal Highway Administration (“FHWA”). The Administrator is responsible for carrying out the duties and powers vested in the USDOT Secretary by Chapter 4 of Title 23 of United States Code for development related to highway design, construction, and

1 maintenance, among other things, as well as additional duties and powers prescribed by the
 2 USDOT Secretary. 49 U.S.C. § 104(b)(1), (c). She is sued in her official capacity.

3 23. Defendant FHWA is an agency administration within USDOT. 49 U.S.C.
 4 § 104(a).

5 BACKGROUND

6 The National Electric Vehicle Infrastructure (“NEVI”) Formula Program

7 24. The NEVI Formula Program was established under the bipartisan Infrastructure
 8 Investment and Jobs Act (“IIJA”), signed into law on November 15, 2021. It is a five-year, \$5
 9 billion program intended “to provide funding to States to strategically deploy electric vehicle
 10 charging infrastructure and to establish an interconnected network to facilitate data collection,
 11 access, and reliability.” Pub. L. 117-58, 135 Stat. 429, 1421 (Nov. 15, 2021).

12 25. NEVI is a “formula” funding program. Accordingly, the IIJA requires the
 13 USDOT Secretary to apportion and distribute funds to the States using statutorily prescribed
 14 formulas for each fiscal year from 2022-2026. *Id.* at 1422. Distribution of these funds is not
 15 discretionary. *See id.* (providing that the Secretary “shall distribute [the NEVI Formula Program
 16 funds] among the States”). The IIJA also directs the USDOT Secretary to administer NEVI funds
 17 “as if apportioned under chapter 1 of title 23, United States Code,” which governs the Federal-
 18 Aid Highway Program—the main formula-based funding program overseen by FHWA. *Id.* at
 19 1425. The Federal-Aid Highway Program is a “federally assisted State program,” with the
 20 “protection of state-sovereignty”—in particular, States’ ability “to determine which projects shall
 21 be federally financed”—as a core feature. *See* 23 U.S.C. § 145(a).

22 26. Under the NEVI Formula Program, States may use their funds to acquire, install,
 23 operate, and maintain publicly available EV charging infrastructure. Pub. L. 117-58 at 1421-22.

1 The IIJA provides that States should initially focus NEVI investments on designated Alternative
 2 Fuel Corridors, which include most major U.S. highways. *See* 23 U.S.C. § 151. NEVI funds may
 3 cover up to 80% of project costs and may also support staffing, implementation, development,
 4 and planning activities. Pub. L. 117-58 at 1421-22, 1424-26.

5 27. Projects funded under the NEVI Formula Program must comply with statutory
 6 requirements and the “minimum standards and requirements” established by the USDOT
 7 Secretary, including specifications for station power, reliability, and accessibility. *See* Pub. L.
 8 117-58 at 1424; 23 C.F.R. § 680.100 *et seq.* These standards are specifically designed to benefit
 9 EV drivers by ensuring 97% annual uptime, transparent pricing, acceptance of multiple payment
 10 methods, and open access to all users, among other things. *See* 23 C.F.R. §§ 680.106, 680.114,
 11 680.116.

12 **The Non-Discretionary Distribution of NEVI Formula Funding to the States**

13 28. The distribution of NEVI funds began with Congress’s \$5 billion appropriation in
 14 the IIJA, which authorized FHWA to incur obligations that trigger disbursement from the U.S.
 15 Treasury. *See* 2 U.S.C. § 622(2)(A)(i).

16 29. Each fiscal year, under the Federal-Aid Highway Program, FHWA—acting with
 17 authority delegated by the USDOT Secretary—is required to certify the amounts of NEVI
 18 formula funds “apportioned” to each State based on a statutory formula. *See* 23 U.S.C. § 104(e).
 19 These apportionments are fixed in statute and reflect historical allocations and congressionally
 20 determined shares. *See id.* at §§ 104(c), 165.

21 30. Consistent with this statutory framework, FHWA has apportioned and made
 22 available \$3.27 billion in NEVI formula funds to the States for fiscal years 2022-2025—\$615

1 million in 2022, and \$885 million in each of 2023, 2024, and 2025. *See* Dkt. #1, Compl., Exhibit
 2 C (“NEVI Status of Funds”).¹

3 31. By law, NEVI formula funds remain available to the States until expended and are
 4 not transferable. Pub. L. 117-58 at 1421, 1425.

5 32. Once available, States work with FHWA to “obligate” their share of formula
 6 funds to specific NEVI projects. “Obligation” refers to a contractual commitment by the federal
 7 government to fund a project through specific agreements with a State. *See* 23 U.S.C.
 8 § 106(a)(3). Once funds are obligated, the State may incur eligible project expenses, submit them
 9 to FHWA, and receive disbursement into its account.

10 **States’ Substantial Efforts to Implement the NEVI Formula Program**

11 33. The IIJA establishes a single prerequisite for States to access their NEVI formula
 12 funds: Each State must submit an annual implementation plan describing how it “intends to use
 13 the funds distributed to the State ... to carry out the [NEVI Formula] Program for each fiscal
 14 year in which funds are made available,” by a deadline set by the USDOT Secretary. Pub. L.
 15 117-58 at 1422.

16 34. To assist States in meeting this NEVI Plan requirement, the IIJA directed the
 17 USDOT Secretary to issue guidance within 90 days of the law’s enactment. *Id.* at 1423.

18 35. Consistent with that mandate, and following the solicitation and receipt of
 19 stakeholder input (including from Plaintiff-Intervenors), *see* 86 Fed. Reg. 67782-85, FHWA
 20 issued initial NEVI guidance in February 2022 and subsequently updated that guidance in June
 21 2023 and again in June 2024.

22 ¹ Annual apportionment figures are available at: [https://www.fhwa.dot.gov/infrastructure-](https://www.fhwa.dot.gov/infrastructure-investment-and-jobs-act/evs_5year_nevi_funding_by_state.cfm)
 23 [investment-and-jobs-act/evs_5year_nevi_funding_by_state.cfm](https://www.fhwa.dot.gov/infrastructure-investment-and-jobs-act/evs_5year_nevi_funding_by_state.cfm).

36. Pursuant to FHWA’s guidance, States worked with diverse stakeholders—including, in many cases, Plaintiff-Intervenors—to prepare and submit detailed NEVI Plans each fiscal year. Initial plans for fiscal years 2022 and 2023 were due by August 1, 2022. States then submitted updated plans ahead of fiscal years 2024 and 2025, with deadlines of August 1, 2023, and September 1, 2024, respectively. In total, States submitted more than 150 NEVI Plans.

37. After submission, Defendants reviewed the State NEVI Plans for compliance with applicable statutes, regulations, and guidance. Defendants applied the version of guidance in effect for the relevant fiscal year of each plan—for example, applying the June 2024 guidance for States’ fiscal year 2025 plans—but did not require States to revise previously submitted plans to conform to updated guidance. Nor did they prohibit new obligations of prior-year apportionments before or after issuing the 2023 or 2024 updates to the guidance.

38. After reviewing each State’s NEVI Plan, Defendant FHWA issued annual letters stating: “FHWA has determined that the [State] Electric Vehicle Infrastructure Deployment Plan is approved for implementation.”² Each letter also stated: “funds are now available to [State] for obligation.”³ In total, Defendants issued more than 150 such letters, with each State receiving a letter in response to each of its NEVI Plan submissions.

39. The statute permits the USDOT Secretary to withhold or withdraw NEVI formula funds from a State only in two narrowly defined circumstances: (1) if a State fails to submit a

² See, e.g., FHWA Letter to State of Michigan Department of Transportation, “Approval of Michigan Electric Vehicle Infrastructure Deployment Plan” (Sept. 29, 2023), available at: https://web.archive.org/web/20250121191907/https://www.fhwa.dot.gov/environment/nevi/ev_deployment_plans/mi-approval-letter-fy24.pdf.

³ See, e.g., FHWA, Fiscal Year 2024 EV Infrastructure Deployment Plans, available at: https://web.archive.org/web/20250118171927/https://www.fhwa.dot.gov/environment/nevi/ev_deployment_plans/index.cfm?format=list#all_plan (archived version of FHWA webpage with all fiscal year 2024 FHWA letters and State plans).

plan, or (2) if a State has not taken steps to implement its submitted plan. Pub. L. 117-58 at 1422. In the latter case, the USDOT Secretary may withhold or withdraw funds only after making an individualized, formal determination that a state has failed to take steps to carry out its plan—a determination that can be made only after completing the statute’s required notice-and-cure process. *Id.*

40. To implement their NEVI Plans, and before obligating funds, States solicit proposals through notices-of-funding opportunities or requests-for-proposals from private parties for projects to acquire and install the charging infrastructure. States then select proposals and enter into contracts with the chosen applicants to carry out NEVI projects.

41. Following project selection, States and FHWA use the standard Federal-aid Highway Program procedures—applicable to all federally assisted, state-administered FHWA formula programs—to “obligate” the funds and disburse funds once States submit eligible expenses. *See* 23 C.F.R. § 680.118.

42. Through February 6, 2025, the States and Defendants had completed the obligation process for slightly more than \$526 million of the total \$3.27 billion of NEVI Funds apportioned and made available to the States for obligation for fiscal years 2022-2025. *See* NEVI Status of Funds.

43. As of February 6, 2025, many States were actively soliciting new proposals and selecting additional projects to implement their NEVI Plans for fiscal years 2022-2025. While progress varies by State, nearly all have taken substantial steps to implement their NEVI Plans. For example, Massachusetts and Maine have obligated all available funds, and all but four States have obligated some portion of their funding. *Id.* Nearly twenty States have obligated over \$10

1 million. *Id.* Yet even with these State efforts, \$2.74 billion of the \$3.27 billion appropriated and
 2 apportioned to the States remains unobligated.

3 **The Unleashing American Energy Executive Order and Related Agency Actions**

4 44. On his first day in office, President Trump signed an Executive Order titled
 5 *Unleashing American Energy*. Exec. Order 14154, 90 Fed. Reg. 8353, 8357 (Jan. 20, 2025)
 6 (“*Unleashing EO*”).

7 45. Section 2 of the *Unleashing EO* outlined a series of broad “polic[ies] of the
 8 United States,” including “eliminat[ing] the ‘electric vehicle (EV) mandate’ . . . by considering
 9 the elimination of unfair subsidies and other ill-conceived government-imposed market
 10 distortions that favor EVs over other technologies” and “ensur[ing] that no Federal funding be
 11 employed in a manner contrary to the principles outlined in this section, unless required by law.”
 12 *Id.* at 8353-54.

13 46. In Section 7 of the *Unleashing EO*, President Trump directed agencies to
 14 “immediately pause the disbursement of funds appropriated” through the Infrastructure
 15 Investment and Jobs Act, including “funds for electric vehicle charging stations made available
 16 through the National Electric Vehicle Infrastructure Formula Program.” *Id.* at 8357.

17 47. Through this directive, the President ordered federal agencies to withhold
 18 congressionally appropriated NEVI Formula Program funds in order to halt implementation of a
 19 statutory program based solely on policy disagreement, notwithstanding Congress’s clear
 20 legislative mandate.

21 48. Section 7 of the *Unleashing EO* also directed relevant executive agencies to
 22 “review [the] processes, policies, and programs for issuing grants, loans, contracts, or any other
 23

1 financial disbursements of such appropriated funds for consistency with the law and the policy
2 outlined in section 2 of this order” relating to the NEVI Formula Program and other programs.

3 *Id.*

4 49. On January 21, 2025, the day after the *Unleashing EO* was issued, Acting Office
5 of Management and Budget (“OMB”) Director Matthew Vaeth issued a memorandum to the
6 heads of departments and agencies stating that the *Unleashing EO* required them to halt
7 disbursement of “appropriations for objectives that contravene the policies established in section
8 2” of the Executive Order. OMB, Memorandum, M-25-11, “Guidance Regarding Section 7 of
9 the Executive Order *Unleashing American Energy*,” from Matthew Vaeth, Acting Director (Jan.
10 21, 2025).

11 50. On January 29, 2025, Defendant USDOT issued a memorandum entitled,
12 “Implementation of Executive Orders Addressing Energy, Climate Change, Diversity, and
13 Gender.” *See* USDOT, “Implementation of Executive Orders Addressing Energy, Climate
14 Change, Diversity, and Gender,” (Jan. 29, 2025) (“Implementation Memo”).

15 51. The Implementation Memo sets out USDOT’s “initial steps” to implement
16 multiple executive orders, including the *Unleashing EO*, by ordering all USDOT operating
17 administrations to identify everything subject to the executive orders within 10 days, and then
18 initiate “all lawful actions necessary to rescind, cancel, revoke, and terminate” those programs,
19 contracts, orders, and policy documents. *Id.* at 1.

20 52. Also on January 29, 2025, Defendants issued an order entitled, “Ensuring
21 Reliance Upon Sound Economic Analysis in Department of Transportation Policies, Programs,
22 and Activities.” *See* USDOT, Order Number DOT 2100.7 (Jan. 29, 2025) (“Ensuring Reliance
23 Order”).

53. Among other things, the Ensuring Reliance Order purports to require, “[t]o the maximum extent permitted by law, DOT-supported or -assisted programs and activities . . . [to] prioritize projects and goals that . . . require local compliance or cooperation with . . . goals and objectives specified by the President of the United States or the Secretary.” *Id.* at 5(f).

Defendants’ Indefinite Suspension of the NEVI Formula Program

54. On February 6, 2025, Defendants issued a letter addressed to “State Department of Transportation Directors” with the subject “Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans.” Dkt. #1, Compl., Exhibit D (“February 6 Letter”).

55. The letter purports to take three actions concerning the NEVI Formula Program that Defendants view as logically connected. First, Defendants “rescinded” their “current NEVI Formula Program Guidance dated June 11, 2024, and all prior versions.” *Id.* at 1. Second, as a purported consequence of rescinding the guidance, Defendants “suspend[ed] the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years.” *Id.* at 2. Third, because of the supposed suspension of all State NEVI Plans, Defendants “[t]herefore” prohibited “new obligations” under the NEVI Formula Program “until . . . updated final NEVI Formula Program Guidance is issued and new State plans are submitted and approved.” *Id.*

56. Defendants’ characterization of this third action as a mere “suspension” is belied by the substance of the February 6 Letter, which effectively nullifies previously approved and properly submitted State NEVI Plans by conditioning further obligations on the submission and approval of “new State plans.” *Id.*

57. Defendants also acknowledge their action “suspending” State Plans conflicts with law because the February 6 Letter further states, “[s]ince FHWA is suspending the existing State plans, States will be held harmless for not implementing their existing plans.” *Id.*

58. According to Defendants, these actions were taken because “new leadership of the Department of Transportation (U.S. DOT) has decided to review the policies underlying the implementation of the NEVI Formula Program” and for the purpose of “updating the NEVI Formula Program Guidance to align with current U.S. DOT policy and priorities, including those set forth in DOT Order 2100.7, titled ‘Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities.’” February 6 Letter at 1-2.

59. In direct response to the actions taken in Defendants’ February 6 Letter, States have halted implementation of the NEVI Formula Program.

60. In the wake of the February 6 Letter, many States publicly confirmed that they were forced to pause implementation of their NEVI Formula Programs and/or were unable to obligate new funds. On May 7, 2025, seventeen States filed suit to challenge Defendants’ actions to freeze the program. *See* Dkt. #1, Compl. As a result of Defendants’ actions, both Plaintiff States and non-party States have reported significant disruptions to their NEVI Formula Program implementation—including forced delays in project solicitations, rescinded funding awards, postponed project delivery with resulting cost escalations, and the risk that numerous planned infrastructure projects will ultimately be cancelled or abandoned.⁴

⁴ *See, e.g.*, Dkt. #1, Compl. at ¶¶ 114-212; Va. Dep’t of Transp., Virginia Electric Vehicle Infrastructure Deployment, available at: <https://publicinput.com/VirginiaNEVI#tab-49681> (last visited May 16, 2025) (announcing the withdrawal of unobligated project awards from two prior funding rounds and the indefinite suspension of a planned third round); Ala. Dep’t of Econ. and Cmty. Affairs, National Electric Vehicle (NEVI) Formula Program, available at: <https://adeca.alabama.gov/nevi/> (last visited May 20, 2025) (announcing indefinite suspension of an open funding round and application solicitation in response to the February 6 Letter); Brett Kast & Brandon Speagle, MDOT Pauses EV Infrastructure Expansion After Funding Freeze, WXYZ Detroit (Feb. 10, 2025), available at: <https://www.wxyz.com/news/mdot-pauses-ev-infrastructure-expansion-after-funding-freeze> (quoting a Michigan Dep’t of Transportation spokesperson’s statement that “[b]ased on guidance from the USDOT, Michigan is pausing second-round submissions of the NEVI program effectively [sic] immediately.”).

PLAINTIFF-INTERVENORS' INJURIES

61. Plaintiff-Intervenors and their members have standing to bring this action because they are concretely injured by Defendants' unlawful actions to nullify existing State NEVI Plans and indefinitely freeze new NEVI obligations, and a favorable ruling from this Court would redress those injuries.

62. Defendants have withheld more than \$2.74 billion in congressionally appropriated formula funds that were slated to cover the bulk of cost—the 80 percent federal cost share—of highway fast charging installations that would expand and improve the nation's highway network of EV charging, ensuring that Alternative Fuel Corridors have fast and reliable charging stations located at least every 50 miles. Absent the availability of the federal cost share, States have halted the development of new NEVI-funded highway charging infrastructure.

63. Plaintiff-Intervenors are public interest organizations committed to increasing the deployment of EVs and access to charging infrastructure. These efforts advance their organizational goals to mitigate climate change, reduce harmful air pollution, improve air quality, advance equity, promote affordability, and realize the economic benefits of broad EV access—including community investment, job creation, and consumer savings.

64. Plaintiff-Intervenors worked to support the establishment of the NEVI Formula Program as part of the IIJA and have engaged with States and FHWA since the program's inception to promote and shape its implementation and maximize its effectiveness.

65. Plaintiff-Intervenors have members who live, travel, or plan to travel in states nationwide using EVs along major highways, including Alternative Fuel Corridors, and who suffer economic, consumer, recreational, and health harms from Defendants' unlawful freeze of the NEVI Formula Program.

1 66. Plaintiff-Intervenors have members whose ability to travel by EV and to purchase
 2 and use their preferred, electric vehicles for distance travel are adversely impacted and restricted
 3 by Defendants' nullification of existing State NEVI Plans and freeze on new obligations of
 4 NEVI formula funds.

5 67. Plaintiff-Intervenors have members who own EVs and engage or have plans to
 6 engage in long-distance travel in these vehicles using designated Alternative Fuel Corridors.
 7 Plaintiff-Intervenors' members have purchased these vehicles and desire to drive them for many
 8 reasons including to minimize their own environmental and climate impacts, to realize lower fuel
 9 and maintenance costs compared to combustion-engine vehicles, and because EVs offer a quiet
 10 ride and are fun to drive. One member has a sensitivity to gasoline fumes and, having switched
 11 to an EV, stated she will never drive another kind of car again because she doesn't feel sick
 12 while driving her EV.

13 68. Plaintiff-Intervenors' members have experienced significant challenges with the
 14 adequacy and reliability of the existing EV fast charging network, particularly during long-
 15 distance travel. They have contended with poor signage, inconveniently located chargers—often
 16 miles off highway routes—broken or inoperable stations, overcrowding with long wait times,
 17 and confusing pricing and payment systems.

18 69. As a result of the limitations of the existing highway fast charging network,
 19 Plaintiff-Intervenors' members have experienced stress, inconvenience, restrictions on their
 20 travel, safety risks, and higher travel costs. Members who own only EVs have had to forgo or
 21 alter travel plans, denying members the benefits of travel altogether or requiring them to make
 22 costly or inconvenient alternative accommodations to reach their desired locations. For example,
 23 some members avoid or limit the frequency of longer trips, restrict travel to less popular times

1 when charging stations are less crowded, or decline to drive at night to avoid searching for off-
2 highway charging stations. Other members have had to borrow or rent alternate vehicles to make
3 desired trips, or taken more expensive and less preferred modes of travel like flying. Even
4 members who own both electric and gas-powered vehicles are harmed by their inability to
5 engage in their desired travel in their preferred EVs, including from the lost opportunity to
6 realize fuel and maintenance cost savings and the increased emissions.

7 70. Plaintiff-Intervenors also have members who wish to purchase fully electric
8 vehicles but are waiting until the national fast charging network is more robust. These members
9 are motivated by the desire to reduce their environmental impact, enjoy EV driving, and save on
10 fuel and maintenance costs—but remain concerned about their ability to take long-distance
11 highway trips given the current state of public fast charging infrastructure. One member
12 purchased an EV in reliance on the charging infrastructure improvements promised by the NEVI
13 program and described Defendants’ abrupt and unexpected freeze of state efforts to build their
14 NEVI networks as a “bait-and-switch.”

15 71. Plaintiff-Intervenors have members who would directly benefit from the NEVI
16 Formula Program’s requirement to install charging stations every 50 miles along designated
17 Alternative Fuel Corridors—a critical measure to ensure equitable access to EV infrastructure in
18 rural and underserved areas. NEVI-funded stations were planned for communities where
19 Plaintiff-Intervenors’ members live—places that have long been bypassed by private
20 infrastructure investment. Members in these areas want to participate in the clean energy
21 transition but lack even the infrastructure necessary, like public fast chargers, to make EV
22 adoption viable. The freeze on NEVI funding strips these members of a long-overdue public
23 investment and directly harms their access to charging, affordable transportation options, and the

1 environmental and economic benefits of electrification. It reinforces the very disparities NEVI
2 was designed to address.

3 72. Plaintiff-Intervenors have members who live in areas vulnerable to flooding,
4 hurricanes, and wildfires and face heightened harm from the freeze of NEVI funding. In
5 emergencies, reliable access to fast charging is essential for safe evacuation—especially as more
6 residents adopt electric vehicles. Without NEVI-funded stations, members confronting climate-
7 related disasters may be left without the dependable infrastructure that is necessary for
8 emergency travel. For this reason, some of Plaintiff-Intervenors’ members have retained gas-
9 powered cars despite their preference to drive electric because they cannot confidently evacuate
10 in an electric vehicle due to the current lack of reliable fast chargers. The freeze of the NEVI
11 Formula Program undermines resilience efforts and puts lives at risk by delaying the buildout of
12 critical infrastructure that would allow people to evacuate safely and efficiently when every
13 minute counts.

14 73. In addition, Plaintiff-Intervenors have members whose health conditions,
15 including asthma, are exacerbated by air pollution. Vehicles are a major source of local air
16 pollution, particularly smog-forming emissions. Plaintiff-Intervenors also have members who
17 live in Black and Brown communities that are overburdened by highway-related air pollution,
18 and are deeply concerned about the health impacts of continued tailpipe emissions. The robust
19 fast charging network funded by the NEVI Formula Program was expected to induce a
20 significant increase in EV adoption, and the resulting increased use of EVs would reduce
21 harmful air pollution from the transportation sector and improve air quality because battery
22 electric vehicles have no tailpipe emissions.

1 74. Lifting the freeze on the flow of NEVI formula funds and allowing States to
2 resume implementation of their State NEVI Plans to develop additional fast and reliable charging
3 station projects along Alternative Fuel Corridors would redress Plaintiff-Intervenors' injuries and
4 their members' injuries.

5 75. Greater and more reliable access to fast charging enabled by the expenditure of
6 appropriated NEVI formula funds would expand Plaintiff-Intervenors' members' ability to use
7 their electric vehicles for desired long-distance travel. The State NEVI Plans include stations
8 along Alternative Fuel Corridors that members rely on, and completing these projects would
9 allow members to travel more frequently, safely, and confidently—without the current stress of
10 planning around inadequate charging infrastructure—and to reach destinations that they cannot
11 currently reach in their EVs. It would also allow members living in disaster-prone areas to
12 evacuate safely in their EVs and provide greater access to consumer savings from reduced fuel
13 and maintenance costs for EV drivers.

14 76. In addition, restoring the NEVI Formula Program and enabling continued
15 development of the nationwide NEVI charging network would provide Plaintiff-Intervenors'
16 members with the confidence and practical ability to purchase fully electric vehicles—
17 facilitating access to their preferred vehicle technology and the opportunity to realize associated
18 fuel and maintenance cost savings. Increased EV adoption induced by NEVI's robust charging
19 network would also reduce harmful transportation-related pollution, benefiting Plaintiff-
20 Intervenors' members with respiratory diseases and sensitivities exacerbated by vehicle
21 emissions and those members living in overburdened communities most affected by vehicle
22 emissions.

CAUSES OF ACTION

COUNT 1

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
IN EXCESS OF STATUTORY AUTHORITY, NOT IN ACCORDANCE WITH LAW,
AND WITHOUT OBSERVANCE OF REQUIRED PROCEDURE**

77. Plaintiff-Intervenors reallege and incorporate all the foregoing paragraphs.

78. Each of the Defendants is an agency as defined in the APA. 5 U.S.C. § 551(1).

79. The actions taken by Defendants in the February 6 Letter to nullify State NEVI Plans and to indefinitely prohibit new obligations of NEVI formula funds are final agency actions reviewable under the APA.

80. The APA requires courts to hold unlawful and set aside agency actions “contrary to constitutional right, power, privilege, or immunity,” “in excess of statutory jurisdiction, authority, or limitations,” “not in accordance with law,” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

81. For at least five reasons, Defendants’ actions to nullify State NEVI Plans and indefinitely withhold NEVI funds are in excess of statutory authority, contrary to law, and without observance of procedure required by law, and must be set aside.

82. **FIRST**, neither the IIA nor any other federal law or regulation authorizes Defendants—or any other executive agency or official—to suspend or nullify State NEVI Plans.

83. Defendants erroneously conclude that because the USDOT Secretary has limited authority to “develop guidance,” Pub. L. 117-58 at 1423, Defendants have additional unwritten authority to categorically “suspend[] the existing State plans” after rescinding program guidance. February 6 Letter at 2.

84. Because Defendants are requiring “new State plans [to be] submitted and approved” and have barred any new obligations under the previously approved NEVI Plans, February 6 Letter at 2, their purported “suspension” of existing State NEVI Plans effectively nullifies those plans and constitutes a revocation of their prior approvals.

85. No federal law authorizes Defendants to suspend, nullify, or revoke approval of, existing State NEVI Plans after their submission.

86. Accordingly, Defendants acted in excess of their statutory authority by nullifying the State NEVI Plans, in violation of the APA.

87. **SECOND**, neither the IIJA nor any other federal law or regulation authorizes Defendants—or any other executive agency or official—to categorically withhold or withdraw NEVI Formula Program funds.

88. By prohibiting all new obligations of all NEVI Formula Program funds already apportioned and made available to the States, the Defendants have categorically withdrawn and are withholding formula funds from the States.

89. Accordingly, Defendants acted in excess of their statutory authority by prohibiting new obligations of NEVI formula funding, in violation of the APA.

90. **THIRD**, the IIJA only permits the USDOT Secretary to “withhold or withdraw . . . funds made available” to a State for a particular fiscal year in two limited circumstances not present here: if (1) a State fails to submit a plan, or (2) the USDOT Secretary “determines a State has not taken actions to carry out its [NEVI] plan.” Pub. L. 117-58 at 1422.

91. All States submitted State NEVI Plans to the USDOT Secretary in accordance with the IIJA.

92. Defendants issued more than 150 letters acknowledging and approving the States' NEVI Plans for fiscal years 2022-2025.

93. Defendants have not determined that a single State has failed to take actions to carry out its plan.

94. By prohibiting new obligations of congressionally appropriated NEVI formula funds already apportioned and made available to the States, the Defendants have indefinitely blocked the distribution of formula funding to the States thereby withdrawing and withholding funds from the States.

95. By taking such action without following required procedures and without reference to any statutory factors—and instead relying solely on Executive Branch policy preferences—Defendants acted contrary to law and in violation of the APA.

96. **FOURTH**, before withdrawing or withholding funds—and “prior to . . . making a determination that a State has not taken actions to carry out its plan”—the USDOT Secretary must first comply with the IIJA’s notice-and-cure requirements. *Id* at 1422-23.

97. Specifically, before making such a determination, the IIJA requires the USDOT Secretary to first “notify the State, consult with the State, and identify actions that can be taken to rectify concerns,” provide at least 90 days for the State to do so, and then issue a 60-day notice of intent to withdraw or withhold funds during which the State may appeal the decision. *Id*.

98. Defendants failed to follow *any* of the notice-and-cure procedures required by law before they withdrew and withheld NEVI formula funds by categorically prohibiting new obligations of funds made available for fiscal years 2022-2025.

99. Defendants therefore acted without observing required procedures and not in accordance with law, in violation of the APA.

1 100. **FIFTH**, Defendants’ actions through the February 6 letter to withhold
 2 appropriated and apportioned funds are contrary to the Impoundment Control Act of 1974
 3 (“ICA”).

4 101. Under the ICA, Defendants’ prohibition of new obligations is “a deferral of
 5 budget authority” as it “precludes the obligation or expenditures of budget authority.” 2 U.S.C.
 6 § 682(1)(B).

7 102. Budget deferrals are permissible only under a very small set of highly
 8 circumscribed conditions, and Executive Branch policy priorities are not a lawful basis for a
 9 budget deferral. *See City & County of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir.
 10 2018) (“Absent congressional authorization, the Administration may not redistribute or withhold
 11 properly appropriated funds in order to effectuate its own policy goals.”).

12 103. By prohibiting new obligations of NEVI formula funds, Defendants have
 13 unlawfully withdrawn and are now withholding funds from the States based on Executive
 14 Branch policy priorities that Congress did not enact as part of the NEVI Formula Program.

15 104. Defendants’ actions also violate the ICA because the Executive Branch failed to
 16 comply with the statute’s requirements for notifying Congress of any deferral of funds.

17 105. Defendants’ actions thereby contravene the Impoundment Control Act.

18 106. Accordingly, Defendants’ actions, and any other agency action taken by
 19 Defendants to freeze, block, or terminate NEVI formula funding based on the Executive
 20 Branch’s priorities rather than Congress’s must be set aside as in excess of Defendants’ statutory
 21 authority, not in accordance with law, and without observance of required procedure. 5 U.S.C.
 22 § 706(2)(A)-(D).

1 107. These agency actions must be held unlawful and set aside under the APA. *Id.* at
2 § 706(2).

3 **COUNT 2**

4 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**
5 **ARBITRARY AND CAPRICIOUS**

6 108. Plaintiff-Intervenors reallege and incorporate all the foregoing paragraphs.

7 109. The APA requires a court to “hold unlawful and set aside agency action” that is
8 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.
9 § 706(2)(A).

10 110. Agency action is arbitrary and capricious if the agency fails to act reasonably or
11 provide a reasoned explanation for its actions; relies on factors Congress did not intend it to
12 consider; ignores important aspects of the issue; or fails to consider reasonable alternatives. It is
13 likewise arbitrary and capricious for an agency to depart from prior policy without
14 acknowledging the change, addressing legitimate reliance interests, or justifying the new policy
15 with sound reasons consistent with the governing statute.

16 111. For at least five reasons, Defendants’ actions through the February 6 letter to
17 nullify State NEVI Plans and indefinitely prohibit new obligations pursuant to those plans were
18 arbitrary and capricious and must be set aside.

19 112. **FIRST**, Defendants failed to provide a reasoned explanation for their actions,
20 including their departure from prior agency determinations.

21 113. Defendants failed to support their actions with facts.

22 114. Defendants disregarded the factual record and circumstances that supported their
23 previous determinations acknowledging and approving State NEVI Plans.

1 115. Defendants failed to provide a legal justification for their actions.

2 116. Defendants failed to explain how the review or withdrawal of prior guidance
3 necessitated Defendants' actions nullifying existing State NEVI Plans and indefinitely
4 prohibiting new obligations.

5 117. Defendants failed to engage in any reasoned, individualized assessment of State
6 NEVI Plans or the steps taken by States to implement them.

7 118. Defendants' unexplained actions and policy reversal, unsupported by fact or law,
8 violates the requirement that agency action be the product of reasoned decisionmaking under the
9 APA.

10 119. **SECOND**, Defendants repudiated existing State NEVI Plans and prohibited new
11 obligations for the sole, and therefore impermissible, purpose of applying a change in Executive
12 Branch policy.

13 120. **THIRD**, Defendants' actions rely on factors that Congress neither intended nor
14 authorized them to consider.

15 121. Specifically, Defendants' actions nullifying existing State NEVI Plans and
16 indefinitely freezing formula funds are based solely on Executive Branch policy preferences.

17 122. Defendants' actions are contrary to Congress's specific directives and purposes
18 for appropriating formula funds for the NEVI Formula Program in the IIJA.

19 123. **FOURTH**, Defendants indefinitely froze more than \$2.74 billion appropriated by
20 Congress under the IIJA without considering or addressing the serious reliance interests at
21 stake—including the expectation held by States, communities, and travelers nationwide that
22 FHWA would distribute NEVI Formula Program funds as required by law to support the projects
23 outlined in the State NEVI Plans.

124. **FIFTH**, Defendants nullified State NEVI Plans and indefinitely froze all available and unobligated NEVI formula funding without consideration of reasonable and lawful alternatives.

125. For example, Defendants could have used their limited discretion within the confines of the IJA to develop new guidance applicable to fiscal year 2026 plans without nullifying existing State NEVI Plans or prohibiting States' use of formula funds apportioned and made available for fiscal years 2022-2025.

126. Defendants' actions must be vacated as arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A).

COUNT 3

VIOLATION OF SEPARATION OF POWERS

127. Plaintiff-Intervenors reallege and incorporate all the foregoing paragraphs.

128. "[W]henever a separation-of-powers violation occurs, any aggrieved party with standing may file a constitutional challenge." *Collins v. Yellen*, 594 U.S. 220, 245 (2021).

129. The President of the United States has only those powers conferred on him by Article II of the Constitution and federal statutes.

130. The U.S. Constitution grants Congress, not the President, exclusive power of the purse and the power to legislate. U.S. Const. art. I §§ 1, 8, 9.

131. When Congress appropriates formula funds for a specified purpose, the Executive Branch has a duty to distribute those formula funds to the States on the terms set by Congress. *See* U.S. Const. art. II, § 3 (Take Care Clause).

132. Neither the President nor any Executive Branch official has constitutional power to unilaterally amend federal statutes. Neither the President nor any Executive Branch official

1 has constitutional power to unilaterally block, delay, or otherwise freeze the distribution of
2 formula funds appropriated by Congress, particularly when the freeze is based on Executive
3 Branch policies rather than Congress's clear spending directives.

4 133. Congress established the NEVI Formula Program under the IIJA and appropriated
5 \$5 billion "to provide funding to States to strategically deploy electric vehicle charging
6 infrastructure." Pub. L. 117-58 at 1422.

7 134. Consistent with statutory requirements, Defendants apportioned the funds to the
8 States, and the States submitted State NEVI Plans for fiscal years 2022-2025 and took action to
9 implement those plans.

10 135. Defendants have a constitutional obligation to implement the congressionally
11 mandated NEVI Formula Program by distributing the congressionally appropriated formula
12 funds to the States each fiscal year of the program. *Id.*

13 136. Defendants' actions purporting to nullify previous State NEVI Plans and prohibit
14 new obligations for fiscal years 2022-2025 directly contravene Congress's directives in the IIJA
15 and other statutes to distribute the NEVI formula funds and otherwise carry out the NEVI
16 Formula Program. *See, e.g., id.* at 1421-22 (providing the USDOT Secretary "shall" distribute
17 the funds to the States to "establish an interconnected network" of reliable and accessible electric
18 vehicle charging stations).

19 137. Congress has not delegated to Defendants the authority to nullify existing State
20 NEVI Plans and require States to submit new ones.

21 138. Congress also has not delegated to Defendants the authority to categorically
22 prohibit new obligations of formula funds made available in previous fiscal years.

139. By indefinitely freezing congressionally appropriated formula funds without congressional authorization, Defendants exercised legislative power not granted by Congress and unlawfully usurped Congress's legislative authority, in violation of the Constitution's separation of powers.

140. By indefinitely freezing congressionally appropriated formula funds based on factors outside the governing statutes and Defendants' congressionally delegated authority, Defendants effectively seek to exercise the power of the purse and amend duly enacted appropriations laws, in violation of the Constitution's separation of powers.

COUNT 4

VIOLATION OF THE TAKE CARE CLAUSE

141. Plaintiff-Intervenors reallege and incorporate all the foregoing paragraphs.

142. The President and the Executive Branch have a duty under the Constitution to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

143. When Congress appropriates formula funds for a specific purpose, the Executive has a duty to distribute those formula funds to the States on the terms set by Congress.

144. The Executive violates the Take Care Clause when it directs federal officers or agencies to act in derogation of a federal statute.

145. The Executive also violates the Take Care Clause when it declines to execute or undermines statutes enacted by Congress and signed into law.

146. Through the IIJA, Congress explicitly required Defendants to distribute formula funds to the States each fiscal year of the program upon the States' submission of a plan in the form and manner required by the USDOT Secretary.

147. Defendants acted contrary to and in defiance of congressional will by nullifying State NEVI Plans and indefinitely blocking access to NEVI formula funds already apportioned to the States for obligation for fiscal years 2022-2025.

148. By ignoring their clear statutory mandate to distribute formula funds each fiscal year of the program, Defendants acted contrary to, and in violation of, the Executive's Constitutional duty to take care that the laws be faithfully executed.

COUNT 5

ULTRA VIRES ACTION

149. Plaintiff-Intervenors reallege and incorporate all the foregoing paragraphs.

150. Plaintiff-Intervenors have a non-statutory right to have official action that is *ultra vires* declared unlawful.

151. An agency or executive officer acts *ultra vires* when it acts in excess of its delegated powers or violates a specific statutory command.

152. Judicial relief is generally available to anyone harmed by a government official's action taken beyond their express or implied legal authority.

153. Defendants' actions are *ultra vires* because no law, including the IIJA, authorizes Defendants—or any other executive agency or official—to categorically “suspend” or nullify States' NEVI Plans, or to categorically and indefinitely block the States' use of NEVI formula funds already apportioned and made available for fiscal years 2022-2025.

154. Additionally, Defendants' actions are *ultra vires* because the withdrawal and withholding of NEVI formula funds violates a clear and mandatory statutory directive to make NEVI formula funds available to the States to effectuate the purposes set forth in the IIJA.

1 155. Defendants therefore acted in excess of the authority delegated by Congress and
2 in direct violation of specific statutory commands, and no reasonable interpretation of law
3 authorizes their actions.

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24 COMPLAINT OF PUBLIC
INTEREST ORGANIZATIONS
CASE NO. 2:25-CV-00848-TL

Earthjustice
810 Third Ave., Suite 610
Seattle, WA 98104
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PRAYER FOR RELIEF

WHEREFORE, for all the reasons set forth above, Plaintiff-Intervenors respectfully request this Court:

- a) Declare Defendants’ actions to categorically “suspend” or nullify all State NEVI Plans and to indefinitely prohibit new obligations of NEVI Formula Program funds apportioned to the States for fiscal years 2022-2025 to be in violation of the Administrative Procedure Act;
- b) Declare Defendants’ actions to categorically “suspend” or nullify all State NEVI Plans and to indefinitely prohibit new obligations of NEVI Formula Program funds apportioned to the States for fiscal years 2022-2025 to be in violation of separation of powers and the Take Care clause of the U.S. Constitution;
- c) Declare Defendants’ actions to categorically “suspend” or nullify all State NEVI Plans and to indefinitely prohibit new obligations of NEVI Formula Program funds apportioned to the States for fiscal years 2022-2025 to be beyond their authority, in violation of law, and unlawful as *ultra vires* acts;
- d) Vacate Defendants’ actions in the February 6 Letter, including to categorically “suspend” or nullify State NEVI Plans and to prohibit new obligations of NEVI Formula Program funds apportioned to the States for fiscal years 2022-2025;
- e) Enjoin Defendants from “suspending,” nullifying, or revoking approval of State NEVI Plans for fiscal years 2022-2025 and from ordering States to submit new State NEVI Plans for fiscal years 2022-2025;

- f) Enjoin Defendants from prohibiting new obligations of, and from otherwise impeding, blocking, cancelling, or terminating, the distribution of, NEVI Formula Program funds apportioned to the States for fiscal years 2022-2025, through action or inaction;
- g) Order Defendants to make NEVI Formula Program funding apportioned to the States for fiscal years 2022-2025 immediately available to States for obligation;
- h) Enjoin Defendants from implementing, giving effect to, or reinstating under a different name or through other means the directives in the *Unleashing EO* or OMB Directive to block implementation of the NEVI Formula Program;
- i) Enjoin Defendants from adopting or implementing any policy or requirement that contravenes or impinges upon congressional intent or directives regarding the implementation of the NEVI Formula Program or the timely obligation and disbursement of NEVI Formula Program funds.
- j) Order Defendants to provide regular status updates regarding the NEVI Formula Program and the distribution of formula funds, including the availability, obligation, and disbursement of funds.
- k) Retain jurisdiction to ensure compliance with the orders of this Court;
- l) Award Plaintiff-Intervenors their reasonable fees, costs, and expenses, including attorneys' fees pursuant to 28 U.S.C. § 2412; and
- m) Grant such other relief as the Court deems just and proper.

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DATED this 22nd day of May 2025.

Respectfully submitted,

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**Pro Hac Vice Application Forthcoming*

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