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Funds for More EV Charging Stations? States Sue to Release Federal Money to Accomplish that Goal.

On May 7, 2025, 16 states and the District of Columbia filed suit in federal court in Seattle with the headline, "President Trump Has Unleashed an Attack on an Increasingly Popular Consumer Choice – the Electric Vehicle."

The complaint alleges that the federal government has illegally withheld billions of dollars appropriated by Congress and awarded to the states pursuant to the Inflation Reduction Act (IRA)[1] and the Infrastructure Investment and Jobs Act (IIJA)[2] and that are made available to the states through the National Electric Vehicle Infrastructure (NEVI) Formula Program.[3]

The complaint asks the court to declare that the administration's actions (1) violate the Administrative Procedure Act, (2) violate the separation of powers doctrine and the Take Care Clause of the U.S. Constitution, and (3) are unlawful under the common law *ultra vires* doctrine. The plaintiffs ask the court to enjoin the U.S. Department of Transportation (DOT) from implementing its proposed actions, and order the agency to resume approvals, restore funding, and block any future attempts to withhold such funds without following the law.

The DOT Letter Suspending State EV Infrastructure Deployment Plan

On February 6, 2025, the DOT delivered a letter to all of the states' DOT Directors stating that funding approvals pursuant to the NEIV charging system program were suspended. The DOT "immediately" rescinded approval of state plans pending a review of the "policies underlying the implementation of the NEVI Formula Program, and all prior versions of this guidance are rescinded."

The letter continued:

> The [Federal Highway Administration] is updating the NEVI Formula Program Guidance to align with current U.S. DOT policy and priorities, including those set for in DOT Order 2100, titled "Ensuring Reliance Upon Sound Economic Analysis in Department of Transportation Policies, Programs, and Activities."

Five Billion Dollars Are Stuck in Limbo

Congress had earlier appropriated $5 billion under the IIJA for the purpose of "providing funding to the states to strategically deploy electric vehicle charging infrastructure and to establish an interconnected network to facilitate data collection, access, and reliability."[4]

Those funds were to be distributed among the states over fiscal years 2022 through 2026 using a mandatory formula established by the Congress. The DOT's action effectively sequesters those funds until the agency "review" is completed.

The Trump Administration's Policy to Eliminate the "Electric Vehicle (EV) Mandate."

After his inauguration, President Trump issued the Executive Order titled, "Unleashing American Energy" proclaiming a policy to eliminate the "EV mandate."[5]

In the section of the order titled, "Terminating the Green New Deal," the order mandated an immediate pause of the disbursement of federal funds appropriated by the Congress under the IRA and the IIJA, including the EV charging stations funds.[6]

The Paris Agreement and Biden's 2035 Climate Target Challenged

The Trump Administration's primary objective is to address the Biden Administration's climate target for 2035. The Biden White House outlined its climate target in the Fact Sheet issued on December 19, 2024, which stated in part:

> On Day One of his Administration, President Biden fulfilled his promise to rejoin the Paris Agreement and set a course for the United States to tackle the climate crisis at home and abroad. In 2021, pursuant to the terms of the Paris Agreement, President Biden submitted a nationally determined contribution (NDC) with a

target of reducing U.S. greenhouse gas emissions 50-52 percent from the 2005 baseline in 2030.

Today, as the United States continues to accelerate the transition to a clean energy economy, President Biden is announcing a new climate target for the United States: a 61-66 percent reduction in 2035 from 2005 levels in economy-wide net greenhouse gas emissions. It keeps the United States on a straight line or steeper path to achieve net-zero greenhouse gas emissions, economy-wide, by no later than 2050. In connection with this announcement, the United States is making a formal submission of this new target to the United Nations Climate Change secretariat as its next NDC under the Paris Agreement. (Emphasis added.)

The Paris Agreement? The Flip-Flop is Alive and Well in the U.S.

The United Nations describes the Paris Agreement as a "legally binding international treaty on climate change. It was adopted by 196 Parties at the UN Climate Change Conference (COP21) in Paris, France, on 12 December 2015. It entered into force on 4 November 2016."

Its overarching goal is to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels."

President Obama joined the U.S. to the Paris Agreement in September 2016. Then, the first Trump Administration announced that the U.S. would withdraw from the Paris Agreement in 2017, but the withdrawal did not take effect until November 4, 2020.[7] President Biden then rejoined the U.S. to the Paris Agreement on February 19, 2021.

And in the latest chapter, on Inauguration Day 2025, President Trump continued the flip-flop that the U.S. has developed related to the 2015 Paris Agreement. He ordered that:

> The United States Ambassador to the United Nations shall immediately submit formal written notification of the United States' withdrawal from the Paris Agreement under the United Nations Framework Convention on Climate Change. The notice shall be submitted to the Secretary-General of the United Nations, the

Depositary of the Agreement, attached as Appendix A. The United States will consider its withdrawal from the Agreement and any attendant obligations to be effective immediately upon this provision of notification.[8]

Where from here?

Predictable in the Courts? No.

Predictable for business and the general public. No.

Predictable at the political level? Maybe.

This blog was drafted by John L. Watson, an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.

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1 (Public Law 117-169)

2 (Public Law 117-58)

3 (Exec. Order No. 14,154, 90 Fed. Reg at 8357).

4 Pub. L. No 117-58, 135 Stat, 429, 1421 (2021)

5 Exec. Order No. 14,154, 90 Fed.Reg. 8353 (January 29, 2025).

6 Exec. Order No 14,154, 90 Fed. Reg. at 8357.

7 *See* U.S. Department of State Press Statement on the U.S. Withdrawal from the Paris Agreement

8 https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/

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