ORAL ARGUMENT REQUESTED
No. 25-6115

In the United States Court of Appeals for the Tenth Circuit

NICK SHAFFER and CHARLA SHAFFER, individually and as parents and next friends of Hope Shaffer, deceased,
Plaintiffs-Appellants,

v.

TOYOTA MOTOR CORPORATION, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Oklahoma
Case No. 5:22-CV-00151 (The Hon. David L. Russell)

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There have been no prior or related appeals.

GLOSSARY

FMVSS	Federal Motor Vehicle Safety Standard
NHTSA	National Highway Traffic Safety Administration

INTRODUCTION

Hope Shaffer was 15 years old and riding in the back seat of a brand-new Toyota Corolla when it was rear-ended. Nothing about the accident foretold what was about to happen: The car behind them was not driving unusually fast—it hit the Corolla and jolted it forward by about 20 miles per hour. Everyone was wearing seatbelts. And both front-seat passengers walked away with no serious injuries.

But the seatback in front of Hope was too weak to stay in place. On impact, the front-seat passenger was thrust backward and the seatback gave way, causing him to slam back into Hope. The back of his head hit the front of hers, and she died.

Hope's parents sued Toyota under Oklahoma products-liability law. Toyota did not deny that the evidence produced in discovery was sufficient to allow a jury to find that the seatback's design was unreasonably dangerous and that Toyota was negligent. Yet Toyota claimed that it was nevertheless completely immune from suit under an Oklahoma statute creating a "rebuttable presumption" against liability for products that comply with an on-point federal safety standard. Okla. Stat. tit. 76, § 57.2(A). Because a federal agency had promulgated a standard for seatback strength in 1967, which the Corolla met, Toyota claimed that it was entitled to total immunity.

But blanket immunity is strong medicine, so Oklahoma's legislature placed two important limits on it. It does not apply (1) if the federal standard is "inadequate to protect the public from unreasonable risks of injury," or (2) if the defendant

"withheld or misrepresented information … relevant to the federal government's or agency's determination of adequacy." Okla. Stat. tit. 76, § 57.2(B)(1), (2).

The district court held that the record here did not support either limitation and granted summary judgment to Toyota. But the court was wrong on both fronts.

As to the first: The federal seatback standard is widely understood to be inadequate. It was established nearly 60 years ago, when seatback technology was nothing like it is today. The average modern seatback is many times stronger than the 1967 standard (as is the seatback at issue in this case). And even the federal agency that set the standard has admitted that its own standard is "inadequate" and in need of an "upgrade." The only reason that has not happened yet is that the agency thinks that more data is needed to allow for an "informed decision" about what the new standard should be. No plausible conception of inadequacy requires more than this.

As to the second: Toyota also withheld information that had been requested by members of Congress in 2016 in an effort to determine whether Congress should intervene on this very issue due to the federal government's inadequacy—something that Congress then did in 2021. That, too, is enough to rebut the presumption.

Reversal is thus warranted. Under any plausible interpretation of this statute, the relevant standard is inadequate and Toyota withheld pertinent information. But if the Court finds it necessary to go further, and if it has doubts as to the best reading of the statute, it should certify these questions to the Oklahoma Supreme Court.

JURISDICTIONAL STATEMENT

This Court has appellate jurisdiction under 28 U.S.C. § 1291. The district court entered judgment on the merits for Toyota on June 30, 2025, and the plaintiffs timely filed a notice of appeal on July 28, 2025. App. Vol. 3 at 208–210. The district court determined that it had diversity jurisdiction under 28 U.S.C. § 1332. Although the parties were not entirely diverse when Toyota removed the case, the court ultimately determined that it could exercise jurisdiction under the "fraudulent joinder" doctrine because it found that the plaintiffs lacked a "colorable claim for relief" against the non-diverse defendant following jurisdictional discovery. App. Vol. 1 at 210, 213–215.

STATEMENT OF THE ISSUES

1. Could a reasonable jury find that the 1967 federal seatback standard has become "inadequate to protect the public from unreasonable risks of injury or damage," such that compliance with the standard alone does not confer immunity from Oklahoma products-liability law? Okla. Stat. tit. 76, § 57.2(B)(1).

2. Could a reasonable jury find that Toyota "withheld" information "relevant to the federal government's or agency's determination of [the federal standard's] adequacy" when it withheld information in response to a congressional inquiry seeking to upgrade that standard? Okla. Stat. tit. 76, § 57.2(B)(2).

3. Should this Court certify questions to the Oklahoma Supreme Court to allow it to decide the meaning of sections 57.2(B)(1) and (B)(2)?

STATEMENT OF THE CASE

I. Factual background

A. Hope Shaffer dies in a rear-end collision after the seatback in front of her collapses and slams the front-seat passenger into her head.

In January 2020, fifteen-year-old Hope Shaffer was learning how to drive. She was attending a lesson at a driving school in her hometown of Oklahoma City along with a fellow student named A.R. The two girls were taking turns driving under the supervision of instructor George Voss. App. Vol. 1 at 35–36; App. Vol. 2 at 127. The car they were driving was brand-new and ostensibly safe—a 2020 Toyota Corolla purchased by the driving school from a local dealership. App. Vol. 1 at 35.

It was A.R.'s turn behind the wheel. App. Vol. 1 at 36. Voss was sitting next to her in the front of the car, while Hope was behind Voss in the backseat. App. Vol 1 at 36; App. Vol. 3 at 50. They all had their seatbelts on. App. Vol. 3 at 50, 56. After exiting a highway, A.R. brought the car to nearly a complete stop on the off-ramp so that she could check for oncoming traffic and merge onto a surface street. App. Vol. 3 at 48–49. The vehicle behind them failed to stop in time and hit the back of their car, jolting the Corolla forward by about 20 mph. *Id.*; App. Vol 2 at 131. Neither A.R. nor Voss were seriously injured in the collision. App. Vol. 3 at 50.

The same could have been true of Hope. The initial collision did not seriously injure her from behind. But it caused Voss to thrust backward, and the back of his

seat wasn't designed to withstand this force. Instead of keeping him in place, it bent backward, allowing him to slam into Hope. App. Vol. 2 at 141–42; App. Vol. 3 at 50, 54–58, 78. The back of his head hit her face, causing catastrophic brain injuries. She died as a result. App. Vol. 1 at 36; App. Vol. 2 at 286–87; App. Vol. 3 at 50–51.

The officer who investigated the accident was surprised that it had resulted in someone's death. In his experience, this was not the type of crash "where you would expect a fatal injury." App. Vol. 2 at 244. The change in speed of the Corolla (or "delta v," as it's known) was about 20 mph—not a "minor" accident, but not a "severe" or "major" one either. *Id.* Out of hundreds of thousands of investigations, he couldn't recall another crash of similar severity that had ended in a fatality. App. Vol. 2 at 131.[1]

B. This phenomenon of "ramping"—a well-known problem—has caused hundreds of kids to die in recent years.

As it turns out, however, this was not an isolated incident. Nor was it a stroke of unforeseeable bad luck. To the contrary, hundreds of children have died in the United States under similar circumstances in recent years. App. Vol. 2 at 276.

What happened in the Corolla is called "ramping." App. Vol. 3 at 58. When a car is rear-ended, the front-seat passenger's weight is thrown backwards. *Id.* A well-designed seatback should be able to absorb and withstand this force without

[1] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief.

collapsing, so that the front passenger stays in their seat and is protected, while the "survival space" of the person behind them remains intact, protecting them too. *Id.* Essentially, the seatback functions to restrain the front-seat passenger from behind, much like a seatbelt does from the front. When a seatback is too weak, it can collapse backward, allowing the occupant to "ramp up" the seatback, shifting out of position and colliding with whoever is sitting behind them. App. Vol. 3 at 58, 61. Hence the term "ramping"—the dangerous "full or partial ejection" of the front-seat passenger. App. Vol. 3 at 58.

Carmakers have known about the problem of ramping for decades. They've known that, although a seatback shouldn't be designed to be "infinitely rigid"—that is, it should partially yield to absorb an impact's force—"excessive yielding … can greatly enhance injury potential by virtue of the occupant ramping up the seat back." App. Vol. 3 at 58, 61. By the same token, carmakers have also long known that stronger designs and more rigorous testing can reduce these dangers. App. Vol. 3 at 60–62.

Yet the problem has persisted, claiming the lives of approximately 50 children every year in the United States. App. Vol. 2 at 276. Children are at particular risk because of their size and because "the public has been instructed to place children in the back seat of vehicles" to protect them from the dangers of front airbags. *Id.*

The ramping that occurred in the Corolla exemplifies the problem. After the crash, Voss's seatback showed telltale signs of backward "deformation," and his seatbelt was locked in a way that "indicated [that he] was sliding, moving rearward and ramping out from under the belt"—which caused him to thrust backward into Hope's head. App. Vol. 2 at 142; *see* App. Vol. 2 at 283–86, 288; App. Vol. 3 at 78. This ramping was thus directly responsible for Hope's death.

C. Carmakers, federal regulators, and Congress all recognize that the current federal seatback standard is inadequate.

One reason for the persistence of ramping is the lack of a meaningful federal standard for seatback strength and testing. The standard that currently exists was developed by the National Highway Traffic Safety Administration (or NHTSA) in the 1960s and has not been updated since—even as seatback technology and testing standards have evolved considerably. *See* 49 C.F.R. § 571.207; Vehicle and Highway Safety, 32 Fed. Reg. 2408, 2415 (Feb. 3, 1967). This standard, sometimes called FMVSS No. 207, "does not provide for the presence of an occupant" in the seat, and just "ensure[s] that the seat back will not break when leaned on" or "while accessing the rear seat." App. Vol. 3 at 59. Nor does the standard require any dynamic testing—such as simulated collisions with crash-test dummies or other tests that measure performance in actual rear-end collisions. *Id.* It requires two "static" tests that check only if the seatback can withstand a certain amount of force without failing. App. Vol. 2 at 134. The standard thus in "no way ensure[s] a seat's safe performance when

occupied by an occupant and loaded dynamically in a rear end crash." App. Vol. 3 at 59. Studies have shown that "light weight folding beach chairs, banquet chairs, and even a seat made of cardboard will pass" this standard. *Id.* (comma omitted).

Carmakers themselves recognize that these requirements are "far below" what is needed to protect passengers. Federal Motor Vehicle Safety Standards; Seating Systems, 89 Fed. Reg. 57998, 58027 (July 16, 2024). As NHTSA recently explained, "manufacturers have, in general, settled on seat back strength that has increased on average over the decades to many times the value set by FMVSS No. 207." *Id.*; *see also id.* at 58015 ("[M]odern production seats are characterized by a seat strength many times the value set by FMVSS No. 207."). This means that the 1960s standard is "considerably lower than the average seat strength of modern production seats." *Id.* at 58027. Toyota, for example, chose "a seat strength that was 2.5 times higher" than the federal standard in designing the Corolla—and even that was insufficient to prevent ramping in an otherwise survivable crash. App. Vol. 2 at 138–39.[2]

NHTSA, too, has recognized that its standard is too weak. In 1998, the agency noted the "valid criticisms" of the 1960s standard and acknowledged that it "requires

[2] Toyota also chose to conduct "dynamic" tests on the Corolla using its own design protocols to "consider energy absorption and movement of the occupants." App. Vol. 2 at 138. But the parameters it selected—using a 172-pound crash-test dummy and measuring how far the seatback tilts only in a 19-mph delta-v collision—meant that a heavier occupant (like Voss) or a more severe crash could cause the seatback to fail and create ramping. App. Vol. 2 at 138–39.

inadequate seat strength to insure that the seat does not fail when a car is subject to a severe rear impact." App. Vol. 3 at 6. The agency further explained that "advances in technology have made possible significant improvement in the ability of the car seat to add appreciable crash victim occupant protection." *Id.* Although NHTSA ultimately refrained from adopting a new standard, the agency did so only because it determined that it could not make an "informed decision" as to what the right standard should be. Federal Motor Vehicle Safety Standards; Seating Systems, 69 Fed. Reg. 67068, 67068 (Nov. 16, 2004). In NHTSA's view, which it expressed in 2004, "additional research and data analyses [we]re needed" to allow it to select a standard that was adequate to balance the various design considerations. *Id.*

Even Congress has now weighed in—and it shares the judgment that the federal standard is outdated and inadequate. A few years ago, Congress passed the Infrastructure Investment and Jobs Act of 2021, a provision of which required NHTSA to issue an advanced notice of proposed rulemaking to "update" the federal standard, *see* Infrastructure Inv. & Jobs Act, Pub. L. No. 117-58, § 24204, 135 Stat. 429, 820 (2021)—a rulemaking that the agency is currently undertaking, *see* 89 Fed. Reg. 57998. That Congress felt the need to do so reflects its judgment not only that the federal standard is inadequate and in need of revision, but that NHTSA had not acted with sufficient urgency in replacing it.

D. Congress's 2021 legislation directing NHTSA to "update" the federal seatback standard traces to a 2016 information request to carmakers—a request that Toyota rebuffed.

The 2021 legislation was a modified version of a bill introduced earlier that year by Senators Ed Markey and Richard Blumenthal, known as the "Modernizing Seatback Safety Act." S. 1413, 117th Cong. (2021). That proposal, in turn, grew out of an information-gathering effort spearheaded by the two senators a few years before.

The senators began looking into the issue in response to reports of widespread child fatalities in rear-end collisions. They wanted to determine how best to address "longstanding concern" that the "antiquated" 1960s standard was "not sufficient to mitigate injury or death of a rear seat occupant due to seatback collapse in a rear-end collision." App. Vol. 2 at 276–77. As they saw it, the "weak seat strength standards" left companies responsible for making their own "design decision[s]" about seatback strength. *Id.* The senators worried that these decisions were being made without due consideration of "the potential for injury to the rear seat occupants." *Id.*

So in 2016, the senators sent information requests to all the major automakers. *See* Ed Markey, *Markey and Blumenthal Query Automakers on Seatback Safety*, U.S. Senator for Massachusetts: Press (May 25, 2016), https://perma.cc/48B7-S57K. They sought to gather data "to better understand the ability of automobile companies to protect the safety of vehicle occupants in rear-end collisions." App. Vol. 2 at 277.

Toyota received one of these inquiries. App. Vol. 2 at 276. Among other things, the letter requested that Toyota provide information about (1) the number of "consumer complaints and incident reports" that it had received from "dealerships or field personnel" concerning front-seatback collapses in the past 10 years, (2) the nature and results of testing that Toyota had performed on its seats, (3) the seatback strength for each make and model that it sold in the U.S., (4) any lawsuits against the company related to front-seatback failure, and (5) any changes the company would need to make to comply with a potential more stringent requirement. App. Vol. 2 at 277–78.

Toyota declined to comply. Although it had responsive information that it could have provided, Toyota chose to withhold that information. *See* App. Vol. 2 at 137–38, 269–70 ("[T]hat is something that Toyota could have done, correct?" "It certainly can be done."). Instead, it responded with a two-page letter touting its "robust safety culture" and "culture of continued improvement." App. Vol. 3 at 34.

Despite Toyota's failure to comply with their request, the senators were able to collect enough information to determine that legislation was warranted. When they introduced their proposal in 2021, they did so because they found that it was necessary to address "a significant public health and safety threat, particularly to children occupying rear seats," and that NHTSA had "neglected to improve the motor vehicle seat integrity standard for more than 50 years." S. 1413, § 2(a).

II. Procedural background

In January 2022, Hope's parents, Nick and Charla Shaffer, sued in Oklahoma state court. They brought claims for both strict products liability and common-law negligence against various Toyota entities involved in designing and manufacturing the Corolla (which we refer to simply as "Toyota"), as well as against Bob Howard Toyota, the local dealership that sold the car to the driving school. App. Vol. 1 at 37–42. The Shaffers alleged that Toyota had defectively designed the Corolla because its passenger seating and restraint systems did not do enough to prevent the ramping that caused their daughter's death. App. Vol. 1 at 38–41.

Removal. Toyota removed the case to federal court. It acknowledged that Bob Howard was an in-state defendant, whose common citizenship with the Shaffers would ordinarily destroy federal diversity jurisdiction. App. Vol. 1 at 19. But Toyota argued that Bob Howard's citizenship should be disregarded for jurisdictional purposes under the so-called "fraudulent joinder" doctrine. App. Vol. 1 at 22–25. The district court ultimately agreed, concluding that the claims against Bob Howard would fail on the merits in light of jurisdictional discovery conducted by the parties. App. Vol. 1 at 209–10, 212. It therefore dismissed the claims against Bob Howard without prejudice and proceeded with the claims against Toyota. App. Vol. 1 at 215.

Summary judgment. Toyota didn't move to dismiss those claims, so the case proceeded to discovery on the merits. Then Toyota sought summary judgment.

It did so, however, on limited grounds: Toyota did not contend that the evidence was insufficient to establish any element of the Shaffers' claims. In other words, it did not dispute that the Shaffers could show that the design of the Corolla's seatback was unreasonably dangerous, and this caused Hope's death. Nor did it contest that a safer design was "feasible both technologically and economically." App. Vol. 2 at 143.

Instead, Toyota sought summary judgment as to liability by relying on the existence of the 1960s federal seatback standard. It cited an Oklahoma statute that creates a "rebuttable presumption" that a manufacturer is not liable for a design-defect products-liability claim if it establishes that the product's design "complied with or exceeded mandatory safety standards or regulations adopted, promulgated, and required by the federal government, or an agency of the federal government." Okla. Stat. tit. 76, § 57.2(A). To qualify for this presumption, the manufacturer must show that the relevant federal standard was "applicable to the product at the time of manufacture" and "governed the product risk that allegedly caused the harm." *Id.* Although Toyota did not attempt to make this showing, the district court held that the presumption nevertheless applied. App. Vol. 3 at 106. Summary judgment therefore turned on whether a jury could find that the presumption should be rebutted here.

The statute specifies two paths for rebutting the presumption. Under the first path, codified in section 57.2(B)(1), the plaintiff may show that the asserted federal

standard was "inadequate to protect the public from unreasonable risks of injury or damage" when the product was manufactured. Under the second path, codified in section 57.2(B)(2), the plaintiff may show that the manufacturer at any time "withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue."

The plaintiffs argued that they had sufficient evidence to satisfy both paths:

Section 57.2(B)(1): regulatory inadequacy. The plaintiffs pointed to numerous facts showing that the federal standard had become inadequate—including the sweeping technological changes since 1967; the fact that modern seatbacks are now designed to be many times stronger than the federal standard; NHTSA's admissions that the standard is no longer adequate and that "advances in technology have made possible significant improvement" since it was adopted; and an expert report explaining how the standard is too weak. App. Vol. 2 at 131–47; App. Vol. 3 at 42, 59.

The district court held that these facts were insufficient. In doing so, the court recognized that the meaning of section 57.2(B)(1) is a "question of first impression" under Oklahoma law, so it must "predict what the [state] supreme court would do." App. Vol. 3 at 107. The district court made this prediction by looking to Texas law, which has a nearly identical statute with the same language. *See* Tex. Civ. Prac. & Rem. Code § 82.008(a). Although the language in the Texas statute had been interpreted in at least three different ways by Texas appellate judges, the district

court believed that the interpretation adopted by a majority of the Texas Supreme Court was the most "persuasive." App. Vol. 3 at 110. *See Am. Honda Motor Co. v. Milburn*, 696 S.W.3d 612, 626–32 (Tex. 2024); *id.* at 632–34 (Blacklock, J., concurring); *id.* at 634–46 (Devine, J., dissenting); *Am. Honda Motor Co. v. Milburn*, 668 S.W.3d 6, 18–20 (Tex. Ct. App. 2021). It therefore predicted that the Oklahoma Supreme Court would follow it.

Under the *Milburn* majority, if a plaintiff is seeking to show that standard was inadequate "when it was adopted," the plaintiff will generally have to provide "a comprehensive review of the various factors and tradeoffs NHTSA considered in adopting that safety standard." 696 S.W.3d at 631. But, as the district court noted, *Milburn* also made clear that a plaintiff may rely on "subsequent developments" to show that, regardless of whether a standard was inadequate when adopted, it "was no longer adequate to protect the public from unreasonable risks of injury at the time of the compliant product's manufacture" (here, 2019). *Id.*; *see* App. Vol. 3 at 111–12.

The district court, however, did not believe that there was sufficient evidence of such subsequent developments in this case. The court acknowledged that "new technology has been developed since 1967," and that in 1998 NHTSA itself noted the "advances in technology" when it stated that the standard "requires inadequate seat strength." App. Vol. 3 at 112–13. But the court thought that the plaintiffs hadn't provided enough specifics, and it declined to give much weight to the agency's

admission of inadequacy. As the court saw it, the agency's admission that the standard required "inadequate seat strength" was not the same as admitting that the standard was "inadequate to protect the public as a whole." *Id.* The court believed that the plaintiffs were required to produce additional evidence about the agency's "weighing of considerations" when it decided not to update the standard in 2004, and that the plaintiffs did not produce such evidence. *Id.* The court did not attempt to reconcile that conclusion with what the agency actually said in 2004: that it was declining to update the standard only because it couldn't make an "informed decision" about what the "proper balance" for a new standard should be. 69 Fed. Reg. at 67069.

Section 57.2(B)(1): withholding relevant information. The Shaffers also argued that the presumption of non-liability could be rebutted in a separate way: because Toyota "withheld" information "relevant to the federal government's … determination of adequacy," Okla. Stat. tit. 76 § 57.2(B)(2), when it refused to provide "readily available" information in response to a request from Senators Markey and Blumenthal. App. Vol. 3 at 116. The district court rejected this argument too. App. Vol. 3 at 115–16. The court held that this conduct did not count under section 57.2(B)(2) because that provision covers only conduct that occurs in an agency rulemaking proceeding. *Id.* The court did not explain how this conclusion coheres with the text of the provision, which refers to withholding information that is "relevant to the

federal government's or agency's determination of adequacy." Okla. Stat. tit. 76 § 57.2(B)(2).

STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo, while considering "the evidence and draw[ing] reasonable inferences therefrom in the light most favorable to the nonmoving party" (here, the plaintiffs). *Iweha v. Kansas*, 121 F.4th 1208, 1220 (10th Cir. 2024). Summary judgment is warranted only if the movant establishes that there is "no genuine dispute as to any material fact," such that "the movant is entitled to judgment as a matter of law." *Id.*

SUMMARY OF ARGUMENT

I. This appeal raises two questions of Oklahoma law: (1) whether the federal seatback standard is "inadequate to protect the public," and (2) whether Toyota withheld information "relevant to the federal government's … determination" of the adequacy of that standard. Okla. Stat. tit. 76, § 57.2(B)(1), (B)(2). If a jury could find that the answer to either question is yes, Toyota is not entitled to summary judgment.

A. A jury could answer yes to both questions. As to the first, the precise meaning of "inadequate to protect the public" is unsettled. No Oklahoma case has interpreted this language, and judges in Texas (the only state with a statute that contains the same language) have splintered on this issue.

1. But this Court need not select among the various competing interpretations. A jury could find that the federal standard is inadequate under even the narrowest interpretation, adopted by a majority of the Texas Supreme Court in *Milburn*.

Even under *Milburn*, a plaintiff may point to "subsequent developments" to show that a standard has become inadequate over time. 696 S.W.3d at 631. The plaintiffs have done just that. Evidence shows that there has been a "material change in technology," *id.*—a sea change, even—such that modern seatbacks are designed to meet standards many times greater than the federal standard. Even the federal regulators now agree that the standard is inadequate: NHTSA has admitted that its own standard "requires inadequate seat strength," particularly in light of "advances in technology," App. Vol. 3 at 6, and the only reason that it has not yet adopted a new standard is that it does not believe that it can make an informed decision as to what it should be. Congress, meanwhile, has recently signaled that, not only is the standard inadequate, but the agency must take action to update it.

No sensible understanding of inadequacy would require more than this. But if it did, the plaintiffs would have that too: Their expert report explains how the standard has "been clearly established to be inadequate" over time, and how it allows even beach chairs or seats made from cardboard to pass muster. App. Vol. 3 at 59.

The district court held that this evidence was insufficient under *Milburn*. It did so, however, only by misunderstanding both *Milburn* and the evidence.

2. This Court should not adopt a more restrictive conception of inadequacy than even the *Milburn* majority. Toyota argued below for an interpretation that would be limited to asking whether a standard was *procedurally* inadequate when adopted, not whether the standard has become *substantively* inadequate over time. No court has ever adopted that reading, and it would contravene the plain statutory text.

B. As to the second question, a jury could find that Toyota withheld pertinent information from the federal government. Members of Congress sent Toyota a letter in 2016 requesting information as part of an effort to determine the problems with the standard and decide whether legislation was warranted to fix them. Toyota responded by refusing to provide that information. Under any plausible reading, that is withholding information relevant to the government's determination of adequacy.

In holding otherwise, the district court read the words "federal government" out of section 57.2(B)(2). It believed that the statute covers only information withheld from *the agency*, because only the agency has the power to amend the standard. But that is wrong twice over. The statute refers to the federal government "or" agency, so they cannot be the same thing. And NHTSA does not have the exclusive power to amend the standard; the ultimate power lies with Congress.

II. If this Court has any doubt that there is sufficient evidence to rebut the presumption here, it should certify the questions about how to interpretate the state statutory provisions to the Oklahoma Supreme Court.

ARGUMENT

I. The decision below should be reversed because a jury could find that Toyota's compliance with the federal standard does not shield it from liability under Oklahoma law.

This appeal is about what it means to rebut Oklahoma's presumption against liability: Is Toyota immune from liability as a matter of state law based solely on the fact that the Corolla's seatback met the federal standard? Or could a jury reasonably find that the presumption is overcome here? These questions, in turn, depend on whether a jury could reasonably find (1) that the federal standard is "inadequate to protect the public from unreasonable risks of injury," or (2) that Toyota "withheld … information … relevant to the federal government's or agency's determination of adequacy of [that] standard[]." Okla. Stat. tit. 76, § 57.2(B)(1), (2). If a jury could make either one of these findings, Toyota is not entitled to immunity as a matter of law, and summary judgment should not have been granted on that basis.

A jury could make either finding here. *First*, a jury could find that the standard is inadequate to protect the public. An expert report explains how the standard has been "clearly established to be inadequate" over the past 60 years. App. Vol. 3 at 59. And ample evidence supports that expert's conclusion: Since the standard was created in the 1960s, car makers, NHTSA, and Congress have all recognized that it is inadequate, and the only reason that NHTSA has not yet updated it is the agency's

determination that it cannot make an informed decision as to what the right standard should be. Under any plausible interpretation of inadequacy, that is enough.

Second, a jury could find that Toyota withheld information relevant to the federal government's determination of the adequacy of the federal standard. The record shows that in 2016 members of Congress were concerned that the standard was inadequate and in need of an update; they sought information from Toyota that was relevant to determining if that was so; and Toyota responded by withholding that information. For this reason, too, the presumption has been rebutted.

A. A jury could find that the federal standard is "inadequate to protect the public," and thus that Toyota's bare compliance with it does not confer immunity under Oklahoma law.

Take the first issue first. Although Oklahoma's legislature has determined that compliance with a federal safety standard gives rise to a rebuttable presumption against liability, that presumption will hold only if the standard is adequate. If the standard is "inadequate to protect the public from unreasonable risks of injury or damage," the presumption will be defeated, and the jury may proceed to decide the elements of the plaintiff's products-liability claim. Okla. Stat. tit. 76, § 57.2(B)(1).

Just what inadequacy means in this context is unsettled. There is no Oklahoma authority on the matter. And the judges who have confronted identical language in other jurisdictions have fractured on its meaning. Most notably, judges in Texas have embraced at least three different interpretations of the same language. At one end of

the spectrum, some judges have read the language to largely overlap with the merits of the design-defect claim. *See, e.g.*, *Milburn*, 668 S.W.3d at 20 (Tex. Ct. App.); *Thompson v. Toyota Motor Sales, USA, Inc.*, 2017 WL 5194108, at *4 (W.D. Tex. 2017). At the other end of the spectrum, a majority of the Texas Supreme Court has recently read the language to require something more than that—for example, a comprehensive critique of the regulatory decisionmaking process, or the existence of "subsequent developments" showing that the standard is "no longer adequate." *Milburn*, 696 S.W.3d at 630–31 & n.23; *see also id.* at 633–34 (Blacklock, J., concurring) (joining the majority's opinion while separately emphasizing that a jury still has "very wide latitude" to find that the federal standard is inadequate under that approach). In between, some judges have agreed that regulatory inadequacy is distinct from the merits but have been willing to accept a broader "evidentiary predicate" to authorize a jury finding of regulatory inadequacy. *See, e.g.*, *id.* at 637, 642 (Devine, J., dissenting).

Which of these interpretations would be adopted by the Oklahoma Supreme Court is anyone's guess. So, if the precise interpretation of regulatory inadequacy mattered to this appeal, it would be appropriate for this Court to certify that question to the Oklahoma Supreme Court rather than to make an *Erie* prediction about what that court might decide (as we explain in Part II). But the precise interpretation does not matter to this appeal. Under any plausible interpretation of section 57.2(B)(1)—including the narrowest potential interpretation, adopted by the majority opinion in

Milburn—the record in this case is sufficient to submit the question to the jury. This Court may therefore resolve this appeal without breaking any new legal ground.

1. The record supports a finding of inadequacy under any plausible interpretation of the statute—including the interpretation adopted by the *Milburn* majority.

Even if the Oklahoma Supreme Court were to adopt the same interpretation of the statute as the *Milburn* majority, summary judgment would be improper here.

a. *Milburn*'s core holding is that "defective design and regulatory inadequacy are necessarily independent inquiries," so proof of regulatory inadequacy requires "something other than proof of a product's defective design." 696 S.W.3d at 627–28. Beyond that, the majority did not specify any particular type of proof that is required to make this additional showing. It made clear, however, that the showing may be made in at least two different ways. One way is to show that the agency "simply got it wrong" at the time that the standard was adopted—perhaps because its decision "ran counter to the evidence before it," or because it "failed to consider" a pertinent danger. *Id.* at 629–30. A plaintiff who takes this approach, according to *Milburn*, must offer "a comprehensive review of the various factors and tradeoffs NHTSA considered" when it adopted the standard in question (here, in 1967). *Id.* at 630.

But that is not the only way to show regulatory inadequacy under *Milburn*. A plaintiff may also point to "subsequent developments" to show that, regardless of whether the standard was adequate when it was first adopted, "the standard was no

longer adequate" when the allegedly defective product was made. *Id.* at 631–32. As examples of potential "subsequent developments," the *Milburn* majority mentioned "a proliferation of new studies or data about risks associated with a compliant product" or "a material change in technology." *Id.* at 631. Yet those are just examples. The opinion does not attempt to "limit the grounds" of proof to only this evidence. *Id.* at 631 n.23. To the contrary, the opinion cites with approval a portion of the concurrence, *id.*, that emphasizes the "very wide latitude" given to juries to find regulatory inadequacy, including based on "new information [that] has come to light since the regulation was enacted," *id.* at 633–34 (Blacklock, J., concurring).

b. This case contains exactly the type of "subsequent developments" that are sufficient to rebut the presumption under *Milburn*. By any measure, there has been a "material change" in seatback technology over the past 60 years—to the point where the federal standard no longer has any real effect. And the key federal regulators—both NHTSA and Congress—have recognized that the standard has now become inadequate and no longer represents an informed determination by the agency.

First, seatback technology has evolved considerably since 1967. Automobile "manufacturers have, in general, settled on seat back strength that has increased on average over the decades to many times the value set by [the federal standard]." 89 Fed. Reg. at 58027. This means that, since 1967, the federal standard has become "considerably lower than the average seat strength of modern production seats." *Id.*

The 2020 Corolla's seatback was emblematic of this technological evolution: Even though it was dangerously weak by modern standards, and even though a stronger seatback was "feasible, both technologically and economically," it still exceeded the federal standard by a factor of 2.5. App. Vol. 1 at 257; App. Vol. 2 at 138–39, 143, 293; App. Vol. 3 at 78–79. If this industry-wide sea change is not "a material change in technology," it is hard to imagine what would be. *Milburn*, 696 S.W.3d at 631–32.

Second, NHTSA itself agrees. Nearly thirty years ago, it pointed out that "advances in technology" since 1967 had "made possible significant improvement" in seatback strength—an observation that is doubly true today. App. Vol. 3 at 6. It also acknowledged "valid criticisms" of its standard as a result of these changes. *Id.*

But the agency did more than just that. It expressly *admitted* that its standard "requires inadequate seat strength to [e]nsure that the seat does not fail when a car is subject to a severe rear impact," and signaled its desire to update the standard. *Id.* Although the agency later abandoned that effort in 2004, its reason for doing so only confirms the inadequacy of the 1960s standard: The agency determined that "additional research and data analyses are needed to allow an informed decision on a rulemaking action in this area," and therefore that it could not produce a rule at that time. 69 Fed. Reg. at 67068. In other words, the agency declined to act not because it found that the standard was adequate based on sound data, but because

it couldn't settle on what the *new* standard should be—and indeed, because it couldn't make an "informed decision on a rulemaking in this area" *at all*. *Id.*

That is about the strongest possible evidence of regulatory inadequacy that a plaintiff could produce. The reason that the statutory presumption exists in the first place is that Oklahoma's legislature has determined that, when a federal standard is on the books, it is fair to presume that federal regulators have spent time studying the problem and its various tradeoffs and have landed on a reasoned decision. But that rationale evaporates where, as here, the agency itself has made clear that the standard does *not* reflect an informed decision based on sound data—and that the data is in fact *insufficient* to allow the agency to determine what an optimal safety standard should be. Or to put the point in the agency's own words: When an agency admits that its standard is "inadequate" and that "further study is needed" to allow for an "informed decision" as to a proper standard, *id.* at 67068–69, there is no reason to presume that the federal standard is adequate and reflects the agency's informed decision-making. Bureaucratic inertia does not negate regulatory inadequacy.

Third, it would make particularly little sense to rely on bureaucratic inertia here given that Congress has now intervened and instructed the agency to get a move on it. In the years since NHTSA chose to keep researching in pursuit of an "informed decision," *id.* at 67068, the problem of ramping continued, to devastating effect for hundreds if not thousands of children, *see* App. Vol. 2 at 276. Eventually, Congress

grew frustrated with NHTSA's lack of urgency. Senators Markey and Blumenthal investigated the problem, found "a significant public health and safety threat," and proposed the "Modernizing Seatback Safety Act" to spur the agency to finally act. S. 1413, 117th Cong. § 2(a) (2021). And a version of that legislation quickly became law, requiring the agency to start a process to "update" the 1960s standard. Infrastructure Inv. & Jobs Act, Pub. L. No. 117-58, § 24204, 135 Stat. 429, 820 (2021). This unusual rebuke from Congress provides additional, powerful confirmation that the standard was no longer adequate at the time when the Corolla was made.

Finally, the record contains additional evidence of regulatory inadequacy. The plaintiffs' expert, for example, offered his conclusion that the federal standard has "been clearly established to be inadequate" in the decades since it was promulgated. App. Vol. 3 at 59. He based this conclusion, in part, on testing that he and others had conducted showing that "light weight folding beach chairs, banquet chairs, and even a seat made of cardboard, will pass the [federal standard]." *Id.* Reviewing his report, a jury could easily credit his conclusion and find that, when cardboard seats are passing muster, that is a sign that the standard had become obsolete.

And then there is the evidence showing that even the Corolla's seatback—which, again, was 2.5 times stronger than the federal standard—was too weak. That evidence may not be sufficient, on its own, to establish regulatory inadequacy under *Milburn*, but it is "certainly … relevant to the adequacy of the regulation allowing

that design." 696 S.W.3d at 628. Here, the plaintiffs have clear evidence that Toyota knew that its front seats were dangerous, that it failed to subject the seats to tests that would have revealed the danger, and that "[s]cientifically, technologically, and economically feasible alternative" designs were available that would have prevented deaths like the one that occurred here. App. Vol. 3 at 78–79. The strength of this evidence is presumably why Toyota didn't move for summary judgment on any element of the plaintiffs' underlying claims. That the federal standard did not impose any meaningful constraint on Toyota's design choices is further evidence that the standard is inadequate to protect the public from unreasonably dangerous designs.[3]

c. The district court erred in reaching a contrary conclusion. After predicting that the Oklahoma Supreme Court would adopt the same interpretation as *Milburn*, the district court held that the record in this case is insufficient to allow a jury to find inadequacy based on subsequent developments. Its reasoning doesn't hold up.

[3] Before turning to the district court's reasoning, we pause to make an *a fortiori* point: If the evidence in this case is sufficient to satisfy the interpretation of regulatory inadequacy adopted by the *Milburn* majority, it is also (and necessarily) sufficient to satisfy other, less-stringent interpretations. In fact, several years before *Milburn*, a Texas intermediate appellate court had occasion to consider the adequacy of this very safety standard. *See Toyota Motor Sales, U.S.A., Inc. v. Reavis*, 627 S.W.3d 713, 728 (Tex. Ct. App. 2021). Although that decision was later vacated after the parties settled, it found that Texas's identical presumption could be rebutted based on evidence that "[a]ll automakers greatly exceed the FMVSS 207 standard," in combination with the fact that "there have been no significant or substantive changes to FMVSS 207 since 1967" and "evidence that a lawn chair is strong enough to pass this standard." *Id.*

The court did not deny that seatback technology has changed materially since 1967. App. Vol. 3 at 112–13. Yet it felt free to disregard that material change because it believed that the plaintiffs had not provided any specifics and had instead relied on "the passage of time alone." App. Vol. 3 at 112. That is incorrect. Among other things, the plaintiffs pointed to the agency's own observation that there had been "significant" advancements in seatback technology even by 1998. App. Vol. 3 at 6. Their expert also spent several pages in his report discussing modern seatback design and testing innovations in the past few decades, and how those changes have made the federal standard an afterthought for manufacturers. App. Vol. 3 at 60–61. Evidence of this sort is more than enough to show a material change in technology under *Milburn*.[4]

The district court also failed to appreciate the significance of the agency's post-1967 actions. App. Vol. 3 at 113. It gave no weight to the agency's admission that the standard "requires inadequate seat strength" because, in its view, seatback failure

[4] The discussion is rather technical, but the upshot of the report is clear. The expert explained that carmakers have recognized since the 1990s that "simply passing the [federal] standard" is not enough because their own research showed a greater "need for controlling and / or limiting the amount of rearward rotation." App. Vol. 3 at 60–61. He explained that, as a result, "several seat and car manufacturers, including Toyota," developed their own "performance criteria" that go well beyond the testing that the federal standard requires. App. Vol. 3 at 61. And he described in detail Toyota's modern "dynamic" seatback strength criteria, documenting how they go well beyond the federal standard's "minimal static" strength criteria. App. Vol. 3 at 59, 61–63.

in rear-end collisions is just one potential risk out of many that a standard must account for, so "inadequate seat strength" doesn't mean "inadequate to protect the public as a whole." *Id.* The district court read *Milburn* to require "evidence that NHTSA erred in its weighing of considerations when deciding against amending" the standard in 2004—evidence that the court believed was "missing" here. *Id.*

That conclusion is doubly wrong. For one thing, the court misread *Milburn*. The majority there demanded "evidence of the various considerations NHTSA must take into account" *only* "to the extent [the plaintiff] contends that NHTSA simply 'got it wrong'" at the time the standard was promulgated. 696 S.W.3d at 630. When discussing "subsequent developments" that "could demonstrate that the standard was no longer adequate," the court didn't call for anything of the sort. *Id.* at 631–32. And the "example[s]" that it gave of such developments only hammer this home. *See id.* at 631 (listing a "material change in technology" or "new studies or data").

For another thing, the court misapprehended what NHTSA did here. The agency admitted that the standard "requires inadequate seat strength" in 1998. NHTSA's position did not change in 2004, much less did it change based on a "weighing of considerations." *Contra* App. Vol. 3 at 113. The agency's position remained consistent: The standard needed an "upgrade." 69 Fed. Reg. at 67069. The only reason that the agency "decid[ed] against" it at that point, App. Vol. 3 at 113, is because the agency lacked the information to select a *new* standard, so it couldn't

make an "informed decision" in the necessary "time frame." 69 Fed. Reg. at 67069. Far from undercutting the agency's earlier admission that the 1960s standard is inadequate, that action is *itself* a recognition of regulatory inadequacy. From that point forward, it was the agency's own stated position that the standard did not reflect its "informed decision" as to the "proper balance" of the relevant factors. *Id.* (explaining that the "information needed to determine th[e] proper balance is not available"). No more is needed to establish regulatory inadequacy under *Milburn*.

2. Toyota's proposed reading has not been adopted by any court and contradicts the plain statutory text.

Because the plaintiffs can rebut the presumption even under *Milburn*, this Court may resolve this appeal without having to parse the statutory text and pick the one interpretation that the Oklahoma Supreme Court is most likely to adopt. In the district court, however, Toyota urged an interpretation that is far narrower even than *Milburn*'s. Under its proposed reading, subsequent developments are irrelevant: A federal standard "is *only* inadequate if a plaintiff shows that NHTSA did not do any weighing whatsoever, or purposefully ignored data, or relied only on monetary considerations rather than safety considerations *when adopting the [standard]*." App. Vol. 3 at 81. (second emphasis added).

That reading would transform the "comprehensive review of the various factors and tradeoffs NHTSA considered" mentioned in *Milburn* into a threshold requirement that the statute imposes in every case. 696 S.W.3d at 631. On this view,

the statute would inquire only as to the adequacy of the decisionmaking *process* that a federal agency went through. Any evidence tending to show that the resulting *substance* of the regulation is inadequate—or had become inadequate based on later events—is irrelevant if the plaintiff cannot show that the agency misunderstood or overlooked something at the time that the standard was initially adopted.

No court, however, has adopted this reading of the statute—not even *Milburn*. Regulatory-process flaws are one way that a plaintiff may show inadequacy under *Milburn*, but so too are subsequent developments (which necessarily take place *after* the regulatory process has occurred). Further, *Milburn* was clear that "nothing in our opinion should be read to limit the grounds on which the presumption may be rebutted." *Id.* at 631 n.23. Other facts may show inadequacy "*even in the absence of* evidence that the standard was inadequate based on the information available to NHTSA when it was adopted." *Id.* at 631 (emphasis added). There is therefore no requirement to examine the agency's regulatory process in every case.

Nor would that be consistent with the statutory text. Section 57.2(B)(2) focuses on the "federal safety standards or regulations." It asks whether those "*standards*" are "inadequate to protect the public from unreasonable risks of injury or damage"—not whether the regulator's *process* was inadequate to provide that protection.

The legislature's decision to focus on standards rather than process was not an oversight. A neighbor provision provides a similar rebuttable presumption—this one

granting protection from liability for products (such as prescription drugs) that go through "premarket licensing or approval by the federal government." Okla. Stat. tit. 76, § 57.2(C). Like the presumption here, section 57.2(C)'s presumption may be rebutted by showing that the premarket licensing was "inadequate to protect the public." *Id.* § 57.2(C)(1). But unlike section 57.2(B)(1), section 57.2(C)(1) clearly puts the focus on the decisionmaking process: It asks whether "the standards *or procedures* used in the particular premarket approval or licensing *process* were inadequate to protect the public from unreasonable risks of injury or damage." *Id.* (emphases added). If the legislature intended liability to turn on *how* an agency selected a standard, it could have used similar words in section 57.2(B). It did not. That choice means something.[5]

[5] It would make little sense to require the kind of "comprehensive review" contemplated by the *Milburn* majority in every case where section 57.2(B)(1) is invoked. When describing that pathway to proving inadequacy, *Milburn* describes something akin to Administrative Procedures Act-style "arbitrary and capricious" review and draws that analogy explicitly. *See* 696 S.W.3d at 629 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). That might be workable in some cases, where the agency decision being scrutinized is discrete and overlaps with the issues in the litigation. (Decisions whether to license a specific product will commonly check both of those boxes, which may be why the premarket approval provision specifically invites this sort of proof.) But section 57.2(B)(1) is intended to govern the gamut of products-liability actions, involving "federal safety standards or regulations" of all sorts. Often, the "various factors and tradeoffs" the agency considered may be numerous, technical, and largely tangential to the tort claim at the heart of the dispute, and more straightforward proof of regulatory inadequacy may be available—including by pointing to subsequent developments, which would otherwise be irrelevant if the focus were purely on procedure. It's doubtful the Oklahoma legislature intended to bog down cases where that's true by requiring a "comprehensive review" of the regulatory process as a matter of course.

B. A jury could find that Toyota withheld information relevant to the federal government's determination of the adequacy of the federal standard, which independently rebuts the presumption.

Section 57.2(B)(2) supplies an independent ground for reversal here. It allows a plaintiff to rebut the presumption of non-liability by showing that the manufacturer had at any point "withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action." Okla. Stat. tit. 76 § 57.2(B)(2).

The plaintiffs have made that showing here. There is evidence that, by 2016, members of Congress had become concerned that the federal seatback standard was inadequate, so they began investigating whether legislative intervention was warranted. They sought information from Toyota that was both relevant to this inquiry and readily available to the company. But rather than provide the information to Congress, Toyota withheld it. That is enough to allow a jury to find that the presumption of non-liability has been rebutted under section (B)(2).

1. We "begin with the plain and ordinary meaning" of the statutory text. *Burlington N. & Santa Fe Ry. Co. v. Grant*, 505 F.3d 1013, 1024 (10th Cir. 2007) (citing *George E. Failing Co. v. Watkins*, 14 P.3d 52, 56 (Okla. 2000)). The text looms especially large here because section (B)(2) comes to this Court as basically a blank slate; no appellate court has considered it, and only one has confronted the same language in Texas's statute, holding that Toyota's response to the same letter was enough to defeat the

presumption as to the same federal standard. *See Toyota Motor Sales, USA, Inc. v. Reavis*, 627 S.W.3d 713, 728–29 (Tex. Ct. App. 2021), *vacated due to settlement* (Tex. 2022).[6]

Applying the text here is straightforward. *First*, the requested information was plainly "relevant to the federal government's … determination of [the] adequacy of the [federal] standard[]." Okla. Stat. tit. 76 § 57.2(B)(2). The letter says this explicitly. The information was requested to address a "longstanding concern" that the federal standard was "not sufficient to mitigate injury or death of a rear seat occupant due to seatback collapse in a rear-end collision." App. Vol. 2 at 276. Congress wanted "to better understand the ability of automobile companies to protect the safety of vehicle occupants in rear-end collisions" by designing seatbacks to meet "higher … standards than the requirements of the antiquated" federal standard. *Id.* at 2.

The information requested was thus not only "relevant" under section (B)(2), but highly relevant. It was requested in connection with a specific effort to determine whether the federal standard was adequate—an effort that culminated in legislation reflecting Congress's determination that the standard was *not* in fact adequate and

[6] Although the *Reavis* decision was later vacated by the Texas Supreme Court, it was vacated for reasons unrelated to its merits. Toyota sought review of the decision in the Texas Supreme Court. But while its petition was pending, the parties settled the case and jointly moved to dismiss and vacate the appellate court's decision. The Texas Supreme Court granted the motion and vacated "without considering the merits." *See* Order, *Toyota Motor Corp. v. Reavis*, No. 21-575 (Tex. Jan. 7, 2022). Notwithstanding that vacatur, the decision remains relevant as a data point for predicting how the Oklahoma Supreme Court might rule on the issue.

that it should be updated. *See* Infrastructure Inv. & Jobs Act, Pub. L. No. 117-58, § 24204, 135 Stat. 429, 820 (2021). That satisfies the statutory criteria of relevance.[7]

Second, the information was "withheld." Despite being "readily available" to the company, Toyota did not provide the information requested when it responded to the letter. App. Vol. 3 at 116; *see* App. Vol. 2 at 270; App. Vol. 3 at 34–35. When information has been specifically sought from someone, but that person chooses not to provide to it, the information has been "withheld" under the ordinary definition of that term. *See, e.g.*, *Piedmont Env't Council v. FERC*, 558 F.3d 304, 322 (4th Cir. 2009) (explaining that the "common meaning of the word 'withhold'" describes a scenario in which something "has been sought" and "not granted"); *Withhold*, Merriam-Webster's Collegiate Dictionary (11th ed. 2012) ("to refrain from granting, giving or allowing").

Putting these two pieces together, a jury could easily find that Toyota withheld information relevant to the federal government's determination of the adequacy of

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[7] Any sensible reading of "the federal government" in this statute includes Congress. Section 57.2(A)'s rebuttable presumption applies to "mandatory safety standards or regulations adopted, promulgated, and required by the federal government, or an agency of the federal government." Besides an executive agency, who else within the tripartite structure of "the federal government" could "adopt," "promulgate," or "require" a federal safety standard? Congress, of course, through legislation. And "federal government" is commonly used in statutes to refer to the entire federal government, including the legislative branch. *See, e.g.*, 38 U.S.C. § 4303(6); 42 U.S.C. § 659(g)(2), (i)(1); *id.* § 4914(a)(2). Some statutes even make clear that "federal government" encompasses "any Member of Congress or committee of Congress." *See, e.g.*, 15 U.S.C. § 7a-3(a)(3)(D).

the federal standard under section 57.2(B)(2). *See Reavis*, 627 S.W.3d at 730 (relying on the same letter and holding that, under Texas law, "the record contains evidence that Toyota … 'withheld or misrepresented information … relevant to the federal government's … determination of adequacy'" of the same standard). The plaintiffs have therefore rebutted the presumption of non-liability for this reason as well.

2. The district court held otherwise only by reading words out of the statute. As the court construed section (B)(2), the information must be withheld *from the agency* because the authority to "determine the adequacy" of a safety standard "has been vested in the Secretary of Transportation and NHTSA" by statute, so only the agency has "the power to amend" a safety standard. App. Vol. 3 at 115–16.

The statute, however, does not say that. It says that the information must be relevant to "the federal government's *or* agency's determination of adequacy." Okla. Stat. tit. 76 § 57.2(B)(2) (emphasis added). The Oklahoma Supreme Court has "stated numerous times that the Legislature's use of the word *or* shows intent to treat the terms on either side of it as separate and distinct," not one and the same. *Toch, LLC v. City of Tulsa*, 474 P.3d 859, 867 (Okla. 2020); *see also Rickard v. Coulimore*, 505 P.3d 920, 924 (Okla. 2022) ("[W]e must interpret legislation so as to give effect to every word," and "to avoid rendering parts superfluous."). Yet that is exactly what the court did below. Rather than read the term "federal government" to mean something other than "agency," the district court did the opposite: It equated the two terms by

requiring that the information be withheld from the agency, and the agency only. In doing so, it nullified the statute's explicit reference to the "federal government."

In addition to lacking any textual basis, the district court's interpretation also lacks any theoretical basis. True, NHTSA has authority to set safety standards. But that authority is not NHTSA's alone. To the contrary, it comes from Congress and ultimately resides in Congress. *See Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022) ("Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided."). "Congress exercises oversight over all agencies," *Armstrong v. Bush*, 924 F.2d 282, 292 (D.C. Cir. 1991), so it can (and does) make determinations about the adequacy of federal regulations. The Congressional Review Act, for example, requires agencies to submit significant rules to Congress and establishes a procedure by which Congress may consider whether to veto them. *See* 5 U.S.C. § 801; *Kan. Natural Res. Coal. v. U.S. Dep't of Interior*, 971 F.3d 1222, 1226–27 (10th Cir. 2020). Congress may also "overturn or amend a rule … through ordinary legislation." Kate R. Bowers & Daniel J. Sheffner, Cong. Rsch. Serv., R46673, *Agency Recissions of Legislative Rules* (Feb. 8, 2021). And in exercising these core congressional powers, Congress has the concomitant "power to secure needed information in order to legislate." *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020). The logic underlying the district court's interpretation misses these basic points.

Nor can the court's conclusion be defended on the ground that only Congress *as a whole* has "the power to amend" safety standards, and Congress *as a whole* did not make the request here. App. Vol. 3 at 116. Section 57.2(B)(2) does not require that the information be requested by, and withheld from, the entire Congress be relevant to the federal government's determination of adequacy. In fact, the text does not require that the information be requested by and withheld from anyone in particular at all. Unlike a neighboring provision, which requires that the relevant information be "withheld *from* or misrepresented *to* the government or agency," Okla. Stat. tit. 76, § 57.2(C)(2) (emphases added), section (B)(2) does not include this same language. And that can only be intentional. After all, it would make particularly little sense to require that information be requested by and withheld from Congress as a whole, given that Congress as a whole rarely engages in information-gathering. To impose that requirement would thus nullify the statute's reference to "federal government."

So the statute instead sensibly focuses on whether the information is "relevant to the federal government's or agency's determination of adequacy"—nothing else. Okla. Stat. tit. 76, § 57.2(B)(2). In doing so, it contemplates that the information can be requested by and withheld from someone other than Congress as a whole and yet still be relevant to Congress's determination of adequacy. And this case is perhaps the best example of that, because the investigative efforts directly led to legislation

on the subject. Accordingly, the information requested in this case satisfies the requirement, and the district court's contrary conclusion constitutes reversible error.

II. If this Court has any doubt that there is sufficient evidence to rebut the presumption under Oklahoma law, it should certify the questions to the Oklahoma Supreme Court.

As explained in part I.A, this Court may resolve this appeal without deciding the precise scope of either section (B)(1) or (B)(2), and we urge the Court to take that minimalist approach. But if the Court finds it necessary to go further, and if it has doubts as to the correct interpretation of these provisions, then we request that the Court certify these questions to the Oklahoma Supreme Court so that Oklahoma's highest court may guide the development of its own state's law.

The Oklahoma Supreme Court accepts certified questions of state law that may be determinative of pending federal litigation if there is no controlling Oklahoma authority on point. *See* Okla. Stat. tit. 20, § 1602. This Court will therefore often certify a question to the Oklahoma Supreme Court if it is (1) potentially outcome-determinative of the litigation and (2) "sufficiently novel" that this Court requires "further guidance" to "feel []comfortable" predicting how the Oklahoma Supreme Court would rule. *Pino v. United States*, 507 F.3d 1233, 1236 (10th Cir. 2007); *see also Lawson v. Spirit AeroSystems, Inc.*, 135 F.4th 1186, 1189 (10th Cir. 2025). Certifying in these circumstances promotes judicial efficiency "and helps build a cooperative

judicial federalism." *Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 178 F.3d 1363, 1365 (10th Cir. 1999) (quoting *Lehman Bros. v. Schein*, 416 U.S. 386, 390–91 (1974)).

The interpretative questions here are the kinds of questions that this Court routinely certifies to the Oklahoma Supreme Court. That is true for four reasons:

First, there is no Oklahoma authority interpreting either of these provisions. *See* App. Vol. 3 at 107 (noting that the case involves "a question of first impression"). And apart from the decision below, there is only one federal decision interpreting one of these provisions. *See Okla. Farm Bureau Mut. Ins. Co. v. Omega Flex, Inc.*, 2024 WL 1160925, at *4–5 (W.D. Okla. Mar. 18, 2024). That counsels in favor of certification. *See Pino*, 507 F.3d at 1237; *Lane v. Progressive N. Ins. Co.*, 800 F. App'x 662, 664 (10th Cir. 2020) (certifying where "no Oklahoma statute or case definitively answers the question"); *Morgan v. State Farm Mut. Auto. Ins. Co.*, 819 F. App'x 614, 617 (10th Cir. 2020) (similar).

Second, judges in other jurisdictions have reached different conclusions about what these provisions mean. *Milburn* alone yielded four separate opinions about Texas's regulatory-inadequacy provision, with at least three distinct answers. *See* 668 S.W.3d at 18–20 (Court of Appeals); 696 S.W.3d at 626–32 (Supreme Court majority); *id.* at 632–34 (concurrence); *id.* at 634–46 (dissent). And before *Milburn*, the Texas Court of Appeals in *Reavis* reached the opposite conclusion as the district court below as to the adequacy of the same federal standard. 627 S.W.3d at 728–29. So there is no

"trend in the authority." *Strong v. Laubach*, 65 F. App'x 206, 212 (10th Cir. 2003). That, too, supports certification. *See Lane*, 800 F. App'x at 664 (certifying open question of Oklahoma law where two federal judges had "reached opposite conclusions").

Third, these questions are the kinds of questions that are worthy of being resolved by the Oklahoma Supreme Court. That is obviously true with respect to section (B)(1), as the Texas Supreme Court's decision to grant certiorari in *Milburn* shows. But as Toyota itself has argued, it is also true with respect to section (B)(2). The *Reavis* litigation involved the same defect, same manufacturer, same safety standard, and same two statutory grounds for rebutting the presumption under Texas law. *See* 627 S.W.3d at 727–730. When Toyota lost in the court of appeals, it petitioned the Texas Supreme Court for discretionary review, arguing that the state's highest court had not at that point "addressed the statutory grounds to rebut [the] presumption," and that its "guidance [was] sorely needed." Petition for Review at 1, *Toyota Motor Corp. v. Reavis*, No. 21-575 (Tex. Sept. 16, 2021). The same is potentially true about this case.

Finally, certification is particularly appropriate where, as here, the statutory questions may implicate "important state policy interests." *Kansas Jud. Review v. Stout*, 519 F.3d 1107, 1120 (10th Cir. 2008). This Court is "more likely to certify questions with significant policy implications" because "state courts should ordinarily decide their state's judicial policy." *Booth v. Home Depot, U.S.A., Inc.*, 2021 WL 4805496, at *2 (10th

Cir. Oct. 14, 2021). The proper interpretation of (B)(1), in particular, raises important questions of judicial policy that will eventually need to be answered. "Whether a federal regulation is 'adequate' or 'inadequate' to protect the public is," in the eyes of some judges, "really a question of policy and politics—which makes judicial application of this statute somewhat confounding." *Milburn*, 696 S.W.3d at 635 (Blacklock, J., concurring).

Again, we believe that resolving this question is ultimately unnecessary in this appeal because of the overwhelming evidence of inadequacy. But if this Court disagrees and finds it necessary to select among the competing interpretations, then, the best course would be to certify the questions.

CONCLUSION

The district court's grant of summary judgment should be reversed.

Respectfully submitted,

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November 21, 2025

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested because of the importance of the issues in this case. Argument will enable the Court to ask questions of counsel to facilitate the resolution of these important issues.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 11,235 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font. This brief complies with all privacy requirements of Federal Rule of Appellate Procedure 25(a)(5) and 10th Circuit Rule 25.5. The digital submission of this brief has been scanned for viruses with the most recent version of a commercial virus scanning program, Nord VPN 2025, and according to the program is free of viruses.

November 21, 2025

/s/ Deepak Gupta
Deepak Gupta

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Tenth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Deepak Gupta
Deepak Gupta

Attachment A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

NICK SHAFFER and CHARLA SHAFFER, Individually, and NICK and CHARLA SHAFFER, as Parents and Next Friends of HOPE SHAFFER, Deceased,	)	
Plaintiffs,	)	
v.	)	**No. CIV-22-151-R**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING MISSISSIPPI, INC.; TOYOTA MOTOR SALES, USA, INC.; and GULF STATES TOYOTA, INC.;	)	
Defendants.	)	

ORDER

Before the Court is Toyota Defendants' Partial Motion for Summary Judgment [Doc. No. 116]. Plaintiffs Nick Shaffer and Charla Shaffer responded [Doc. No. 133], and Defendants replied [Doc. No. 140]. The matter is now at issue. For the following reasons, the Motion regarding Plaintiffs' strict liability claim is GRANTED.

Factual Background

Hope Shaffer was killed in a car crash while being driven home from driver's education training. She was sitting in the rear passenger seat of a 2020 Toyota Corolla while another student was driving and the instructor, George Voss, was sitting in the front passenger seat directly in front of her. When the student driver was attempting to exit from the highway, she became confused and came to a nearly complete stop on the off-ramp.

The Corolla was rear-ended by a Chevrolet Silverado also attempting to exit the highway. While the student driver and Mr. Voss suffered only minor injuries from the collision, Ms. Shaffer died from blunt force trauma to the front of her skull. What caused the trauma is disputed.

Plaintiffs' theory of the case is that Mr. Voss's head collided with Ms. Shaffer's head due to a defect in the front passenger seat of the subject Corolla [Doc. No. 133 at p. 1]. Specifically, Plaintiffs claim that the front seat was not rigid enough to prevent "ramping,"[1] which can lead to passenger-on-passenger contact in severe collisions. *Id*.

Defendants' theory is that Ms. Shaffer's head hit a narrow, rigid object within the vehicle rather than Mr. Voss's head. Accordingly, they contend that the seat was not defective, and that Mr. Voss did not ramp into the backseat.

Plaintiffs brought suit in state court for (1) strict products liability and (2) common law negligence [Doc. No. 1-1 pp. 10-15]. They additionally sought punitive damages under Oklahoma law. *Id*. at p. 15. Defendants removed the action to this Court [Doc. No. 1] and now seek partial summary judgment on Plaintiffs' strict products liability claim, as well as their prayer for punitive damages. Doc. No. 116 at p. 1.

Motion for Summary Judgment

A. Legal Standard

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.

[1] "Ramping" occurs when a seat yields to the point that the seat becomes fully reclined [Doc. No. 116-4 at p. 7].

Civ. P. 56(a). Whether a fact is material is determined by the substantive law at issue, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*.

The movant "always bears the initial responsibility of…identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quotation marks omitted). "If the movant carries this initial burden, the nonmovant that would bear the burden of persuasion at trial may not simply rest upon its pleadings; the burden shifts to the nonmovant to go beyond the pleadings and set forth specific facts that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (citation omitted).

The Court "view[s] the evidence and draw[s] reasonable inferences therefrom in the light most favorable to the nonmoving party." *Sanders v. Sw. Bell Tel., L.P.*, 544 F.3d 1101, 1105 (10th Cir. 2008). At this stage, the Court's role is not "to weigh the evidence and determine the truth of the matter," but to determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 249-252.

B. Strict Liability

Defendants' motion for summary judgment as to Plaintiffs' strict liability claim is premised on the rebuttable presumption of non-liability established in Okla. Stat. tit. 76, § 57.2(A):

> In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the formula, labeling, or design for the product complied with or exceeded mandatory safety standards or regulations adopted, promulgated, and required by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

Okla. Stat. tit. 76, § 57.2(A). This presumption may be rebutted by establishing that either:

> 1. The mandatory federal safety standards or regulations applicable to the product and asserted by the defendant as its basis for rebuttable presumption were inadequate to protect the public from unreasonable risks of injury or damage; or
>
> 2. The manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

Okla. Stat. tit. 76, § 57.2(B)(1)-(2).

The parties agree that FMVSS 207 is the pertinent federal regulation at issue. Doc. No. 133 at n.1. It is likewise undisputed that the front seat of the subject Corolla complied with FMVSS 207 at the time of the collision. *Id*. at p. 5. Thus, the rebuttable presumption set forth in Okla. Stat. tit. 76, § 57.2(A) applies to this case. The overarching issue then is whether Plaintiffs can rebut that presumption using one of the two methods outlined in Okla. Stat. tit. 76, § 57.2(B)(1)-(2).

The Oklahoma Supreme Court has not previously analyzed the presumption. Defendants' invocation of the rebuttable presumption to challenge Plaintiffs' strict liability claim therefore presents a question of first impression. When presented with questions of first impression regarding state law, the Tenth Circuit has defined the contours of a federal court's role as follows:

> In cases arising under diversity jurisdiction, the federal court's task is not to reach its own judgment regarding the substance of the common law, but simply to "'ascertain and apply the state law.'" *Wankier v. Crown Equip. Corp.*, 353 F.3d 862, 866 (10th Cir. 2003) (quoting *Huddleston v. Dwyer*, 322 U.S. 232, 236, 64 S.Ct. 1015, 88 L.Ed. 1246 (1944)); *see also Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). The federal court must follow the most recent decisions of the state's highest court. *Wankier*, 353 F.3d at 866. "Where no controlling decision exists, the federal court must attempt to predict what the state's highest court would do." *Id*. In doing so, it may seek guidance from decisions rendered by lower courts in the relevant state, *Progressive Cas. Ins. Co. v. Engemann*, 268 F.3d 985, 988 (10th Cir. 2001), appellate decisions in other states with similar legal principles, *United States v. DeGasso*, 369 F.3d 1139, 1148 (10th Cir. 2004), district court decisions interpreting the law of the state in question, *Sapone v. Grand Targhee, Inc.*, 308 F.3d 1096, 1100, 1104-05 (10th Cir. 2002), and "the general weight and trend of authority" in the relevant area of law, *MidAmerica Constr. Mgmt., Inc. v. MasTec N. Am., Inc.*, 436 F.3d 1257, 1262 (10th Cir. 2006) (internal quotation marks omitted). Ultimately however, the Court's task is to predict what the state supreme court would do.

Wade v. EMCASCO Ins. Co., 483 F.3d 657, 665-66 (10th Cir. 2007).

The parties have not identified any Oklahoma cases interpreting or applying the presumption.[2] However, the Texas Supreme Court recently applied an identical rebuttable

[2] Another court in this district has applied the presumption, but did so in a brief, case-specific manner. *See Okla. Farm Bureau Mut. Ins. Co. v. Omega Flex, Inc.*, No. CIV-22-18-D, 2024 WL 1160925, at *4-5 (W.D. Okla. Mar. 18, 2024). In *Omega Flex*, the court found "minimally sufficient evidence" to defeat the motion for summary judgment where

presumption[3] in a product liability case. *See Am. Honda Motor Co., Inc. v. Milburn*, 696 S.W.3d 612 (Tex. 2024).

In *Milburn*, the Texas Supreme Court reversed a jury verdict in favor of the plaintiff because the plaintiff did not rebut the presumption of non-liability outlined in TEX. CIV. PRAC. & REM. CODE § 82.008(a). *Id*. at 632. Specifically, the plaintiff failed to establish that the pertinent federal regulation—FMVSS 208—was inadequate to protect the public from unreasonable risk of harm. *Id*. The *Milburn* Court noted that "whether a product's design is defective and whether the applicable safety standards with which the design complies are inadequate to protect the public necessarily constitute distinct inquiries." *Id*. at 627. Central to its decision, the Texas Supreme Court stated that to determine whether a regulation is inadequate, the plaintiff must present "a comprehensive review of the various factors and tradeoffs NHTSA considered in adopting [the] safety standard," and that without such a showing, "neither [the court] nor a jury can deem a particular regulation 'inadequate' to prevent an unreasonable risk of harm to the public as a whole." *Id*. at 631. The court specifically observed that the "agency's decision-making is what led to the regulation whose adequacy is being challenged[,]" and that it "fail[s] to see how a jury could second-guess that decision without evaluating the process by which it was reached." *Id*. at 631, n.22.

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evidence was presented that the regulatory agency did not consider lightning's possible effect on the product. *Omega Flex, Inc.*, 2024 WL 1160925, at *4.

[3] TEX. CIV. PRAC. & REM. CODE § 82.008(a).

Defendants urge this Court to adopt the approach set forth in *Milburn*. Doc. No. 116 at p. 7. Plaintiffs contend that *Milburn* is inapplicable for several reasons, all of which are unavailing. First, Plaintiffs argue that *Milburn* should not be adopted because at the time of the briefing, the *Milburn* plaintiffs had filed a motion for rehearing and the opinion was unpublished. Doc. No. 133 at p. 3. But the motion for rehearing was denied and the opinion was subsequently published. And the opinion would have persuasive value regardless of whether it was published.[4] Second, Plaintiffs contend that *Milburn* is distinguishable due to its different procedural posture. *Id*. But the procedural posture of the present case has little bearing on the Court's interpretation of the requirements established in *Milburn*.

However, given the identical statutory language at issue, as well as the *Milburn* Court's reasoning, the Court predicts that the Oklahoma Supreme Court would find that the *Milburn* Court's framework best honors the Legislature's intent in creating the rebuttable presumption. In holding that defective design and regulatory inadequacy "are necessarily independent inquiries[,]" the *Milburn* Court noted that if "the Legislature merely wanted to highlight such [regulatory] compliance as part of the evaluation of whether a product is defectively designed, it could have done so. Instead, the Legislature

[4] Under Oklahoma law, "a statute adopted by Oklahoma from another state which at the time of adoption has been construed by the highest court of the first state, is presumed adopted as so construed; however, if decisions by the highest court of the other state occurred after adoption of the statute in Oklahoma, such decisions are persuasive only." *Krimbill v. Talarico*, 2018 OK CIV APP 37, ¶ 5, 417 P.3d 1240 (citing *In re Fletcher's Estate*, 1957 OK 7, ¶ 25, 308 P.2d 304). Texas adopted the rebuttable presumption in 2003, while Oklahoma adopted the same rebuttable presumption in 2014. *Milburn* was decided in 2024. Thus, the weight of *Milburn* is persuasive, not mandatory.

chose to create an independent presumption that can be rebutted only by establishing the inadequacy of the standard itself, allowing manufacturers to reasonably rely on those standards when designing their products." *Milburn*, 696 S.W.3d at 628-29 (internal citation omitted). It further observed that in the absence of this framework, the presumption would be rendered superfluous. *Id*. at 628.[5] This Court finds *Milburn*'s reasoning persuasive and predicts that the Oklahoma Supreme Court would not interpret the statute in a manner that renders it superfluous.

Having determined that *Milburn*'s interpretation is applicable, the Court turns to whether Plaintiffs have met their burden to show either regulatory inadequacy or the withholding or misrepresenting of information pertinent to NHTSA's determination of FMVSS 207's adequacy.

1. Regulatory Inadequacy

In *Milburn*, the Texas Supreme Court made clear that a plaintiff is required to do more than merely prove that the subject product is defective and/or unreasonably dangerous to rebut the presumption of non-liability. *Id*. at 627. "And while evidence tending to show a product was defectively designed can certainly also be relevant to the adequacy of the regulation allowing that design, legally sufficient evidence of the former does not automatically amount to legally sufficient evidence of the latter." *Id*. at 628. The

[5] Absent an independent inquiry into the inadequacy of the federal regulation, the *Milburn* Court noted that the function of the presumption would be as follows: "a defendant is liable for a defective design if the plaintiff proves X, unless the product complies with an applicable federal safety standard, in which case the defendant is not liable unless the plaintiff proves X (which has already been proven)." *Id*. at 629.

Milburn Court noted that "[a]bsent a comprehensive review of the various factors and tradeoffs NHTSA considered in adopting that safety standard, neither [the Court] nor a jury can deem a particular regulation 'inadequate' to prevent an unreasonable risk of harm to the public as a whole." *Id*. at 631. But it also refused to "foreclose the possibility that subsequent developments could demonstrate that the standard was no longer adequate to protect the public from unreasonable risks of injury at the time of the compliant product's manufacture." *Id*. Specifically, the court observed that "a material change in technology or a proliferation of new studies or data about risks and injuries associated with a compliant product could demonstrate the standard's inadequacy." *Id*.[6]

So while a plaintiff cannot rebut the presumption of non-liability merely by proving that the subject product was defective, it may do so by providing evidence of the "various factors and tradeoffs NHTSA considered in adopting the safety standard" and then showing that the regulatory agency "engaged in an improper or erroneous decision-making process in approving the regulation[.]" *Id*. at 632. A plaintiff may also rebut the presumption by providing evidence of "post-approval developments that call the regulation's adequacy into question[,]" *id*., such as "a material change in technology or a proliferation of new studies or data about risks and injuries associated with a compliant product[.]" *Id*. at 631.

Here, Plaintiffs do not attempt to meet the standard announced in *Milburn*. As discussed above, they instead unsuccessfully argue that *Milburn* is inapplicable. Applying

[6] The *Milburn* Court declined to explain "the parameters of such a showing" but hinted that prior complaints, lawsuits, and recalls were likely some of the evidence that could be used in meeting this standard. *Id*.

the evidence Plaintiffs present in their Response to the *Milburn* standard; the Court finds that it falls short.

First, while Plaintiffs contend that NHTSA "got it wrong" by making the front seat strength requirements too weak to prevent severe injury to rear passengers in severe rear-end collisions, they fail to present evidence of the "various factors and tradeoffs NHTSA considered" in adopting FMVSS 207. Missing is any evidence that NHTSA simply failed to consider increasing the rigidity requirements for front seats. *See Id.*, 696 S.W.3d at 629. Rather, Defendants put forth evidence that NHTSA explicitly considered increasing the requirements, but deemed that more data was necessary to determine whether such an increase would have a negative corresponding effect upon front seat passengers. Doc. No. 116-4. So while it is true that the *Milburn* Court did not preclude rebuttal of the presumption by showing that the regulatory agency merely "got it wrong" *Milburn*, 696 S.W.3d at 631, n.23, absent evidence of the considerations undertaken by NHTSA in the regulatory process or evidence that NHTSA simply failed to consider the risk of harm to back seat passengers due to the front seat strength requirements, Plaintiffs cannot meet their burden. And because they presented no such evidence, they accordingly failed to rebut the presumption on that ground.

Second, Plaintiffs emphasize that NHTSA has not updated FMVSS 207 since its inception in 1967. Doc. No. 133 at p. 20. This argument appears to follow from *Milburn*'s second method of rebutting the presumption: post-approval developments. *See Milburn*, 696 S.W.3d at 632. But passage of time alone is insufficient to show inadequacy. While it logically tracks that new technology has been developed since 1967 that could bear upon

seat strength and passenger safety, Plaintiffs cite no such new technology. Instead, they point to a report issued by NHTSA in 1998 that states (1) "it is acknowledged that the current standard [FMVSS 207] requires inadequate seat strength to ensure that the seat does not fail when a car is subject to a severe rear impact[,]" and (2) "advances in technology have made possible significant improvement in the ability of the car seat to add appreciable crash victim occupant protection, especially with the advent of integrated seat concepts[]" [Doc. No. 133-11 at p. 2]. But again, pointing to this report is not sufficient in itself to show that FMVSS 207 is inadequate to protect the public as a whole. As Defendants note in their Reply, FMVSS 207 must provide standards that "protect the size-diverse public sometimes wearing their seatbelts and sometimes not involved in front, side, rear, and pole crashes at low, moderate, and high speeds sitting in various configurations in the vehicle[]" [Doc. No. 140 at p. 3]. Thus, while Plaintiffs' evidence shows that severe injuries to rear passengers in severe rear-end collisions were an issue that was both known to and acknowledged by NHTSA, missing is any evidence that NHTSA erred in its weighing of considerations when deciding against amending FMVSS 207. Without evidence of the considerations undertaken, the jury cannot determine whether FMVSS 207 is inadequate to protect the public as a whole, even in the face of both knowledge of severe injuries and potential advances in technology. *See Milburn*, 696 S.W.3d at 631.

And while it is known that studies have been conducted and data has been collected regarding the risks and injuries associated with FMVSS 207, *see* Doc. No. 116-4, Plaintiffs do not point to a study or a collection of data that supports a reasonable inference of inadequacy when compared to NHTSA's other safety considerations. Plaintiffs do,

however, present evidence of prior instances of severe injuries to back seat passengers in severe rear-end collisions [Doc. No. 133-8 at p.1]. They also provide evidence that Toyota receives complaints of severe injuries caused by severe rear-end collisions [Doc. No. 133-7 at p. 5]. But significantly, there is no evidence that NHTSA disregarded these reports or that, on balance, increasing the seat strength requirement of FMVSS 207 would sufficiently prevent these severe injuries without leading to a higher corresponding risk of injury to other passengers. Thus, like above, Plaintiffs' failure to provide any evidence of NHTSA's regulatory process in either promulgating or failing to amend FMVSS 207 effectively precludes their rebuttal of the presumption under *Milburn*.

Accordingly, Plaintiffs did not rebut the presumption of non-liability by showing regulatory inadequacy as set forth by Okla. Stat. tit. 76, § 57.2(B)(1).

2. Withholding or Misrepresenting Information

Plaintiffs second theory of rebuttal is based on Defendants allegedly withholding information from the federal government that was pertinent to the promulgation of FMVSS 207. *See* Okla. Stat. tit. 76, § 57.2(B)(2). Viewing the evidence presented in the light most favorable to Plaintiffs and asserting every reasonable inference in their favor, the record does not support such a finding.

Plaintiffs base their argument on Defendants' incomplete answers to requests for information sent by United States Senators Richard Blumenthal and Edward Markey. Doc. No. 133 at pp. 11-12. But as Defendants note, Plaintiffs' reliance on the senators' letter as rebuttal evidence misconstrues the regulatory process.

The statutory basis for FMVSS 207 is found in 49 U.S.C. § 30101, which states that the purpose of the chapter is "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." 49 U.S.C. § 30101. Pursuant to this purpose, Congress determined that it was necessary to both "prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce" and "carry out needed safety research and development." *Id*. at (1)-(2). Under 49 U.S.C. § 30111, the prescription of motor vehicle safety standards such as FMVSS 207 is delegated to the Secretary of Transportation. 49 U.S.C. § 30111(a). NHTSA is delegated the authority to exercise the authority vested in the Secretary of Transportation in the statutes outlined above. 49 C.F.R. § 1.95.

In accordance with the statutory mandate outlined above, NHTSA, under the direction of the Secretary of Transportation, promulgated FMVSS 207 in 1967. As discussed in both Defendants' Exhibit 4 and Plaintiffs' Exhibit 16, since 1967, NHTSA has considered several proposals for rulemaking that would amend FMVSS 207. At each turn, the agency determined that amendment was either not warranted or did not adequately balance the dueling safety considerations regarding seatback rigidity.

The above makes two points clear. First, Congress enabled the Secretary of Transportation (and through subsequent delegation, NHTSA) to promulgate FMVSS 207. And second, the Secretary of Transportation (and NHTSA as the prescribing body) holds the authority to issue and alter motor vehicle safety regulations such as FMVSS 207. Two United States Senators do not have the authority to either issue, amend, or determine the adequacy of FMVSS 207, as this authority has been vested in the Secretary of

Transportation and NHTSA pursuant to 49 U.S.C. § 30101, 30111(a), and 49 C.F.R. § 1.95. Thus, when Senators Blumenthal and Markey requested information from Defendants regarding their knowledge of the shortcomings of FMVSS 207, they did not do so with the power to amend FMVSS 207 to make seatbacks more rigid. Accordingly, when Defendants did not directly answer the senators' requests with information they admit was readily available, they did not "with[o]ld or misrepresent[] information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action" as required to rebut the presumption. *See* Okla. Stat. tit. 76, § 57.2(B)(2). Therefore, Plaintiffs did not rebut the presumption on their second ground.

Accordingly, Defendants' Motion regarding Plaintiffs' claim for strict liability is GRANTED.

Conclusion

Accordingly, Defendants' Motion for Summary Judgment is GRANTED regarding Plaintiffs' strict liability claim.

Additionally, the parties are ordered to file a status report within seven days of this Order discussing the effect that this Order has on (1) Plaintiffs' common law negligence claim, and (2) Plaintiffs' motions to compel.

IT IS SO ORDERED this 28th day of February, 2025.

David L. Russell

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

Attachment B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

NICK SHAFFER and CHARLA SHAFFER, Individually, and NICK and CHARLA SHAFFER, as Parents and Next Friends of HOPE SHAFFER, Deceased,	)	
Plaintiffs,	)	
v.	)	**No. CIV-22-151-R**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING MISSISSIPPI, INC.; TOYOTA MOTOR SALES, USA, INC.; and GULF STATES TOYOTA, INC.;	)	
Defendants.	)	

ORDER

Before the Court is Toyota Defendants' Motion for Partial Summary Judgment [Doc. No. 169]. Plaintiffs Nick and Charla Shaffer Responded [Doc. No. 172], and Defendants replied [Doc. No. 173]. The matter is now at issue. For the following reasons, Defendants' Motion is GRANTED.

INTRODUCTION

In 2014, the Oklahoma Legislature created a rebuttable presumption of non-liability to manufacturers in a "product liability action." Under the presumption, if a manufacturer's product complies with federal safety standards or regulations, the manufacturer is not liable for injuries caused by the product barring application of two narrow exceptions. *See* Okla.

Stat. tit. 76, § 57.2(A)-(B). The issue presented by Defendants' Motion is whether this presumption applies to claims arising under a theory of negligence.

BACKGROUND

Hope Shaffer was killed in a car accident while sitting in the back seat of a 2020 Toyota Corolla [Doc. No. 1-1, ¶¶ 40, 49]. Plaintiffs' theory of the case is that the severe head trauma that caused her death was the result of the front seat passenger's seatback being overly weak, leading to a phenomenon known as "ramping" and resulting in head-to-head contact between the front seat passenger and the back seat passenger [Doc. No. 133 at p. 1]. Plaintiffs sued under theories of strict liability and negligence based on the crashworthiness of the subject vehicle's front seatback, and sought both actual and punitive damages. Doc. No. 1-1 at pp. 10-16.

In their First Motion for Partial Summary Judgment, Defendants asserted that they were presumptively not liable under § 57.2(A) because the front passenger seat complied with federal seatback safety standards [Doc. No. 116 at p. 4]. Defendants further argued that neither of the exceptions enumerated in § 57.2(B) applied. *Id*. at p. 5. The Court agreed and granted Defendants' Motion as to Plaintiffs' claims for strict liability and punitive damages [Doc. No. 163].

Left unanswered was the effect of § 57.2(A) on Plaintiffs' negligence claim. *Id*. at p. 14. The Court therefore permitted Defendants to file the instant Motion to determine whether compliance with federal regulations applies to harms caused by an alleged product defect sounding in negligence [Doc. No. 167].

LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "'When applying this standard, [the Court] view[s] the evidence and draw[s] reasonable inferences therefrom in the light most favorable to the nonmoving party.'" *Gutierrez v. Cobos*, 841 F.3d 895, 900 (10th Cir. 2016) (quoting *Ribeau v. Katt*, 681 F.3d 1190, 1194 (10th Cir. 2012)).

DISCUSSION

Defendants argue that Plaintiffs' negligence claim is a "product liability action" subject to the rebuttable presumption enumerated in § 57.2(A), and that Defendants are therefore entitled to judgment as a matter of law. Doc. No. 169 at p. 11. Plaintiffs contend that § 57.2(A) only applies to strict liability actions because it is triggered by a "product liability action" which is distinct from a negligence claim. Doc. No. 172 at p. 5.

In 1974, Oklahoma adopted what many jurisdictions refer to as "strict liability." *See Kirkland v. Gen. Motors Corp.*, 1974 OK 52, ¶¶ 20-21, 521 P.2d 1353. Oklahoma's version of the doctrine was labeled "Manufacturers' Products Liability." *Id.* ¶ 21. Critically, the Oklahoma Supreme Court did not abolish negligence as a theory of liability when an individual is harmed by a defective product. *Id.* ¶ 40. Instead, through the adoption of Manufacturers' Products Liability, the *Kirkland* Court provided an additional theory of liability—separate from negligence and its cumbersome defenses—for a plaintiff to assert a claim against a manufacturer. *Id.*

Nearly 40 years later, the Oklahoma Court of Civil Appeals clarified that while a plaintiff harmed by a defective product may assert a claim through Manufacturers' Products Liability, she may also bring suit under a theory of negligence:

> "A product liability action may be based on a theory of negligence liability or strict products liability. The Oklahoma Supreme Court in the seminal products liability case, *Kirkland v. General Motors Corp.*, noted that a plaintiff is not required to elect one theory of liability. 1974 OK 52, ¶ 40, 521 P.2d 1353. Even with the advent of strict products liability, the negligence cause of action remains available to a plaintiff injured by a defective product."

Honeywell v. GADA Builders, Inc., 2012 OK CIV APP 11, ¶ 24, 271 P.3d 88; *see also Oglesbee v. Glock, Inc.*, No. 23-5134, 2024 WL 5233181, at *4 (10th Cir. Dec. 27, 2024) and *Braswell v. Cincinnati, Inc.*, 731 F.3d 1081, 1093 n.4 (10th Cir. 2013)).

The Court finds *Honeywell* and its progeny dispositive: the rebuttable presumption enumerated in § 57.2(A) applies to product liability actions, and a product liability action can include claims arising under both manufacturer's product liability (strict liability) and negligence.

Plaintiffs lodge several arguments in support of their contention that § 57.2(A) does not apply to their negligence claim. Doc. No. 172 at p. 3. These include Defendants' inadequate internal testing, inadequate seat design, and Defendants' knowledge of the risks caused by overly weak seatbacks. *Id*. These arguments are premised on the idea that Plaintiffs' negligence claim is based on Defendants' conduct rather than the condition of the seatback itself. *Id*. But as Defendants note, the bottom-line remains the same under Plaintiffs' theory of the case: Hope Shaffer was killed because of an overly weak—that is, defective—seatback. Doc. No. 169 at p. 6; *see also* Doc. No. 1-1, ¶ 50. And "[a] 'product

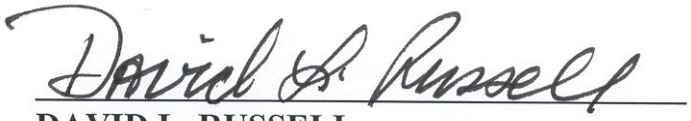
liability action' is based on injuries caused by a defective product." *Honeywell*, 2012 OK CIV APP 11, ¶ 20. So regardless of Defendants' alleged negligent omissions or knowledge of the purportedly defective seatback, under Plaintiffs' theory, Hope Shaffer's death was caused by the overly weak seatback, rendering Plaintiffs' negligence claim a "product liability action."

It is undisputed that the front seatback of the subject vehicle complied with the pertinent federal regulation's seatback strength requirements. Doc. No. 133 at p. 5. And the Oklahoma Legislature has made the determination that such compliance is a defense in a product liability action. Okla. Stat. tit. 76, § 57.2(A). So under the instant facts—all of which point to a negligence claim based on a defective product—application of § 57.2(A) is appropriate and is dispositive of Plaintiffs' negligence claim.

CONCLUSION

Accordingly, Defendants' Second Motion for Partial Summary Judgment is GRANTED.

IT IS SO ORDERED this 30th day of June, 2025.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

Attachment C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

NICK SHAFFER and CHARLA SHAFFER, Individually, and NICK and CHARLA SHAFFER, as Parents and Next Friends of HOPE SHAFFER, Deceased,	)	
Plaintiffs,	)	
v.	)	**No. CIV-22-151-R**
TOYOTA MOTOR CORPORATION; TOYOTA MOTOR NORTH AMERICA, INC.; TOYOTA MOTOR ENGINEERING & MANUFACTURING MISSISSIPPI, INC.; TOYOTA MOTOR SALES, USA, INC.; and GULF STATES TOYOTA, INC.;	)	
Defendants.	)	

JUDGMENT

In accordance with the Court Order [Doc. No. 175] issued this 30th day of June, 2025, judgment is hereby entered in favor of Defendants.

ENTERED this 30th day of June, 2025.

David L. Russell

DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE