

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

April , 2018

Administrator Pruitt:

We write today to urge you to revoke the July 8, 2009 waiver of Clean Air Act preemption granted to the State of California for its greenhouse gas emission standards for motor vehicles.

As State-based independent free-market think tanks, we are strong advocates for the authority of States and cooperative federalism. However, in this instance, **the clear requirements of the Clean Air Act** – which stipulates that any waiver must be in light of California’s need for separate regulations “to meet compelling and extraordinary conditions”¹ – **were violated by the Obama Administration’s granting of a waiver for California’s vehicle greenhouse gas emission standards in 2009.**

Further, to follow California’s lead reduces consumer choice, increases financial burdens on families, and imposes greater safety risks to drivers and passengers. Almost all Americans would prefer to make their own choices about what cars to buy and fuels to use. Very few would like those choices to be made by bureaucrats in Sacramento.

In 2007, EPA Administrator Stephen L. Johnson clearly articulated why California’s waiver request did not meet the “compelling and extraordinary conditions” test when the Agency initially denied the request in December of that year. As Johnson stated in a letter to then-Governor Schwarzenegger, “[u]nlike other air pollutants covered by previous waivers, **greenhouse gases are fundamentally global in nature**”; furthermore, the issue of greenhouse gas emissions “**is not exclusive or unique to California and differs in a basic way from the previous local and regional air pollution problems** addressed in prior waivers.”²

In other words, there is no justification for California to be allowed to write its own rules in this case. The “compelling and extraordinary conditions” of California’s localized pollution problems simply do not apply here, because greenhouse gases are a component of the Earth’s atmosphere.

Furthermore, California’s vehicle emission standards are a clear violation of the 1975 Energy Policy and Conservation Act (EPCA). Regulations such as the California standard and EPA’s federal GHG standards for light-duty vehicles are, in essence, fuel efficiency standards – given that **there is no currently available technology to reduce vehicle GHG emissions other than through reduced consumption of traditional transportation fuels.**

¹ 42 U.S. Code § 7543.

² Letter from EPA Administrator Stephen L. Johnson to California Governor Arnold Schwarzenegger, Dec. 19, 2007 (emphasis added).

This connection is clearly demonstrated through the establishment by EPA and the National Highway Traffic Safety Administration (NHTSA) of a National Program combining EPA's GHG rules and the Department of Transportation's Corporate Average Fuel Economy (CAFE) standards. In fact, California Air Resources Board Chair Mary Nichols acknowledged that "although NHTSA's CAFE standards do not constitute motor vehicle emission standards, they are closely related to EPA's corresponding greenhouse gas emission standards..."

Yet EPCA clearly states that "a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles".³

As free-market champions, we are gravely concerned when governments – whether at the State or Federal level – apply tortured interpretations of the law to achieve politically driven policy outcomes. Our concern in this case is all the greater, given that the policies California has adopted – and twelve other states have chosen to follow – will reduce consumer choice, increase financial burdens on families, and impose greater safety risks to drivers and passengers. While these policies will come at great cost, their combined effect would reduce global man-made greenhouse gas emissions by only a fraction of 1 percent.⁴

As you have pointed out, "California is not the arbiter of these issues." We support California's ability to craft State regulations targeting the types of emissions that contribute to its localized air-quality problems – that is, its "compelling and extraordinary conditions" as stated in the Clean Air Act. **But California should not be allowed to subvert the clear intent of the law to dictate manufacturing and energy-use mandates that will harm consumers both in California and in other States across the Nation.**

Thank you for your consideration of our views and for your leadership on these important issues.

Sincerely,

cc: President Donald J. Trump
Secretary Elaine Chao

³ 49 U.S. Code § 32919

⁴ McCarthy, James E., and Robert Meltz, CRS Report for Congress: "California's Waiver Request to Control Greenhouse Gases Under the Clean Air Act," updated January 8, 2008.