

# United States Senate

WASHINGTON, DC 20510

July 27, 2021

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Regan:

As Members of Congress committed to the right of states to protect their residents from motor vehicle air pollution, we strongly support the Environmental Protection Agency's (EPA) reconsideration of its withdrawal of the waiver of federal preemption under the Clean Air Act for California's Advanced Clean Car program. The waiver was unlawfully withdrawn under the Trump Administration and should be promptly reinstated.

Congress and EPA have repeatedly recognized California's right to adopt standards necessary to protect the public health and welfare of its residents. Indeed, California first adopted standards limiting pollution from motor vehicles sold in the state before the Congress established EPA's authority to do so. As Congress has also repeatedly provided, the states empowered by the Clean Air Act have the right to adopt California's standards and accelerate the transition to cleaner vehicles sold in those states.

The Advanced Clean Car program is a long-standing program that allows California and the many other states adopting it to improve air quality, protect the health and welfare of their residents, and reduce the pollution that is driving climate change. The program is able to produce these positive results through emissions standards and deployment of zero emission vehicles. Thirteen states and the District of Columbia, which together comprise 36 percent of the auto market, have adopted California's clean car standards.<sup>[1]</sup> Four more states are in the process of adopting the standards.<sup>[2]</sup>

The withdrawal of the waiver by the Trump Administration was unprecedented, and because it was based on erroneous interpretations of the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act, and the Clean Air Act, it was unlawful.<sup>[3]</sup> EPA has never previously withdrawn a waiver, and we believe the agency lacks the authority to do so. However, even if EPA did have such authority, there was not a proper basis for doing so in this case. California has long-standing and continuing air quality problems, and those problems provide an ample basis for the state's authority to adopt standards limiting

---

<sup>[1]</sup> Colorado, Connecticut, Delaware, Massachusetts, Maryland, Maine, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington.

<sup>[2]</sup> Nevada, New Mexico, Minnesota, Virginia.

<sup>[3]</sup> See Brief for Members of Congress as Amici Curiae in Support of Petitioners, *Union of Concerned Scientists v. National Highway Traffic Safety Administration*, D.C. Cir. No. 19-1230 (filed Oct. 27, 2020).

vehicle pollution. Moreover, the severe risks to California from worsening climate change have been illustrated through the recent history of devastating wildfires, drought, and severe weather. These harms plainly provide further justification for California's adoption of standards that limit vehicle pollution.

The waiver provides important benefits to the entire nation. By enabling states to adopt standards to protect residents' public health and welfare, the waiver has spurred significantly greater innovation and development of cleaner vehicle technologies. Similarly, California and other states' adoption of its zero-emission vehicle program has been critical to fostering the development and introduction of electric vehicles, which are now available everywhere and reduce both pollution and fuel expenses for all Americans. These regulatory programs lead to life-saving air quality improvements, which is especially critical for people of color and low-income communities, who experience disproportionate harm from motor vehicle pollution.

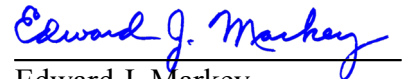
The mounting threats to health and welfare posed by climate change makes the authority of the states to lead more important than ever. It is vital that the waiver be reinstated to allow pioneering states to continue the process of innovation in clean vehicles.

For all these reasons, we urge you to promptly reinstate the waiver.


Sincerely,



Thomas R. Carper  
Chairman  
Committee on Environment  
and Public Works



Edward J. Markey  
Chair  
Senate Environment and  
Public Works Subcommittee  
on Clean Air, Climate, and  
Nuclear Safety



Dianne Feinstein  
United States Senator



Alex Padilla  
United States Senator



Michael F. Bennet  
United States Senator



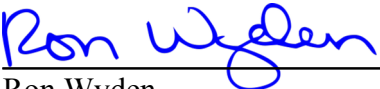
Chris Van Hollen  
United States Senator



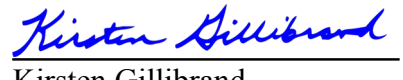
Cory A. Booker  
United States Senator



Sheldon Whitehouse  
United States Senator




Ron Wyden  
United States Senator



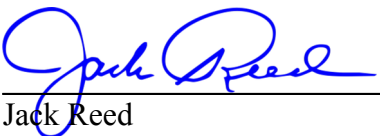
Kirsten Gillibrand  
United States Senator



Martin Heinrich  
United States Senator



Richard Blumenthal  
United States Senator



Jack Reed  
United States Senator



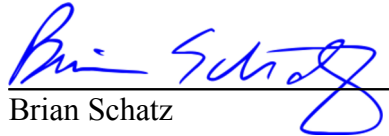
Christopher A. Coons  
United States Senator



Bernard Sanders  
United States Senator



Tammy Duckworth  
United States Senator



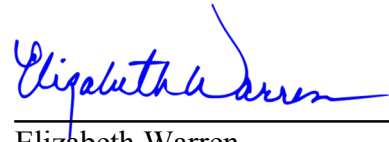
Brian Schatz  
United States Senator



Benjamin L. Cardin  
United States Senator



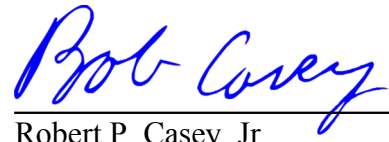
Robert Menendez  
United States Senator



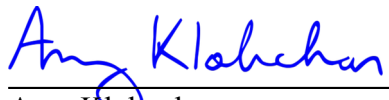
Elizabeth Warren  
United States Senator



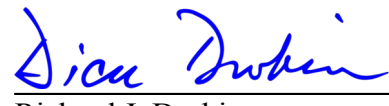
Jeffrey A. Merkley  
United States Senator



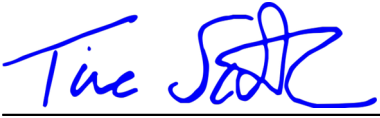
Robert P. Casey, Jr.  
United States Senator



Amy Klobuchar  
United States Senator

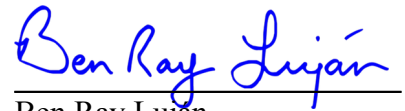


Richard J. Durbin  
United States Senator



---

Tina Smith  
United States Senator



---

Ben Ray Lujan  
United States Senator