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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, et al., Defendants.	Case No.: 4:25-cv-04966-HSG **[CORRECTED] BRIEF OF ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** Hearing Date: February 19, 2026 Time: 2 PM Judge: Honorable Haywood S. Gilliam, Jr. Courtroom: 2, 4th Floor Trial Date: not set Action Filed: June 12, 2025

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IDENTITY AND INTEREST OF AMICI[1]

Founded in 1967, Environmental Defense Fund (EDF) is a nonprofit organization with more than 320,000 members nationwide, including about 47,000 in California. Employing a staff of scientists, economists, policy experts, and other professionals, EDF works to counter threats to public health by reducing pollution and advancing clean, affordable solutions that strengthen people's ability to thrive in a changing climate. Recognizing California's singularly serious air quality problems and the need to control emissions from the State's vast motor vehicle fleet, EDF has long supported California's authority to adopt protective emission standards. EDF has frequently participated in litigation to defend California standards. See *American Free Enterprise Chamber of Commerce v. EPA*, No. 25-106 (9th Cir.) (EDF as movant for intervention); *Ohio v. EPA*, No. 22-1081 (D.C. Cir) (EDF as respondent-intervenor); *Union of Concerned Scientists v. NHTSA*, No. 19-1230 (D.C. Cir.) (EDF as petitioner).

Founded in 1970, Natural Resources Defense Council (NRDC) is a national non-profit membership organization whose mission includes ensuring the rights of all people to clean air, clean water, and healthy communities. NRDC has a longstanding organizational commitment to protect the interests of its members and to reduce all sources of air pollution, including emissions of harmful smog-forming pollutants and greenhouse gases from motor vehicles. *See, e.g.*, *Natural Resources Defense Council, Inc. v. EPA*, 655 F.2d 318 (D.C. Cir. 1981); *Natural Resources Defense Council, Inc. v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994); *Union of Concerned Scientists. v NHTSA*, No. 19-1230 (D.C. Cir.). NRDC has over 32,000 members who reside in California who will suffer from increased air pollution due to Defendants' actions challenged in this case.

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from amici and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Founded in 1892, Sierra Club is the Nation's oldest and largest grassroots environmental group, with over 620,000 dues-paying members, including over 130,000 in California—people whose health is adversely affected by vehicular pollution subject to regulation by the California standards at issue in this case. Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club works on behalf of its members, who rely upon the organization to advocate for their interests in front of state, local and federal entities, including EPA, and in the courts. Sierra Club has a long history of advocacy and litigation for vehicle regulations aimed at reducing the many harmful and toxic pollutants vehicles emit and at lessening our dependence on oil as a transportation fuel. Sierra Club is currently involved in several cases to defend California's waivers. *See American Free Enterprise Chamber of Commerce v. EPA*, No. 25-106 (9th Cir.) (ACC II waiver); *American Free Enterprise Chamber of Commerce v. EPA*, No. 25-89 (9th Cir.) (Omnibus waiver); *American Fuel & Petrochemical Manufacturers v. EPA*, No. 25-1614 (9th Cir.) (TRU waiver).

INTRODUCTION AND SUMMARY OF ARGUMENT

As Plaintiffs demonstrate, the measures challenged here, styled "resolutions of disapproval," are unprecedented and substantively and procedurally extraordinary. Never before have highly expedited procedures like those under the Congressional Review Act (CRA) been applied to an adjudication—and that statute's plain text precludes doing so. And never before has any federal resolution been read to nullify an adjudication. Nor have preemption waivers under Section 209(b)—the subject of the Resolutions here—ever been deemed to be anything other than adjudications.

Moreover, as we explain here, the type of adjudication at issue—the one that Defendants seek to subject to various short-cuts—is no ordinary one. It involves core police powers of a State, to address extraordinary and compelling local conditions within its borders. By sleight of hand, the Resolutions purport to extinguish state law and function to accord the Executive plenary power, unmoored from the statutory standards Congress wrote into law to constrain executive discretion and protect California's longstanding authority. Contrary to the regime operating when the waiver applications were submitted to EPA, under the improvised new procedure, California had no opportunity to be heard or petition for judicial review.

California began regulating vehicular pollution long before the federal government did so and has contributed to many of the key advances in understanding vehicular air pollution and the technological and regulatory means to abate it. In the Clean Air Act, Congress recognized California's established role by granting the State the unique authority to obtain waivers of preemption for its emission standards. EPA's waiver decisions are fact-bound exercises of adjudicatory authority, with the relevant review standards established by Congress deliberately favoring California's authority to adopt its own, more protective standards. The extraordinary events which resulted in the Resolutions provided none of those constraints.

The particular state measures targeted by the Resolutions are of great practical moment; they are matters of life or death. Absent this Court's intervention, thousands more Californians will die prematurely, suffer cardiac events and asthma attacks, and visit emergency rooms than under the legal regime that has governed for decades—and was universally understood, including by Defendants, to govern until the events at issue.

Defendants' actions here—which effectively disable important State laws—exceeded their powers in multiple respects. Plaintiffs' challenge should be allowed to proceed.

ARGUMENT

As Plaintiffs demonstrate, the Resolutions reflect an egregious misuse of the CRA, which authorizes Congress to disapprove only federal "rules" of general applicability issued by federal agencies, not to invalidate agency orders like those granting Section 209(b) preemption waivers.[2] As all the relevant stakeholders, CRA experts, and even ardent congressional opponents of California emissions regulation consistently recognized, waiver proceedings under Section 209(b) are not subject to the CRA. Am. Compl., ¶¶ 64-71. The CRA manifestly does not empower Congress to involve itself in review of *adjudications*, nor did (or could) Congress confer on the Executive authority to initiate such a congressional "review" by ipse dixit. The three sets of California standards at issue here were developed and submitted for EPA approval under these settled understandings and under the narrowly circumscribed, deferential-to-California waiver criteria set out in the statute. And the California submissions were adjudicated, correctly, under that regime (which provides aggrieved parties the right, *see* 42 U.S.C. § 7607(b), to seek review of such determinations in court).

As Plaintiffs also demonstrate, the flagrant misuse of the CRA here disrespects the role of States in our constitutional system. Designed as a brake on federal agency rulemaking, the CRA targets only major federal rules and was never intended to create a tool for Congress to effectively override core exercises of *state* police power.[3] The CRA was never intended to give Congress the power to thwart exercises of state police powers laws via this backdoor strategy.

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[2] *See* 5 U.S.C. §§ 801(a)(1)(A), 804(3); *see also* Plaintiffs' Opp. to Mot. to Dismiss (ECF 194) at 3-4; Amended Complaint ¶¶ 64-93 (ECF 157).

[3] A congressional power to veto state laws was advocated for, but decisively rejected, at the Constitutional Convention. *See* Derek A. Webb, *The Original Meaning of Civility: Democratic Deliberation at the Philadelphia Constitutional Convention*, 64 S.C. L. Rev. 183, 201-02 (2012) (noting that James Madison initially supported a congressional power to veto state laws "but later

The offense to federalism principles has particularly severe consequences for human health and welfare: California's vehicle emissions regulations reflect the exercise of core police powers that have protected Californians' lives for more than half a century. The regulations are designed to protect California's people from harmful pollution that, as explained below, has proven to be an especially serious scourge.[4] The effect of the challenged Resolutions is to disable state air pollution standards intended to protect Californians from those serious harms – and obstruct California's ability even to meet its federal obligations to meet Clean Air Act ambient quality standards. Disabling the California regulations at issue here means more air pollution for Californians and a shortening of lives that the overridden standards would have preserved. *See* p. 18, infra. It disrupts state air quality planning that was years in the making and impedes the State's efforts to meet air quality standards that it has obligations under federal law to achieve.

As explained below, over decades, Congress itself has affirmed and reaffirmed California's valid interest in adopting its own, more protective air pollution standards and established and refined carefully circumscribed criteria for EPA to review waiver applications (and federal courts'

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conceded that the Convention had 'justly abandoned' it"); *see also Notes of Rufus King in the Federal Convention of 1787,* in DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES 844, 855-56 (1927) (Convention rejected, by 7 to 3 vote (with one delegation divided), proposals to allow Congress to "negative" state laws); 5 J. ELLIOT, DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 127, 171-74, 319-22 (Philadelphia 1845) (same).

[4] *See Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960) ("Legislation designed to free from pollution the very air that people breathe clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power."); *Pac. Merch. Shipping Ass'n v. Goldstene*, 639 F.3d 1154, 1167 (9th Cir. 2011) ("Congress itself contemplated that the states would retain leading roles in regulating air quality when it passed the Clean Air Act."); *Exxon Mobil Corp. v. US EPA*, 217 F.3d 1246, 1255 (9th Cir. 2000) ("Air pollution prevention falls under the broad police powers of the states, which include the power to protect the health of citizens in the state.").

review of EPA's resulting adjudicatory decisions). In purporting to nullify multiple Clean Air Act waivers "under the CRA," Congress has gone well beyond the powers granted to it by that statute.

I. IN RESPONSE TO SERIOUS PUBLIC HEALTH CHALLENGES, CALIFORNIA DEVELOPED A SUCCESSFUL EMISSIONS CONTROL PROGRAM WHICH CONGRESS PRESERVED IN THE CLEAN AIR ACT

A. Motor Vehicle Emissions Harm Public Health and the Environment.

Internal-combustion engines in cars, trucks, and offroad vehicles are among the largest sources of air pollutants that pose a slew of hazards to human health. Motor vehicles emit multiple nitrogen oxides and volatile organic compounds, which interact with sunlight to produce ground-level ozone, commonly known as smog.[5] Ground-level ozone causes impaired lung function and cardiovascular stress and leads to additional emergency room visits and premature deaths.[6] People with respiratory conditions, children, pregnant women, elderly people, and those who work outdoors are particularly vulnerable.[7]

Motor vehicles are also significant sources of particulate matter, an "air-suspended mixture of solid and liquid particles that vary in number, size, shape, surface area, chemical composition, solubility, and origin."[8] Fine particulate matter can penetrate deep into the lungs and enter the

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[5] *See* Daniela Nuvolone et al., *The Effects of Ozone on Human Health*, 25 ENV'T SCI. & POLLUTION RES. 8074, 8074 (2017); EPA, *Ground-Level Ozone Basics*, https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics.

[6] Jennifer D. Stowell et al., *The Impact Of Climate Change And Emissions Control On Future Ozone Levels: Implications For Human Health*, 108 Env't Int'l 41, 41 (2017); Junfeng (Jim) Zhang, et al., *Ozone Pollution: A Major Health Hazard Worldwide*, 10 FRONTIERS IN IMMUNOLOGY 2518 (Oct. 2019).

[7] See Am. Lung Ass'n, *Ozone*, https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone; EPA, *Health Effects of Ozone in the General Population*, https://www.epa.gov/ozone-pollution-and-your-patients-health/health-effects-ozone-general-population#symptoms.Ozone pollution is a particular risk for the 1 in 10 school-age children suffering from asthma. *Id.*

[8] C. Arden Pope III & Douglas W. Dockery, *Health Effects of Fine Particulate Air Pollution: Lines That Connect*, 56 J. AIR & WASTE MGMT. ASS'N 709, 710 (2006); California Air Resources Board,

bloodstream, and "is associated with the greatest proportion of adverse health effects related to air pollution,"[9] including exacerbated symptoms and premature mortality in people with heart or lung disease; increased risk of cardiovascular illness and heart attacks; decreased lung function; and difficulty breathing.[10] Particulate pollution from diesel engines poses special health risks and contains "over 40 known cancer-causing organic substances."[11]

Motor vehicles contribute more than any other source category to the carbon dioxide pollution that causes climate change, endangering public health by, among other things, increasing heat-related deaths, increasing incidence and intensity of droughts and wildfires, and exacerbating "criteria" air pollution such as smog and particulate matter.[12] Climate change facilitates formation

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Inhalable Particulate Matter and Health (PM2.5 and PM10), https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health.

[9] EPA, *Particulate Matter (PM) Basics* ("*PM Basics*"), https://www.epa.gov/pm-pollution/particulate-matter-pm-basics.

[10] See *id.*; California Air Resources Board, *Inhalable Particulate Matter and Health (PM2.5 and PM10)*, https://www.epa.gov/pm-pollution/particulate-matter-pm-basics (noting that "older adults with chronic heart or lung disease, children and asthmatics" are among the groups most likely to suffer health effects from particulate-matter exposure); Pope III & Dockery, *Health Effects of Fine Particulate Air Pollutiion*, 56 J. AIR & WASTE MGMT. ASS'N at 731–32.

[11] CARB, *Overview: Diesel Exhaust & Health*, https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health

[12] *See, e.g.*, Drew Shindell, et al., *Temporal and Spatial Distribution of Health, Labor, and Crop Benefits of Climate Change Mitigation in the United States*, 118 PROC. OF NAT'L ACAD. OF SCIENCES No. 46, pp. 1-8 (2021); Kim Knowlton et al., *Six Climate Change-Related Events in the United States Accounted for About $14 Billion In Lost Lives and Health Costs*, 30 HEALTH AFF. 2167, 2168 (2011); Patrick L. Kinney, *Climate Change, Air Quality, and Human Health*, 35 AM J. PREV. MED. 459, 459-62 (2008); Tiffany T. Smith et al., *Heat Waves in the United States: Definitions, Patterns, and Trends*, 118 CLIMATIC CHANGE 811, 812–14 (2013).

of ground-level ozone,[13] and increases the incidence of temperature inversions and stagnation events that worsen local air pollution.[14]

B. California's Pioneering Contributions to Emissions Control.

Because of its distinctive topography, massive population and large motor vehicle fleet, California has long faced especially significant air pollution problems. As the State's population swelled in the twentieth century, air pollution problems became more conspicuous and severe. Growing attention to California's problems prompted advances in scientific understanding of vehicular air pollution and of the means for its control. In the late 1940s and early 1950s, noting that air pollution was causing crop damage in the Los Angeles basin, Cal Tech chemist Arie Jan Haagen-Smit found that smog resulted in large part from photochemical reactions among pollutants in motor vehicle emissions.[15] Haagen-Smit's research, and California regulatory actions based upon it, prompted the automobile industry to install positive crankcase ventilation, the nation's first vehicle emission control measure.[16]

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[13] Lu Shen et al., *Impact of Increasing Heat Waves on U.S. Ozone Episodes in the 2050s: Results from a Multimodel Analysis Using Extreme Value Theory*, 43 GEOPHYSICAL RES. LETTERS 7 (2016); Clara Nussbaumer & Ronald Cohen, *The Role of Temperature and NOx in Ozone Trends in the Los Angeles Basin*, 54 ENVTL. SCI. & TECH. 15652, 15652 (2020).

[14] Sam Iacobellis et al., *Impact of Climate Change on the Frequency and Intensity of Low-Level Temperature Inversions in California* 25 FINAL REP. TO CAL. AIR RES. BD., PROJECT 06-319 (2010), https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/06-319.pdf; John H. Tibbetts, *Air Quality and Climate Change: A Delicate Balance*, 123 ENV'L HEALTH PERSP. A148, A151 (2015); Daniel E. Horton et al., *Occurrence and Persistence of Future Atmospheric Stagnation Events*, 4 NATURE CLIMATE CHANGE 698, 698 (2014).

[15] Arie J. Haagen-Smit, *The chemistry and physiology of Los Angeles smog*, 44 INDUSTRIAL & ENGINEERING CHEMISTRY 1342 (1952); Peter Brimblecombe, *Arie Jan Haagen-Smit and the History of Smog*, *Royal Society of Chemistry Environmental Chemistry Group Bulletin* (Jan. 2012), https://www.envchemgroup.com/arie-jan-haagen-smit-and-the-history-of-smog.html.

[16] Douglas Smith, *Fifty Years of Clearing the Skies*, CALTECH NEWS, (April 15, 2013) https://www.caltech.edu/about/news/fifty-years-clearing-skies-39248; Sarah Gardner, *LA Smog: the Battle against Air Pollution*, MARKETPLACE (July 14, 2014).

California undertook the Nation's first comprehensive efforts to control vehicular air pollution. As the D.C. Circuit has explained:

> California's interest in pollution control from motor vehicles dates to 1946. Stevens, Air Pollution and the Federal System: Responses to Felt Necessities, 22 Hastings L.J. 661, 674 (1971). Comprehensive statewide efforts began in 1957, when the State granted county air pollution control boards the authority to prescribe standards for emission control devices and to prohibit the sale of unapproved devices. 1957 Cal.Stats., chap. 239, s 1 (former Cal. Health & Safety Code s 24263.7). This was followed by the authorization for the establishment of statewide standards, 1959 Cal.Stats., chap. 200 (former Cal. Health & Safety Code s 426.5), and a certification procedure, 1960 Cal. Stats., chap. 23, s 1 (former Cal. Health & Safety Code s 24386).

Motor and Equipment Mfrs. Ass'n, Inc. v. EPA, 627 F.2d 1095, 1109 n.26 (D.C. Cir. 1979) ("*MEMA I*").

In the 1960 Motor Vehicle Pollution Control Act, California established a Motor Vehicle Pollution Control Board (later replaced by the Air Resources Board) and directed it to identify means of controlling air pollution and then establish emissions standards.[17] Soon after, California established requirements for vehicle emission control technology including positive crankshaft ventilation beginning in Model Year 1963 and various types of catalytic converters in Model Year 1964.[18] California soon thereafter adopted the first standards for vehicular emissions of hydrocarbons and carbon monoxide, applicable to new Model Year 1966 vehicles—the first tailpipe

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https://www.marketplace.org/story/2014/07/14/la-smog-battle-against-air-pollution. In 1968, Governor Ronald Reagan appointed Haagen-Smit to be the first Chairman of the newly created California Air Resources Board.

[17] *See* W. Christopher Brestel, Jr., *The California Motor Vehicle Pollution Control Law*, 50 CALIFORNIA L. REV. 121 (1962) (citing former Cal. Health & Safety Code Secs. 24378-24398); Thomas C. Austin, *The California Vehicle Emission Control Program – Past, Present and Future*, 90 SAE Transactions 3824, 3926-27 (1981) (*California Vehicle Emission Program*).

[18] *See* Austin, *The California Vehicle Emission Control Program*, 90 SAE Transactions at 3926-27; *see also* S. Rep. No. 192, 89th Cong., 1st Sess. 5 (1965) (noting that the "acute smog problem in Metropolitan Los Angeles forced the control of exhaust carbon monoxide and hydrocarbons and crankcase emissions").

emission standards in the Nation.[19] California's pioneering actions built upon the state legislature's recognition that "the pollution of the air by the discharge of air pollutants from the exhausts of motor vehicles constitutes one of the most serious threats to the health of the people of this State."[20]

C. The Clean Air Act Waiver Provision Preserved California's Lead Role.

When Congress undertook to regulate air pollution at the national level, California's program was already well established. Federal legislators recognized that California "leads in the establishment of standards for regulation of automotive pollutant emissions." S. Rep. No. 192, 89th Cong., 1st Sess. 5 (1965). In enacting the initial federal vehicle emission standards in 1967, Congress recognized both the "benefits for the Nation" from "new control systems" developed in response to California's technology-forcing standards and the "benefits for the people of California … from letting that State improve on its already excellent program of emissions control." *MEMA I*, 627 F.2d at 1109-10 (quotation marks omitted). In the 1967 Clean Air Act Amendments, Congress authorized the Secretary of Health and Human Services to prescribe federal emissions standards for new motor vehicles and provided that state new vehicle standards would be preempted. Pub. L. No. 90-148, § 208(a), 81 Stat. 485, 501 (1967). However, the Act also specified that, except in narrow circumstances, EPA "shall" waive preemption for California (i.e., for "any State" that had established certain vehicular emissions controls "prior to March 30, 1966"). *Id.* § 208(b); *see also Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1079 n.9 (D.C. Cir. 1996). This preemption waiver

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[19] *See id.*; California Air Resources Board, *History*, https://ww2.arb.ca.gov/about/history; S. Kent Hoekman and J. Steve Welstand, *Vehicle Emissions and Air Quality: The Early Years (1940s–1950s)*, 12 ATMOSPHERE 1354 (2021); J.A. Maga and G.C. Haas, G.C., *The Development of Motor Vehicle Exhaust Emission Standards in California*, 10 J. AIR POLL. CONTROL. ASSOC. 393–414 (1960).

[20] Ch. 200, § 1. Ch. 835, § 1. [1959] Cal. Stats. Reg. Sess. 2091, 2885 (Rees-Richards Act), *see also* California Air Resources Board, *History*, https://ww2.arb.ca.gov/about/history.

provision embodies a careful "compromise" between States' traditional pollution-control authorities and automakers' fears of "having to meet fifty-one separate sets of emissions control requirements." *MEMA I*, 627 F.2d at 1109 (*citing* S. Rep. No. 403, 90th Cong., 1st Sess. 81 (1967)). Congress's choice allowed California to continue to serve as "a kind of laboratory for innovation" in pollution-control technologies and methods, *id* at 1111, and reflected Congress's recognition that the California's existing program responded to a "harsh reality" of serious, chronic air pollution problems unique to the state. *See* H.R. Rep. No. 90-728, at 96-97 (1967); *see also* S. Rep. No. 90-403, at 33 (1967).

This allocation of regulatory authority has remained a central feature of the Nation's approach to reducing vehicular air pollution and safeguarding public health. The 1970 Clean Air Act Amendments strengthened EPA's authority to regulate vehicular "emission[s] of any air pollutant," while reaffirming the corresponding breadth of California's entitlement to regulate those emissions. Pub. L. No. 91-604, § 6(a), 84 Stat. at 1690 (amending Section 202 of the Clean Air Act); see also id. § 8(a), 84 Stat. at 1694 (recodifying the waiver provision as Section 209(b) of the Act). The 1970 Amendments also established the federal Clean Air Act's basic structure, under which States are responsible for implementation plans to meet health-based national standards. *See, e.g., Union Elec. Co. v. E.P.A.,* 427 U.S. 246, 256–57 (1976); California's authority to adopt more-stringent-than-federal vehicle pollution control standards, combined with EPA's presumptive duty to grant waivers of preemption under Section 209(b), has been a critical part of California's state implementation planning process ever since.

When further amending the Clean Air Act in 1977, Congress noted with approval that EPA had construed the waiver provision with appropriate deference to California's policy goals, consistent with Congress's intent "to permit California to proceed with its own regulatory program" for new motor vehicle emissions. H.R. Rep. No. 95-294, at 301 (1977). Congress also "ratif[ied] and

strengthen[ed] the California waiver provision," *id.*, by removing the prior requirement that *each* individual California pollution standard be "more stringent" than any federal standard. The amendment permitted California to adopt standards that "will be, in the aggregate, at least as protective" as EPA standards, Pub. L. No. 95- 95, § 209(b)(1), 91 Stat. 685, 755 (1977). That change allowed California to decide which pollutants are its highest priority, even when, due to technological constraints, its decisions will require less stringent standards for other pollutants. *MEMA I*, 627 F.2d at 1110 n.32.[21] The amended waiver provision *requires* EPA to waive preemption for California when the State has determined its standards are, in the aggregate, at least as protective as EPA standards, unless EPA finds that (1) California's protectiveness determination is arbitrary and capricious, (2) California "does not need such State standards to meet compelling and extraordinary conditions," or (3) California's standards are not "consistent with" Section 202(a)'s requirements, 42 U.S.C. § 7521(a) (generally meaning the standards are not technologically feasible. *Id.* § 7543(b)(1)).[22] And, if a waiver is denied, California is afforded the full panoply of judicial review rights, including judicial review of EPA's application of the statutory factors deliberately crafted to provide for deference to California authorities' judgment. The waiver provision's design—contemplating application of defined statutory standards to a factual record developed and submitted by California, with a right for the state to seek judicial review of any

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[21] The enactment history highlights Congress's intent "to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare." H.R. Rep. No. 95-294, at 301-02 (1977).

[22] The 1977 amendments also reflected Congress's approval of the preemption waiver in another important way; new Section 177 of the Act permitted other States addressing their own pollution problems to adopt, and enforce California vehicular emission standards "for which a waiver has been granted." 42 U.S.C. § 7507.

adverse decision—confirms the universal understanding that EPA's limited role is that of adjudicator, not rulemaker.

Congress made even more clear in amending Section 209(b) that EPA's role is adjudicatory—a limited, deferential review of CARB's rulemaking determinations, designed to respect California's authority, expertise, and policy discretion. Under Section 209(b), Congress directs EPA to make an adjudicatory determination either granting or denying the request for a waiver of preemption based upon the specific statutory factors. Congress mandated respect for California's technical judgments, requiring EPA to use the "arbitrary and capricious" standard to review the state's determination "that [its] standards will be, in the aggregate, at least as protective" as Federal standards," 42 U.S.C. § 7543(b)(1)(A). Congress intended that EPA "is not to overturn California's judgment lightly," *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 463 (D.C. Cir. 1998) (*MEMA II)* (quoting H.R. Rep. No. 95-294, at 302 (1977)), as Congress purposefully "chose to permit California to blaze its own trail with a minimum of federal oversight," *id.* (quoting *Ford Motor Co. v. EPA*, 606 F.2d 1293, 1297 (D.C. Cir. 1979)). Finally, through the use of the obligatory term "shall," the waiver statute *requires* EPA to grant a preemption waiver unless specified factors are present, thereby limiting EPA's grounds for denying a waiver to those specific factors.

The Clean Air Act's preemption waiver regime has proven to be a critical and enduring feature of pollution control policy. [23] EPA has granted California more than 75 preemption waivers.[24] The California emissions standards connected with these waivers have yielded enormous

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[23] When it amended the Clean Air Act in 1990, Congress essentially replicated the language and structure of the Section 209(b)(1) waiver provision in the newly written Section 209(e)(2)), which was established to cover preemption of "nonroad" vehicles and engines. 42 U.S.C. § 7543(e)(2).

[24] *See* EPA, *Vehicle Emissions California Waivers and Authorizations,* https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations.

reductions in pollution even as the state's population and economy have swelled—and have accounted for important public health gains. As a National Research Council review concluded: "California has used its authority as Congress envisioned: to implement more aggressive measures than the rest of the country and to serve as a laboratory for technological innovation."[25]

II. CALIFORNIA STANDARDS HAVE PROVIDED ENORMOUS PUBLIC HEALTH BENEFITS AND HAVE LED TO KEY INNOVATIONS IN EMISSIONS-CONTROL TECHNOLOGIES

California's vehicle emissions control program is surely one of the great success stories in the history of pollution control. Prior to the first California tailpipe standards (1966) and the creation of CARB (1967), vehicle emissions were essentially unregulated and included hydrocarbons (HCs), oxides of nitrogen (NOx), and carbon monoxide (CO) from the tailpipe as well as additional emissions directly emitted from the crankcase and evaporative emissions of gasoline from the fuel delivery system and fuel tank.

Since then, California's vehicle emissions standards have prevented vast amounts of harmful air pollution. Between 1967 and 2024, California's vehicle emission standards have contributed to reductions in emissions from California's light-duty fleet of an average of 9000 tons/day for hydrocarbons, 2500 tons/day for nitrogen oxides, and nearly 60,000 tons/day for carbon monoxide.[26] For the heavy-duty fleet over the same period, California's standards have helped to reduce emissions by 1900 tons/day for hydrocarbons, more than 8000 tons/day for NOx, more than 14,000 tons/day for carbon monoxide, and approximately 1430 tons/day for particulate matter.[27] By

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[25] Nat'l Research Council, *State and Federal Standards for Mobile-Source Emissions* 4 (Nat'l Acads. Press 2006), https://doi.org/10.17226/11586.

[26] *See* Environmental Defense Fund, *Emission Reductions from California On-Road Vehicle Programs* 1-2, https://library.edf.org/AssetLink/anw1470gl618q12hvslyvwn7r315f522.pdf

[27] *See id.*

reducing vehicular air pollution, California's vehicle emissions have contributed to important improvements in public health.[28]

California's pioneering role in motor vehicle emissions control has profoundly shaped the enterprise of protecting the public from harmful pollution. Many of the most important advances in motor-vehicle air-pollution control debuted in California, including the first leaded-gasoline phase-out requirements; the first emission standards for hydrocarbons, carbon monoxide, diesel particulates, and greenhouse gases; and essential pollution-control technologies like three-way catalytic converters, onboard diagnostic systems, fuel injection, zero-emission technologies, carbon canisters, exhaust gas recirculation, and oxidation catalysts.[29]

III. CALIFORNIA'S AUTHORITY TO ADOPT ITS OWN, MORE STRINGENT VEHICULAR STANDARDS REMAINS INDISPENSIBLE TO PROTECTING CALIFORNIANS' HEALTH AND TO MEETING THE STATE'S FEDERAL AIR QUALITY OBLIGATIONS

While California's pioneering air pollution control programs have contributed to major reductions in air pollution, the State's air pollution challenges remain significant, and its ability to address those challenges by adopting its own emission standards remains vital.

California's topography of large, air-trapping basins, its vast population centers, and its unmatched number of motor vehicles help create the most severe ozone pollution problems in the country. California is home to the three metropolitan areas with the worst ozone pollution in the

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[28] For example, studies have shown improvements in children's lung growth and function as a result of reduced pollution. W. James Gauderman et al., *Association of Improved Air Quality with Lung Development in Children*, 372 N. ENGL. J. MED. 905, 905-13 (2015).

[29] *See* Carrie Jenks et al., *California Transportation Policy Leadership: How California Led the World Toward Cleaner, Advanced Vehicles* (M.J. Bradley & Co. 2018); National Research Council, *State and Federal Standards for Mobile-Source Emissions* 4, 94–96 tbl. 3-4, 264 (discussing California's "pioneering role in setting mobile-source emissions standards").

United States (Los Angeles-Long Beach, Visalia, and Bakersfield-Solano).[30] EPA classifies 15 regions in California as ozone nonattainment areas, more than any other state.[31] California is home to the nation's only "extreme" ozone nonattainment areas, *see* 42 U.S.C. § 7511.[32] The great majority of Californians—nearly 35 million—are exposed to ozone levels exceeding federal health standards.[33]

California continues to suffer from the impacts of particulate matter pollution; the three metropolitan areas with the most severe year-round particle pollution in the United States are located in California.[34] Diesel particulate matter "has a significant impact on California's population," causing "about 70% of total known cancer risk related to air toxics in California" and hundreds of premature non-cancer fatalities.[35]

California is particularly vulnerable to climate-change impacts. Due to its geography and population distribution, the state is susceptible to damaging wildfires.[36] Warming and extended droughts deplete Sierra snowpack, on which much of the State's water supply and agricultural

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[30] Am. Lung Ass'n, *Most Polluted Cities*, https://www.lung.org/research/sota/city-rankings/most-polluted-cities (last visited Jan. 15, 2026).

[31] *See* U.S. Envtl. Prot. Agency, *Summary Nonattainment Area Report*, https://www3.epa.gov/airquality/greenbook/popexp.html (current as of Dec. 31, 2025).

[32] *Id.*

[33] *See id.*

[34] Am. Lung Ass'n, *State of the Air 2025* (#1, Bakersfield-Delano, CA, #2, Visalia, CA, *see* https://bit.ly/4jHwtZx; #3, Fresno-Hanford-Corcoran, CA, *see* https://bit.ly/49mX62m; #5, Los Angeles-Long Beach, CA).

[35] CARB, *Overview: Diesel Exhaust & Health*, https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health (estimating 730 annual cardiopulmonary deaths in California).

[36] Scott L. Stephens et al., *Prehistoric Fire Area and Emissions from California's Forests, Woodlands, Shrublands and Grasslands*, 251 Forest Ecology and Mgmt. 205, 205 (2007).

production depends.[37] Increased temperatures associated with a warming climate can contribute to stagnant air conditions that also exacerbate California's persistent smog problem.[38] Studies project California will experience some of the highest ground-level ozone escalation over current levels in the United States, aggravating the pollutant's extensive public health impacts.[39] Climate change is expected to exacerbate some forms of particulate pollution, including by creating conditions for wildfires.[40]

California's ability to adopt its own, more stringent vehicle emission standards is vital to protecting Californians' health and to meeting federal air quality standards. California cannot achieve attainment of those national standards merely by tightening state-law emission standards for stationary sources of NOx precursors or particulate matter,[41] and cannot meet federal air quality requirements by relying on less stringent federal vehicle emissions standards alone—putting aside the fact that EPA is proposing to dramatically weaken those standards.[42] In order to address the problem, California will need to substantially decrease air pollution, especially from motor vehicles, the largest source category.

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[37] *See* Leah Fisher and Sonya Ziaja, *California's Fourth Climate Assessment Statewide Summary Report 56* (2018).

[38] *Climate Change Makes Air Pollution Worse*, YALE CLIMATE CONNECTIONS (Apr. 2019).

[39] Neal Fann et al., *The Geographic Distribution and Economic Value of Climate Change-Related Ozone Health Impacts in the United States in 2030*, 65 J. Air & Waste Mgmt. Ass'n 570, 574 (2015).

[40] Christopher G. Nolte et al., Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II, U.S. Glob. Change Rsch. Program 512, 521 (2018).

[41] "The only viable pathway to achieve the [2015 ozone] standard requires a transformation to zero emissions technology where feasible across all sectors." S. Coast Air Quality Mgmt. Dist., 2022 Air Quality Management Plan, Ch. 4: "Control Strategy and Implementation," at 4-2 (2022).

[42] *See, e.g.*, 90 Fed. Reg. 36288, 36288 (Aug. 1, 2025) (proposing rule to "repeal all greenhouse gas (GHG) emission standards for light-duty, medium-duty, and heavy-duty vehicles and engines").

The State emissions standards covered by the waivers at issue in this case will improve health and save thousands of lives. The Advanced Clean Cars II program is projected, by 2040, to reduce 395 million metric tons of CO2 emissions, more than 3,600 tons of particulate matter, and nearly 58,000 tons of NOx.[43] The particulate matter reductions are estimated, by 2040, to result in approximately 1,006-1,574 fewer Californians dying prematurely, as well as fewer hospitalizations, and ER visits.[44] The Advanced Clean Trucks Rule is estimated to result, by 2040, in 470-734 fewer Californians dying prematurely, and to fewer hospitalizations and ER visits.[45] And the Omnibus Low NOx program is expected to reduce pollution by 2050 by amounts that will mean approximately 3,000-4,800 fewer Californians dying prematurely, as well as fewer hospitalizations, and ER visits.[46] Each of these programs would save billions in avoided health expenses. *See id.* And the three programs are central to California's comprehensive air quality plans, which represent years of painstaking policy development and analysis, and, as other amici demonstrate, are critical to California's ability to attain air quality standards.[47]

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[43] *See* Environmental Defense Fund, *Emission Reductions from California On-Road Vehicle Programs* 2, https://library.edf.org/AssetLink/anw1470gl618q12hvslyvwn7r315f522.pdf.

[44] *See id.*

[45] *See id.*

[46] *See id.* at 3.

[47] *See* Brief of the Bay Area Air Quality Management District as Amicus Curiae in Support of Plaintiffs' Opposition to Motion to Dismiss, Pt. II; *see also* CARB, 2022 State Strategy for the State Implementation Plan 55, 65 (Sept. 22, 2022), https://ww2.arb.ca.gov/sites/default/files/2022-08/2022_State_SIP_Strategy.pdf; *id.* at 4 ("However, more NOx emissions reductions from sources under local, State, and federal jurisdiction will be needed to attain the 70 ppb ozone standard, especially in the South Coast."); S. Coast Air Quality Mgmt. Dist., 2022 Air Quality Management Plan, Ch. 4: "Control Strategy and Implementation," at 4-2 (2022) ("The only viable pathway to achieve the [2015 Ozone] standard requires a transformation to zero emissions technology where feasible across all sectors.").

CONCLUSION

Defendants' motion to dismiss the Amended Complaint should be denied.

Respectfully submitted,

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