

## LAWSUIT AGAINST EPA FOLLOWS NEWLY REINSTATED CALIFORNIA WAIVER

Tue Jun 28th, 2022 | Categories: *Rulemaking and Legislative Practice* |

The Environmental Protection Agency was met with a lawsuit in early May from a collection of Republican-led states over its decision to restore the Clean Air Act waiver for California. This waiver, which was reinstated in March of 2022, permits California to set its own standards for emissions regarding vehicles. California has faced long-term struggles with smog and air pollution, and for many, the waiver was perceived as a step in the right direction; Ohio, Georgia, Texas, West Virginia, and several other states, view this differently.

According to these states, the EPA violated a doctrine in the U.S. Constitution by providing California with special treatment. The attorney general for West Virginia, Patrick Morrisey explained the motivation behind the lawsuit by stating, "The Act simply leaves California with a slice of its sovereign authority that Congress withdraws from every other state." Morrisey continued to say, "The EPA cannot selectively waive the Act's preemption for California alone because that favoritism violates the states' equal sovereignty."

An important factor in this debate is the fact that California formerly held access to the Clean Air Act waiver, but it was dismantled in 2019 during the Trump era under the guise of that administration's Safer Affordable Fuel-Efficient Vehicles Rule, designed to Obama-era emission standards. In the eyes of the EPA, the Trump administration decision to revoke California's waiver in 2019 was wrong and unjustly discredited all the work that California had put forth in tackling the state's emission epidemic. Director of the EPA, Michael Regan, commented on agency's decision, ""Our partnership with states to confront the climate crisis has never been more important. With today's action, we reinstate an approach that for years has helped advance clean technologies and cut air pollution for people not just in California, but for the U.S. as a whole." Regan also stated that other states are welcome to adopt California's updated standard in lieu of federal requirements, as the agency support the initiative by California in addressing their climate issues head-on.

At the time of its revival, the EPA claimed that the reinstatement of the waiver restored "an approach that for years has helped advance clean technologies and cut air pollution for people not just in California but for the U.S. as a whole." Over the years the waiver's success has been found to be true; through over 100 revisions, California's set of renewed emissions standards has spearheaded the green automotive movement, and the state's plan has already been adopted by over a dozen other states. This profound success, while perceived as beneficial to many, has subsequently caused a wake of change throughout the global automotive world. As the nation's most populous state, California is responsible for about 11% of all new car sales, as reported by the National Automobile Dealers Association. As a result, car manufacturers, which design and engineer cars years before release, have had to produce vehicles that adhere to the stricter standards of the state, as making different versions for states with lower standards would be too costly. Thus, California's automotive industry has been producing vehicles that are revolutionizing sustainable transportation, while simultaneously spiking the cost of vehicles around the globe.

The Trump-era EPA adjusted the national benchmark to produce vehicles that average 54 miles per gallon, set in 2012, to only 40 miles per gallon by 2025. This move created division within the automotive industry, leading companies such as Honda, Ford, BMW, and Volkswagen to reach a deal with California in 2019 to adhere to the state's standards. This decision by car manufacturers to stand with California also led to an increase in vehicle costs while pushing the entire industry to adopt a more sustainable approach. Trump's justice department would move to open an antitrust probe of these companies. In line with Biden's mission at tackling the issue of

climate change, and reaching net zero greenhouse gas emissions by 2050, the EPA believed the waiver to be a calculated and purposeful maneuver in achieving this goal.

The seventeen states that compose the lawsuit, represented by their attorneys general, seek to enforce their interpretation of the constitution's equal sovereignty precedent. In July 2021, a collection of 16 attorneys general presented a letter to the EPA addressing their concerns with reinstating the California waiver. This message communicated that the waiver would be "unconstitutional" since "a federal law giving one state special power to regulate a major national industry contradicts the notion of a union of sovereign states." Washington State Rep. Cathy McMorris Rodgers commented, "President Biden's strict, rush-to-green auto emissions regulations are yet another example of this administration putting radical environmentalists' agenda ahead of hardworking Americans." The EPA has not commented on the lawsuit yet, however the agency will fight this dispute and seek continuance for the waiver that has already attained much remediation for California emissions levels.