July 28, 2022

CARB Public Comment
https://ww2.arb.ca.gov/applications/public-comments

Re: Oppose July 9, 2022 Proposed Advanced Clean Cars II (ACC II) Regulations
Oppose May 10, 2022 CARB Draft 2022 Climate Change Scoping Plan Update

Dear CARB Members,

I strongly recommend that you oppose the July 9, 2022 Proposed Advanced Clean Cars II (ACC II) Regulations (https://ww2.arb.ca.gov/rulemaking/2022/advanced-clean-cars-ii) and the May 10, 2022 CARB Draft 2022 Climate Change Scoping Plan Update (https://ww2.arb.ca.gov/sites/default/files/2022-05/2022-draft-sp.pdf). Detailed evidence that supports my opposition is contained in the following 7 documents that constitute my Public Comment:

June 8, 2022 California Business Coalition Letter Opposing CARB Climate Change Scoping Plan and Advanced Clean Cars II (AAC II) Regulations (PDF pages 2-4);

June 24, 2022 Los Angeles County Business Federation Coalition Letter Opposing CARB Climate Change Scoping Plan and Advanced Clean Cars II (AAC II) Regulations (PDF pages 5-11);

July 1, 2022 Wall Street Journal Lead Editorial "Restoring a Constitutional Climate" Regarding June 30, 2022 SCOTUS Decision on West Virginia v. EPA (PDF page 12);

May 12, 2022 Petition by 17 State Attorneys General Opposing Reinstatement of the California Waiver, Which is Needed for CARB to Implement the Advanced Clean Car Rule II (PDF pages 13-25);

December 10, 2021 Enstrom Comment to EPA Opposing the 2021-2022 EPA CASAC PM2.5 Panel Accelerated Review of the 2021 EPA Policy Assessment for Particulate Matter (PDF pages 26-29);

February 25, 2022 Enstrom Comment to EPA Opposing the 2021-2022 EPA CASAC PM2.5 Panel Accelerated Review of the 2021 EPA Policy Assessment for Particulate Matter (PDF page 30);

June 8, 2022 Enstrom Comment to EPA Opposing the 2022 EPA CASAC Ozone Panel Accelerated Review of 2022 EPA Policy Assessment for Ozone (PDF pages 31-32).

I understand that CARB Staff is obligated to respond to all public comments, including my comment. Please post and send me your response to the 7 documents in my comment. All these documents are relevant to the ACC II and the Scoping Plan Update.

Thank you very much.

Sincerely yours,

James E. Enstrom, PhD, MPH, FFACE
Retired UCLA Research Professor (Epidemiology)
President, Scientific Integrity Institute
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jenstrom@ucla.edu
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OPEN LETTER TO CARB ON UPCOMING CLIMATE POLICY REGULATIONS

California Air Resources Chair Liane M. Randolph and Board Members
1001 I Street
Sacramento, CA 95814

Dear Board Members,

As California businesses begin to emerge out of the devastating COVID-19 pandemic that impacted every facet of our lives, we are now facing another major challenge - unprecedented energy costs. Some of these higher energy costs are certainly the result of the Russian invasion of Ukraine. However, the premium Californians pay for all forms of energy is also unquestionably the result of California's energy and climate policy design.

Governor Newsom and Legislators have proposed immediate action to get money directly into the pockets of Californians facing higher energy costs. At the same time, this Board is on track to adopt major regulations over the next few months that have the potential to drive businesses out of California, resulting in job losses, increase cost of living – including food, utilities, and housing costs – and major declines in economic activity.

We collectively have deep concerns with the direct negative impacts from the Climate Change Scoping Plan to meet the AB 32 emissions mandate and the Advanced Clean Cars Rule (ACC II), both of which you will be considering over the course of the coming months.

The decisions made and the path chosen will have a profound impact on all Californians, dictating how they must run their businesses, what cars they can drive, where they can live, and what stove they can cook with. Life as we know it in California will be altered going forward.

ACC II and the Scoping Plan will have major implications for businesses and individuals in California, including:

- **Higher utility costs** disproportionately impacting inland and rural communities
- **Eliminating consumer choice** by mandating all electric vehicles, appliances, residential and commercial buildings
- **Worsening our electric grid reliability** by pushing electrification without the infrastructure in place, thus increasing the likelihood of power outages
- **Increasing costs to businesses,** especially agricultural and goods movement sectors

To lessen the impacts on those that can least afford it, climate policies must be cost-effective, technology-neutral and most protective of the state's skilled and trained workforce. We

respectfully urge you to consider that selecting an unnecessarily high-cost pathway will deepen inequality for millions of Californians who are already feeling the squeeze of high energy costs.

California's climate policies have become more aggressive and more regressive, usually dictated by coastal affluent communities to the detriment of the rest of California's communities struggling to make ends meet. Our climate solutions should be available to all Californians, not just those that can afford electric vehicles, new appliances, and rooftop solar power.

There is no question that the climate crisis is real. We are all committed to being a part of the solution for a lower carbon future.

We believe you can create holistic climate strategies that consider the needs of every community, especially those most vulnerable to high costs, foster innovation, create jobs, and rebuild California's dwindling middle class. We can show the other states and nations that California can lead the way, without leaving anyone behind.

Getting it right will take courage from policy makers and regulators to think creatively, make adjustments, and stand up against costly and harmful policies.

As business and community leaders, we stand ready to work with this Board to adopt and implement an energy policy for our state that embraces carbon removal and other technologies to meet our emissions goals without forcing us to rely on a single technology that our electricity grid and infrastructure is ill-prepared for. For the sake of every Californian, and as an example to the Nation, we must get it right.

Sincerely,

African American Farmers of California, Will Scott Jr., President

Agricultural Energy Consumers Association, Michael Boccadoro, Executive Director

Californians for Affordable and Reliable Energy (CARE Coalition), Rob Lapsley, Chair

California Alliance of Small Business Associations, William R. La Marr, Executive Director,

California Asian Chamber of Commerce, David Nelson, VP of Public Policy

California Business Roundtable, Rob Lapsley, President & CEO

California Farm Bureau, Jim Houston, Administrator

California Fresh Fruit Association, Ian LeMay, President

California Fuels and Convenience Alliance, Samuel Bayless, Director of Policy

California Hispanic Chamber of Commerce, Julian Canéte, President

California League of Food Producers, Trudi Hughes, President & CEO

California Manufacturers and Technology Association, Lance Hastings, President & CEO

Central Valley Business Federation, Clint Olivier, CEO

Central Valley Latino Mayors and Elected Officials, Victor Lopez, Chair

Central Valley Yemen Foundation, Ali Ahmed, Co-Chair

Coastal Energy Alliance, Chris Collier, Founder & President

Fresno Farm Bureau, Ryan Jacobsen, CEO

Hispanic Chamber of Commerce San Francisco, Carlos Solórzano, CEO

Inland Empire Economic Partnership, Paul Granillo, President & CEO

International Warehouse Logistics Association, Mike Williams, Executive Director

Kings County Farm Bureau, Dusty Ference, Executive Director

Los Angeles Business Federation, Tracy Hernandez, Founder & CEO

Latin Business Association, Ruben Guerra, Chief Executive

Milk Producers Council, Kevin Abernathy, General Manager

Nisei Farmers League, Manuel Cunha Jr., President

Pro Small Biz CA, Jack Frost, President

Raisin Bargaining Association, Harvey Singh, Chairman

Small Business California, Scott Hauge, President, and Founder

Si Se Puede Foundation, Doug Kessler, Executive Director

Torrance Chamber of Commerce, Donna Duperron, President & CEO

Tulare County Farm Bureau, Tricia Stever Blattler, Executive Director


Biz Fed
Los Angeles County Business Federation
Strengthening the Voice of Business Since 2008


California Business Roundtable


Rebuild SoCal Partnership


CBIA
CALIFORNIA BUILDING INDUSTRY ASSOCIATION


Biz Fed
Central Valley Business Federation
Strengthening the Voice of Business


SCLC
SOUTHERN CALIFORNIA LEADERSHIP COUNCIL


CALIFORNIA ASSOCIATION OF REALTORS®


NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
NAIOP OF CALIFORNIA


California Business Properties Association


GREATER SACRAMENTO
ECONOMIC COUNCIL


San Pedro
CHAMBER of COMMERCE


CALIFORNIA RETAILERS ASSOCIATION
Consumers Economy Jobs


EAST BAY LEADERSHIP COUNCIL


CMTA
CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION


CALIFORNIA HOTEL & LODGING ASSOCIATION


ORANGE COUNTY BUSINESS COUNCIL


NFIB


CALIFORNIA RESTAURANT ASSOCIATION


Employers Group


ENGINEERING CONTRACTORS' ASSOCIATION
ECA


BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA
BIA
99 YEARS
ALMOST A CENTURY OF ADVOCACY IN THE BUILDING INDUSTRY


BOMA California


CALASIAN chamber of commerce


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NISEI FARMERS LEAGUE


SANTA CLARITA VALLEY
Chamber of Commerce


LA
South Chamber of Commerce


CIAQC
Construction Industry Air Quality Coalition


The Chamber
Long Beach Area Chamber of Commerce


AFRICAN AMERICAN FARMERS OF CALIFORNIA


GREATER SAN FERNANDO VALLEY CHAMBER OF COMMERCE


TORRANCE
Area Chamber of Commerce


SAN GABRIEL VALLEY
The Voice of Business
Est. 1991
ECONOMIC PARTNERSHIP


SM area
Chamber of Commerce


VENICE
Chamber of Commerce
est.1905


GLENDALE
ASSOCIATION OF REALTORS®
EST. 1920


VICA
VALLEY INDUSTRY & COMMERCE ASSOCIATION
SINCE 1949

CALIFORNIA HISPANIC CHAMBERS OF COMMERCE

NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
SoCAL CHAPTER

PMSA
PACIFIC MERCHANT SHIPPING ASSOCIATION

Liane Randolph, Chair
California Air Resources Board

Submitted electronically via:
http://www.arb.ca.gov/lispub/comm/bclist.php

Re: Comments from the Los Angeles County Business Federation and its Coalition Partners on the California Air Resources Board's Draft 2022 Scoping Plan Update

Dear Chair Randolph and Members of the Board:

On behalf of BizFed, the Los Angeles County Business Federation, an alliance of over 220 business organizations who collectively represent over 450,000 employers in Los Angeles County, and the undersigned organizations, we write today to express our very serious concerns about the Draft 2022 Scoping Plan Update (the "Update") which is proposed for consideration by the California Air Resources Board ("CARB").

BizFed's members generally share goals of (i) addressing and mitigating greenhouse gas emissions ("GHG") arising from activities in California, and (ii) doing so in ways that will both improve the lives and well-being of all Californians and protect and benefit our economy. In addition, we believe that to achieve AB32/SB375 goals and the best outcomes:

- new and ongoing CARB regulations must be soundly justified and obtainable (technologically, financially, etc.)
- CARB's regulations should be as commanding or as tempered as the proof and data indicate is best; and
- the evolution and ongoing evaluation of CARB's policies and regulations should reflect input from all affected stakeholders, including certainly from the most affected industries.

Although we appreciate the regulatory intention behind much of the Update, we are concerned that the Update contains many elements that are ill-advised and should be forgone or substantially corrected before CARB finalizes the Update. Both the diversity of BizFed's membership and the Update's broad sweep prevent us from providing a thorough expression of our many concerns; and we expect that some of our members will provide comments of their own. We therefore ask CARB to consider our more basic concerns about the Update, as follows:

1. **If the State of California wishes to be a true global leader in the field of GHG reduction regulations, then CARB must be far more circumspect – it must *think globally* – when analyzing the effects of its proposed mandates and policies; and it should avoid measures that will exacerbate the growing trend toward the out-migration from California of business activity, jobs and citizens.**

   For many years, California's legislature and its three most recent governors have espoused the goal of making California a global leader in achieving GHG reductions in ways that benefit rather than harm California's citizens, its businesses and its economy. California will not meet this goal if CARB continues to ignore the extra-jurisdictional implications of its regulatory actions. The Update shows that CARB continues to view its legislative directive myopically and without regard to California's relative position both nationally and world wide.

   CARB's general failure in this regard can best be understood by examining two particular shortcomings in CARB's analyses put forth in the Update. The first is the fact that the Update

analyses is limited to only those activities that take place physically within California's borders (excepting only the production of electricity imported into the state for in-state consumption) when considering the GHG impacts of citizens' lives and industry throughout California. (See Update, p. 34.) Any and all other activity which is located and transpires in any other relatively GHG-intensive state or nation is ignored in CARB's analyses**. As a consequence, CARB's approach is to impose increasingly on activities and industry occurring in California in ways that cause the actors and industries to either move or keep their operations outside of California (i.e., to move or keep all such activities in other states and nations, which in most cases leads to more harmful GHG impacts).**

An example is CARB's proposed regulation of cement production within California. Whereas CARB proposes an eventual standard of GHG neutrality on such in-state cement production irrespective of the costs, CARB blindly welcomes the importation of cement into California even though it may be produced in Asia using the worst possible GHG causing production methods. From CARB's point of view, it does not matter if the cement produced in California were already the world's most GHG efficient cement. If GHG-intensive imported cement could be moved about within California to its ultimate destination by means of a GHG-free vehicle, then CARB will assume that such imported cement has no GHG associated with its production, application and consumption in California.

Because CARB ignores extra-jurisdictional GHG emissions (except from electricity production), CARB's approach is irrational in relation to the State's legitimate governmental interest in reducing GHG and its worldwide impacts. In other words, CARB has chosen to make *intra-state* GHG betterment the direct enemy of *global* GHG betterment – even though global climate change caused by GHG is unarguably a global problem that can best be addressed only when it is considered at a global scale.

While AB32 expressly requires CARB to minimize "leakage"[1] of GHG emissions from California's economy,[2] the flawed design presented in this draft Scoping Plan is likely to cause leakage.

If CARB were to correct its error in this regard, then CARB would appreciate that many of California's industries are already at the relative vanguard of responsibly addressing GHG in their operations and practices. Such industries should therefore be nurtured, encouraged to stay and prosper here, and further imposed upon regulatorily only in more balanced and non-disruptive ways than CARB is proposing.

The second main shortcoming in CARB's analytical approach is that CARB ignores all evidence of the fact that its policies are leading and will foreseeably further lead to the out-migration of California's citizens (in addition to its industries) to other states and nations where per capita GHG is much higher. California ranks second in the nation in lowest per capita GHG emissions, only slightly behind the State of New York. If CARB were to view GHG properly as a global problem that is best addressed globally, then CARB would naturally embrace policies that discourage and do not themselves spur the out-migration of citizens from California. CARB would instead adopt policies that might invite significant net immigration into California. CARB's policies – and particularly many of those concerning land use and housing, transportation and energy consumption – are spurring an increasingly apparent and

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[1] ""Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state." [AB32 California Global Warming Solutions Act of 2006, codified at Health & Safety Code section 38505(j).]

[2] Health & Safety Code section 38562(b)(8).

predictable out-migration of Californians to other regulatory climes where the per capita GHG emissions are much higher. CARB's policies are thereby worsening global climate change. Each of these is discussed briefly below.

2. **In the Update, CARB proposes to continue to advance land use and housing policies that undermine local control and exacerbate California's housing shortage and affordability crisis.**

   Sound land use decisions always require a thorough understanding of the myriad factors that are anecdotally at hand given the context. Consequently, land use decisions are best left to the respective local governments which – through their democratic processes – best allow for well-informed land uses changes. For this reason, BizFed and its coalition partners support the primacy of respective local governments vis-a-vis local land use decision-making.

   In contrast, the Update reflects CARB's increasing hostility toward local governments' primacy in land use decision-making. In the Update, CARB continues to champion heavy-handed, top-down, prescriptive land use formulae that would, if realized, have an unduly constrictive and centripetal effect on land use, and would send the bulk of future growth and redevelopment into relatively expensive and already crowded urban centers. Such CARB policies are inconsistent with the ongoing will of both local governments and California's tens of millions of residents.

   The Update contains four main land use regulatory concepts that are particularly problematic. First, CARB proposes policy changes under the California Environmental Quality Act ("CEQA"), which requires deciding agencies (usually local governments) to study impacts and impose mitigation requirements when approving projects and land use plans. CARB's CEQA proposals would strongly disfavor all but relatively high-density (e.g., at least 20 units per acre), central urban, mass transit-oriented development and re-development. The aim and effect of such policies is to disfavor, prejudice and relatively burden all other types of development (lower density communities and redevelopment projects, suburban development, "edge" development, "new towns," and the like). (See Update pp. 195-206 and Appendices D and F.). Some of CARB's recommended CEQA changes have nothing to do with air quality and GHG (i.e., within CARB's purview and relative expertise), such as CARB's proposed CEQA exemption for projects that contain at least 20% subsidized housing and meet certain labor standards. Although BizFed's members have long advocated for CEQA reform, CARB should not be championing CEQA reform that would undercut local governments' prerogatives and disfavor many reasonable types of development which are (i) needed in substantially greater quantity, (ii) most affordable, and (iii) popular with California's consumers.

   Second, CARB proposes to rule out development on 90% of California's land by labelling them as "natural and working lands" – apparently slated for regulatory protection from development. (Update, p. 195.) Like CARB's recommended changes to CEQA, such a sweeping designation of lands as natural and working lands suggests a top-down dismissal of local jurisdictions' land use prerogatives, imposed at a time that local jurisdictions should be wielding their approval powers more urgently to address the present housing shortage and home affordability crisis. Local jurisdictions should be assessing land use in their General Plans through the extensive study and preparation of their respective General Plan Housing Elements.

   Third, the Update recommends stripping land use authority from local governments and ceding it instead to regional metropolitan planning organizations - such as the Southern California Association of Governments (SCAG). (See Update, Appendix E, pp. 27, 29.) BizFed has perennially participated in SCAG's processes by which it updates its Sustainable

Community Strategy (its regional land use scenario). We therefore have a reasonable understanding of the scenarios and growth modeling that underpin SCAG's land use vision. It contains various parts that should never be pursued and can never be realized. Given our ongoing recognition of the primacy of local governments' prerogatives concerning land use, we strongly reject CARB's suggestion that land use authority should be stripped away from local governments and ceded instead to regional metropolitan planning organizations.

Lastly, CARB continues to champion land use policies aimed at radically reducing per capita vehicle miles traveled ("VMT"). Indeed, the Update contains a stated goal of reducing non-commercial, per capita VMT by some thirty percent (30%) between 2019 and 2045. In short, CARB aims not to decrease GHG per se, but instead to decrease individual mobility by nearly one-third, and to do so by mandating sweeping, massive, concentrated changes in our urban form and effectively ruling out and stultifying all other kinds of development and redevelopment.

CARB has a long-running, very poor record in terms of appreciating Californians' steadfast reliance on VMT and individual mobility. Such reliance is essential for citizen's maintaining their livelihoods and efficiently spending their precious time. Since 2010 (pursuant to Senate Bill 375 enacted in 2008), CARB has been promoting land use scenarios aimed at reducing per capita VMT; but no meaningful VMT reductions have been realized. CARB – as well as other agencies such of the Governor's Office of Planning and Research – should leave off their overreaching aims of curbing individual mobility in California. The state's VMT initiatives are not working. They are stultifying needed homebuilding. They will never work without imposing land use outcomes that would be devastating to California's citizens' lifestyles and its economy; and – as long as they are pursued – they run the risk of driving California's citizens out of state at an increasing pace. Jobs are transitioning and are becoming more automated; and employers are offering workers the opportunity to work from home. California is investing in transit projects, electrical vehicle charging stations, fleet upgrades to electrical vehicles, etc. Prior to VMT action, CARB should assess these lifestyle changes and infrastructure investments prior to enacting VMT mandate to ensure our state remains the economic leader it is today.

3. **In the Update, CARB proposes to continue to pursue transportation policies that the data show have been and are being effectively rejected by overwhelming percentages of the relevant public.**

Consistent with CARB's wish to greatly reduce individual mobility and VMT, the Update indicates CARB's continuing push to promote (i) mass transit systems and infrastructure, and (ii) mass-transit-oriented real estate development and redevelopment, in each case to the exclusion of all other alternatives (such as new and better roads leading to new towns). Specifically, the Update calls for a doubling of transit service coverage and service frequencies by 2030. (Update, Appendix E, p. 13.) All available data from recent years show, however, that public utilization of mass transit is both relatively minimal and generally slipping further. Indeed, per capita mass transit utilization was trending downward even before the COVID-19 pandemic decreased such utilization even more – as SCAG and other MPOs have recognized. We therefore question the wisdom of CARB's determination to keep pouring state funding into mass transit infrastructure that California's citizens find to be of little collective utility.

The Update similarly calls for additional and substantial spending focused on infrastructure for walking and bicycling, which is connected with CARB's push toward relatively dense urban housing. (Update, Appendix E, pp. 6-11.) But spending on walking and bicycling infrastructure will have no more than a de minimis impact on the other forms of mobility such as individual VMT or mass transit, given that – for example – all but a small fraction of VMT

(less than 2%) involves trip lengths that are short enough to be accomplished by walking or biking, and many citizens have infirmities that preclude deriving much utility from such modes apart from exercise if they can.

Given our concern stated above about CARB advancing policies that drive California's citizens to leave for more accommodating sister states, we believe that all state agencies should be working to provide a balanced mix of new transportation infrastructure, which would include mass transit where it would have the most utility, and paths for walking and biking, but also significant new roads and lane additions where they would have utility and allow for additional homebuilding of all typologies.

4. **In the Update, CARB proposes policies concerning energy consumption that will foist huge costs on California's citizenry.**

Finally, we are concerned about CARB's many suggestions in the Update concerning the rapid and near total de-carbonization of California's energy consumption. BizFed and its coalition partners support an all-the-above approach to our energy needs. We believe that a diversified energy portfolio is necessary to meet our clean air and GHG goals while also balancing equity and most importantly - energy reliability and affordability. We therefore support hydrogen, clean and renewable natural gas, electrification, solar, wind, the ongoing, albeit more clean and efficient use of petroleum, and other means to ensure we are lowering greenhouse gas emissions (GHG) while keeping costs low, supporting jobs, and meeting our economic demands.

The Update, however, sets forth the goal of carbon neutrality by 2045 primarily through the rapid acceleration of electricity production using solar, wind, hydrogen, and other renewable fuel sources. In what appears to be nothing other than gifts to environmental interests, however, CARB foresees very little future reliance on fossil fuels (a greater than 90% reduction between now and 2045), no future reliance whatsoever on nearly GHG-free nuclear power, and decreased reliance on nearly GHG-free hydro-generated electricity production.

The impacts to the grid from a one-size-fits all strategy would be devasting and both businesses and consumers would be impacted. Adopting decarbonization without a thorough assessment of existing infrastructure, technology and energy alternatives is a risky proposition. Coordination and extensive planning between the CEC, the CPUC and stakeholders is critical to ensure that the state's electrical grid is prepared to meet the needs for all zero emissions technologies.

Most troublingly, the Update is devoid of meaningful estimates of the costs associated with such a rapid and sweeping transition from present fuel sources and infrastructure to the near carbon-free future that CARB envisions for 2045. BizFed therefore urges CARB to prepare such cost-benefit analyses and share them with the stakeholders for scrutiny and comment – so that all concerned can participate in a discussion of the relative costs and benefits of forgoing various energy sources and thoughtfully pursuing others.

Our concern is that CARB should be moving California toward orderly and cost-efficient shifts in energy policy only with the relative costs and benefits more clearly in view. New energy sources and new means of utilizing energy should be pursued only if and when California's citizens can be assured that the basic utility that they presently enjoy (for example, warm homes in the winter, or a needed quantum of VMT) can be maintained affordably and without wasting their money and efforts on regulatory missteps. Here again, if CARB were to impose expensive, wasteful and unpopular energy policies, CARB will drive citizens to leave the state for more GHG-intensive jurisdictions. CARB will then have failed both California's citizenry

and posterity when compared to what CARB might instead do, which is lead a balanced, careful, non-misanthropic, and multi-decadal effort to move California as wisely and intelligently as possible closer to the ideal of GHG neutrality.

Conclusion

As stated at the beginning, like you, we desire to see continued emissions reduction while maintaining the states diverse economic vitality. This is not an easy feat. We appreciate the staff and board's diligence in bringing diverse groups to the table to map out the most effective CARB Scoping Plan possible.

CARB has made significant strides in emissions reductions, and it should be proud of its accomplishments. We would like to remind CARB these reductions were done in collaboration with many stakeholders, in particular those in the business community. With that in mind, we look forward to continuing our work with CARB and the state to develop smart and effective policies to achieve additional GHG emissions reductions where technically and economically feasible.

Thank you for your consideration of our letter. If you have any questions, please contact sarah.wiltfong@bizfed.org.

Sincerely,

African American Farmers of California
Building Industry Association of Southern CA
Building Owners and Managers Association (BOMA)
CA Association of Realtors
CA Building Industry Association
CA Business Property Association
CA Business Roundtable
CA Hotel & Lodging Association
CA Manufacturing and Technology Association
CA Restaurant Association
CalAsian Chamber
California Hispanic Chamber of Commerce
California Retailers Association
Central Valley Business Federation (BizFed CV)
Construction Industry Coalition on Air Quality
East Bay Leadership Council
Employers Group
Engineering and Contractors Association
FuturePorts
Glendale Association of Realtors
Greater Sacramento Economic Council
Greater San Fernando Valley Chamber
Inland Empire Economic Partnership
Institute of Real Estate Management
LA South Chamber
Long Beach Area Chamber
Los Angeles County Business Federation (BizFed)
NAIOP CA
NAIOP SoCal
National Federation of Independent Business
Nisei Farmers League
Orange County Business Council
Pacific Merchant Shipping Association
ReBuild SoCal Partnership
San Gabriel Valley Economic Partnership
San Mateo Area Chamber
San Pedro Chamber
Santa Clarita Valley Chamber
Southern CA Leadership Council
Torrance Area Chamber
Valley Industry & Commerce Association
Venice Chamber
Western States Petroleum Association

REVIEW & OUTLOOK

Restoring a Constitutional Climate

This has been an historic Supreme Court term, and the Justices kept it going to the end with a major 6-3 decision Thursday (*West Virginia v. EPA*) reining in the administrative state. The subject was climate regulation but the message should echo across the federal bureaucracy.

The Supreme Court sets guardrails on the administrative state.

The question was whether the Environmental Protection Agency could invoke an obscure statutory provision to re-engineer the nation's electric grid. Prior to the 2015 Obama rule, the EPA had used the provision only a handful of times to regulate pollutants from discrete sources.

The rule would have effectively required coal and gas-fired generators to subsidize renewables. It was stayed by the Court in 2016 but revived by the D.C. Circuit Court of Appeals last year. Now the Court is burying it for good, and its legal rationale is especially important.

* * *

Writing for the majority, Chief Justice John Roberts relies on the Court's "major questions" doctrine. This requires courts to look with skepticism when agencies claim "'in a long-extant statute an unheralded power' representing a 'transformative expansion" in its power. That's what the Obama EPA did.

The three liberal dissenters criticize the majority for announcing "the arrival" of the major questions doctrine. But the Court has often invoked it over two decades to block administrative overreach, including during the Bush Presidency. Lower courts, by contrast, have mostly relied on the Court's *Chevron* precedent to defer to regulators.

The majority's decision in effect diminishes *Chevron* by instructing lower courts to first consider whether regulators are seizing unheralded powers that Congress hasn't authorized. The Chief cites the Centers for Disease Control and Prevention's eviction ban and the Occupational Safety and Health Administration's vaccine mandate, both of which the Court overturned.

Justice Elena Kagan's dissent accuses the majority of abandoning textualism. "Some years ago, I remarked that '[w]e're all textualists now,'" she writes. "It seems I was wrong. The current Court is textualist only when being so suits it."

Textualism has become en vogue among liberal jurists because they can use it to bend statutory text to their policy preferences. First, they claim statutory language is ambiguous. Then they decide that under *Chevron* an agency's statutory interpretation is reasonable.

Or sometimes they interpret narrow text broadly to give agencies expansive powers to do something that Congress never explicitly authorized or contemplated. Such faux-textualism divests the text of meaning.

The Court is now placing guardrails on *Chevron* to prevent lower courts from going off the constitutional road. Justice Neil Gorsuch's concurrence, joined by Samuel Alito, is especially helpful in lighting the way for lower courts grappling with when and how to apply the major questions doctrine.

First, he writes, the doctrine applies when "an agency claims the power to resolve a matter of great 'political significance.'" Second, an agency "must point to clear congressional authorization when it seeks to regulate '"a significant portion of the American economy."'" Third, it may apply when an agency seeks to intrude "into an area that is the particular domain of state law."

Justice Gorsuch adds that courts must examine the legislative provisions on which the agency seeks to rely "'with a view to their place in the overall statutory scheme'" and "may examine the age and focus of the statute the agency invokes in relation to the problem the agency seeks to address" as well as its "past interpretations of the relevant statute." Note his emphasis on statutory language. The majority's decision reinforces textualism as properly understood and bolsters the Constitution's separation of powers.

The dissenters bemoan that Congress lacks the expertise to regulate technical subjects such as climate change. In a footnote, Justice Gorsuch devilishly cites Woodrow Wilson, a progressive critic of the Constitution and a founder of the administrative state, as believing in government by experts because the people are fools. The real beef of the dissenters is that the Constitution purposefully makes it hard to pass laws.

* * *

Contrary to their critics, the Justices aren't blocking climate regulation. They are merely saying that the decision on whether and how to do it rests with Congress. As with many other decisions this term, the Court is telling Congress and the executive to stay in their proper constitutional lane.

Congress must give clear commands before the executive branch can write costly rules that tell Americans how to live their lives. The Court is reinvigorating the separation of powers and enhancing liberty in the bargain.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF OHIO, STATE OF ALABAMA, STATE OF ARKANSAS, STATE OF GEORGIA, STATE OF INDIANA, STATE OF KANSAS, STATE OF KENTUCKY, STATE OF LOUISIANA, STATE OF MISSISSIPPI, STATE OF MISSOURI, STATE OF MONTANA, STATE OF NEBRASKA, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF TEXAS, STATE OF UTAH, and STATE OF WEST VIRGINIA, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY and MICHAEL S. REGAN, in his official capacity as Administrator of the U.S. Environmental Protection Agency, Respondents.	Case No. _____

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and section 307(b) of the Clean Air Act, 42 U.S.C. §7607(b), the States of Ohio, Alabama, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah, and West Virginia hereby petition the Court for review of a final action of respondents, the U.S. Environmental Protection Agency and Michael S. Regan, Administrator of the U.S. Environmental Protection Agency. This final agency action re-instituted California's waiver of federal preemption under section 209(b)(1) of the Clean Air Act, 42 U.S.C. 7543(b)(1), to allow California to regulate greenhouse gas emissions from motor vehicles under its Advanced Clean Cars program. This agency action was announced on March 14, 2022. *California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision*, 87 Fed. Reg. 14332 (Mar. 14, 2022).

Section 307(b) provides venue exclusively in this Court for review of final agency actions that are "nationally applicable," or based on the agency's published determination of "nationwide scope or effect." 42 U.S.C. § 7607(b)(1); *see also Dalton Trucking v. U.S. Envt'l Protection Agency*, 808 F.3d 875, 877 (D.C. Cir. 2015). The Administrator has determined that the EPA's March 14 decision has "nationwide scope or effect." 87 Fed. Reg. at 14379.

DATED: May 12, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022, a copy of the foregoing petition for review has been served by United States first-class mail upon each of the following:

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0257; FRL–9325–01–OAR]

California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) has completed the reconsideration of its 2019 action withdrawing a 2013 Clean Air Act (CAA) waiver of preemption for California's greenhouse gas (GHG) emission standards and zero emission vehicle (ZEV) sale mandate, which are part of California's Advanced Clean Car (ACC) program. This decision rescinds EPA's 2019 waiver withdrawal, thus bringing back into force the 2013 ACC program waiver, including a waiver of preemption for California's ZEV sales mandate and GHG emissions standards. In addition, EPA is withdrawing the interpretive view of CAA section 177 included in its 2019 action, that States may not adopt California's GHG standards pursuant to section 177 even if EPA has granted California a waiver for such standards. Accordingly, other States may continue to adopt and enforce California's GHG standards under section 177 so long as they meet the requirements of that section.

DATES: Petitions for review must be filed by May 13, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2021–0257. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available electronically through *www.regulations.gov.* After opening the *www.regulations.gov* website, enter EPA–HQ–OAR–2021–0257 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA's Office of Transportation and Air Quality (OTAQ) maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in this notice; the page can be accessed at *https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations.*

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SUPPLEMENTARY INFORMATION:

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I. Executive Summary

CAA section 209(a) generally preempts states from adopting emission control standards for new motor vehicles. But Congress created an important exception from preemption. Under CAA section 209(b), the State of California [1] may seek a waiver of preemption, and EPA must grant it unless the Agency makes one of three statutory findings. California's waiver of preemption for its motor vehicle emissions standards allows other States to adopt and enforce identical standards pursuant to CAA section 177. Since the CAA was enacted, EPA has granted California dozens of waivers of preemption, permitting California to enforce its own motor vehicle emission standards.

Of particular relevance to this action, in 2013, EPA granted California's waiver request for the state's Advanced Clean Car (ACC) program (ACC program waiver).[2] California's ACC program includes both a Low Emission Vehicle (LEV) program, which regulates criteria pollutants and greenhouse gas (GHG) emissions, as well as a Zero Emission Vehicle (ZEV) sales mandate. These two requirements are designed to control smog- and soot-causing pollutants and GHG emissions in a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles (as well as

[1] The CAA section 209(b) waiver is limited ''to any State which has adopted standards . . . for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966,'' and California is the only State that had standards in place before that date. ''California'' and ''California Air Resources Board'' (CARB) are used interchangeably in certain instances in this notice when referring to the waiver process under section 209(b).

[2] 78 FR 2111 (January 9, 2013).

limited requirements related to heavy-duty vehicles). Between 2013 and 2019, twelve other States adopted one or both of California's standards as their own. But in 2019, EPA partially withdrew this waiver as part of a final action entitled ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program'' (SAFE 1), marking the first time the agency withdrew a previously granted waiver.[3] In addition, in the context of SAFE 1, EPA provided an interpretive view of CAA section 177 asserting that other states were precluded from adopting California's GHG standards.

As Administrator of the Environmental Protection Agency (EPA), I am now rescinding EPA's 2019 actions in SAFE 1 that partially withdrew the ACC program waiver for California's ACC program. I am rescinding these actions because (1) EPA's reconsideration of the waiver under the particular facts and circumstances of this case was improper; (2) EPA's reconsideration was based on a flawed interpretation of CAA section 209(b); (3) even under that flawed interpretation, EPA misapplied the facts and inappropriately withdrew the waiver; (4) EPA erred in looking beyond the statutory factors in CAA 209(b) to action taken by another agency under another statute to justify withdrawing the waiver; (5) that agency has also since withdrawn the action EPA relied on in any event; and (6) EPA inappropriately provided an interpretive view of section 177.

As a result of this action, EPA's 2013 waiver for the ACC program, specifically the waiver for California's GHG emission standards and ZEV sales mandate requirements for model years (MYs) 2017 through 2025, comes back into force.[4] I am also rescinding the interpretive view set forth in SAFE 1 that States may not adopt California's GHG standards pursuant to CAA section 177 even if EPA has granted California a section 209 waiver for such standards. Accordingly, States may now adopt and enforce California's GHG standards so long as they meet the requirements of Section 177, and EPA will evaluate any State's request to include those provisions in a SIP through a separate notice and comment process.

Section II of this action contains a detailed history of EPA's waiver adjudications leading up to this action. In summary, in 2012, CARB submitted the ACC waiver request to EPA, which included ample evidence of the criteria pollution benefits of the GHG standards and the ZEV sales mandate. As it had in all prior waiver decisions with two exceptions (including SAFE 1), in considering the request EPA relied on its ''traditional'' interpretation of section 209(b)(1)(B), which examines whether California needs a separate motor vehicle program as a whole—not specific standards—to address the state's compelling and extraordinary conditions. In 2013, EPA granted California's waiver request for its ACC program in full. In 2018, however, EPA proposed to withdraw portions of its waiver granted in 2013 based on a new interpretation of section 209(b)(1)(B) that looked at whether the specific standards (the GHG standards and ZEV sales mandate), as opposed to the program as a whole, continued to meet the second and third waiver prongs (found in sections 209(b)(1)(B) and (C)).[5] In addition, EPA proposed to look beyond the section 209(b) criteria to consider the promulgation of a NHTSA regulation and pronouncements in SAFE 1 that declared state GHG emission standards and ZEV sales mandates preempted under EPCA. In 2019, after granting CARB a waiver for its ACC program in 2013 and after 12 states had adopted all or part of the California standards under section 177, EPA withdrew portions of the waiver for CARB's GHG emission standards and ZEV sales mandates. In SAFE 1, EPA cited changed circumstances and was based on a new interpretation of the CAA and the agency's reliance on an action by NHTSA that has now been repealed.[6]

On January 20, 2021, President Biden issued Executive Order 13990, directing the Federal Agencies to ''immediately review'' SAFE 1 and to consider action ''suspending, revising, or rescinding'' that action by April 2021. On April 28, 2021, EPA announced its Notice of Reconsideration, including a public hearing and an opportunity for public comment.[7] The Agency stated its belief that there were significant issues regarding whether SAFE 1 was a valid and appropriate exercise of Agency authority, including the amount of time that had passed since EPA's ACC program waiver decision, the approach and legal interpretations used in SAFE 1, whether EPA took proper account of the environmental conditions (*e.g.,* local climate and topography, number of motor vehicles, and local and regional air quality) in California, and the environmental consequences from the waiver withdrawal in SAFE 1. Further, EPA stated it would be addressing issues raised in the related petitions for reconsideration of EPA's SAFE 1 action. In the meantime, having reconsidered its own action, and also in response to Executive Order 13990, NHTSA repealed its conclusion that state and local laws related to fuel economy standards, including GHG standards and ZEV sales mandates, were preempted under EPCA,[8] and EPA revised and made more stringent the Federal GHG emission standards for light-duty vehicles for 2023 and later model years, under section 202(a).[9]

Section III of this action outlines the principles that govern waiver reconsiderations. It sets forth the statutory background and context for the CAA preemption of new motor vehicle emission standards, the criteria for granting a waiver of preemption, and the ability of other States to adopt and enforce California's new motor vehicle emission standards where a waiver has been issued if certain CAA criteria are met. In brief, CAA section 209(a) generally preempts all States or political subdivisions from adopting and enforcing any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. But section 209(b) contains an important exception that allows only

[3] 84 FR 51310 (September 27, 2019).

[4] In SAFE 1, EPA did not withdraw the entire 2013 waiver, but instead only withdrew the waiver as it related to California's GHG emission standards and the ZEV sales mandate. The waiver for the low-emission vehicle (LEV III) criteria pollutant standards in the ACC program remained in place. EPA's reconsideration of SAFE 1 and the impact on the ACC waiver therefore relates only to the GHG emission standards and the ZEV sales mandate, although ''ACC program waiver'' is used in this document. This action rescinds the waiver withdrawal in SAFE 1. In this decision, the Agency takes no position on any impacts this decision may have on state law matters regarding implementation.

[5] EPA's 2018 proposal was jointly issued with the National Highway Traffic Safety Administration (NHTSA). 83 FR 42986 (August 24, 2018) (the ''SAFE proposal''). In addition to partially withdrawing the waiver, that proposal proposed to set less stringent greenhouse gas and CAFE standards for model years 2021–2026. NHTSA also proposed to make findings related to preemption under the Energy Policy and Conservation Act (EPCA) and its relationship to state and local GHG emission standards and ZEV sales mandates.

[6] 84 FR 51310. In SAFE 1, NHTSA also finalized its action related to preemption under EPCA. NHTSA's action included both regulatory text and well as pronouncements within the preamble of SAFE 1. In 2020, EPA finalized its amended and less stringent carbon dioxide standards for the 2021–2026 model years in an action titled ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks'' (SAFE 2). 85 FR 24174 (April 30, 2020).

[7] ''California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment.'' 86 FR 22421 (April 28, 2021).

[8] 86 FR 74236 (December 29, 2021).

[9] 86 FR 74434 (December 30, 2021).

California to submit a request to waive preemption for its standards. Importantly, EPA must grant the waiver unless the Administrator makes at least one of three findings: (1) That California's determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, is arbitrary and capricious (the ''first waiver prong,'' under section 209(b)(1)(A)); (2) that California does not need such State standards to meet compelling and extraordinary conditions (the ''second waiver prong,'' under section 209(b)(1)(B)); or (3) that California standards are not consistent with section 202(a), which contains EPA's authority to regulate motor vehicles (the ''third waiver prong,'' under section 209(b)(1)(C)). In the 1977 amendments to the CAA, section 177 was added to allow other States that may be facing their own air quality concerns to adopt and enforce the California new motor vehicle emission standards for which California has been granted a waiver under section 209(b) if certain criteria are met.

Section III also provides more context to indicate that Congress intended that, when reviewing a request for a waiver, EPA treat with deference the policy judgments on which California's vehicle emission standards are based. It discusses the history of Congress allowing states to adopt more stringent standards. Ultimately, Congress built a structure in section 209(b) that grants California authority to address its air quality problems, and also acknowledges the needs of other states to address their air quality problems through section 177. Lastly, Section III describes the burden and standard of proof for waiver decisions.

Section IV of this action then discusses EPA's first basis for rescinding the SAFE 1 waiver withdrawal: That EPA did not appropriately exercise its limited authority to withdraw a waiver once granted. Section 209 does not provide EPA with express authority to reconsider and withdraw a waiver previously granted to California. EPA's authority thus stems from its inherent reconsideration authority. In the context of reconsidering a waiver grant, that authority may only be exercised sparingly. EPA believes its inherent authority to reconsider a waiver decision is constrained by the three waiver criteria that must be considered before granting or denying a waiver request under section 209(b). EPA's reconsideration may not be broader than the limits Congress placed on its ability to deny a waiver in the first place. EPA notes further support for limiting its exercise of reconsideration authority, relevant in the context of a waiver withdrawal, is evidenced by Congress's creation of a state and federal regulatory framework to drive motor vehicle emissions reduction and technology innovation that depends for its success on the stable market signal of the waiver grant—automobile manufacturers must be able to depend reliably on the continuing validity of the waiver grant in order to justify the necessary investments in cleaner vehicle technology. Accordingly, EPA now believes it may only reconsider a previously granted waiver to address a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Even then, as with other adjudicatory actions, when choosing to undertake such a reconsideration EPA believes it should exercise its limited authority within a reasonable timeframe and be mindful of reliance interests. EPA expects such occurrences will be rare. The Agency's waiver withdrawal in SAFE 1 was not an appropriate exercise of EPA's limited authority; there was no clerical error or factual error in the ACC program waiver, and SAFE 1 did not point to any factual circumstances or conditions related to the three waiver prongs that have changed so significantly that the propriety of the waiver grant is called into doubt. Rather, the 2019 waiver withdrawal was based on a change in EPA's statutory interpretation, an incomplete assessment of the record, and another agency's action beyond the confines of section 209(b). EPA erred in reconsidering a previously granted waiver on these bases. Accordingly, EPA is rescinding its 2019 withdrawal of its 2013 ACC program waiver.

Sections V and VI further explain why, even if SAFE 1 were an appropriate exercise of EPA's limited authority to reconsider its previously-granted waiver, the Agency would still now rescind its waiver withdrawal.

As discussed in Section V, the Agency's reinterpretation of the second waiver prong in SAFE 1 was flawed. While EPA has traditionally interpreted the second waiver prong, section 209(b)(1)(B), to require a waiver unless the Agency demonstrates that California does not need its own motor vehicle emissions program, to meet compelling and extraordinary conditions, the SAFE 1 waiver withdrawal decision was based on a statutory interpretation that calls for an examination of the need for the specific standard at issue. Section V explains why EPA believes that its traditional interpretation is, at least, the better interpretation of the second waiver prong because it is most consistent with the statutory language and supported by the legislative history. Accordingly, we reaffirm the traditional interpretation—in which EPA reviews the need for California's motor vehicle program—in this action.

Additionally, Section V explains why even if the focus is on the specific standards, when looking at the record before it, EPA erred in SAFE 1 in concluding that California does not have a compelling need for the specific standards at issue—the GHG emission standards and ZEV sales mandate. In particular, in SAFE 1, the Agency failed to take proper account of the nature and magnitude of California's serious air quality problems, including the interrelationship between criteria and GHG pollution.[10] Section V further discusses EPA's improper substitution in SAFE 1 of its own policy preferences for California's, and discusses the importance of deferring to California's judgment on ''ambiguous and controversial matters of public policy'' that relate to the health and welfare of its citizens.[11] Based on a complete review of the record in this action, EPA now believes that, even under the SAFE 1 interpretation, California needs the ZEV sales mandate and GHG standards at issue to address compelling and extraordinary air quality conditions in the state. EPA's findings in SAFE 1, which were based on the Agency's inaccurate belief that these standards were either not intended to or did not result in criteria emission reductions to address California's National Ambient Air Quality Standard (NAAQS) obligations, are withdrawn.

Section VI discusses SAFE 1's other basis for withdrawing the ACC program waiver, EPCA. In SAFE 1, EPA reached beyond the waiver criteria in section 209(b)(1) and considered NHTSA's regulations in SAFE 1 that state or local regulation of carbon dioxide emission from new motor vehicles (including

[10] As explained herein, the requirements in the ACC program were designed to work together in terms of the technologies that would be used to both lower criteria emissions and GHG emissions. The standards, including the ZEV sales mandate and the GHG emission standards, were designed to address the short- and long-term air quality goals in California in terms of the criteria emission reductions (including upstream reductions) along GHG emission reductions. The air quality issues and pollutants addressed in the ACC program are interconnected in terms of the impacts of climate change on such local air quality concerns such as ozone exacerbation and climate effects on wildfires that affect local air quality.

[11] 40 FR 23102, 23104 (May 28, 1975); 58 FR 4166 (January 13, 1993).

California's ZEV sales mandate and GHG standards) are related to fuel economy and as such are preempted under EPCA. NHTSA has since issued a final rule that repeals all regulatory text and additional pronouncements regarding preemption under EPCA set forth in SAFE 1.[12] This action by NHTSA effectively removes the underpinning and any possible reasoned basis for EPA's withdrawal decision based on preemption under EPCA in SAFE 1. Additionally, the Agency has historically refrained from consideration of factors beyond the scope of the waiver criteria in section 209(b)(1) and the 2013 ACC program waiver decision was undertaken consistent with this practice. EPA believes that the consideration of EPCA preemption in SAFE 1 led the Agency to improperly withdraw the ACC program waiver on this non-CAA basis. EPA's explanation that withdrawal on this basis was justified because SAFE 1 was a joint action, and its announcement that this would be a single occurrence, does not justify the ACC waiver withdrawal. Thus, EPA is rescinding the withdrawal of those aspects of the ACC program waiver that were based on NHTSA's actions in SAFE 1.

Section VII addresses SAFE 1's interpretive view of section 177 that States adopting California's new motor vehicle emission standards could not adopt California's GHG standards.[13] EPA believes it was both unnecessary and inappropriate in a waiver proceeding to provide an interpretive view of the authority of states to adopt California standards when section 177 does not assign EPA any approval role in states' adoption of the standards. Therefore, as more fully explained in Section VII, the Agency is rescinding the interpretive view on section 177 set out in SAFE 1. Section VIII discusses certain other considerations, including the equal sovereignty doctrine and California's deemed-to-comply provision, and concludes that they do not disturb EPA's decision to rescind the 2019 waiver withdrawal action.

Section IX contains the final decision to rescind the withdrawal of the 2013 ACC program waiver. In summary, I find that although EPA has inherent authority to reconsider its prior waiver decisions, that authority to reconsider is limited and may be exercised only when EPA has made a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Further, EPA's reconsideration may not be broader than the limits Congress placed on its ability to deny a waiver in the first place. Even where those conditions are met, I believe that any waiver withdrawal decision should consider other factors such as the length of time since the initial decision and California and others' reliance on the initial decision. Because there were no factual or clerical errors or such significantly changed factual circumstances or conditions necessary to trigger EPA's authority to reconsider its previously granted waiver during the SAFE 1 proceeding, I believe SAFE 1 was not an appropriate exercise of EPA's authority to reconsider. In addition, even if it were an appropriate exercise, EPA should not have departed from its traditional interpretation of the second waiver prong (section 209(b)(1)(B)), which is properly focused on California's need for a separate motor vehicle emission program—not specific standards—to meet compelling and extraordinary conditions. And even under EPA's SAFE 1 interpretation of the second waiver prong, a complete review of the factual record demonstrates that California does need the GHG emission standards and ZEV sales mandate to meet compelling and extraordinary conditions in the State. Therefore, EPA should not have withdrawn the ACC program waiver based upon the second waiver prong in SAFE 1 and recission of the withdrawal is warranted. Additionally, I find that EPA inappropriately relied on NHTSA's finding of preemption, now withdrawn, to support its waiver withdrawal, and rescind the waiver withdrawal on that basis as well. Finally, independently in this action, I am rescinding the interpretive views of section 177 that were set forth in SAFE 1, because it was inappropriate to include those views as part of this waiver proceeding.

For these reasons, I am rescinding EPA's part of SAFE 1 related to the CAA preemption of California's standards. This recission has the effect of bringing the ACC program waiver back into force.

II. Background

This section provides background information needed to understand EPA's decision process in SAFE 1, and this decision. This context includes: A summary of California's ACC program including the record on the criteria pollutant benefits of its ZEV sales mandate and GHG emission standards; a review of the prior GHG emission standards waivers in order to explain EPA's historical evaluation of the second waiver prong; an overview of the SAFE 1 decision; a review of the petitions for reconsideration filed subsequent to SAFE 1; and a description of the bases and scope of EPA's reconsideration of SAFE 1. EPA's sole purpose in soliciting public comment on its reconsideration was to determine whether SAFE 1 was a valid and appropriate exercise of the Agency's authority. In the Notice of Reconsideration, EPA therefore noted that reconsideration was limited to SAFE 1 and that the Agency was not reopening the ACC program waiver decision.

A. California's Advanced Clean Car (ACC) Program and EPA's 2013 Waiver

On June 27, 2012, CARB notified EPA of its adoption of the ACC program regulatory package that contained amendments to its LEV III and ZEV sales mandate, and requested a waiver of preemption under section 209(b) to enforce regulations pertaining to this program.[14] The ACC program combined the control of smog- and soot-causing pollutants and GHG emissions into a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles (as well as limited requirements related to heavy-duty vehicles for certain model years).[15]

In its 2012 waiver request, CARB noted that the 2012 ZEV amendments would also result in additional criteria pollutant benefits in California in comparison to the earlier ZEV regulations and would likely provide benefits beyond those achieved by

[12] 86 FR 74236.

[13] 84 FR at 51310, 51350.

[14] 2012 Waiver Request, EPA–HQ–OAR–2012–0562–0004 (2012 Waiver Request) at 1, 3–6. CARB's LEV III standards include both its criteria emission standards and its GHG emission standards. SAFE 1 did not address the LEV III criteria emission standards and as such the ACC program waiver remained in place. SAFE 1 did address CARB's GHG emission standards and ZEV sales mandate and this action addresses these two standards as well. As noted in CARB's 2012 Waiver Request, these three standards are interrelated and comprehensive in order to address the State's serious air quality problems including its criteria pollutants and climate change challenges.

[15] As noted in CARB's waiver request, ''[a]t the December 2009 hearing, the Board adopted Resolution 09–66, reaffirming its commitment to meeting California's long term air quality and climate change reduction goals through commercialization of ZEV technologies. The Board further directed staff to consider shifting the *focus of the ZEV regulation to both GHG and criteria pollutant emission reductions,* commercializing ZEVs and PHEVs in order to meet the 2050 goals, and to take into consideration the new LEV fleet standards and propose revisions to the ZEV regulation accordingly.'' 2012 Waiver Request at 2 (emphasis added). EPA stated in SAFE 1 that California's ZEV standard initially targeted only criteria pollutants. 84 FR at 51329. *See also* 78 FR at 2118.

complying with the LEV III criteria pollutant standard for conventional vehicles only. CARB attributed these benefits not to vehicle emissions reductions specifically, but to increased electricity and hydrogen use that would be more than offset by decreased gasoline production and refinery emissions.[16] CARB's waiver request attributed the criteria emissions benefits to its LEV III criteria pollutant fleet standard and did not include similar benefits from its ZEV sales mandate. According to the request, the fleet would become cleaner regardless of the ZEV sales mandate because the ZEV sales mandate is a way to comply with the LEV III standards and, regardless of the ZEV sales mandate, manufacturers might adjust their compliance response to the standard by making less polluting conventional vehicles. CARB further explained that because upstream criteria and PM emissions are not captured in the LEV III criteria pollutant standard, net upstream emissions are reduced through the increased use of electricity and concomitant reductions in fuel production.[17]

On August 31, 2012, EPA issued a notice of opportunity for public hearing and written comment on CARB's request and solicited comment on all aspects of a full waiver analysis for such request under the criteria of section 209(b).[18] Commenters opposing the waiver asked EPA to deny the waiver under the second waiver prong, section 209(b)(1)(B), as it applied to the GHG provisions in the ACC Program, calling on EPA to adopt an alternative interpretation of that provision focusing on California's need for the specific standards. Following public notice and comment and based on its traditional interpretation of section 209(b), on January 9, 2013, EPA granted California's request for a waiver of preemption to enforce the ACC program regulations.[19] The traditional interpretation, which EPA stated is the better interpretation of section 209(b)(1)(B), calls for evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions.[20] As explained, EPA must grant a waiver to California unless the Administrator makes at least one of the three statutorily-prescribed findings in section 209(b)(1). Concluding that opponents of the waiver did not meet their burden of proof to demonstrate that California does not have such need, EPA found that it could not deny the waiver under the second waiver prong.[21]

Without adopting the alternative interpretation, EPA noted that, to the extent that it was appropriate to examine the need for CARB's specific GHG standards to meet compelling and extraordinary conditions, EPA had explained at length in its earlier 2009 GHG waiver decision that California does have compelling and extraordinary conditions directly related to regulation of GHGs. This conclusion was supported by additional evidence submitted by CARB in the ACC program waiver proceeding, including reports that demonstrate record-setting wildfires, deadly heat waves, destructive storm surges, and loss of winter snowpack. Many of these extreme weather events and other conditions have the potential to dramatically affect human health and well-being.[22] Similarly, to the extent that it was appropriate to examine the need for CARB's ZEV sales mandate, EPA noted that the ZEV sales mandate in the ACC program enables California to meet both its air quality and climate goals into the future. EPA recognized that CARB's coordinated strategies reflected in the ACC program for addressing both criteria pollutants and GHGs and the magnitude of the technology and energy transformation needed to meet such goals.[23] Therefore, EPA determined that, to the extent the second waiver prong should be interpreted to mean a need for the specific standards at issue, CARB's GHG emission standards and ZEV sales mandate satisfy such a finding.

In the context of assessing the need for the specific ZEV sales mandate in the ACC program waiver, EPA noted CARB's intent in the redesign of the ZEV regulation of addressing both criteria pollutants and GHG emissions, and CARB's demonstration of ''the magnitude of the technology and energy transformation needed from the transportation sector and associated energy production to meet . . . the goals set forth by California's climate change requirements'' and found that the ZEV standards would help California achieve those ''long term emission benefits as well as . . . some [short-term] reduction in criteria pollutant emissions.'' [24]

B. Prior Waivers for GHG Standards

For over fifty years, EPA has evaluated California's requests for waivers of preemption under section 209(b), primarily considering CARB's motor vehicle emission program for criteria pollutants.[25] More recently, the Agency has worked to determine how

[16] 2012 Waiver Request at 6.

[17] *Id.* at 15–16.

[18] 77 FR 53119 (August 31, 2012).

[19] Set forth in the ACC program waiver decision is a summary discussion of EPA's earlier decision to depart from its traditional interpretation of section 209(b)(1)(B) (the second waiver prong) in the 2008 waiver denial for CARB's initial GHG standards for certain earlier model years along with EPA's return to the traditional interpretation of the second prong in the waiver issued in 2009. 78 FR at 2125–31. These interpretations are discussed more fully in Section III.

[20] *Id.* at 2128 (''The better interpretation of the text and legislative history of this provision is that Congress did not intend this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. In this context it is important to note that air pollution problems, including local or regional air pollution problems, do not occur in isolation. Ozone and PM air pollution, traditionally seen as local or regional air pollution problems, occur in a context that to some extent can involve long range transport of this air pollution or its precursors. This long range or global aspect of ozone and PM can have an impact on local or regional levels, as part of the background in which the local or regional air pollution problem occurs.'').

[21] Because EPA received comment on this issue during the ACC program waiver proceeding, as it pertained to both CARB's GHG emission standards and ZEV sales mandate, the Agency recounted the interpretive history associated with standards for both GHG emissions and criteria air pollutants to explain EPA's belief that section 209(b)(1)(B) should be interpreted the same way for all air pollutants. *Id.* at 2125–31 (''As discussed above, EPA believes that the better interpretation of the section 209(b)(1)(B) criterion is the traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions. Applying this approach with the reasoning noted above, with due deference to California, I cannot deny the waiver.'').

[22] *Id.* at 2126–29. Within the 2009 GHG waiver, and again in the 2013 ACC program waiver, EPA explained that the traditional approach does not make section 209(b)(1)(B) a nullity, as EPA must still determine whether California does not need its motor vehicle program to meet compelling and extraordinary conditions as discussed in the legislative history. Conditions in California may one day improve such that it may no longer have a need for its motor vehicle program.

[23] *Id.* at 2131 (''Whether or not the ZEV standards achieve additional reductions by themselves above and beyond the LEV III GHG and criteria pollutant standards, the LEV III program overall does achieve such reductions, and EPA defers to California's policy choice of the appropriate technology path to pursue to achieve these emissions reductions. The ZEV standards are a reasonable pathway to reach the LEV III goals, in the context of California's longer-term goals.'').

[24] *Id.* at 2130–31. *See also* 2012 Waiver Request at 15–16); CARB Supplemental Comments, EPA–HQ–OAR–2012–0562–0373 at 4 (submitted November 14, 2012).

[25] EPA notes that the 1990 amendments to the CAA added subsection (e) to section 209. Subsection (e) addresses the preemption of State or political subdivision regulation of emissions from nonroad engines or vehicles. Section 209(e)(2)(A) sets forth language similar to section 209(b) in terms of the criteria associated with EPA waiving preemption, in this instance for California nonroad vehicle and engine emission standards. Congress directed EPA to implement subsection (e). See 40 CFR part 1074. EPA review of CARB requests submitted under section 209(e)(2)(A)(ii) includes consideration of whether CARB needs its nonroad vehicle and engine program to meet compelling and extraordinary conditions. *See* 78 FR 58090 (September 20, 2013).

December 10, 2021

To:
EPA CASAC Particulate Matter (PM) Panel
Peer Review of 2021 Draft Supplement to 2019 EPA PM Integrated Science Assessment
and 2021 Draft EPA PM Policy Assessment
U.S. Environmental Protection Agency
https://casac.epa.gov/ords/sab/f?p=105:19:15763176931927:::RP,19:P19_ID:962

From:
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Comments on September 2021 Supplement to December 2019 EPA PM Integrated Science Assessment

The September 2021 EPA PM ISA Supplement must be entirely redone because it deliberately falsifies and exaggerates the adverse health effects of PM2.5 and incorrectly claims that PM2.5 *causes* premature deaths. The ISA focuses almost exclusively on the positive associations between PM2.5 and mortality that have been promoted by the Chinese-funded Harvard TH Chan School of Public Health (Harvard Chan) since the publication of Dockery 1993 and Pope 1995. This deliberate falsification of the research record has been documented by a word search of the ISA which counts the citations of first authors in the text and all authors in the references. Among Harvard Chan and Northeastern investigators, the top 8 (Bell, Dominici, Hart, Laden, Pope, Schwartz, Thurston, Zanobetti) are cited 171 times; 5 Chinese co-authors of Dominici are cited 84 times; 10 Canadian investigators are cited 218 times, although their Canadian evidence is not relevant to US evidence on PM2.5 and mortality; 4 legacy promoters of PM2.5 deaths (Dockery, Samet, Thun, Gapstur) are cited 8 times. Table 1 shows that these 27 (8+5+10+4) key promoters of PM2.5 deaths are cited a total of 481 times. Table 2 shows that all 30 Chinese co-authors of Dominici, including the 5 in Table 1, are cited 236 times. My understanding is that Chinese graduate students are used because they are extremely smart, they work extremely hard, they are eager to come to the US via Harvard Chan, and they prefer to focus on US air pollution rather than Chinese air pollution. Currently, the most aggressive promoters of PM2.5 deaths in the US are Schwartz, Dominici, and Pope. They are being helped by the Chinese, Canadians, and others in Tables 1, 2, and 4.

The falsification of the research record is made clear in Table 3. It shows that the ISA does not cite the published null findings and criticism of 61 investigators, including myself and prior CASAC Chairs Cox, McClellan, and Wolff. Only 4 of the 61 critics are cited at all and these 4 (Lipfert, Smith, Wyzga, Young) are cited just 12 times, with only Young 2017 showing null findings. Although there has been an ongoing 30-year controversy about claims that PM2.5 *causes* deaths based on "secret science" findings that are not transparent and reproducible, a word search reveals that the 303-page ISA does not contain the words controversy, transparency, reproducibility, and integrity. The ISA totally ignores Enstrom 2017, my independent CPS II reanalysis which found major flaws in Pope 1995, the 2000 HEI Reanalysis, and the 2009 HEI Follow-up (doi: 10.1177/1559325817693345a). If the ACS had allowed truly independent access to CPS II data, beyond the access allowed for the flawed 2000 HEI Reanalysis, my reanalysis could have been done during 1995-1997 and the 1997 PM2.5 NAAQS might never have been established.

A specific example of the falsification of the research record by EPA is the 2012 Fann *Risk Analysis* article "Estimating the national public health burden associated with exposure to ambient PM2.5 and ozone" (doi: 10.1111/j.1539-6924.2011.01630.x). This article claimed that 130,000 annual US deaths are *caused* by PM2.5 based on the CPS II results in HEI 2009. Cox disputed this EPA claim in his 2012 *Risk Analysis* letter "Miscommunicating risk, uncertainty, and causation: fine particulate air pollution and mortality risk as an example" (doi: 10.1111/j.1539-6924.2012.01806.x). The validity of the Cox letter is supported by Enstrom 2017, which found no significant relationship between PM2.5 and total mortality in the CPS II cohort. In addition, my detailed June 29, 2020 EPA Comment defending the existing PM2.5 NAAQS included strong evidence that PM2.5 *does not cause* deaths in the US (http://www.scientificintegrityinstitute.org/EPAPM25JEE062920.pdf). Below I have attached the Cox letter and key pages from my EPA Comment.

Most of the recent US evidence on PM2.5 deaths in the PM is based on very complex statistical analyses of the Medicare records of up to 69 million recipients, after indirectly imputing air pollution levels and lifestyle characteristics to recipients defined by their zip code. However, I have been unable to confirm that Dominici, Schwartz, Bell, Zigler, Shi, and others have proper authorization to use Medicare records for methodologically flawed ecological epidemiology. These well-known epidemiologic flaws, which date back to the famous 1988 AJE article "The Ecological Fallacy," are described in my detailed 31-page July 8, 2021 review of a now rejected ES&T manuscript by Shi and Schwartz and others (http://scientificintegrityinstitute.org/ESTJEEAdd070821.pdf).

Keep in mind that 69 million Americans, including myself, have NEVER granted permission for their private Medicare records to be used for ecological research that violates basic epidemiologic principles and produces weak associations that are claimed to be *causal* by activist authors and activist EPA staffers. I believe that this ecological research violates US HHS Human Research Protections 45 CFR 46 (https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/index.html). In order to conduct a legitimate epidemiologic cohort study, each subject must understand the purpose and details of the study and then must give their informed consent to be enrolled in the study. For instance, every subject in the CPS II cohort that I analyzed in Enstrom 2017 was voluntarily enrolled in 1982 using the attached "CPS II Instructions for Researchers" and "CPS II Fact Sheet". I was an ACS Researcher who properly enrolled CPS II subjects as per these two documents.

Furthermore, unless strict confidentiality policies are continuously enforced, I believe that individual Medicare recipients can be identified from the detailed "de-identified" zip-code-level information used by Dominici, et al. Such identification would directly violate Americans' HIPAA privacy rights. Since June 2021, key Medicare investigators have refused to provide me with evidence that they have proper access to Medicare records (http://scientificintegrityinstitute.org/CurranJEE083021.pdf). Thus, I am now attempting to obtain this evidence from the Center for Medicare and Medicaid Services (CMS), specifically the appropriate Medicare Data Use Agreement and details on Medicare security procedures (https://www.hhs.gov/guidance/document/instructions-completing-data-use-agreement-dua-form-cms-r-0235).

In addition to systematic falsification of the published research record, the ISA totally ignores the many unpublished null PM2.5 findings that are posted on the Internet. These null findings have been rejected by the same prominent journals that publish positive PM2.5 findings. For instance, *SCIENCE* rejected without review my proposed March 2020 Policy Forum response to its aggressive and repeated opposition to the EPA Transparency Rule (http://scientificintegrityinstitute.org/EPATransJEE041720.pdf). *JAMA* rejected without review my proposed March 2020 Letter to the Editor pointing out that the February 2020 *JAMA* Fineberg-Allison

Viewpoint opposing the EPA Transparency Rule did not cite Enstrom 2017, which demonstrated the importance of transparency (http://scientificintegrityinstitute.org/EPATransJEE051820.pdf). *NEJM* rejected without review my proposed September 2020 Letter to the Editor countering the August 2020 *NEJM* Sounding Board "The Need for a Tighter Particulate-Matter Air-Quality Standard" by the Independent Particulate Matter Review Panel (IPMRP). *NEJM* rejected my letter in both published format and on-line format (http://scientificintegrityinstitute.org/NEJMJEE091020.pdf). Finally, a prominent epidemiology journal rejected the findings described in EPA SAB Member Richard Smith's November 17 public comment, which showed NO relationship between PM2.5 and total mortality below 12 μg/m³. Smith's important null findings are attached below and posted here (http://rls.sites.oasis.unc.edu/postscript/rs/Smith-Medicare-PM.pdf).

Please note that the 19 IPMRP authors of the *NEJM* Sounding Board include 9 PM Panel Members (CASAC Chair Sheppard, CASAC Member Chow, Adams, Allen, Balmes, Gordon, Kleinman, Sarnat, and Turpin). Thus, even before the 2021 PM ISA Supplement had been prepared, 9 of the 22 PM Panel Members stated that they are unequivocally in favor of tightening the PM2.5 NAAQS of 12 μg/m³. The August 2020 *NEJM* Sounding Board, my proposed *NEJM* letter, and the *NEJM* rejection are attached below. Table 4 provides evidence that all 22 PM Panel Members have a strong bias toward adverse PM2.5 health effects, based on their 348 PM2.5-related publications on PubMed.gov (http://scientificintegrityinstitute.org/PMPanelPubs121021.pdf).

The PM Panel members have rarely, if ever, cited the extensive null evidence of the 61 PM2.5 NAAQS critics in Table 3. None have ever cited my publications. In addition, the authorship of these 348 publications shows a strong interrelationship between PM Panel Members and the Pro-PM2.5 authors in Table 1 and elsewhere. Also, these publications indicate that essentially all PM Panel Members have received funding from EPA, NIEHS, and/or HEI. One half (11) of the PM Panel Members are from three states with aggressive air regulatory agencies (CA, MA, NY). There are NO PM Panel Members from 39 states. NO PM Panel Member has published criticism of the relationship between PM2.5 and mortality.

Comments on October 2021 EPA PM Policy Assessment

Along with the September 2021 PM ISA Supplement, the October 2021 PM PA must be entirely redone because it deliberately exaggerates the adverse health effects of PM2.5 and makes policy recommendations that are based on invalid claims that PM2.5 *causes* premature deaths. Like the ISA Supplement, the PA focuses almost exclusively on the positive associations between PM2.5 and mortality that have been promoted by the Chinese-funded Harvard TH Chan School of Public Health investigators. This deliberate falsification of the research record has been documented by a word search of the PA which counts the number of citations of first authors in the text and all authors in the references. Among Harvard Chan and Northeastern investigators, the top 8 (Bell, Dominici, Hart, Laden, Pope, Schwartz, Thurston, Zanobetti) are cited 315 times; 5 Chinese co-authors of Dominici are cited 226 times; 10 Canadian investigators are cited 410 times, although their Canadian evidence is not relevant to US evidence on PM2.5 and mortality; 4 legacy promoters of PM2.5 deaths (Dockery, Samet, Thun, Gapstur) are cited 35 times. Table 1 shows that these 27 (8+5+10+4) key promoters of PM2.5 deaths are cited a total of 986 times. Table 2 shows that all 30 Chinese co-authors of Dominici, including the 5 in Table 1, are cited 325 times.

As with the ISA Supplement, the falsification of the research record in the PA is made clear in Table 3. It shows that the PA does not cite the published null findings and criticism of 61 investigators, including myself and prior CASAC Chairs Cox, McClellan, and Wolff. Only 4 of the 61 critics are cited at all and

these 4 (Cox, Lipfert, Smith, Wyzga) are cited only 22 times, with only Cox's 2019 CASAC Letters describing null findings. Although there has been an ongoing 30-year controversy about claims that PM2.5 *causes* deaths based on "secret science" findings that are not transparent and reproducible, a word search reveals that the 649-page PA does not contain the words controversy, transparency, reproducibility, and integrity. Just like the ISA, the PA totally ignores Enstrom 2017, my independent CPS II reanalysis which found major flaws in Pope 1995, the 2000 HEI Reanalysis, and the 2009 HEI Follow-up (doi: 10.1177/1559325817693345a). If the ACS had not blocked independent access to CPS II data, my reanalysis could have been done during 1995-1997 and the 1997 PM2.5 NAAQS might never have been established. Rather than acknowledging my reanalysis and errors in PM2.5 death claims, HEI has increased funding of research associating low level PM2.5 with deaths. The ISA Supplement and PA focus on these implausible low-level PM2.5 death effects, based primarily on improper use of Medicare records, and they ignore valid criticism of these results as well as evidence of NO PM2.5 death effects.

Before California regulations are nationalized by EPA, it is important to note the adverse consequences of FALSE PM2.5 death claims and excessive PM2.5 regulations. The October 19 California Business Roundtable letter to Governor Newsom describes ways to solve the Supply Chain Crisis at the Ports of Los Angeles and Long Beach (https://cbrt.org/wp-content/uploads/2021/10/Port-Crisis-Letter-FINAL.pdf). One way is to suspend the CARB regulations that prohibit older diesel trucks from entering the ports. Instead of suspending these regulations, CARB (particularly Balmes) voted on December 9 to implement new DMV smog check regulations on all trucks (https://ww2.arb.ca.gov/news/carb-passes-smog-check-regulation-heavy-duty-trucks-and-buses). These regulations are justified by the FALSE claim that they will "prevent 7,500 air-quality related deaths," when there is overwhelming evidence that there are NO PM2.5-related deaths in California from diesel engines or any other source, dating back to Enstrom 2005 (http://www.scientificintegrityinstitute.org/IT121505.pdf). On December 9 CARB (particularly Balmes) also voted to ban small gasoline-powered off-road engines, like leaf blowers and lawn mowers (https://ww2.arb.ca.gov/news/carb-approves-updated-regulations-requiring-most-new-small-road-engines-be-zero-emission-2024). These ruthless CARB regulatory actions directly hurt blue collar workers, like truck drivers and gardeners, and they inflate the cost of living for all Californians.

Evidence challenging the tightening of the PM2.5 NAAQS is powerfully summarized in the November 17 public comments to EPA CASAC PM Panel made by a courageous toxicology PhD candidate, Enstrom, and Milloy (https://www.youtube.com/watch?v=P6OhZaaexv8&ab_channel=SamuelDelk). This evidence includes the fact that there is no etiologic mechanism by which inhaling 100 μg of PM2.5 per day can cause death and the fact that the US already has a very low PM2.5 level of 7 μg/m³, whereas our competitor China has the very high level of 48 μg/m³. Nevertheless, on December 2, 20 of the 22 PM Panel Members recommended lowering the annual PM2.5 NAAQS of 12 μg/m³ and the remaining 2 previously recommended lowering the NAAQS; 17 Members recommended a NAAQS of 8-10 μg/m³.

The Biden EPA should not be focused on tightening the PM2.5 NAAQS while the Chinese are sending their PM2.5 across the Pacific Ocean to America and while dozens of Chinese researchers are improperly accessing and analyzing the confidential Medicare records of 69 million Americans. The November 2 recommendation of the PM Panel confirms the validity of the writings of renowned New York Times journalist John Tierney on "The Left's War on Science" (https://www.manhattan-institute.org/html/lefts-war-science-11161.html), renowned physicist Lawrence Krauss on "The Ideological Corruption of Science" (https://www.wsj.com/articles/the-ideological-corruption-of-science-11594572501), and Enstrom on Environmental Lysenkoism regarding PM2.5 science and regulations (http://scientificintegrityinstitute.org/NASJEEA020820.pdf). Thus, there is a current lawsuit against the Biden EPA CASAC and Science Advisory Board for violation of the Federal Advisory Committee Act (https://junkscience.com/2021/10/former-casac-chair-added-as-plaintiff-in-young-v-epa/).

February 25, 2022
US EPA CASAC PM Panel Webcast re PM2.5 NAAQS based on 2021 PM ISA Supp & PM PA
(https://www.youtube.com/watch?v=ZkMsBXwyenw)
(https://casac.epa.gov/ords/sab/f?p=113:19:22380851460992:::RP,19:P19_ID:966)

Dr. James Enstrom's Verbal Comment to EPA CASAC PM Panel re PM2.5 NAAQS

I have 50 years of experience in conducting epidemiologic cohort studies and I have published important peer-reviewed PM2.5 death findings based on ACS CPS I and CPS II cohort data. The February 4 PM Panel letters do not address the detailed public criticism of the 2021 PM ISA Supplement and PM PA. The EPA staff has made NO changes in these documents in response to this criticism. In particular, they ignored Richard Smith's evidence of NO PM2.5 deaths below 12 μg/m³ and my 36 pages of evidence that PM2.5 DOES NOT *cause* premature deaths in the US (http://scientificintegrityinstitute.org/pmpanel121021.pdf).

The recommendations of the PM Panel and EPA staff to tighten the PM2.5 NAAQS are based on a deliberately falsified research record regarding PM2.5-related deaths. Falsification is serious scientific misconduct as defined in the January 11 White House OSTP Scientific Integrity Task Force Report. Thus, I request that Jennifer Peel, with a PhD in Epidemiology, confirm that the PM PA is "a robust and comprehensive evaluation of the epidemiologic literature" and that public comments like mine do not alter her evaluation.

There is NO scientific or public health justification for tightening the PM2.5 NAAQS because there is no etiologic mechanism by which inhaling about 100 μg of PM2.5 per day can cause death and the US already has a very low average PM2.5 level of 7 μg/m³ whereas our competitor China has a very high level of 48 μg/m³. Indeed, there are adverse public health, welfare, social, economic, and energy effects associated with tightening the PM2.5 NAAQS. This tightening will hurt America at a time when it is facing military and economic dangers from Russia and China, as well as rapidly increasing energy costs. Finally, I strongly support the ongoing Young and Cox v. EPA lawsuit because the Biden CASAC and its PM Panel are illegally constituted and in gross violation of the Federal Advisory Committee Act. The current misguided effort to tighten the PM2.5 NAAQS must be stopped.

Thank you.

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June 8, 2022

US EPA CASAC Ozone Review Panel Regarding Ozone NAAQS Reconsideration
https://casac.epa.gov/ords/sab/f?p=113:19:8532987399969:::19:P19_ID:972
https://youtu.be/5Qsqhqb5_F0 (minutes 20-26)
http://scientificintegrityinstitute.org/OzonePanel060822.pdf

Dr. James Enstrom's Verbal Comment to EPA CASAC Ozone Review Panel

I am Dr. James Enstrom. I have had a long career as an epidemiologist at UCLA and I have made significant contributions to air pollution epidemiology, particularly regarding the importance of transparency and reproducibility. The 2000 EPA CASAC, the 2000 EPA Administrator, and the April 2022 EPA Ozone Policy Assessment Reconsideration all recommended that the ozone NAAQS remain unchanged at 70 ppb. Thus, the Ozone Panel should not reconsider the ozone NAAQS at this time, but should reconsider it later during the regular 5-year review cycle. Instead, the Ozone Panel should assess six fundamental aspects of the science underlying the NAAQS.

1. Assess the extensive criticism of the linear no-threshold (LNT) model and estimate the threshold below which ozone has no adverse human health effects. U Massachusetts Professor Edward Calabrese published a May 17, 2022 "LNTGate" critique of LNT (https://doi.org/10.1016/j.cbi.2022.109979). It illustrates how acceptance of the LNT dose-response model was unethically advocated and advanced in the 1950s by key scientists and by *Science,* America's leading science journal. Unfortunately, *Science* will not acknowledge errors in four historical articles that are cornerstones in acceptance of the LNT model.

2. Assess the human health effects of ozone based on actual human exposure to ozone, not on the readings of ambient air monitors (https://doi.org/10.1016/j.envint.2018.07.012). There is extensive published evidence that most Americans are personally exposed to less than 20 ppb of 8-hour ozone because they spend up to 90% of their time indoors (https://doi.org/10.1111/ina.12942). In addition, the average seasonal 8-hour maximum ozone concentration in 2019 in the US was 43 ppb (https://www.stateofglobalair.org/air/ozone). The average indoor and outdoor ozone levels are both far below the current ozone NAAQS of 70 ppb (1.0 ppb~2.0 µg/m^3). Thus, most Americans are not exposed to unhealthy levels of ozone.

3. Assess the extreme publication bias against null air pollution health effects findings by examining key null findings that have been ignored by EPA. My December 10, 2021 CASAC PM Panel comment (http://scientificintegrityinstitute.org/PMpanel121021.pdf) and my February 25, 2022 CASAC PM Panel comment (http://scientificintegrityinstitute.org/PMpanel022522.pdf) document that the 2021 PM ISA and PA ignored at least 60 authors, including me, who have published null findings or criticized the PM2.5 NAAQS. Similar publication bias exists regarding the ozone NAAQS.

4. Assess the evidence that ozone health effects must be based on findings that are transparent and reproducible. My 2017 and 2018 reanalyzes of the ACS CPS II cohort found serious flaws in the seminal Pope 1995 article and the 2000 HEI Reanalysis and demonstrated the importance of access to underlying data (http://scientificintegrityinstitute.org/DRPM25JEEPope052918.pdf). However, *Science* Editor-in-Chief Holden Thorp recently demonstrated his strong bias against EPA transparency by personally stating to me that he will not publish any evidence that I submit to *Science* that supports "Strengthening Transparency in Regulatory Science" (http://scientificintegrityinstitute.org/ThorpJEE041822.pdf).

5. Assess the evidence that the ozone NAAQS is so low that it is impossible to ever reach attainment in many areas, especially in California. The April 15, 2022 SCAQMD Notice of Intent to sue EPA is necessary because it is impossible for the South Coast Air Basin to attain the 1997 Ozone NAAQS of 80 ppb without massive emissions reductions from Federal sources not controlled by SCAQMD (http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan/final-2016-aqmp). EPA must recognize that California is a very healthy area of the US and that the current clean air in California is not harming its citizens (http://scientificintegrityinstitute.org/AQMPJEE081516.pdf) . Overregulation by EPA is hurting California both scientifically and economically.

6. Finally, CASAC Panel members must recognize the different interpretations of weak epidemiologic evidence and engage with critics like myself. Simply note the difference between the 2020 CASAC and the 2022 CASAC regarding the assessment of the same PM2.5 data (https://junkscience.com/2021/10/former-casac-chair-added-as-plaintiff-in-young-v-epa/). It is important that you assess evidence objectively, keeping in mind the above points. This request is particularly critical at a time when the US faces a serious energy crisis that is made worse by unjustified EPA regulations on ozone and PM2.5.

Thank you very much.

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