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Battle Over California's Vehicle Air Emission Waivers Now in U.S. District Court

On June 12, 2025, immediately after President Trump signed three Congressional resolutions in an attempt to stop California from implementing strict vehicle air emission standards, California and 10 other states[1] filed their complaint in the U.S. District Court for the Northern District of California asking the court to declare that the congressional resolutions "have no effect on the status or enforceability of state emissions control programs."

This unprecedented adventure was bound to land in federal court and will undoubtedly end up in the U.S. Supreme Court. The courts' resolutions will determine how the state and federal governments work together to implement vehicle air emissions standards.

Background

On May 1, 2025, the U.S. House of Representatives passed resolutions (ostensibly pursuant to the authority provided in the Congressional Review Act) in an attempt to block implementation of California's vehicle emissions mandates. The target of the House resolutions is the Biden Administration's December 18, 2024, approval of the Clean Air Act waiver allowing California to begin full implementation of its regulations.[2]

Three weeks later, on May 22, 2025, the U.S. Senate joined the House and passed its own disapproval resolution in the attempt to repeal California's electric vehicle mandate.[3]

President Trump then signed the resolutions on June 12, 2025, stating in part:

> These bipartisan measures prevent California's attempt to impose a nationwide electric vehicle mandate and to regulate national fuel economy by regulating carbon emissions. Because of the joint resolutions I signed today, California's Advanced Clean Cars II, Advanced Clean Trucks, and Omnibus Low NOx programs are fully and expressly preempted by the Clean Air Act and cannot be implemented.[4]

California as "a Kind of Laboratory for Innovation."

The states' complaint reviews the history of California's efforts to limit vehicular air pollution resulting in the U.S. Congress recognizing California's "extraordinary air pollution challenges and the value of state-level experimentation." Thus, "while [Congress] preempted other states from regulating emissions from new motor vehicles, Congress required [the U.S. Environmental Protection Agency] EPA to waive that preemption for California except in narrow circumstances."[5]

Over the years, the EPA has granted California more than 75 Clean Air Act preemption waivers that have required manufacturers to reduce emissions from the vehicles sold in the state. The complaint, citing the ruling in the *Engine Mfrs. Ass'n v. EPA* case,[6] asserts that these decisions allowing California to expand its state air emissions programs balance the benefits "for the state and the entire county" thus "preserving [California as] a kind of laboratory for innovation."

The Congressional Review Act Does Not Provide Authority to Disapprove the Waivers

Central to the states' complaint is the argument that Congressional Review Act (CRA) cannot be used to negate "state rules" or to alter federal limits on state authority: "the text of the CRA is exclusively concerned with federal rules promulgated by federal agencies." In addition, the Clean Air Act preemption waivers are "adjudicatory orders" under the Administrative Procedure Act (APA), not "rules."

That position mimics the conclusion of the General Accountability Office (GAO) when asked by members of Congress whether a 2002 waiver action was a "rule" subject to the CRA; and the more recent iteration of that same conclusion by the GAO (and the Senate Parliamentarian) specifically addressing the three resolutions that are the

subject of the current case; the waivers are not rules and thus, the CRA does not apply. The complaint summarizes the GAO conclusions:

> On March 6, 2025, the GAO issued its legal analysis, concluding (as before) that waiver actions are not subject to the CRA. . . . Again, the GAO concluded that these three waiver decisions meet "the APA definition of an **order**," not of a rule, because they make preemption determinations – i.e., "'final disposition[s]' granting California a 'form of permission' as described in the APA definition" of "order." . . . The GAO also reiterated its prior conclusion that, even if waiver decisions were rules, they would still not be subject to the CRA because they are not rules of general applicability. Instead, the GAO concluded, waiver decisions "concern[] a specific entity – California – and address[] a statutory waiver specific to California's [program]." (Emphasis added)

The Senate Parliamentarian agreed: "After hearing arguments on both sides, the Senate Parliamentarian agreed with the GAO that waiver decisions are not subject to the CRA."

With that as background, the complaint states its seven claims for relief (short excerpts taken from each claim):

> *1. Ultra Vires – Conduct in Excess of Statutory Authority*
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> Pursuant to 28 U.S.C. § 2201, plaintiffs are entitled to a declaration that defendant's reclassification and submission actions were *ultra vires* and the resulting resolutions are unlawful, void, and of no effect.
>
> *2. Violation of the Administrative Procedure Act*
>
> The EPA defendants' APA violations provided a pretextual basis for the use of the CRA by the U.S. to disapprove these waivers, and the resolutions would not have been enacted without that pretextual basis. The resolutions thus "stand[] or fall[] on the validity of the" actions taken by the EPA defendants.
>
> *3. Violation of the Congressional Review Act*
>
> By its own plain terms, the CRA does not apply to these waiver decisions because EPA's waiver actions are orders, not rules, as defined by the APA (and

incorporated in the CRA). And, even if waiver decisions were rules, they would still not be rules of general applicability that would be subject to the CRA.

4. Violation of the Take Care Clause

Article II, Section 3 of the Constitution provides that the president – and pursuant to his direction, the Executive Branch – "shall take care that the laws be faithfully executed." U.S. Const. art. II, § 3. . . . The Executive Branch defendants neither exercised care nor even attempted to faithfully execute the nation's laws, including the Clean Air Act, the APA, the CRA, and the Constitution.

5. Violation of the Separation of Powers

Congress's decision to allow the Executive Branch to be the sole arbiter of what the definition of "rule" means under the APA and CRA also unconstitutionally intruded on the judiciary's Article III power "to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803); U.S. Const. art. III, § 2.

6. Violation of the Tenth Amendment and Structural Principles of Federalism

These resolutions were enacted only because both the Executive and Legislative Branches opted to flout settled procedures and the plain text of the CRA (to which all states consented). The Executive Branch began this unprecedented maneuver when, without any process or explanation, it issued a blatantly unlawful post-hoc declaration that the three adjudicatory orders at issue were suddenly rules. With the president's imprimatur, Congress then compounded the errors, opting to disregard and overrule the reasoned decisions of both the GAO and the Senate Parliamentarian, although those decisions are ordinarily treated as dispositive. . . .

The framers designed a federal government that would "be disinclined to invade the rights of the individual states, or the prerogatives of their governments." Garcia, 469 U.S. at 551 (quoting The Federalist No. 46, at 332 (B. Wright ed. 1961)). These resolutions required an end-run around that design. The numerous "extraordinary defects in the national political process" reflected in that end-run render the resolutions "invalid under the Tenth Amendment" and the principles of federalism embedded in the Constitution's structure. South Carolina, 485 U.S. at

512.

7. Nonstatutory Review: Violations of Federal Law by Federal Officials

The president, EPA, and its administrator have stated definitely that the state regulations at issue here, including the Advanced Clean Cars II, Advanced Clean Trucks, and Omnibus regulations, became preempted and unenforceable upon enactment of the respective resolutions and are now preempted and unenforceable. . . . Each of the resolutions is unlawful and unconstitutional.

Unprecedented Move by Congress and the Executive

This unprecedented adventure will end up in the U.S. Supreme Court. The resolution will determine how the state and federal governments work together to implement vehicle air emissions standards.

This blog was drafted by John Watson, an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.

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[1] The states joining the lawsuit are Colorado, Delaware, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.

[2] *See* May 6, 2025, Spencer Fane blog detailing the history of the California waivers, the state regulations involved, the involvement of the "Section 177 states" that have adopted some of all of California's standards in lieu of federal requirements, and the determinations of the General Accountability Office (GAO), and the Senate Parliamentarian opining that the Congressional Review Act does not provide authority to the House and Senate to "disapprove" the California waivers.

[3] The resolutions include: (1) H.J. Res. 87, "Joint Resolution providing congressional disapproval under Chapter 8 of Title 5, U.S. Code, of the rule submitted by the Environmental Protection Agency (EPA) relating to 'California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision'"; (2) H.J. Res. 88, "Joint Resolution providing congressional

disapproval under Chapter 8 of Title 5, U.S. Code, of the rule submitted by the EPA relating to 'California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision'"; and (3) H.J. Res. 89, "Joint Resolution providing congressional disapproval under Chapter 8 of Title 5, U.S. Code, of the rule submitted by the EPA relating to 'California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The 'Omnibus' Low NOx Regulation; Waiver of Preemption; Notice of Decision.'"

4 The White House statement also states: "Under the Congressional Review Act, the EPA cannot approve any future waivers that are "substantially the same" as those disapproved in the joint resolutions. The core of the waivers at issue are their authorization of California to regulate greenhouse gas and NOx emissions from internal combustion engines and to impose what amounts to an electric vehicle mandate across the nation. Accordingly, the joint resolutions prohibit the EPA from approving future waivers for California that would impose California's policy goals across the entire country and violate fundamental constitutional principles of federalism, ending the electric vehicle mandate for good."

5 Pub. L. No. 90-148, § 208(b), 81 Stat. 485, 501 (1967)

6 88 F.3d 1075, 1080 (D.C. Cir. 1996)

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