UCLA School of Law

JULIA E. STEIN
PROJECT DIRECTOR, EMMETT INSTITUTE ON CLIMATE CHANGE AND THE ENVIRONMENT
CLINICAL SUPERVISING ATTORNEY, FRANK G. WELLS ENVIRONMENTAL LAW CLINIC

SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (310) 794-5132
E-mail: steinj@law.ucla.edu

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Steven S. Cliff, PhD
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Attn: Docket # NHTSA-2021-0030

Re: *Comment on Notice of Proposed Rulemaking ("NPRM")– Corporate Average Fuel Economy (CAFE) Preemption, 86 FR 25980 ("Proposed Rule")*

Dear Acting Administrator Cliff,

We, the undersigned faculty members at the Emmett Institute on Climate Change and the Environment at UCLA School of Law, submit the following comments on the Corporate Average Fuel Economy (CAFE) Preemption rule, 86 FR 25980 (hereinafter, the "Proposed Rule"), which would repeal the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program rule (hereinafter, the "2019 Rule"). The Emmett Institute is a leading law school center focused on climate change and other critical environmental issues, and serves as a source of environmental legal scholarship, nonpartisan expertise, and policy analysis.

We appreciate the opportunity to comment, and write to express our support for the Proposed Rule.[1] Repealing both the 2019 Rule and its preamble is appropriate because the 2019 Rule contravened Congress' intent that the Energy Policy and Conservation Act ("EPCA") not preempt state-level vehicle greenhouse gas ("GHG") emission and zero-emission vehicle ("ZEV") standards; because the 2019 Rule's finalization of a determination that such emission standards are preempted likely exceeded NHTSA's legal authority; and because the 2019 Rule fails to comport with basic administrative procedure requirements. Given the deficiencies of the 2019 Rule, we concur with the Proposed Rule that leaving NHTSA with a "clean slate" to regulate is the best possible course of action.

[1] 84 FR 51310 (2019).

I. Repeal is Appropriate Because NHTSA Lacked Legal Authority to Adopt the 2019 Rule

In the Rule, NHTSA determined that state ZEV and vehicle GHG emission standards are preempted because they could interfere with federal fuel economy standards promulgated by NHTSA. However, the statutory design and legislative history of EPCA tell a very different story. First, NHTSA lacked legal authority to issue the 2019 Rule because it directly contravened Congress' intent that EPCA not preempt state ZEV and vehicle GHG emission standards. Second, it is unclear that EPCA delegates authority to NHTSA to issue a formal preemption determination via rulemaking at all—but at the very least, it delegates no authority to issue a preemption determination that contradicts Congress. Accordingly, the Proposed Rule's repeal of the 2019 Rule in its entirety is appropriate.

A. EPCA's Statutory and Legislative History Demonstrate the 2019 Rule's Conflict with Congressional Intent

In every preemption case, the "purpose of Congress is the ultimate touchstone." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). Courts may disregard an agency's determination that its regulations preempt state law when "it appears from the statute or its legislative history that the [preemption determination] is not one that Congress would have sanctioned." *City of New York v. F.C.C.*, 486 U.S. 57, 64, 108 S. Ct. 1637, 1642, 100 L. Ed. 2d 48 (1988) (internal citations omitted). Here, EPCA's statutory and legislative history make it clear that Congress never intended to preempt state emission standards. Any delegated authority NHTSA may possess to adopt a preemption regulation does not extend to a preemption determination that squarely contradicts Congress' own position on the preemptive effect of EPCA. The Proposed Rule appropriately recognizes that NHTSA must, accordingly, repeal the 2019 Rule.

As the Proposed Rule indicates,[2] a careful analysis of the legislative history before the passage of EPCA and during its subsequent amendments shows that Congress never intended EPCA to preempt state vehicle emission regulation. The purpose of EPCA, enacted in response to the 1973 petroleum crisis, was to improve the United States' energy independence and reduce reliance on oil imports. *See* Greg Dotson, State Authority to Regulate Mobile Source Greenhouse Gas Emissions, Part 2: A Legislative and Statutory History Assessment, 32 Georgetown Ent. L. Rev. at 11 ("Dotson Article"). Throughout EPCA's drafting, Congress knew and understood that emission standards could impact fuel economy and rejected proposals to subordinate emission standards—including state emission standards—to fuel economy concerns. *Id*. at 16, 23, and 26.

The subordination of EPCA-authorized fuel economy standards to state and federal vehicle emission requirements has been reaffirmed multiple times by both Congress and the courts.[3] During the first

[2] Commenters, litigants, and scholars have reached the conclusion that "Congress did not intend to preempt state GHG standards or ZEV mandates under Section 32919." Corporate Average Fuel Economy (CAFE) Preemption, 86 Fed. Reg. at fn 90.

[3] To discern Congressional intent, courts ordinarily look at the "structure and purpose of the statute as a whole," combined with the statute's "surrounding regulatory scheme." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996).

three years after the passage of EPCA, Congress set fuel economy standards by statute. 15 U.S.C. § 2002(a)(1) (1976). Individual manufacturers could, however, petition NHTSA to relax the fuel economy standards that Congress set via an adjustment clause. *See id*. § 2002(d). NHTSA had to grant such a petition if, inter alia, compliance with new or different "Federal standards" reduced an automaker's average fuel economy. *Id*. § 2002(d)(3)(C)(i). Congress defined "Federal standards" to include both EPA's "emissions standards under section 202 of the Clean Air Act" and California's "emissions standards applicable by reason of section 209(b) of such Act." 15 U.S.C. § 2002(d)(3)(D)(i) (1976). Congress thereby signaled that EPCA did not preempt California emission standards for which EPA granted a waiver, even if they substantially affected fleet-average fuel economy. In the event of a conflict, automakers could obtain relief not from state emission standards but from the federal fuel economy standard.

The statutory adjustment clause is not EPCA's only requirement to consider California's standards.[4] In 1992, Congress amended EPCA to require that "no Federal agency shall acquire a light duty motor vehicle or medium duty passenger vehicle that is not a low greenhouse gas emitting vehicle." Pub. L. No. 110-140, § 141, 121 Stat. at 1517; 42 U.S.C. § 13212(f)(2)(A). Critically, Congress left how to define a "low greenhouse gas emitting vehicle" in the hands of EPA—not NHTSA. *See* 42 U.S.C. § 13212(f)(3)(A). Congress required EPA, when identifying these vehicles, to "take into account the most stringent standards for vehicle greenhouse gas emissions applicable to and enforceable against motor vehicle manufacturers for vehicles sold anywhere in the United States." *Id*. § 13212(f)(3)(B). The language "sold anywhere in the United States" was a clear reference to California's greenhouse gas emissions standards. *See* Dotson Article at 58-63. NHTSA's determination in the 2019 Rule would force NHTSA to both consider California's emissions standards while simultaneously holding them null and void, creating a paradigmatic "'statutory contradiction' (really, self- contradiction)." *Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1, 37 (D.C. Cir. 2019); *see also Green Mountain*, 508 F. Supp. 2d at 354.

Legislative history after the passage of EPCA further demonstrates that Congress intended fuel economy standards to be subordinate to emission standards, and decidedly did not intend to preempt state emission standards. *See* Brief for Members of Congress as Amici Curiae Supporting Petitioners, *Union of Concerned Scientists et al. v. National Highway Transportation Safety Administration*,

[4] EPCA's text and the statutory scheme of which it is a part also demonstrate Congressional intent to allow states to regulate alternative fuel vehicles like ZEVs. In passing EPCA, Congress chose to define "fuel" and "fuel economy" narrowly, with a clear focus on traditional, fossil fuel powered automobiles. *See* 49 U.S.C. § 32901(a)(10)-(11). EPCA also prohibits NHTSA from considering the availability of alternative fuel vehicles in determining the maximum feasible average level of fuel economy. 49 U.S.C. § 32902(h)(1) (prohibiting consideration of dedicated alternative fuel vehicles), (h)(2) (limiting consideration of dual fuel vehicles to gasoline or diesel fuel use). Although the statute incentivizes manufacture of alternative fuel vehicles, *id*. § 32905 and allows calculation of electric vehicles for determining overall fleet compliance, *id*. § 32904(a)(2), the only statutory mandates for alternative fuel vehicles relate to public disclosure of information regarding those vehicles, *id*. § 32908. Taken together with the text of EPAct 1992, which encouraged the states to submit plans on introducing alternative-fuel vehicles, it becomes clear that Congress sought to allow the states to develop schemes to regulate alternative-fuel vehicles and that EPCA does not preempt the states from doing so; no degree of "fuel economy"—as that term is defined in EPCA—can be applied to alternative fuel vehicles, so any state law regarding alternative fuel vehicles cannot be preempted by EPCA.

USCA Case #19-1230, Document #1850346. In 1994, Congress recodified EPCA, amending the language in Section 502(e)(3) to require consideration of "the effect of other motor vehicle standards of the Government on fuel economy." Pub. L. No. 103-272, 108 Stat. 745, 1060 (1994); 49 U.S.C. § 32902(f). Accompanying House and Senate reports explain that the recodification was meant to occur "without substantive change" to the recodified provisions, meaning that the new language in Section 502(e)(3) retains the same meaning as EPCA's original language.[5]

In 2006, despite no new Congressional action on the subject, NHTSA suggested it could have the authority to preempt state emissions standards when those standards governed the release of carbon dioxide. Average Fuel Economy Standards for Light Trucks Model Years 2008-2011, 71 Fed. Reg 17,565, 17654 (hereinafter, the "2006 Rule"). The next year, however, the Supreme Court held, in *Massachusetts v. EPA*, that EPA's mandate to regulate emissions, including GHGs, was not limited by EPCA. *Massachusetts v. EPA*, 549 U.S. 497 (2007). Two subsequent district court decisions found that EPCA cannot preempt state GHG emissions standards adopted pursuant to a Clean Air Act Section 209(b) waiver. *See Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d. 295 (D. Vt. 2007) (*Green Mountain*); *Central Valley Chrysler-Jeep, Inc. v. Goldstene*, 529 F. Supp. 2d 1151 (E.D. Cal. 2007) (*Central Valley Chrysler-Jeep*).

Critically, Congress also chose to add to the chorus of voices contravening the finding of the 2006 Rule and instead reiterating that state vehicle GHG emission and ZEV standards are not preempted by EPCA. On December 19, 2007, Congress passed the Energy Independence and Security Act, which added a savings clause to EPCA:

> Except to the extent expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation), including any energy or environmental law or regulation.

Pub. L. No. 110-140, § 3, 121 Stat. 1492, 1498 (2007); 42 U.S.C. § 17002. Where Congress enacts a savings clause, courts must assume there is some significant amount of conduct it saves. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 868 (2000). Here, the savings clause reaffirms Congress' intent, as codified in EPCA, for fuel economy mandates to sit alongside, rather than supplant, environmental protections, including state and federal authority to regulate vehicle greenhouse gas emissions under the CAA. During debate over EISA on the Senate floor, Senator Dianne Feinstein explained that EPA authority to regulate greenhouse gases was "in no way affected by" EISA. 153 Cong. Rec. 15,386 (2007). Then-Representative Edward Markey made similar statements on the House floor at the time.[6]

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[5] See H.R. Rep. No. 103-180, at 1 (1993); S. Rep. No. 103-265, at 1 (1994); *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 346 (D. Vt. 2007).

[6] Then-Representative Markey explained that "[t]he laws and regulations referred to in section 3 include, but are not limited to, the [CAA] and any regulations promulgated under [CAA] authority. It is the intent of Congress to fully preserve existing federal and State authority under the [CAA]." 153 Cong. Rec. 16,750 (2007) (emphasis added).

Congress is presumed to understand existing law, including judicial decisions, at the time it legislates. *See Mississippi ex rel. Hood v. AU Optronics Corp*., 571 U.S. 161, 169 (2014) (quoting *Hall v. United States*, 566 U.S. 506, 516 (2012)). Since *Massachusetts v. EPA* (decided April 2007), *Green Mountain* (decided September 2007) and *Central Valley* (decided December 2007) were all decided prior to the enactment of EISA, Congress' amendment to EPCA to insert a savings clause must be read to ratify them.

Beyond this presumption, however, the record affirmatively shows that Congress was aware of the Court's interpretation of EPCA's preemptive scope. Representative Henry Waxman explained that the proposal "won't diminish the EPA's authority to address global warming, which the Supreme Court has recognized [in *Massachusetts v. EPA*]. It won't seize authority from the States to act on global warming." 153 Cong. Rec. 14,430 (2007). Crucially, proposals *were* introduced to EISA requiring EPA's greenhouse gas standards to be consistent with fuel economy standards; however, such proposals were rejected[7], showing that Congress meant and understood the balance of power to require that EPCA would cede in any potential conflict with vehicle emission standards.

Subsequent evidence from the members of Congress involved in the drafting, debate, and ultimate passage of EISA confirms this intent. In a 2018 letter, Senators Feinstein, Carper, and Markey all confirmed that Congress both rejected proposals that would allow EPCA to preempt Section 209(b) waivers under the Clean Air Act, and that members of Congress and the Bush Administration understood EISA's savings clause to preserve the supremacy of 209(b) jurisdictions to set their own emissions standards.[8]

The 2019 Rule's preamble simply declared this statutory and legislative history irrelevant. SAFE Vehicles Rule Part One: One National Program, 84 Fed. Reg. at 51,321. But that conclusion contradicts Congressional intent, *Geier v. Honda*, and the savings clause on its face. NHTSA lacks authority to directly contravene the purpose of Congress; the agency has rightly recognized in the Proposed Rule that repeal of the 2019 Rule is appropriate given its clear deviation from Congress' intent not to preempt state or federal vehicle GHG emission standards.

B. NHTSA Lacked Express or Ancillary Authority to Adopt the 2019 Rule

While NHTSA's disregard of Congressional intent in adopting the 2019 Rule would alone support that rule's repeal, the Proposed Rule's approach is all the more appropriate given NHTSA's uncertain statutory authority to adopt a preemption rule. NHTSA correctly recognized that agencies do not "possess plenary authority"; just because an agency is empowered in a specific circumstance does not mean it is empowered in similar circumstances. Proposed Rule, 86 Fed. Reg. 25,980, 25,986, quoting

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[7] *See* Dotson Article at 57.

[8] Senators Tom Carper, Dianne Feinstein, & Edward J. Markey, *Letter to Secretary Chao & Acting Administrator Wheeler*, OFFICE OF SENATOR TOM CARPER (October 25, 2018), available at https://www.carper.senate.gov/public/_cache/files/7/6/76d590f1-6fa6-4220-acf6-3dafa2f3cc87/31AB5C61718D2BCBF79C387F1C430B0C.ghg-tailpipe-standards.pdf.

Ry. Lab. Executives' Ass'n v. Nat'l Mediation Bd., 29 F.3d 655, 670 (D.C. Cir.), amended, 38 F.3d 1224 (D.C. Cir. 1994). We offer here some additional thoughts to support and augment the legal authority cited in the Proposed Rule.

While it may be possible that NHTSA could, under certain circumstances, retain authority to adopt a formal preemption determination consistent with Congressional intent, the 2019 Rule's broad, explicit preemption of state vehicle GHG emission and ZEV standards exceeded NHTSA's authority under the power conferred to it by EPCA. "Agencies may act only when and how Congress lets them." *Cent. United Life Ins. Co. v. Burwell*, 827 F.3d 70, 73 (D.C. Cir. 2016); *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 618 (D.C. Cir. 1976) ("Even the allowance of a wide latitude in the exercise of delegated powers is not untrammeled freedom to regulate activities over which the statute fails to confer…authority").

An agency may possess express regulatory authority and/or ancillary regulatory authority to act; NHTSA lacked either when it issued the 2019 Rule. *Comcast Corp. v. F.C.C.*, 600 F.3d 642, 645 (D.C. Cir. 2010) (finding that the FCC had express authority to regulate landline telephones, radio transmissions, etc., while it was given ancillary authority to "perform any and all acts…as may be necessary for the execution of its functions"). Ancillary authority is generally insufficient to find that Congress meant to delegate a specific power to an agency. *Merck & Co. v. HHS*, 385 F. Supp. 3d 81, 92 (D.D.C. 2019), aff'd, 962 F.3d 531 (D.C. Cir. 2020) ("[a]n agency's general rulemaking authority plus statutory silence does not...equal congressional authorization"). And agencies cannot "pronounce on pre-emption absent delegation by Congress." *Wyeth v. Levine*, 555 U.S. at 577.

NHTSA, as an arm of the Department of Transportation, exercises "the authority vested in the Secretary under" EPCA's fuel-economy chapter. 49 C.F.R. § 1.95(a). The fuel economy chapter, for its part, merely gives the Secretary power to "prescribe by regulation average fuel economy standards." 49 U.S.C. §32901(b)(3). NHTSA's explicit power to implement EPCA ends there, and thus does not provide an express basis under which NHTSA may pronounce upon preemption. NHTSA also lacked the ancillary authority to adopt the 2019 Rule. Regulations are a proper exercise of ancillary agency power where they are "reasonably ancillary to the effective performance of" an agency's responsibilities. *Comcast*, 600 F.3d at 650 (finding that a statute giving the FCC power to "perform any and all acts, make such rules and regulations, and issue such orders…as may be necessary in the execution of its functions did not, without more, give the FCC sufficient power to preempt state cable TV regulation). Here, Congress vested in the Secretary only the authority to "prescribe regulations to *carry out* the duties and powers" that chapter assigns them. 49 U.S.C. § 322(a) (emphasis added). A limited delegation to simply "carry out" duties and powers does not authorize NHTSA to issue regulations preempting state vehicle GHG emission and ZEV standards in contravention of Congressional intent. *See Gonzales v. Oregon*, 546 U.S. 243 264-65 (2006) (delegation for the "execution" of agency functions could not be construed as "further delegation to define other functions well beyond the statute's specific grants of authority.").[9] Nor does NHTSA need to issue regulations to

[9] Furthermore, NHTSA's claim that the 2019 Rule was a codification of "NHTSA's longstanding position on EPCA preemption over the course of nearly two decades," beyond being factually incorrect, has no bearing on whether NHTSA

give EPCA's preemption provision effect: As NHTSA has recognized, both in the 2019 Rule and in the Proposed Rule, the preemption provision in 49 U.S.C. §32919 is "self-executing."[10]

NHTSA's proposed repeal of the 2019 Rule, then, comports with legal precedent on the scope of agency authority and fulfills NHTSA's duty to repeal a rule it no longer believes is authorized.[11]

II. Repeal of the 2019 Rule is Appropriate Because the 2019 Rule Flouted Bedrock Administrative Procedure Principles

Lastly, we support NHTSA's decision to repeal the 2019 Rule because that rule failed to conform to basic requirements of administrative procedure.

Administrative process deficiencies like the ones apparent in the 2019 Rule leave agency regulations legally vulnerable. *See United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). Regulations are procedurally deficient if they fail to examine the relevant data and articulate a satisfactory explanation for agency action, if the agency's explanation runs counter to the evidence before the agency, or when the agency fails to consider an important aspect of the problem. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Regulations also fail to comport with administrative procedure requirements when, in deviating from past policy, they fail to acknowledge and grapple with the fact that "longstanding policies may have engendered serious reliance interests that have to be taken into account." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (finding that changing a decades-long agency policy required "reasoned explanation" and that a few, cursory reasons for a change were insufficient as a matter of law). The 2019 Rule is deficient in all these ways and, accordingly, repeal is warranted.

First, NHTSA failed to consider the evidence before it—and an important aspect of the regulatory landscape—when it acted to preempt state ZEV mandates in a manner inconsistent with the letter of EPCA. Although NHTSA has recognized that it is barred by statute from considering alternative fuel vehicles as it determines fleet "fuel economy," the agency made no attempt to reconcile this

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had the authority to issue the Rule in first instance. "An agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate." *Fed. Mar. Comm'n v. Seatrain Lines, Inc*., 411 U.S. 726, 745 (1973). The authority to overstep NHTSA's statutory mandate does not exist simply because NHTSA may have overstepped its statutory mandate in the past.

[10] SAFE Vehicles Rule Part One: One National Program, 84 Fed. Reg. at 513125. To the extent NHTSA believes a statement confirming EPCA's lack of preemptive effect on state vehicle GHG emission and ZEV standards would be useful and appropriate, it could issue interpretive guidance to that effect. However, we do not believe that such guidance—or a more formal preemption determination along those lines—is necessary in light of the self-executing nature of EPCA's preemption language, the statutory and legislative history of EPCA and its amendments, and legal precedent regarding EPCA's relationship to state and federal fuel economy standards. NHTSA could also simply elect to proceed consistent with Congress' intent in setting future fuel economy standards, recognizing that NHTSA's authority to set such standards in no way impedes state-level vehicle GHG emission or ZEV standards that have been granted a waiver pursuant to Section 209(b) of the Clean Air Act.

[11] *EME Homer City Generation, L.P. v. E.P.A.*, 795 F.3d 118, 134 (D.C. Cir. 2015); CAFE Preemption, 86 Fed. Reg. at fn 8.

prohibition with its determination that it had the authority to preempt state ZEV mandates. Instead, NHTSA stated that "[a]lmost all technologically feasible reduction of tailpipe emissions of carbon dioxide is achievable through improving fuel economy" without considering that the introduction of alternative fuel vehicles may reduce emissions of carbon dioxide and concluded, without analysis, that it is "not dispositive" that state-level ZEV mandates include no mention of fuel economy—a term which by definition excludes alternative fuel vehicles. Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310, 51,315. These unsupported and conclusory determinations do not meet administrative procedure requirements. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43.

Second, NHTSA's analysis of EPCA's preemption provision in the 2019 Rule was perfunctory, failing to adequately explain the basis for its conclusion that state vehicle GHG emission and ZEV standards "relate to" fuel economy. In the 2019 Rule, NHTSA did little more than cite to *Morales v. Transworld Airlines, Inc.* to argue that "related to" should be construed broadly. *Morales v. Transworld Airlines, Inc.* 504 U.S. 374, 383-84 (1992); Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986, 43,233. Failing to meaningfully engage with existing federal court precedent that interprets the scope of EPCA preemption in the context of state vehicle GHG emission standards, the 2019 Rule simply said, without more, that NHTSA "disagreed" with the analysis offered in *Green Mountain* and *Central Valley*. SAFE Vehicles Rule Part One: One National Program, 84 Fed. Reg. at 51,314. Again, this thin assessment does not meet the bar for adequate administrative process.

Finally, the 2019 Rule failed to recognize or analyze the substantial reliance interests that were impacted by upsetting a longstanding interpretation of the relationship between EPCA and state-level vehicle GHG emission and ZEV standards. State agencies like the California Air Resources Board, as well as automakers themselves, explained that they had significant reliance interests in a rule that continued to recognize California's authority to regulate vehicle GHG emissions and set a ZEV mandate.[12] The 2019 Rule dispensed with these concerns by simply finding that they were invalid or "not relevant." SAFE Vehicles Rule Part One: One National Program, 84 Fed. Reg. at 51,327. But categorical determinations that state government and industry reliance interests are inapposite or irrelevant do not satisfy the requirement that NHTSA provide a "reasoned explanation" for its policy change. *Encino Motorcars, LLC*, 136 S. Ct. at 2126. NHTSA is right to repeal a rule which so destabilized government and industry reliance interests without adequate explanation.

III. Conclusion

In sum, the 2019 Rule contravened Congress' intent in enacting EPCA and its subsequent amendments (as evidenced by both legislative history and the statute itself), relied on dubious legal authority to adopt a preemption determination, and failed to adhere to bedrock principles of administrative procedure. Given the short time the 2019 Rule was in effect, repeal is the best way to restore the

[12] *See, e.g.*, Letter from General Motors, et al., to President Donald J. Trump, DETROIT FREE PRESS (June 6, 2019), http://media.freep.com/uploads/digital/Trump-GHG-CAFE-Letter-June-6-2019.pdf

regulatory certainty both government and industry[13] seek in the wake of confusion created by that rule. We thus support the Proposed Rule's repeal of the 2019 Rule in its entirety.

Sincerely,[14]

Julia E. Stein
Project Director, Emmett Institute on Climate Change & the Environment
Clinical Supervising Attorney, Frank G. Wells Environmental Law Clinic
UCLA School of Law

William Boyd
Professor of Law
Michael J. Klein Chair in Law
UCLA School of Law

Charles R. Corbett
Emmett Climate Engineering Fellow in Environmental Law & Policy, Emmett Institute on Climate Change & the Environment
UCLA School of Law

Benjamin A. Harris
Shapiro Fellow in Environmental Law & Policy, Emmett Institute on Climate Change & the Environment
UCLA School of Law

Sean B. Hecht
Co-Executive Director, Emmett Institute on Climate Change & the Environment
Evan Frankel Professor of Policy and Practice
Co-Director, Frank G. Wells Environmental Law Clinic
UCLA School of Law

[13] Comments of Ford Motor Company on Docket NHTSA-2021-0030-0002 (Apr. 28, 2021), available at https://www.regulations.gov/comment/NHTSA-2021-0030-0002 ("We support California's authority to regulate under their [CAA Section 209(b)] waiver…")

[14] All of the following are signatories in their personal capacity only. Institutional affiliations are included solely for identification purposes.

Cara A. Horowitz
Andrew Sabin Family Foundation Co-Executive Director, Emmett Institute on Climate Change & the Environment
Co-Director, Frank G. Wells Environmental Law Clinic
UCLA School of Law

Beth Kent
Emmett/Frankel Fellow in Environmental Law & Policy, Emmett Institute on Climate Change & the Environment
UCLA School of Law

Edward A. Parson
Dan and Rae Emmett Professor of Environmental Law
Faculty Co-Director, Emmett Institute on Climate Change & the Environment
UCLA School of Law

Alex Wang
Professor of Law
UCLA School of Law

Jonathan Zasloff
Professor of Law
UCLA School of Law