

# Auto Industry Claims in Lawsuit Seeking to Overturn California's Historic Global Warming Regulation

## Clean Air Act

Auto Industry Claim: *EPA has determined that Congress did not authorize EPA to regulate CO2 or any other greenhouse gas under Section 202(a) of the Clean Air Act, and this "precludes" EPA granting the required "waiver of preemption" for these regulations under Section 209(b).*

RESPONSE: EPA has made this determination, and we have no doubt that EPA would use it as a basis for refusing to grant the waiver.

However, EPA's decision is clearly wrong, and this issue is now before the U.S. Court of Appeals for the DC Circuit. Section 202(a)(1) of the Clean Air Act requires EPA to regulate any pollutant "which may reasonably be anticipated to endanger public health or welfare," and in Section 302(h), Congress explicitly defined "welfare" to include "effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate." Given this rather plain language (which EPA has completely ignored) we are confident that the court will rule that both EPA and California have Clean Air Act authority to regulate greenhouse gases.

## Corporate Average Fuel Economy (CAFE)

Auto Industry Claim: *California's vehicle global warming regulations are preempted by the federal CAFE fuel economy standards in two ways. First, the regulations are expressly preempted because they are "related to" fuel economy. Second, the regulations are "inconsistent" with the National Highway Traffic Safety Administration's (NHTSA) determination of the "maximum feasible" CAFE standard, and thus would "frustrate the accomplishment of federal objectives."*

### RESPONSE:

1. Because Congress already had given California the authority to set its own air pollution standards for auto emissions, the CAFE statute explicitly requires that NHTSA take California's auto emission standards into account when setting CAFE standards. Thus Congress recognized and accepted that California emission standards -- such as the global warming regulations -- could have an effect on fuel economy.

2. Because the CAFE standards are actually only "minimum" standards, federal objectives would be "frustrated" only if the automakers were unable to comply with CAFE as a result of the global warming regulations. However, even the automakers admit that by complying with the global warming standards they would exceed the minimum CAFE standards.

## **The Commerce Clause**

Auto Industry Claim: *Because the global warming regulation (a) increases the retail price of cars, and (b) provides no environmental benefit, these regulations violate the Commerce Clause of the Constitution by "excessively burdening" interstate commerce.*

RESPONSE: 1. The costs imposed are not "excessive"; in fact, these cars will result in savings to consumers over the life of the vehicle. 2. There are significant environmental benefits resulting from implementation of these regulations. Thus this argument doesn't hold water.

## **Sherman Act**

Auto Industry Claim: *The global warming regulations violate federal antitrust law because they provide that "where one automaker owns 10% or more of the shares of another, the two companies may only meet their GHG obligations by coordinating key strategic decisions."*

RESPONSE: This is a totally frivolous argument; the automakers have put forward no evidence or legal analysis that such "coordination" violates the Sherman Act.

## **Federal Foreign Policy**

Auto Industry Claim: *The global warming regulations are preempted by the Constitution's "foreign affairs power" because CARB's "unilateral efforts" would "frustrate established foreign policy."*

RESPONSE: There is no "established foreign policy" that says states cannot take action to curb global warming pollution within their borders. In fact, several states have taken actions to reduce global warming pollution, including imposing limits on emissions from power plants, and no such claims have been filed in those instances, let alone upheld. Further, we do not believe that the auto industry has "standing" to allege an injury to President's Constitutional powers.