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HEARING ON STATES' ROLE IN PROTECTING AIR QUALITY: PRINCIPLES OF
COOPERATIVE FEDERALISM

Tuesday, March 5, 2019

United States Senate

Subcommittee on Clean Air and Nuclear Safety

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:07 a.m. in room 406, Dirksen Senate Office Building, the Honorable Mike Braun [chairman of the subcommittee] presiding.

Present: Senators Braun, Whitehouse, Cramer, Rounds, Sullivan, Boozman, Ernst, Cardin, Booker, and Markey.

Also Present: Senators Barrasso and Carper.

Senator Braun. Thanks to everyone for being here today. This hearing of the Clean Air and Nuclear Safety Subcommittee is called to order.

First, I am going to turn to Senator Barrasso to make a few comments.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Thank you very much, Mr. Chairman.

Before we begin, I just want to take a moment to congratulate Senator Braun on holding his first hearing as the Chairman of the Clean Air and Nuclear Safety Subcommittee. He just joined the Senate a few months ago and he has already established himself as a leader.

Senator Braun, I know you share my commitment to pursue innovative, practical solutions to improve the air that we breathe, while allowing for our economy to grow, so I look forward to supporting your work and the work this Subcommittee will accomplish with you at the helm.

Today's hearing addresses a critical subject: States and Washington working together to protect our environment.

When I go back to my home State of Wyoming, I hear about the improved relationship that regulators and businesses have with the Environmental Protection Agency since President Trump has taken office.

So, Chairman Braun, thank you for holding this important meeting. Thank you.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE MIKE BRAUN, A UNITED STATES SENATOR
FROM THE STATE OF INDIANA

Senator Braun. You are welcome.

I will begin by recognizing myself for a brief opening statement before turning the floor over to Ranking Member Whitehouse for five minutes, then we will hear from our panel of experts.

I come to this Subcommittee not just as a conservationist and an advocate for protecting our natural resources, but as someone who knows how important clean air is from firsthand experience from being a farmer and an outdoorsman. Way back in my hometown of Jasper, Indiana, when I was 16 years old, I took slides of our factories spewing out coal dust into our community, so my interest in this is deep roots.

Respecting and preserving our rich natural resources has been a priority of mine since I was young; even started the ecology club back in high school. Excited to be able to work with my colleagues on this Subcommittee and with the Trump Administration to protect our environment in an economically responsible way.

The purpose of this hearing is to hear your experiences implementing the concept of cooperative federalism under the Clean Air Act in hopes of providing this Subcommittee and the public at large with a greater understanding of the

opportunities and challenges facing States as they engage with the EPA to implement Clean Air Act regulations.

On a subject not with air, but two or three weeks ago, when it came to waters, waters of the U.S., I had three different farmers ask me about how they navigate through the web of regulations in the simple process of managing their ditches. They were confused by the intertwining of what they think is there and how it is even being implemented at the State level.

Despite what some stories might suggest, we have seen tremendous air quality improvements in the U.S. since Congress passed the Clean Air of 1970. At the same time, our economy has grown. U.S. GDP has grown 324 percent since 1970, while emissions of major air pollutants have dropped precipitously. Over that same time frame, emissions of six common pollutants -- lead, ozone, particles, carbon monoxide, nitrogen dioxide, and sulfur dioxide -- have fallen 73 percent.

For much of the history of the CAA, this was achieved through rulemaking, where input from industry, the States, and the Federal Government was carefully considered to reach attainable targets.

Despite these successes, the previous administration eroded this doctrine, creating inefficiencies and waste at both the Federal and State levels. The Obama EPA mandated CAA regulations with minimal collaboration with the States. The

regulations also ignored and exaggerated the feasibility of commercially available control technologies.

This led to a lack of regulatory coordination between States and the EPA and some jurisdictional lawsuits resulting. Most notably, 26 States went to the Supreme Court and asked for relief from the Clean Power Plan, citing EPA's lack of authority to issue that rule. In an unprecedented rule, the Court granted the States' request and stayed the rule.

The Trump Administration and the new EPA Administrator, Andrew Wheeler, have recognized the need to reconsider controversial rules that have went way beyond their original intended authority. This Administration is committed to listening to the concerns of the States.

Our expert witnesses today are State air officials who can bring an on-the-ground perspective as to how the decrease in Federal litigation tying up State resources has affected their important work. North Dakota, in an example that we will hear about today, has saved half a million dollars in litigation annually and can, instead, redirect that money towards environmental protection.

My regulatory philosophy is that government works best at the local level. I have believed that my entire life. I think, if there is regulation needed, it is best to implement it when you are closest to the people, where those being governed have

skin in the game; and I applaud Administrator Wheeler's efforts to implement the law as intended by Congress, ensuring that those who make regulatory decisions are members of the communities that will live under those regulations.

I look forward to hearing from our panel of expert witnesses today and again would like to emphasize my passion for this critical issue.

Now I would like to recognize Ranking Member Senator Whitehouse for his opening statement.

[The prepared statement of Senator Braun follows:]

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES
SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. Thank you, Mr. Chairman, and congratulations on your maiden hearing as Chair.

Almost 11 months ago, this Subcommittee held a hearing on the same subject that brings us here today, cooperative so-called federalism. At that hearing, we heard powerful testimony from the lead environmental officials in California and Delaware who described the damage that rising seas driven by carbon pollution are causing in their States. The witnesses from Delaware also described the struggle of reducing air pollution when much of it blows in from power plants in upwind States.

I lamented that then Environmental Protection Agency Administrator Scott Pruitt's governing philosophy wasn't so much cooperative federalism as it was cooperative corporatism, serving the interests of industry.

So here we sit, 11 months later, back to take testimony on the same subject. It occurs to me to wonder what the point is to these hearings.

What has EPA done with respect to air pollution since our last hearing, held on April 10, 2018?

Well, April 13, three days after the last hearing on this subject, EPA issued a final notice denying a petition filed by Connecticut under the Clean Air Act asking EPA to make a

determination that emissions from a Pennsylvania power plant were responsible for its inability to meet air quality standards.

So much for EPA concern about the problem of cross-State air pollution.

On August 2nd, EPA and the National Highway Traffic Safety Administration announced a proposal to freeze greenhouse gas emission and corporate average fuel economy standards for cars and light trucks. This proposal would result in additional carbon pollution of almost 900 million metric tons for model years 2021 through 2025. That is the equivalent of adding almost 200 million cars to the road for one year and represents almost 20 percent of U.S. total carbon emissions in 2018.

Who at EPA was paying attention when California and Delaware discussed what carbon pollution is doing to coastal States?

On August 21st, EPA announced a proposal to replace the Clean Power Plan. This proposal would result in additional carbon pollution of between 20 and 61 million short tons per year over the period 2025 to 2035, the equivalent of adding between 4 and 12 million cars to the road.

Again, was anyone at EPA paying any attention when California and Delaware discussed what carbon pollution is doing to coastal States?

On September 11th, EPA announced a proposed rule to weaken monitoring and repair rules for methane leaks at oil and gas facilities. This proposal would result in additional carbon pollution of 380,000 short tons of methane over the period 2019 to 2025 and would create downwind air pollution problems, the equivalent of adding almost 2 million cars to the road for one year.

Again, was anyone at EPA paying the slightest attention to those States in our last hearing on this subject?

On October 5th, EPA denied four petitions by Delaware and one by Maryland asking it to make a final determination that out-of-State power plants were responsible for their inability to meet air quality standards.

On December 6th, after all the work members of this Committee have done to encourage carbon capture technologies, EPA proposed eliminating carbon capture and storage technology as the best system of emission reduction for new and modified coal-fired power plants.

On December 27th, EPA proposed eliminating the legal justification for rules limiting the emissions of mercury and other hazardous air pollutants that Rhode Islanders must live with.

On February 21st, 2019, the Trump Administration announced that it would end negotiations with California over the auto

rule.

In short, EPA completely ignored our last hearing on this subject.

What else since April 10th? Well, there is the ever-growing mountain of evidence of EPA's cooperative corporatism. Former EPA Administrator Scott Pruitt's litany of scandals, many of them related to improper relationships with the fossil fuel industry he was supposed to be regulating, became so long that he was finally forced to resign. After his resignation, he was given a job by a coal baron. The revolving door spins.

Meanwhile, who did we confirm to replace Pruitt? Through the revolving door came former coal lobbyist Andrew Wheeler. We shrugged off the fact that the U.S. Chamber of Commerce, the National Association of Manufacturers, and two shadowy fossil fuel industry front groups, the Utility Air Regulatory Group and the American Council for Clean Coal Electricity, got essentially exactly their proposal to replace the Clean Power Plan. And guess what? Bill Wehrum, the head of EPA's Air Office, who was responsible for this proposal, used to have the Utility Air Regulatory Group as his client. The revolving door just keeps spinning.

We turned a blind eye to Marathon Petroleum's role undoing greenhouse gas emission and fuel economy standards for automobiles. Various front groups that received a minimum, a

minimum of \$196 million from fossil fuel industry interests all lobbied to roll back the standards, as did Valero, Endeavor, Koch Companies, and the American Fuel and Petrochemical Manufacturers.

So, forget federalism at EPA. It has become evermore apparent that the Trump EPA has zero intention of listening to the States and every intention of kowtowing to the fossil fuel industry.

What we ought to be holding hearings on is the capture of EPA by the industry it is supposed to regulate but instead has been turned into its toy and play thing.

Thank you, Mr. Chairman.

[The prepared statement of Senator Whitehouse follows:]

Senator Braun. You are welcome.

As you can see from the opening statements, we are going to have a robust conservation here today. That is good.

We will now hear from our witnesses: Dave Glatt, Chief of the Environmental Health Section, North Dakota Department of Health; Becky Keogh, Director, Arkansas Department of Environmental Quality; Craig Segall, Assistant Chief Counsel, California Air Resources Board.

I am very pleased that two of our witnesses today have representatives from States here on our own Subcommittee. I will start with Senator Cramer to introduce our witness from North Dakota, and then, after that is done, Senator Boozman will introduce our guest from Arkansas.

Senator Cramer.

Senator Cramer. Thank you, Mr. Chairman.

And thank you to all the witnesses for being here, and thanks for inviting Dave to testify today.

Dave, I think North Dakota has an exceptional story to tell regarding the subject of today's hearing, and I am looking forward to your testimony.

I really can't think of anybody better prepared than Dave to testify on this topic. Dave is a native North Dakotan. He received both his Bachelor's Degree in Biology and his Master's Degree in Environmental Engineering from North Dakota State

University, famous for lots of things, not the least of which is seven out of the last eight national football championships; and we celebrated that yesterday with the President in the White House, so it was a great day. So, thanks for being here, Dave.

But Dave spent 35 years to this point, I think, at least, at the North Dakota Department of Health. He has been the Chief of the Environmental Health Section for the Department for the last 16 years. Over the course of 35 years, obviously, he has worked with lots of administrations of different political stripes, different relationships, different philosophies, and all the while Dave, I can assure you, has had North Dakota's air, water, land resources at the heart of every part of his job, and we have seen that.

When I was a regulator in North Dakota on the Public Service Commission, we always had great confidence that Dave was going to look out for the air that we all breathe because he was looking out for the air that he breathes.

So, with that perspective, Dave, thank you for being here. We look forward to your testimony.

Thank you, Mr. Chairman.

Senator Braun. Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman. I want to give a special thanks to Becky Keogh of Little Rock, Arkansas for being here today to testify. Becky has an impressive job

history which has made her uniquely qualified at this hearing to testify.

Becky served as the Director of the Arkansas Department of Environmental Quality, or ADEQ, since 2015. Prior to her role as Director, Mrs. Keogh served as Deputy Director of ADEQ from 1996 to 2006. She was subsequently appointed to serve on the Arkansas Geological Commission from 2006 to 2009.

Becky is currently the President of the Environmental Council of the United States, which we are very proud of. An Arkansas native, Director Keogh has a degree in chemical engineering from our mutual alma mater, the University of Arkansas. We can't brag that we are doing very well in football right now, but we are rebuilding.

As an Arkansas native, we really do appreciate all that she has done and appreciate her being here today and really look forward to your testimony. Thanks for all your hard work in so many different areas for the people of Arkansas.

Senator Braun. Thank you, Senator Boozman.

Finally, Craig Segall is the Assistant Chief Counsel at the California Air Resources Board, where he is responsible for litigation and implementation of many of the Board's climate and clean air programs. Previously, he was a staff attorney at the Sierra Club, where he litigated many of the issues we will discuss today.

Mr. Segall is also a former law clerk of the Honorable Marsha Berzon of the U.S. Court of Appeals for the Ninth Circuit. He is a graduate of the University of Chicago and of the Stanford Law School. Thank you for being here today.

I want to remind the witnesses that your full written testimony will be made part of the official hearing record. Please keep your statements to five minutes so that we may have time for plenty of questions.

Look forward to hearing your testimony, and we will begin with Mr. Glatt.

STATEMENT OF DAVE GLATT, CHIEF OF THE ENVIRONMENTAL HEALTH
SECTION, NORTH DAKOTA DEPARTMENT OF HEALTH

Mr. Glatt. Well, thank you, Chairman Braun, Ranking Member Whitehouse, and members of the Committee. Thank you for giving me this opportunity to testify in front of you this morning.

My name is Dave Glatt. I am a registered professional engineer, Environmental Health Section Chief for the North Dakota Department of Health. We are North Dakota's primary environmental protection agency, responsible for implementation of many of the U.S. EPA federally delegated programs such as the Clean Air Act.

As background, North Dakota is a mostly rural agricultural State which leads the Nation in the production of many agricultural crops. In addition, we are second in the Nation for oil production and we are a net energy exporter distributing energy throughout the region following an all-of-the-above philosophy. Utilizing abundant coal, oil, natural gas, and renewable resources, the State is routinely recognized for its great air quality, high environmental program compliance, and overall quality of life.

I am here today to briefly discuss my observations after 35 years working with the Department of the Federal and State working relationship. At times it is referred to as a relationship founded in cooperative federalism doctrine where,

in principle, the Federal Government works with States as equal partners in the pursuit of environmental and public health protection.

Under this doctrine, the Federal Government sets the standards to provide national consistency and the States are tasked with the implementation of these standards with Federal oversight.

Due to the diverse nature of the Nation where climate, geology, topography, population, cultural, and political elements vary widely, it is critically important that States take a lead role in the implementation of environmental programs. In fact, this doctrine has matured over the years to where States are directly responsible for over 90 percent of program implementation and enforcement activities.

Where States are the primary implementers of programs, innovative and cost-effective approaches to environmental protection are the rule and not the exception. We live in the communities we regulate, where transparency, responsiveness, accessibility, and accountability are not just buzz words, but expectations of the public we serve.

Working at the State agency in various capacities, I have observed the following:

Where cooperative federalism is embraced by both EPA and the States with respect to air quality, the result is relevant,

lasting, and cost-effective environmental protection solutions. In our State, under this doctrine, Superfund sites have been cost-effectively closed in a timely manner; use of compliance assistance technologies such as optical gas imaging cameras were introduced for use in oil fields; and EPA acknowledged and adopted a State-developed minor source air permitting program for oil wells that enhanced EPA's regulatory presence on Tribal lands. Where cooperative federalism flourishes, relevant and meaningful environmental public health protection follows.

Since the establishment of EPA, States have consistently and methodically increased their technical expertise and competency to the point where they are at par or exceed the Federal Government in many areas of environmental protection. The States excel in areas where they follow good science and the law, and their technical expertise is applied to State-specific environmental conditions or industrial operations.

States' direct involvement with environmental challenges has also identified certain areas where their expertise may be limited, and in these areas Federal input is appreciated and needed, such as in the establishment of national ambient air or drinking water standards.

Federal regulatory overreach that does not follow a cooperative federalism doctrine or ignores State-specific concerns has resulted in legal challenges and considerable

expenditures of State dollars. Where EPA has not taken the time to listen to State-specific challenges and has, instead, created numerous, sometimes onerous, regulations while treating States as a singular entity has resulted in less cooperation and more litigation.

During the past administration, North Dakota expended over \$700,000 challenging Federal environmental regulations such as the Clean Power Plan that did not account for the specific nature of the environment or industry, or the direct and indirect impact on the citizens of the State. The State viewed these regulations as an arbitrary Federal regulatory overreach with little or no environmental benefit.

Our expenditures spent on litigation in the current Administration is a little over \$100,000, which has been primarily expended to address the actions from the previous administration. In the current working relationship with our Federal partners, there has been more listening and cooperation than prescriptive directives. We generally feel that excessive funds spent on litigation would be better spent on environmental compliance and improvement actions.

It is important to note that the environmental quality remains at high levels and compliance rates have not decreased in the State with the more open, flexible, and cooperative approach with this Administration.

States are the constant in any administration change. Each new administration typically starts out declaring a new day and a new way of environmental protection. It has been my experience when the Federal partner has outlined a new approach to environmental regulation, they believe it will be improvement from previous actions.

However, these declarations seem to discount the actions by the States and the unique, necessary role they play in meaningful environmental protection. It has been my experience that the Federal regulatory pendulum can swing widely from administration to administration, while the State regulatory pendulum moves less radically. Although States do not agree on every issue, the foundation of all State-level action has historically been accessible, accountable environmental and public health protection.

Lastly, the right of States to implement desired environmental protection and controls must be applied judicially with great responsibility and caution. A State's quest to improve "in State" environmental challenges should not negatively impact sovereign State jurisdictions outside its borders. Negative regulatory impacts can include additional cost to an adjoining State with no perceived or actual benefit. We have experience with issues such as this as it related to energy production and how an adjoining State attempted to direct

development and industry standards in North Dakota.

This concludes my testimony. I will stand for any questions at the appropriate time, Mr. Chairman.

[The prepared statement of Mr. Glatt follows:]

Senator Braun. Thank you, Mr. Glatt.

Dr. Keogh.

STATEMENT OF BECKY KEOGH, DIRECTOR, ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

Ms. Keogh. Chairman Braun and Ranking Member Whitehouse and Subcommittee members, I am Becky Keogh. I am the Director of the Arkansas Department of Environmental Quality, and it is my great honor to appear before this Committee. I bring greetings from Governor Asa Hutchinson and the rest of our great natural State, and a warm hello to you from home, Senator Boozman.

Only three years ago I was here seeking this body's assistance in improving the relationship between the Federal Government and the States. While cooperative federalism called for States to be partners with the EPA, functionally, States were more pawn than partner. Not only were States excluded from environmental policy solutions, we weren't even part of the equation.

I am here once again representing Arkansas, and much has changed. In addition to my Arkansas duties, I now serve as the President of the Environmental Council of States. Since my first testimony, States have gone from asking for a seat at the table to a discussion of what happens when we arrive. We States are now advocating for a standard operating procedure of shared decision-making, shared protection, shared problem solving, and shared programmatic development between States and EPA.

When federalism is at its purest, it is also at its rawist. State regulatory agencies and EPA are required to simultaneously regulate from the position of sovereign and subordinate, and that is compounded by the dynamic and unpredictable subject matter of which we are asked to regulate. Often, our most challenging days are ones that cannot be imagined just the day before.

Protecting and preserving the environment requires that we environmental regulators stand at the ready to respond to edicts such as acts of Congress and natural disasters. Our challenges are at the same time unique to our locality, but yet universal to our larger national community, and each answer is both a part and a whole. Each of our voices is essential to effective management of our Nation's air, land, water, and wildlife.

In order to understand and navigate the future relationship with EPA, we must have an understanding of the past, and, Mr. Chairman, I understand that you have experience in a successful logistics company, and I am sure, working extensively with vehicles, you have noticed the size of the windshield in relationship to the rearview mirror. There is a reason the windshield is larger than the rearview mirror. Certainly, the future is bigger than the past, but the rearview mirror serves an undeniable purpose. In order to understand where we are going, we must first understand where we have been.

Missteps of the past have a way of catching up to us after we have long since passed them by and, just like a rearview mirror, these objects may be closer than they appear. However, by looking through the windshield we can see a path to innovation and exploration, and the path forward should be paved with greater responsibility and flexibility at the State level.

The argument for decentralization is not an argument for eliminating the Federal role in environmental protection. Rather, it is an argument for redefining the Federal-State balance. States today bear little resemblance to States in the 1960s, and our role in environmental protection has fundamentally changed. We have been transformed by growth of professional staffs, vigorous two-party systems, use of referenda and initiatives to make policy, procedural requirements that assure greater public participation in decisions. Many aspects of environmental protection have also been assimilated into State and local politics.

Seventy percent of important environmental legislation enacted by the States now has little or nothing to do with national policy, and only 25 percent, approximately \$2.8 billion, of the total amount States now spend annually on environment and natural resources actually come from Washington. State and local governments are responsible for nearly all the enforcement of national environmental laws and continue to

dominate decisions in the areas of land use and waste disposal.

The benefits of a State-centered environmental protection future are apparent if you peer through the windshields of the States. In fact, at the Arkansas Department of Environmental Quality, we do most things that were once exclusively the role of the Federal Government: we operate 13 federally delegated environmental programs; we have 300-plus engineers, ecologists, geologists, biologists, lawyers, accountants, and epidemiologists; we operate a state-of-the-art lab that informs our work.

Air quality in Arkansas is among the best in the Country. The entire State is in full attainment of all national ambient air quality standards, and we are on track for achieving regional haze visibility goals. Arkansas takes the lead in implementing protective and timely permitting processes, brings certainty to our businesses as they make substantial investments. Our single permitting system reduces duplication and ensures swift issuances. Advancements in technology and transparency through e-permitting, advanced monitoring and transformation efforts resulted in ADEQ becoming one of the Nation's leaders in reduced backlog, lowest permitting costs, and achievement of air quality standards.

Under Governor Hutchinson's transformation of government, the Arkansas Energy Office has also been aligned with the

Arkansas Department of Environmental Quality, and in administering energy advancement and efficiency programs, Arkansas is seeking record investment in solar energy investments and energy performance solutions, realizing reductions in greenhouse gas emissions well beyond those that were mandated under previous regulatory agendas.

The success of Arkansas is not isolated. All States have unique regional experience and successes that allow us to better deal with new and unforeseen environmental challenges. Just this month, we asked and received assistance from the State of Texas and Louisiana and from our State's National Guard's Departments of Health, Ag, and Forestry to help us extinguish an expansive underground fire that is threatening the air and water quality in one of our most vulnerable Arkansas communities.

These unique environmental challenges that we are battling in Arkansas remind us that even the most robust environmental program can, at the same time, be expert and novice depending on the specific challenge. That is where the EPA could be a tremendous difference maker for overall environmental landscape. But frustrating to both of us, the EPA has been limited by current law in what they are able to do to respond to our call.

So, looking through that expansive windshield in the not-so-far distance of the road, we must find a better path. The role of States has evolved and there has not been a substantial

modification to the Federal role. Why not use the wealth of EPA resources, both technical and financial, to help States fill gaps? Consider allowing the EPA the flexibility to offer support that is not duplicative, but instead niche in nature. Consider their primary charge as a supporting role. No matter how robust and progressive in their programs, States benefit from a central source of support.

In conclusion, I am happy to report that change is in the horizon. Last week I was informed that newly confirmed Administrator Wheeler will be meeting with Arkansas tomorrow to discuss our road ahead. We will have one eye on the rearview mirror to remember where we have been, but our momentum and energy will be focused through the windshield at what lies ahead, and I commend to him, as I do to you today, as I conclude, the wisdom of Winston Churchill: The pessimist sees the difficulty in every opportunity; the optimist sees the opportunity in every difficulty.

Thank you very much.

[The prepared statement of Ms. Keogh follows:]

Senator Braun. Thank you.

Mr. Segall.

STATEMENT OF CRAIG SEGALL, ASSISTANT CHIEF COUNSEL, CALIFORNIA
AIR RESOURCES BOARD

Mr. Segall. Thank you, Chairman, Ranking Member, members of the Subcommittee. I am glad to be with you today. I am Craig Holt Segall, Assistant Chief Counsel of the California Air Resources Board. We are one of the oldest and largest environmental bodies in the Country and in the world. We are also working on some of the hardest problems, given California's tens of millions of people live in deep valleys and desperately need protection from difficult air quality and pressing climate change.

I am going to make three points to you today that are elaborated in my written testimony.

The first of those points, as we heard from the Chair and from my co-panelists, is that the Clean Air Act is built on a cooperative federalism framework. In its very revision, it recognizes two critical points that we have talked a bit about already today: first, that the States need to be the primary regulators, but, second, that they need a strong and consistent Federal partner that supports their work to protect their people.

Now, a hallmark of that program is the Clean Air Act's vehicle programs. California has been regulating vehicle emissions since before there was a U.S. EPA or this version of

the Clean Air Act, and the Act recognized that treating California and the many States that have joined it functionally as a laboratory for innovation.

We have wound up commercializing technologies in cars that today are standard; the check engine light, the catalytic converter. The list goes on. And as we have added millions of cars and millions of people to our State and the States around the Country, we have seen dramatic increases in air quality through the shared back and forth collaboration in Republican administrations and Democratic administrations on these critical issues.

The net result, as the Chair alluded to, has been dramatic decreases in air pollution, although it remains a pressing problem, and enormous benefits. According to one peer-reviewed study that U.S. EPA itself produced, we are looking at about \$20 trillion, with a T, in public health benefits as a result of the Clean Air Act since 1990 to only several billions in costs, about a 40:1 benefit to cost ratio.

My second point, and this is critical, is that all of that is at risk today as a result of this Administration, which is, frankly, treating States with contempt. Again, my core example would be the vehicle program. The Trump Administration announced some weeks ago that they stopped negotiating with California. The truth is they never started. They offered us

some meet-and-greets. They showed no interest at all in maintaining the program that has now been running for multiple decades, in terms of greenhouse gases for nearly a decade successfully, and supported by an over 12,000-page engineering analysis we developed jointly with them for years.

Instead, in the interest of policymaking by Tweet, we saw a sudden reversal and a complete refusal to engage with any of the technical underpinnings of that role. Indeed, they refused to give us even the most basic technical information. We had to FOIA them. They still haven't even answered that FOIA.

Bottom line it has been a frozen process, an ideological one, and it is not rooted in science. EPA's own experts have published in the Journal Science condemning their approach.

We were able to rerun as many of their numbers as we could on the basis of their partial and spotty record. Truth is their proposal would result in \$168 billion in costs to the Country, conservatively, throw the auto industry into chaos, basically blow up public investments in battery systems and electrification and protecting the air, and add an enormous amount of air pollution.

This is a huge unfunded mandate for the States because functionally it means that we will be unable to meet our federally mandated air quality standards, much less our State goals, our State climate targets, and move forward progressively

on modernizing the industry. It is, frankly, a disaster, and it is only the tip of a rapidly melting iceberg.

Folks have alluded to the Clean Power Plan, which had enormous amount of State flexibility. The Administration's replacement somehow manages to actually increase power plant emissions. And the list goes on.

The Ranking Member alluded to some of these rollbacks. I needn't rehearse all of them. But we have seen systematic assaults in toxics protections, on air quality planning standards, even on something as basic as wood stove pollution. You know, rollback after rollback after rollback, all driven by an administration so ethically corrupt that we have already lost one EPA administrator. We have never seen this in working with U.S. EPA under any administration, this wholesale agency capture.

And that brings me to my third point. This isn't just a public health catastrophe. It is not just risking our progress on climate change when we have only a decade left to change course. It is a rule of law problem. What we are seeing is an agency that is ignoring the statute and the cooperative federalism framework set forward by the Article 1 Congress that is divorced from the factual record and it is treating the States not as co-sovereigns with whom it has partnered now for going on half a century, but as interest groups to be swept

aside while it increases the profits of narrow sectors of the economy at enormous cost to our economies, to our health, and to our people.

What I would ask of this Subcommittee and of Congress is to reassert your prerogative in oversight and in caring for public health and call the agency to task. There is not much time left. The vehicle rollback will be finalized in the coming months. Rollback after rollback is coming. We need your help and we need it now. Thank you.

[The prepared statement of Mr. Segall follows:]

Senator Braun. Thank you.

Thank you, witnesses, for your testimony. We will now turn to the Senators here for questions. I am going to start by recognizing myself with five minutes, and we want to stick as close as we can to the five minutes.

This is for Director Keogh and Mr. Glatt. The EPA, under the Obama Administration, in my opinion, failed to treat States as co-sovereigns in protecting the environment. Can you speak as to how, in your States, you have seen that rightful responsibility be returned to the States?

Start with you, Mr. Glatt.

Mr. Glatt. Thank you, Chairman. Yes, in several ways. Just the overall initial relationship. When we interacted with EPA under the Obama Administration, it was more of "what have you been up to lately." Now it is "what can we do to help." And they actually are allowing us to do environmental protection and they have come along with us as partners, so we look forward to that relationship staying the same. It is about environmental protection and it is about compliance at the end of the day, it is not about gotcha, and we really appreciate the approach they have taken.

One clear example, we permitted a refinery, the cleanest refinery in the United States if not the Nation. We started out working with the EPA. Their assistance to us to make sure that

the permit complied with the law was invaluable and I appreciated that relationship. In the past, they would have remained silent, waited until we went out for public comment, and then approached us as a gotcha type moment. That is not how you do good government.

Senator Braun. Thank you.

Director Keogh?

Ms. Keogh. Well, we too have seen the cooperation of this Administration particularly in various programs not only just our air program, but our water. We had many things that I would call on hold or stuck for decades, if not longer, in terms of permits policies in our water programs, as well as our air.

Arkansas is benefitting, however, directly from the approval of a State regional plan approach for regional haze visibility improvements now without the added \$1 billion or more in unneeded and unnecessary controls that were mandated under a Federal plan from the previous administration, so we are finding that Regional Administrator Anne Idsal, as well as the administrative staff in D.C., outreach. Administrator Wheeler particularly has been effective in bringing us to the table ahead of issues, not after the issues are created.

Thank you.

Senator Braun. Thank you.

This will be for the same two witnesses. As State

regulators, you handle a lot of permits. Can you give me a couple particular instances where a permitting process has ended up being simpler and with an effective, good outcome for the environment?

Mr. Glatt?

Mr. Glatt. One really quick one is, Mr. Chairman, we developed a minor source permitting program for the oil field, making sure that we knew where the oil wells were being developed, who was developing them, and the type of emissions coming off of them. Initially, EPA was critical of that. Once they took a look at that, they adopted that program and implemented it on the Reservation, improving environmental quality on the Reservation.

So, when we are allowed to do permitting at the State level, it gets done quicker, in a matter of days, versus what we were talking weeks or not at all at the EPA.

Ms. Keogh. Likewise, we are a State with many minor sources that don't really fall to the level of a Federal regulatory program, and Arkansas developed a unique minor source permitting program that we believe is protective but allows the flexibility for new growth in our State. This has been very effective and we recently received approval of a State implementation plan for that after it languished for about seven years under previous administration's review, so we look forward

to that interaction.

We also have effective permitting programs on a number of key issues and concerning permits. We have been able to take permits that were stuck on water quality and bring them to final resolution, providing actually more protection through a permit than leaving it unaddressed through ongoing debates between the State and the Federal Government.

Senator Braun. Thank you.

Briefly here, again for the same two witnesses, when the EPA was developing the Clean Power Plan, did they consult with your States to determine feasibility, or did they ignore your input?

Mr. Glatt?

Mr. Glatt. Mr. Chairman, they did consult with us, but it was superficial. I did meet with the administrator in North Dakota. It was zero degrees that day. I expressed to the administrator it is not always this warm in North Dakota and that major changes in the power grid would result in true public health implications. So they consulted. Final rule that came out didn't look at all like the proposed rule, so they did not listen to us at all.

Senator Braun. Thank you.

Briefly, Director Keogh.

Ms. Keogh. Yes. We were consulted only toward the final

proposal. Arkansas has a base of nuclear power, but also very diverse energy supply, and it was important to Arkansas to have a plan that works for us going forward, and we are seeing great benefits of that flexibility using markets and technology to drive lower cost solutions but improved and reduced greenhouse gas emissions.

Senator Braun. Thank you.

Ranking Member Whitehouse.

Senator Whitehouse. Thank you, Chairman. I guess the point I would like to open with is that one State's onerous regulation is a neighboring State's clean air. And, as a downwind State, we have to take it pretty seriously when EPA won't enforce Federal law, won't protect our downwind States. My State Department of Environmental Management can't regulate a spewing power plant in Pennsylvania or West Virginia or Ohio. There is nothing we can do about that. And if EPA walks away from its responsibility, those States may think they have been relieved of an onerous regulation, but I live in a world in which I drive to work in Rhode Island, and on a bright, clear summer day I have heard the radio warn that the air is unsafe to breathe in my State; that elderly people, the people with breathing difficulties, that infants should stay indoors on a nice summer day because nobody will tell the polluting power plants in other States to knock it off and clean up their act.

So, until Rhode Island is protected -- and I think it ain't for nothing that so many of us who are here today are from downwind States. This isn't funny. This is making a big difference in our lives.

Ms. Keogh talked about the windshield and the rearview. I would add one other automotive feature; I would add headlights. We have to have the headlights flicked on so we can see ahead to what is coming at us. And the headlights are science. That is what lets us know what is coming at us. So, when we have an EPA that throws legitimate scientists off their advisory board so they can bring industry flunkies on so that they can ignore scientific reports that warn very clearly about what is going to happen, there is no longer any debate about this, and the coasts are going to take a real beating. We are looking at several feet of sea level rise in my small State. We don't have much to give away, folks. Several feet of sea level rise is not funny, and the fact that EPA won't take an interest in this issue is very frustrating.

So, I appreciate how they are not being onerous with you guys, but I have a different fight. I have to fight to protect my own State here. And what I see is very selective cooperative federalism. It is cooperative federalism when the interest of the State happens to align with the fossil fuel industry. Then they are all cooperative as all get-out. But when, like

California and Rhode Island, as a CAFE standard State also, when the States have worked together in cooperative federalism and put together a rule that has stood the test of time for, what, decades now, this Administration's approach to cooperative federalism is no, we're going to do what Marathon Oil tells us to do and we are going to completely ignore the 14 States that have done this for a long time.

This isn't right. This isn't right, and it is going to come home to roost because you can't stop science. You can't stop facts. You can't stop the operation of the earth by the biological, chemical, and geological rules that we know. So this is going to come, and what it is going to show is that the true north for this Administration wasn't federalism; it was whatever the fossil fuel industry told it to do, and that, in my experience, has been the true north.

But there are States, unlike you guys, who are downwind States, and for us it really, really matters when there is a power plant that won't clean up its pollution and we can't do anything about it and EPA walks away. There are coastal States. It is not just me. Moody's has now said that it is going to rate municipal debt based on climate and sea level risk for coastal communities.

Freddie Mac has said that there could well be a coastal property values crash as bad as the 2008 mortgage meltdown. I

lived through that. I don't want to live through that again. Freddie Mac isn't the Sierra Club; Freddie Mac is all about homes and mortgages, and they are warning about it. First Street has just gone all the way up the coast and in peer reviewed research showed that coastal property values in areas subject to flooding are already starting to peel off. So, if there is going to be a coastal property values crash, that is what the opening of it looks like, and that is what is happening.

I already mentioned the CAFE standards. Some cooperative federalism, when they won't work with 14 States on a program that has already been working very effectively to help bring down pollution from automobiles.

So, I appreciate this hearing, but I don't take EPA at all seriously. I think cooperative federalism is a mask, it is a sham. It is a way to deliver for the fossil fuel industry, and, depending on what State you are, they will roll right over you in the name of cooperative federalism.

Senator Braun. Thank you.

Senator Cramer.

Senator Cramer. Thank you, Mr. Chairman.

Again, thanks to all the witnesses.

Dave, I am going to follow up a little bit on how Chairman Braun wrapped up at the end of his time, because I would like to

hear you put a little more meat on those bones as it relates to the Clean Power Plan and the collaboration and cooperation of the Federal Government.

You might recall I was still on the Public Service Commission when the Clean Power Plan was first rolled out, and when we first saw the Clean Power Plan, I think we, as a State, we knew what the Government wanted to address, what they were trying to address; and, as I recall, our State, along with our stakeholders, we were looking for pragmatic solutions to the same problem that the Clean Power Plan was trying to solve.

By the way, before I forget, does anybody remember the Supreme Court of the United States staying the Clean Power Plan? We have people up here who passionately talk about the good old days of the Clean Power Plan that was deemed not to be appropriate by the Supreme Court of the United States, and we are still under that stay, so let's not forget that there are other facts that we can't ignore in the law.

With that, Dave, if you could just help. You referenced the final rule and how it differed from the proposed rule. Maybe just tell a little more of that study, because I think it is important.

Mr. Glatt. Yes, Chairman and Senator. There was a lot to that. I first will state that when the proposal came out I sat down with every one of the CEOs from the electric generation

utilities. Some of them were coops, some were privately owned. Not one of those CEOs said hell no. What they said, we can do this, but we need time and we need cooperation. So they sat down and looked at the proposal and they said this is something I think we can work through, so they were actively looking at how do we reduce CO2, how do we start changing the electric generation economy or market, if you will.

We sat down with EPA and we said, you know, this is something I think we can work with. What came out of that was primarily a doubling of the reductions required, to the point where the CEOs said we can't work with this; basically, this would put us out of business and we would not be an entity anymore. So they went from cooperation, saying yes, we can do this, trying to work with EPA, explain to them where this was going and how they could make this work, going to a point where EPA came out and just pushed it to the limit to where they said we can't be part of this anymore.

Senator Cramer. Let me follow up on that. Hadn't the comment period between the proposed rulemaking and the final rule, had we as a State, and other stakeholders throughout the Country, had they known that this, what I call, forgive me, a bait and switch, had they not known that was going on, would they have commented differently or perhaps more aggressively had they thought that the EPA was a real partner in all this?

Mr. Glatt. Yes, Senator. Actually, they were kicking themselves because they did not actively comment on the initial proposal because that was something they thought they could work with. What came out later was so radically different, they really thought they missed an opportunity without coming out more aggressively initially. They thought they had a cooperative process moving forward. I would use the same term, it was bait and switch. The comment I had received from an EPA individual, I said, what is going on here, and they said, well, there are winners and losers, and you lost.

That is not how we operate and that is not how anybody should operate. We are all in this together. And we are sensitive to the needs of the coasts and we need to be on the same page, but we have to work together and not find winners and losers.

Senator Cramer. Ms. Keogh, if you could comment as well. I know that I am not as familiar with specific situations, but perhaps you could elaborate.

Ms. Keogh. Right. As Dave Glatt said, our biggest challenge with the Clean Power Plan was the winners and losers aspect. We were a State and are a State that is fundamentally focused on clean energy. As the recent speech of the chairman of our joint energy committee said, the cleanest kilowatt and the cheapest kilowatt is the one not used. So we focus a lot on

efficiency in Arkansas and we have found ways. Arkansas State University is now saving \$20 million a year through an energy performance innovative grant program that we established where they can put tuition dollars back into education rather than pay for a higher use of energy to run their campuses.

So, these are the things that we are looking for in Arkansas to find solutions. They are durable; they are reasonable; they keep rates affordable; they keep the grid reliable, and that is what we are looking for and that is what we hope for through a power strategy for Arkansas and for the Nation.

Thank you.

Senator Cramer. Thank you.

Thank you, Mr. Chairman.

Senator Braun. Senator Carper.

Senator Cardin. Thank you, Mr. Chairman.

By way of background, I served in the State legislature, was Speaker of the House in the Maryland General Assembly, was appointed by President Reagan to serve on the Federalism Task Force and Commission. I believe in federalism; I think it is extremely important.

I think the Clean Air Act represents the best example of federalism. In 1963, it was passed, recognizing the States with the primary responsibility to regulate and show what works so

other States could copy that, exactly what California did with its CAFE, with its standards for autos, copied by 12 other States because it worked. You showed what could be done.

There are certain areas where the States cannot act. Pollution knows no bound. Delaware and Maryland are downwind States. The Clean Power Plan rule by the Obama Administration was a recognition that the Federal Government is the only entity that can control what goes on across borders.

So I am somewhat puzzled by the support for the Trump Administration when it has restricted the States' ability to act where it believes it is in its best interest to act, but has withdrawn the Federal support in those areas that really are interstate areas.

So, Mr. Segall, let me give you a chance as to how the restrictions that have been imposed by the Trump Administration is affecting the State of California in its ability to do what the Supreme Court has said, by the way, under the Clean Air Act, that carbon is a dangerous pollutant and is required to be regulated under the Clean Air. How has the Trump policies affected your ability to protect the carbon emissions in your State?

Mr. Segall. Senator, it is profoundly concerning. What I should say is this is a justice question. We have talked a bit already about CEOs, but fundamentally this is about vulnerable

people. Living in Sacramento, you sometimes can't see to the end of the street because of the forest fire smoke this past summer. We are acutely aware of the danger of climate pollution, and what we are seeing is a proposal essentially to flatline both the Federal greenhouse gas standards and to attack California's ability and the ability of any State that wants to adopt our standards to adopt our greenhouse gas emission standards and, and this is especially strange, our zero emission vehicle standards, which are a criteria, or smog standards. It is unclear how or why they are being attacked.

We have been here before. This was litigated twice. Two federal district courts have held our authority, so it is really beyond the pale. The bottom line is, if this moves forward, we are going to see tons of excess pollution, we are going to see a slowdown in vehicle innovation, and we are going to see increased both climate risk and just generally air quality risk as we see additional pollution and smog pollution in all of our cities. It is exceptionally concerning.

Senator Cardin. To Mr. Glatt and to Ms. Keogh, do you support the Trump Administration's restrictions on the 13 States that have different emission standards? Do you support taking away from the States the ability to act in regards to their vehicle emission issues?

Mr. Glatt. Senator, I am a very strong supporter of

States' rights and being able to address those issues within their state boundaries. Where I start to get a little shaky on that is when a State imposing under the umbrella of saying it is all right to control pollution in our State, starts impacting other States; and we have had that case on externalities.

Senator Cardin. But my question is on vehicle emissions, where California has acted and 12 other States have acted. Do you support their ability to do that?

Mr. Glatt. I support their ability. I don't know if that has any positive impact in North Dakota.

Senator Cardin. Well, I understand that, but if North Dakota decided to do it, you would believe you should have the right to do that, wouldn't you?

Mr. Glatt. I would say, Senator, that is correct.

Senator Cardin. And Ms. Keogh, do you also agree with what Mr. Glatt just said?

Ms. Keogh. As I stated in my testimony, I think States and EPA regulate from a position of sovereignty and subordinate. We are an advocate, as well as North Dakota, on States' rights and our attorney general has acted to defend rule of law on these matters. I think that is the important thing that we look at, is what is allowed under Federal law, and that States' rights apply to regulatory matters within their jurisdiction under the law.

Senator Cardin. It was a simple question. Do you agree that California should have the right in regards to what they have been doing for many years now on emissions?

Ms. Keogh. As provided under law, yes, I do.

Senator Cardin. So maybe, Mr. Chairman, we have reached some consensus, that is, that what the Trump Administration is recommending in taking away from California and 12 other States, including Maryland, is something that our State partners believe is wrong.

Senator Braun. Thank you.

Senator Boozman.

Senator Boozman. Thank you, Mr. Chairman.

Again, thank all you all for being here at the hearing. One thing I would like to state is that I know that we have a really difficult situation in Arkansas with the Trafalgar Road fire in Bella Vista, and I know that the ADEQ has worked really hard on that, also having support of the EPA, so we really do appreciate the efforts in that regard. You all, as well as EPA, have certainly kept us informed. I know that you two are working back and forth together. As you mentioned, when the administrator found out that you were going to be in town, wanted to meet with you, and our regional administrator also. So, again, I think that is really what this is all about in the sense of we talk about cooperation and things like that. I

think that is a good example of that, so we do appreciate that effort and do appreciate you all's effort in, again, dealing with a very difficult situation.

You know, I have been with Senator Cardin in the House and now over here and have great respect for him. I guess my experience has been that, in the past, with not just the past administration, but the administrations in general, the EPA is all for cooperation until you want to do something different than what they want. That has just been the standard. I think that is part of government. That is why people elect us, to try to keep a handle on that.

Can you comment on that, Ms. Keogh, in regard to how can we do a better job of working hand-in-hand? As Senator Cardin pointed out, the frustration of States wanting to do this and that. Can you comment on how we can do a better job of working hand-in-hand with stakeholders to develop rules and regulations?

Ms. Keogh. Thank you, Senator Boozman, I am happy to do so. In Arkansas, we work closely with our regulated community, but we also work closely with our public interest groups to make sure that our programs do address a broader sense. EPA has been a true partner as we have instituted an operational efficiency model to streamline our permitting program and to increase transparency. I know working recently with Region 6, one of the things we have asked them to do is to reduce the duplication

where they might grow analyze or replace our decision-making with their own technical staff and to reallocate those technical resources to helping us solve those problems that either go past what our capabilities are.

So I think, Senator Boozman, you hit the nail on the head about the fact that we should be able to find answers by our collective work, rather than independent analysis that seems to waste money and time.

Thank you.

Senator Boozman. Right. Can you talk a little bit about the fire policy forum ADEQ helped coordinate, in particular, maybe your thoughts on how this approach could serve as a model for interagency collaboration?

Ms. Keogh. Well, I mentioned natural disasters earlier and we have talked about a specific uncontrolled fire in Arkansas, but this is a subject matter that I know in California is near and dear to their heart, but we have a number of situations where we believe fire is a tool that is necessary for our foresters to use to manage our forests to avoid those uncontrolled fires that result in a much larger environmental impact. Working both with our agriculture industry and our U.S. Forest Service, the State forestry department, we were able to bring together stakeholders to help get a common understanding of how that practice can be beneficial but yet, at the same

time, be implemented in a way that protects our quality, and it garnered speakers from EPA's Office of Research and Development, the director came in, as well as U.S. Forest Service, and I think it was a true success. Even our own Farm Bureau, our ag group now has a tool to inform farmers on how to better utilize better decision-making. So it shows when we bring the experts together, they find not only a good solution, but a better solution than we, as an agency, might have devised.

Senator Boozman. I agree.

Thank you, Mr. Chairman.

Senator Braun. Thank you.

Senator Carper.

Senator Carper. Thanks so much. Welcome. It is great to see all of you. Thanks so much for joining us today.

One of the questions that we are being asked here in the United States Senate as Democrats and Republicans is do we believe climate change is real, do we believe that human beings are contributing to that, and do we think that Congress has some responsibility in addressing that.

I would just ask each of you, Mr. Glatt, Ms. Keogh, do you believe climate change is real? Just a yes or no.

Mr. Glatt. Senator, I appreciate the question.

Senator Carper. Just a yes or no.

Mr. Glatt. Yes and no.

Senator Carper. Thank you so much.

Ms. Keogh?

Ms. Keogh. We deal with an everchanging --

Senator Carper. Your mic is not on, ma'am.

Ms. Keogh. I am sorry. We deal with an everchanging climate through our regulatory policies and we do act in Arkansas --

Senator Carper. I was just looking for a yes or no. Thank you, ma'am.

Mr. Segall?

Mr. Segall. Yes, of course.

Senator Carper. All right.

Mr. Glatt, do you think we, as human beings, have something to do with that?

Mr. Glatt. Pardon, the question?

Senator Carper. Do you think we, as human beings, have something to do with climate change?

Mr. Glatt. Senator --

Senator Carper. Just a yes or no.

Mr. Glatt. Yes, and we are doing something about it, yes.

Senator Carper. Thank you.

Ms. Keogh?

Ms. Keogh. We are taking actions to reduce our man-made emissions so that we can derive better --

Senator Carper. Is that a yes?

Ms. Keogh. We believe that --

Senator Carper. Okay, Mr. Segall? Thank you.

Mr. Segall?

Mr. Segall. Yes. And I would add that it is beyond a five-sigma level of proof, they just reported the other day. It is unquestionable.

Senator Carper. Mr. Glatt, do you think Congress has some responsibility in addressing this challenge?

Mr. Glatt. Senator --

Senator Carper. Just a yes or no.

Mr. Glatt. Congress has a role, but the difficulty is --

Senator Carper. Thank you very much.

Ms. Keogh? Ms. Keogh? Thank you.

I don't mean to be rude, but I don't have a lot of time.

Does Congress have a responsibility in addressing this? Do we have a shared responsibility in addressing this? Just a yes or no.

Ms. Keogh. I believe this is a science decision, not so much a political decision, but I do believe there is a role to play in making sure that we are all treated --

Senator Carper. Thank you, ma'am.

Mr. Segall?

Mr. Segall. This is a most fundamental responsibility. It

is an existential threat to the Country.

Senator Carper. I live in a State called Delaware, east of here, and when I was governor of Delaware we were out of attainment for a number of clean air requirements, and it is not because of what we were doing in our States. Ninety percent of our pollution in Delaware comes from outside of our State. I could have shut down the State of Delaware, all the cars, vehicles off the road, shut down every business. We would still have been out of attainment.

Meanwhile, up in Pennsylvania there are utilities, coal-fired utilities that are operating and they have scrubbers, they have equipment of scrubbers on their power plants and they don't use them. They don't use them. We have a situation up in Pennsylvania with three. There is a situation in West Virginia, I think there is another over there. They don't use them.

States have the opportunity to petition, called Section 126, to do something about that, and to say, EPA, we can't make Pennsylvania turn on their pollution control, we can't make West Virginia turn on their pollution control devices. EPA, why don't you help us, kind of like Golden Rule, treat other people the way you want to be treated. That is one of the problems that we face. I just want you to feel what we face, what we have to put up with at the end of America's tailpipe.

The greatest source of carbon emissions in our Country

comes from mobile sources. Andrew Wheeler said that he was all for a 50-State deal, and when it came time to actually negotiate a 50-State deal with California and 13 other States, he was nowhere to be seen.

Mr. Segall, any comments that you have on this?

Mr. Segall. Yes, that is true. It is appalling. This is a program we worked on for decades under Democratic and Republican administrations. It is one that is working well. It is one that is saving lives. One would hope that the administrator of the EPA would want to preserve it and would recognize the importance of the coal regulatory State sovereigns. They haven't, and that is a shocking departure from practice and endangers a lot of people.

Senator Carper. Mr. Segall, the California Resources Board said, "The administration broke off communications before Christmas and never responded to our suggested areas of compromise or offered any compromise proposal at all." Can you tell us more about this Administration's efforts to work with California, compared to how the Obama Administration did so?

Mr. Segall. Yes. Under the Obama Administration we worked extensively on the technical details. Again, this is a science question. We had a 12,000-page report. Everything was working fine.

This Administration issued a sketchy determination in

response to a presidential Tweet that was just a few pages long that blew up the entire program. That has been consistent with their negotiating style. Folks in the room often aren't even familiar with the core technical details of their programs.

Senator Carper. I will finish with this. I was a naval flight officer during the Vietnam War, stationed for a while in San Diego as a midship in Long Beach, later on at Moffett Field, California. I like to run. I love to run outside. There were days where I ran outside I did a lot more damage to my lungs than I did good. And the reason why California has asked years ago for the ability to have more rigorous standards, shared by States like Utah because of the geography in those States and the pollution that gathers between the mountains, they asked for some special abilities to tighten things up. That is what they have had for years. The auto companies don't want to build one car for California and 49 States, a different model of the same car. They didn't want that; they want a 50-State deal.

Why we don't work with them and with California to make that happen is beyond me. This is something that is good for the planet, good for our air, good for industry. It just makes no sense.

Thank you.

Senator Braun. Senator Markey.

Senator Markey. Thank you, Mr. Chairman, very much.

Mr. Segall, thank you for being here, and we thank California for its leadership on this. Massachusetts is a State that follows California. Rhode Island follows California. Delaware follows California. We are all in on your efforts here. Administrator Wheeler proposed new fuel economy emissions rule that would wrench away California's longstanding ability to set its own standards and allow our States to follow, because an attack on California is an attack on all of us, and we feel it as an attack.

Has California's Clean Air Act waiver for vehicle emission standards ever been revoked?

Mr. Segall. No, that has never happened.

Senator Markey. It has never happened. So the assault on State-level standards means more money spent by consumers on gasoline, more oil imported from the Middle East, more carbon pollution in the atmosphere, and more uncertainty for States and car companies.

Mr. Segall, with all these lose-lose outcomes, who would you say is the winner if Trump wins through his EPA Administrator Wheeler? Who is the winner in all this?

Mr. Segall. This is purely a gift to oil companies.

Senator Markey. Oil companies.

Mr. Segall. Yes.

Senator Markey. So oil companies are just doing cartwheels

with the happiness that they have about how much lower the fuel economy standards will be.

Mr. Segall. Oh, yeah. We see enormous increases in people being made to buy their product. What is really going on here is a subsidy program to oil at the expense of State sovereignty and public health.

Senator Markey. When I was in the House, I was the author of the fuel economy standard law in 2007, along with Senators over here, partnered with Nancy Pelosi. We got that done and that is what was used with the California waiver to promulgate the 2012 standards. I am very proud of that and it is still the largest single reduction of greenhouse gases of any law ever passed in any Country in the world.

So, like many other things, Trump is just going to side with the Koch Brothers, side with the oil industry in general. It is all part of a pathological pattern where he is a climate denier, gives his State of the Union Address for an hour and 20 minutes, doesn't mention climate change, names a fossil fuel lobbyist to be the head of the EPA.

So, Mr. Segall, will a challenge to California's ability to set its own strong standards under the Clean Air Act mean more uncertainty for consumers and auto manufacturers?

Mr. Segall. Senator, it will. What this will drive is massive litigation and a massive need by the States to take

every other action at their disposal to make up those tons. This isn't going to lift anybody's regulatory burden; it is going to require extensive State action to get where we need to go, and, in the meantime, it is going to make it harder for the auto industry, especially the American auto industry, to compete globally.

Senator Markey. So this Section 177.202-209 authority in the Clean Air Act, I said on the Floor there is no intention in having a 2007 law in any way undermined that authority which you have, and it has also been reaffirmed twice by courts that you have this authority, California has this authority. So we are setting up just a massive, prolonged litigation with the whole world looking at us as we try to preach temperance from a barstool. We are telling other countries please reduce your greenhouse gases and Trump is the denier-in-chief, and it is just sending the wrong message to the rest of the world as these apocalyptic events across the planet are becoming more and more intense as we are just seeing incredible tornados across the south unprecedented in terms of their damage. But, again, unfortunately, a preview of coming attractions of what is going to happen, and it will even be worse in the years ahead.

In your testimony you mention disagreements between EPA and National Highway Transportation safety staff working on the proposed new rule. A former EPA official even said the

Department of Transportation "cooked the books" to make sure they could produce the numbers to justify the awful rule.

Mr. Segall, didn't an EPA analysis find that this rule would actually cause an additional 17 fatalities a year, despite the Administration's argument that the rule will save lives by keeping drivers off the road?

Mr. Segall. Senator, I believe that is right, and I would say I have never before seen an EPA rule where EPA's own staff was so thoroughly cut out of the process and filed documents explaining the rule was wrong.

Senator Markey. So this is a classic example of State and Federal Government cooperation, and Trump and his oil company cronies are seeking to cheat on this test, including the fatalities that are caused, but also the damage to our planet.

Senator Whitehouse and I, we happen to live with the second fastest warming body of water on the planet, the Gulf of Maine. Except for the Arctic, it is the worst, and we are poised to see damage that is going to be absolutely catastrophic for us, but it is also true for the whole rest of the planet. I thank California, I thank you for all your efforts. We stand with you and we will fight with you.

Mr. Segall. Thank you.

Senator Markey. Thank you, Mr. Chairman.

Senator Braun. Thank you, Senator Markey.

We have time remaining, and as I run this Subcommittee I am going to use it to the full extent. We don't meet often enough, and I think there is probably more to be said, so anyone that wants to follow up with an additional two, two and a half minutes, three minutes, I am going to start here and then allow everybody else to do likewise.

Mr. Segall, California's position that the standards issued in 2012 by the Obama Administration should not be changed, do you agree with that, that what we had in 2012 through the Obama Administration should not be changed?

Mr. Segall. I do, with a caveat. When we went through the 12,000-page technical review, Senator, we actually determined the standards were, if anything, a little too weak. We maintained them at the same level, basically maintain our national program, but they underrepresent what the industry can do.

Senator Braun. Thank you. I think in the assertiveness of that statement I wonder if that really is implicit, that there is room for negotiation; and I will quote somebody from your State, from Mary Nichols, head of the California Air Resources Board: "California will take all actions to ensure that the smart standards we developed in partnership with the auto industry to cut greenhouse gas emissions from vehicles stay in place."

Mr. Segall, in his speaking about the Obama era standards that are feasible and beneficial and that we need to review them, was based upon a single presidential Tweet. I would tend to disagree with that as well. The Alliance of the Automobile Manufacturers sent a letter to the EPA and the letter said, "If left unchanged, those standards could cause up to 1.1 million Americans to lose jobs due to lost vehicle sales and low-income houses would be hit the hardest."

I ask for unanimous consent to enter this into the record.

[The referenced information follows:]

Senator Braun. Ranking Member Whitehouse, do you have an additional comment?

Senator Whitehouse. Mr. Segall, you used the word capture in your testimony. Could you elaborate on what you mean? I assume you are describing the concept of regulatory capture or agency capture.

Mr. Segall. I am, and that concept essentially speaks to the point where a regulator becomes so interwoven with the entities it is regulating that it stops looking critically at the evidence. Actually, the letter that the Chairman has entered into the record is a good example of this. The auto industry, after some relief, it is true, they have been pressing for that for years, they were rejected on the record just months before in a real analysis. What we are seeing in this sudden swerve has a lot to do with the fact that EPA is now run primarily by fossil fuel lobbyists. Their view is narrow, their economic interests are narrow, and their ability to actually rigorously look at the evidence is clearly limited. And you don't have to take my word for it; we have gone to court again and again on these rollbacks. We keep winning because EPA isn't grounding its actions in the law and the facts and, to me, that is a strong indication that what we are seeing are politically driven choices, not proper environmental decisions.

Senator Whitehouse. I hear that Marathon Oil and a few

fossil industry front groups were the driving force between the CAFE standards rollback. Do you have any information from your perspective on the California Air Resources Board about that?

Mr. Segall. We believe that reporting. We think that is right. This looks very much, given that the science cannot possibly support what has been proposed and the auto industry themselves have said that they don't want it. Who wants this? It is the oil industry.

Senator Whitehouse. Like the old story about the tortoise on top of the fence post. You know it didn't climb there; somebody had to put it there when its behavior is that weird.

You mentioned in your testimony that the Clean Power Plan, as proposed by this fossil fuel industry-run EPA would actually, to quote you, "incredibly actually increase power sector emissions on its own admission." When you say on its own admission, what do you mean?

Mr. Segall. I mean EPA's own impact analysis. They project increases in most of the major pollutants so bad that they also propose major revisions to the core permitting programs to accommodate this massive pollution. It is quite remarkable.

Senator Whitehouse. So, if you were looking at that Clean Power Plan and you were looking at it as a means for trying to actually reduce carbon emissions, it would appear to be rather

deliberately going in the opposite direction, would it not?

Mr. Segall. It is a gift to the coal industry at the cost of people's lungs.

Senator Whitehouse. Thank you.

Senator Braun. Senator Cramer.

Senator Cramer. I have 20 minutes, but I will try to say a few things in two. In fact, I may shift completely to a very pragmatic issue.

Dave, it has been really cold in North Dakota, has it not, this winter? One of the coldest winters in decades.

Mr. Glatt. That is correct, Senator.

Senator Cramer. In a long time. Last week, maybe it was two weeks ago, could have been any week in the last five or six, is it not true that in the Midwest, the integrated resource planning that involves, one of concerns you raised early on in your testimony, involves the availability of a robust energy on the grid, electricity, was at stake. Why was that?

Mr. Glatt. The demand was so great during this cold spell.

Senator Cramer. And when we have high demand and the grid relies on energy sources that are not reliable, intermittent, what happens but that there is not enough supply, and that is exactly what happened. The people of Minnesota actually complained that their electricity wasn't as robust as a result of what always happens, or at least 90 percent of the time

happens when it is really, really cold, is the wind does not blow, and wind turbines don't turn, don't spin; and when wind turbines don't spin, they don't provide warmth. And, by the way, that didn't even consider the fact that gas companies were asking people to curtail their use of natural gas because they needed to get this other fuel to dispatchable electricity.

My point of all this is to tell you that I have great empathy with what you were saying, Mr. Segall, with regard to States' rights and emission standards, particularly transportation emissions. I also know that there can occasionally be conflicts between the interstate commerce clause and other cooperative federalism, and that this stuff is never as simple as anyone side would like it to be.

But I also know that I just think that when the EPA -- the Clean Power Plan in particular, when they came out with not just a big bait and switch in terms of the standard, the emission allowance, which I thought was very unfair and unreasonable, but they were very prescriptive, as well; and what I worry about is whenever we become overly prescriptive or we broaden jurisdictions outside the fence line -- as an example, that was one of the early blunders of the Clean Power Plan, was to go beyond EPA's legal authority -- that we don't allow the type of innovation that I believe exists. And I think you could make a point of that, I think you could, and I certainly think you

could. I just think we could have a better conversation sometimes about this.

My time is well up, but if anybody wants to comment, that is just my rambling for the moment, Mr. Chairman.

Mr. Segall. Senator, I would just say that California is a great example of that. We are moving rapidly toward 100 percent renewable grid and what we are finding is intermittency is much less of a problem than we would have thought because energy storage is replacing both gas plants, and if we balance that out. And it has been great to see how well Americans can innovate when we ask them to do it.

Ms. Keogh. I would just add that, as an engineer, I am a full believer that technology will lead the way in terms of environmental excellence, and I think we have seen that in the last few years, and I hope that we can continue to show that technology is the answer versus more regulation. Thank you.

Mr. Glatt. And just to add up finally that I agree with that. We are seeing the market in the clean power plant vacuum change. We are seeing more renewable, less coal, less emissions, and that is without any regulations, so it tells me that at least the corporations in North Dakota understand that things have to change, and they are doing that, and it is innovation, it is new technology, and spending money to move forward.

Senator Braun. Quick note: members can submit follow-up questions for the record; it will be open for two weeks.

I want to thank all of the witnesses; it was a very good, robust conversation and I think Senator Whitehouse and I are both in agreement that the topics of federalism and the environment need to be vetted. We need to take the full hour and a half to do it, and we hope to have this Committee as a good forum to do it.

Thank you so much. The hearing is adjourned.

[Whereupon, at 11:31 a.m. the committee was adjourned.]