

**Testimony of Craig Holt Segall,
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Before the Senate EPW Subcommittee on Clean Air and Nuclear Safety
Hearing on Cooperative Federalism, March 5, 2019**

I am Craig Holt Segall, Assistant Chief Counsel of the California Air Resources Board. Chairman Braun, Ranking Member Whitehouse, members of this Subcommittee, thank you for inviting me to testify on cooperative federalism. Cooperation between states and U.S. EPA has saved thousands of lives, generated trillions in economic benefits, and created entire clean industries. But all of that is at risk, as the rogue administration of this U.S. EPA ignores Congressional direction and threatens state sovereignty.

My testimony today has three parts. First, I will describe the success we have enjoyed together. Second, I will discuss the pressing threats to our shared success and to public health and the economy. I will conclude by describing how these threats also threaten the rule of law and our federal relationship.

I. The Clean Air Act: A History of Success

States have used their police powers to protect the public since colonial days. Congress built on that legacy with the wave of environmental legislation of the 1960s and 70s; the federal Clean Air Act is perhaps the most successful of these efforts.ⁱ Congress set out two fundamental premises in the Act:

- First, Congress established that air pollution control “is the primary responsibility of States and local governments.”ⁱⁱ Congress made clear that states retained that authority, and, with few exceptions, nothing in the Act precluded state standards more stringent than federal law.
- Second, Congress made clear that “Federal financial assistance and leadership” are essential to support the states, set baseline standards, and set planning processes in motion.ⁱⁱⁱ

Building on those two fundamental points with regard to mobile sources, Congress recognized California’s global leadership in controlling car and truck emissions by preserving it in the 1967 Clean Air Act, defending and expanding that authority for decades, and allowing other states to join California standards if they chose.^{iv} Today, fourteen states and the District of Columbia have joined California to use these standards to protect peoples’ health.

The states drove innovation. California’s efforts ultimately brought you the check engine light, the catalytic converter, and many other improvements that have led to cleaner, safer, cars for everyone – all around the world.^v California standards were ultimately adopted as national standards in many cases. Today, that pattern continues as California creates innovative new incentives for progress, supported by national partnerships. It is no accident that citizens and companies in California and the states joining it are now pioneering the zero emission cars that will drive the future.

The results of this cooperative structure have been extraordinary. According to U.S. EPA, emissions of key pollutants have dropped by an average of 73 percent while the economy grew by 324 percent.^{vi} That means hundreds of thousands of saved lives, and millions of avoided asthma attacks.^{vii} A peer-reviewed analysis projects benefits since 1990 of up to \$2 trillion in 2020, at a cost of just around \$65 billion.^{viii}

In California alone, progress has been just as remarkable thanks to ongoing clean-up efforts. Air quality statewide has improved for decades. Los Angeles has not had a Stage 1 Ozone Alert for almost twenty years, soot pollution is way down, and we estimate that we have saved tens of thousands of lives.^{ix} During that time, California added millions of people and cars, and boomed to become one of the strongest economies in the world. We remain the largest manufacturing state in the country, as measured by output and employment^x – and our workers are some of the best paid as we continue to prosper.

During that time, California has also led on fighting climate change. As you know, we have barely a decade to sharply cut emissions or risk catastrophic change endangering billions of people, as the Trump Administration has reported.^{xi} California has already cut its emissions below 1990 levels, and is on track to cut emissions by 40% below those levels by 2030.^{xii} Pollution cuts from vehicles, which drive more than half of pollution in California and dominate pollution nationally, are a key part of that strategy; we have been operating under a shared national program to drive that innovation for nearly a decade.

But now all that progress is at risk.

II. What We Stand to Lose

A year ago, then-California EPA Secretary Matthew Rodriquez testified to this Committee that the Trump Administration was failing to hold up its end of the cooperative federalism partnership.^{xiii} He told you that U.S. EPA was failing to enforce the Clean Air Act and its own rules. He told you states had to sue repeatedly to get vital smog standards in place, block illegal loopholes for dirty trucks, and illegal exemptions for toxics. He told you that budget cuts were pushing the burden of basic enforcement onto the states. Sadly, we have not changed course.

Since that time, U.S. EPA enforcement has continued to collapse,^{xiv} the former Administrator resigned under an ethical cloud and was replaced by another Administrator with suspect ties to the fossil fuel industry, the Administration continues to propose dramatic budget cuts to staffing and to state grants, and U.S. EPA continues to undermine our partnership with illegal rollbacks and failures to enforce its rules.

The most egregious proposal is U.S. EPA's proposal to nearly flatline federal greenhouse gas emissions standards for cars, and to attack California's separate vehicle authority. That proposal ignores a twelve-thousand page analysis by CARB and the federal government showing that the current standards are feasible and beneficial, a conclusion U.S. EPA affirmed before turning on a dime in response to a Presidential tweet.^{xv} It disrupts decades of state/federal work, ignores two federal district court decisions affirming California's authority, and threatens the ability of dozens of states to comply with federal public health targets by stalling out vehicle emissions reductions.

The proposal is unacceptable, illegal, and has been repudiated by leading experts in a peer-reviewed study in *Science*.^{xvi} It is based on vastly inflated estimates of cleaner vehicle costs that bear no relation to the technical record. The proposal then offers tortured claims, based on non-peer-reviewed models, that without a rollback these expenses will force Americans to keep old cars and (for some reason) to vastly increase their driving, causing more traffic deaths. In essence, believe it or not, the proposal claims that the best way to save lives is not cutting pollution and focusing on highway safety and public transit, but to raise gas consumption and gas prices to keep everyone off the roads (and yet with newer, shoddier, cars in our garages). If that logic seems implausible and hard to follow – it is. In fact, we don't

need to pay the oil companies millions to save us all; we just need to build clean, safe, cars, as we have been doing for years.

If this bizarre rollback is finalized, CARB's analysis shows that air pollution will jump in Los Angeles and other polluted parts of the state, and the country.^{xvii} So will gas prices, fuel use (by billions of gallons), and greenhouse gases.^{xviii} The rule will also undermine American competitiveness, create enormous uncertainty for the auto industry, and threaten jobs and investments in clean energy and cleaner cars. We conservatively estimate the net cost of the federal rollback at \$168 billion.^{xix} And that is not counting the more diffuse cost of stalling out progress in the vital auto industry.

It should not surprise this committee that U.S. EPA's professional staff was cut out of this proposal's development. The rulemaking docket is full of EPA staff commenting with dismay that the proposal makes no sense. Instead, the oil industry is behind this campaign, as the New York Times has reported, mounting an ongoing disinformation campaign and seeking to coopt the former oil and coal industry lobbyists and lawyers who now run the Agency.^{xx} Members of this committee have documented this improper bias in detail, and California shares their concerns.^{xxi} It should not surprise you to learn that the Administration continues to fail to respond to information requests for the made-up models and analyses underlying the flawed proposal.

California and states representing more than one-third of the U.S. auto market stand ready to take all legal action necessary to block the rule. Congress should look closely at this disastrous proposal.

And the damage does not stop there. U.S. EPA has proposed to replace the Clean Power Plan with a rule that, incredibly, actually *increases* power sector emissions on its own admission.^{xxii} We are not just failing to gain ground – we are moving backwards. U.S. EPA has done its best to allow the oil industry to leak and flare natural gas – foregoing state royalties and risking public health. It has even recently proposed to allow dangerous pollution from the woodstoves that many Americans still use to heat their homes, even though cleaner models are available.^{xxiii} Each one of these proposals ignores the evidence, and Congress's clear mandates in the Clean Air Act to work with the states to clean the air. Instead, the states are left holding the bag, needing to spend their resources to stop the worst and maintain the status quo.

Not only must these rollbacks stop, we need accelerated federal action. For instance, federal rules on trucks, ships, airplanes, and new locomotives are critical to cleaning up the air – and especially the freight sector.^{xxiv} The freight and transportation sectors dominate remaining emissions preventing air quality attainment in places like Los Angeles and the San Joaquin Valley, and in states and cities across the country.

The result is that states – red, blue, and purple – are losing the tools and rules they need to cut pollution to comply with federal health standards. In essence, we are losing the ability to protect our people because U.S. EPA is not holding up its end of the deal. The result is not just an unfunded mandate to cut pollution with failing federal help, but cuts to highway funds and lost grant monies if we cannot attain federal standards. And it is not just a dollars problem: Without federal action, too many people – especially children, the ill, and the elderly -- will remain at risk.

We need action to protect the vulnerable, not to further endanger them and the planet.

III. The Threat to Federalism and the Rule of Law

This assault on public health and the states offends the most basic principles of our law: The rollbacks ignore the facts on which dispassionate government action must be based, shirk clear direction from Congress, and trample on the states as co-sovereigns.

This last offense is particularly serious. As James Madison wrote in the Federalist Papers, states “retain a residuary and inviolable sovereignty.”^{xxv} Justice Kennedy reminded us that states retain that dignity today.^{xxvi} They are to be treated as “joint participants in the governance of the Nation.”^{xxvii}

Congress enshrined that understanding in the federal Clean Air Act, to our great and lasting benefit. This U.S. EPA, with its leadership captured by narrow interests, seeks instead to trample on that framework and disrupt a cooperative relationship that has saved the lives of hundreds of thousands of people. There could be no more fundamental assault on state sovereigns than endangering their people while ignoring Congress’s clear command that the air be cleaned in partnership.

Instead, U.S. EPA is ignoring the law and the evidence for political purposes. In the vehicle process, U.S. EPA has treated California, for instance, as just another interest group – rather than a sovereign state representing tens of millions of people. The Administration completely failed to seriously engage us, and is now ready to attack our choices and the free decisions of our companion states on spurious grounds.

This is wrong: As the Court, including Justices Scalia, Roberts, Kavanaugh, Gorsuch, and Alito have repeatedly reminded us, Congress’s law and the Constitution, not policy preferences, must be the agency’s guide.^{xxviii} Our ordered liberty, our federal relationship, the quality of our air, and the health of our people depend on the cooperative federalism that Congress has set out. I would respectfully ask that this Subcommittee take all appropriate action to call U.S. EPA back to the purpose set out by the Congress and protect the law, the country, and the very air we breathe.

ⁱ For a thorough discussion of these issues, see Ann Carlson, *Iterative Federalism and Climate Change*, Journal of the UCLA School of Law (2008), available at: <https://escholarship.org/content/qt7pc2n5qc/qt7pc2n5qc.pdf>.

ⁱⁱ 42 U.S.C. § 7401(a)(3).

ⁱⁱⁱ 42 U.S.C. § 7401(a)(4).

^{iv} 42 U.S.C. § 7543(b) & (e); 42 U.S.C. § 7507.

^v CARB, *Analysis in Support of Comments of the California Air Resources Board on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks* (Oct. 26, 2018), pp. 23-67 (discussing this history), available at: <https://ww2.arb.ca.gov/carbs-comments-safe-proposal>

^{vi} U.S. EPA, *Progress Cleaning the Air and Improving People’s Health*, available at: <https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>. See also Timothy J. Sullivan et al., *Air Pollution Success Stories in the United States: The Value of Long-Term Observations*, 84 Environmental Science and Policy 69 (2018);

^{vii} See *id.*

^{viii} Timothy J. Sullivan et al., *Air Pollution Success Stories in the United States: The Value of Long-Term Observations*, 84 Environmental Science and Policy 69 (2018) (citing U.S. EPA analyses).

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- ^{ix} CARB, *Fifty Year Air Quality Trends and Health Benefits* (2018), available at: https://www.arb.ca.gov/board/books/2018/020818/18-1-2pres.pdf?_ga=2.132591819.435680366.1551201838-1125598780.1450482027. See also David D. Parrish et al., *Air Quality Improvement in Los Angeles – Perspectives for Developing Cities*, 10 *Environmental Science and Engineering* 11 (2016). CARB has further documented the close link between air pollution control and air quality improvement in its State Implementation Plan. See CARB, Revised Proposed 2016 State Strategy for the State Implementation Plan (March 7, 2017), available at: <https://www.arb.ca.gov/planning/sip/2016sip/rev2016statesip.pdf>.
- ^x National Association of Manufacturers, *State Manufacturing Data*, available at: <https://www.nam.org/Data-and-Reports/State-Manufacturing-Data/State-Manufacturing-Data/April-2017/2017-State-Manufacturing-Data-Table/>.
- ^{xi} U.S. Global Change Research Program, *Fourth National Climate Assessment Vol. II* (2018), available at: <https://nca2018.globalchange.gov/>.
- ^{xii} CARB, *California Greenhouse Gas Emissions for 2000 to 2016* (2018), available at: https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2016/ghg_inventory_trends_00-16.pdf.
- ^{xiii} Testimony of Matthew Rodriquez before the Senate EPW Subcommittee on Clean Air and Nuclear Safety (Apr. 10, 2018), available at: https://www.epw.senate.gov/public/index.cfm/hearings?id=94D3696B-6633-4CBC-86AD-FD18A131611E&Statement_id=98BA2ED6-25B5-4B93-9626-5D0FAC52F77F.
- ^{xiv} CNN, *New Report from Environmental Group Details Reduced Enforcement at EPA* (Feb. 26, 2019), available at: <https://www.cnn.com/2019/02/26/politics/epa-report-enforcement-environmental-integrity-project-eip/index.html>.
- ^{xv} U.S. EPA/CARB/NHTSA, *Draft Technical Assessment Report: Midterm Evaluation of Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards for Model Years 2022-2025* (July 2016), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100OXEO.PDF?Dockkey=P100OXEO.PDF>; see also U.S. EPA, *Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation* (2017), available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100QQ91.pdf>.
- ^{xvi} Antonio M. Bento et al., *Flawed Analyses of U.S. Auto Fuel Economy Standards*, 362 *Science* 1119 (2018), available at: <http://science.sciencemag.org/content/362/6419/1119.summary>
- ^{xvii} CARB analysis, *supra* n. v, at pp. 291-292.
- ^{xviii} *Id.* at 333-34.
- ^{xix} *Id.* at 332.
- ^{xx} Hiroko Tabuchi, *The New York Times*, *The Oil Industry’s Covert Campaign to Rewrite American Car Emissions Rules* (Dec. 13, 2018), available at: <https://www.nytimes.com/2018/12/13/climate/cape-emissions-rollback-oil-industry.html>.
- ^{xxi} See, e.g., Letter from Senator Sheldon Whitehouse et al. to U.S. EPA Regarding the SAFE Rule (Oct. 26, 2018).
- ^{xxii} 83 Fed. Reg. 44746, 44784 (Aug. 31, 2018).
- ^{xxiii} See 83 Fed. Reg. 61,574 (Nov. 30, 2018).
- ^{xxiv} See generally CARB, *Mobile Source Strategy* (2016), available at: <https://www.arb.ca.gov/planning/sip/2016sip/2016mobsrsrc.pdf>.
- ^{xxv} Federalist 39.
- ^{xxvi} See, e.g., *Alden v. Maine*, 527 U.S. 706, 714.
- ^{xxvii} *Id.* at 748.
- ^{xxviii} See, e.g., *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427, 2446 (2014) (Scalia, J., writing that agencies may not “revise clear statutory terms”); *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451, 460 (D.C. Cir. 2017) (now-Justice Kavanaugh writing that EPA may “act only as authorized by Congress”); *Scenic America, Inc. v. DOT*, 138 S. Ct. 2 (Oct. 2, 2017) (Gorsuch, J., joined by Roberts, C.J., and Alito, J. writing that agencies are not delegated unbounded power).