TESTIMONY OF
MICHIGAN ATTORNEY GENERAL MIKE COX

BEFORE THE U. S. SENATE COMMITTEE ON ENVIRONMENT & PUBLIC WORKS

JANUARY 24, 2008

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Madam Chair and members of the Committee, I am Mike Cox, Attorney General for the State of Michigan. I have been asked to present testimony regarding the Environmental Protection Agency's announced intent to deny California's request for a waiver under Section 209(b) of the Clean Air Act. The proposed waiver would, for the first time, allow California to regulate greenhouse gas emissions from automobiles to address global warming. I am here representing the State of Michigan's interests – and I believe the interests of many states – in advocating a comprehensive national solution, as opposed to a one-state or multi-state solution, to the global problem of greenhouse gas emissions and climate change.

Significant climate change is a serious concern and should be addressed. Reasonable people can disagree on the causes of this phenomenon and the ultimate impact, but all of us want the same outcome – a healthy environment that will sustain the Nation's and the world's population at the level that ever improving modern technology allows.

As Michigan's Attorney General, I have been a strong proponent of state sovereignty and states' rights. I have never hesitated from protecting the State of Michigan's right to preserve its environment when necessary and appropriate. As one who sees genius in our federal system of governance, I believe issues that are not fundamentally national in scope and don't require a national solution should be delegated and handled by the level of government most able to accomplish the mission of serving the people, the states. Conversely, for problems that impact more than one state, regional, if possible, but more likely national solutions and standards are needed. Sometimes the lines are not clear, as the Chairwoman of this Committee knows from my opposition to pending federal ballast water legislation that would preempt state action. In that context, I believe state action is required due to EPA's failure to regulate biological pollutants such as invasive species pursuant to the Clean Water Act.

Consequently, I appreciate California's unique history of air quality problems and the special status California was given under the Clean Air Act because it was an early leader in addressing pollution from auto emissions. It is clear that the waiver grew out of California's early regulatory expertise and the special problems that California or, more specifically, Southern California faced from smog. In fact, California has been granted many waivers over the years, and many of the waivers addressed issues that impacted many other states as well. However, it is clear as a legal matter that Congress never intended the exception to the Clean Air Act's otherwise broad field preemption to allow California to issue separate state standards for pollutants that affect every state – and every other country – without meeting the requirements of Section 209(b) that California "needs" the requested regulation to "meet" the "compelling and extraordinary conditions" in California.

Against a backdrop of constitutional principles concerning the supremacy of federal law and the doctrine of federalism, it is especially implausible to attribute an intent to Congress in the Clean Air Act to allow California to issue separate state standards addressing global climate change. If California faces problems associated with greenhouse gas emissions that are widely shared (non-extraordinary and non-unique), there is no reason to block all other states (as is done in the Clean Air Act except they may adopt a California standard) from regulating new motor vehicle greenhouse gas emissions but allow California to set such standards.

The objective of California's current waiver request is to address global climate change. The problem, as I see it, is that global climate change is not *solely* a California problem nor is it *solely* a national problem; it is, by definition and vernacular, a *global* problem. Accordingly, in contrast to the ballast water issue, here the line where national action is required is not blurred. Global climate change is a national and international issue which cannot be solved by individual states nor can it be addressed by focusing on only a single sector – automobiles – that by conservative estimates produce less than a third of U.S. greenhouse emissions and 7% of worldwide emissions.

Greenhouse emissions come from numerous sources besides automobile emissions including power plants, manufacturing facilities, aircraft, commercial vehicles, and naturally occurring emissions. All of these sources are global in nature. Article 6 of the United States Constitution and common sense dictate that any effective global climate change regulatory scheme is necessarily a national policy that addresses all sources of U.S. emissions in the larger context of international emissions. Allowing California, and the other states that adopt its regulations, to impose what will become the de facto national standard contravenes principles of federalism and undermines the possibility for our Nation to speak and act with one voice in addressing this global problem. California's proposed regulation will not be effective in controlling national or international emissions because it only addresses a small part of the total national and worldwide emissions – again, auto emissions are less than a third of the U.S. greenhouse gas emissions and 7% of the worldwide emissions. Further, the proposed California waiver fails to engage in any meaningful analysis of the costs of such regulation.

While I recognize the problems of my sister state, California, I must point out that its solution is not without a cost to the Nation and particularly to Michigan. This is a tenuous time for the nation's economy and so I would urge all concerned to move cautiously. Automotive job losses for the nation will be felt more acutely in Michigan. Over the past six years, our unemployment rate has grown from 3.8% in 2001 to 7.6% in 2007 – well above the national rate. Different data has been reported related to how many jobs will be lost under the California plan, but all indicate there will be job losses. Data from those in the best position to judge, the Nation's auto companies, indicates the net job loss would range from 60,000 to 100,000 jobs; and because Michigan has 22% of the nation's auto manufacturing jobs, our burden would be even greater – which would truly create "compelling and extraordinary conditions" in my State.

In sum, this is simply not an issue that should or can be addressed by one or even multiple states. Congress recently debated the issue of global climate change when it passed the Energy Independence and Security Act, which raises mileage standards to 35 MPG by 2020. Representatives from across the country passed a bill to impose new CAFE standards that took

into account the issues related to greenhouse gas emissions, as well as, energy conservation concerns. While California's proposal relies on some concepts that are not related to CAFE standards, such as upstream energy costs for hybrid and electric vehicles and air conditioner leakage, the thrust of the greenhouse gas emission standards sought by California are from increased fuel economy; or rather, CAFE standards by a different name. While the ink is barely dry on the new Energy Independence and Security Act of 2007, California's waiver request would de facto amend it – and bypass the constitutional prerogatives of Congress – by promulgating a new regulation that necessarily depend on changing corporate average fuel economy standards. In addition to this Act, there have been numerous bills introduced in Congress over the past few years that address the problems of energy, pollution, and the impact of greenhouse gas emissions on global warming. Certainly, these efforts are evidence that Congress believes global climate change is a national problem.

Unfortunately, time does not permit me to address the impact of greenhouse emissions from Brazil, Russia, India, and China nor the potential for regulatory confusion between EPA, NHSTA, and parallel state agencies, if the California waiver were to pass. Suffice it to say, that more than almost any problem facing American society today, global climate change requires one voice – a national voice.

Congress is the national policy-making body in our system of government. Instead of criticizing EPA's decision, this body should make the national policy choices it is authorized and entrusted to make. The benefit of one national standard based upon the broad-based agreement of all of the states through the use of the constitutionally empowered democratic branches of government will result in more uniform compliance and acceptance by all. I hope this hearing is one of the first steps in addressing this issue and that the national government and Congress will take action.

Thank you.