Testimony of Jeffery R. Holmstead
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Good morning. My name is Jeff Holmstead. I am a partner in the law firm of Bracewell & Giuliani and head of the firm's Environmental Strategies Group (ESG). This morning, however, I am not appearing on behalf of my law firm or any of the firm's clients. I am here in my personal capacity – as a former EPA official who has spent almost 20 years working on Clean Air Act and climate change issues.

From 2001 to 2005, I was the Assistant Administrator for Air and Radiation at EPA. I am proud to say that I headed EPA's Office of Air and Radiation – the Office in charge of implementing the Clean Air Act – longer than anyone else in the Agency's history. I believe that I am as well acquainted as anyone with the legal, policy, and political issues associated with the Clean Air Act and climate change.

Late last year, Administrator Johnson announced his intention to deny California's request for a waiver under Section 209 of the Clean Air Act. I know that Chairman Boxer and certain other members of the Committee are unhappy with this decision, but I believe it is the right decision as both a legal matter and a policy matter.

The Clean Air Act creates complex relationship between the federal government and the states when it comes to regulating sources of air pollution. Very generally speaking, the federal government sets "ambient air quality standards" and then allows states to decide which sources of pollution to regulate in order to meet those standards. Almost 40 years ago, however, when

Congress first began to deal with air pollution issues, it decided that there should generally be one set of uniform national emission standards for motor vehicles. Thus, section 209(a) of the Clean Air Act provides that "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles." But there is an important exception to this federal preemption. Congress recognized that California faced "compelling and extraordinary conditions" with respect to air quality because of its location, its geography and weather patterns – and because the vast majority its air pollution came from vehicles. Thus, Congress provided that EPA "shall, after notice and opportunity for public hearing, waive application of this section – the prohibition on state vehicle standards – to California. Importantly, however, the Act also states that "No such waiver shall be granted if the Administrator finds that – [California] does not need such State standards to meet compelling and extraordinary conditions."

Historically, there has been very little discussion about what is meant by the phrase "compelling and extraordinary conditions." It was undisputed that California faced very serious air pollution problems – the air in many of its major cities was unhealthy to breathe – and that most of the State's pollution came from vehicles being driven on California roads. Thus, there was very little question as to whether the State needed its own, more stringent standards to "meet compelling and extraordinary conditions."

Now, however, California seeks a waiver to deal with a very different type of problem – global climate change. And this is truly a global issue. A ton of CO2 emitted in New York or New Delhi has precisely the same impact on California as a ton of the same gas emitted in Los Angeles or Sacramento. The state is not seeking a waiver in order to provide healthier air for its

residents to breathe, but to make what it admits is a "minimal" difference in global emissions of greenhouse gases.

There is no denying that climate change is an enormously important issue. But based on the history and structure of the Clean Air Act, it is clear that "compelling and extraordinary" does not just mean "enormously important." It means that there must be something different about California relative to other states – something "extraordinary" that would justify differential treatment for California.

In support of its waiver request, California lists a number of potential impacts that the State may face because of climate change, including on impacts on tourism, public health, water resources, agriculture, wildfires, sanitation, water-borne infections, temperature feedbacks on ozone levels, river flows, and the like. Obviously, these impacts are potentially very serious, but many other States face some or all of them. Nowhere does California attempt to demonstrate that the negative impacts it would face from global climate change are "extraordinary" as compared to other States in the nation.

It would be problematic under our constitution if Congress were to favor one state over all others unless there is a good reason for doing so – unless there is something different about that state to justify its special status. If California's problems are not different from those faced by other states, yet it alone is given special treatment under the statute, the rationale for Congress's blocking all other States from regulating emissions from new motor vehicles would be eliminated. The special status for California only makes sense if section 209(b) is read to allow the State to address conditions that are "compelling and extraordinary" compared to other States.

Climate change is clearly not a state specific issue. It is one that the nation and the international community as a whole need to address. This Committee should not view greenhouse gases in the same manner as conventional pollutants currently regulated under the Clean Air Act and should recognize the need to control greenhouse gases under national and international programs.

Regulation of greenhouse gases is an issue that crosses over various industrial sectors and will affect the nation's economy as a whole. The United States cannot afford, from either an economic or environmental prospective, to address climate change without a thoughtful national discussion. California is obviously in a strong position to influence a national debate. It is well represented in Congress, and the technical experts in California agencies are well respected at EPA and other parts of the federal government. The best way to ensure that all the ramifications of greenhouse gas regulation are carefully considered and addressed is to ensure a federal preemption of state regulatory activities. This is a national and global issue and solutions to global warming need to be addressed at that level.