KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2018

The Honorable Elaine L. Chao
Secretary
United States Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Madam Secretary and Administrator Wheeler:

As the attorneys general for our respective states, we write to stress the importance of the President's proposal to improve and bring national harmony to the Corporate Average Fuel Economy (CAFE) standards.

One state should not be able to effectively dictate fuel economy standards, tailpipe emission requirements, and mandates for zero emission vehicles (ZEV) for the entire nation where Congress has set a clear policy favoring a single federal standard and no compelling air quality concern exists that is unique to that state.

We believe in the rule of law and concur with the assertion in the proposed rule that state-based greenhouse gas (GHG) tailpipe standards and ZEV mandates are preempted under the Energy Policy Conservation Act of 1975. That legislation was enacted to address the United States' dependency on OPEC by establishing uniform motor vehicle fuel economy standards across the entire nation.

Unfortunately, it is impossible to achieve those uniform standards under current federal policy. Instead, the voters of states that prefer more stringent standards are allowed the latitude to legislate as they see fit while voters in states that prefer less stringent standards find themselves subjected to the more stringent state's standards. Allowing one state the authority to increase federal standards for the entire nation while preempting any state that seeks to decrease them is inconsistent with bedrock principles of federalism and thwarts Congress' purpose of establishing a unified national standard when it created the CAFE program in 1975.

The current policy originated with a purported waiver issued under the Clean Air Act. We agree that this ostensible waiver was likewise preempted by the terms of the Energy Policy Conservation Act. Contrary to the Environmental Protection Agency's prior interpretation of the

correlation of these statutes, state standards preempted under the Energy Policy Conservation Act cannot rationally be afforded a valid waiver of preemption under the Clean Air Act.

We also believe that the California GHG waiver was improperly granted and is inconsistent with Section 209 of the Clean Air Act. There is no sound basis on which to conclude the California standards address "compelling and extraordinary" air quality concerns unique to California. In fact, California has made no secret of the fact that their standards are aimed at establishing nationwide policy toward carbon emission and will not meaningfully address ambient GHG concentrations in the state. Moreover, the California standards are unlawful in that they are infeasible and do not provide sufficient lead time or give appropriate consideration to compliance costs under Section 209 of the Act.

We support implementation of the proposal and urge revocation of the Environmental Protection Agency's previous waivers to California, thereby precluding the nine other opt-in states under Section 177 from enacting California's fuel economy standards.

Very truly yours,

Ken Paxton
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Leslie Rutledge
Attorney General of Arkansas

Jeff Landry
Attorney General of Louisiana

Doug Peterson
Attorney General of Nebraska

Mike Hunter
Attorney General of Oklahoma

Alan Wilson
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