

**SUMMARY OF WRITTEN TESTIMONY BY EDMUND G. BROWN JR.
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA BEFORE THE
SELECT COMMITTEE ON ENERGY INDEPENDENCE AND GLOBAL WARMING
JUNE 8, 2007**

Thank you, Mr. Chairman and members of the committee for this opportunity to provide comments on the Bush Administration's response to the United States Supreme Court's opinion in *Massachusetts v. EPA*. and the President's May 14 Executive Order: Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines.

Mr. Chairman, you have asked me to address three additional topics: the impact of climate change on California, California's efforts to combat climate change, and the appropriate Congressional response to global warming. Key points include:

- Global warming is the most catastrophic long-term threat our county is facing today. It is absolutely critical that we respond swiftly and aggressively. A deficient response to this threat significantly undermines our national security, furthers our foreign oil dependency and weakens our economy. California is particularly vulnerable to the impacts of global warming, which will include decreased water supply and increased temperatures, flooding, and wildfires.
- California has a longstanding record of pioneering the fight against global warming. In 2002, the California legislature passed AB 1493, the state statute authorizing California's greenhouse gas emissions regulation. In 2006, California enacted AB 32, the first statute of its kind mandating greenhouse gas reductions. 11 other states adopted California's regulation and more are slated to join.
- The Supreme Court in *Massachusetts v EPA* strongly reinforced longstanding legal principles. The Court directed EPA to obey Congress' mandate in the Clean Air Act and to stop resisting its duty to protect the public and the environment from global warming. The decision affirmed California's right to set its own automobile emissions standards.
- Congress should continue to protect California's right to set its own automobile emissions standards. It should not embrace any proposal to narrow or eliminate that right. In so doing, it would undermine the statutory framework of over 40 years, which was set in place by earlier Congresses.
- The groundwork for the solution to the problem was laid over a generation ago when Congress passed the Air Quality Act of 1967. The original reasons for which Congress authorized California to develop separate standards for automobile emissions remain valid. The automobile industry should not be permitted to undermine that structure.

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Thank you, Mr. Chairman and members of the committee for this opportunity to provide comments on the Bush Administration's response to the United States Supreme Court's opinion in *Massachusetts v. EPA*. and the President's May 14 Executive Order: Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines. Mr. Chairman, you have asked me to be sure to address three additional topics: the impact of climate change on California, California's efforts to combat climate change, and the appropriate Congressional response to global warming.

I. IMPACTS OF CLIMATE CHANGE ON CALIFORNIA

Global warming is the most urgent environmental issue of our time. Its impacts are real, dramatic, and they are happening now. California's unique topography, and its high human and vehicular population, have already caused higher ozone concentrations than other parts of the country. Hotter temperatures expected to result from climate change will cause more ozone in California. Climate change will make the problem even more extreme. Climate change will cause increases in wildfires. More wildfires means more wildlife and habitat destruction, more destruction of peoples' homes and possessions, and increases in other pollutants such as particulates resulting from these wildfires. Climate change will have water impacts for California that will be felt acutely. The warming of our western mountains will cause decreased snowpack, more winter flooding, reduced summer water flows, to name a few. In California,

these impacts and others were most recently described by the California Air Resources Board (ARB) in its testimony on May 22 and 30 to EPA as part of our waiver request. Those presentations are publicly available on the ARB Website.

II. CALIFORNIA'S EFFORTS TO COMBAT GLOBAL WARMING

We in California have a longstanding record of taking action to combat climate change. In 2002, California enacted legislation authorizing our automobile greenhouse gas rule and ARB finalized the regulation in 2004. Thus, we have lead this fight for years and our effort is well established.

Unfortunately, California has had to defend itself from an aggressive legal attack from the automakers. Their lobby has challenged the regulations at every opportunity and has presented a strategy for endless stonewalling. They have sued California, challenging the state's authority to regulate greenhouse gas emissions from cars and trucks, and they have challenged ten other states' actions in adopting the California rules. The automobile industry appears to be doing everything it can to get the U.S. EPA to delay or deny our waiver request.

California's legislature also enacted the California Global Warming Solutions Act of 2006 (AB 32). AB 32 is the world's first comprehensive program of regulatory and market mechanisms to achieve greenhouse gas reductions. California is currently developing a low carbon fuel standard (LCFS) which will help the state in meeting the goals of AB 32 which include reducing greenhouse gas emissions to 1990 levels by 2020.

III. MASSACHUSETTS v. EPA AND THE PRESIDENT'S EXECUTIVE ORDER

The United States Supreme Court's opinion in *Massachusetts v. EPA* was a resounding affirmation of California's actions to address global warming. That opinion directed EPA to follow Congress' mandate in the Clean Air Act. The case represents an important victory, but the remarkable thing about it is that it did not do anything radically new. It simply -- and authoritatively -- reiterated, re-emphasized, and validated existing legal principles. The opinion says forcefully that carbon dioxide and other greenhouse gases are pollutants that are emitted from cars and trucks. That is a conclusion that the automobile industry, in particular, tried for years to avoid. But Congress, when it first promulgated the Clean Air Act defined pollutants broadly. This was never in controversy until the present Administration moved into the White House.

The case also affirmed the right of States to challenge the federal government's inaction on global warming. And it limited the question for EPA to ask, in whether to adopt regulations like California's, to the statutory question of whether these pollutants "may reasonably be anticipated to endanger public health and welfare." Again, these are not new legal principles, but it took a Supreme Court case to put these arguments to rest because of the intractable resistance to them by the automobile industry and others.

Massachusetts v. EPA also makes it clearer that our California regulations meet the requirements of the Clean Air Act and are not preempted by the Energy Policy and Conservation Act (EPCA), the federal CAFE statute. It helps show that there are compelling and extraordinary conditions that allow for separate California standards. And it shows that it is not difficult to harmonize fuel economy standards with carbon dioxide emission standards, and that

those standards are parallel and complementary. Neither displaces the importance of the other.

Unfortunately, President Bush and his Administration continue to avoid taking action against global warming, despite the Supreme Court's opinion. His administration still claims that more study is needed. It would not be surprising if EPA took the same position and claimed that more study was needed. The President's May 14 Executive Order is just one more example of this stall tactic. Now that they've lost the battle over whether global warming is actually happening, the Executive Order asserts that the problem of global warming is complicated and so more coordination is needed before "first steps" can be taken. This is nothing but more delay. The President says that regulations "should be developed." California's regulations are already completed. EPA should grant California its waiver and let us move forward. There is no reason to delay. So, our position on the President's Executive Order is this: we reject it. We urge you also to reject that order and what it stands for, which is more delay.

IV. CONGRESS SHOULD RESPOND TO GLOBAL WARMING BY REJECTING THE AUTOMOBILE INDUSTRY'S ATTEMPTS TO UNDERMINE THE CLEAN AIR ACT'S WAIVER PROVISION.

California is still waiting for EPA to grant our waiver request. There's one simple way for California to get started in implementing its fight against global warming: EPA must grant the waiver. Anything that Congress does should not get in the way of that goal. You can greatly assist California by rejecting proposed statutory language that would undermine or weaken the waiver provisions in the Clean Air Act.

Congress should respond to the problem of global warming by strengthening California's ability to act. For example, the Discussion Draft on Alternative Fuels, Infrastructure, and Vehicles, on which the House Subcommittee on Energy and Air Quality held hearings yesterday,

does not represent the kind of congressional action that will help in the fight against global warming. Most important to us, the Discussion Draft's provision eliminating the Clean Air Act waiver provision for California would destroy our ability to lead other states and the Nation in fighting global warming.

The Discussion Draft is also an attack on state sovereignty. The right of California and other states to protect their citizens from the impacts of global warming should not be undermined. Global warming is the most important environmental problem of our generation, and perhaps our civilization. This is nothing less than an attack on 40 years of a system under the Clean Air Act that has worked well. The efficacy of that system was just last year, 2006, validated in a National Academy of Science study commissioned by Congress, entitled State and Federal Standards for Mobile Source Emissions. NAS, which as you know is comprised of distinguished scholars in this field, undertook a thorough examination of this subject and concluded that: "The original reasons for which Congress authorized California to develop separate standards for automobile emissions remain valid." NAS recommended that California be allowed to continue in its pioneering role in setting mobile source emissions standards.

Congress can protect California's automobile greenhouse gas emissions standards from challenges based on EPCA preemption by inserting a "savings clause" into the Energy Policy Conservation Act (EPCA). This will protect against industry lawsuits arguing, as they are now, that Congress intended for EPCA to preempt California's right to set automobile emissions standards under the Clean Air Act. A savings clause would make explicit what is now implicit, and we believe to be true -- that nothing in EPCA affects the authority granted to California in Sections 202 and 209 of the Clean Air Act.

Congress can maintain the Clean Air Act's framework in place and reject the automobile industry's aggressive attempts to undo it. Just yesterday, the CEOs from General Motors Corp., Ford Motor Co. and DaimlerChrysler met with members of congress in both chambers, to discuss fuel economy (CAFÉ). They criticize CAFÉ as being an ineffective policy for reducing foreign oil dependence. Their trade association is running ads aimed at undermining the 35 mpg mandate in the Senate's current energy bill. At the same time they are adamantly opposed to the Clean Air Act's longstanding authorization of California's automobile emissions program and they claim they want NHTSA, the agency responsible for setting the CAFÉ standards, to regulate them instead of EPA. The fact is, they simply do not want to live up to their responsibilities to the environment and to the American people. They rebel against any real attempt to get them to do their part. This is nothing new.

Over the past 40 years, the domestic automobile industry has opposed just about every public health and welfare regulation -- seat belts, turn signals, collapsible steering columns, catalytic converters, air bags, and fuel economy standards. Taking a phrase from an earlier Supreme Court, the automobile industry has "waged the regulatory equivalent of war" against these standards. *Motor Vehicle Manufacturers Association v. State Farm Mutual Ins. Co.*, 4623 U.S. 29, 49 (1983).

The industry claims that California's greenhouse gas requirements will cost too much, cannot be met, and will not work. When the automobile industry opposed the Clean Air Act of 1970, they said the same things they are saying now. At that time, the American Automobile Manufacturers Association said that it would not be possible to achieve the control levels specified in the bill and that manufacturers would be forced to shut down. Of course, the U.S.

auto industry did meet the emissions requirements. Therefore, it's no surprise that now, instead of working to comply with the regulation, they are fighting it. They claim the sky is falling. In every case they have been wrong before and they are wrong now.

V. CONCLUSION

The problem of global warming is not new. As a nation, we are now reconciling ourselves to the reality that it is time to take radical steps to prevent global warming from devastating the planet. California has been a leader in confronting in threat and we are now on the verge of being able to implement our automobile greenhouse gas regulation to take action in this battle. Though the automobile industry has fought us every step of the way, I urge you to partner with us, not them.

The original reasons for which Congress authorized California to develop separate standards for automobile emissions remain valid. Global warming is a big problem, but the groundwork for the solution to the problem was laid over a generation ago when Congress passed the Air Quality Act of 1967. The automobile industry should not be permitted to undermine that structure. It tried vigorously to prevent its enactment in 1967 and its trying now to push it back and carve global warming out of the waiver authorization. This would only serve to weaken EPA's efforts to attack global warming and it would eviscerate California's automotive global warming program.