

PRESERVING CHOICE IN VEHICLE PURCHASES ACT

SEPTEMBER 1, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1435]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1435) to amend the Clean Air Act to prevent the elimination of the sale of internal combustion engines, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## PURPOSE AND SUMMARY

The purpose of H.R. 1435 is to amend the conditions contained in the Clean Air Act (CAA) under which the Administrator of the Environmental Protection Agency (EPA) must deny a State a waiver for vehicle emissions laws. Specifically, H.R. 1435 adds a requirement that the EPA cannot grant a waiver if the State directive “directly or indirectly” limits the sale or use of new motor vehicles with internal combustion engines.

## BACKGROUND AND NEED FOR LEGISLATION

## CLEAN AIR ACT

Title II of the CAA addresses mobile (transportation-based) sources of air pollution emissions via the tailpipe by seeking to reduce pollutants from both on-road and non-road vehicles through vehicle emission standards, as well as transportation fuel through fuel controls on gasoline and diesel. The title calls for air pollutant emission standards applicable to new motor vehicles, new motor vehicle engines, and nonroad vehicle engines that address air pollutants such as particulate matter (PM), nitrous oxide (NO<sub>x</sub>), and greenhouse gases (GHGs).

Within Title II, CAA section 202(a) provides EPA with the authority to set emission standards for new motor vehicles, “after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.” EPA is required to consider issues of technological feasibility, cost of compliance, and lead time.<sup>1</sup> EPA may also consider other factors, including the impacts of potential standards on emissions of air pollutants, the impacts of such standards on public health and welfare, the impacts on the automotive industry, the impacts on the vehicle purchasers and consumers, oil conservation, energy security and other energy impacts, safety, and other relevant considerations.<sup>2</sup>

While Title II of the CAA generally pre-empts states from adopting their own emission standards for new motor vehicles or engines, CAA section 209(b) provides the EPA Administrator with the authority to grant a State’s vehicle emission standards an exemption to federal preemption, subject to three conditions. California is the only state eligible for a waiver under CAA section 209(b), because California adopted emission standards for new vehicles prior to the enactment of the CAA. In terms of the specific conditions, the EPA Administrator shall grant California a waiver unless: (1) the EPA was arbitrary and capricious in determining that the State’s standards are at least as protective of public health and welfare as federal standards; (2) California does not need the standards to meet compelling or extraordinary conditions; or (3) the State’s standards and accompanying enforcement procedures are not consistent with CAA section 202(a).

CAA section 177 allows additional States to avoid preemption of their vehicle emission standards if they adopt California’s exact

<sup>1</sup>See “Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles,” 88 Fed. Reg. 87, May 5, 2023.

<sup>2</sup>*Id.*

motor vehicle emission standards under certain conditions. States are not required to seek EPA’s approval to adopt California’s standards under CAA section 177. As of today, 17 States and the District of Columbia are referred to as “Section 177 states” that have passed state laws adopting California’s Low-Emission Vehicle (LEV) criteria pollutant and greenhouse gas (GHG) emission regulations.<sup>3</sup> Of that group, 15 States and the District of Columbia are poised to adopt California’s Zero-Emission Vehicle (ZEV) regulations as well.<sup>4</sup> The Section 177 states represent 40.1 percent of U.S. new light-duty vehicles sales.<sup>5</sup>

#### CALIFORNIA’S WAIVER REQUEST

On August 25, 2022, the California Air Resources Board (CARB) voted to approve its Advanced Clean Cars II (ACC II) regulation.<sup>6</sup> California recently submitted a request for a waiver for ACC II under CAA section 209(b). The State’s regulation requires an increasing number of zero-emission vehicles, including battery-electric, plug-in hybrid electric vehicles, and hydrogen fuel cell vehicles to meet strict air quality and GHG emission standards.<sup>7</sup> It also effectively bans the sale of new internal combustion engine vehicles by requiring all new vehicle sales to be zero-emission vehicles by 2035.<sup>8</sup>

A change of this nature would constitute a dramatic change in vehicles driven regardless of consumer demand. As recently as 2021, data for light-duty vehicle registrations in the United States demonstrates that Americans chose a diversity of engine types and car classes to meet their needs. Specifically, 93.8 percent of these registrations were for cars powered by gasoline or ethanol/flex fuel, 0.33 percent operated on diesel or biodiesel, almost 0.02 percent were hybrid vehicles, and 0.008 percent were plug-in hybrid or battery electric vehicles.<sup>9</sup>

#### ELECTRIC VEHICLE COSTS

American consumers are directly impacted by the cost of vehicles. According to Kelley Blue Book, the average price of an EV is \$65,291, which is \$17,197 more than the average price of an internal combustion engine (ICE) vehicle.<sup>10</sup> Insurance for an EV is also \$44 more expensive per month or \$528 more expensive per year than insurance for gas-powered cars.<sup>11</sup> Pricing is especially important, because access to a car is tied to improved economic outcomes for low-income households. During a Subcommittee on Environment, Manufacturing, and Critical Materials hearing, Mr. Nunes of the Breakthrough Institute testified that:

EVs today are more expensive to purchase up front than [ICE] powered vehicles. Moreover, this price disadvantage

<sup>3</sup> See “California Section 177 States,” California Air Resources Board, May 13, 2022.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See “Advanced Clean Cars II Regulations: All New Passenger Vehicles Sold in California to be Zero Emissions by 2035,” California Air Resources Board.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, “Vehicle Registration Counts by State,” U.S. Department of Energy Office of Energy Efficiency & Renewable Energy, 2022.

<sup>10</sup> See “Electric Car FAQ: Your Questions Answered,” Kelley Blue Book, October 31, 2022.

<sup>11</sup> See “Electric car insurance 2023 guide,” Policygenius, December 29, 2022.

doesn't fully capture the state of the EV market. In 2011, the inflation adjusted price of a new EV was nearly \$44,000. By 2022, that price had risen to over \$66,000. EV prices aren't just going up; they are rising faster than inflation and, as Breakthrough's analysis suggests, faster than ICE vehicle prices. Should the government nevertheless implicitly mandate EV adoption, an approach recently adopted by the [EPA], it would risk worsening existing inequities in new vehicle ownership while also encouraging some households to continue driving older, more polluting ICE vehicles for longer than they ordinarily would, potentially hindering emissions reductions efforts.<sup>12</sup>

Additionally, any Inflation Reduction Act funding intended to subsidize the final purchase price and thus the growth of EV sales among certain Americans ends in 2032 when EPA's rule—mandating two-thirds of new motor vehicles sold be EVs—becomes fully effective.

The costs do not end with the upfront purchase price. Fueling one's new electric vehicle engine is also an expense of consequence. A study by the Anderson Economic Group (AEG) found trucks cost about the same to fuel and charge, while entry and midlevel cars and SUVs cost more to charge at home and in public than they do to fuel at a gas station.<sup>13</sup> AEG found the cost to charge an entry-priced ICE cars and crossovers was "around \$9.78 per 100 purposeful miles," but an entry-priced EV charged mostly at home was \$12.55 and an EV charged mostly at commercial charging stations was \$15.97.<sup>14</sup> In addition, AEG found the cost to charge mid-priced ICE cars and crossovers was "approximately \$11.08 per 100 purposeful miles," but a mid-priced EV charged mostly at home was \$12.62 and an EV charged mostly at commercial charging stations was \$16.10.<sup>15</sup> In the luxury segment, consumers of electric vehicles charged mostly at home paid around \$13.50 per 100 miles, as opposed to the \$17.56 for the ICE version.<sup>16</sup> However, EV owners paid slightly more for commercial charging (\$17.81).<sup>17</sup> This study was based on the latest information on gas and residential electricity prices, commercial charging prices, tax rates on fuel and electric cars, fuel economy details, and more to compare the cost of fueling versus charging for 100 miles of driving. Moreover, unlike studies that only compare gas and electricity costs, the AEG study amortized other costs, like charging installation and EV registration fees, as part of the cost of home charging, as well as time spent driving to and waiting at a station as a cost part of commercial charging.

EV consumers are faced with a myriad of hidden costs in addition to the vehicle and fuel itself. If consumers choose to install a charging station at home, J.D. Power estimates that the price could be as much as \$50,000 depending on labor and existing electric wir-

<sup>12</sup> See *Written Testimony of Ashley Nunes*, Director of Federal Policy, Climate, and Energy, The Breakthrough Institute, before the Committee on Energy and Commerce, April 26, 2023

<sup>13</sup> See "Some Cars Cheaper to Fuel with Gas than Electric in 2023," Anderson Economic Group, August 1, 2023.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

ing.<sup>18</sup> Focusing on charging equipment specifically, Level 2 chargers are the most common at-home EV charging stations and cost an average of \$1,200 to \$2,500 per charger.<sup>19</sup> Another significant cost of EV ownership is the cost of battery replacement. If not covered under warranty, consumers would have to pay between \$5,000 and \$20,000 to replace an EV battery.<sup>20</sup>

#### ELECTRIC VEHICLE FUNCTIONALITY

There is also the issue of vehicle range and functionality. An EV's driving range and electric car mileage per charge varies, but typically drivers can expect the median of 234 miles in a single charge—factors that can affect an EV's range, including weather, battery size, and towing weight.<sup>21</sup> Conversely, the median range of gasoline vehicles in the United States is 403 miles per fill-up. The Subcommittee on Environment, Manufacturing, and Critical Materials received testimony from the President of the Minnesota Automobile Dealers Association (MADA) that in colder weather areas the “need to defrost and heat a vehicle can reduce the batteries range by as much as 40%”<sup>22</sup> citing a study by J.D. Power and Plugshare that found “cold places that receive nasty winter weather . . . can experience significant declines in [vehicle] satisfaction.”<sup>23</sup> The head of MADA also testified that EVs have a limited towing capability—a significant problem for contractors, farmers, loggers and miners, stating “[t]owing anything with any weight to it dramatically reduces the potential vehicle range even in ideal weather conditions.”<sup>24</sup> Also, there are 55,509 EV charging stations in the United States,<sup>25</sup> while the National Association of Convenience Stores reports that there are more than 150,174 fueling stations across the United States.<sup>26</sup>

#### CONSUMER PREFERENCES

Data from a study by Cox Automotive noted that consumer interest in EVs is not translating into purchases of EVs. Cox's report found the unsold inventory of EVs in the United States grew from Memorial Day Weekend 2023 to June 26, 2023 with most EV models at more than a 100 days' supply, which was more than twice the rate of gas-powered and hybrid vehicles.<sup>27</sup> The unsold inventory was 171 percent higher than what is considered “normal and ideal” for auto dealers.<sup>28</sup> Specifically, 90,953 EVs were sitting on dealership lots across the country during that 30-day period.<sup>29</sup>

H.R. 1435 is necessary to prevent California's law from creating a *de facto* national effort to ban or otherwise eliminate the sale of

<sup>18</sup> See “How Much Does It Cost to Install an EV Charger?” J.D. Power, December 11, 2022.

<sup>19</sup> *Id.*

<sup>20</sup> See “Updated: Electric Car Battery Replacement Costs,” Recurrent Auto, March 26, 2023.

<sup>21</sup> See “FOTW #1221, January 17, 2022: Year 2021 All-Electric Vehicles Had a Median Driving Range about 60% of Gasoline Powered Vehicles,” Vehicles Technology Office, Department of Energy, January 12, 2022.

<sup>22</sup> See *Written Testimony of Scott Lambert*, President, Minnesota Automobile Dealers Association, before the Committee on Energy and Commerce, June 22, 2023.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See “Electric Vehicle Charging Station Locations,” Office of Energy Efficiency and Renewable Energy, Department of Energy, August 21, 2023.

<sup>26</sup> See “U.S. Convenient Store Count,” National Association of Convenience Stores, February 2023.

<sup>27</sup> See “Path to EV Adoption: Consumer and Dealer Perspectives,” Cox Automotive, June 2023.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

new internal combustion engine cars and light trucks through the involvement of Section 177 states.

#### COMMITTEE ACTION

On June 22, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing on H.R. 1435. The title of the hearing was “Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel.” The Subcommittee received testimony from:

- Joseph Goffman, Principal Deputy Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency;
- Chet Thompson, President and CEO, American Fuel and Petrochemical Manufacturers;
- Neil Caskey, CEO, National Corn Growers Association;
- Scott Lambert, President, Minnesota Auto Dealers Association; and,
- Genevieve Cullen, President, Electric Drive Transportation Association.

On July 12, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials met in open markup session and forwarded H.R. 1435, without amendment, to the full Committee by a record vote of 13 yeas and 8 nays.

On July 27, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1435 without amendment, favorably reported to the House by a record vote of 26 yeas and 22 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE # 4**

**BILL:** H.R. 1435, the Preserving Choice in Vehicle Purchases Act

**AMENDMENT:** An amendment, offered by Rep. Ruiz, No. 1, would strike the section on the effect on existing waivers.

**DISPOSITION:** **NOT AGREED TO**, by a roll call vote of 20 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette			
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson		X		Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters			
Rep. Palmer				Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster			
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier	X		
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							

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**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE # 5**

**BILL:** H.R. 1435, the Preserving Choice in Vehicle Purchases Act

**AMENDMENT:** An amendment, offered by Rep. Barragan, No. 2, would condition the effective date upon certifying that the Act will not cause disproportionate harm to EJ communities.

**DISPOSITION:** **NOT AGREED TO**, by a roll call vote of 20 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson		X		Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer				Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster			
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto			
Rep. Armstrong		X		Rep. Craig			
Rep. Weber		X		Rep. Schrier	X		
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							

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**COMMITTEE ON ENERGY AND COMMERCE  
118TH CONGRESS  
ROLL CALL VOTE # 6**

**BILL:** H.R. 1435, the Preserving Choice in Vehicle Purchases Act

**AMENDMENT:** A motion by Mrs. Rodgers to order H.R. 1435 favorably reported to the House, without amendment (Final Passage).

**DISPOSITION:** **AGREED TO**, by a roll call vote of 26 yeas to 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess				Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson	X			Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer				Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster			
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier		X	
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obenolte							

## OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1435 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to amend the conditions under which the EPA Administrator under the Clean Air Act must deny a State a waiver for vehicle emissions laws.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1435 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

## RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII,

(1) The following related hearing was used to develop or consider H.R. 1435:

- On June 22, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing on H.R. 1435. The title of the hearing was “Driving Affordability: Preserving People’s Freedom to Buy Affordable Vehicles and Fuel.” The Subcommittee received testimony from:

Joseph Goffman, Principal Deputy Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency;

Chet Thompson, President and CEO, American Fuel and Petrochemical Manufacturers;

Neil Caskey, CEO, National Corn Growers Association;

Scott Lambert, President, Minnesota Auto Dealers Association; and,

Genevieve Cullen, President, Electric Drive Transportation Association.

(2) The following related hearing was held:

- On Wednesday, April 26, 2023, the Subcommittee on Environment, Manufacturing, and Critical Materials held a hearing entitled, “Exposing the Environmental, Human Rights, and National Security Risks of the Biden Administration’s Rush to Green Policies.” The Subcommittee received testimony from:

Mark Mills, Senior Fellow, Manhattan Institute;

Ashley Nunes, Director of Federal Policy, Climate, and Energy, Breakthrough Institute;

Daniel Simmons, Vice President for Policy, Institute for Energy Research; and,

Trevor Higgins, Senior Vice President, Energy and Environment, Center for American Progress.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

#### EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1435 contains no earmarks, limited tax benefits, or limited tariff benefits.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

Section 1 of H.R. 1435 provides that the Act may be cited as the “Preserving Choice in Vehicle Purchases Act.”

##### *Section 2. State standards*

Section 2 of H.R. 1435 contains three parts:

- (1) First, the section amends CAA section 209(b), the conditions under which EPA can grant a waiver to a State for motor vehicle emission standards, by adding a requirement that the EPA cannot grant a waiver if the State directive “directly or indirectly” limits the sale or use of new motor vehicles with internal combustion engines.

(2) Second, the section prevents EPA from considering State standards amended after the date of enactment of this bill as having qualified under an existing waiver.

(3) Third, section 2(b) revokes any CAA section 209(b) waivers that California received between January 1, 2022, and the date that H.R. 1435 becomes law if the State standard “directly or indirectly” limited the sale or use of new motor vehicles with internal combustion engines. As drafted, the Committee understands that Section 2(b) could apply to California’s Advanced Clean Cars II, Advanced Clean Cars I, Advanced Clean Trucks, Heavy-Duty Vehicle Engines Emission Warranty and Maintenance, Nonroad Engine Pollution Control Standards regulations,<sup>30</sup> and the Advanced Clean Fleets regulation.<sup>31</sup>

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**CLEAN AIR ACT**

\* \* \* \* \*

**TITLE II—EMISSION STANDARDS FOR MOVING SOURCES**

\* \* \* \* \*

**PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS**

\* \* \* \* \*

**STATE STANDARDS**

SEC. 209. (a) 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 or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

<sup>30</sup> See “*Vehicle Emissions California Waivers and Authorizations*,” Environmental Protection Agency, August 4, 2023.

<sup>31</sup> See “*Recent Actions Taken by OAL on Proposed Regulations*,” Office of Administrative Law, State of California, 2023.

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, **[or]**

(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this **[part.] part, or**

*(D) such State standards directly or indirectly limit the sale or use of new motor vehicles with internal combustion engines, as such term is defined in section 63.9375 of title 40, Code of Federal Regulations, as in effect January 1, 2023.*

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title.

*(4) The Administrator may not determine that any State standards amended after the date of enactment of this paragraph are within the scope of a waiver granted under paragraph (1) before the date of enactment of this paragraph.*

(c) Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 207(a)(2), no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) NONROAD ENGINES OR VEHICLES.—

(1) PROHIBITION ON CERTAIN STATE STANDARDS.—No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

(2) OTHER NONROAD ENGINES OR VEHICLES.—(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health

and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

- (i) the determination of California is arbitrary and capricious,
  - (ii) California does not need such California standards to meet compelling and extraordinary conditions, or
  - (iii) California standards and accompanying enforcement procedures are not consistent with this section.
- (B) Any State other than California which has plan provisions approved under part D of title I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—
- (i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and
  - (ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

\* \* \* \* \*

## MINORITY VIEWS

We oppose H.R. 1435, legislation to prevent the Administrator of the Environmental Protection Agency (EPA) from granting a waiver of federal preemption under the Clean Air Act (CAA) for any California vehicle emissions standard that “directly or indirectly limit[s] the sale or use of” vehicles with internal combustion engines and directs EPA to revoke already-granted waivers that do not comply with this vague metric. This would put existing waivers dating back to 2013 in jeopardy, upend the entire clean vehicle supply chain, and create uncertainty for the U.S. automotive industry. This bill is a direct attack on over 50 years of Congress and EPA recognizing California’s ability to voluntarily adopt those standards to protect their citizens from dangerous air pollution and climate change.

## BACKGROUND

Congress and EPA have viewed California as a leader in reducing air pollution for decades due to its unique air pollution challenges, and as the first state to regulate tailpipe emissions from vehicles back in 1966.<sup>1</sup> This is reflected in Section 209 of the CAA, which requires EPA to grant California waivers so it can set vehicle emissions standards that are more protective than those set by EPA at the federal level.

Additionally, Section 177 of the CAA allows other pollution-burdened states to voluntarily adopt any California emissions standard that has been granted a waiver from EPA. Section 177 authority has allowed over a dozen states to adopt California’s low-emission vehicle (LEV) or zero-emission vehicle (ZEV) standards and reap the environmental and public health benefits of the more stringent standards.<sup>2</sup>

H.R. 1435 seeks to erase decades of historic progress on addressing air pollution from the transportation sector, driving innovation, and protecting public health.

The bill would put existing waivers dating back to 2013 in jeopardy. The Majority seeks to retroactively reverse nearly a decade’s worth of clean vehicle standards, choosing polluters over people, instead of building upon the industry’s innovation and where market trends are leading. Recently, the California Air Resources Board (CARB) and truck and engine manufacturers announced the Clean Truck Partnership to cut dangerous pollution from the heavy-duty transportation sector and assure a path to zero-emission trucks.

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<sup>1</sup> California Air Resources Board, *History* ([ww2.arb.ca.gov/about/history#:text=In%201966%20California%20established%20the,Air%20Resources%20Board%20was%20established.](http://ww2.arb.ca.gov/about/history#:text=In%201966%20California%20established%20the,Air%20Resources%20Board%20was%20established.)) (accessed Aug. 25, 2023).

<sup>2</sup>The International Council on Clean Transportation, *Benefits of Adopting California Advanced Clean Cars II Regulations Under Clean Air Act Section 177* (May 24, 2023).

However, if enacted, H.R. 1435 would revoke existing waivers and block any future waivers related to this historic agreement.

The Majority claims H.R. 1435 is necessary to prevent California from creating a de facto national ban on new internal combustion engine cars and light trucks. This reasoning is short-sighted and fails to recognize market demand for EVs, the public health and environmental benefits of moving towards zero-emission vehicles, states' rights, and where auto industry innovation is already heading. American demand for EVs is already outpacing supply, as EV demand increased by 350 percent from 2020 to 2022, and the EV market share increased by 377 percent from 2020 to the first quarter of 2023.<sup>3</sup> Auto manufacturers are also leading the way, with Ford having announced an investment of \$3.7 billion in its Michigan, Ohio, and Missouri factories to manufacture both electric and internal combustion engine vehicles.

Furthermore, H.R. 1435 sends the wrong signal to our domestic vehicle manufacturing industry. Industry desires predictability, regulatory certainty, and long-term stability. During a Subcommittee on Environment, Manufacturing, and Critical Materials legislative hearing on H.R. 1435, the only witness representing the vehicle manufacturing industry testified that the disruption and uncertainty that would ensue from this bill, “. . . would work against U.S. market leadership and consumers' access to EV choices.”<sup>4</sup>

The detrimental impacts of H.R. 1435 would extend well beyond California, to any Section 177 state that chose to adopt California's standards. Combined, these states represent more than 40 percent of new vehicle sales.<sup>5</sup> Thus, by making egregious changes to the CAA Section 209 waiver authority, the bill directly infringes upon states' rights to make regulatory decisions that fit their needs.

#### SUMMARY OF H.R. 1435

Section 2(a) of H.R. 1435 amends CAA Section 209(b) by adding that the EPA Administrator shall not grant a waiver of federal preemption if the state standards “directly or indirectly limit[s] the sale or use of” vehicles with internal combustion engines, providing a destructively vague metric. Additionally, the section prevents EPA from determining any state standards are within scope of existing waivers after the date of enactment—blocking California from amending existing waivers to avoid the bill's requirements.

Section 2(b) of H.R. 1435 requires the EPA Administrator to revoke all waivers granted after January 1, 2022, if the state standard “directly or indirectly limit[s] the sale or use of” vehicles with internal combustion engines, requiring the EPA Administrator to revoke already-existing waivers that do not comply with this vague metric.

<sup>3</sup> Consumer Reports, *Excess Demand: The Looming EV Shortage* (Mar. 2023).

<sup>4</sup> House Committee on Energy and Commerce, Testimony of Genevieve Cullen, President, Electric Drive Transportation Association, *Hearing on Driving Affordability: Preserving People's Freedom to Buy Affordable Vehicles and Fuel*, 118th Cong. (June 22, 2023).

<sup>5</sup> *Id.*

## CONCLUSION

H.R. 1435 disregards decades of legal precedent, upends the CAA's Section 209 waiver process, and imperils the technological advancement in the transportation sector. Instead of joining Democrats in addressing dangerous air pollution, strengthening domestic vehicle manufacturing supply chains, and driving innovation, the Majority is choosing to help their polluter friends at the expense of public health, technological innovation, states' rights, and a stronger, cleaner economy for American families.

For the reasons stated above, we dissent from the views contained in the Committee Report.

FRANK PALLONE, Jr.

*Ranking Member, Committee on Energy and Commerce.*

