 The Los Angeles Times is reporting that EPA will propose to roll back greenhouse gas emissions standards for automobiles to 2020 levels. EPA will also claim that the California waiver is superseded by fuel economy standards issued by NHTSA and therefor is not valid, according to the report:

> Administration lawyers argue that the law gives NHTSA [the National Highway Transportation Safety Administration] power to pre-empt California's authority to set its own rules. NHTSA's authority, according to the draft plan, supersedes the special waiver the EPA has given California to pursue targets more aggressive than those set by the federal government.

I have explained in detail here how the auto standards work and California's special role in issuing them. Today's *L.A. Times* report suggests that the Pruitt EPA is proposing essentially eliminating tougher auto standards for passenger cars for model years 2021-2025 and simply freezing the 2020 standards through 2026. At the same time, EPA will claim that California's waiver to issue its own tougher standards is no longer valid.

California has special authority under the Clean Air Act to issue tailpipe standards to reduce air pollutants from cars so as long as it has a waiver from EPA. The Obama Administration approved such a waiver for California to issue its own greenhouse gas standards, currently identical to the federal standards Pruitt proposes revoking. If the LA Times report is correct, Pruitt will implicitly revoke the waiver the Obama Administration granted. And he will argue as the basis for doing so that a separate statute, the Energy Policy and Conservation Act (EPCA), which preempts all states, including California, from issuing fuel economy standards, allows the administration to ignore the waiver. Pruitt will apparently argue that EPCA allows the NHTSA to override California's waiver under the CAA. This argument, is frankly, ridiculous.

Let's start with the fact that California's standards do not regulate fuel economy, they regulate greenhouses gases. So on its face, California is not regulating fuel economy. Moreover, nowhere in the EPCA is NHTSA given the authority to override California's waiver, and nowhere does the statue say that NHTSA's authority "supersedes" California's special waiver authority under the Clean Air Act. But there's more. EPA and auto manufacturers have lost this argument three separate times. In two district court cases, auto manufacturers argued that an earlier version of California's greenhouse gas emissions standards for cars was preempted by the EPCA. They lost. EPA tried a similar argument in the landmark U.S. Supreme Court decision *Massachusetts v EPA*. The Court in Mass v. EPA held that greenhouse gases are air pollutants under the Clean Air Act and that EPA had a statutory obligation to consider whether these pollutants endanger public health and welfare. EPA tried to argue that EPA itself could not regulate greenhouse gases from automobiles because NHTSA and the Department of Transportation had the responsibility to regulate fuel economy. Here is the way the Supreme Court described EPA's argument that it could not regulate greenhouse gases from automobiles under the Clean Air Act:

> The agency [explained] that if carbon dioxide were an air pollutant, the only feasible method of reducing tailpipe emissions would be to improve fuel economy. But because Congress has already created detailed mandatory fuel economy standards subject to Department of Transportation (DOT) administration, the agency concluded that EPA regulation would either conflict with those standards or be superfluous."

The Court categorically rejected EPA's argument:

> …that DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public health and welfare … a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.

The logical conclusion of Mass v. EPA is that a) since greenhouse gases are "air pollutants" under the Clean Air Act; b) and because EPA has a statutory obligation to consider whether to regulate greenhouse gases from automobiles; c) California has statutory authority to regulate pollutants (including greenhouse gases) from automobiles; and d) the EPCA preemption provision over fuel economy does not prohibit the state from doing so because the statutory authority California has is "wholly independent from" the fuel economy standards.

Rolling back the auto standards to 2020 also appears to be legally indefensible. Administrator Pruitt just released a midterm review of auto standards for model years

2022-2025. There are many reasons to think that the midterm review itself is a legally tenuous basis for rolling back the 2022-2025 standards given the flimsy and auto manufacturer-produced evidence on which it relies. But the midterm review casts no doubt on the adequacy of the 2021 model year standards. Yet the proposal would eliminate the 2021 standards and apply 2020 standards through 2026 with no basis in the record whatsoever. It is hard to imagine a court upholding the agency's right to withdraw the standards with no evidence in the record for doing so. . Instead, this seems to be a flagrant attempt to say, "we aren't going to regulate you at all" given that manufacturers have already had to factor the 2020 standards into their production decisions given the long production time for cars.