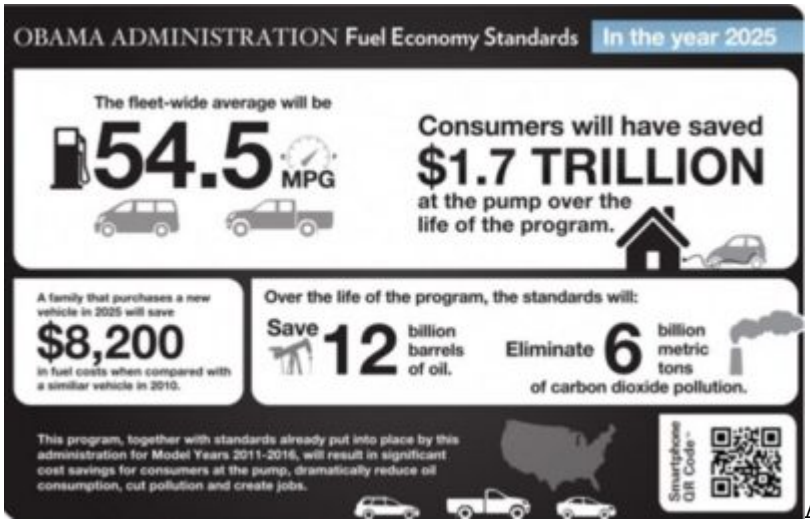

As expected, the Trump Administration has released its proposal that recommends freezing combined fuel efficiency and greenhouse gas standards at 2020 levels for model years 2021-2025. The proposal also recommends revoking the waiver EPA granted California in 2013 to issue its own greenhouse gas emissions standards and to continue the state's program to gradually increase the percentage of zero emissions vehicles each auto manufacturer must sell in the state. It is important to remember that the proposal is not final and the agencies that issued it, EPA and the Department of Transportation, could choose a less environmentally hostile, legally dubious path forward. But given that the freezing of the standards and the proposed revocation of California's waiver is their "preferred" position — and given President Trump's open hostility toward the Golden State and zealous anti-regulatory agenda – it's a better bet that this proposal will be finalized once the necessary administrative process is complete.

The Administration justifies its recommendations on the grounds that freezing the standards at 2020 levels will improve safety and lower consumer costs grounds. Experts have roundly criticized both of these grounds. A just-released comprehensive cost analysis concludes that the standards Trump is proposing to repeal could save consumers up to $5,000 over the life of car ownership, with truck drivers saving up to $8,000. The National Academy of Sciences also concludes that "the [current] standards appear to make vehicles more affordable for both new and used car buyers." And with respect to safety, the automakers themselves confirm that they are able to manufacture new, lighter weight materials to meet tougher standard without sacrificing safety. The arguments about cost and safety are makeweights designed to provide cover for a proposal that is likely to be struck down in court.

In a collection of blog posts, I have addressed why I think the legal bases the Administration

are weak. Here is a post that addresses whether EPA/DOT are on solid ground freezing the standards: "Wheeler EPA Looking To Freeze Auto Standards, Revoke California Waiver". The post describes the arguments in more detail but here is the fundamental problem EPA/DOT face: how can EPA have said — as it has — that greenhouse gas emissions from cars endanger public health and welfare and then fail to regulate them to get those emissions to decline?

The proposal to yank California's waiver to issue its own standards, including its zero-emission vehicle program, is also legally weak. The Administration argues that even though California has authority to issue its own auto standards under the Clean Air Act, a separate federal statute, the Energy Policy and Conservation Act, preempts the state from doing so. Here is a blog post that provides the detail and background about why this argument is so weak: "The New EPA Plan to Roll Back Auto Emissions Standards and "Supersede" the California Waiver is Legally Indefensible". Again, the post spells out the argument in significantly more detail, but here is the fundamental problem EPA/DOT face with their argument. The U.S. Supreme Court has already essentially rejected their view in Massachusetts v. EPA. The Court held that the obligation to issue fuel economy standards under the Energy Policy and Conservation Act is "wholly independent" of EPA's environmental responsibilities under the Clean Air Act to regulate greenhouse gas emissions from cars in order to protect public health and welfare. The same reasoning makes clear that California's power to regulate greenhouse gas emissions under the Clean Air Act is "wholly independent" of the Energy Policy and Conservation Act's ban on state regulation of fuel economy. The fuel economy statute does not, therefore, preempt California's greenhouse gas regulations. Two district courts have already agreed with my analysis.

Finally, the proposal argues that the waiver was improperly granted because California lacks "compelling and extraordinary circumstances" to regulate and its regulations are "technologically infeasible" taking into account compliance costs. These arguments are addressed in detail in "Wheeler EPA Looking to Freeze Auto Standards, Revoke California Waiver." But here, in essence, is the problem with the EPA/DOT arguments. How can EPA argue that California lacks compelling and extraordinary circumstances for its ZEV program, which reduces conventional air pollutants to zero, when two of the state's air districts — San Joaquin Valley and South Coast — are extreme non-attainment zones for ozone and out of attainment for fine particulates? And at a time when the federal government has just made the ozone standards even tougher? How can EPA argue that the state is not experiencing compelling and extraordinary circumstances when half of California is on fire and the state has experienced record drought, both made significantly worse by climate change? And how can EPA say the technology doesn't exist to reduce

greenhouse gases and zero emission vehicles given that we already have a large fleet of electric vehicles, hydrogen fuel cell cars are coming on line and many models can already meet the 2025 standards 7 years early?

I am pessimistic that the comment period that is now open on the EPA/DOT proposal will sway an administration that has regularly ignored rationality and truth. Acting Administrator Wheeler, though, has already show a willingness to reconsider some of the ill-fated decisions of his predecessor. Perhaps the comment period will provide him with an opportunity to persuade his Department of Transportation counterparts that a less aggressive proposal — one that actually cuts greenhouse gas emissions and protects California's authority — might actually be on stronger legal grounds. I'm not optimistic.