Along with hundreds of others, I traveled to Fresno, California to testify today against EPA's proposed rollback of vehicle standards. We've covered EPA and NHTSA's legally flawed proposal in a number of previous Legal Planet posts. Today's hearing started out with NHTSA's chief counsel accidentally referring to EPA as the "Energy Protection Agency," but has been filled with powerful testimony from California government officials; local doctors, residents, and clergy; and environmental justice advocates laying out the case for why EPA and NHTSA's terrible proposed rulemaking gets it wrong.

Protestors outside the September 24, 2018 SAFE proposal public hearing in Fresno, California

A few highlights of this morning's testimony include CARB Chair Mary Nichols referring to the legal basis for the proposed rulemaking as "flabby" and arguing the technical basis "makes no sense," AG Becerra's strong testimony arguing now is "not the time to backslide on our responsibilities," and Cal/EPA head Matt Rodriguez pointing out US EPA's hypocrisy on abandoning cooperative federalism when it comes to California.

California government officials testify against the proposed SAFE rule in Fresno, California (Sept. 24, 2018)

Interestingly, many of the automaker groups were somewhat neutral in their testimony. Few expressed full-throated support for the proposed rulemaking. Instead, they urged EPA and NHTSA to work with California and other stakeholders to reach a commonsense national standard.

I chose to focus my three minutes of testimony on EPA's decision to revoke California's Clean Air Act waiver granted in 2013 for the state's Advanced Clean Cars program, and have included my prepared remarks below.

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Good morning. My name is Meredith Hankins, and I'm here today to testify against the proposed SAFE rule, both as an asthmatic Los Angeles resident who suffered through 87 straight days of ozone violations this summer, and as a legal scholar at the Emmett Institute on Climate Change and the Environment at UCLA School of

Law.

The Emmett Institute will be submitting more detailed written comments, but I'm here today to emphasize a few key reasons why we believe the proposed rule is wrong both as a matter of policy and as a matter of law. My comments this morning will be focused on the proposal to revoke part of the Clean Air Act waiver granted to California in 2013 for the Advanced Clean Cars program, and in particular the claim that California does not have "compelling and extraordinary circumstances" justifying its standards.

First, EPA has no legal basis under the Clean Air Act to revoke an existing waiver. Congress intended EPA grant California tremendous deference when the state seeks a preemption waiver, even revising the waiver provision in 1977 to grant additional deference to the state. And the plain text of the waiver provision contains no criteria for revoking a waiver. Instead, it only gives EPA the authority to grant or deny a waiver of preemption once California has adopted new standards. As detailed by NYU's Institute for Policy Integrity, the Clean Air Act's legislative history likewise does not demonstrate intent to authorize EPA to revoke a waiver once it has been granted.

Furthermore, even if EPA did possess some inherent authority to revoke a waiver previously granted, such authority would necessarily be limited to the specific grounds to deny a waiver provided in the text of Clean Air Act — none of which apply here.

California continues to have extremely "compelling and extraordinary circumstances" justifying the state's need for its own motor vehicle standards, both for criteria pollutants like NOx and greenhouse gases like CO2. The California Air Resources Board estimates that 12 million Californians currently live in areas that exceed national ambient air quality standards for ozone and PM2.5, breathing in unhealthy air every day that worsens their risk for asthma attacks, reduces lung function, and increases the risk of cardiovascular disease. California currently has the only two areas designated extreme nonattainment, the only two severe nonattainment areas, the only two serious nonattainment areas, and four out of the five areas designated moderate nonattainment in the entire country for the 8 hour ozone NAAQS. And California's ozone nonattainment problems are only exacerbated by climate change, as scientists predict our climate will become more and more conducive to ozone formation as more greenhouse gases are emitted into our atmosphere.

Replacing fossil fuel vehicles spewing NOx and other smog precursors with zero-emission vehicles is a crucial part of California's plan to meet the ozone standards in Los Angeles and here in the San Joaquin valley. But EPA is proposing to revoke California's waiver for the ZEV program. Revoking any part of the 2013 waiver will hamstring California's ability to regulate motor vehicle emissions, forcing those 12 million Californians to continue breathing unhealthy air for the foreseeable future.

And it's not just California. Revoking California's waiver likewise hobbles the 9 other states that rely on the ZEV program in their own State Implementation Plans, which as EPA admits will force the agency to put out a call for revised plans since it's unclear how these states will come into attainment with the ozone NAAQS without the ZEV program.

As we will detail more fully in written comments, the Emmett Institute believes California continues to meet **all** statutory criteria necessary for the waiver received in 2013. Revoking any part of California's waiver is contrary to the law, and dangerous for the public health of all Californians.

Thank you for your time.