Of the many achievements of California's legendary legislator Fran Pavley, one of the most remarkable is then-Assemblywoman Pavley's modest bill, AB 1493, which directed California to become the first jurisdiction in the country to control greenhouse gas emissions from cars. That bill, introduced in 2001 and passed the next year, told the California Air Resources Board to create such standards using ARB's special powers under the Clean Air Act to develop more strict air pollution controls for cars than the federal government (explained here).

Not surprisingly, Pavley's proposal was subject to relentless attack from the get-go. As Pavley wrote in describing opposition to the bill as its prospects grew:

> The powerful oil and auto industries suddenly engaged, with some suggesting that voluntary programs could achieve the same goals. The opposition called the bill poorly crafted and an end-run around the Federal fuel-efficiency standards. But we weren't setting a miles-per-gallon standard. We were regulating tail pipe emissions.

Everything old is new again, and the fight rages on–even on similar terms. Today, just about 22 years after Pavley first gathered her staff to brainstorm the introduction of AB 1493, opponents are litigating in the DC Circuit to overturn EPA's decision to reinstate a set of California's GHG and ZEV standards that had been approved under President Obama, withdrawn under President Trump (remember the "SAFE Rule"?), and now have been restored. One of the arguments that challengers make in this case is that these GHG and ZEV standards are really fuel economy standards in disguise and are therefore preempted by the federal statute controlling fuel economy standards, the Energy Policy Conservation Act of 1975.

Late last week, through the Frank Wells Environmental Law Clinic at UCLA, some colleagues and I filed an amicus brief in support of California's standards. We filed on behalf of two other legendary legislators, Sen. Tom Carper and Rep. Frank Pallone, Jr., each of whom has chaired the key Senate and House committees with jurisdiction over the Clean Air Act. In our brief, we describe 50 years of unbroken Congressional commitment to California's ability to craft car standards such as these. We argue that

> [n]othing in the 1975 Act indicates an intent to invalidate elements of the

> Clean Air Act. Congress understood that the fuel-economy improvements it sought through the 1975 Act could be affected by the vehicle-emissions standards created under the Clean Air Act . . . But Congress struck the balance between these two aims in favor of public-health and air-quality goals: it made exceptions in the 1975 Act to prioritize Clean Air Act emissions reductions over fuel-economy improvements, not the other way around. In doing so, Congress explicitly required that § 209(b) standards [aka California's standards] be considered in setting fuel-economy requirements under the 1975 Act. Thus, reading the Act to preempt § 209(b) standards that affect fuel economy both contradicts Congressional intent and makes the Act nonsensical.

The brief also points to more recent legislation, including a provision of the Inflation Reduction Act crafted by Sen. Carper, Rep. Pallone and others, that affirms and ratifies the validity of these California car standards. (You can read more about the foundations of this argument in a hot-off-the-presses ELR paper by Greg Dotson and Dustin Maghamfar here.)

For many decades, California has led the way to stronger, more health-protective car standards, creating models for regulation that are then followed throughout the U.S. and the world. Here's hoping it continues to be able to play this critically important role in the climate change context. And three cheers for Fran Pavley.